

C. Brooks Cutter, Esq., (SBN 121407)
John R. Parker, Jr., Esq. (SBN 257761)
CUTTER LAW P.C.
401 Watt Avenue
Sacramento, CA 95864
Telephone: (916) 290-9400
Facsimile: (916) 669-4499
bcutter@cutterlaw.com
jparker@cutterlaw.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KERI VAN LENGEN and DEBORAH NAVA
on behalf of themselves, and a class of similarly
situated persons,

Plaintiffs,

v.

GENERAL MILLS, INC., GENERAL MILLS
SALES, INC., GENERAL MILLS
OPERATIONS, LLC, ROXANNE ORNELAS
AND DOES 1 – 50,

Defendants.

Case No.

CLASS ACTION COMPLAINT FOR

**(1) VIOLATION OF UNFAIR
BUSINESS PRACTICES ACT;**

**(2) VIOLATION OF UNFAIR
COMPETITION LAW;**

**(3) VIOLATION OF THE CONSUMER
LEGAL REMEDIES ACT;**

(4) UNJUST ENRICHMENT; AND

**(5) BREACH OF EXPRESS
WARRANTY**

DEMAND FOR JURY TRIAL

Plaintiffs Keri Van Lengen and Deborah Nava, on behalf of themselves and all others
similarly situated, by and through their undersigned counsel, hereby sue Defendants General
Mills, Inc. and General Mills Sales, Inc., General Mills Operations, LLC (collectively “General
Mills” or “Defendants”), and Does 1 – 50, and upon information and belief and investigation of

counsel, allege as follows:

I. JURISDICTION AND VENUE

1. This Court has original jurisdiction over this action under 28 U.S.C. section 1332 (d) of The Class Action Fairness Act because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs and because Plaintiffs and Defendants are residents of different states.

2. Venue is proper in this Court pursuant to 28 U.S.C. section 1391 because Plaintiffs reside in and suffered injuries as a result of Defendants' acts in this District; many of the acts and transactions giving rise to this action occurred in this District, and Defendants (1) are authorized to conduct business in this District and have intentionally availed themselves of the laws and markets of this District through the manufacture, distribution and sale of their products in this District; and (2) are subject to personal jurisdiction in this District.

II. NATURE OF THE CASE

3. This case arises out of General Mills' deceptive, unfair and false advertising and merchandising practices regarding its "Gluten Free" Cheerios and Honey Nut Cheerios ("Cheerios").

4. Gluten, a protein, occurs naturally in wheat, rye, barley and crossbreeds of those grains.

5. Persons with celiac disease, gluten sensitivity or a wheat allergy can experience a variety of symptoms which can adversely affect their health.

6. According to the Food and Drug Administration's ("FDA") website, "An estimated 3 million people in the United States have celiac disease." If a person with celiac disease consumes foods that contain gluten, it can trigger the production of antibodies that damage the lining of the small intestine. "Such damage limits the ability of celiac disease patients

1 to absorb nutrients and puts them at risk of other very serious health problems, including
2 nutritional deficiencies, osteoporosis, growth retardation, infertility, miscarriages, short stature,
3 and intestinal cancers.”

4 [http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/allergens/
5 ucm362510.htm](http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/allergens/ucm362510.htm)

6
7 7. To help consumers, especially those living with celiac disease, be confident that
8 food items labeled “gluten-free” met a defined standard for gluten content, federal regulations
9 were established which defined gluten-free labeling of food. 21 CFR §101.91 became final on
10 August 2, 2013. It provided that

11 “(3) The labeling claim “gluten-free” means:

12 (i) That the food bearing the claim in its labeling:

13 (A) Does not contain any one of the following:

14 (1) An ingredient that is a gluten-containing grain (e.g., spelt wheat);

15 (2) An ingredient that is derived from a gluten-containing grain and that has not
16 been processed to remove gluten (e.g., wheat flour); or

17 (3) An ingredient that is derived from a gluten-containing grain and that has been
18 processed to remove gluten (e.g., wheat starch), if the use of that ingredient
19 results in the presence of 20 parts per million (ppm) or more gluten in the food
20 (i.e., 20 milligrams (mg) or more gluten per kilogram (kg) of food); or

21 (B) Inherently does not contain gluten; and

22 (ii) Any unavoidable presence of gluten in the food bearing the claim in its

23 labeling is below 20 ppm gluten (i.e., below 20 mg gluten per kg of food).”

24 8. Manufacturers were given one year to bring their labels into compliance with the
25 gluten-free labeling standard.

26 9. General Mills’ sales materials reflected that the company viewed the “gluten free”
27 designation as a way to boost sales. A sales release announcing “Cheerios is going gluten-free!”
28

1 stated, "Gluten Free cheerios provides Operators with even more Gluten Free solutions to offer
 2 patrons a variety of options," and noted that, "30% of US Population are Gluten Avoiders; +15%
 3 last 4 years." The company also established a Gluten Free Information website:
 4 www.generalmillsscf.com/gluten-free. (Exhibit A, attached hereto.)

