

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

MARIO ALIANO , individually, and on behalf of all others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	No. 16 cv 3087
)	
THE QUAKER OATS COMPANY ,)	
)	
Defendant.)	Jury Trial Demanded

CLASS ACTION COMPLAINT

Plaintiff MARIO ALIANO (“Plaintiff”), individually, and on behalf of all others similarly situated, by and through counsel at Zimmerman Law Offices, P.C., brings this Class Action Complaint (“Complaint”) against Defendant THE QUAKER OATS COMPANY (“Defendant” or “Quaker Oats”), as follows:

INTRODUCTION

1. Plaintiff brings this suit on behalf of himself and a Class of similarly situated individuals to stop Defendant from misrepresenting that its food products contain maple syrup and/or maple sugar, when, in fact, maple syrup and maple sugar are not ingredients in the products. In addition, Plaintiff, on behalf of himself and the proposed class, seeks restitution and other equitable, injunctive, declaratory, and monetary relief as set forth below.

2. A food shall be deemed to be “misbranded” under the Code of Federal Regulations “[i]f its container is so made, formed, or filled as to be misleading.” 21 C.F.R. § 343(d).

3. The Quaker Oats Company manufactures, markets, distributes, and sells a variety of Quaker Oats Maple & Brown Sugar Instant Oatmeal products. The company misrepresents

and falsely advertises that these products contain maple syrup or maple sugar, but these products do not contain any maple syrup or maple sugar.

4. By misrepresenting the key ingredients in its products, Defendant engaged, and still engages in, business practices that are unlawful, unfair, and deceptive because consumers reasonably rely on Defendant's material misrepresentations to their detriment.

PARTIES

5. Plaintiff MARIO ALIANO ("Mr. Aliano") is a natural person and resident and citizen of Illinois.

6. Defendant THE QUAKER OATS COMPANY is a New Jersey corporation with its principal place of business in Chicago, Illinois, that does business nationwide, including in the State of Illinois.

JURISDICTION AND VENUE

7. This Court has personal jurisdiction over Defendant because Defendant is a citizen and resident of the state of Illinois. Defendant's headquarters is located in Chicago, Illinois.¹

8. Pursuant to 28 U.S.C. § 1332, this Court has subject matter jurisdiction over this class action because the amount in controversy exceeds \$5 million, and some members of the Class are citizens of states different than Defendant.

9. Venue is proper in this District because Defendant transacts business in the Northern District of Illinois. Quaker Oats products are sold at hundreds of grocery stores located in this district. Further, a substantial part of the events occurred in this District because the case arises out of Quaker Oats products that Plaintiff purchased in this District.

¹ See, <http://www.manta.com/c/mmb5wq6/the-quaker-oats-company> (last visited March 7, 2016).

FACTUAL ALLEGATIONS
***Consumer Expectations Regarding Products
Containing Maple Syrup and Maple Sugar***

10. Maple syrup and maple sugar are premium ingredients that companies add to sweeten food products.

11. Maple syrup contains an abundant amount of naturally occurring minerals such as calcium, manganese, potassium and magnesium. It is also a source of beneficial antioxidants that have shown to help prevent cancer, support the immune system, lower blood pressure and slow the effects of aging.²

12. Maple syrup is believed to have a higher nutritional value than all other common sweeteners.³

13. Maple sugar is made when all of the water in the maple syrup is boiled away. It is then stirred while very hot allowing any water that is left to evaporate as steam. The result is a dry pure granular maple sugar that can be substituted for white processed granulated sugar.⁴

14. Defendant claims to use maple syrup and maple sugar in Quaker Oats Maple & Brown Sugar Instant Oatmeal, Quaker Oats Maple & Brown Sugar High Fiber Instant Oatmeal, Quaker Oats Maple & Brown Sugar Gluten Free Instant Oatmeal, Quaker Oats Maple & Brown Lower Sugar Instant Oatmeal, Quaker Oats Maple & Brown Sugar Weight Control Instant Oatmeal, and Quaker Oats Maple & Brown Sugar Organic Instant Oatmeal (collectively, “Quaker Oats Oatmeal”). Quaker Oats Oatmeal prominently displays the words “Maple & Brown Sugar” on its packaging along with images of a pitcher of maple syrup.

² See, <http://vermontmaple.org> (last visited Feb. 29, 2016)

³ See, <http://vermontmaple.org> (last visited Feb. 29, 2016).

⁴ See, <http://vermontmaple.org/maple-products/maple-sugar/> (last visited Feb. 29, 2016).

15. Consumers reasonable rely on Defendant's representations that Quaker Oats Oatmeal contains maple syrup and/or maple sugar, including the representations in the name of these products and the images and statements on Quaker Oats Oatmeal's packaging that indicates that the products contain maple syrup and maple sugar.

