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No Fee GC § 6103

FILED
YOLO SUPERIOR COURT
JAN 08 2019
BY A. TRUITT
DEPUTY

5 Additional counsel listed on "Attachment A"
6 Attorneys for the Plaintiff

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF YOLO**

9
10
11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 vs.

14 RUSSELL STOVER CHOCOLATES, LLC, and
GHIRARDELLI CHOCOLATE COMPANY,

15
16 Defendants.

NO. *CV19-47*

**COMPLAINT FOR
INJUNCTION, CIVIL
PENALTIES, AND OTHER
RELIEF**

UNLIMITED CIVIL CASE
(Amount demanded exceeds
\$10,000)

17
18
19 JEFF W. REISIG, District Attorney of Yolo County, by LARRY BARLLY, Deputy
20 District Attorney; ANNE MARIE SCHUBERT, District Attorney for the County of Sacramento,
21 by Supervising Deputy District Attorney DOUGLAS WHALEY; LISA A. SMITTCAMP, District
22 Attorney of Fresno County by TY MURPHY, Deputy District Attorney; TORI VERBER
23 SALAZAR, District Attorney, County of San Joaquin, by CELESTE KAISCH, Deputy District
24 Attorney; JEFFREY S. ROSELL, District Attorney for the of Santa Cruz, by EDWARD T.
25 BROWNE, Deputy District Attorne;y and STEPHANIE A. BRIDGETT District Attorney of Shasta
26 County by ANAND "LUCKY," JESRANI, Senior Deputy District Attorney acting on information
27 and belief, allege:

1
2 **JURISDICTION AND VENUE**

3 1. Acting to protect the general public from untrue and misleading representations
4 and unlawful business practices, plaintiffs brings this suit in the name of THE PEOPLE OF THE
5 STATE OF CALIFORNIA. Plaintiffs, by this action and pursuant to Business and Professions
6 Code sections 17200, 17203, 17204, 17205, 17206, 17500, 17535 and 17536, seek to enjoin
7 Defendants, RUSSELL STOVER CHOCOLATES, LLC, and GHIRARDELLI, CHOCOLATE
8 COMPANY (hereinafter "Defendants") from engaging in unfair and unlawful business practices
9 as alleged herein and seek to obtain civil penalties and remedies for the Defendants' violation of
10 the above statutes, and seek to recover its costs and cost of investigation pursuant Business and
11 Professions Code section 12015.5.

12 2. At all times mentioned herein, Defendants have transacted business within the
13 Counties of Yolo, Sacramento Fresno, San Joaquin, Santa Cruz, and Shasta in the State of
14 California. The violations of law hereinafter described have been committed in the Counties of
15 Yolo, Sacramento Fresno, San Joaquin, Santa Cruz, and Shasta and elsewhere in the State of
16 California.

17 **DEFENDANT**

18 3. Defendant RUSSELL STOVER, LLC (formerly Russell Stover Candies, Inc. aka
19 Russell Stover, Inc.) is a Missouri Limited Liability Company, which was converted from a
20 corporation pursuant to section 351.409 of the Missouri General Business Corporation Law on
21 September 2, 2014; is a subsidiary of Defendant LINDT AND SPRUNGLI (NORTH
22 AMERICA), Inc., with its principal place of business at 4900 Oak Street, Kansas City, Missouri
23 64112. Defendant RUSSELL STOVER, LLC owns the brand Whitman's Candies, Inc.

24 4. Defendant GHIRARDELLI CHOCOLATE COMPANY was herein mentioned in this
25 Complaint, is a California Corporation, and a subsidiary of Defendant LINDT AND SPRUNGLI
26 (NORTH AMERICA), Inc., with its principal place of business at 1111 139th Street, San
27 Leandro, California 94578.

1 5. At all times herein mentioned in this Complaint, Defendants have been, and are
2 engaged in the business of manufacturing, and/or packaging, and/or distributing food products
3 which are offered for sale to California consumers.

4 6. When reference is made to any act or omission of Defendants, individually or
5 collectively, or their officers, agents or employees, such allegations shall be deemed to mean that
6 the officers, directors, employees or representatives of Defendants did, or authorized, such act
7 while engaged in the management, direction, representation or control of the affairs of said
8 Defendants, and did so while acting within the course and scope of their duties.