5
 6 10. General Mills represented that Cheerios were made of oats which were naturally
 7 gluten-free, but the company had "added a process to sort out the stray grains" of wheat, barley
 8 and rye that were often present in the oats used to manufacture the cereal. (Exhibit A)

9
 10 11. In September, 2015, General Mills began a major campaign to advertise its
 11 "Gluten Free" Cheerios and Cheerios Honey Nut Cereal products, and distributed these products
 12 in California and throughout the United States.

13 12. The "Gluten Free" designation was placed prominently on the Cheerios Boxes.

Nutrition Facts
 Serving Size 1 cup (28g)
 Children Under 4 - 1/4 cup (21g)
 Servings Per Container about 12
 Children Under 4 - about 16

Amount Per Serving	Cheerios	with 1/4 cup skim milk	Cereal for Children under 4
Calories	100	150	80
Calories from Fat	15	20	10
% Daily Value**			
Total Fat 2 1/2g	3%	3%	1.5g
Saturated Fat 0.5g	3%	3%	0g
Trans Fat 0g			0g
Polysaturated Fat 0.5g			0.5g
Monounsaturated Fat 0.5g			0.5g
Cholesterol 0mg	0%	1%	0mg
Sodium 140mg	6%	8%	105mg
Potassium 180mg	5%	11%	135mg
Total Carb 20g	7%	9%	15g
Dietary Fiber 3g	11%	11%	2g
Soluble Fiber 1g			0g
Sugars 1g			1g
Other Carbohydrate 16g			12g
Protein 3g			2g

Ingredients: Whole Grain Oats, Corn Starch, Sugar, Salt, Tripotassium Phosphate, Vitamin E (mixed tocopherols) Added to Preserve Freshness.
Vitamins and Minerals: Calcium Carbonate, Iron and Zinc (mineral nutrients), Vitamin C (sodium ascorbate), A B Vitamin (niacinamide), Vitamin B₆ (pyridoxine hydrochloride), Vitamin A (palmitate), Vitamin B₁ (thiamin mononitrate), A B Vitamin (folic acid), Vitamin B₁₂, Vitamin D₃.
 DISTRIBUTED BY GENERAL MILLS SALES, INC., MINNEAPOLIS, MN 55418 USA
GLUTEN FREE
 Not made with genetically modified ingredients.
 Trace amounts of genetically modified (also known as "genetically engineered") material may be present due to potential cross contact during manufacturing and shipping.
 © General Mills
 May be mfg. under U.S. Pat. No. 7,021,525 & Pat. Pend.
 Exchange: 1 1/2 starch
 Based on Academy of Nutrition and Dietetics and American Diabetes Association criteria
 This package is sold by weight, not by volume. You can be assured of proper weight even though some settling of contents normally occurs during shipment and handling.
 F 3842756115 SSG 3890456115

General Mills

NATURALLY FLAVORED **Honey Nut Cheerios**

first ingredient WHOLE GRAIN OATS

Gluten Free

Sweetened Whole Grain Oat Cereal with Real Honey & Natural Almond Flavor

NO ARTIFICIAL FLAVORS
NO ARTIFICIAL COLORS

THREE GRAMS OF SOLUBLE FIBER DAILY FROM WHOLE GRAIN OAT FOODS, LIKE HONEY NUT CHEERIOS® CEREAL, IN A DIET LOW IN SATURATED FAT AND CHOLESTEROL, MAY REDUCE THE RISK OF HEART DISEASE. HONEY NUT CHEERIOS CEREAL PROVIDES 25 GRAMS PER SERVING.

Nutrition Facts

Serving Size ¾ cup (28g)
Servings Per Container about 17

Amount Per Serving	Honey Nut Cheerios	with 1% cup skim milk
Calories	110	150
Calories from Fat	15	15
		% Daily Value**
Total Fat 1.5g*	2%	2%
Saturated Fat 0g	0%	0%
Trans Fat 0g		
Polyunsaturated Fat 0.5g		
Monounsaturated Fat 0.5g		
Cholesterol 0mg	0%	1%
Sodium 160mg	7%	9%
Potassium 115mg	3%	9%
Total Carbohydrate 22g	7%	9%
Dietary Fiber 2g	8%	8%
Soluble Fiber less than 1g		
Sugars 1g		
Other Carbohydrate 11g		
Protein 2g		
Vitamin A	10%	15%
Vitamin C	10%	10%
Calcium	10%	25%
Iron	25%	25%
Vitamin D	10%	25%
Thiamin	25%	30%
Riboflavin	25%	35%
Niacin	25%	25%
Vitamin B ₆	25%	25%
Folic Acid	50%	50%
Vitamin B ₁₂	25%	35%
Phosphorus	8%	20%
Magnesium	6%	10%
Zinc	25%	30%

* Amount in cereal. A serving of cereal plus skim milk provides 1.5g total fat, less than 5mg cholesterol, 220mg sodium, 320mg potassium, 28g total carbohydrate (15g sugars, 12g other carbohydrate), and 7g protein.

** Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories 2,000	2,500
Total Fat	Less than 65g	80g
Sat Fat	Less than 20g	25g
Cholesterol	Less than 300mg	300mg
Sodium	Less than 2,400mg	2,400mg
Potassium	3,500mg	3,500mg
Total Carbohydrate	300g	375g
Dietary Fiber	25g	30g

Ingredients: Whole Grain Oats, Sugar, Oat Bran, Corn Starch, Honey, Brown Sugar Syrup, Salt, Tripotassium Phosphate, Rice Bran Oil and/or Canola Oil, Natural Almond Flavor, Vitamin E (mixed tocopherols) Added to Preserve Freshness.