16. Food products that are represented as containing maple syrup or maple sugar command a premium in the marketplace. In addition, companies increase sales when they represent that a product contains these ingredients.

Defendant's Deceptive and Unfair Business Practices

17. At all relevant times, Defendant was responsible for the manufacturing, packaging, labeling, promotion, distribution, and sale of Quaker Oats Oatmeal throughout the nation, including in the state of Illinois.

18. On the front packaging of all Quaker Oats Oatmeal, Defendant places a prominent image of a glass pitcher of maple syrup and the words "Maple & Brown Sugar" appear in bold in the name of the products.

19. The front packaging of all Quaker Oats Oatmeal is the same or substantially similar.

20. However, Quaker Oats Oatmeal does not contain any maple syrup or maple sugar, as Defendant represents. Therefore, Quaker Oats Oatmeal's container is made and formed to be misleading, and Quaker Oats Oatmeal is misbranded pursuant to the Code of Federal Regulations. *See* 21 C.F.R. 343(d).

21. Defendant willfully misrepresented that its products contain maple syrup and/or maple sugar knowing that consumers, including Plaintiff and Class members, would reasonably rely on Defendant's representations on the labels of Quaker Oats Oatmeal, including the names

of these products, images of maple syrup, and the declaration that the products contain maple sugar, to inform them of whether the products contain maple syrup and/or maple sugar.

22. The presence of premium ingredients maple sugar and/or maple syrup in Quaker Oats Oatmeal has a material bearing on consumers' decision to buy them.

23. According to the Vermont Maple Sugar Makers' Association and over ten other maple industry groups, this business practices injures consumers and maple syrup manufacturers:

This unchecked misbranding has an adverse impact on manufacturers of products containing real maple syrup, as it allows cheaper products not containing premium ingredients to compete with those actually containing maple syrup. Further, it deceives consumers into believing they are purchasing a premium product when, in fact, they have a product of substantially lower quality.⁵

24. Accordingly, Plaintiff and members of the Class have been harmed because they overpaid for the products and would not have purchased the products had they known that the products did not contain any maple syrup or maple sugar.

Facts Relevant to Plaintiff

25. Plaintiff purchased Quaker Oats Oatmeal several times, as recently as early 2016 when Plaintiff purchased Quaker Instant Oatmeal Maple and Brown Sugar at a retail grocery store located in Chicago, Illinois.

26. Before deciding to purchase Quaker Oats Oatmeal, Mr. Aliano searched for instant oatmeal items that contained maple syrup and/or maple sugar.

27. Plaintiff viewed and relied upon Defendant's representations that Quaker Oats Oatmeal contains maple syrup and/or maple sugar, including the representations in the name of the product and the prominent image of maple syrup on the product packaging.

⁵ See Feb. 15, 2016 Letter from Vermont Maple Sugar Makers' Association to the Food and Drug Administration available at <https://consumermediallc.files.wordpress.com/2016/02/fdamaple.pdf> (last visited March 1, 2016)

28. Because Plaintiff was purchasing a product that was labeled as containing maple sugar and/or maple syrup ingredients, he reasonably believed that it, in fact, contained these ingredients.

29. It was reasonable for Plaintiff to rely on Defendant's representations that Quaker Oats Oatmeal contains maple syrup and/or maple sugar in deciding to purchase Quaker Oats Oatmeal.

30. Had Plaintiff known that Quaker Oats Oatmeal did not contain maple syrup or maple sugar as an ingredient, he would not have purchased the product, or he would have paid substantially less for it. As a result, Plaintiff has suffered damages, including the amount of money he paid to purchase Quaker Oats Oatmeal.

31. In addition to monetary damages, Plaintiff seeks injunctive relief to stop Defendant from engaging in unlawful, unfair, and deceptive business practices by misrepresenting that Quaker Oats Oatmeal contains maple syrup and/or maple sugar when it does not.

CLASS ALLEGATIONS

32. **Class Definition:** Plaintiff brings this action pursuant to Fed. R. Civ. P. Rule 23, on behalf of a nationwide class of similarly situated individuals and entities ("the Class"), defined as follows:

All persons in the United States who purchased Quaker Oats Maple & Brown Sugar Instant Oatmeal (Classic Recipe), Quaker Oats Maple & Brown Sugar High Fiber Instant Oatmeal, Quaker Oats Maple & Brown Sugar Gluten Free Instant Oatmeal, Quaker Oats Maple & Brown Lower Sugar Instant Oatmeal, Quaker Oats Maple & Brown Sugar Weight Control Instant Oatmeal, or Quaker Oats Maple & Brown Sugar Organic Instant Oatmeal.