9 **INTRODUCTION**

10 7. This matter comes before the Court based on the People’s allegations that Defendants,
11 individually and collectively, packaged food products, as partially shown in the attached Exhibit
12 A, (collectively the “Products”), in violation of California law relating to non-functional slack
13 fill, improper labeling, and/or prohibitions against misleading advertising and unfair competition.

14
15 **FIRST CAUSE OF ACTION**
16 **UNTRUE OR MISLEADING STATEMENTS**
17 **(Business and Professions Code section 17500)**

18 8. Plaintiff incorporates paragraphs 1 through 7 of this Complaint herein by
19 reference.

20 9. Beginning on an exact date unknown to the plaintiff, but at least within three (3)
21 years prior to the date of filing of this Complaint, Defendants, individually and collectively, with
22 the intent to induce members of the general public to purchase its products, made or caused to be
23 made representations to the public which were untrue and misleading. Said untrue or misleading
24 statements, which are unlawful under Business and Professions Code section 17500, included
25 advertising a food product for sale wherein the container in which the product was packaged:

26 (A) was predominately empty. Defendants’ Products were packaged in such a
27 manner that there were large void spaces around the actual product in the box, had false
28

1 sidewalls or were otherwise misleading, in violation California's packaging requirements
2 pursuant to Business and Professions Code sections 12602, and 12606.2(b); and/or

3 (B) in containers which had void space not visible by consumers, referred to
4 as "nonfunctional slack fill" in violation of Business and Professions Code sections 12602, and
5 12606.2(c); This nonfunctional slack fill packaging, when displayed for sale to the public of the
6 State of California, caused false representations to the public by implying that Defendants'
7 Products filled the entire package and/or

8 (C) had information that was not prominent, definite, plain, and conspicuous
9 in violation of NIST Handbook 130, Uniform Laws and Regulations, Packaging and Labeling
10 Regulations, section 8.1, as made applicable in the State of California pursuant to Title 4
11 California Code of Regulations, 4510; and/or

12 (D) GHIRARDELLI CHOCOLATE COMPANY packaged its 100%
13 Unsweetened Cocoa Product in containers that failed to state the correct weight in violation of
14 12024 of the California Business and Professions Code.

15 10. The representations and statements made by Defendants, individually or
16 collectively, as set forth in the paragraphs above, were untrue or misleading when made, and
17 were known, or should have been known, by Defendants to be untrue or misleading.

18 11. Unless enjoined by order of this court, Defendants will retain the ability to and
19 could make untrue or misleading statements in violation of Business and Professions Code
20 section 17500.

21 **SECOND CAUSE OF ACTION**
22 **UNFAIR COMPETITION**
23 **(Business and Professions Code section 17200)**

24 12. Plaintiff realleges and incorporates herein by reference all allegations contained in
25 paragraphs 1 through 11 inclusive, of this Complaint.

26 13. Beginning on an exact date unknown to plaintiff, but at least within four (4) years
27 prior to the filing of this Complaint, Defendants, individually and collectively, engaged in
28

1 unlawful acts or practices in the conduct of its business, which acts or practices constituted unfair
2 competition within the meaning of section 17200 of the Business and Professions Code, and
3 which included, but are not limited to:

4 (A) Defendants made, or caused to be made, untrue or misleading
5 representations regarding the packaging of its food products as more fully
6 described in paragraphs 8 above, in violation of Business and Professions
7 Code section 17500.

8 (B) Defendant violated section 12602 of the Business and Professions Code,
9 in that Defendant's products, including the Products shown in Exhibit A,
10 which were sold in California, were packaged in non-conforming type
11 packages. Said non-conforming packages contained extra space by
12 volume and/or sidewalls in the interior of the package. The sidewalls and
13 volume provided no benefit to the contents of the packaging and misled
14 consumers.

15 (C) Defendant violated section 12606.2(b) of the California Business and
16 Professions Code, in that Defendant's Products as shown in Exhibit A,
17 were sold in containers made, formed, or filled as to be misleading to a
18 potential customer as to the actual size and filling of the package with
19 Defendant's products.

20 (D) Defendant violated section 12606.2(c) of the California Business and
21 Professions Code, in that Defendant's Products as shown in Exhibit A,
22 were packaged in containers that were nonfunctionally slack filled and the
23 containers' contents were not viewable or discernable by the potential
24 consumer.

