

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

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

Plaintiff,)

v.)

MOM BRANDS COMPANY, LLC,)
and POST HOLDINGS, INC.)

Defendants.)

No.

Jury Trial Demanded

2016CH03879
CALENDAR/ROOM 11
TIME 00:00
Class Action

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 Defendants MOM BRANDS COMPANY, LLC and POST HOLDINGS, INC. (“Defendants”), as follows:

INTRODUCTION

1. Plaintiff brings this suit on behalf of himself and a Class of similarly situated individuals to stop Defendants from misrepresenting that their 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. Pursuant to the Federal Food, Drug and Cosmetic Act (“FDCA”), a food shall be considered “misbranded” if “its labeling is false or misleading in any particular.” See 21 U.S.C. § 343(a)(1).

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3. Pursuant to the Illinois Food, Drug and Cosmetic Act (“IFDCA”), a food is “misbranded” if “its labeling is false or misleading in any particular.” *See* 410 ILCS 620/11(a).

4. Defendants manufacture, market, distribute, and sell a variety of BetterOats Maple & Brown Sugar instant oatmeal products, including BetterOats Oat Revolution Maple & Brown Sugar, BetterOats Oat Revolution Thick & Hearty Maple & Brown Sugar, BetterOats Oat Revolution Steel Cut Maple & Brown Sugar, BetterOats Oat Revolution Steel Cut Maple & Brown Sugar with Protein, and BetterOats OatFit Maple & Brown Sugar (collectively, “BetterOats Oatmeal”). Defendants misrepresent and falsely advertise that these products contain maple syrup and/or maple sugar, but these products do not contain any maple syrup or maple sugar.

5. By misrepresenting the key ingredients in its products, Defendants engaged, and still engage, in business practices that are unlawful, unfair, and deceptive because consumers reasonably rely on Defendants’ material misrepresentations to their detriment.

PARTIES

6. Plaintiff MARIO ALIANO (“Mr. Aliano”) is a natural person and resident and citizen of Illinois.

7. Defendant POST HOLDINGS, INC. is a Missouri corporation with its principle place of business in St. Louis, Missouri, that does business nationwide, including in the state of Illinois.

8. Defendant MOM BRANDS COMPANY, LLC is a Minnesota limited liability company with its principle place of business in Lakeview, Minnesota, that does business nationwide, including in the state of Illinois. Upon information and belief, Defendant MOM BRANDS COMPANY, LLC is a subsidiary of Defendant POST HOLDINGS, INC.

JURISDICTION AND VENUE

9. Jurisdiction over Defendants is proper pursuant to 735 ILCS 5/2-209(b)(4) because Defendants are non-resident companies doing business in the state of Illinois. BetterOats Oatmeal is sold at grocery stores such as Jewel Osco, Target, and Mariano's Fresh Market,¹ each of which own and operate dozens of grocery stores in the state of Illinois.²

10. Venue is also proper in this County, pursuant to 735 ILCS 5/2-102, because Defendants are doing business in Cook County, Illinois.

FACTUAL ALLEGATIONS

Consumer Expectations Regarding Products Containing Maple Syrup and Maple Sugar

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

12. 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.³

13. Maple syrup is believed to have a higher nutritional value than all other common sweeteners.⁴

¹ The MOMBrands website allows for customers to locate stores in which BetterOats Oatmeal is sold near you. See <http://mombrands.com/find-products/better-oats/> (last visited March 17, 2016). A search for "All Better Oats Brand Oatmeal" within 40 miles of Chicago, Illinois zipcode 60602 yielded results from the following grocery store chains: Jewel Osco, Mariano's Fresh Market, Target Store, and Target Express.

² The "vast majority" of Jewel Osco's 185 grocery stores are located in Illinois. See <http://www.vault.com/company-profiles/retail/jewel-osco/company-overview.aspx>. 83 Target stores are located in the state of Illinois. See <http://www.hoursinfo.com/target/illinois>. 36 Mariano's Fresh Market Stores are located in the state of Illinois. See <http://mombrands.com/find-products/better-oats/>

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

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

14. 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.⁵

15. Defendants claim to use maple syrup and/or maple sugar in BetterOats Oatmeal. BetterOats Oatmeal prominently displays the words “Maple & Brown Sugar” on its packaging along with images of a pitcher of maple syrup.