Vitamins and Minerals: Calcium Carbonate, Zinc and Iron (mineral nutrients), Vitamin C (sodium ascorbate), A B Vitamin (niacinamide), Vitamin B₆ (pyridoxine hydrochloride), Vitamin B₁₂ (cobalamin), Vitamin B₁ (thiamin mononitrate), Vitamin A (palmitate), A B Vitamin (folic acid), Vitamin B₁₂, Vitamin D₃.

CONTAINS ALMOND INGREDIENTS.

DISTRIBUTED BY GENERAL MILLS SALES, INC., MINNEAPOLIS, MN 55440 USA

GLUTEN FREE

© General Mills May be mfg. under U.S. Pat. Nos. 5,968,572; 7,959,961; 7,021,525 & Pat. Pend.

Exchange: 1½ Starch
Based on Academy of Nutrition and Dietetics and American Diabetes Association criteria
This package is sold by weight, not by volume. You can be assured of proper weight even though some settling of contents normally occurs during shipment and handling.

F 3860022109 SS6 3572469109

13. Despite the new labeling rule, the FDA began to receive reports of adverse reactions from people who had eaten original Cheerios or Honey-Nut Cheerios that were labeled “gluten free.”

14. In response to these complaints, the FDA tested 36 samples of gluten-free Cheerios that were taken from different manufacturing facilities and lots. A sample of Honey Nut Cheerios was found to contain 43 ppm of gluten, well above 20 ppm limit.

15. On October 5, 2015, General Mills recalled a reported 1.8-million boxes of Cheerios. Recalled were 13 lots of Honey Nut Cheerios and 4 lots of original Cheerios manufactured at its Lodi, California plant. The recalled lots were identified by their “Better if used by” code dates which ranged between 12JUL2016LD and 25JUL2016LD for Honey Nut Cheerios, and between 14JUL2016LD and 17JUL2016LD for original Cheerios in yellow boxes.

1 16. On October 6, 2015, The FDA issued a Safety Alert that it was investigating
2 complaints associated with Cheerios labeled “Gluten Free.”

3 17. Any food that bears the claim “gluten-free”, “no gluten,” “free of gluten” or
4 “without gluten” in its labeling but does not meet the requirements of CFR 101.91(a)(3) is deemed
5 “misbranded.”

6 18. California’s Sherman Law incorporates “[a]ll food labeling regulations and any
7 amendments to those regulations and any amendments to those regulations adopted pursuant to
8 the FDCA” as “the food labeling regulations of this state.” Cal. Health & Safety Code §
9 110100(a).

10 19. Moreover, the Sherman Law adopts and incorporates specific federal food laws
11 and regulations. Under California’s Sherman Law, “[a]ny food is misbranded if its labeling does
12 not conform with the requirements for nutrient content or health claims as set forth in Section
13 403(r) (21 U.S.C. Sec. 343(4)) of the federal act and the regulations adopted pursuant thereto.”
14 Cal. Health & Safety Code § 110670. Furthermore, the Sherman Law provides that “any food is
15 misbranded if its labeling is false or misleading in any particular.” Cal. Health & Safety Code §
16 110660.

17 20. State law claims based on a food product’s non-conforming, misleading, or
18 deceptive label are expressly permitted when they impose legal obligations identical to the FDCA
19 and corresponding FDA regulations, including FDA regulations concerning naming and labeling.
20 *In re Farm Raised Salmon Cases*, 42 Cal. 4th 1077, 1094-95 (2008). Defendants’ conduct thus
21 constitutes a violation of California law for which Plaintiffs and class members are entitled to
22 seek redress under the Unfair Competition Law (“UCL”), the False Advertising Law (“FAL”) and
23 the Consumer Legal Remedies Act (“CLRA”).
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III. PARTIES

21. Defendant General Mills, Inc., is a Delaware corporation with its principal place of business in Minneapolis, Minnesota, and is registered to do business in California.

22. Defendant General Mills Sales, Inc., is a Delaware Corporation with its principal place of business in Minneapolis, Minnesota. General Mills Sales, Inc. is registered to do business in the State of California.

23. General Mills Operations, LLC is a Delaware Limited Liability Corporation with its principal place of business in Minneapolis, Minnesota. General Mills Operations, LLC is registered to do business in the State of California.

24. At all relevant times herein, Defendants General Mills, Inc., General Mills Sales, Inc., and General Mills Operations, LLC, collectively referred to herein as “General Mills” manufactured, advertised, marketed, distributed, and sold Cheerios and Honey Nut Cheerios cereals in boxes labeled “Gluten Free” throughout California and the United States.

25. Plaintiffs are informed and believe and thereon allege that at all times relevant herein, Roxanne Ornelas was employed by Defendants as the Manufacturing Manager at the General Mills plant in Lodi, California.

26. The true names and capacities of Does 1 through 50 are unknown to Plaintiffs. Plaintiffs are informed and believe and thereon allege that each of these Defendants are in some way liable for the events referred to in this complaint and caused damage to Plaintiffs. Plaintiffs will amend this Complaint and insert the correct names and capacities of those defendants when they are discovered.