25 (E) Defendant violated NIST Handbook 130, Uniform Laws and Regulations,
26 Packaging and Labeling Regulations, section 8.1, as made applicable in
27 the State of California pursuant to Title 4 California Code of Regulations,
28

1 4510 in that its food products were packaged in containers that had
2 information that was not prominent, definite, plain, and conspicuous.

3 (F) GHIRARDELLI CHOCOLATE COMPANY packaged its 100%
4 Unsweetened Cocoa Product in containers that failed to state the correct
5 weight in violation of 12024 of the California Business and Professions
6 Code.

7 13. The conduct of Defendants as set forth above demonstrates the necessity for
8 granting injunctive relief restraining such and similar acts of unfair competition pursuant to
9 California Business and Professions Code section 17203 and 17535. Unless enjoined and
10 restrained by order of the court, Defendants, individually and collectively, will retain the ability
11 to, and may engage in, said acts of unfair competition, and misleading advertising.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT AS FOLLOWS:

14 1. Pursuant to California Business & Professions Code sections 17204 and 17535,
15 Defendants and their officers, directors, agents, employees, representatives, and all persons
16 acting in concert or participating with it, with actual or constructive notice of this injunction, be
17 permanently enjoined and restrained from engaging in the following acts while advertising or
18 attempting to sell any of its candy products to The People Of The State Of California:

19 (A) Making any oral or written representations in violation of California
20 Business and Professions Code section 17500 including, but not limited to,
21 those acts set forth in the first cause of action of this complaint.

22 (B) Engaging in any business practices in violation of California Business and
23 Professions Code section 17200 including, but not limited to, those acts
24 set forth in the second cause of action of this complaint.

25 2. Defendants, and each of them, herein be assessed a civil penalty of Two
26 Thousand Five Hundred Dollars (\$2,500) for each act of false or misleading advertising engaged
27 in, in violation of California Business and Professions Code section 17500 as provided in section
28

1 17536.

2 3. Defendants, and each of them, herein be assessed a civil penalty of Two
3 Thousand Five Hundred Dollars (\$2,500) for each act of unlawful or unfair business practice
4 engaged in, in violation of California Business and Professions Code section 17200 as provided
5 in section 17206.


6 4. Plaintiffs recover their costs.

7 5. Plaintiffs have such other and further relief as the nature of the case may require,
8 and the Court deems proper to fully and successfully dissipate the false and misleading
9 representations, and the unfair, unlawful and fraudulent business practices complained of herein,
10 and the effects thereof.

11
12 DATED: 12-20-18

Respectfully submitted,

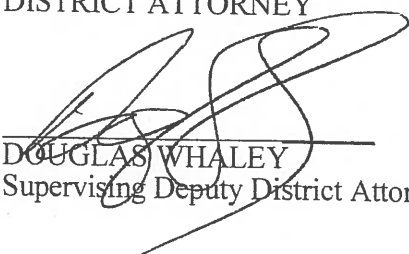
JEFF W. REISIG
DISTRICT ATTORNEY

13
14
15
16
17 By: 
LARRY BARLLY
Deputy District Attorney
Attorney for Plaintiff

18
19
20 DATED: 12/19/18

Respectfully submitted,

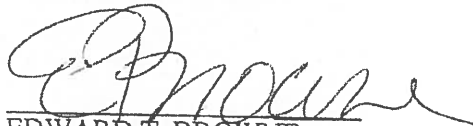
ANNE MARIE SCHUBERT
DISTRICT ATTORNEY

21
22
23
24 By: 
DOUGLAS WHALEY
Supervising Deputy District Attorney

1 DATED: 12/20/2018

Respectfully submitted,

JEFFREY S. ROSELL
DISTRICT ATTORNEY



By: EDWARD T. BROWNE
Assistant District Attorney

8 DATED: 1/4/18

Respectfully submitted,

TORI VERBER SALAZAR
DISTRICT ATTORNEY

By: Handly for
CELESTE KAISCH
Deputy District Attorney

15 DATED: 12/20/18

Respectfully submitted,

LISA A. SMITTCAMP
DISTRICT ATTORNEY

By: [Signature]
TY MURPHY
Deputy District Attorney

22 DATED: 12/20/2018

Respectfully submitted,

STEPHANIE A. BRIDGETT
DISTRICT ATTORNEY

By: [Signature]
ANAND "LUCKY," JESRANI
Senior Deputy District Attorney

Attachment "A"

