



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-15-546850

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**COMPLAINT**

**MICHELLE GYORKE-TAKATRI ET AL VS. NESTLE USA, INC. ET AL**

001C04990800

**Instructions:**

Please place this sheet on top of the document to be scanned.

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**  
NESTLE USA, INC. and GERBER PRODUCTS COMPANY

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**  
MICHELLE GYORKE-TAKATRI and KATIE SILVER on behalf of themselves  
and all others similarly situated

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos arrentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco  
Civic Center Courthouse, 400 McAllister Street, San Francisco, CA 94102-4514

CASE NUMBER  
(Número del caso):

15-546850

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Matthew J. Zevin, Esq.

Stanley Law Group, 10021 Willow Creek Road, San Diego, CA 92131, Tel: (619) 235-5306

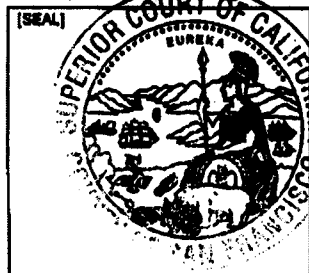
Victoria Gonzalez  
Deputy  
(Adjunto)

DATE: JUL 14 2015  
(Fecha)

CLERK OF THE COURT Clerk, by  
(Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
under:
 

<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4.  by personal delivery on (date):

**BY FAX**

**F I L E D**

Superior Court of California  
County of San Francisco

JUL 14 2015

CLERK OF THE COURT

BY: [Signature]  
Deputy Clerk

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15 E-mail: steve@consumerhelper.com

16 *Attorneys for Plaintiffs Michelle Gyorke-Takatri, Ka-*  
17 *tie Silver, and the Proposed Class*  
18 *[Additional Counsel Listed on Signature Page]*

**SUPERIOR COURT OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN FRANCISCO**

14 MICHELLE GYORKE-TAKATRI and KA-  
15 TIE SILVER on behalf of themselves and all  
16 others similarly situated,

Plaintiffs,

v.

17 NESTLE USA, INC. and GERBER PROD-  
18 UCTS COMPANY,

Defendants

CASE NO. **CGC 15-546850**

**CLASS ACTION COMPLAINT FOR:**

1. Violation of Consumers Legal Remedies Act (Cal. Civil Code § 1750 et seq.);
2. Violation of Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.);
3. Violation of False Advertising Law (Cal. Bus. & Prof. Code § 17500 et seq.);
4. Breach of Express Warranty;
5. Breach of Implied Warranty of Merchantability;
- 6) Unjust Enrichment

**BY FAX**

**DEMAND FOR JURY TRIAL**

22 Plaintiffs Michelle Gyorke-Takatri and Katie Silver ("Plaintiffs"), individually and on  
23 behalf of all others similarly situated, bring this action against Nestle USA, Inc. and Gerber  
24 Products Company ("Gerber" or "Defendants"), because Gerber markets Gerber Graduates  
25 Puffs as though they contain significant amounts of the fruits and vegetables vibrantly depicted  
26 on its packaging, when in fact Gerber Graduates Puffs contain only trace amounts of those in-  
27 gredients, or none at all.

28 *///*

1 **NATURE OF THE ACTION**

2 1. This is a proposed statewide class action for Gerber's false and deceptive<sup>1</sup> prac-  
3 tices in deceiving consumers about the fruit and vegetable content and the nutritional and  
4 health qualities of Gerber Graduates Puffs.

5 2. From January 1, 2011 to the present (the "Class Period"), Gerber made false  
6 and deceptive representations that Gerber Graduates Puffs and Gerber Graduates Organic  
7 Puffs ("Puffs" or "Products") contained significant amounts of the actual fruits or vegetables  
8 shown on the label, were nutritious and healthful to consume, and better than similar products.

9 3. In fact, Gerber's Puffs do not contain any, or significant amounts of, the fruits  
10 or vegetables shown on the label. The closest ingredient to fruits or vegetables in the Puffs is  
11 little more than a powder ("dried apple puree"). Even then, there is less than one gram of this  
12 apple powder in each serving of the Puffs—meaning the Puffs contain much more sugar in  
13 each serving than any fruit- or vegetable-like ingredient.

14 4. Thus, although Gerber markets Puffs as healthful and nutritious, these Products  
15 are devoid of the health benefits of consuming fruit or vegetables, and are mostly a combina-  
16 tion of flour and sugar.

17 5. In addition, Gerber violates federal law aimed at preventing consumer decep-  
18 tion. 21 C.F.R. section 102.5 requires any company that (1) markets a food based on its fruit or  
19 vegetable content if the fruit or vegetable content affects price or consumer acceptance, or (2)  
20 chooses to make it appear that there is more fruit or vegetable in the product than is actually  
21 the case, to display the true percentage of fruits or vegetables in the product name on the front  
22 label. Gerber violates this requirement.

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25 \_\_\_\_\_  
26 <sup>1</sup> The terms "deceptive," "deceptively," and "deception" encompass other descriptive  
27 terms, including various forms of the words: mislead, misrepresent, untrue, unfair,  
28 false, disparage, and unlawful. All of these terms are referenced in California's Civil  
Code and California's Health and Safety Code.

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## JURISDICTION

6. This court has jurisdiction over all causes of action Plaintiffs assert, pursuant to California Constitution, Article VI, Sec. 10, because this case involves causes of action not given by statute to other trial courts.

7. Venue is proper in this district pursuant to Code of Civil Procedure section 395 because substantial acts in furtherance of the alleged improper conduct, including the dissemination of false and deceptive information about the Puffs, occurred within this County.

## PARTIES

9

### Plaintiffs

10 8. During the Class Period, Plaintiff Michelle Gyorke-Takatri ("Gyorke-Takatri")  
11 was a resident of California and purchased Gerber's Puffs about once a week for herself and  
12 her children.