16. Consumers reasonable rely on Defendants’ representations that BetterOats Oatmeal contains maple syrup and/or maple sugar, including the representations in the name of these products and the images and statements on BetterOats Oatmeal’s packaging that indicates that the products contain maple syrup and/or maple sugar.

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

Defendants’ Deceptive and Unfair Business Practices

18. At all relevant times, Defendants were responsible for the manufacturing, packaging, labeling, promotion, distribution, and sale of BetterOats Oatmeal throughout the nation, including in the state of Illinois.

19. On the front packaging of all BetterOats Oatmeal, Defendants place 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.

20. The front packaging of all BetterOats Oatmeal is the same or substantially similar.

⁵ See, <http://vermontmaple.org/maple-products/maple-sugar/> (last visited Feb. 29, 2016).

21. Additionally, the back of the packaging of BetterOats Oat Revolution Maple & Brown Sugar and BetterOats Oat Revolution Thick & Hearty Maple & Brown Sugar displays a section that states, “Discover what makes Better Oats Better,” under which the packaging displays the words “Maple Syrup,” with an arrow pointing to a pitcher of maple syrup.

22. However, BetterOats Oatmeal does not contain any maple syrup or maple sugar, as Defendants represent. Therefore, BetterOats Oatmeal’s labeling is false and misleading, and BetterOats Oatmeal is misbranded under state and federal law. *See* 21 U.S.C. § 343(a)(1); 410 ILCS 620/11(a).

23. Defendants willfully misrepresented that BetterOats Oatmeal contains maple syrup and/or maple sugar knowing that consumers, including Plaintiff and Class members, would reasonably rely on Defendants’ representations on the labels of BetterOats Oatmeal, including the names of these products, images of maple syrup, and the declaration that the products contain maple syrup and/or maple sugar, to inform them of whether the products contain maple syrup and/or maple sugar.

24. The presence of premium ingredients maple sugar and/or maple syrup in BetterOats Oatmeal has a material bearing on consumers’ decision to buy those products.

25. 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.⁶

⁶ *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).

26. 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

27. Plaintiff purchased BetterOats Oatmeal several times, as recently as early 2016 when Plaintiff purchased BetterOats Oat Revolution Maple & Brown Sugar and BetterOats OatFit Maple & Brown Sugar at a retail grocery store located in Illinois.

28. Before deciding to purchase BetterOats Oatmeal, Plaintiff searched for instant oatmeal items that contained maple syrup and/or maple sugar.

29. Plaintiff viewed and relied upon Defendants' representations that BetterOats 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.

30. 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.

31. It was reasonable for Plaintiff to rely on Defendants' representations that BetterOats Oatmeal contains maple syrup and/or maple sugar in deciding to purchase BetterOats Oatmeal.

32. Had Plaintiff known that BetterOats 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 BetterOats Oatmeal.

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

CLASS ALLEGATIONS

34. **Class Definition:** Plaintiff brings this action pursuant to 735 ILCS 5/2-801, 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 BetterOats Oat Revolution Maple & Brown Sugar, BetterOats Oat Revolution Thick & Hearty Maple & Brown Sugar, BetterOats Oat Revolution Steel Cut Maple & Brown Sugar, BetterOats Oat Revolution Steel Cut Maple & Brown Sugar with Protein, or BetterOats OatFit Maple & Brown Sugar.

Excluded from the Class are: (1) Defendants, Defendants’ agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their 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.

35. Plaintiff also brings this action pursuant to 735 ILCS 5/2-801, on behalf of a subclass of similarly situated individuals and entities (“the Illinois Subclass”), defined as follows:

All Illinois residents who purchased BetterOats Oat Revolution Maple & Brown Sugar, BetterOats Oat Revolution Thick & Hearty Maple & Brown Sugar, BetterOats Oat Revolution Steel Cut Maple & Brown Sugar, BetterOats Oat Revolution Steel Cut Maple & Brown Sugar with Protein, or BetterOats OatFit Maple & Brown Sugar.

Excluded from the Illinois Subclass are: (1) Defendants, Defendants’ agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their 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.

36. **Numerosity:** The Class is so numerous that joinder of individual members would be impracticable. BetterOats Oatmeal is sold nationwide at hundreds of grocery stores across the country.⁷ 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.

