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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KATELYN KINN and MATTHEW
PRICE,

Plaintiffs,

v.

THE QUAKER OATS COMPANY,

Defendant.

**AMENDED CLASS ACTION
COMPLAINT**

JURY DEMAND MADE

Katelyn Kinn and Matthew Price (“Plaintiffs”), individually and on behalf of all others similarly situated, hereby file this Amended Class Action Complaint against the Quaker Oats Company (“Quaker” or “Defendant”), making the allegations herein upon personal knowledge as to themselves and their own acts, and upon information and belief and based upon investigation of counsel as to all other matters:

AMENDED COMPLAINT - 1

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I. INTRODUCTION

1
2 1. Defendant Quaker Oats Company aggressively advertises and promotes its
3 oatmeal products as part of “healthy living,” both in the health benefits of its oat products and the
4 environmental way its oats are produced. It touts the “wholesome goodness” and health benefits
5 of its oat products, and labels many of its oat products as “100% Natural.” It claims that its oats
6 are grown using “eco-friendly” methods that pose “less risk of pollutants and groundwater
7 pollution.”
8

9 2. Quaker drives home its “eco-friendly” message with pictures of happy, smiling
10 children walking among the drying oat fields.
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18 The child in the drying oat field depicted in Quaker’s advertising should not be smiling, and
19 neither should other consumers of Quaker’s oat products.
20

21 3. Defendant’s implicit and explicit claims are false, deceptive, and misleading. Far
22 from being eco-friendly and 100% Natural,” Quaker’s oat products contain the chemical
23 glyphosate, a potent herbicide that last year was declared a probable human carcinogen by the
24 cancer research arm of the World Health Organization.
25

26 4. Glyphosate poses a hidden threat to consumers of Quaker’s oat products because
27 Quaker allows its suppliers to spray glyphosate directly on the oats as a drying agent shortly
28 before harvest. Pre-harvest application of glyphosate to oats is not necessary to oat production,
29
AMENDED COMPLAINT - 2

1 and has never been approved by the United States Environmental Protection Agency (“EPA”). It
2 is therefore prohibited.

3 5. Quaker encourages its suppliers to unlawfully apply glyphosate pre-harvest to
4 shorten harvest times by a few weeks, reducing Quaker’s costs and increasing its profits.
5 Consumers unknowingly bear the costs. Because pre-harvest application of glyphosate targets
6 the crop itself and occurs so close to harvest, it is estimated to account for about half of
7 consumers’ dietary exposure to the chemical, even though the pre-harvest application accounts
8 for a much smaller percentage of the chemical's use.
9

10 6. This lawsuit challenges Quaker’s practice of selling oats that are subject to pre-
11 harvest glyphosate application, which is a prohibited practice under federal law. The lawsuit
12 also targets Quaker’s false claims that Quaker Oats are "100% natural." Quaker must not be
13 allowed to profit on growing consumer demand for healthful, natural products, while illegally
14 treating its products with with a chemical biocide in violation of laws.
15
16

17 7. This is a proposed consumer protection class action for injunctive relief and
18 economic damages based on Quaker’s practice of selling products made with oats subject to pre-
19 harvest glyphosate application, which is prohibited by federal law as described herein. The
20 proposed nationwide class includes consumer who have purchased Quaker’s oat products made
21 with oats treated with glyphosate pre-harvest (“Quaker Oat Products”).
22

23 8. Claims by the sub-class address misrepresentations and omissions committed by
24 Quaker regarding its Quaker Oats Old-Fashioned, Quaker Oats Quick 1-Minute, and Quaker
25 Steel Cut Oats (“Quaker Oats”), which Quaker falsely and deceptively labels and markets as
26 “Natural,” “100% Natural,” “100% Natural Whole Grain,” and “Heart Healthy” or “part of a
27 heart healthy diet,” and sells despite the products being adulterated and unsafe. The products are
28

1 not “Natural,” “100% Natural,” or “100% Natural Whole Grain” as labeled and marketed. In
2 fact, the products

3 9. Plaintiffs seek declaratory and injunctive relief and damages. Plaintiffs seek an
4 order prohibiting Quaker from selling Quaker Oats that have been unlawfully subjected to pre-
5 harvest use of glyphosate, as well as other declaratory and injunctive relief and monetary
6 damages for the class and sub-class.
7

8 **II. VENUE AND JURISDICTION**

9 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d), the
10 Class Action Fairness Act (“CAFA”).
11

12 11. This Court has personal jurisdiction over the parties in this case. Plaintiffs
13 Kinn and Price are citizens of Washington and reside in Seattle, Washington. Quaker has
14 sufficient minimum contacts with Washington purposefully avails itself of the laws of
15 Washington to market Quaker Oat Products to consumers in Washington, and distributes Quaker
16 Oat Products to numerous retailers throughout Washington State. Some of the acts complained
17 of herein, including the sale of deceptively branded Quaker Oat Products without adequate
18 disclosure, occurred in Washington State.
19

20 12. Venue is proper in this Court. Within the State, substantial acts in furtherance of
21 the alleged improper conduct, including the sale of Quaker Oat Products and dissemination of
22 false and misleading information regarding the nature, quality, and/or ingredients of Quaker
23 Oats, and a substantial portion of the transactions complained of herein occurred within and had
24 a profound effect in King County.
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III. PARTIES

13. At all times mentioned herein, Quaker Oats Company was a Chicago, Illinois-based division of PepsiCo, Inc., a North Carolina corporation headquartered in Purchase, New York, licensed to do business in Washington State, and one of the world's largest food and beverage companies. Quaker was, at all relevant times, engaged in commercial transactions throughout the State of Washington, including King County, including internet sales.

14. Quaker manufactures and/or causes the manufacture of oat-based food products, and markets and distributes the products in retail stores in Washington and throughout the United States. Quaker Foods North America, of which upon information and belief Quaker is a part, makes, markets, sells, and distributes products spanning several categories such as hot and ready-to-eat cereals, rice, pasta, dairy, and other branded products.

15. At all times mentioned herein, Plaintiff Kinn was and is an individual consumer over the age of 18, a citizen of the state of Washington, and a resident of King County, Washington. During the class period, Plaintiff Kinn repeatedly purchased Quaker Oat Products (including Quaker Oats, Quaker "Chewy Chocolate Chip" granola bars, Quaker "Simply Granola - Oats, Honey and Almonds") from Safeway and Fred Meyer stores located in Seattle, Washington. Kinn also repeatedly purchased the Products in Port Orchard, Washington, and Sturgeon Bay, Wisconsin.

16. At all times mentioned herein, Plaintiff Price was and is an individual consumer over the age of 18, a citizen of the state of Washington, and a resident of King County, Washington. During the class period, Plaintiff Price repeatedly purchased Quaker Oat Products (including Quaker Oats) from a Safeway store located in Seattle, Washington.

1 17. In deciding to make these purchases, Plaintiffs saw, relied upon, and reasonably
2 believed Quaker Oat Products were produced without illegal pesticide applications and believed
3 Quaker's representations that Quaker Oats are natural and healthful, and comprise only "100%
4 Natural Whole Grain," are "Heart Healthy," and are "part of a heart healthy diet."