1
2 LISA A. SMITCAMP, District Attorney
3 TY MURPHY, Deputy District Attorney,
4 SBN 172554
5 Consumer and Environmental Protection Division
6 2220 Tulare Street
7 Fresno California, 93721
8 (559) 600-3141

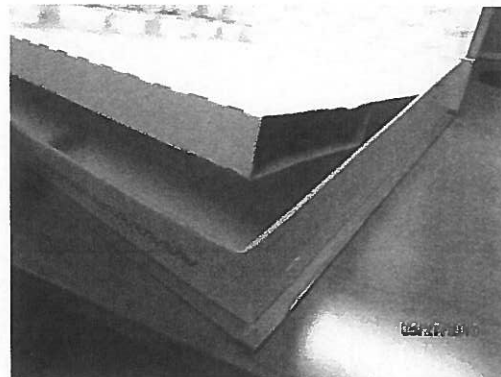
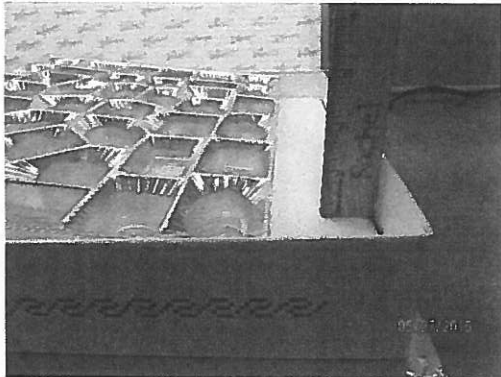
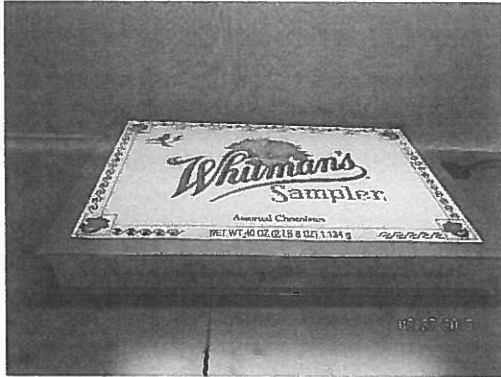
9 ANNE MARIE SCHUBERT
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13 906 G Street, Suite 700
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23 JEFFREY S. ROSELL
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District Attorney, County of Shasta
Anand "Lucky" Jesrani, SBN 238252
Senior Deputy District Attorney
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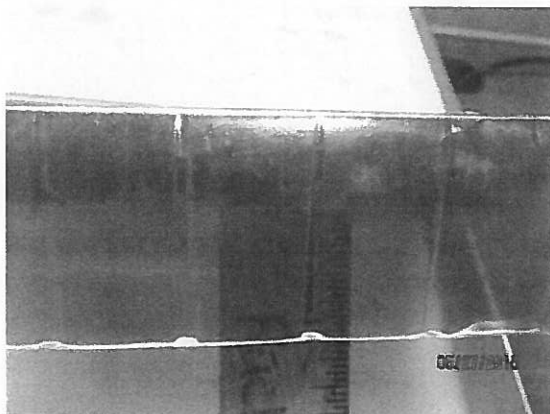
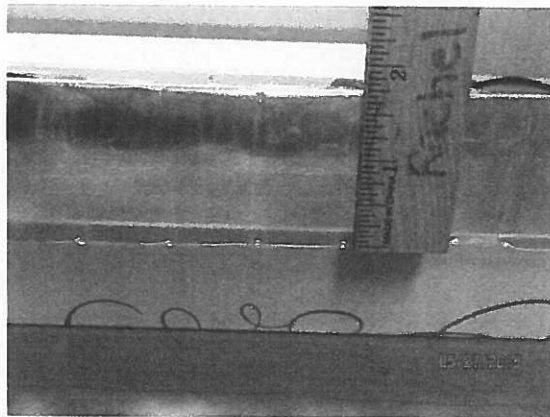
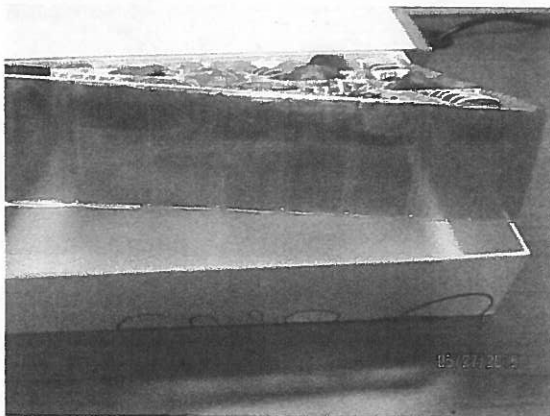
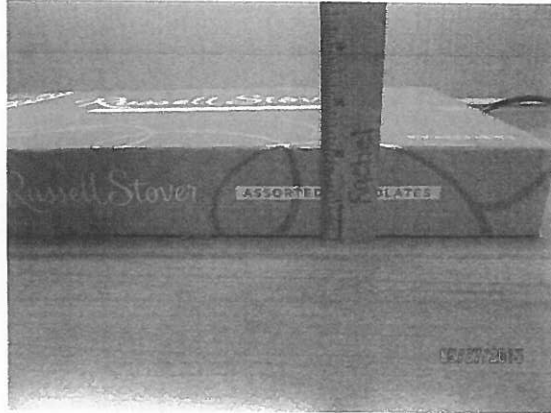
EXHIBIT A