27. At all times mentioned, each of the Defendants – including Does 1 through 50 – was the representative, agent, employee, joint venture, or alter ego of each of the other defendants and in doing the things alleged herein was acting within the scope of its authority as such.

1 28. General Mills, Roxanne Ornelas, and Does 1 through 50 are collectively referred
2 to herein as “Defendants.”

3 29. Plaintiff Keri Van Lengen is a resident of Placer County, California. In late
4 September 2015, she saw advertising for Gluten-Free Cheerios. Based on this advertising, she
5 purchased Honey Nut Cheerios labeled as “Gluten Free.” She subsequently learned that the
6 Honey Nut Cheerios she purchased were recalled because they contained gluten.
7

8 30. Plaintiff Deborah Nava is a resident of Sacramento County, California. Based on
9 the “Gluten Free” label, she purchased Cheerios, and subsequently learned that the Cheerios she
10 purchased were recalled because they contained gluten.

11 **IV. CLASS ACTION ALLEGATIONS**

12 31. Plaintiff brings this lawsuit as a class action on her own behalf and on behalf of all
13 other persons similarly situated as members of the proposed Class, pursuant to Federal Rules of
14 Civil Procedure 23(a), (b)(1), and (b)(3). This action satisfies the numerosity, commonality,
15 typicality, adequacy, predominance and superiority requirements of those provisions.
16

17 32. The proposed Class is defined as:

18 All persons or entities who purchased Cheerios or Honey Nut Cheerios advertised as gluten-
19 free, and which were not gluten-free.

20 33. Excluded from the Class are Defendants, their affiliates, employees, agents and
21 attorneys, and the Court.
22

23 34. Plaintiff reserves the right to amend the Class definitions if discovery and further
24 investigation reveal that any Class should be expanded, divided into additional subclasses, or
25 modified in any other way.

26 **a. Numerosity and Ascertainability**

27 35. The exact number of Class Members is presently unknown. However, the size of
28

1 the Class can be estimated with reasonable precision. Based upon the Defendants' sales volume it
2 is reasonable to presume, that the members of the Class are so numerous that joinder of all
3 members is impracticable.

4 36. Approximately 1.8-million boxes of Cheerios and Honey Nut Cheerios were
5 recalled by General Mills on October 5, 2015. Plaintiff is informed and believes that this
6 represented approximately 1 percent of Defendants' production of Cheerios advertised as Gluten
7 Free. The disposition of the claims of these Class Members in a single action will provide
8 substantial benefits to all parties and to the Court.
9

10 **b. Typicality**

11 37. The claims of the representative Plaintiffs are typical of the claims of the Class
12 because, Plaintiffs, like all Class Members, purchased Cheerios labeled as Gluten Free which
13 were not Gluten Free. Plaintiffs, like all Class Members, have been damaged by Defendants'
14 conduct because they have incurred losses relating to the purchase of Cheerios labeled as Gluten
15 Free. Further, the factual bases of defendants' misconduct are common to all Class Members and
16 represent a common thread of misconduct resulting in injury to all Class Members.
17

18 **c. Adequate Representation**

19 38. Plaintiffs are members of the Class and will fairly and adequately represent and
20 protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in
21 prosecuting consumer class actions, including actions involving false advertising.
22

23 39. Plaintiffs and their counsel are committed to vigorously prosecuting this action on
24 behalf of the Class and have the financial resources to do so. Neither Plaintiffs nor their counsel
25 have interests adverse to those of the Class.

26 **d. Predominance of Common Issues**

27 40. There are numerous questions of law and fact common to Plaintiffs and Class
28

Members that predominate over any question affecting only individual Class Members. The answers to these common questions will advance resolution of the litigation as to all Class Members. These common legal and factual issues include:

- a. whether the Cheerios contained gluten;
- b. whether Defendants knew or should have known that the Cheerios contained gluten;
- c. whether Defendants failed to take the steps necessary to ensure that the Cheerios cereals did not contain gluten;
- d. whether Defendants made material misrepresentations regarding the Cheerios cereals labeled as “Gluten Free;”
- e. whether Defendants had a duty to disclose the true nature of the Cheerios cereals to Plaintiffs and Class Members;
- f. whether Defendants omitted and failed to disclose material facts about the Cheerios cereals;
- g. whether Defendants’ concealment of the true nature of the Cheerios would have induced a reasonable consumer to act to their detriment by purchasing the Cheerios; and
- h. whether Plaintiffs and Class Members are entitled to injunctive and equitable relief.

e. Superiority

41. Plaintiffs and Class Members have all suffered and will continue to suffer harm and damages as a result of Defendants’ unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

42. Absent a class action, most Class Members would likely find the cost of litigating

1 their claims prohibitively high and would therefore have no effective remedy at law. Because of
2 the relatively small size of the individual Class Members' claims, it is likely that only a few Class
3 Members could afford to seek legal redress for Defendants' misconduct. Absent a class action,
4 Class Members will continue to incur damages and Defendants' misconduct will continue without
5 remedy.

6
7 43. Class action treatment of common questions of law and fact would also be a
8 superior method to multiple individual actions or piecemeal litigation in that class treatment will
9 conserve the resources of the courts and the litigants, and will promote consistency and efficiency
10 of adjudication.