37. **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:

- a. Whether BetterOats Oatmeal contains maple syrup and/or maple sugar;
- b. Whether Defendants misrepresent that BetterOats Oatmeal contains maple syrup and/or maple sugar;
- c. Whether Defendants failed to inform Plaintiff and the Class that BetterOats Oatmeal does not contain maple syrup and/or maple sugar;
- d. Whether Defendants warranted to consumers that BetterOats Oatmeal contains maple syrup and/or maple sugar;
- e. Whether Defendants breached that warranty;
- f. Whether Defendants' conduct violates the Illinois Food, Drug and Cosmetic Act;
- g. Whether Defendants' conduct constitutes unfair or deceptive business practices under the Illinois Consumer Fraud and Deceptive Trade Practices Act;
- h. Whether Defendants violated the Consumer Fraud and Deceptive Trade Practices Acts of the fifty states and the District of Columbia;
- i. Whether Defendants' conduct constitutes fraud;

⁷ BetterOats Oatmeal is sold in over 200 stores, just in the state of Illinois. *See supra* notes 1 and 2.

- j. Whether Defendants' conduct constitutes fraudulent misrepresentation;
- k. Whether Defendants' conduct resulted in Defendants unjustly retaining a benefit to the detriment of Plaintiff and Class members, and violated the fundamental principles of justice, equity, and good conscience.

38. **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: Defendants' misrepresentations regarding whether BetterOats Oatmeal contains maple syrup and/or maple sugar.

39. **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.

40. **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.

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

42. Defendants have 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 Illinois Subclass)
Violation of the Illinois Food, Drug and Cosmetic Act
(410 ILCS 620/1, *et seq.*)

43. Plaintiff repeats and re-alleges the allegations of the paragraphs 1-42 with the same force and effect as though fully set forth herein.

44. At all relevant times, the IFDCA was in full force and effect.

45. BetterOats Oatmeal's labeling is false or misleading in any particular, and is therefore misbranded pursuant to 410 ILCS 620/11(a), because BetterOats Oatmeal's label expressly represents that BetterOats Oatmeal contains maple syrup and/or maple sugar when, in fact, it does not contain any maple syrup and/or maple sugar.

46. The IFDCA prohibits "the manufacture, sale or delivery, holding or offering for sale any food, drug, device or cosmetic that is adulterated or misbranded." 410 ILCS 620/3.1.

47. The IFDCA prohibits "misbranding of any food, drug, device or cosmetic." 410 ILCS 620/3.2.

48. The IFDCA prohibits "the dissemination of any false advertisement." 410 ILCS 620/3.5.

49. Defendants violated the IFDCA by misbranding BetterOats Oatmeal, by manufacturing and selling BetterOats Oatmeal that was misbranded, and by disseminating BetterOats Oatmeal labels that contained false advertisements.

50. Defendants violated the IFDCA with the intent to defraud or mislead consumers, including Plaintiff and Class members.

51. Plaintiff and Class members reasonably relied on Defendants' misrepresentations that BetterOats Oatmeal contained maple syrup and/or maple sugar in making the decision to purchase BetterOats Oatmeal.

52. Acting as reasonable consumers, Plaintiff and Class members would not have purchased BetterOats Oatmeal, or they would have paid substantially less for it, had they known the truth, and they received a product that was worth less than what they paid.

53. Plaintiff and members of the Class were damaged as a direct result of Defendants' violation of the IFDCA.

54. "A private cause of action is found to exist under a statute where: (1) the plaintiff falls within the class of persons sought to be protected; (2) the plaintiff's injury is one intended to be prevented; (3) the cause of action is consistent with the underlying purpose of the statute; and (4) the private cause of action is necessary to effectuate the purpose of the statute, *i.e.*, a civil remedy is needed." *Reuben H. Donnelley Corp. v. Brauer*, 275 Ill.App.3d 300, 311 (1st Dist. 1995).

55. Plaintiff and Class members fall within the class of persons sought to be protected by the IFDCA because they unknowingly purchased misbranded food as a result of the misrepresentations on BetterOats Oatmeal's label. The IFDCA was designed to regulate the manner in which food, drug, and cosmetics could be manufactured, prepared, advertised, and sold to consumers. Specifically, section 620/11 of the IFDCA was designed to prohibit food manufacturers and sellers from mislabeling food products such that they are misleading to consumers. Misbranded food is prohibited under the IFDCA less consumers, such as Plaintiff and Class members, fall victim to the misrepresentations on the food's labeling.