Excluded from the Class are: (1) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge

to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

33. Plaintiff also brings this action pursuant to Fed. R. Civ. P. Rule 23, on behalf of a subclass of similarly situated individuals and entities ("the Illinois Subclass"), defined as follows:

All Illinois residents who purchased Quaker Oats Maple & Brown Sugar Instant Oatmeal (Classic Recipe), Quaker Oats Maple & Brown Sugar High Fiber Instant Oatmeal, Quaker Oats Maple & Brown Sugar Gluten Free Instant Oatmeal, Quaker Oats Maple & Brown Lower Sugar Instant Oatmeal, Quaker Oats Maple & Brown Sugar Weight Control Instant Oatmeal, or Quaker Oats Maple & Brown Sugar Organic Instant Oatmeal.

Excluded from the Illinois Subclass are: (1) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Illinois Subclass; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

34. **Numerosity:** The Class is so numerous that joinder of individual members would be impracticable. Quaker Oats Oatmeal is sold at thousands of retail grocery stores throughout the country, as well as online through Amazon.com, Walmart.com, and the Quaker Online Store.⁶ While the exact number of Class members is presently unknown and can only be ascertained through discovery, Plaintiff believes that there are thousands of Class members, if not more.

35. **Commonality and Predominance:** There are several questions of law and fact common to the claims of the Plaintiff and members of the putative Class, which predominate over any individual issues, including:

⁶ See, <http://www.quakeroats.com/products/product-locator#> (last visited March 7, 2016).

- a. Whether Quaker Oats Oatmeal contains maple syrup and/or maple sugar;
- b. Whether Defendant misrepresents that Quaker Oats Oatmeal contains maple syrup and/or maple sugar;
- c. Whether Defendant warranted to consumers that Quaker Oats Oatmeal contains maple syrup and/or maple sugar;
- d. Whether Defendant breached that warranty;
- e. Whether Defendant's conduct constitutes unfair or deceptive business practices under the Illinois Consumer Fraud and Deceptive Trade Practices Act;
- f. Whether Defendant's conduct constitutes fraud;
- g. Whether Defendant's conduct constitutes fraudulent misrepresentation;
- h. Whether Defendant's conduct resulted in Defendant unjustly retaining a benefit to the detriment of Plaintiff and Class members, and violated the fundamental principles of justice, equity, and good conscience.

36. **Typicality:** Plaintiff's claims are typical of the claims of the proposed Class. All claims are based on the same legal and factual issues, to wit: Defendant's misrepresentations regarding whether Quaker Oats Oatmeal contains maple syrup and/or maple sugar.

37. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does not have any interests antagonistic to those of the proposed Class. Plaintiff has retained competent counsel experienced in the prosecution of this type of litigation. The questions of law and fact common to the proposed Class members predominate over any questions affecting only individual Class members.

38. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. Individual actions are not economically feasible. The trial and the litigation of Plaintiff's claims are manageable.

39. Unless a class is certified, Defendant will retain monies received as a result of its conduct that was wrongfully taken from Plaintiff and Class members. Unless an injunction is issued, Defendant will continue to commit the violations alleged, and the members of the proposed Class and the general public will continue to be misled.

40. Defendant has acted and refused to act on grounds generally applicable to the proposed Class, making appropriate final injunctive relief with respect to the proposed Class as a whole.

COUNT I
(on Behalf of the Nationwide Class and Illinois Subclass)
Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act
(815 ILCS § 505/1, *et seq.*)

41. Plaintiff repeats and re-alleges the allegations of the paragraphs 1-40 with the same force and effect as though fully set forth herein.

42. The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS §§ 505/1, *et seq.*, provides protection to consumers by mandating fair competition in commercial markets for goods and services.

43. The ICFA prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”. 815 ILCS § 505/2.

44. The ICFA applies to Defendant’s acts as described herein because it applies to transactions involving the sale of goods or services to consumers.

45. Defendant is a “person,” as defined by 815 ILCS § 505/1(c).

46. Plaintiff and each member of the Class are “consumers,” as defined by 815 ILCS § 505/1(e), because they purchased Quaker Oats for personal use.

47. Quaker Oats Oatmeal is “merchandise,” as defined by 815 ILCS § 505/1(b).

48. Defendant made false and fraudulent statements, and misrepresented material facts, regarding its products sold to consumers, including the misrepresentation that Quaker Oats Maple & Brown Sugar products contain maple syrup and/or maple sugars.

49. Defendant omitted material facts regarding its products sold to consumers, including the fact that Quaker Oats Maple & Brown Sugar products do not contain maple syrup and/or maple sugars.