5 18. Plaintiffs were willing to pay more for Quaker Oats because they expected the
6 Products to use minimal synthetic pesticides and certainly to be free of probable carcinogens and
7 chemical desiccants resulting from illegal pesticide use. Had Plaintiffs known at the time that
8 Quaker Oats contain the unnatural biocide glyphosate, they would not have purchased or
9 continued to purchase Quaker Oats.
10

11 19. Had Plaintiffs been warned of the Quaker's illegal glyphosate use, the dangers of
12 ingesting glyphosate, and of the presence of glyphosate in Quaker Oat Products and Quaker
13 Oats, they would not have purchased or continued to purchase those products.
14

15 20. If Quaker Oat Products were legally produced and if Quaker Oats were
16 reformulated such that Quaker's representations were truthful, i.e., such that Quaker Oats
17 contained only "100% Natural Whole Grain" and the oats were not treated with glyphosate,
18 Plaintiffs would purchase such products in the future.
19

20 IV. FACTUAL ALLEGATIONS

21 A. Quaker's Illegal Use of Pre-Harvest Glyphosate.

22 21. Consumers reasonably expect that their food will not be illegally treated with
23 pesticides or other dangerous chemicals. This is a basic expectation of the marketplace.
24

25 22. Quaker can meet that consumer expectation. It manages its supply chain and can
26 regulate the use of glyphosate by its suppliers and thereby control the residues of glyphosate in
27 Quaker Oats.
28

23. However, Quaker does not prohibit oats treated with glyphosate and in some instances even encourages pre-harvest use of glyphosate by its suppliers. In a 2009 interview titled "Growing Top Quality Oats for Quaker," Quaker's senior manager of agriculture research and development recommended pre-harvest application of glyphosate to oats grown for Quaker.

24. United States EPA-approved glyphosate product labels do not permit pre-harvest application to oats. EPA-approved labels permit pre-harvest application of certain glyphosate products only to certain cereal and grain crops, but oats are not among them. For example, the EPA-approved label for Monsanto Company's Roundup, the most widely used glyphosate product in the world, states:

9.1 Cereal and Grain Crops

LABELED CROPS: Barley, Buckwheat, Millet (pearl, proso), Oats, Rice, Rye, Quinoa, Teft, Teosinte, Triticale, Wheat (all types), Wild rice

TYPES OF APPLICATION: Those listed in Section 9.0 plus Red Rice Control Prior to Planting Rice, Spot Treatment (Except Rice), Wiper Applicator (Feed Barley and Wheat Only), **Preharvest (Feed Barley and Wheat Only)**.

(emphasis added).

25. In most cases relevant here, EPA's glyphosate use labels and their restrictions on pre-harvest application extend into Canada. Federal law requires that glyphosate exported from the United States bear its EPA-approved label. 7 U.S. C. § 136o; 40 CFR 168.65. Most glyphosate used in Canada is imported from the United States and its use is subject to EPA-approved label restrictions.

26. Glyphosate manufactured outside of the United States and used in Canada is subject to Canadian use restrictions. The Canadian labels for the glyphosate-based herbicides approved for pre-harvest application to oats restrict the pre-harvest application to the period 7 to 14 days before harvest oats for human consumption, and 3 to 7 days for oats for livestock

1 “forage,” to maximize weed control and harvest benefits. The labels warn: “Earlier application
2 may reduce crop yield and/or quality, and may lead to excess glyphosate residues in the crop.”

3 27. The Canadian division of Monsanto, the world’s leading glyphosate
4 manufacturer, publishes a “Preharvest Staging Guide” for growers which advises growers to
5 apply the chemical to oats – including oats for human consumption – three to five days before
6 harvest. This advice encourages growers to ignore the EPA-label restriction against *any* pre-
7 harvest use on oats, and the Canadian label’s seven to fourteen day restriction.
8

9 28. Still, Monsanto Canada acknowledges that grain purchasers may regulate their
10 supply chain to control glyphosate in their products. Thus, Monsanto Canada’s Preharvest
11 Staging Guide advises growers to check with their “oat grain purchaser prior to a preharvest
12 application.” 95. In 2015, a major grain miller with mills in Canada and the United States
13 banned oats that were treated with glyphosate pre-harvest. This move was known to many in the
14 industry, including Quaker.
15

16 29. On information and belief, oats used to produce Quaker Oats are treated with
17 glyphosate pre-harvest in violation of applicable United States and Canadian law and regulation,
18 and/or in a manner inconsistent with the applicable herbicide label.
19
20

21 **B. Glyphosate Residues Render Quaker Oats Products Unsafe, Adulterated Foods.**
22

23 30. Federal and state law prohibit sale unsafe foods adulterated with chemical
24 pesticide residues, such as Quaker Oat Products, and impose on Quaker a duty to prevent such
25 adulteration of the Products. 21 U.S.C. § 331; RCW 69.04.040.
26
27
28

Federal Law

31. Under the federal Food Drug and Cosmetics Act (“FD&CA”) a “food shall be deemed to be adulterated” if, *inter alia*, “it bears or contains a pesticide chemical residue that is unsafe within the meaning of [21 U.S.C. § 346a(a)].” 21 U.S.C. § 342(a)(2)(B).

32. 21 U.S.C. § 346a(a)(1) provides the “General Rule” that “any pesticide chemical residue in or on a food shall be deemed unsafe for the purpose of [21 U.S.C. § 342(a)(2)(B)]” unless there is “a tolerance for such pesticide chemical residue in or on such food in effect under [21 U.S.C. § 346a] and the quantity of the residue is within the limits of the tolerance,” or an exemption from the tolerance requirement applies.

33. There is no tolerance for glyphosate residue in or on processed oats such as Quaker Oat Products in effect under 21 U.S.C. § 346a, and there is no applicable exemption from the tolerance requirement. Thus, Quaker Oat Products are “unsafe” under the “general rule” of 21 U.S.C. § 346a(a)(1).

34. 21 U.S.C. § 346a(a)(2) provides an exception to the “general rule” for certain processed foods such as milled oats, but that exception only applies when all of the following criteria are met: (1) the pesticide chemical must have been used in or on the raw agricultural commodity in conformity with a tolerance under 21 U.S.C. § 346a; (2) the residue in or on the raw agricultural commodity must have been “removed to the extent possible in good manufacturing practice”; and (3) the concentration of the pesticide residue in the processed food must not be greater than the tolerance prescribed for the residue in the raw agricultural commodity. 21 U.S.C. § 346a(a)(2)(A).

35. The glyphosate residue on Quaker Oat Products is not exempt from the general rule against pesticide residues because it has not been “removed to the extent possible in good

1 manufacturing practice,” because Quaker accepts oats that have been treated with glyphosate
2 pre-harvest, which is unnecessary, frequently illegal, and results in inordinate chemical residues.

3 36. Quaker can reduce and remove glyphosate from Quaker Oat Products, including
4 by controlling glyphosate in its supply chain. Indeed, Quaker has a legal responsibility to do so.
5 Section 103 of the 2011 Food Safety Modernization Act (FSMA), 21 U.S.C. § 350g, requires
6 food facilities such as Quaker’s mills and oat processing plants to conduct certain evaluations
7 and identify and implement certain controls to provide assurances that their products are not
8 adulterated under 21 U.S.C. § 342 or misbranded under the FD&CA. The hazards Quaker must
9 evaluate and control include those associated with pesticides and their residues. 21 U.S.C. §
10 350g(b)(1)(A); 21 C.F.R. 117.130(b)(1)(ii). Required “preventative controls” include
11 appropriate supplier verification activities. 21 U.S.C. § 350g(o)(3).
12

14 37. The Food and Drug Administration’s FSMA implementing regulations similarly
15 require Quaker to identify hazards to be addressed through “preventative controls” to assure such
16 hazards will be “significantly minimized or prevented and the food manufactured, processed,
17 packed, or held by [its] facility will not be adulterated under section 402” of the FD&CA, 21
18 U.S.C. § 342. 21 C.F.R. § 117.135. Preventative controls required by the regulation include
19 supply chain controls. 21 C.F.R. 117.135(c)(6). Supply chain controls include a written program
20 that may consist of documentation and on-site audits, and “[t]he supply-chain program must
21 provide assurance that a hazard requiring a supply-chain-applied control has been significantly
22 minimized or prevented.” 21 C.F.R. § 507.110(c).
23

25 38. Quaker has not implemented adequate controls, including supply chain controls,
26 to prevent Quaker Oats from being adulterated by glyphosate residues.
27

State Law

39. Under Chapter 69.04.210(1) RCW, a food shall be deemed adulterated if, *inter alia*, it “bears or contains any poisonous or deleterious substance which may render it injurious to health.”