13 9. During the Class Period, Plaintiff Katie Silver ("Silver") was a resident of Cali-  
14 fornia and purchased Gerber's Puffs about once a week for herself and her children

15 10. Ms. Gyorke-Takatri purchased Apple, Banana, Blueberry, Organic Green Veg-  
16 gies, Sweet Potato, and Vanilla Puffs. Ms. Silver purchased Blueberry Puffs. Both Plaintiffs  
17 relied on Gerber's large and prominent representations of fruits or vegetables on front of the  
18 Puffs packaging when they decided to purchase the Puffs. The prominent graphics of fresh  
19 fruits and vegetables on the front of the Puffs packages led Ms. Gyorke-Takatri and Ms. Silver  
20 to believe that the depicted fruit or vegetable was a primary ingredient in the Puffs and that the  
21 Puffs were healthy and nutritious. Had Plaintiffs known that the Puffs contained none, or only  
22 a tiny amount, of any fruit or vegetable depicted, they would not have purchased the Puffs.

23 11. Plaintiffs saw and relied on Gerber's deceptive depictions of the ostensibly  
24 primary ingredients on the packaging of the Puffs as well as Gerber's widespread advertising  
25 and marketing<sup>2</sup> campaign (such as print magazine and mailer coupons). Gerber's marketing  
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27 <sup>2</sup> The terms "markets" and "marketing" include all forms of advertising in all forms of  
28 media, including without limitation, print advertisements, television and radio com-  
mercials, packaging and product labels, viral marketing, incentives, and websites.

1 campaign uniformly emphasized fruits and vegetables and represented that the Puffs were nu-  
2 tritious, healthful, and better than similar products. Plaintiffs relied on these misrepresentations  
3 when they decided to purchase Puffs.

4 12. Gerber's representations are deceptive because Gerber's Puffs are not healthful,  
5 do not contain any, or significant amounts of, the fruit or vegetables depicted on the label, and  
6 lack significant amounts of any actual fruit or vegetables. Plaintiffs suffered injury because,  
7 had they known that Gerber's claims were deceptive, they would not have bought the Puffs at  
8 all, and certainly would not have paid a premium price for them.

9 13. Plaintiffs acted as reasonable consumers with respect to their decisions to buy  
10 Gerber's Puffs.

#### 11 Defendants

12 14. Defendant Nestle USA, Inc. (Nestle USA) is a subsidiary of Nestle SA, a Swiss  
13 corporation that does business in this country and touts itself as the world's largest food com-  
14 pany.<sup>3</sup> Nestle USA controls the practices of Gerber Products Company in this country. Nestle  
15 USA is a Delaware corporation headquartered at 800 North Brand Boulevard, Glendale, Cali-  
16 fornia 91203.

17 15. Defendant Gerber Products Company is the best-known baby food company in  
18 the country. Gerber does business in California and every other state in the country. Gerber is a  
19 Michigan corporation headquartered at 12 Vreeland Road, Florham Park, New Jersey 07932.  
20 On information and belief, Gerber does business as Nestle Nutrition, Nestle Infant Nutrition,  
21 and Nestle Nutrition North America.

#### 22 FACTS

23 16. Gerber engages in a widespread and uniform marketing and advertising cam-  
24 paign to portray its Puffs as nutritious and healthful. Gerber engages in this deceptive cam-  
25 paign to sell Puffs to consumers (who would not otherwise buy them), to charge a premium  
26 price, and to take away market share from other similar companies.

27 <sup>3</sup>Nestle website, About Us, Key Figures, [http://www.nestleusa.com/about-us/key-](http://www.nestleusa.com/about-us/key-figures)  
28 [figures](http://www.nestleusa.com/about-us/key-figures) (last visited June 18, 2015).

1           17.     Plaintiffs and other class members want to be sure they are feeding their young  
2 children healthy snacks.

3           18.     When deciding what products to buy, Plaintiffs and other class members rely on  
4 the information companies choose to put on package labels.<sup>4</sup>

5           19.     Gerber has one of the most respected and well-known names in the world when  
6 it comes to infant food. On information and belief, that was a significant factor when Nestle  
7 acquired Gerber in 2007—at a time when Gerber Graduates had sales of \$250 million and 91%  
8 market share.<sup>5</sup>

9           20.     Nestle describes Gerber as “One of the most trusted names in baby food and  
10 baby care since 1927. Gerber baby food and baby care is committed to promoting good nutri-  
11 tion and healthy eating habits for children.”<sup>6</sup>

12           21.     In its most recent Annual Report, Nestle bragged that it “aims to support par-  
13 ents with the information they need to make the most informed decisions about their children’s  
14 health and eating habits, such as the importance of regular consumption of fruits and vegeta-  
15 bles, and of exercise.”<sup>7</sup> Also, in its corporate principles, Nestle promises that it is “[c]ommitted  
16 to responsible, reliable consumer communication that empowers consumers to exercise their  
17 right to informed choice and promotes healthier diets.”<sup>8</sup>

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19           <sup>4</sup> See, e.g., Christina R. Munsell, Jennifer L. Harris, Vishnudas Sarda, and Marlene B.  
20 Schwartz, *Parents’ Beliefs About the Healthfulness of Sugary Drink Options: Opportunities*  
21 *to Address Misperceptions*, Pub. Health Nutrition, available on CJO2015.  
doi:10.1017/S1368980015000397 (Mar. 11, 2015).

22           <sup>5</sup> Hugo Miller and Evan von Schaper, *Nestle Buys Gerber for \$5.5 Billion*, BLOOMBERG  
23 NEWS Apr. 13, 2007, available at [http://www.washingtonpost.com/wp-  
dyn/content/article/2007/04/12/AR2007041200372.html](http://www.washingtonpost.com/wp-<br/>dyn/content/article/2007/04/12/AR2007041200372.html).

24           <sup>6</sup> Nestle website, Brands, Gerber <http://www.nestle.com/brands/allbrands/gerber> (last  
25 visited June 18, 2015).