50. Defendant’s misrepresentations and omissions regarding its Quaker Oats Maple & Brown Sugar products constitute deceptive and unfair acts or practices prohibited by the ICFA.

51. Defendant’s misrepresentations and omissions possess the tendency or capacity to mislead and create the likelihood of deception.

52. Defendant’s aforementioned misrepresentations and omissions, were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of their Quaker Oats Oatmeal.

53. Defendant’s aforementioned misrepresentations and omissions are unfair business practices because they offend public policy and cause substantial injury to consumers.

54. Defendant intended that Plaintiff and Class members rely on the false statements, misrepresentations, and omissions of material facts in purchasing Quaker Oats Oatmeal.

55. Plaintiff and Class members reasonably relied on Defendant’s misrepresentations and omissions when they purchased Quaker Oats Oatmeal.

56. Acting as reasonable consumers, had Plaintiff and Class members been aware of the true facts regarding Quaker Oats Oatmeal, they would have declined to purchase the Quaker Oats Oatmeal, or they would have paid less for it.

57. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for Quaker Oats Oatmeal which, in fact, do not contain maple syrup and/or maple sugars as represented.

58. Plaintiff and Class members could not have reasonably avoided the injuries suffered by purchasing the Quaker Oats Oatmeal because it was reasonable for Plaintiff and Class members to rely on Defendant's misrepresentations and omissions.

59. The injury suffered by consumers as a result of Defendant's unfair and deceptive trade practices is substantial because consumers unknowingly paid for Quaker Oats Oatmeal that does not, in fact, contain maple syrup and/or maple sugars, as represented.

60. As a direct and proximate result of Defendant's unfair and deceptive acts or practices, Plaintiff and members of the Class suffered damages by purchasing Quaker Oats Oatmeal because they would not have purchased the Quaker Oats Oatmeal, or they would have paid substantially less for them, had they known the truth.

61. The injuries to Plaintiff and the members of the Class were caused by Defendant's conduct in disseminating false and misleading advertising that originated in the state of Illinois, including the advertising and marketing campaigns described above. All of the marketing, advertising, and promotional activities and literature were coordinated at, emanate from, and are developed at Defendant's Illinois headquarters. All critical decisions regarding Defendant's marketing and advertising were made in Illinois.

62. When Plaintiff and the members of the Class purchased Quaker Oats Oatmeal, those payments were processed and the money was sent to Defendant's headquarters in Illinois.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MARIO ALIANO, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class and/or the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendant;
- D. Enjoining Defendant from making false representations and omissions concerning Quaker Oats Oatmeal that will be sold to customers;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- F. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- G. Granting all such further and other relief as the Court deems just and appropriate.

COUNT II

(on Behalf of the Nationwide Class)

**Violation of the Consumer Fraud and Deceptive Trade
Practices Acts of the Various States and District of Columbia**

63. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-40 with the same force and effect as though fully set forth herein.

64. Plaintiff brings this Count individually, and on behalf of all similarly situated residents of each of the 50 states and the District of Columbia for violations of the respective statutory consumer protection laws, as follows:

- a. the Alabama Deceptive Trade Practices Act, Ala.Code 1975, § 8–19–1, *et seq.*;
- b. the Alaska Unfair Trade Practices and Consumer Protection Act, AS § 45.50.471, *et seq.*;
- c. the Arizona Consumer Fraud Act, A.R.S §§ 44-1521, *et seq.*;
- d. the Arkansas Deceptive Trade Practices Act, Ark.Code §§ 4-88-101, *et seq.*;
- e. the California Unfair Competition Law, Bus. & Prof. Code §§17200, *et seq.* and 17500 *et seq.*;
- f. the California Consumers Legal Remedies Act, Civil Code §1750, *et seq.*;
- g. the Colorado Consumer Protection Act, C.R.S.A. §6-1-101, *et seq.*;
- h. the Connecticut Unfair Trade Practices Act, C.G.S.A. § 42-110, *et seq.*;
- i. the Delaware Consumer Fraud Act, 6 Del. C. § 2513, *et seq.*;
- j. the D.C. Consumer Protection Procedures Act, DC Code § 28-3901, *et seq.*;
- k. the Florida Deceptive and Unfair Trade Practices Act, FSA § 501.201, *et seq.*;
- l. the Georgia Fair Business Practices Act, OCGA § 10-1-390, *et seq.*;
- m. the Hawaii Unfair Competition Law, H.R.S. § 480-1, *et seq.*;
- n. the Idaho Consumer Protection Act, I.C. § 48-601, *et seq.*;
- o. the Indiana Deceptive Consumer Sales Act, IN ST § 24-5-0.5-2, *et seq.*;
- p. The Iowa Private Right of Action for Consumer Frauds Act, Iowa Code Ann. § 714H.1, *et seq.*;
- q. the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*;
- r. the Kentucky Consumer Protection Act, KRS 367.110, *et seq.*;