40. Glyphosate is a poisonous or deleterious chemical biocide that may render Quaker Oats injurious to health.

41. Under Chapter 69.04.210(2) RCW, a processed food such as Quaker Oat Products shall also be deemed adulterated if it “bears or contains any added poisonous or added deleterious substance . . . which is unsafe within the meaning of RCW 69.04.390.” Chapter 69.04.390 RCW provides that “Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed unsafe . . .”

42. Glyphosate in Quaker Oat Products is unsafe within the meaning of Chapter 69.04.390 RCW because glyphosate – particularly glyphosate applied pre-harvest -- is not required in the production of Quaker Oat Products and can readily be avoided through good manufacturing practices, including refusal of oats treated with glyphosate.

43. As under federal law, Chapter 69.04.210(2) RCW provides a limited exception such that a pesticide chemical has been used in or on a raw agricultural commodity in conformity with a tolerance prescribed under State law and the FD&CA, and the raw commodity is then processed (e.g., milled), the pesticide residue will not be deemed unsafe if – and only is - such residue has been (1) removed to the extent possible in good manufacturing practice; and (2) the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity. However, as stated above, the

1 glyphosate residue on Quaker Oat Products has not been “removed to the extent possible in good
2 manufacturing practice” and the Products are unsafe.

3 44. State law incorporates the federal FSMA implementing regulations, including
4 those detailing Quaker’s duty to ensure against adulteration by, *inter alia*, implementing supply
5 chain controls regarding glyphosate residues. RCW 69.04.398 (incorporating federal regulations
6 implementing the FD&CA).
7

8 **C. Quaker Portrays its Oat Products as Healthy and Good for the Environment.**

9 45. Hoping to capture the growing healthy foods market, Quaker cultivates its image
10 as a healthful, wholesome, impurity-free brand.
11

12 46. Quaker also presents itself as a leader in environmental responsibility. Quaker
13 asserts, “As part of Quaker’s holistic approach to environmental sustainability, we have taken
14 special interest in our milling and manufacturing processes.”¹ It also presents itself as an expert
15 source of information on oats—touting their health benefits and environmentally friendly
16 properties. Quaker’s website headlines the “Quaker Oats Center of Excellence,” billed as
17 “advancing the unique benefits of the oat” with a “Scientific Advisory Board comprised of
18 prominent experts in science, agricultural sustainability, product innovation and consumer
19 insights.”²
20
21

22 47. Quaker claims that “While the health benefits of oats are well
23 documented, many people will be surprised to learn about the numerous environmental
24
25

26 ¹ <http://www.quakeroats.com/oats-do-more/for-your-world/oats-and-the-environment/innovations-in-milling-and-manufacturing> (last visited May 3, 2016).

27 ² <http://www.quakeroats.com/about-quaker-oats/content/quakeroats-center-of-excellence.aspx>
28 (last visited May 3, 2016); <http://www.quakeroats.com/about-quaker-oats/content/quakeroats-center-of-excellence/meet-the-experts.aspx> (last visited May 3, 2016).
29

1 advantages associated with this humble grain. Oats provide benefits to the environment
 2 that are surprising from such an unassuming grain.”³ Quaker’s website goes on to assert
 3 that cultivating oats reduces the risk of ground- and surface-water contamination and,
 4 because oats require less tilling, reduces soil’s susceptibility to erosion. *See id.*

5 48. Quaker asserts that cultivating oats *reduces* the use of herbicides that risk
 6 pollution and groundwater contamination—“Since oats require less herbicide spray than many
 7 other grains, there is less risk of pollutants and groundwater contamination,”⁴ — further creating
 8 the impression in reasonable consumers that Quaker Oats are “100% Natural” products in which
 9 consumers will not find herbicides.⁵

10 49. Quaker also suggests that purchasing Quaker Oats is a “green” choice, and that
 11 Quaker Oats are “eco-friendly.” Its website links to Facebook “conversations” with topics like,
 12 “What are some of your tips for living a ‘greener’ life?” and runs polls like, “What’s preventing
 13 you from buying ‘eco-friendly’ products?” *See* [http://www.quakeroats.com/oats-do-](http://www.quakeroats.com/oats-do-more/foryour-world/oats-and-the-environment)
 14 [more/foryour-world/oats-and-the-environment](http://www.quakeroats.com/oats-do-more/foryour-world/oats-and-the-environment) (last visited May 3, 2016).

15 50. Quaker presents itself as a “green” organization from top to bottom:

16 Quaker is working to incorporate sustainability practices into every facet of its
 17 operation. From the corporate level to employee sponsored grassroots
 18 organizations, we are dedicated to reducing our impact on the environment.

19 [. . .]

20 Our employees reflect and help drive Quaker’s commitment to “green” practices.

21 . . .

22 At every level of Quaker, we are committed to improving our environmental
 23 practices throughout every step of our business.

24
 25
 26 ³ [http://www.quakeroats.com/oats-do-more/for-your-world/oats-and-the-environment/growing-](http://www.quakeroats.com/oats-do-more/for-your-world/oats-and-the-environment/growing-our-oat)
 27 [our-oat](http://www.quakeroats.com/oats-do-more/for-your-world/oats-and-the-environment/growing-our-oat) (last visited May 3, 2016).

28 ⁴ *Id.*

29 ⁵ *See also* [http://www.quakeroats.com/docs/default-source/meet_the_experts/quaker-oats-center-](http://www.quakeroats.com/docs/default-source/meet_the_experts/quaker-oats-center-launch-release-final.pdf)
[launch-release-final.pdf](http://www.quakeroats.com/docs/default-source/meet_the_experts/quaker-oats-center-launch-release-final.pdf) (last visited May 3, 2016) (oats “protect the earth by reducing the need
 for herbicides by developing a dense cover that shades competing weeds.”)

Whether it's how our products are packaged and shipped or the types of cups our employees use in the breakroom, Quaker is thinking about how best to implement positive change within the world.⁶

51. Nowhere on its website does Quaker warn of the health or environmental risks of glyphosate.

C. Quaker Markets Quaker Oats as “100% Natural” and “Heart Healthy.”

52. Quaker prominently labels its Old Fashioned Quaker Oats product as “100% Natural Whole Grain” that is “part of a heart-healthy diet.” These representations appear on the front label of the product. Should any consumer seek additional information from the back of the label, Quaker lists the product's ingredients as not only “100% Natural” but also of a particular quality: “100% Natural Whole Grain Quaker Quality Rolled Oats.”

53. Quaker prominently labels its Quick 1-Minute Quaker Oats product as “100% Natural Whole Grain” that is “Heart Healthy.” These representations appear on the front label of the product. Should any consumer seek additional information from the back of the label, Quaker lists the product's ingredients as not only “100% Natural” but also of a particular quality: “100% Natural Whole Grain Quaker Quality Rolled Oats.”