11 44. Defendants have acted in a uniform manner with respect to the Plaintiffs and Class
12 Members.

13 45. Class-wide declaratory, equitable, and injunctive relief is appropriate under Rule
14 23(b)(1) and/or (b)(2) because Defendants have acted on grounds that apply generally to the
15 Class, and inconsistent adjudications with respect to Defendants' liability would establish
16 incompatible standards and substantially impair or impede the ability of Class Members to protect
17 their interests. Class-wide relief assures fair, consistent, and equitable treatment and protection of
18 all Class Members, and uniformity and consistency in Defendants' duties to perform corrective
19 action regarding the Class Cereal.
20

21
22 **FIRST CAUSE OF ACTION**
23 **Violation of Unfair Business Practices Act**
(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

24 46. Plaintiffs incorporate by reference each and every paragraph of this Complaint as
25 if fully set forth herein and further allege as follows.

26 47. California Business and Professions Code Section 17200, *et seq.* prohibits "any
27 unlawful, unfair or fraudulent business act or practice."
28

1 47. As set forth above, under FDA regulations wholly adopted by California's
2 Sherman Law, the "Gluten Free" statement is prohibited on foods that are not gluten free. The
3 Cheerios purchased by Plaintiffs contained the "Gluten Free" label, but contained gluten. This is
4 a clear violation of California's Sherman Law and, thereby, an "unlawful" business practice or act
5 under Business and Professions Code sections 17200, *et seq.*

6
7 48. In addition, Defendants' use of the "Gluten Free" label constitutes a "fraudulent"
8 business practice within the meaning of Business and Professions Code section 17200, *et seq.*
9 The applicable food regulations are carefully crafted to require that nutrient content claims be
10 presented in a qualified and contextualized manner to protect the consuming public from being
11 deceived. Defendants' non-compliant "Gluten Free" label is an unqualified nutrient content claim
12 that poses the very risk of deception the regulations were promulgated against. By labeling
13 products "Gluten Free" Defendants created the misimpression that their products do not contain
14 gluten and are therefore safe for those persons who may be sensitive to gluten to eat.

15
16 49. Defendants used the "Gluten Free" label to induce Plaintiffs and Class Members to
17 purchase the Cheerios products. Had Defendants not included the "Gluten Free" statement on the
18 Cheerios products, Plaintiffs and Class Members would not have purchased the Cheerios.

19 50. Defendants' practices are also unfair under the UCL because the harm to the
20 public from Defendants' false labelling of "Gluten Free" outweighs any utility of the practice of
21 false labeling -- in fact there is no such utility at all. Moreover, because the practice is unfair
22 violates public policy as stated FDA regulations and California's Sherman Law.

23
24 51. Defendants have thus engaged in unlawful, unfair and fraudulent business acts in
25 violation of Business and Professions Code Section 17200, *et seq.*

26 52. Pursuant to Business and Professions Code Section 17203, Plaintiffs and Class
27 members seek an order requiring Defendants to immediately cease such acts of unlawful, unfair
28

1 and fraudulent business practices and requiring Defendants to correct their actions.

2 **SECOND CAUSE OF ACTION**

3 **Violation of Unfair Competition Law (Cal. Bus. & Prof. Code §§17500, *et seq.*)**

4 53. Plaintiffs incorporate by reference each and every paragraph of this Complaint as
5 if fully set forth herein and further allege as follows:

6 54. Plaintiffs bring this cause of action on behalf on of themselves and all others
7 similarly situated pursuant to California Business & Professions Code § 17500.

8 55. California Business & Professions Code § 17500 provides that it is unlawful for
9 any person, firm, corporation or association to dispose of property or perform services, or to
10 induce the public to enter into any obligation relating thereto, through the use of untrue or
11 misleading statements.
12

13 56. At all times herein alleged, Defendants have committed acts of disseminating
14 untrue and misleading statements as defined by California Business & Professions Code § 17500
15 by engaging in the following acts and practices with intent to induce members of the public to
16 purchase gluten free Cheerios cereals:
17

- 18 a. Representing to Plaintiffs and the general public that Cheerios' gluten free label on
19 the box meant that the contents met all Food and Drug Administration standards
20 for such labeling and were safe for consumption by persons sensitive to gluten,
21 when, in fact, the Defendants knowingly failed to take necessary measures to
22 ensure their products were gluten free;
- 23 b. Engaging in advertising programs designed to create the image, impression and
24 belief by consumers that Cheerios cereals were free of gluten and safe for
25 consumption by persons sensitive to gluten, even though their Cheerios cereals
26 contained gluten that far exceeded the amount specified by the FDA for
27
28

1 designating products as gluten free;

2 c. Representing to Plaintiffs and the general public that Defendants had developed a
3 reliable manufacturing method to ensure Cheerios were gluten-free.

4 57. Defendants' use of the Gluten Free label therefore constitutes untrue and/or
5 misleading advertising within the meaning of Business and Professions Code Sections 17500 *et*
6 *seq.*

7
8 58. Plaintiffs, on behalf of themselves and all others similarly situated, demand
9 judgment against Defendants for injunctive relief afforded under Business and Professions Code
10 Sections 17500, *et seq.*, attorneys' fees and costs.