26           <sup>7</sup> Nestle Annual Report 2014, available at [http://www.nestle.com/asset-  
library/documents/library/documents/annual\\_reports/2014-annual-report-en.pdf](http://www.nestle.com/asset-<br/>library/documents/library/documents/annual_reports/2014-annual-report-en.pdf).

27           <sup>8</sup> The Nestle Corporate Business Principles June 2010, available at  
28 <http://www.nestle.com/asset->

1           22. On its consumer website, Gerber proclaims that “we work hard to become a  
2 parent’s trusted partner in fostering healthy growth and development and helping establish  
3 healthy eating habits from Birth+ to Toddler 2+.”<sup>9</sup>

4           23. On that same website, speaking specifically about Graduates products, Gerber  
5 promises that Graduates products, including Puffs, “offer a range of nutritious, delicious prod-  
6 ucts designed for your Crawler.”<sup>10</sup>

7           24. Because of Gerber’s reputation, Plaintiffs and other class members trusted Ger-  
8 ber to provide healthy snacks for their young children.

9           25. Gerber violated Plaintiffs’ trust, and broke its promises, because Puffs are not  
10 the fruit- or vegetable-packed healthy snacks that the label and advertising make them appear  
11 to be.

12           26. Specifically, although the Graduates Puffs varieties all bear the name of a fruit  
13 or vegetable with prominent depictions of the fruit or vegetable (often in large quantities), in  
14 truth the Puffs that Plaintiffs purchased contain none, or only miniscule amounts, of the actual  
15 fruit or vegetable promised by Gerber, thus providing little more than empty calories for young  
16 children.

17           27. Gerber’s Puffs provide no dietary fiber (a key substance found in fruits and  
18 vegetables) and contain the vitamins emphasized in Gerber’s marketing campaign<sup>11</sup> only due  
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21 library/documents/library/documents/corporate\_governance/corporate-business-  
22 principles-en.pdf.

23 <sup>9</sup> Gerber website, Why Gerber, <https://www.gerber.com/why-gerber/why-gerber> (last  
24 visited June 18, 2015).

25 <sup>10</sup> Gerber website, Products, Snacks, <https://www.gerber.com/products/snacks> (last  
26 visited June 18, 2015).

27 <sup>11</sup> E.g., Gerber website, Products, Banana Puffs,  
28 [https://www.gerber.com/products/product/gerber-graduates-puffs-banana-naturally-  
flavored-with-other-natural-flavors](https://www.gerber.com/products/product/gerber-graduates-puffs-banana-naturally-flavored-with-other-natural-flavors) (“Good Source of five B Vitamins, Vitamin E, Zinc  
and Iron”) (last visited June 18, 2015).



1 to synthetic fortification.<sup>12</sup> Reasonable consumers are likely deceived by Gerber's marketing  
2 campaign into believing that these vitamins are present in the Puffs thanks to significant  
3 amounts of fruits and vegetables. Unfortunately for consumers, the synthetic vitamins Gerber  
4 adds to the Puffs do not provide the same health benefits as vitamins obtained by eating fruits  
5 and vegetables.<sup>13</sup>

6 28. Each variety of Gerber's Puffs contains more sugar than fruits or vegetables.<sup>14</sup>  
7 Gerber takes advantage of its trusted name to market unhealthy and even dangerous Products  
8 for consumption by some of the youngest and most vulnerable consumers.

9 29. Examination of three of the Puffs varieties illustrates Gerber's deliberate and  
10 uniform deceptions. The Products' images and lists of ingredients are from Gerber's website  
11 (although the size of the ingredients list is considerably greater than on the actual product la-  
12 bel).

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24 <sup>12</sup> See Gerber Graduates Puffs' ingredients lists, Illustrations 1-3.  
25 <sup>13</sup> See, e.g., Rui Hai Liu, *Health Benefits of Fruits and Vegetables are from Additive and Syn-*  
26 *ergistic Combinations of Phytochemicals*, 78 AM. J. CLIN. NUTR. 517S, 517S-520S, at 518S  
27 (2003); INST. OF MEDICINE, FOOD AND NUTRITION BOARD, *Dietary Reference Intakes for*  
28 *Vitamin C, Vitamin E, Selenium, and Carotenoids* (Nat'l Academy Press, 2000).  
<sup>14</sup> See Gerber Graduates Puffs' ingredients lists, Illustrations 1-3.

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**Illustration 1**  
**Sweet Potato Puffs Packaging and Ingredients**



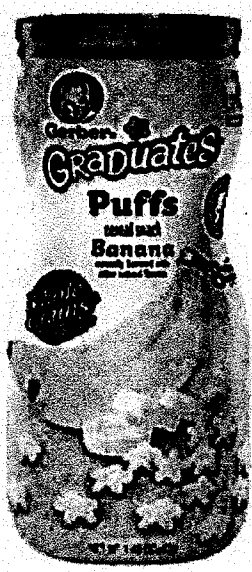
Rice Flour, Whole Wheat Flour, Wheat Starch, Sugar, Whole Grain Oat Flour, Dried Apple Puree, Less than 2% of: Tri- and Dicalcium Phosphate, Natural Sweet Potato Flavor, (Includes Dried Sweet Potato), Mixed Tocopherols (To Maintain Freshness), Soy and Sunflower Lecithin, Annatto Extract Color. Vitamins and Minerals: Zinc Sulfate, Vitamin E (Alpha Tocopheryl Acetate), Iron (Electrolytic), Niacinamide (A B Vitamin), Vitamin B2 (Riboflavin), Vitamin B1 (Thiamine Hydrochloride), Vitamin B12 (Cyanocobalamin)<sup>15</sup>

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<sup>15</sup> Cf. Gerber website, Products, Gerber Graduates, Puffs, <https://www.gerber.com/products/product/gerber-graduates-puffs-sweet-potato-naturally-flavored-with-other-natural-flavors> (emphasis added) (last visited June 18, 2015).