54. Quaker prominently labels its Quaker Steel Cut Oats product as “Hearty 100% Natural Whole Grain Oats” that is “part of a heart healthy diet.” These representations appear on the front label of the product. Should any consumer seek additional information from the back of the label, Quaker lists the product's ingredients as not only “100% Natural” but also of a particular quality: “100% Natural Whole Grain Quaker Quality Steel Cut Oats.”

⁶ <http://www.quakeroats.com/oats-do-more/for-your-world/oats-and-the-environment/we-are-living-change> (last visited May 3, 2016).

1 55. Upon information and belief, Quaker has profited enormously from its
2 fraudulently marketed products and its carefully orchestrated label and image.

3 56. Representing that a product is “Natural,” “100% Natural,” “100% Natural
4 Whole Grain,” or “Healthy” is a statement of fact.

5 57. Failing to disclose that a product contains glyphosate and failing to warn of the
6 dangers of ingesting glyphosate are omissions of relevant fact.

7
8 58. Quaker further enhances the image of a natural, wholesome product by marketing
9 some Quaker Oats as “Old Fashioned,” and all Quaker Oats under a picture of man dressed in
10 Colonial-era attire.

11
12 59. Consumers reasonably believe that a product labeled “Natural” or “100%
13 Natural” does not contain synthetic ingredients.

14 60. Consumers reasonably believe that a product labeled “Natural” or “100%
15 Natural” does not contain pesticides.

16
17 61. In 2014, the Consumer Reports® National Research Center conducted a
18 nationally representative phone survey to assess consumer opinion regarding food labeling. *See*
19 <http://www.greenerchoices.org/pdf/consumerreportsfoodlabelingsurveyjune2014.pdf> (last visited
20 May 3, 2016).

21
22 62. Sixty-six percent of all respondents in the Consumer Reports survey said that a
23 “natural” label on packaged and processed foods means that “no toxic pesticides were used.” *Id.*
24 at 19. Eighty-six percent of respondents said that a “natural” label on packaged and processed
25 foods should mean that “no toxic pesticides were used.” *Id.* at 20.

26
27 63. Consumers reasonably believe that a product labeled “100% Natural Whole
28 Grain,” especially a product whose only ingredient is listed as “100% Natural Whole-Grain

1 Quaker Quality Rolled Oats,” does not contain anything other than natural oats.

2 64. Quaker knows and intends that when consumers see labels promising that a
3 product is “Natural,” “100% Natural,” or “100% Natural Whole Grain,” consumers will
4 understand that to mean that, at the very least, the product does not contain synthetic ingredients
5 or harmful chemicals.
6

7 65. Referring to its “Old Fashioned” and “Quick Oats” products, Quaker’s website
8 states that “100% Natural” “means these products do not contain any artificial or synthetic
9 ingredients, just oats.” *See* <https://cu.pepsico.com/quaker> (last visited May 3, 2016).
10

11 66. Consumers reasonably expect that if a product contains a harmful substance, the
12 presence of that substance will be disclosed, and they will be warned of the dangers associated
13 with the substance.

14 **D. Quaker Oats Contain Glyphosate, an Unnatural and Dangerous Substance.**

15 67. Because glyphosate is a probable human carcinogen, Quaker Oats are not
16 “Healthy” or “Heart-Healthy.” Moreover, despite Quaker’s “Heart-Healthy” claims, the presence
17 of glyphosate in Quaker Oats reduces the level of beta glucan, a soluble fiber linked to
18 improvements in cholesterol levels and cardiovascular health. Under U.S. Food and Drug
19 Administration regulations, the permissibility of a manufacturer’s “heart healthy” claims
20 depends, in part, on the level of soluble fibers such as beta glucan in a product.⁷
21
22

23 68. Quaker Oats thus has a duty to disclose the presence of glyphosate and to warn of
24 the dangers associated with glyphosate.
25
26

27 ⁷ *See*
28 <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm064919.htm> (last visited May 3, 2016).
29

69. On information and belief, glyphosate is, by volume, the world's most widely produced herbicide. It is also used as a desiccant.

70. In 2015, the International Agency for Research on Cancer ("IARC"), a research arm of the World Health Organization, declared glyphosate a category 2A "probable" human carcinogen. A summary of the study underlying this declaration was published in *The Lancet Oncology*, Vol. 16, No. 5 (May 2015).⁸ The IARC study noted such carcinogenic risk factors as DNA damage to human cells resulting from exposure to glyphosate. *See id.* Glyphosate has been previously found to be a suspected human endocrine disruptor, with estrogenic effects even at extremely low concentrations.⁹

71. Glyphosate, as a biocide, functions by disrupting the shikimate pathway.¹⁰ Although humans themselves do not have a shikimate pathway, the shikimate pathway is present in bacteria, including bacteria that inhabit the human gut and are essential to proper immune functioning. Glyphosate thus is suspected to disrupt human immune function as well.

⁸ Available at <http://www.thelancet.com/journals/lanonc/article/PIIS14702045%2815%2970134-8/abstract> (last visited May 3, 2016).

⁹ *See* Thongprakaisang, S. *et al.*, "Glyphosate induces human breast cancer cells growth via estrogen receptors," 59 *Food & Chem. Toxicol.* 129 (June 2013), *abstract available at* <http://www.ncbi.nlm.nih.gov/pubmed/23756170> (last visited May 3, 2016); *see also, e.g.*, Gasnier, C. *et al.*, "Glyphosate-based herbicides are toxic and endocrine disruptors in human cell lines," 262(3) *Toxicology* 184 (Aug. 21, 2009), *abstract available at* <http://www.ncbi.nlm.nih.gov/pubmed/19539684> (last visited May 3, 2016).

¹⁰ *See, e.g.*, Heike, H. & N. Amrhein, "The Site of the Inhibition of the Shikimate Pathway by Glyphosate," *Plant Physiol.* 66:823 (1980), *available at* <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC440734/>

72. Studies examining low doses of glyphosate-based herbicides at levels that are or have been generally considered “safe” for humans show that these compounds can nevertheless cause liver and kidney damage.¹¹

73. Glyphosate is derived from the amino acid glycine. To create glyphosate, one of the hydrogen atoms in glycine is artificially replaced with a phosphonomethyl group.

74. Glyphosate is not “Natural.”

75. Glyphosate is neither “100% Natural” nor present in “100% Natural Whole Grain.”

76. Glyphosate is a dangerous substance, the presence and dangers of which should be disclosed.

77. On information and belief, glyphosate is used to increase oat harvest for commercial purposes; is not necessary to successful planting, growing, or harvesting of oats; is

¹¹ Myers, J. et al, “Concerns over use of glyphosate-based herbicides and risks associated with exposures: a consensus statement.” *See also* Seralini G.E., et al, “Republished study: long-term toxicity of a Roundup herbicide and a Roundup-tolerant genetically modified maize,” *Environ. Sci. Europe* 2014;26:14, available at <http://enveurope.springeropen.com/articles/10.1186/s12302-014-0014-5> (last visited May 3, 2016); Benedetti A.L., “The effects of sub-chronic exposure of Wistar rats to the herbicide Glyphosate-Biocarb,” *Toxicol. Lett.* 2004;153(2):227–232, available at <http://www.ncbi.nlm.nih.gov/pubmed/15451553> (last visited May 3, 2016); Larsen K. et al, “Effects of Sublethal Exposure to a Glyphosate-Based Herbicide Formulation on Metabolic Activities of Different Xenobiotic-Metabolizing Enzymes in Rats,” *Int. J. Toxicol.* 2014, available at <http://www.ncbi.nlm.nih.gov/pubmed/24985121> (last visited May 3, 2016); Mesnage R. et al, “Transcriptome profile analysis reflects rat liver and kidney damage following chronic ultra-low dose Roundup exposure,” *Environ. Health* 2015;14:70, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4549093/> (last visited May 3, 2016). <http://www.plantphysiol.org/content/66/5/823.full.pdf> (last visited May 3, 2016); *see also* <http://www.glyphosate.eu/glyphosate-mechanism-action> (last visited May 3, 2016) and [http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/faq7206?opendocument](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/faq7206?opendocument) (last visited May 3, 2016).