56. Plaintiff and Class members' common injury is one intended to be prevented by the IFDCA. Section 620/11 of the IFDCA prohibits food manufacturers and sellers from mislabeling food products such that they are misleading to consumers in order to prevent consumers from buying food products because they reasonably believe false representations

about those food products. Plaintiff and Class members reasonably believed Defendants' misrepresentations that BetterOats Oatmeal contains maple syrup and/or maple sugar, and they would not have purchased BetterOats Oatmeal, or would have paid less for it, had they known the truth.

57. Granting Plaintiff and Class members a private right of action under the IFDCA is consistent with the underlying purpose of the IFDCA. The underlying purpose of section 620/11 of the IFDCA is to prevent consumers from being misled by false or misleading food labels. Allowing Defendants to be held liable for their deceptive conduct to Plaintiff and Class members who reasonably relied on their misrepresentations is consistent with that purpose.

58. Granting Plaintiff and Class members a private right of action under the IFDCA is necessary to effectuate the purpose of the IFDCA because the statute would be rendered meaningless if it could not be enforced. There would be no incentive keeping food manufacturers and sellers from misrepresenting food products to consumers if they could not be held liable to consumers for those misrepresentations.

59. Defendants' misbranding of BetterOats Oatmeal in violation of the IFDCA violates public policy because Defendants made material misrepresentations to consumers with the intent that consumers, including Plaintiff and Class members, rely on those misrepresentations to their detriment.

PRAYER FOR RELIEF

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

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying 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 and the Illinois Subclass and against Defendants;
- D. Awarding Plaintiff and the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff and the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT II

(on Behalf of the Illinois Subclass)

Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act (815 ILCS 505/1, *et seq.*)

60. Plaintiff repeats and re-alleges the allegations of the paragraphs 1-42 with the same force and effect as though fully set forth herein.

61. 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.

62. 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.

63. The ICFA applies to Defendants' acts as described herein because it applies to transactions involving the sale of goods or services to consumers.

64. Each Defendant is a "person," as defined by 815 ILCS 505/1(c).

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

66. BetterOats Oatmeal is “merchandise,” as defined by 815 ILCS 505/1(b).

67. Defendants made false and fraudulent statements, and misrepresented material facts, regarding their products sold to consumers, including the misrepresentation that BetterOats Oatmeal contains maple syrup and/or maple sugar.

68. Defendants omitted material facts regarding their products sold to consumers, including the fact that BetterOats Oatmeal does not contain maple syrup and/or maple sugar.

69. Defendants’ misrepresentations and omissions regarding their BetterOats Oatmeal constitute deceptive and unfair acts or practices prohibited by the ICFA.

70. Defendants’ misrepresentations and omissions possess the tendency or capacity to mislead and create the likelihood of deception.

71. Defendants’ aforementioned misrepresentations and omissions, were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of their BetterOats Oatmeal.

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

73. Defendants’ aforementioned conduct is deceptive and unlawful because it violated section 343(a)(i) of the FDCA and section 620/11(a) of the IFDCA.

74. Defendants intended that Plaintiff and Class members rely on the false statements, misrepresentations, and omissions of material facts in purchasing BetterOats Oatmeal.

75. Plaintiff and Class members reasonably relied on Defendant’s misrepresentations and omissions when they purchased BetterOats Oatmeal.

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

77. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for BetterOats Oatmeal which, in fact, did not contain maple syrup and/or maple sugar as represented.

78. Plaintiff and Class members could not have reasonably avoided the injuries suffered by purchasing the BetterOats Oatmeal because it was reasonable for Plaintiff and Class members to rely on Defendants' misrepresentations and omissions.

79. The injury suffered by consumers as a result of Defendants' unfair and deceptive trade practices is substantial because consumers unknowingly paid for BetterOats Oatmeal that does not, in fact, contain maple syrup and/or maple sugar, as represented.

80. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, Plaintiff and members of the Class suffered damages by purchasing BetterOats Oatmeal because they would not have purchased the BetterOats Oatmeal, or they would have paid substantially less for them, had they known the truth, and they received a product that was worth less than what they paid.

PRAYER FOR RELIEF

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

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying 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 and the Illinois Subclass and against Defendants;
- D. Enjoining Defendants from making false representations and omissions concerning BetterOats Oatmeal that will be sold to customers;
- E. Awarding Plaintiff and the Illinois Subclass damages equal to the amount of actual damages that they sustained, plus punitive damages;
- F. Awarding Plaintiff and 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 III

(on Behalf of the Nationwide Class)

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

81. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-42 with the same force and effect as though fully set forth herein.

