

JS 44 (Rev. 1/16)

CIVIL COVER SHEET

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

Barbara Gates

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

(c) Attorneys (Firm Name, Address, Email and Telephone Number)
DeNittis Osefchen, P.C.
525 Route 73 North, Suite 410
Marlton, NJ 08053

DEFENDANTS

The Quaker Oats Company

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

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

Attorneys (If Known)
Unknown

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

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 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 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 checked="" 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 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"/> 376 Qui Tam (31 USC 3729(a)) <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 checked="" 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):
 Illinois Consumer Fraud and Deceptive Trade Practices Act; Illinois Food, Drug and Cosmetic Act; New Jersey Consumer Fraud Act
 Brief description of cause:
 food mislabeling/consumer fraud

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
over \$5 million

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BARBARA GATES on behalf of herself and all others similarly situated, Plaintiff, v. THE QUAKER OATS COMPANY, Defendant.	CLASS ACTION COMPLAINT
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CLASS ACTION COMPLAINT

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

INTRODUCTION

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

2. 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.” 21 U.S.C. § 343(a)(1).

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. The Quaker Oats Company manufactures, markets, distributes, and sells a variety of Quaker Oats Maple & Brown Sugar Instant Oatmeal products. The company misrepresents and falsely advertises that these products contain maple syrup or maple sugar, but these products do not contain any maple syrup or maple sugar.

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

PARTIES

6. Plaintiff BARBARA GATES ("Ms. Gates") is a natural person and resident and citizen of New Jersey.

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

JURISDICTION AND VENUE

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

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

10. Venue is proper in this District because Defendant transacts business in the District of New Jersey and is incorporated in New Jersey. Quaker Oats products are sold at hundreds of grocery stores located in this district.

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

FACTUAL ALLEGATIONS

Consumer Expectations Regarding Products Containing Maple Syrup and Maple Sugar

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.²

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

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.⁴

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

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

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

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

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

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

Defendant's Deceptive and Unfair Business Practices

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

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

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

21. However, Quaker Oats Oatmeal does not contain any maple syrup or maple sugar, as Defendant represents. Therefore, Quaker Oats Oatmeal's labeling is false and misleading, and Quaker Oats Oatmeal is misbranded under state and federal law. See 21 U.S.C. § 343(a)(1); 410 ILCS 620/11(a).

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

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

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

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

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

25. 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

26. Plaintiff purchased Quaker Oats Oatmeal several times, as recently as early 2016 when Plaintiff purchased Quaker Instant Oatmeal Maple & Brown Sugar at a retail grocery store known as Shop-Right located in Absecon, New Jersey.

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

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

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

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

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

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

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

CLASS ALLEGATIONS

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

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

Excluded from the Class are: (1) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in

this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

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

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

Excluded from the New Jersey Subclass are: (1) Defendant, Defendant’s agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities’ current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge’s immediate family; (3) any person who executes and files a timely request for exclusion from the New Jersey 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.

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

36. **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 Quaker Oats Oatmeal contains maple syrup and/or maple sugar;
- b. Whether Defendant misrepresents that Quaker Oats Oatmeal contains maple syrup and/or maple sugar;

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

- c. Whether Defendant failed to inform Plaintiff and the Class that Quaker Oats Oatmeal does not contain maple syrup and/or maple sugar;
- d. Whether Defendant warranted to consumers that Quaker Oats Oatmeal contains maple syrup and/or maple sugar;
- e. Whether Defendant breached that warranty;
- f. Whether Defendant's conduct violates the Illinois Food, Drug and Cosmetic Act;
- g. Whether Defendant's conduct constitutes unfair or deceptive business practices under the Illinois Consumer Fraud and Deceptive Trade Practices Act;
- h. Whether Defendant violated the Consumer Fraud and Deceptive Trade Practices Acts of the fifty states and the District of Columbia;
- i. Whether Defendant's conduct constitutes fraud;
- j. Whether Defendant's conduct constitutes fraudulent misrepresentation;
- k. Whether Defendant's conduct resulted in Defendant unjustly retaining a benefit to the detriment of Plaintiff and Class members, and violated the fundamental principles of justice, equity, and good conscience.