1 not a “natural” method of growing or harvesting oats; is applied to oats as a drying agent shortly
2 before harvest; and is applied for commercial purposes only.¹²

3 **E. Quaker Knew, or Should Have Known, That Its Oats Contained Illegal Pesticide**
4 **Residues and That Its Representations Were False.**

5 78. Quaker holds itself out to the public as a trusted expert in the growing, harvesting,
6 and processing of oats.

7 79. Quaker knew that its Quaker Oat Products contained illegally applied pesticides,
8 and it knows that Quaker Oat Products continue to contain illegally applied pesticides.
9

10 80. The representations Quaker made in selling Quaker Oats are false. It knew how
11 the oats were grown, harvested, and processed, and that they were likely to contain glyphosate,
12 an unnatural and dangerous herbicide. Further, Quaker knew that its suppliers were applying
13 glyphosate to oats pre-harvest and that this would result in elevated glyphosate residues in
14 Quaker Oats. Without regard to the restrictions on pre-harvest glyphosate application and the
15 resulting increase in glyphosate residues, Quaker encourages growers to continue applying
16 glyphosate to oats shortly before harvest.
17

18 81. Quaker thus knew all the facts demonstrating that Quaker Oats were mislabeled
19 and falsely advertised, and that it had a duty to disclose the presence of glyphosate and to warn
20 consumers about the dangers associated with glyphosate.
21

22 **F. Quaker Intended for Consumers to Rely on Its Misrepresentations.**

23 82. Quaker made the false, deceptive, and misleading representations and omissions
24 intending for Plaintiffs and the Class Members to rely upon these representations and omissions
25 in purchasing Quaker Oats.
26
27
28

29 ¹²

1 83. In making the false, misleading, and deceptive representations and omissions at
2 issue, Quaker knew and intended that consumers would purchase the Quaker Oats when
3 consumers would otherwise purchase a competing product.

4 84. Consumers are not only willing to pay more for a product that purports to be
5 “100% Natural” – they expect that product to be free of synthetic pesticides and chemical
6 desiccants.
7

8 85. In making the false, misleading, and deceptive representations and omissions at
9 issue, Quaker also knew and intended that consumers would pay more for “Natural” or “100%
10 Natural” oats that are free of unnatural agents than consumers would pay for oats that are not
11 “Natural” or “100% Natural,” furthering Quaker’s private interest of increasing sales of its
12 products and decreasing the sales of the all-natural and/or glyphosate-free products that are
13 truthfully marketed by its competitors.
14

15 86. Quaker knows that consumers prefer “Natural” and “100% Natural” foods, and
16 foods that do not contain dangerous or potentially dangerous chemicals. Quaker knows that
17 consumers will pay more for “Natural” or “100% Natural” foods, or would not purchase the
18 foods at all unless they were “Natural” and/or “100% Natural” and/or free from unnatural and
19 potentially dangerous chemicals.
20

21 87. Similarly, independent surveys confirm that consumers will purchase more
22 “Natural” products than conventional products, and will pay more for “Natural” products.
23

24 **G. Consumers Did Reasonably Rely on Quaker’s Misrepresentations.**

25 88. Consumers frequently rely on label representations and information in making
26 purchase decisions, especially in purchasing food.
27
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1 89. When Plaintiffs and the Class Members purchased Quaker Oats, they saw the
2 false, misleading, and deceptive representations detailed above, and did not receive disclosure of
3 the presence of glyphosate or any warning of the dangers associated with glyphosate, as detailed
4 above.

5 90. These misrepresentations and omissions were uniform and were communicated to
6 Plaintiffs and every other member of the Class at every point of purchase and consumption.

7 91. Plaintiffs and the Class Members were among the intended recipients of Quaker's
8 deceptive representations and omissions.

9 92. Plaintiffs and the Class Members reasonably relied to their detriment on Quaker's
10 misleading representations and omissions.

11 93. Quaker's false, misleading, and deceptive misrepresentations and omissions
12 deceived and misled, and are likely to continue to deceive and mislead, Plaintiffs, the Class
13 Members, reasonable consumers, and the general public.

14 94. Quaker's misleading affirmative statements further obscured what it failed to
15 disclose, and the warnings it failed to give. Thus, reliance upon Quaker's misleading and
16 deceptive representations and omissions may be presumed.

17 95. Quaker made the deceptive representations and omissions with the intent to
18 induce Plaintiffs and the Class Members to purchase Quaker Oats. Plaintiffs' and the Class
19 Members' reliance upon such representations and omissions may be presumed.

20 96. Quaker's deceptive representations and omissions are material in that a reasonable
21 person would attach importance to such information and would be induced to act upon such
22 information in making purchase decisions. Thus, Plaintiffs' and the Class
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Members' reliance upon such representations and omissions may be presumed as a matter of law; the representations and omissions were material; and a nexus exists between Quaker's conduct, on the one hand, and Plaintiffs' and the Class Members' decisions to purchase Quaker Oats at a certain price, on the other hand.

H. Quaker's Conduct and Plaintiffs' and the Class Members' Injury.

97. As an immediate, direct, and proximate result of Quaker's sale of Quaker Oat Products treated with illegal pesticides and its false, misleading, and deceptive representations and omissions about Quaker Oats, Quaker injured Plaintiffs and the Class Members in that they:

- a. paid a sum of money for a product that was falsely represented;
- b. paid a sum of money for a product containing glyphosate, of which they received no warning;
- c. paid more for a product that was falsely represented than they would have paid had the product not been falsely represented;
- d. were deprived the benefit of the bargain because the Quaker Oats they purchased were different from what Quaker warranted;
- e. were deprived the benefit of the bargain because the Quaker Oats they purchased had less value than what was represented;
- f. did not receive a product that measured up to their expectations as created by Quaker;
- g. ingested (or caused their children to ingest) a substance that was other than what was represented;

1 h. ingested (or caused their children to ingest) a substance they did not expect or
2 consent to;

3 h. ingested (or caused their children to ingest) a substance introduced by and/or
4 present in excess amounts because of production methods that are illegal or contrary to
5 applicable environmental and human health regulations;

6 i. ingested (or caused their children to ingest) a product that included an unnatural
7 substance;

8 j. without their knowing consent, ingested (or caused their children to ingest) an
9 herbicide that is harmful to their health or their children's health;

10 k. without their knowing consent, ingested (or caused their children to ingest) a
11 substance that is, contains, or is produced with a known or suspected toxin, carcinogen, or
12 hazardous substance;

13 l. without their knowing consent, ingested (or caused their children to ingest) a
14 substance that poses health or environmental risks;

15 m. without their knowing consent, ingested (or caused their children to ingest) a
16 substance that is otherwise harmful to the environment and/or the farmers and other workers who
17 utilize or process such substance;

18 n. ingested (or caused their children to ingest) a substance that was of a lower
19 quality than what Quaker promised;

20 o. were denied the benefit of knowing what they ingested (or caused their children to
21 ingest);

22 p. were caused unwittingly to support an industry that contributes to environmental,
23 ecological, or health damage;

1 q. were denied the benefit of supporting an industry that sells natural products and
2 contributes to environmental sustainability; and/or

3 r. were denied the benefit of the beneficial properties of the “Natural” products
4 promised.