11 **THIRD CAUSE OF ACTION**
12 **Violation of the Consumer Legal Remedies Act**
13 **(Cal. Civ. Code §§ 1750, *et seq.*)**

14 59. Plaintiffs incorporate by reference all allegations set forth in the preceding
15 paragraphs of this Complaint.

16 60. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
17 California Civil Code Sections 1750, *et seq.* ("CLRA").

18 61. The CLRA has adopted a comprehensive statutory scheme prohibiting various
19 deceptive practices in connection with the conduct of a business providing goods, property, or
20 services to consumers primarily for personal, family, or household purposes. The self-declared
21 purposes of the Act are to protect consumers against unfair and deceptive business practices and
22 to provide efficient and economical procedures to secure such protection.

23
24 62. Each Defendant is a "person" as defined by Civil Code Section 1761(c), because
25 each Defendant is a corporation as set forth above.

26 63. Plaintiffs and Class Members are "consumers," within the meaning of Civil Code
27 Section 1761(d), because they are individuals who purchased the "Gluten Free" Cheerios for
28

1 personal and/or household use.

2 64. Defendants' Cheerios products are "goods" within the meaning of California Civil
3 Code Section 1761(a), in that they are tangible products bought by Plaintiffs and Class Members
4 for personal, family, and/or household use.

5 65. Defendants' sale of their products to wholesalers and retailers throughout
6 California constitutes "transaction[s]" which were "intended to result or which result[ed] in the
7 sale" of goods to consumers within the meaning of Civil Code Sections 1761(e) and 1770(a).

8 66. Plaintiffs have standing to pursue this claim as they have suffered injury in fact
9 and have lost money as a result of Defendants' actions as set forth herein. Specifically, Plaintiffs
10 purchased the "Gluten Free" Cheerios products. Had Defendants not included the offending
11 "Gluten Free" label on their Cheerios, Plaintiffs would not have purchased the products, would
12 have purchased less of the products or would have paid less for them.

13 67. Section 1770(a)(5) of the CLRA prohibits anyone from "[r]epresenting that goods
14 or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities
15 which they do not have...." Defendants' "Gluten Free" label accompanies food products that
16 contain gluten, in violation of governing food labeling regulations. As a result, by employing the
17 "Gluten Free" label, Defendants effectively represented that the Cheerios products have
18 sponsorship, approval, characteristics, uses, and benefits which they do not have under the
19 governing law.

20 68. Section 1770(a)(7) of the CLRA prohibits anyone from "[r]epresenting that goods
21 or services are of a particular standard, quality, or grade, or that goods are of a particular style or
22 model, if they are of another." By employing the non-compliant "Gluten Free" label, defendants
23 similarly represented the General Mills Cheerios products to be of a particular standard, quality,
24 or grade which they are not under the governing law.

1 69. Section 1770(a)(9) of the CLRA prohibits anyone from “[a]dvertising goods or
2 services with intent not to sell them as advertised.” As noted above, Defendant General Mills is a
3 multi-million dollar company advised by skilled counsel, who, on information and belief, are or
4 by the exercise of reasonable care should be aware of the governing regulations and their purpose,
5 and the necessity to exercise reasonable care to ensure compliance with governing regulations and
6 their purpose. By introducing Cheerios products which contained gluten, but were labeled
7 “Gluten Free” into the stream of commerce notwithstanding this knowledge, Defendants thus
8 intentionally sold misbranded products.
9

10 70. Plaintiffs have attached hereto the declaration of venue required by Civil Code
11 Section 1780(d).
12

13 71. Plaintiffs seek an order enjoining the acts and practices described above, and
14 awarding attorneys’ fees and costs and will amend this Complaint to seek damages under the
15 CLRA.

16 **FOURTH CAUSE OF ACTION**
17 **Unjust Enrichment**

18 72. Plaintiffs hereby incorporate by reference the allegations contained in the
19 preceding paragraphs of this Complaint.

20 73. Plaintiffs bring this claim for unjust enrichment on behalf of the Class.

21 74. General Mills has been unjustly enriched because they intentionally sold the
22 Cheerios labeled as “Gluten Free” when they were not, in fact, free of gluten, and could not
23 provide the promised gluten free benefits.
24

25 75. Plaintiffs and Class Members conferred a benefit on General Mills by purchasing
26 “Gluten Free” labeled Cheerios, in order to obtain the “Gluten Free” benefits and would not have
27 otherwise purchased Cheerios or would have purchased less of them.
28

1 76. Plaintiffs and Class Members got less than what they paid for because the Cheerios
2 did not comply with applicable governmental regulations governing the manufacture, marketing
3 and advertising of gluten free foods. The Cheerios purchased by Plaintiffs and Class Members
4 did not deliver the promised benefits of a gluten free cereal that they expected.

5 77. General Mills knows of and appreciates the benefit conferred by the Plaintiffs and
6 Class Members and has retained that benefit notwithstanding its knowledge that the benefit is
7 unjust.

8 78. The foregoing did not occur by happenstance or conditions out of General Mills'
9 control. In fact, Plaintiffs are informed and believe that General Mills failed to ensure that the oat
10 flour used to manufacture the Cheerios did not contain gluten and failed to test the finished
11 Cheerios for gluten before distributing them to retail and wholesale outlets for purchase by
12 consumers.