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**Illustration 2  
Banana Puffs Packaging and Ingredients**



Rice Flour, Whole Wheat Flour, Wheat Starch, Sugar, Whole Grain Oat Flour, Dried Apple Puree, Less Than 2% of: Tri- and Dicalcium Phosphate, Natural Banana Flavor, Calcium Phosphate, Mixed Tocopherols (To Maintain Freshness), Soy and Sunflower Lecithin, Caramel Color, Turmeric Extract Color. Vitamins and Minerals: Zinc Sulfate, Vitamin E (Alpha Tocopheryl Acetate), Iron (Electrolytic), Niacinamide (A B Vitamin), Vitamin B2 (Riboflavin), Vitamin B6 (Pyridoxine Hydrochloride), Vitamin B1 (Thiamine Hydrochloride), Vitamin B12 (Cyanocobalamin)<sup>16</sup>

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<sup>16</sup> Cf. Gerber website, Products, Snacks, Puffs, Banana, <https://www.gerber.com/products/snacks-products/product/gerber-graduates-puffs-banana-naturally-flavored-with-other-natural-flavors/27> (emphasis added) (last visited June 18, 2015).

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**Illustration 3**  
**Peach Puffs Packaging and Ingredients**



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Rice Flour, Whole Wheat Flour, Wheat Starch, Sugar, Whole Grain Oat Flour, Dried Apple Puree, Natural Peach Vanilla Flavor (Includes Citric Acid, Acetic Acid, Invert Sugar, Peach Juice Concentrate, Vanilla Extract) Less Than 2% of: Calcium Phosphate, Mixed Tocopherols (To Maintain Freshness), Soy and Sunflower Lecithin, Annatto Extract Color. Vitamins and Minerals: Zinc Sulfate, Vitamin E (Alpha Tocopheryl Acetate), Iron (Electrolytic), Niacinamide (A B Vitamin), Vitamin B2 (Riboflavin), Vitamin B6 (Pyridoxine Hydrochloride), Vitamin B1 (Thiamine Hydrochloride), Vitamin B12 (Cyanocobalamin)<sup>17</sup>

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<sup>17</sup> Cf. Gerber website, Products, Snacks, Puffs, Peach, <https://www.gerber.com/products/product/gerber-graduates-puffs-peach-naturally-flavored-with-other-natural-flavors> (emphases added) (last visited June 18, 2015).

1           30.     The Sweet Potato variety, despite the name and the prominent images of whole  
2 and sliced sweet potatoes, contains barely any sweet potato at all. The best Gerber can muster  
3 is less than 2% (less than the amount of sugar) of natural sweet potato flavor—and a percent-  
4 age of that natural sweet potato flavor is composed of “dried sweet potato.” Like the other va-  
5 rieties, Sweet Potato contains “dried apple puree”—little more than apple-flavored powder.

6           31.     The Banana variety, despite the name and the prominent images of a bunch of  
7 bananas and sliced bananas, contains no banana at all. Like the other varieties, Banana Puffs  
8 contain “dried apple puree”—little more than apple-flavored powder.

9           32.     The Peach variety, despite the name and the prominent images of whole and  
10 sliced ripe peaches, contains barely any peach at all. The best Gerber can muster is natural  
11 peach vanilla flavor—and a percentage of that natural peach vanilla flavor is composed of  
12 “peach juice concentrate.” And, as with the Sweet Potato and Banana varieties, the Peach vari-  
13 ety contains a trivial amount of “dried apple puree.”

14           33.     The federal Food and Drug Administration (“FDA”) requires companies to list  
15 food ingredients in “descending order of predominance by weight.”<sup>18</sup> When an ingredient is  
16 present in amounts of 2 percent or less by weight, FDA allows companies to choose to lump  
17 all those minor ingredients under a heading such as “Less than \_ percent of \_\_\_\_.”<sup>19</sup> Once a  
18 company uses this heading, the following ingredients are not necessarily listed in descending  
19 order of predominance by weight.<sup>20</sup> Gerber lists the ingredients list for the Puffs Products us-  
20 ing the heading “Less than 2% of \_\_\_\_.”

21           34.     Dried apple puree appears in the ingredients lists after sugar and four types of  
22 flour ingredients, and immediately before the “Less than 2% of:\_\_\_\_” heading. Thus, it is likely  
23 that barely more than 2% of this fruit-like ingredient is in the Puffs.

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26           <sup>18</sup> 21 C.F.R. § 101.4(a)(1).

27           <sup>19</sup> 21 C.F.R. § 101.4(a)(2).

28           <sup>20</sup> 21 C.F.R. § 101.4(a)(2).



1 on Puffs' advertising, packaging, and labels. Reliance on the information Gerber chooses to  
2 provide consumers is reasonable.

3 37. Plaintiffs and other class members would never have paid the premium price  
4 that Gerber commands, and in fact would not have bought the Puffs at all, had they known the  
5 truth. They wanted healthy fruit- or vegetable-packed snacks for their children, not the empty  
6 calories and total or practical absence of fruit or vegetables actually provided.

7 38. The Center for Science in the Public Interest has criticized this very practice:

8 Food companies aggressively market phony fruit snacks to toddlers, children, and  
9 their parents, pushing them as healthy options and substitutes for real fruit. Un-  
10 fortunately for parents and kids, phony fruit snacks don't always contain the  
11 fruits advertised on the front of the box and never in the quantities suggested. In-  
12 stead, companies use relatively cheap, nutritionally void, and highly processed  
13 pear, apple, and white grape juices, making phony fruit snacks much closer to  
14 gummy bears than actual fruit.