5 98. Had Quaker not made the false, misleading, and deceptive representations and
6 omissions, and had Quaker not failed to warn of the presence of glyphosate and dangers
7 associated with glyphosate, Plaintiffs and the Class Members would not have been injured as
8 listed above. Accordingly, Plaintiffs and the Class Members have suffered “injury in fact” as a
9 result of Quaker’s wrongful conduct.
10

11 99. Plaintiffs and the Class Members all paid money for Quaker Oat Products and/or
12 Quaker Oats, but did not obtain the full value of the advertised products due to Quaker’s
13 misrepresentations and omissions. Plaintiffs and the Class Members purchased, purchased more
14 of, or paid more for, such products than they would have had they known the truth about such
15 products. Accordingly, Plaintiffs and the Class Members have suffered “injury in fact” and lost
16 money or property as a result of Quaker’s wrongful conduct.
17

18
19 **I. Quaker Benefited From Its Misleading Representations and Omissions.**

20 100. As the intended, direct, and proximate result of Quaker’s sale of adulterated food
21 and its false, misleading, and deceptive representations and omissions, Quaker has been unjustly
22 enriched through more sales of Quaker Oats Products and Quaker Oats and higher profits at the
23 expense of Plaintiffs and the Class Members. As a direct and proximate result of its deception,
24 Quaker also unfairly obtained other benefits, including the higher value associated with a
25 “natural” brand, redirecting sales to it and away from its competitors, and increased sales of its
26 other products.
27
28

1 101. Plaintiffs, and all other similarly situated consumers, did not bargain for Products
2 that contain unnatural ingredients in exchange for their payment of the purchase price.

3 102. Quaker has profited by failing to warn consumers of the presence of glyphosate
4 in the Products or of the health effects of consuming glyphosate.

5 103. Upon information and belief, Quaker has failed to remedy the problem with the
6 Products, thus causing future harm to consumers. Plaintiffs, Class Members, and future
7 purchasers in the consuming public, are at risk of real, immediate, and continuing harm if the
8 Products continue to be sold as is, and without adequate warning of the presence of glyphosate
9 and of the health effects of ingesting glyphosate.
10

11 104. Plaintiffs would continue to purchase the Products again in the future if the
12 Products were reformulated so that they did not contain glyphosate or oats treated with
13 glyphosate.
14

15 105. Quaker has failed to provide adequate relief to Plaintiffs or Class Members as of
16 the date of filing this Complaint.
17

18 106. Plaintiffs contends that the Products were sold pursuant to unfair and
19 unconscionable trade practices because the production methods used violated applicable
20 pesticide restrictions, including FIFRA, the Products are adulterated and unsafe, and the sale of
21 the Products offends public policy and is immoral, unethical, oppressive, unscrupulous, and
22 caused substantial economic injuries to Plaintiffs and Class Members.
23

24 107. Reasonable consumers do not expect Products advertised as “Natural,” “100%
25 Natural,” and “100% Natural Whole Grain” to contain unnatural ingredients such as glyphosate,
26 much less elevated levels of glyphosate due to unpermitted uses of that chemical. Defendant’s
27 statements and other representations convey a series of express and implied claims and/or
28

1 omissions which Defendant knows are material to the reasonable consumer in making a
2 purchasing decision, and which Defendant intended for consumers to rely upon when choosing
3 to purchase the Products.

4 108. Defendant misrepresented the nature, quality, and/or ingredients of the Products,
5 and/or failed to adequately disclose the health risks of ingesting the glyphosate contained in the
6 Products, which was and is false, misleading, and/or likely to deceive reasonable consumers.
7 Reasonable consumers expect the presence of such ingredients to be disclosed so that they can
8 make informed purchasing decisions, and they expect production processes to comply with
9 applicable law.
10

11 109. Therefore, the Products are valueless, and not worth the purchase price that
12 Plaintiffs and Class Members paid for them, and/or are not what Plaintiffs and Class Members
13 reasonably intended to receive.
14

15 110. Accordingly, Plaintiffs seeks, individually and on behalf of all other similarly
16 situated purchasers of the Products during the Class Period, injunctive relief, and actual
17 economic damages equaling the aggregate purchase price paid for the Products by Plaintiffs and
18 Class Members during the Class Period.
19

20 111. Plaintiffs also seeks declaratory relief in the form of an order declaring
21 Defendant's conduct to be unlawful, as well as injunctive and equitable relief putting an end to
22 Defendant's misleading and unfair business practices, including a prohibition on sales of oats
23 that have been illegally treated with glyphosate and adulterated Quaker Oats, clear and full
24 disclosure of the presence of glyphosate in the Products and of the health effects of ingesting
25 glyphosate and/or a reformulation of the Products so that the Products no longer contain
26 glyphosate.
27
28

V. CLASS ACTION ALLEGATIONS

112. Plaintiffs re-allege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

113. This action is maintainable as a class action under Court Rule 23(b) of the Washington State Rules of Civil Procedure.

114. The class definition(s) may depend on the information obtained throughout discovery. Notwithstanding, at this time, Plaintiffs bring this class action and seeks certification of the claims and certain issues in this action on behalf of a Class of individuals defined as:

All persons who have purchased Quaker Oat Products, for personal use, and not for resale, within any applicable limitations period until Notice is provided to the Class. Excluded from the class are: (1) Defendant, any entity or division in which Defendant has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; and (2) the judge to whom this case is assigned and the judge's staff.

115. Plaintiffs seek a "Natural Oats Subclass," defined as follows:

All persons who have purchased Quaker Oats, for personal use, and not for resale, within any applicable limitations period until Notice is provided to the Class. Excluded from the subclass are: (1) Defendant, any entity or division in which Defendant has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; and (2) the judge to whom this case is assigned and the judge's staff.

116. Plaintiffs reserve the right to amend the Class and Subclass definition if further information and discovery indicates that the Class or Subclass definition should be narrowed, expanded, or otherwise modified.

1 117. All members of the Class are similarly affected by Quaker's sale of products that
2 were illegally treated with pesticides.

3 118. All members of the Subclass were and are similarly affected by the deceptive
4 advertising of the Products, and the relief sought herein is for the benefit of Plaintiffs and
5 members of the Class.
6

7 **A. Numerosity**

8 119. Consumers in the Class and Subclass are so numerous as to make joinder
9 impracticable, if not impossible. Class Members may be notified of the pendency of this action
10 by recognized, Court-approved notice dissemination methods, which may include U.S. Mail,
11 electronic mail, Internet postings, and/or published notice.
12

13 **B. Common Questions of Law and Fact Predominate**

14 120. There are numerous questions of law and fact common to Plaintiffs and Class
15 Members that predominate over questions affecting only individual members, including:
16

17 a. Whether Defendants Quaker Oats Products contain oats that were illegally treated
18 with glyphosate and, if so, what are the proper remedies for such violations.