Whitman Sampler Assorted Chocolates, 40 oz.,

0-76740-07098-6

Exhibit A



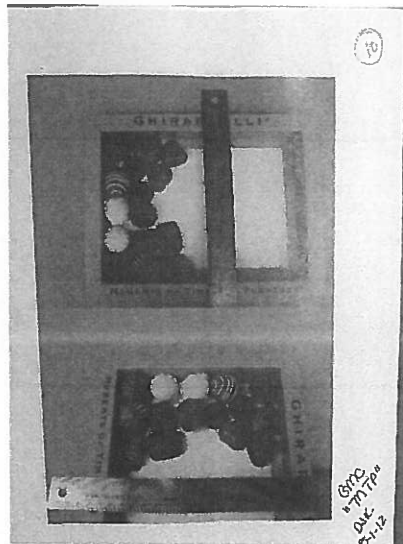
Russell Stover Fine
Assorted Chocolates,
30 oz.

0-7726000091-0

Exhibit A

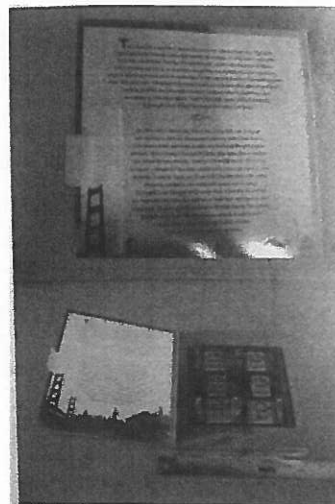
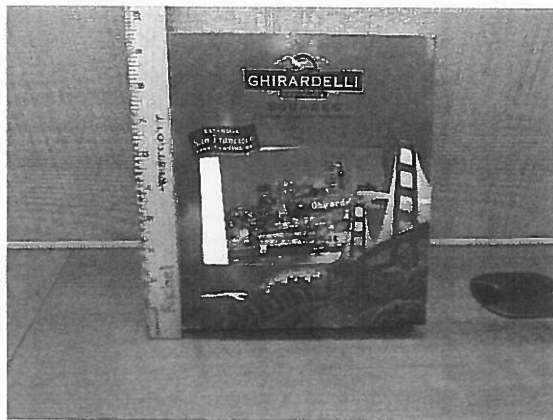