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

38. **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.

39. **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.

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

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

COUNT I

(on Behalf of the Nationwide Class) Violation of the Illinois Food, Drug and Cosmetic Act (410 ILCS 620/1, et seq.)

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

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

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

45. 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.

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

47. The IFDCA prohibits “the dissemination of any false advertisement.” 410 ILCS 620/3.5.

48. Defendant violated the IFDCA by misbranding Quaker Oats Oatmeal, by manufacturing and selling Quaker Oats Oatmeal that was misbranded, and by disseminating Quaker Oats Oatmeal labels that contained false advertisements.

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

50. Plaintiff and Class members reasonably relied on Defendant’s misrepresentations that Quaker Oats Oatmeal contained maple syrup and/or maple sugar in making the decision to purchase Quaker Oats Oatmeal.

51. Acting as reasonable consumers, Plaintiff and Class members would not have purchased Quaker Oats 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.

52. Plaintiff and members of the Class were damaged as a direct result of Defendant’s violation of the IFDCA.

53. “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).

54. 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 Quaker Oats 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.

55. 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 Defendant's misrepresentations that Quaker Oats Oatmeal contains maple syrup and/or maple sugar, and they would not have purchased Quaker Oats Oatmeal, or would have paid less for it, had they known the truth.

56. 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 Defendant to be held liable for its deceptive conduct to Plaintiff and Class members who reasonably relied on the misrepresentations is consistent with that purpose.

57. 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.

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

59. The injuries to Plaintiff and the members of the Class were caused by Defendant's conduct in disseminating false and misleading advertising that originated in the state of Illinois, including the misrepresentations on Quaker Oats Oatmeal's label described above. All of the marketing, advertising, labeling, and other promotional activities were coordinated at, emanate from, and are developed at Defendant's Illinois headquarters. All critical decisions regarding Defendant's representations regarding Quaker Oats Oatmeal were made in Illinois.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BARBARA GATES, individually, and on behalf of the Class and the New Jersey Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class and/or the New Jersey Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and the New Jersey Subclass and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the New Jersey Subclass and against Defendant;
- D. Awarding Plaintiff, the Class, and/or the New Jersey Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff, the Class, and/or the New Jersey 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 Nationwide Class)
Violation of the Illinois Consumer Fraud and Deceptive Trade Practices Act
(815 ILCS 505/1, et seq.)**

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

62. 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.

63. 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.

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

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

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

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

68. Defendant made false and fraudulent statements, and misrepresented material facts, regarding its products sold to consumers, including the misrepresentation that Quaker Oats Oatmeal contains maple syrup and/or maple sugar.

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

70. Defendant's misrepresentations and omissions regarding its Quaker Oats Oatmeal constitute deceptive and unfair acts or practices prohibited by the ICFA.

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

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

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

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

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

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

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

78. As such, Plaintiff and Class members suffered injuries in fact – i.e., the loss of the money that they paid for Quaker Oats Oatmeal which, in fact, does not contain maple syrup and/or maple sugar as represented.

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

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

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

82. The injuries to Plaintiff and the members of the Class were caused by Defendant's conduct in disseminating false and misleading advertising that originated in the state of Illinois, including the misrepresentations on Quaker Oats Oatmeal's label described above. All of the marketing, advertising, labeling, and other promotional activities were coordinated at, emanate from, and are developed at Defendant's Illinois headquarters. All critical decisions regarding Defendant's representations regarding Quaker Oats Oatmeal were made in Illinois.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BARBARA GATES, individually, and on behalf of the Class and the New Jersey Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class and/or the New Jersey Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and the New Jersey Subclass and her undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the New Jersey Subclass and against Defendant;
- D. Enjoining Defendant from making false representations and omissions concerning Quaker Oats Oatmeal that will be sold to customers;
- E. Awarding Plaintiff, the Class, and/or the New Jersey Subclass damages equal to the amount of actual damages that they sustained, plus punitive damages;
- F. Awarding Plaintiff, the Class, and/or the New Jersey 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 New Jersey Sub-Class Only) **New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.**

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

85. The New Jersey Consumer Fraud Act clearly applies to all sales of Quaker Oats Oatmeal sold in New Jersey.

86. The New Jersey Consumer Fraud Act ("CFA") was enacted to protect consumers against sharp and unconscionable commercial practices by persons engaged in the sale of goods or services. See Marascio v. Campanella, 298 N.J. Super. 491, 500 (App. Div. 1997).