19 b. Whether Defendant's practices and representations related to the marketing,
20 labeling and sales of Quaker Oats were unfair, deceptive, fraudulent, misleading, and/or unlawful
21 in any respect, thereby violating Washington law;
22

23 b. Whether Defendant violated standards of duty to Plaintiffs and Class Members;

24 c. Whether sale of Defendant's falsely labeled Products affirmatively misled
25 consumers;
26

27 d. Whether Defendant failed to warn Plaintiffs and Class Members of the presence
28 of glyphosate in the Products and/or of the health effects of ingesting glyphosate in violation of
29

1 Washington law with its practices and representations related to the marketing, labeling, and sale
2 of the Products;

3 e. Whether Defendant breached any warranties, including an express warranty
4 created through the labeling and marketing of its falsely labeled Products;

5 f. Whether Defendant's false and deceptive marketing and labeling was material;

6 g. Whether Defendant's conduct as set forth above economically injured
7 Plaintiffs and Class Members;

8 h. Whether Defendant's actions impacted the public interest;

9 i. Whether Defendant acted intentionally or recklessly; and

10 j. Whether Plaintiffs and Class Members are entitled to injunctive relief.

11
12
13 **C. Typicality**

14 121. The claims asserted by Plaintiffs in this action are typical of the claims of the
15 Class Members, as the claims arise from the same course of conduct by Defendant, and the relief
16 sought within the Class is common to the Class Members. Further, there are no defenses
17 available to Defendant that are unique to Plaintiffs.

18
19 **D. Adequacy**

20 122. Plaintiffs will fairly and adequately represent and protect the interests of the
21 Class, including the Subclass. Plaintiffs are adequate representatives of the Class because their
22 interests do not conflict with the interests of the Class members they seek to represent, and they
23 have retained counsel competent and experienced in both consumer protection and class action
24 litigation. Plaintiffs and Plaintiffs' counsel will fairly and adequately protect Class Members'
25 interests. Undersigned counsel has represented consumers in a variety of actions where they have
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sought to protect consumers from fraudulent and deceptive practices, including environmental- and health-related misbranding.

E. Predominance and Superiority of Class Action

123. The prerequisites to maintaining a class action pursuant to Court Rule 23(b) are met because questions of law and fact common to each Class Member predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

124. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of the Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual Class Members. Each Class Member has been damaged and is entitled to recovery as a result of the violations alleged herein.

125. Moreover, because the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual Class Members to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

126. Plaintiffs are unaware of any difficulties in managing this case that should preclude class action.

F. Declaratory and Injunctive Relief

127. Certification also is appropriate under Rule 23(b) because Defendant acted, or refused to act, on grounds generally applicable to the Class, thereby making appropriate the

1 injunctive relief sought on behalf of the Class. Further, given the large number of consumers of
2 the Products, allowing individual actions to proceed in lieu of a class action would run the risk of
3 yielding inconsistent and conflicting adjudications.

4 **VI. FIRST CAUSE OF ACTION**

5 **(Unjust Enrichment - Claim of Class and Subclass)**

6
7 128. Plaintiffs re-allege and incorporate by reference the allegations set forth in the
8 preceding paragraphs of this Complaint, as if fully set forth herein.

9 129. As a result of the conduct described above, Defendant has been and will be
10 unjustly enriched at the expense of Plaintiffs and Class Members. Defendant's unfair and illegal
11 actions described above enabled Defendant to sell Quaker Oat Products to Plaintiffs and Class
12 Members and/or to inflate the price of such products, unjustly enriching Defendant at an amount
13 to be proven at trial.

14
15 130. As a result of the conduct described above, Defendant has been and will be
16 unjustly enriched at the expense of Plaintiffs and Class and Subclass Members. Defendant's
17 unfair and illegal actions described above enabled Defendant to sell Quaker Oats to Plaintiffs and
18 Class Members and/or to inflate the price of the Products, unjustly enriching Defendant at an
19 amount to be proven at trial.

20
21 131. Defendant should be required to disgorge this unjust enrichment.

22 **VII. SECOND CAUSE OF ACTION**

23 **(Unlawful, Deceptive and Unfair Business Practices - Class Claim)**

24
25 132. Plaintiffs re-allege and incorporate by reference the allegations set forth in the
26 preceding paragraphs of this Complaint, as if fully set forth herein.

1 133. Defendant's sale of Quaker Oat Products containing glyphosate and the
2 misbranding and non-disclosure alleged herein constitutes unlawful, deceptive, and unfair
3 business acts within the meaning of the Washington Consumer Protection Act, RCW 19.86 *et*
4 *seq.*

5 134. Quaker's sale of Quaker Oat Products containing glyphosate and the misbranding,
6 deceptive marketing, and non-disclosure of the presence and effects of glyphosate in the
7 Products is unfair and deceptive and has the capacity to mislead or deceive consumers and
8 members of the public, and did mislead or deceive Plaintiffs and Class and Subclass Members.
9 Quaker misrepresented and/or omitted facts about the presence of glyphosate in the Products and
10 the health effects of ingesting glyphosate, which were and are material to Plaintiffs' and Class
11 Members' decisions to purchase the Products. Such practices occurred in the conduct of trade or
12 commerce, they affected the public interest, and they proximately caused injury to Plaintiffs and
13 Class Members in their business and/or property.

14 135. Defendant knowingly sold the Products containing glyphosate and labeled and
15 marketed as "Natural," healthy, and with similar deceptive claims, with the intent that the
16 labeling and marketing of the Products would deceive consumers, and concealed and failed to
17 disclose material facts with the intent that consumers would rely upon such concealment and
18 non-disclosure.

19 136. As more fully described herein, Quaker's misleading marketing, advertising,
20 packaging, and labeling of Quaker Oats is likely to deceive a reasonable consumer. Indeed,
21 Plaintiffs and the other Subclass members were unquestionably deceived regarding the
22 characteristics of Quaker's Products, as Quaker's marketing, advertising, packaging, and labeling

1 of Quaker Oats misrepresents and/or omits the true nature, quality, and/or ingredients of the
2 Products.

3 137. Quaker's sale of Quaker Oats Products to Plaintiffs and other members of the
4 Class despite the Products containing oats that were treated with glyphosate in violation of law,
5 in a manner inconsistent with herbicide labels, and in a manner that renders the Products
6 adulterated and unsafe, is, furthermore, an unfair business practice.
7

8 138. Plaintiffs and the other members of the Class who purchased Quaker Oats
9 Products had no way of reasonably knowing that the Products they purchased were produced in
10 violation of law, adulterated, and not as marketed, advertised, packaged, and labeled. Thus, they
11 could not have reasonably avoided the injury each of them suffered.
12

13 139. Defendant's sale of the Products containing glyphosate and its deceptive labeling,
14 marketing, and non-disclosure and other acts described above continue to this day and present a
15 threat to Plaintiffs and Class Members. Defendant has failed to publicly acknowledge its
16 wrongdoing. Defendant's conduct also affects and threatened the public interest in other ways,
17 including health and environmental impacts as-yet not fully known but to be proven at trial.
18

19 140. Defendant's sale of Products containing glyphosate without labels disclosing the
20 same, and its concealment, misbranding, and mislabeling of the Products constitutes a per se
21 violation of the Washington Consumer Protection Act.
22

23 141. Defendant's sale of Products containing oats that have been treated with
24 glyphosate illegally constitutes a per se violation of the Washington Consumer Protection Act.

25 142. Defendant's sale of adulterated Quaker Oats constitutes a per se violation of the
26 Washington Consumer Protection Act.
27
28

1 143. As a result of Defendant's unfair practices, misrepresentations, concealment, and
2 non-disclosure, Plaintiffs and Class Members have been and continue to be harmed.