15 ...  
16 The Dietary Guidelines Advisory Committee concluded that "nutrient intake  
17 should come primarily from foods" and that "the more scientists learn about nu-  
18 trition and the human body, the more they realize the importance of eating foods  
19 in their most intact forms without added solid fats, sugars, starches, or sodium."  
20 Another good reason to stay away from phony fruit snacks, which are mainly  
21 sugar and small amounts of fruit that has been dehydrated, pureed, concentrated,  
22 heated, and otherwise processed until it is shelf stable and largely unrecognizable,  
23 requiring colors, flavors, and vitamins to be added back in.<sup>22</sup>

24 39. Plaintiffs were therefore deceived, and spent money they would not have spent  
25 as a result of Gerber's deceptive practices.

#### 26 CLASS ALLEGATIONS

27 40. Plaintiffs bring this action as a statewide class action pursuant to section 382 of  
28 the California Code of Civil Procedure on behalf of all persons who purchased Gerber Gradu-  
ates during the Class Period (the "Class"). Excluded from the Class are officers and directors  
of Gerber, members of the immediate families of the officers and directors of Gerber, and its

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48-Ounce/dp/B004BCT2JI/ref=sr\_1\_1?ie=UTF8&qid=1427226526&sr=8-  
1&keywords=graduates+puffs+peach (last visited June 18, 2015).

<sup>22</sup> CSPI website, Nutrition Policy, Fruit Fraud,  
<http://cspinet.org/nutritionpolicy/fruitfraud.html> (last visited June 18, 2015).

1 legal representatives, heirs, successors or assigns and any entity in which they have or have  
2 had a controlling interest.

3 41. Plaintiffs presently do not know the exact number or identities of all Class  
4 members, but given the nature of the claims and the number of retail stores selling Gerber's  
5 Puffs, Plaintiffs believe that Class members are so numerous that joinder of all members of the  
6 Class is impracticable.

7 42. There is a well-defined community of interest in the questions of law and fact  
8 involved in this case. Questions of law and fact common to the members of the Class which  
9 predominate over questions which may affect individual Class members include:

- 10 a. Whether Gerber labeled, marketed, advertised, or sold Puffs to Plaintiffs and  
11 those similarly situated using false, misleading, or deceptive statements or rep-  
12 resentations, including statements or representations concerning the nutritional  
13 and health qualities of its Puffs;
- 14 b. Whether Gerber omitted or misrepresented material facts in connection with the  
15 sales of its Puffs;
- 16 c. Whether Gerber participated in and pursued the common course of conduct  
17 complained of; and
- 18 d. Whether Gerber's labeling, marketing, advertising, or selling of its Puffs as  
19 healthful and nutritious constitutes an unfair or deceptive consumer sales prac-  
20 tice.

21 43. Plaintiffs' claims are typical of those of the Class because Plaintiffs, like all  
22 members of the Class, purchased Gerber's Puffs at a premium price in a typical consumer set-  
23 ting and sustained damages from Gerber's wrongful conduct.

24 44. Plaintiffs will adequately protect the interests of the Class and have retained  
25 counsel experienced in litigating complex class actions. Plaintiffs have no interests that conflict  
26 with those of the Class.

27 45. A class action is superior to adjudication of this controversy over the other  
28 available methods for the fair and efficient.





1 was undertaken by Gerber in transactions intended to result in, and which did result in, the sale  
2 of goods to consumers.

3 53. As alleged more fully above, Gerber has violated the CLRA by falsely repre-  
4 senting to Plaintiffs and the Class certain health qualities of its Puffs.

5 54. As a result of engaging in such conduct, Gerber has violated California Civil  
6 Code §§ 1770(a)(5), (a)(7), and (a)(9).

7 55. Pursuant to California Civil Code §§ 1780(a)(2) and (a)(5), Plaintiffs seek an  
8 order of this Court that requires, among other things, Gerber to remove language on Gerber's  
9 labeling and advertising representing Puffs as healthful and nutritious, include the percentage  
10 of the characterizing ingredient for Puffs in their statements of identity, make any other chang-  
11 es in the labeling and advertising of Puffs to prevent the deception described in this Complaint,  
12 and award damages, attorneys' fees, and any other relief the Court deems proper pursuant to  
13 Cal. Civ. Code §§ 1780 and 1781.

14 56. Plaintiffs and members of the Class may be irreparably harmed or denied an ef-  
15 fective and complete remedy if such an order is not granted.

16 57. The unfair and deceptive acts and practices of Gerber, as described above, pre-  
17 sent a serious threat to Plaintiffs and members of the Class.

## 18 SECOND CAUSE OF ACTION

### 19 Unlawful Business Acts and Practices, 20 In Violation of California Business and Professions Code § 17200, *et seq.*

21 58. The acts of Gerber described above constitute unlawful business acts and prac-  
22 tices.

23 59. Gerber's manufacturing, marketing, advertising, packaging, labeling, distribut-  
24 ing, and selling of Puffs violate California's Sherman Food, Drug and Cosmetics Law, Cal.  
25 Health & Saf. Code § 109875, *et seq.* (the "Sherman Law").

26 60. The Sherman Law defines a "person" as "any individual, firm, partnership,  
27 trust, corporation, limited liability company, company, estate, public or private institution, as-  
28 sociation, organization, group, city, county, city and county, political subdivision of this state,

1 other governmental agency within the state, and any representative, agent, or agency of any of  
2 the foregoing." Cal. Health & Saf. Code § 109995. Gerber is a corporation and, therefore, a  
3 "person" within the meaning of the Sherman Law.

4 61. In relevant part, the Sherman Law declares that food is misbranded if its label-  
5 ing is false or misleading in any particular way and further provides that it is unlawful for any  
6 person to misbrand any food. Cal. Health & Saf. Code §§ 110660, 110765.

7 62. The Sherman Law adopts the federal Food, Drug, and Cosmetic Act and regula-  
8 tions written by FDA. Cal. Health & Safety Code §§ 109875, *et seq.* Gerber's actions violate  
9 21 C.F.R. section 102.5, as discussed above.

10 63. Gerber's practices are unlawful under the California Consumers Legal Remedy  
11 Act, Cal. Civ. Code § 1750, *et seq.* ("CLRA") because they violate the Sherman Law and the  
12 federal Food, Drug, and Cosmetic Act.