- s. the Louisiana Unfair Trade Practices and Consumer Protection Law, LSA-R.S. 51:1401, *et seq.*;
- t. the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A, *et seq.*;
- u. the Maryland Consumer Protection Act, MD Code, Commercial Law, § 13-301, *et seq.*;
- v. the Massachusetts Regulation of Business Practices for Consumers Protection Act, M.G.L.A. 93A, *et seq.*;
- w. the Michigan Consumer Protection Act, M.C.L.A. 445.901, *et seq.*;
- x. the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.*;
- y. the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.*;
- z. the Missouri Merchandising Practices Act, V.A.M.S. § 407, *et seq.*;
- aa. the Montana Unfair Trade Practices and Consumer Protection Act of 1973, Mont. Code Ann. § 30-14-101, *et seq.*;
- bb. the Nebraska Consumer Protection Act, Neb.Rev.St. §§ 59-1601, *et seq.*;
- cc. the Nevada Deceptive Trade Practices Act, N.R.S. 41.600, *et seq.*;
- dd. the New Hampshire Regulation of Business Practices for Consumer Protection, N.H.Rev.Stat. § 358-A:1, *et seq.*;
- ee. the New Jersey Consumer Fraud Act, N.J.S.A. 56:8, *et seq.*;
- ff. the New Mexico Unfair Practices Act, N.M.S.A. §§ 57-12-1, *et seq.*;
- gg. the New York Consumer Protection from Deceptive Acts and Practices, N.Y. GBL (McKinney) § 349, *et seq.*;
- hh. the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen Stat. § 75-1.1, *et seq.*;
- ii. the North Dakota Consumer Fraud Act, N.D. Cent.Code Chapter 51-15, *et seq.*;
- jj. the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*;
- kk. the Oklahoma Consumer Protection Act, 15 O.S.2001, §§ 751, *et seq.*;

- ll. the Oregon Unlawful Trade Practices Act, ORS 646.605, *et seq.*;
- mm. the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*;
- nn. the Rhode Island Deceptive Trade Practices Act, G.L.1956 § 6-13.1-5.2(B), *et seq.*;
- oo. the South Carolina Unfair Trade Practices Act, SC Code 1976, §§ 39-5-10, *et seq.*;
- pp. the South Dakota Deceptive Trade Practices and Consumer Protection Act, SDCL § 37-24-1, *et seq.*;
- qq. the Tennessee Consumer Protection Act, T.C.A. § 47-18-101, *et seq.*;
- rr. the Texas Deceptive Trade Practices-Consumer Protection Act, V.T.C.A., Bus. & C. § 17.41, *et seq.*;
- ss. the Utah Consumer Sales Practices Act, UT ST § 13-11-1, *et seq.*;
- tt. the Vermont Consumer Fraud Act, 9 V.S.A. § 2451, *et seq.*;
- uu. the Virginia Consumer Protection Act of 1977, VA ST § 59.1-196, *et seq.*;
- vv. the Washington Consumer Protection Act, RCWA 19.86.010, *et seq.*;
- ww. the West Virginia Consumer Credit And Protection Act, W.Va.Code § 46A-1-101, *et seq.*;
- xx. the Wisconsin Deceptive Trade Practices Act, WIS.STAT. § 100.18, *et seq.*; and
- yy. the Wyoming Consumer Protection Act, WY ST § 40-12-101, *et seq.*

65. Quaker Oats Oatmeal products are consumer goods.

66. Defendant engaged, and still engages, in unfair or deceptive acts or practices when Defendant misrepresented and continues to misrepresent material facts regarding its Quaker Oats Oatmeal sold to consumers, including the misrepresentation that Quaker Oats Oatmeal contains maple syrup and/or maple sugars.

67. Defendant omitted material facts regarding its Quaker Oats Oatmeal sold to consumers, including the fact that Quaker Oats Oatmeal does not contain maple syrup and/or maple sugars.

68. Defendant's misrepresentations and omissions possess the tendency or capacity to mislead and create the likelihood of deception.

69. Defendant's aforementioned misrepresentations and omissions were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of the Quaker Oats Oatmeal to Plaintiff and Class members.

70. Defendant's aforementioned misrepresentations and omissions are unfair business practices because they offend public policy and cause substantial injury to consumers.

71. Defendant intended, and still intends, that Plaintiff and Class members rely on the false statements, misrepresentations, and omissions of material facts in purchasing Quaker Oats Oatmeal.