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1/17/12
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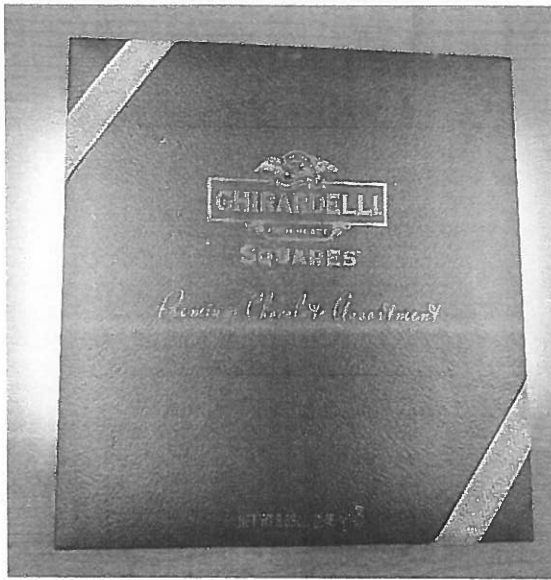
Masterpiece Timeless Collection, 7.3 oz.,
7-4759931246-5



Premium Chocolate Assortment Squares, 9.38 oz.

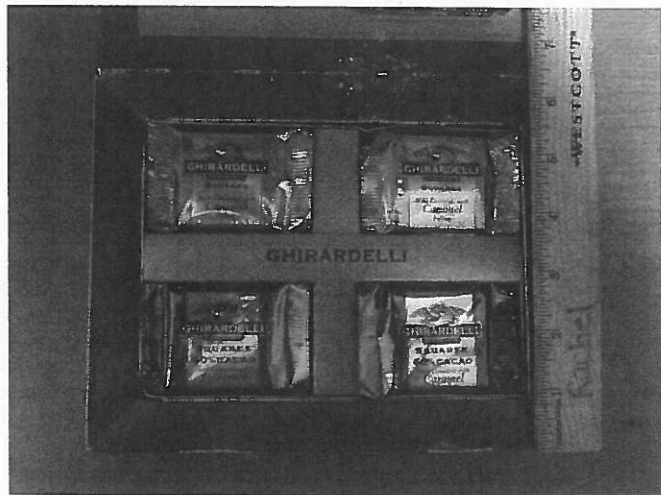
7-4759930619-8

Exhibit A



Premium Chocolate Assortment Squares, 8.63 oz.

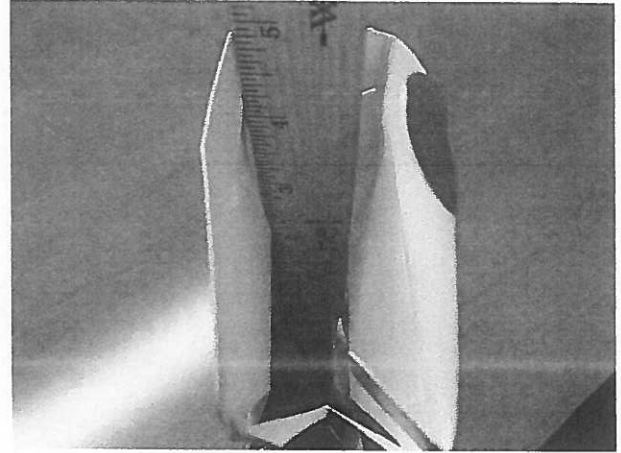
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Caramel Chocolate Assortment Squares, 6.38 oz.

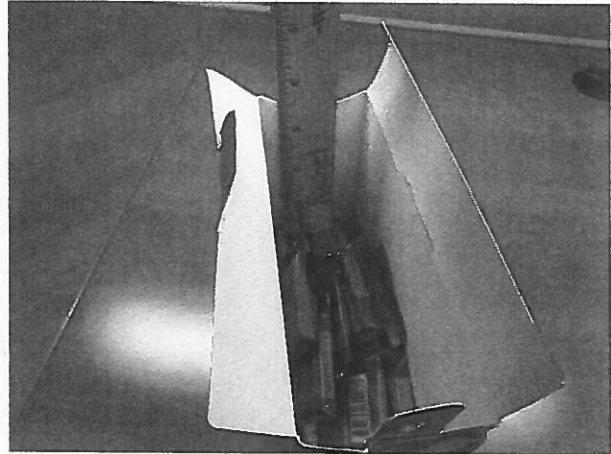
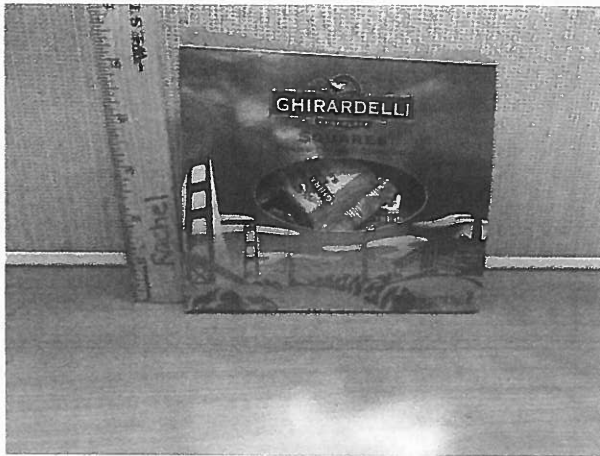
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Exhibit A