87. The CFA is a remedial statute which the New Jersey Supreme Court has repeatedly held must be construed liberally in favor of the consumer to accomplish its deterrent

and protective purposes. See Furst v. Einstein Moomjy, 182 N.J. 1, 11-12 (2004) (“**The Consumer Fraud Act is remedial legislation that we construe liberally to accomplish its broad purpose of safeguarding the public.**”).

88. With regard to the CFA, “[t]he available legislative history demonstrates that the Act was intended to be one of the strongest consumer protection laws in the nation.” New Mea Const. Corp. v. Harper, 203 N.J. Super. 315, 319 (App. Div. 1986).

89. For this reason, the “**history of the Act is one of constant expansion of consumer protection.**” Kavky v. Herballife International of America, 359 N.J. Super. 497, 504 (App. Div. 2003).

90. The CFA was intended to protect consumers “**by eliminating sharp practices and dealings in the marketing of merchandise and real estate.**” Lemelledo v. Beneficial Management Corp., 150 N.J. 255, 263 (1997).

91. Specifically, N.J.S.A. 56:8-2 of the CFA prohibits “**unlawful practices,**” which are defined as:

The act, use or employment of any unconscionable commercial practice, deception, fraud, false pretense, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission whether or not any person has in fact been misled, deceived or damaged thereby.

92. The catch-all term “**unconscionable commercial practice**” was added to the CFA by amendment in 1971 to ensure that the Act covered, inter alia, “**incomplete disclosures.**” Skeer v. EMK Motors, Inc., 187 N.J. Super. 465, 472 (App. Div. 1982).

93. In describing what constitutes an “**unconscionable commercial practice,**” the New Jersey Supreme Court has noted that it is an amorphous concept designed to establish a broad business ethic. See Cox v. Sears Roebuck & Co., 138 N.J. 2, 18 (1994).

94. Quaker Oats Oatmeal is a “credence good,” because its properties and purported benefits cannot be independently assessed or verified by the consumer at the time of purchase and such properties and benefits are made known to consumers only through the information provided on the label by the product's manufacturer and distributor. See Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496, 522 (2010). See also Richard A. Posner, An Economic Approach to the Law of Evidence, 51 Stan. L.Rev. 1477, 1489 (1999) (“**A good is a credence good if the consumer cannot readily determine its quality by inspection or even use, so that he has to take its quality ‘on faith.’**”).

95. The New Jersey Supreme Court in Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496, 522 (2010) spoke regarding the relationship between dishonest product labeling and credence goods, stating:

A rational consumer does not randomly take a bottle of pills off a shelf and then purchase it without reading the packaging and labeling.

96. In order to state a cause of action under the CFA, a plaintiff does not need to show reliance by the consumer. See Varacallo v. Massachusetts Mut. Life Ins. Co., 332 N.J.Super. 31, 43, 752 A.2d 807 (App.Div.2000); Gennari v. Weichert Co. Realtors, 148 N.J. 582, 607-608, 691 A.2d 350 (1997) (holding that reliance is not required in suits under the CFA because liability results from “**misrepresentations whether ‘any person has in fact been misled, deceived or damaged thereby’**”).

97. Rather, the CFA requires merely a causal nexus between the false statement and the purchase, not actual reliance. See Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496, 522 (2010) (“**causation under the CFA is not the equivalent of reliance**”).

98. As stated by the New Jersey Supreme Court in Lee, 203 N.J. at 528:

It bears repeating that the CFA does not require proof of reliance, but only a causal connection between the unlawful practice and ascertainable loss.

99. The purchase of a credence good, where the label on the product contains false misrepresentations of material fact, by itself, establishes a presumption of a causal nexus under the CFA. See Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496 (2010). See also Varcallo, at *49 (“**the purchase of the policy by a person who was shown the literature would be sufficient to establish prima facie proof of causation.**”).