72. Plaintiff and Class members reasonably relied on Defendant's misrepresentations and omissions when they purchased Quaker Oats Oatmeal.

73. Acting as reasonable consumers, had Plaintiff and Class members been aware of the true facts regarding Quaker Oats Oatmeal, they would have declined to purchase the Quaker Oats Oatmeal, or they would have paid less for it.

74. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for Quaker Oats Oatmeal, which were significantly mislabeled as containing maple syrup and/or maple sugars.

75. Plaintiff and Class members could not have reasonably avoided the injuries suffered by purchasing the Quaker Oats Oatmeal that were significantly mislabeled because it

was reasonable for Plaintiff and Class members to rely on Defendant's misrepresentations and omissions.

76. The injury suffered by consumers as a result of Defendant's unfair and deceptive trade practices is substantial because consumers unknowingly paid for Quaker Oats Oatmeal that does not contain maple syrup and/or maple sugars as represented.

77. As a direct and proximate result of Defendant's unfair and deceptive acts or practices, Plaintiff and members of the Class suffered damages by purchasing Quaker Oats Maple & Brown Sugar Instant Oatmeal products because they would not have purchased the Quaker Oats Maple & Brown Sugar Instant Oatmeal products, or they would have paid substantially less for them, had they known the truth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MARIO ALIANO, individually, and on behalf of the Class, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Enjoining Defendant from making false representations and omissions concerning Quaker Oats Oatmeal that will be sold to customers;
- E. Awarding Plaintiff and the Class damages equal to the amount of actual damages that they sustained;
- F. Awarding Plaintiff and the Class attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- G. Granting all such further and other relief as the Court deems just and appropriate.

COUNT III
(on Behalf of the Nationwide Class and the Illinois Subclass)
Fraud

78. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-40 with the same force and effect as though fully set forth herein.

79. The elements of a cause of action for fraud are: “(1) a false statement of material fact; (2) defendant’s knowledge that the statement was false; (3) defendant’s intent that the statement induce the plaintiff to act; (4) plaintiff’s reliance upon the truth of the statement; and (5) plaintiff’s damages resulting from reliance on the statement.” *See, e.g., Connick v. Suzuki Motor Co.*, 174 Ill.2d 482, 496 (1996) (citing *Bd. of Educ. of City of Chicago v. A, C & S, Inc.*, 131 Ill.2d 428, 452 (1989)).

80. Defendant made false statements of material fact through its advertising for its Quaker Oats Oatmeal. Defendant misrepresented, and continues to misrepresent, that Quaker Oats Oatmeal contain maple syrup and/or maple sugars.

81. The fact that Quaker Oats Oatmeal does not contain maple syrup and/or maple sugars is a material fact that Defendant has falsely represented and/or actively concealed.

82. Defendant knew that Quaker Oats Oatmeal does not contain maple syrup and/or maple sugars at the time that it made the representations. Defendant’s misrepresentations were made with scienter.

83. Defendant affirmatively misrepresented and actively concealed material facts regarding its Quaker Oats Oatmeal with the intent that Plaintiff and the members of the Class rely on the misrepresentations and purchase Quaker Oats Oatmeal.

84. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented material facts, and if they had been aware of the truth, Plaintiff and Class

members would not have purchased the Quaker Oats Oatmeal, or they had would have paid less for it.

85. It was reasonable for Plaintiff and the Class to rely on Defendant's misrepresentations and omissions and believe that Quaker Oats Oatmeal contain maple syrup and/or maple sugars.

86. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for Quaker Oats Oatmeal which were advertised as containing maple syrup and/or maple sugars in violation of the Code of Federal Regulations.

87. As a direct and proximate result of Defendant's fraud, Plaintiff and members of the Class suffered damages by purchasing Quaker Oats Oatmeal because they would not have purchased Quaker Oats Oatmeal, or they would have paid substantially less for it, had they known the truth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MARIO ALIANO, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class and/or Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendant;
- D. Enjoining Defendant from making false representations and omissions concerning Quaker Oats Oatmeal that will be sold to customers;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;

- F. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- G. Granting all such further and other relief as the Court deems just and appropriate.

COUNT IV
(on Behalf of the Nationwide Class and the Illinois Subclass)
Fraudulent Misrepresentation

88. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-40 with the same force and effect as though fully set forth herein.

89. To succeed on a claim of fraudulent misrepresentation, a plaintiff "must establish the following elements: (1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) an intent to induce the plaintiff to act; (4) action by the plaintiff in justifiable reliance on the truth of the statement; and (5) damage to the plaintiff resulting from such reliance." *See, e.g., Doe v. Dilling*, 228 Ill.2d 324, 342-43 (2008) (internal citations omitted).