Example of 7 piece "Bottle box" 3.72 ounces

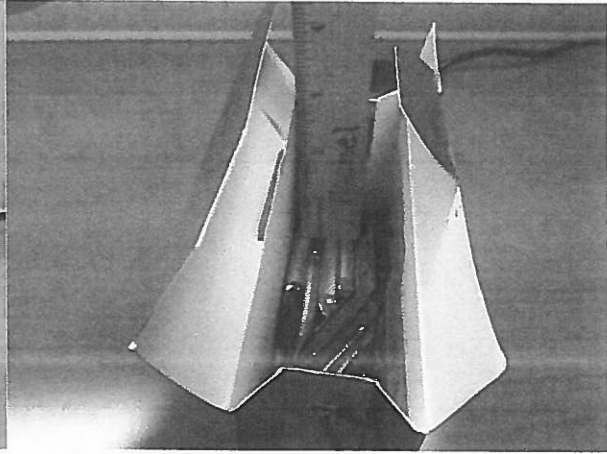
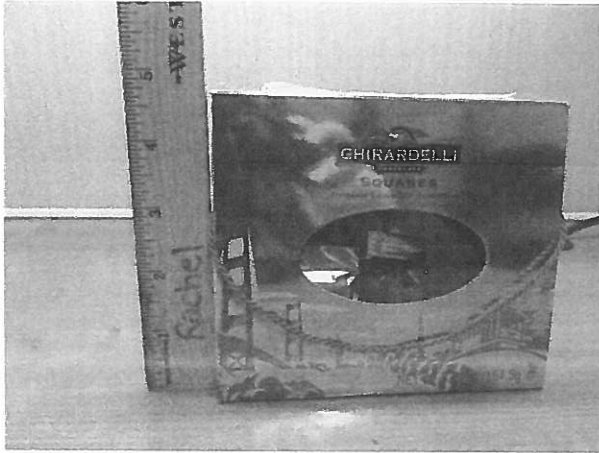
7-4759933040-7



Large "purse" box 9.83 ounces

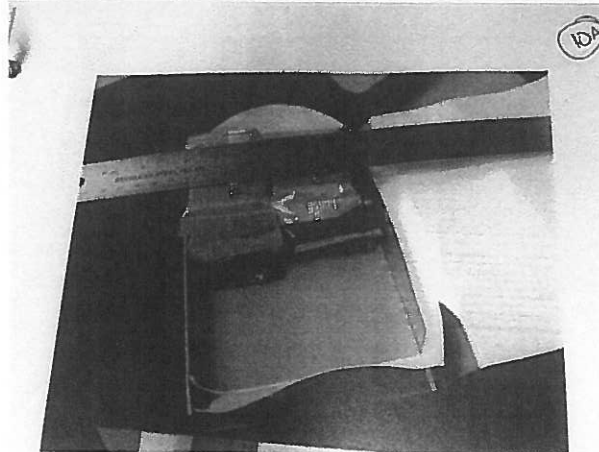
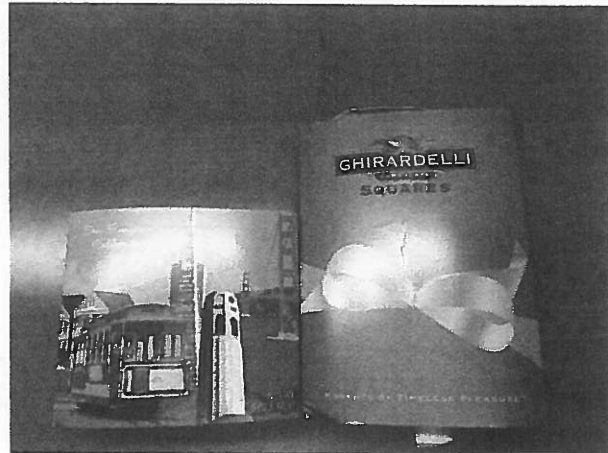
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EXHIBIT A