13 64. Gerber's practices alleged above are unlawful under California Business and  
14 Professions Code § 17200, *et seq.* because they violate § 17500, *et seq.*, which forbids untrue  
15 advertising and misleading advertising.

16 65. As a result of the Gerber's practices described above, Plaintiffs and the Class,  
17 pursuant to California Business and Professions Code § 17203, are entitled to an order enjoin-  
18 ing future wrongful conduct on the part of Gerber and any other orders and judgments which  
19 may be necessary to disgorge Gerber's ill-gotten gains and to restore to any person in interest  
20 any money paid for Puffs as a result of the wrongful conduct of Gerber.

21 66. The above-described unlawful business acts and practices of Gerber present a  
22 threat and reasonable likelihood of deception to Plaintiffs and members of the Class in that  
23 Gerber has systematically perpetrated and continues to perpetrate unlawful acts or practices  
24 upon members of the Class by means of its misleading manufacturing, marketing, advertising,  
25 packaging, labeling, distributing, and selling of Puffs.

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1 **THIRD CAUSE OF ACTION**

2 **Fraudulent Business Acts and Practices,**  
3 **In Violation of California Business and Professions Code § 17200, et seq.**

4 67. The acts of Gerber as described above constitute fraudulent business practices  
5 under California Business and Professions Code § 17200, et seq.

6 68. As more fully described above, Gerber's misleading marketing, advertising,  
7 packaging, and labeling of Puffs is likely to deceive reasonable California consumers. Indeed,  
8 Plaintiffs and other members of the Class were unquestionably deceived regarding the charac-  
9 teristics of Gerber's Puffs, as Gerber's marketing, advertising, packaging, and labeling of  
10 Puffs misrepresents or omits the true nutritional content and levels of fruit and vegetables in  
11 Puffs.

12 69. This deception caused Plaintiffs and members of the Class to purchase Products  
13 that they would not otherwise have purchased or to pay more than they would have for Puffs  
14 had they known the statements on the front of Gerber's Puffs conveying healthfulness are con-  
15 trary to the actual ingredients of the Puffs.

16 70. As a result of the business acts and practices described above, Plaintiffs and the  
17 Class, pursuant to California Business and Professions Code § 17203, are entitled to an order  
18 enjoining future wrongful conduct on the part of Gerber and any other orders and judgments  
19 which may be necessary to disgorge Gerber's ill-gotten gains and to restore to any person in  
20 interest any money paid for Puffs as a result of the wrongful conduct of Gerber.

21 **FOURTH CAUSE OF ACTION**

22 **Misleading and Deceptive Advertising,**  
23 **In Violation of California Business and Professions Code § 17500, et seq.**

24 71. Plaintiffs assert this cause of action against Gerber for violations of California  
25 Business and Professions Code § 17500, et seq. for misleading and deceptive advertising.

26 72. At all material times, Gerber engaged in a scheme of offering its Puffs for sale  
27 to Plaintiffs and other members of the Class by way of, inter alia, commercial marketing and  
28 advertising, the Internet, product packaging and labeling, and other promotional materials.

1 Gerber's portrayal of its Puffs as healthful and nutritious is misleading and deceptive. Gerber's  
2 advertisements and inducements were made within the State of California and come within the  
3 definition of advertising as contained in Business and Professions Code § 17500, *et seq.* in that  
4 such promotional materials were intended as inducements to purchase Puffs and are statements  
5 disseminated by Gerber to Plaintiffs and the Class and were intended to reach members of the  
6 Class. Gerber knew, or in the exercise of reasonable care should have known, that these state-  
7 ments were misleading and deceptive.

8 73. In furtherance of its plan and scheme, Gerber prepared and distributed within  
9 the State of California—via commercial marketing and advertising, the Internet, product pack-  
10 aging and labeling, and other promotional materials—statements that misleadingly and decep-  
11 tively represented Puffs as healthful and nutritional. Consumers, including Plaintiffs, necessar-  
12 ily and reasonably relied on these materials concerning Puffs. Consumers, including Plaintiffs  
13 and the Class members, were among the intended targets of such representations.

14 74. These acts of Gerber, in disseminating said misleading and deceptive state-  
15 ments throughout the State of California to consumers, including Plaintiffs and members of the  
16 Class, were and are likely to deceive reasonable consumers, including Plaintiffs and other  
17 members of the Class, by obfuscating the unhealthy ingredients in Puffs and misrepresenting  
18 the levels of the expected ingredients contained in Puffs, all in violation of the "misleading  
19 prong" of California Business and Professions Code § 17500.

20 75. As a result of these violations of the "misleading prong" of California Business  
21 and Professions Code § 17500, *et seq.*, Gerber has been unjustly enriched at the expense of  
22 Plaintiffs and the other members of the Class. Plaintiffs and the Class, pursuant to California  
23 Business and Professions Code § 17535, are entitled to an order of this Court enjoining wrong-  
24 ful future conduct on the part of Gerber, and any other orders and judgments which may be  
25 necessary to disgorge Gerber's ill-gotten gains and restore to any person in interest any money  
26 paid for Puffs as a result of the wrongful conduct of Gerber.

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**FIFTH CAUSE OF ACTION**

**Breach of Express Warranty**

76. Gerber provided Plaintiffs and other members of the Class with written express warranties, including, but not limited to, warranties that Puffs were healthful and had particular healthful characteristics as set forth above.

77. Gerber breached these warranties, causing damage to Plaintiffs and other members of the Class, who overpaid for Puffs, which were not healthful in that they contained ingredients harmful to one's health that did not otherwise conform to Gerber's warranties.

78. As a proximate result of the breach of warranties by Gerber, Plaintiffs and Class members have suffered damages in an amount to be determined at trial in that, among other things, they purchased and paid a premium for Products that did not conform to what was promised as promoted, marketed, advertised, packaged, and labeled by Gerber, and they were deprived of the benefit of their bargain and spent money on Products that did not have any value or had less value than warranted or Products that they would not have purchased at a premium and used had they known the true facts about Puffs.

