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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
11 others similarly situated,

12 Plaintiffs,

13 v.

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

15 Defendants.
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Case No. 5:19-cv-07471-BLF

**NESTLÉ USA, INC.’S NOTICE OF
MOTION AND MOTION TO DISMISS
AND REQUEST FOR JUDICIAL
NOTICE; AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Hearing date: May 7, 2020

Time: 9:00 a.m.

Courtroom: 3

Honorable Beth L. Freeman

*[Declaration of Dale J. Giali; and
[Proposed] Order filed concurrently
herewith]*

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1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on May 7, 2020 at 9:00 a.m., or as soon thereafter as
3 this matter may be heard, in Courtroom 3 of the San Jose Courthouse of this Court, located at
4 280 South 1st Street, San Jose, CA 95113, before the Honorable Beth L. Freeman, defendant
5 Nestlé USA, Inc. will and hereby does move the Court for an order dismissing the First
6 Amended Complaint (ECF No. 13) and each claim therein filed by plaintiffs Linda Cheslow and
7 Steven Prescott. This motion is made pursuant to Federal Rules of Civil Procedure 8, 9(b), and
8 12(b)(6), based on the following grounds:

9 1. Plaintiffs do not plausibly allege that the labeling of the Premier White
10 Morsels baking product is false or misleading to a reasonable consumer in violation of Cal.
11 Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), Cal. Bus. & Prof. Code §§ 17500, *et seq.*
12 (“FAL”) and Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”).

13 2. Plaintiffs lack standing to pursue their claims under the UCL, FAL, and
14 CLRA because they cannot plausibly allege that they suffered an economic injury in reliance
15 on the labeling and advertising for Premier White Morsels baking product.

16 3. Plaintiffs lack Article III standing to pursue their claims for injunctive relief;

17 4. Plaintiffs’ claims fail on the independent ground that plaintiffs have not pled
18 them with particularity, as required by Fed. R. Civ. P. 9(b).

19 **PLEASE TAKE FURTHER NOTICE THAT** Nestlé seeks judicial notice of
20 images of the label of the challenged product.

21 This motion is based on the attached memorandum of points of authorities and request for
22 judicial notice, the accompanying Declaration of Dale J. Giali, all pleadings and documents on
23 file in this case, and on such other written and oral argument as may be presented to the Court at
24 the hearing on this matter.

25 Dated: February 28, 2020

MAYER BROWN LLP
Dale J. Giali
Keri E. Borders

27 by: /s/ Dale J. Giali
Dale J. Giali
28 Attorneys for Defendant NESTLÉ USA, INC.

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STATEMENT OF ISSUES TO BE DECIDED

1. Have plaintiffs plausibly alleged deception, reliance, and damages based on the labeling of Nestlé’s Premier White Morsels baking product?
2. Do plaintiffs lack statutory standing to pursue their claims under the UCL, FAL, and CLRA?
3. Do plaintiffs lack Article III standing to pursue their claims for injunctive relief?
4. Do plaintiffs comply with the heightened pleading standard of Fed. R. Civ. P. 9(b)?

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27

TABLE OF CONTENTS

	Page(s)
I. INTRODUCTION.....	1
II. FACTUAL BACKGROUND.....	3
A. Plaintiffs’ First Amended Complaint	3
B. Plaintiffs Participation In Identical Lawsuits	3
III. LEGAL ARGUMENT	4
A. Standard For Motion To Dismiss	4
B. Plaintiffs Fail To Plausibly Allege That The Labeling Of The White Chips Is False Or Misleading.....	5
C. Plaintiffs Lack Standing Under The UCL, FAL, And CLRA Because They Fail To Plausibly Allege Reliance.....	11
D. The Complaint Does Not Meet The Heightened Pleading Requirements Of Fed. R. Civ. P. 9(b).....	12
E. Plaintiffs’ Claim That Premier White Morsels Are Falsely Labeled As A “Premier” Baking Product Fails Because It Is Non-Actionable Puffery.....	13
F. Plaintiffs Lack Standing To Pursue Injunctive Relief	14
G. The Complaint Should Be Dismissed With Prejudice	15
IV. REQUEST FOR JUDICIAL NOTICE.....	16
A. Exhibit A Is A More Complete And Clearer Image Of The Product Label Included In Plaintiffs’ Complaint.....	16
B. Exhibit A Is Incorporated By Reference In The Complaint.....	16
V. CONCLUSION	18

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14
15
16
17
18
19
20
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23
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25
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27
28

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Page(s)

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888 F. Supp. 2d 1000 (N.D. Cal. 2012)17

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556 U.S. 662 (2009).....5

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2011 WL 3795013 (N.D. Cal. Aug. 26, 2011)14

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400 F. Supp. 3d 942 (N.D. Cal. 2019)12

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550 U.S. 544 (2007).....4

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637 F.3d 1047 (9th Cir. 2011)12, 15

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