82. 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 Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 501/1 *et seq.*;
- p. the Indiana Deceptive Consumer Sales Act, IN ST § 24-5-0.5-2, *et seq.*;
- q. The Iowa Private Right of Action for Consumer Frauds Act, Iowa Code Ann. § 714H.1, *et seq.*;
- r. the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.*;
- s. the Kentucky Consumer Protection Act, KRS 367.110, *et seq.*;
- t. the Louisiana Unfair Trade Practices and Consumer Protection Law, LSA-R.S. 51:1401, *et seq.*;
- u. the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A, *et seq.*;
- v. the Maryland Consumer Protection Act, MD Code, Commercial Law, § 13-301, *et seq.*;
- w. the Massachusetts Regulation of Business Practices for Consumers Protection Act, M.G.L.A. 93A, *et seq.*;
- x. the Michigan Consumer Protection Act, M.C.L.A. 445.901, *et seq.*;
- y. the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.*;
- z. the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.*;

- aa. the Missouri Merchandising Practices Act, V.A.M.S. § 407, *et seq.*;
- bb. the Montana Unfair Trade Practices and Consumer Protection Act of 1973, Mont. Code Ann. § 30-14-101, *et seq.*;
- cc. the Nebraska Consumer Protection Act, Neb.Rev.St. §§ 59-1601, *et seq.*;
- dd. the Nevada Deceptive Trade Practices Act, N.R.S. 41.600, *et seq.*;
- ee. the New Hampshire Regulation of Business Practices for Consumer Protection, N.H.Rev.Stat. § 358-A:1, *et seq.*;
- ff. the New Jersey Consumer Fraud Act, N.J.S.A. 56:8, *et seq.*;
- gg. the New Mexico Unfair Practices Act, N.M.S.A. §§ 57-12-1, *et seq.*;
- hh. the New York Consumer Protection from Deceptive Acts and Practices, N.Y. GBL (McKinney) § 349, *et seq.*;
- ii. the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen Stat. § 75-1.1, *et seq.*;
- jj. the North Dakota Consumer Fraud Act, N.D. Cent.Code Chapter 51-15, *et seq.*;
- kk. the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*;
- ll. the Oklahoma Consumer Protection Act, 15 O.S.2001, §§ 751, *et seq.*;
- mm. the Oregon Unlawful Trade Practices Act, ORS 646.605, *et seq.*;
- nn. the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*;
- oo. the Rhode Island Deceptive Trade Practices Act, G.L.1956 § 6-13.1-5.2(B), *et seq.*;
- pp. the South Carolina Unfair Trade Practices Act, SC Code 1976, §§ 39-5-10, *et seq.*;
- qq. the South Dakota Deceptive Trade Practices and Consumer Protection Act, SDCL § 37-24-1, *et seq.*;
- rr. the Tennessee Consumer Protection Act, T.C.A. § 47-18-101, *et seq.*;
- ss. the Texas Deceptive Trade Practices-Consumer Protection Act, V.T.C.A., Bus. & C. § 17.41, *et seq.*;

- tt. the Utah Consumer Sales Practices Act, UT ST § 13-11-1, *et seq.*;
- uu. the Vermont Consumer Fraud Act, 9 V.S.A. § 2451, *et seq.*;
- vv. the Virginia Consumer Protection Act of 1977, VA ST § 59.1-196, *et seq.*;
- ww. the Washington Consumer Protection Act, RCWA 19.86.010, *et seq.*;
- xx. the West Virginia Consumer Credit And Protection Act, W.Va.Code § 46A-1-101, *et seq.*;
- yy. the Wisconsin Deceptive Trade Practices Act, WIS.STAT. § 100.18, *et seq.*; and
- zz. the Wyoming Consumer Protection Act, WY ST § 40-12-101, *et seq.*

83. BetterOats Oatmeal products are consumer goods.

84. Defendants engaged, and still engage, in unfair or deceptive acts or practices when Defendants misrepresented and continue to misrepresent material facts regarding their BetterOats Oatmeal sold to consumers, including the misrepresentation that BetterOats Oatmeal contains maple syrup and/or maple sugar.

85. Defendants omitted material facts regarding their BetterOats Oatmeal sold to consumers, including the fact that BetterOats Oatmeal does not contain maple syrup and/or maple sugar.

86. Defendants' misrepresentations and omissions possess the tendency or capacity to mislead and create the likelihood of deception.