**SIXTH CAUSE OF ACTION**

**Breach of Implied Warranty of Merchantability**

79. Plaintiffs and other Class members purchased Gerber's Puffs, which Gerber promoted, marketed, advertised, packaged, and labeled as healthful and as having particular healthful characteristics as set forth above. Pursuant to these sales, Gerber impliedly warranted that Puffs would be merchantable and fit for the ordinary purposes for which such goods are used and conform to the promises or affirmations of fact made in Puffs' promotions, marketing, advertising, packaging, and labels. As a result, Plaintiffs and other Class members relied on Gerber's representations that Puffs were healthful and had particular healthful characteristics as set forth above, and, at or about that time, Gerber sold its Puffs to Plaintiffs and other Class members. By Gerber's representations regarding the reputable nature of its companies and related entities, and by its promotion, marketing, advertising, packaging, and labeling of

1 Puffs, Gerber warranted that its Puffs are healthful and have particular healthful characteristics  
2 as set forth above. Plaintiffs and Class members bought Puffs, relying on Gerber's representa-  
3 tions that its Products were healthful and have particular healthful characteristics when, in fact,  
4 they are not healthful in that they lack significant amounts of real, natural fruit and thus do not  
5 conform to Gerber's warranties.

6 80. Gerber breached the warranty implied at the time of sale in that Plaintiffs and  
7 Class members did not receive goods that were healthful or that have the healthful characteris-  
8 tics represented and, thus, the goods were not merchantable as fit for the ordinary purposes for  
9 which such goods are used or as promoted, marketed, advertised, packaged, labeled, or sold.

10 81. As a proximate result of this breach of warranty by Gerber, Plaintiffs and the  
11 Class members have suffered damages in an amount to be determined at trial in that, among  
12 other things, they purchased and paid a premium for Puffs that did not conform to what was  
13 promised as promoted, marketed, advertised, packaged, and labeled by Gerber, and they were  
14 deprived of the benefit of their bargain and spent money on Products that did not have any  
15 value or have less value than warranted or Products that they would not have purchased at a  
16 premium and used had they known the true facts about them.

## 17 SEVENTH CAUSE OF ACTION

### 18 Unjust Enrichment

19 82. As a result of Gerber's deceptive and misleading labeling, advertising, market-  
20 ing, and sales of Puffs, Gerber was enriched at the expense of Plaintiffs and all others similarly  
21 situated, through the payment of the purchase price for Gerber's Puffs.

22 83. Under the circumstances, it would be against equity and good conscience to  
23 permit Gerber to retain the ill-gotten benefits that it received from Plaintiffs and the members  
24 of the Class in light of the fact that Puffs purchased by Plaintiffs and the members of the Class  
25 were not what Gerber purported them to be. Thus, it would be unjust or inequitable for Gerber  
26 to retain the benefit without restitution to Plaintiffs and the members of the Class for the mon-  
27 ies paid to Gerber for such Products.

28 ///

**PRAYER FOR RELIEF**

**THEREFORE, Plaintiffs demand judgment as follows:**

1. **An order certifying the proposed Class, appointing Plaintiffs as representatives of the Class, and appointing their undersigned counsel as class counsel;**
2. **A declaration that Gerber is financially responsible for notifying Class members of the pendency of this suit;**
3. **An award of restitution, including disgorgement pursuant to California Business & Professional Code §§ 17203, 17535;**
4. **An order enjoining Gerber's unlawful and deceptive acts and practices pursuant to California Business & Professional Code §§ 17203, 17535.**
5. **Injunctive relief pursuant to California Civil Code § 1780;**
6. **Monetary damages, including, but not limited to any compensatory, incidental, or consequential damages in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law with respect to the common law claims alleged;**
7. **Punitive damages in accordance with proof and in an amount consistent with applicable precedent;**
8. **An order awarding Plaintiffs and the Class members the reasonable costs and expenses of suit, including their attorneys' fees; and**
9. **Any further relief that the Court may deem appropriate.**

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1 **JURY TRIAL DEMANDED**

2 Plaintiffs hereby demand a trial by jury.

3  
4 DATED: July 13, 2015

5 STANLEY LAW GROUP  
6 MATTHEW J. ZEVIN

7   
8 \_\_\_\_\_  
9 MATTHEW J. ZEVIN

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19 *Attorneys for Plaintiffs Michelle Gyorke-Takatri,*  
20 *Katie Silver, and the Proposed Class*  
21 *[Additional Counsel Listed on Signature Page]*

22 **SUPERIOR COURT OF CALIFORNIA**

23 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

24 MICHELLE GYORKE-TAKATRI and  
25 KATIE SILVER, on behalf of themselves  
26 and all others similarly situated,  
27  
28 Plaintiffs,

v.  
29 NESTLE USA, INC. and GERBER  
30 PRODUCTS COMPANY,  
31  
32 Defendants.

CASE NO.  
CLASS ACTION  
AFFIDAVIT OF VENUE BY PLAINTIFF  
MICHELLE GYORKE-TAKATRI

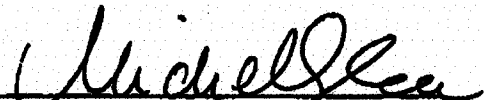
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I, Michelle Gyorke-Takatri, hereby declare that:

1. I have personal knowledge of the facts stated herein. If called upon, I could and would competently testify to the facts contained in this Affidavit.
2. I am a Plaintiff in the above-entitled action.
3. The Complaint filed in this matter contains causes of action for violations of the Consumers Legal Remedies Act against Nestle USA, Inc. and Gerber Products Company ("Defendants"). These causes of action arise out of my purchases of Defendants' Gerber Graduates Puffs, which were falsely marketed as healthful and containing significant amounts of the fruit or vegetables depicted on the products' packaging.
4. I purchased the Gerber Graduates Puffs in San Francisco County.