90. Defendant made false statements of material fact through its advertising for the Quaker Oats Oatmeal. Defendant misrepresented, and continues to misrepresent that Quaker Oats Oatmeal contains maple syrup and/or maple sugars when, in fact, it does not.

91. The fact that Quaker Oats Oatmeal does not contain maple syrup and/or maple sugars is a material fact regarding Quaker Oats Oatmeal that Defendant has falsely represented and/or actively concealed.

92. Defendant knew that its Quaker Oats Oatmeal did not contain maple syrup and/or maple sugars at the time that it made the representations. Defendant's misrepresentations were made with scienter.

93. Defendant affirmatively misrepresented and/or actively concealed material facts regarding the Quaker Oats Oatmeal with the intent that Plaintiff and the members of the Class rely on the misrepresentations and purchase Quaker Oats Oatmeal.

94. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented material facts, and if they had been aware of the truth, Plaintiff and Class members would not have purchased the Quaker Oats Oatmeal, or they had would have paid less for it.

95. It was reasonable for Plaintiff and the Class to believe that Quaker Oats Oatmeal contained maple syrup and/or maple sugars at the time when they purchased the products.

96. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for Quaker Oats Oatmeal which did not contain maple syrup and/or maple sugars as advertised.

97. As a direct and proximate result of Defendant's fraudulent representation, Plaintiff and members of the Class suffered damages by purchasing the Quaker Oats Oatmeal because they would not have purchased Quaker Oats Oatmeal, or they would have paid substantially less for it, had they known the truth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MARIO ALIANO, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class and/or the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the Illinois Subclass and his undersigned counsel as Class Counsel;

- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendant;
- D. Enjoining Defendant from making false representations and omissions concerning Quaker Oats Oatmeal that will be sold to customers;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- F. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- G. Granting all such further and other relief as the Court deems just and appropriate.

COUNT V
(on Behalf of the Nationwide Class and the Illinois Subclass)
Breach of Express Warranty

98. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-40 with the same force and effect as though fully set forth herein.

99. At all relevant times there was in full force and effect the Illinois Commercial Code provision regulating express warranties, codified as 810 ILCS 5/2-313.

100. To succeed on a claim for breach of an express warranty, a plaintiff must show: (1) "the terms of the warranty," (2) "the failure of some warranted part," (3) "a demand upon the defendant to perform under the terms of the warranty," (4) "a failure of the defendant to do so," (5) "a compliance with the terms of the warranty by the plaintiff," and (6) "damages measured by the terms of the warranty." *See, e.g., Hasek v. DaimlerChrysler Corp.*, 319 Ill.App.3d 780, 793 (1st Dist. 2001).

101. However, a plaintiff is not required to provide the seller with notice of a defect if the seller has actual knowledge of the product's particular defect. *See, e.g., Connick v. Suzuki Motor Co., Ltd.*, 174 Ill.2d 482, 492 (1996).

102. “It is not necessary to the creation of an express warranty that the seller use formal words such as ‘warrant’ or ‘guarantee’ or that he have a specific intention to make a warranty[.]” 810 ILCS 5/2-313(2).

103. By packaging, labeling, and selling Quaker Oats Oatmeal, Defendant, as the manufacturer, marketer, distributor, and seller of Quaker Oats Oatmeal, expressly warranted that Quaker Oats Oatmeal contained maple syrup and/or maple sugars.

104. Defendant’s representations, affirmations of fact, and promises related to Quaker Oats Oatmeal constitute an express warranty because the representations, affirmations, and promises became a part of the basis of the bargain with Plaintiff and members of the Class that Quaker Oats Oatmeal contains maple syrup and/or maple sugars.

105. Defendant breached its express warranty because Quaker Oats Oatmeal does not contain maple syrup and/or maple sugar as warranted.

106. Plaintiff and members of the Class complied with the terms of the warranty because they paid money in exchange for the Quaker Oats Oatmeal. Neither Plaintiff nor members of the Class misused the Quaker Oats Oatmeal or contributed to its deficiency.

107. Plaintiff and members of the Class were not required to provide Defendant with notice that Quaker Oats Oatmeal is defective because Defendant had actual knowledge that Quaker Oats Oatmeal did not contain maple syrup and/or maple sugar as warranted.

108. Defendant had actual knowledge that Quaker Oats Oatmeal does not contain maple syrup and/or maple sugars as warranted because Defendant was responsible for manufacturing, packaging, and marketing Quaker Oats Oatmeal.