87. Defendants' aforementioned misrepresentations and omissions were used or employed in the conduct of trade or commerce, namely, the marketing, sale, and distribution of the BetterOats Oatmeal to Plaintiff and Class members.

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

89. Defendants' aforementioned conduct is deceptive and unlawful because it violated section 343(a)(i) of the FDCA and section 620/11(a) of the IFDCA.

90. Defendants intended, and still intend, that Plaintiff and Class members rely on the false statements, misrepresentations, and omissions of material facts in purchasing BetterOats Oatmeal.

91. Plaintiff and Class members reasonably relied on Defendants' misrepresentations and omissions when they purchased BetterOats Oatmeal.

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

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

94. Plaintiff and Class members could not have reasonably avoided the injuries suffered by purchasing the BetterOats Oatmeal that was significantly mislabeled because it was reasonable for Plaintiff and Class members to rely on Defendants' misrepresentations and omissions.

95. The injury suffered by consumers as a result of Defendants' unfair and deceptive trade practices is substantial because consumers unknowingly paid for BetterOats Oatmeal that does not contain maple syrup and/or maple sugar as represented.

96. As a direct and proximate result of Defendants' unfair and deceptive acts or practices, Plaintiff and members of the Class suffered damages by purchasing BetterOats Oatmeal because they would not have purchased the BetterOats Oatmeal, or they would have

paid substantially less for it, had they known the truth, and they received a product that was worth less than what they paid.

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 set forth in 735 ILCS 5/2-801, *et seq.*, 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 Defendants;
- D. Enjoining Defendants from making false representations and omissions concerning BetterOats Oatmeal that will be sold to customers;
- E. Awarding Plaintiff and the Class damages equal to the amount of actual damages that they sustained, plus punitive damages;
- 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 IV

(on Behalf of the Nationwide Class and the Illinois Subclass) Common Law Fraud

97. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-42 with the same force and effect as though fully set forth herein.

98. 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)).

99. Defendants made false statements of material fact through their advertising for their BetterOats Oatmeal. Defendants misrepresented, and continue to misrepresent, that BetterOats Oatmeal contain maple syrup and/or maple sugar.

100. The fact that BetterOats Oatmeal does not contain maple syrup and/or maple sugar is a material fact that Defendants have falsely represented and/or actively concealed.

101. Defendants knew that BetterOats Oatmeal does not contain maple syrup and/or maple sugar at the time that they made the representations. Defendants' misrepresentations were made with scienter.

102. Defendants affirmatively misrepresented and actively concealed material facts regarding its BetterOats Oatmeal with the intent that Plaintiff and the members of the Class rely on the misrepresentations and purchase BetterOats Oatmeal.

103. 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 BetterOats Oatmeal, or they had would have paid less for it.

104. It was reasonable for Plaintiff and the Class to rely on Defendants' misrepresentations and omissions and believe that BetterOats Oatmeal contained maple syrup and/or maple sugar.

105. As such, Plaintiff and Class members suffered injuries in fact—*i.e.*, the loss of the money that they paid for BetterOats Oatmeal which did not contain any maple syrup and/or maple sugar as represented.

106. As a direct and proximate result of Defendants' fraud, Plaintiff and members of the Class suffered damages by purchasing BetterOats Oatmeal because they would not have purchased BetterOats Oatmeal, or they would have paid substantially less for it, had they known the truth, and they received a product that was worth less than what they paid.

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 set forth in 735 ILCS 5/2-801, *et seq.*, 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 Defendants;
- D. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained, plus punitive damages;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. 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)
Fraudulent Misrepresentation

107. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-42 with the same force and effect as though fully set forth herein.

108. 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).

109. Defendants made false statements of material fact through their advertising for the BetterOats Oatmeal. Defendants misrepresented, and continue to misrepresent that BetterOats Oatmeal contains maple syrup and/or maple sugar when, in fact, it does not.

110. The fact that BetterOats Oatmeal does not contain maple syrup and/or maple sugar is a material fact regarding BetterOats Oatmeal that Defendants have falsely represented and/or actively concealed.

111. Defendants knew that their BetterOats Oatmeal did not contain maple syrup and/or maple sugar at the time that they made the representations. Defendants’ misrepresentations were made with scienter.

112. Defendants affirmatively misrepresented and/or actively concealed material facts regarding the BetterOats Oatmeal with the intent that Plaintiff and the members of the Class rely on the misrepresentations and purchase BetterOats Oatmeal.