13 79. Therefore, Defendants should be required to disgorge their unjust enrichment.

14
15 **FIFTH CAUSE OF ACTION**
16 **Breach of Express Warranty**
17

18 80. Plaintiffs hereby incorporate by reference the allegations contained in the
19 preceding paragraphs of this Complaint.

20 81. Plaintiffs bring this claim for breach of express warranty on behalf of the Class.

21 82. By advertising the "Gluten Free" qualities of its Cheerios cereals, General Mills
22 expressly warranted to Plaintiffs and Class Members that the Cheerios at least complied with all
23 applicable laws and regulations relating to gluten free foods, as it would be impossible for a food-
24 stuff to be "gluten free" if it contained more gluten than allowed by applicable laws and
25 regulations.

26 83. Moreover, by advertising the gluten free nature of Cheerios, General Mills
27
28

1 warranted to purchasers of the Cheerios that it would indeed be gluten free and could be
2 consumed by persons who were sensitive to gluten or desired to exclude foods containing gluten
3 from their diets. Such statements became the basis of the bargain for Plaintiffs and other Class
4 Members because such statements were among the facts a reasonable consumer would consider
5 material in the purchase of a cereal.

6
7 84. In fact, the Cheerios subject to the recall contained 43 parts per million (ppm) of
8 gluten when tested by the Food and Drug Administration (“FDA”). This is far in excess of the 20
9 ppm limit established by the FDA for foods to be considered “gluten free.”

10 85. The “Gluten Free” label on the Cheerios boxes created an express warranty that
11 the Cheerios were free of gluten, safe for those with gluten sensitivity to eat, and therefore a more
12 desirable cereal to them than cereals without the gluten free designation.

13 86. General Mills breached this express warranty by failing to ensure that the oats used
14 in the Cheerios met the regulatory guidelines, by failing to ensure the oat flour was free of gluten,
15 and failing to test the finished cereal products.

16 87. As a result of the foregoing breaches of express warranty, Plaintiffs and Class
17 Members have been damaged because they purchased Cheerios that were unlawfully sold, did not
18 comply with government regulations, did not perform as promised and were less valuable than
19 what they paid for.
20

21
22 **PRAYER FOR RELIEF**

23 Plaintiffs, individually and on behalf of all others similarly situated requests the Court to
24 enter judgment against Defendants, as follows:

25 A. an order certifying the proposed Class, designating Plaintiffs as the named
26 representatives of the Class, and designating the undersigned as Class Counsel;

27 B. a declaration that Defendants are financially responsible for notifying Class
28

- 1 Members about the true nature of the “Gluten Free” Cheerios;
- 2 C. an order enjoining Defendants to desist from further deceptive distribution,
- 3 marketing and sales of non-compliant “Gluten Free” Cheerios;
- 4 D. an award to Plaintiffs and Class Members of compensatory, exemplary, punitive
- 5 and statutory penalties and damages, including interest, in an amount to be proven
- 6 at trial;
- 7
- 8 E. an award to Plaintiffs and Class Members for the return of the purchase prices of
- 9 the “Gluten Free” Cheerios, with interest from the time it was paid, for the
- 10 reimbursement of the reasonable expenses occasioned by the sale, for damages and
- 11 for reasonable attorneys’ fees;
- 12 F. a declaration that General Mills must disgorge, for the benefit of Plaintiffs and
- 13 Class Members, all or part of the ill-gotten profits received from the sale of
- 14 “Gluten Free” Cheerios, and make full restitution to Plaintiffs and Class Members;
- 15
- 16 G. an award of attorneys’ fees and costs, as allowed by law;
- 17 H. an award of pre-judgment and post-judgment interest, as provided by law;
- 18
- 19 I. leave to amend this Complaint to conform to the evidence produced at trial; and
- 20 J. such other relief as may be appropriate under the circumstances.

21

22 DATED: October 30, 2015

CUTTER LAW, P.C.

23

24 /s/ John R. Parker, Jr.

By: _____

C. BROOKS CUTTER

25 JOHN R. PARKER, JR.
26 Attorneys for Plaintiff

DECLARATION OF JOHN R. PARKER, JR.
PURSUANT TO CALIFORNIA CIVIL CODE § 1780(d)

I, John R. Parker, Jr., declare as follows:

1. I submit this declaration pursuant to section 1780(d) of the California Consumers Legal Remedies Act. I have personal knowledge of the matters set forth below and if called as a witness could and would be competent to testify thereto.

2. Venue is proper in this Court because Plaintiffs reside in and suffered injuries as a result of Defendants' acts in this District; many of the acts and transactions giving rise to this action occurred in this District, and Defendants (1) are authorized to conduct business in this District and have intentionally availed themselves of the laws and markets of this District through the manufacture, distribution and sale of their products in this District; and (2) are subject to personal jurisdiction in this District.

3. Plaintiff Keri Van Lengen is a resident of Placer County, California, and Plaintiff Deborah Nava is a resident of Sacramento County, California.

4. Defendant General Mills, Inc. is a Delaware corporation with its principal place of business located at Number One General Mills Boulevard, Minneapolis, Hennepin County, Minnesota.