109. Plaintiff and members of the Class relied on Defendant’s warranty that Quaker Oats Oatmeal contained a maple syrup and/or maple sugars when they purchased Quaker Oats

Oatmeal. Because Defendant packaged and labeled the Quaker Oats Maple & Brown Sugar Instant Oatmeal, and similar Quaker Oats Oatmeal products, as “Maple & Brown Sugar,” it was reasonable for Plaintiff and members of the Class to believe that Quaker Oats Oatmeal contained maple syrup and/or maple sugars and to rely on that belief when they purchased the products.

110. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented warranties, and if they had been aware of the truth, Plaintiff and Class members would not have purchased the Quaker Oats Oatmeal, or they had would have paid less for it.

111. Plaintiff and the members of the Class did not receive Quaker Oats Oatmeal as warranted. The Quaker Oats Oatmeal they purchased was worth substantially less than the oatmeal products containing maple syrup and/or maple sugar that they were promised and expected.

112. As a direct and proximate result of Defendant’s breach of warranty, Plaintiff and members of the Class suffered damages by purchasing Quaker Oats Oatmeal because they would not have purchased Quaker Oats Oatmeal, or would have paid substantially less for it, had they known the truth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MARIO ALIANO, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class and/or the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendant;

- D. Enjoining Defendant from making false representations and omissions concerning Quaker Oats Oatmeal that will be sold to customers;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- F. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- G. Granting all such further and other relief as the Court deems just and appropriate.

COUNT VI

**(on Behalf of the Nationwide Class and the Illinois Subclass)
Unjust Enrichment**

113. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-39 with the same force and effect as though fully set forth herein.

114. When a specific contract does not govern the relationship of the parties, and, therefore, no adequate remedy at law is applicable, an equitable remedy under a theory of unjust enrichment is available. *See, e.g., Guinn v. Hoskins Chevrolet*, 361 Ill.App.3d 575, 604 (1st Dist. 2005) (internal citations omitted).

115. Unjust enrichment “is a condition that may be brought about by unlawful or improper conduct as defined by law[.]” *See, e.g., Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25 (quoting *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill.App.3d 1017, 1024 (3rd Dist. 2009); *Alliance Acceptance Co. v. Yale Insurance Agency, Inc.*, 271 Ill.App.3d 483, 492 (1st Dist. 1995)).

116. To prevail on a claim of unjust enrichment, a plaintiff must prove: (1) “that the defendant has unjustly retained a benefit to the plaintiff’s detriment,” and (2) “that defendant’s retention of the benefit violates the fundamental principles of justice, equity, and good

conscience.” *See, e.g., Cleary v. Philip Morris Inc.*, 656 F.3d 511, 518 (7th Cir.2011) (quoting *HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 131 Ill.2d 145, 160 (1989)).

117. Plaintiff and members of the Class paid a retail price for Quaker Oats Oatmeal believing that the oatmeal products they purchased contained maple syrup and/or maple sugars. However, the Quaker Oats Oatmeal purchased by Plaintiff and members of the Class does not contain maple syrup and/or maple sugars as represented.

118. Defendant has unjustly received and retained a benefit at the expense of Plaintiff and the Class because Defendant unlawfully acquired its profits for Quaker Oats Oatmeal appreciating and knowing that the oatmeal products purchased by Plaintiff and members of the Class did not contain maple syrup and/or maple sugars as represented.

119. Defendant has acquired and retained money belonging to Plaintiff and the Class as a result of its wrongful conduct: misrepresenting that Quaker Oats Oatmeal contains maple syrup and/or maple sugar when it, in fact, does not. Each individual sale of Quaker Oats Oatmeal nets Defendant profit at the expense of consumers.

120. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented material facts, and would not have purchased the Quaker Oats Oatmeal, or would have paid less for it, had they been aware of the truth.

121. Plaintiff and the members of the Class have suffered damages as a direct result of Defendant’s conduct.

122. Defendant’s retention of the benefit violates the fundamental principles of justice, equity, and good conscience because Defendant misled Plaintiff and the Class into falsely believing the Quaker Oats Oatmeal contains maple syrup and/or maple sugars in order to unjustly receive and retain a benefit.

123. Under the principles of equity, Defendant should not be allowed to keep the money belonging to Plaintiff and the members of the Class because Defendant has unjustly received it as a result of Defendant's unlawful actions described herein.

124. Plaintiff, individually and on behalf of the Class, seeks restitution for Defendant's unlawful conduct, as well as interest and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MARIO ALIANO, individually, and on behalf of the Class and the Illinois Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class and/or the Illinois Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the Illinois Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the Illinois Subclass and against Defendant;
- D. Enjoining Defendant from making false representations and omissions concerning Quaker Oats Oatmeal that will be sold to customers;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- F. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- G. Granting all such further and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all counts so triable.

Plaintiff MARIO ALIANO, individually, and on behalf of all others similarly situated,

By: /s/ Thomas A. Zimmerman, Jr.

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