113. 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 BetterOats Oatmeal, or they would have paid less for it.

114. It was reasonable for Plaintiff and the Class to believe that BetterOats Oatmeal contained maple syrup and/or maple sugar at the time when they purchased the products.

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

116. As a direct and proximate result of Defendants' fraudulent representation, Plaintiff and members of the Class suffered damages by purchasing the BetterOats Oatmeal because they would not have purchased BetterOats Oatmeal, or they would have paid substantially less for it, had they known the truth, and they received a product that was worth less than what they paid.

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 set forth in 735 ILCS 5/2-801, *et seq.*, 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 Defendants;
- D. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;

- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. 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)
Breach of Express Warranty

117. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-42 with the same force and effect as though fully set forth herein.

118. 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.

119. 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).

120. 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).

121. "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).

122. By packaging, labeling, and selling BetterOats Oatmeal, Defendants, as the manufacturers, marketers, distributors, and sellers of BetterOats Oatmeal, expressly warranted that BetterOats Oatmeal contained maple syrup and/or maple sugar.

123. Defendants' representations, affirmations of fact, and promises related to BetterOats 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 BetterOats Oatmeal contains maple syrup and/or maple sugar.

124. Defendants breached their express warranty because BetterOats Oatmeal does not contain maple syrup and/or maple sugar as warranted.

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

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

127. Defendants had actual knowledge that BetterOats Oatmeal does not contain maple syrup and/or maple sugar as warranted because Defendants were responsible for manufacturing, packaging, and marketing BetterOats Oatmeal.

128. Plaintiff and members of the Class relied on Defendants' warranty that BetterOats Oatmeal contained a maple syrup and/or maple sugar when they purchased BetterOats Oatmeal. Because Defendants packaged and labeled BetterOats Oatmeal, as "Maple & Brown Sugar," it was reasonable for Plaintiff and members of the Class to believe that BetterOats Oatmeal

contained maple syrup and/or maple sugar and to rely on that belief when they purchased the products.

129. 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 BetterOats Oatmeal, or they had would have paid less for it.

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

131. As a direct and proximate result of Defendants' breach of warranty, Plaintiff and members of the Class suffered damages by purchasing BetterOats Oatmeal because they would not have purchased BetterOats Oatmeal, or would have paid substantially less for it, had they known the truth, and they received a product that was worth less than the warranted condition.

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 set forth in 735 ILCS 5/2-801, *et seq.*, 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 Defendants;
- D. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;

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

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

132. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-42 with the same force and effect as though fully set forth herein.

133. 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).

134. 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)).

135. 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)).

136. Plaintiff and members of the Class paid a retail price for BetterOats Oatmeal believing that the oatmeal products they purchased contained maple syrup and/or maple sugar.

However, the BetterOats Oatmeal purchased by Plaintiff and members of the Class does not contain maple syrup and/or maple sugar as represented.

137. Defendants have unjustly received and retained a benefit at the expense of Plaintiff and the Class because Defendants unlawfully acquired their profits for BetterOats Oatmeal appreciating and knowing that the oatmeal products purchased by Plaintiff and members of the Class did not contain maple syrup and/or maple sugar as represented.

138. Defendants have acquired and retained money belonging to Plaintiff and the Class as a result of their wrongful conduct: misrepresenting that BetterOats Oatmeal contains maple syrup and/or maple sugar when it, in fact, does not. Each individual sale of BetterOats Oatmeal nets Defendants profit at the expense of consumers.

139. Acting as reasonable consumers, Plaintiff and the Class were unaware of these misrepresented material facts, and would not have purchased the BetterOats Oatmeal, or would have paid less for it, had they been aware of the truth, and they received a product that was worth less than what they paid.

140. Plaintiff and the members of the Class have suffered damages as a direct result of Defendants' conduct.

141. Defendants' retention of the benefit violates the fundamental principles of justice, equity, and good conscience because Defendants misled Plaintiff and the Class into falsely believing the BetterOats Oatmeal contains maple syrup and/or maple sugar in order to unjustly receive and retain a benefit.

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

143. Plaintiff, individually and on behalf of the Class, seeks restitution for Defendants' 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 set forth in 735 ILCS 5/2-801, *et seq.*, 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 Defendants;
- D. Awarding Plaintiff, the Class, and/or the Illinois Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff, the Class, and/or the Illinois Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and
- F. 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: _____

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