3 144. Plaintiffs and Class Members are entitled to an injunction against Defendant's
4 unfair, misleading, and deceptive practices and requiring cessation of sale of adulterated Quaker
5 Oats and Products containing oats that have been illegally treated with glyphosate, corrective
6 advertising and labeling, and a declaration that Defendant's actions constitute a violation of
7 consumer protection law. Plaintiffs and Class Members are entitled to damages sustained as a
8 result of Defendant's unfair and deceptive acts and practices, treble damages or other punitive
9 damages to the extent allowed by law, and reimbursement of costs and attorneys' fees. In
10 addition, Defendant should be required to pay civil penalties, including those provided for under
11 RCW 19.86.140, for every violation.
12

13
14 **THIRD CAUSE OF ACTION**

15 **(Negligent Misrepresentation -Subclass Claim)**
16

17 145. Plaintiffs re-allege and incorporate by reference the allegations set forth in the
18 preceding paragraphs of this Complaint, as if fully set forth herein.

19 146. Defendant negligently and/or recklessly misrepresented and concealed from
20 consumers the true nature of Quaker Oats, which made false, deceptive, and illusory the sale of
21 the Products to Plaintiffs and Subclass Members.
22

23 147. Defendant's representations were negligently or recklessly made to potential
24 customers and the general public through uniform concealment and non-disclosure, through mass
25 media and point-of-sale advertising, and through other information prepared or disseminated by
26 Quaker, including through the Internet. As a direct and proximate result of these
27
28

1 misrepresentations, omissions, and concealments, Plaintiffs and Subclass Members have been
2 damaged in an amount to be proven at trial.

3 148. Defendant at all times knew that consumers, such as Plaintiffs and Subclass
4 Members, relied upon the advertising and labeling – and lack of labeling – Quaker provided. The
5 materiality of such labeling is established by consumer surveys and as a matter of law. Quaker’s
6 misrepresentation, concealment and non-disclosure were intended to influence consumers’
7 purchasing decisions and were done with reckless disregard for the rights of consumers,
8 Plaintiffs, and Subclass Members.
9

10 **FOURTH CAUSE OF ACTION**

11 **(Breach of Warranties - Class Claim)**

12
13 149. Plaintiffs re-allege and incorporate by reference the allegations set forth in the
14 preceding paragraphs of this Complaint, as if fully set forth herein.

15 150. The Products are “goods” within the meaning of Uniform Commercial Code
16 Article 2 and RCW 62A.3 *et seq.*
17

18 151. Quaker provided Plaintiffs and other members of the Class with written, express
19 warranties including, but not limited to, warranties that its Quaker Oats were “Natural,” “100%
20 Natural,” and “100% Natural Whole Grain.” The products are not “Natural,” “100% Natural,”
21 “100% Natural Whole Grain,” “Heart Healthy,” or “part of a heart healthy diet.”
22

23 152. Quaker, the seller, made these affirmations of fact to Plaintiffs and the other Class
24 Members, the buyers.

25 153. These affirmations of fact or promises by Quaker relate to the goods and became
26 part of the basis of the bargain.
27
28

1 154. Plaintiffs and members of the Class purchased the Products, believing them to
2 conform to the express warranties.

3 155. Quaker breached these warranties and violated RCW 62A.2-313. This breach
4 resulted in damages to Plaintiffs and other members of the Class, who bought the Products but
5 did not receive the goods as warranted. Specifically, the Products contained glyphosate.

6 156. Defendant's conduct described herein also constitutes breach of an implied
7 warranty or merchantability and a violation of RCW 62A.2-314. In particular, the Products sold
8 by Defendant were not merchantable at the time of sale due to Defendant's concealment and
9 non-disclosure.
10

11 157. Defendant's conduct described herein further constitutes a breach of implied
12 warranty of fitness for a particular purpose and a violation of RCW 62A.2-315. In particular,
13 many consumers purchase "Natural" oats because there is a common understanding that natural,
14 unadulterated oats are a healthy food and promote overall health of the consumer. Quaker
15 specifically promotes this common understanding. Defendant's Products were not fit for that
16 particular purpose because unbeknownst to consumers, they contain glyphosate.
17

18 158. As a proximate result of the breach of warranties by Quaker, Plaintiffs and the
19 other members of the Class did not receive goods as warranted. Plaintiffs and the members of the
20 Class therefore have been injured and have suffered damages in an amount to be proven at trial.
21 Among other things, Plaintiffs and members of the Class did not receive the benefit of the
22 bargain and have suffered other injuries as detailed above. Moreover, had Plaintiffs and Class
23 Members known the true facts, they either would not have purchased the Products, or would not
24 have been willing to pay the premium price Quaker charged for the Products.
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FIFTH CAUSE OF ACTION

(Declaratory and Injunctive Relief - Class Claim)

159. Plaintiffs re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint, as if fully set forth herein.

160. There is a live, justiciable controversy over each of the following:

a. Whether Defendant can legally sell Quaker Oat Products that have been illegally treated with glyphosate;

b. Whether Defendant is engaging in unfair and deceptive practices, including misbranding with respect to marketing and labeling Quaker Oats as, *inter alia*, “Natural” and healthy when they in fact contain glyphosate, selling Quaker Oat Products illegally treated with glyphosate, and selling adulterated foods;

c. Whether Defendant’s conduct constitutes negligent misrepresentation and concealment;

d. Whether Defendant’s conduct constitutes breach of warranties; and

e. Whether Defendant was unjustly enriched by its misrepresentations and deceptive practices.

161. Plaintiffs and Class Members are entitled to declaratory relief establishing each of the foregoing in the affirmative.

162. Plaintiffs and Class Members are entitled to an injunction stopping Quaker Oats from its misbranding, concealment, non-disclosure, and sale of adulterated products and/or products produced in violation of law, and remedying such past acts with new and corrective disclosures, a recall of misbranded, adulterated, and illegally produced Quaker Oats, and other

1 affirmative remedial measures. The requested injunctive relief is warranted to effectuate the
2 requested declaratory relief, and an injunction is in the public interest.

3 **VII. REQUEST FOR RELIEF**

4 WHEREFORE, Plaintiffs, individually and on behalf of the Class, request relief as
5 follows:
6

7 A. An order certifying that this action is properly brought and may be maintained as
8 a class action, that Plaintiffs be appointed the class representative, and that Plaintiffs' counsel be
9 appointed counsel for the Class;

10 B. An order declaring Defendant's conduct to be in violation of applicable law;

11 C. An order enjoining Defendant from selling Quaker Oat Products containing oats
12 that have been illegally treated with glyphosate and/or treated with glyphosate prior to harvest;

13 D. An order enjoining Defendant from selling Quaker Oat Products containing
14 glyphosate without adequately disclosing the presence of glyphosate in the Products and of the
15 health effects of ingesting glyphosate;
16

17 E. An order requiring Defendant to engage in a corrective advertising campaign to
18 inform the public concerning the true nature of Quaker Oat Products and Quaker Oats;
19

20 F. Restitution, disgorgement, refund, and/or other monetary damages, together with
21 costs, disbursements, including reasonable attorneys' fees pursuant to the applicable statutes and
22 prejudgment interest at the maximum rate allowable by law;

23 G. Maximum penalties allowed by law;

24 H. Monetary damages, including but not limited to any compensatory, incidental, or
25 consequential damages in an amount to be determined at trial, together with prejudgment interest
26 at the maximum rate allowable by law with respect to the claims alleged;
27

1 I. Statutory damages in the maximum amount provided by law;

2 J. Punitive damages in accordance with proof and in an amount consistent with
3 applicable precedent;

4 K. An award to Plaintiffs and Class Members of reasonable attorneys' fees and costs;

5 L. For such other and further relief as may be deemed just, necessary, or proper.
6

7 RESPECTFULLY SUBMITTED this 9th day of September, 2016.
8

9 SMITH & LOWNEY, PLLC
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12 Knoll D. Lowney, WSBA No. 23457
13

14 By: /s/ Claire E. Tonry
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