I declare under penalty of perjury under the laws of the State of California that the foregoing Affidavit is true and correct, and was executed by me in the City of San Francisco, California, on July 7, 2015.

  
MICHELLE GYORKE-TAKATRI

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Matthew J. Zevin, Esq. SBN 170736
STANLEY LAW GROUP
10021 Willow Creek Road, Suite 200
San Diego, CA 92131
TELEPHONE NO.: (619) 235-5306 FAX NO.: (815) 377-8419
ATTORNEY FOR (Name): Plaintiffs, Michelle Gyorke-Takatri and Katie Silver

FOR COURT USE ONLY
FILED
Superior Court of California
County of San Francisco
JUL 14 2015
CLERK OF THE COURT
BY: [Signature] Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS: 400 McAllister Street
CITY AND ZIP CODE: San Francisco, CA 94102-4514
BRANCH NAME: Civic Center Courthouse

CASE NAME: MICHELLE GYORKE-TAKATRI, et al. v. NESTLE USA, INC., et al.

CIVIL CASE COVER SHEET
Complex Case Designation
Unlimited (Amount demanded exceeds \$25,000)
Limited (Amount demanded is \$25,000 or less)
Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 15-546850
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

- 1. Check one box below for the case type that best describes this case:
Auto Tort
Contract
Provisionally Complex Civil Litigation
Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort
Real Property
Unlawful Detainer
Judicial Review
Employment
Miscellaneous Civil Litigation

- 2. This case is/is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. Large number of separately represented parties
b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. Substantial amount of documentary evidence
d. Large number of witnesses
e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 7 (Unfair Business Acts & Practices; Fraudulent Business Acts, etc.)
5. This case is/is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
Date: July 13, 2015
Matthew J. Zevin, Esq. [Signature]
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

BY FAX

NOTICE
Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
File this cover sheet in addition to any cover sheet required by local court rules.
If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

<p><b>Auto Tort</b>            Auto (22)—Personal Injury/Property Damage/Wrongful Death            Uninsured Motorist (46) (<i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i>)</p> <p><b>Other P/IPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>            Asbestos (04)            Asbestos Property Damage            Asbestos Personal Injury/Wrongful Death            Product Liability (<i>not asbestos or toxic/environmental</i>) (24)            Medical Malpractice (45)            Medical Malpractice—              Physicians &amp; Surgeons              Other Professional Health Care Malpractice            Other P/IPD/WD (23)            Premises Liability (e.g., slip and fall)            Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)            Intentional Infliction of Emotional Distress            Negligent Infliction of Emotional Distress            Other P/IPD/WD</p> <p><b>Non-P/IPD/WD (Other) Tort</b>            Business Tort/Unfair Business Practice (07)            Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08)            Defamation (e.g., slander, libel) (13)            Fraud (18)            Intellectual Property (19)            Professional Negligence (25)              Legal Malpractice              Other Professional Malpractice (<i>not medical or legal</i>)            Other Non-P/IPD/WD Tort (35)</p> <p><b>Employment</b>            Wrongful Termination (38) Other Employment (15)</p>	<p><b>Contract</b>            Breach of Contract/Warranty (06)            Breach of Rental/Lease              Contract (<i>not unlawful detainer or wrongful eviction</i>)            Contract/Warranty Breach—Seller Plaintiff (<i>not fraud or negligence</i>)            Negligent Breach of Contract/Warranty            Other Breach of Contract/Warranty            Collections (e.g., money owed, open book accounts) (09)            Collection Case—Seller Plaintiff            Other Promissory Note/Collections Case            Insurance Coverage (<i>not provisionally complex</i>) (18)            Auto Subrogation            Other Coverage            Other Contract (37)            Contractual Fraud            Other Contract Dispute</p> <p><b>Real Property</b>            Eminent Domain/Inverse Condemnation (14)            Wrongful Eviction (33)            Other Real Property (e.g., quiet title) (26)            Writ of Possession of Real Property            Mortgage Foreclosure            Quiet Title            Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>)</p> <p><b>Unlawful Detainer</b>            Commercial (31)            Residential (32)            Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>)</p> <p><b>Judicial Review</b>            Asset Forfeiture (05)            Petition Re: Arbitration Award (11)            Writ of Mandate (02)              Writ—Administrative Mandamus              Writ—Mandamus on Limited Court Case Matter              Writ—Other Limited Court Case Review            Other Judicial Review (39)            Review of Health Officer Order            Notice of Appeal—Labor Commissioner Appeals</p>	<p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)</b>            Antitrust/Trade Regulation (03)            Construction Defect (10)            Claims Involving Mass Tort (40)            Securities Litigation (28)            Environmental/Toxic Tort (30)            Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41)</p> <p><b>Enforcement of Judgment</b>            Enforcement of Judgment (20)            Abstract of Judgment (Out of County)            Confession of Judgment (<i>non-domestic relations</i>)            Sister State Judgment            Administrative Agency Award (<i>not unpaid taxes</i>)            Petition/Certification of Entry of Judgment on Unpaid Taxes            Other Enforcement of Judgment Case</p> <p><b>Miscellaneous Civil Complaint</b>            RICO (27)            Other Complaint (<i>not specified above</i>) (42)            Declaratory Relief Only            Injunctive Relief Only (<i>non-harassment</i>)            Mechanics Lien            Other Commercial Complaint Case (<i>non-tort/non-complex</i>)            Other Civil Complaint (<i>non-tort/non-complex</i>)</p> <p><b>Miscellaneous Civil Petition</b>            Partnership and Corporate Governance (21)            Other Petition (<i>not specified above</i>) (43)            Civil Harassment            Workplace Violence            Elder/Dependent Adult Abuse            Election Contest            Petition for Name Change            Petition for Relief From Late Claim            Other Civil Petition</p>
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