100. By the acts alleged herein, Defendants have violated the CFA.

101. Specifically, Defendants have made identical, false, written, misstatements of affirmative fact by regarding the Quaker Oats.

102. These statements were false when made and Defendants knew that these statements were false when made.

103. As a result of these false, written affirmative misstatements of material fact, Plaintiff Gates and the New Jersey Sub-Class have suffered an ascertainable loss of money.

104. Specifically, Plaintiff Gates and the members of the New Jersey Sub-Class have been deprived of the benefit of the promised bargain – a valid measure of “ascertainable loss” under the CFA according to the New Jersey Supreme Court and New Jersey Appellate Division – in that Plaintiff Gates and the members of the New Jersey Sub-Class received something less than what was represented by Defendants in the Product name and on the Product’s label.

COUNT IV

**(on Behalf of the Nationwide Class)
Violation of the Consumer Fraud and Deceptive Trade
Practices Acts of the Various States and District of Columbia**

105. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-41 with the same force and effect as though fully set forth herein.

106. 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.

107. Quaker Oats Oatmeal products are consumer goods.

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

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

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

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

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

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

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

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

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

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

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

omissions.

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

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

PRAYER FOR RELIEF

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

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

**(on Behalf of the Nationwide Class and the New Jersey Subclass)
Breach of Express Warranty**

121. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-41 with the same force and effect as though fully set forth herein.

122. 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.

123. 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).

124. 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).

125. “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).

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

127. Defendant’s representations, affirmations of fact, and promises related to Quaker Oats Oatmeal constitute an express warranty because the representations, affirmations, and

promises became a part of the basis of the bargain with Plaintiff and members of the Class that Quaker Oats Oatmeal contains maple syrup and/or maple sugar.

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

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

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

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

132. Plaintiff and members of the Class relied on Defendant's warranty that Quaker Oats Oatmeal contained a maple syrup and/or maple sugar when they purchased Quaker Oats Oatmeal. Because Defendant packaged and labeled Quaker Oats Oatmeal as "Maple & Brown Sugar," it was reasonable for Plaintiff and members of the Class to believe that Quaker Oats Oatmeal contained maple syrup and/or maple sugar and to rely on that belief when they purchased the products.

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

134. Plaintiff and the members of the Class did not receive Quaker Oats Oatmeal as

warranted. The Quaker Oats Oatmeal they purchased was worth substantially less than the oatmeal products containing maple syrup and/or maple sugar that they were promised and expected.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BARBARA GATES, individually, and on behalf of the Class and the New Jersey Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class and/or the New Jersey Subclass defined herein;
- B. Designating Plaintiff as representative of the Class and/or the New Jersey Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the New Jersey Subclass and against Defendant;
- D. Awarding Plaintiff, the Class, and/or the New Jersey Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff, the Class, and/or the New Jersey 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 New Jersey Subclass) Unjust Enrichment

136. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-41 with the same force and effect as though fully set forth herein.

137. 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).

138. 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)).

139. 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)).

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

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

142. Defendant has acquired and retained money belonging to Plaintiff and the Class as

a result of its wrongful conduct: misrepresenting that Quaker Oats Oatmeal contains maple syrup and/or maple sugar when it, in fact, does not. Each individual sale of Quaker Oats Oatmeal nets Defendant profit at the expense of consumers.

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BARBARA GATES, individually, and on behalf of the Class and the New Jersey Subclass, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action and certifying the Class and/or the New Jersey Subclass defined herein;

- B. Designating Plaintiff as representative of the Class and/or the New Jersey Subclass and his undersigned counsel as Class Counsel;
- C. Entering judgment in favor of Plaintiff, the Class, and/or the New Jersey Subclass and against Defendant;
- D. Awarding Plaintiff, the Class, and/or the New Jersey Subclass damages equal to the amount of actual damages that they sustained;
- E. Awarding Plaintiff, the Class, and/or the New Jersey 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.

By: s/Stephen P. DeNittis
Stephen P. DeNittis

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Dated: April 7, 2016

Counsel for Plaintiff and the Class