5. This action is commenced in the United States District Court for the Eastern District of California.

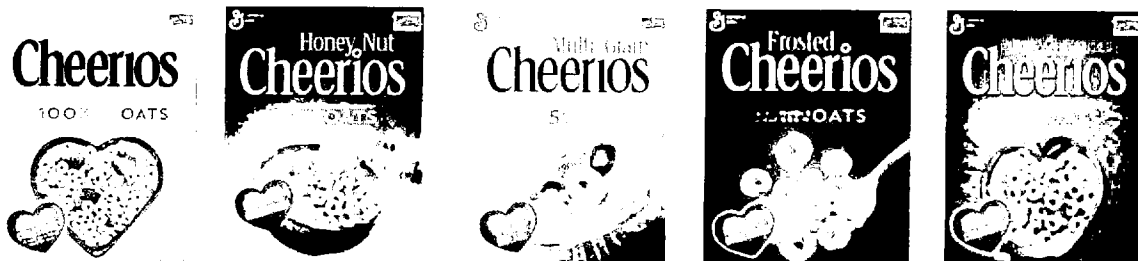
I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on October 29, 2015, in Sacramento, California.

/s/ John R. Parker, Jr.

John R. Parker, Jr.

EXHIBIT A

Cheerios[®] is going gluten-free!



Five of Cheerios products, original Cheerios in the Yellow Box, Honey Nut, Multi-Grain, Apple Cinnamon and Frosted Cheerios, will be going Gluten Free! The change will apply to all C&F formats (Bowlpak, Cup, Bulk, etc.).

More Gluten Free Cereals Unlock Opportunities

- 30% of US Population are Gluten Avoiders; +15% last 4 years¹
- 70% of US Population are Gluten Indifferent¹
- For more Gluten Free Information, see our website: www.generalmillscf.com/gluten-free



Gluten Free Cheerios provides Operators with even more Gluten Free solutions to offer patrons a variety of options.

Cheerios are not changing!

Cheerios are Made of Oats

Still the same source

Oats are Naturally Gluten-Free

Always have been

But often had traces of wheat, barley, and rye

Thus, Multigrain Cheerios will change formula

Cheerios Added a Process to Sort Out the Stray Grains

Invested in a new facility

Now, Cheerios are Gluten-Free, without changing a thing!

No UPC change

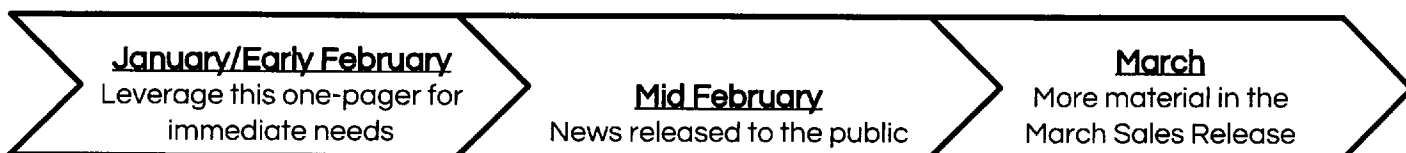
¹Source: Mintel, Gluten-free-foods, US, September 2013

Executional Details

Product Timeline



Sales Timeline



Impacted SKUs²

Brand	Package	Units/OZ	UPC
Apple Cinnamon Cheerios	Bowlpak	96/1 OZ	10016000318790
Cheerios	Bowlpak	96/1 OZ	10016000322629
Cheerios	Bowlpak	96/688 OZ	10016000119410
Honey Nut Cheerios	Bowlpak	96/1 OZ	10016000119182
Multigrain Cheerios	Bowlpak	96/1 OZ	10016000322636
Cheerios	Bulk	4/29 OZ	10016000119779
Honey Nut Cheerios	Bulk	4/39 OZ	10016000119885
Cheerios	Cup	60/1.3 OZ	10016000289314
Cheerios	Cup	10/7.8 OZ	10016000138961
Cheerios	Cup	12/1.3 OZ	10016000296046
Honey Nut Cheerios	Cup	60/1.8 OZ	10016000289338
Honey Nut Cheerios	Cup	10/10.8 OZ	10016000138985
Honey Nut Cheerios	Cup	12/1.8 OZ	16000296039
Cheerios	Singlepak	70/625 OZ	10016000119458
Honey Nut Cheerios	Singlepak	70/0.81 OZ	10016000319636
Honey Nut Cheerios	Singlepak	70/81 OZ	10016000119601

¹Some accounts might have old packaging due to distributor and account inventory.

²Will include all Retail boxes sold in C&F and Variety Packs

CIVIL COVER SHEET

Case 2:15-at-01128 Document 1-2 Filed 10/30/15 Page 1 of 2

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Keri Van Lengen and Deborah Nava

(b) County of Residence of First Listed Plaintiff CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Cutter Law P.C.
401 Watt Avenue,
Sacramento, CA 9586 / 916.290.9400

DEFENDANTS

General Mills, Inc., General Mills Sales, Inc., General Mills Operations, LLCm Roxanne Ornelas and DOES 1-50

County of Residence of First Listed Defendant CA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C section 1391
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 10/30/2015 SIGNATURE OF ATTORNEY OF RECORD
John R. Parker, Jr.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Case 2:15-at-01128 Document 1-2 Filed 10/30/15 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.