Small "purse" box 5.45 ounces

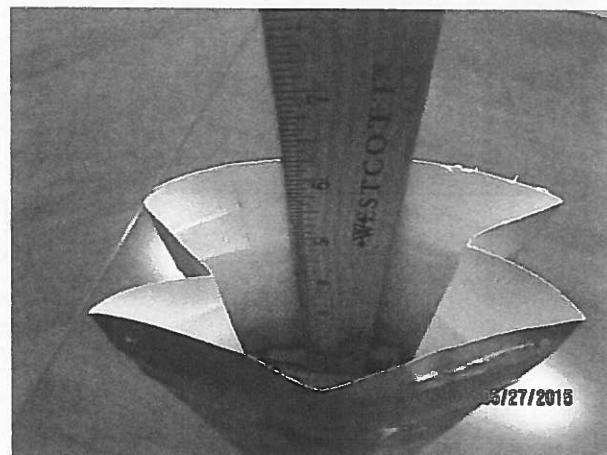
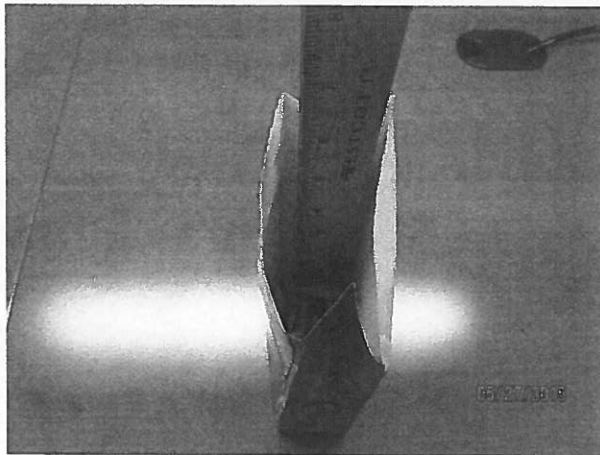
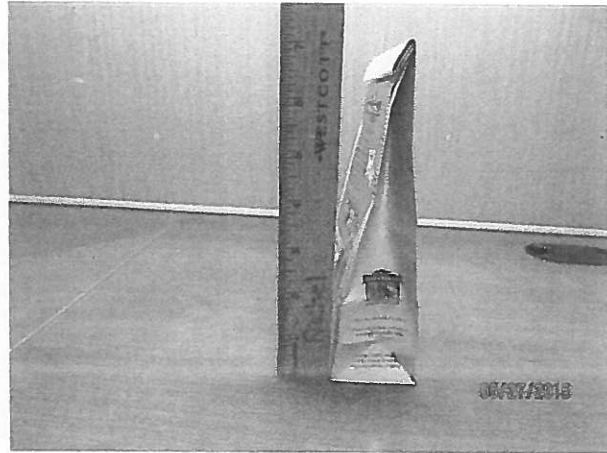
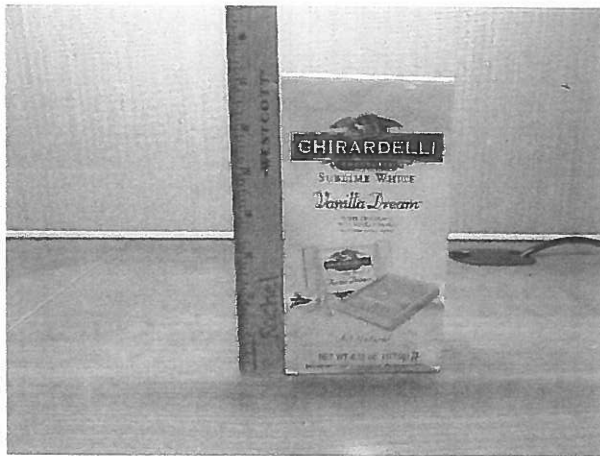
7-4759930615-0



Cable Car Box, 5.0 ounces

7-4759930827-7

EXHIBIT A



Example of “Standup” or “Tent” bags

4.12 ounces

7-4759930212-1