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 10 Attorney for Plaintiff,  
 11 VICTORIA REYES

12 UNITED STATES DISTRICT COURT  
 13 SOUTHERN DISTRICT OF CALIFORNIA

14 Victoria Reyes, on behalf of herself 15 and all others similarly situated, 16 17 Plaintiff, 18 19 vs. 20 WK Kellogg Co. 21 22 Defendants.	23 <b>'25CV0075 AJB MMP</b> 24 Case No.: unassigned 25 <b>CLASS ACTION COMPLAINT</b> 26 1. Unfair Competition Law 27 2. False Advertising Law 28 3. Consumer Legal Remedies Act Jury Trial Demanded General Jurisdiction – Civil
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29 **I. JURISDICTION**

30 1. This Court has original diversity jurisdiction over this action under the  
 31 Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). Plaintiff is a citizen of the State  
 32 of California and Defendant is a citizen of the State of Delaware and is  
 33 headquartered with its principal place of business in the state of Michigan. The  
 34 matter in controversy, which includes the purchase price for all sales of the  
 35 Products, in the state of California, during the past four years, exceeds the sum or  
 36 value of \$5,000,000, exclusive of interest and costs, and this is a class action in  
 37 which the number of members of the proposed class is not less than 100.  
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1 2. In addition, this Court has diversity jurisdiction over Plaintiff s state  
2 law claims pursuant to 28 U.S. C. § 1332(a) because the matter in controversy,  
3 which includes Plaintiff s claims and the claims of the proposed class members,  
4 exceeds the sum or value of \$75,000, exclusive of interest and costs, and certain  
5 members of the proposed class are citizens of states different from the states in  
6 which Defendant is a citizen.

7 **II. NU**

8 3. Venue is proper pursuant to 28 U.S.C. § 1391. A substantial part of the  
9 events or omissions giving rise to Plaintiff s claims occurred in this judicial district.  
10 Also, Defendant has used the laws within, and has done substantial business in, this  
11 judicial district in that they have promoted, marketed, distributed, and sold the  
12 Products at issue in this judicial district. Finally, there is personal jurisdiction over  
13 Defendant in this judicial district.

14 **III. PARTI S**

15 4. Plaintiff Victoria Reyes is a resident of San Diego, California. During  
16 the Class Period (defined below), Ms. Reyes purchased one of the Products at issue  
17 at a CVS store located in San Diego, California, within the Court s district.

18 5. Defendant WK Kellogg Co, is a Delaware corporation headquartered  
19 in the State of Michigan, with its principal place of business at 1 Kellogg Square,  
20 Battle Creek, MI 49017. Therefore, Defendant is a citizen of the states of Delaware  
21 and Michigan. At all times relevant hereto, Defendant manufactured, mass  
22 marketed, sold, produced, and distributed the Product throughout the United States,  
23 including the State of California.

24 **I . STAT M NT O ACTS**

25 6. This is a class action against Kellogg for unfair and deceptive trade  
26 practices for representing on the front packaging of the Products that the cereals  
27 contain strawberries.

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1 7. Kellogg uses deceptive photographs on the front of its cereal boxes for  
2 the Products to make it appear that the Products contain strawberries.

3 8. However, there are no strawberries contained in the Products.

4 9. For example, the packaging for Kellogg s Corn Flakes looks as  
5 follows:



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10. The packaging for Kellogg's Rice Krispies looks as follows:



1 11. The packaging for Kellogg's Frosted Flakes looks as follows:



27 12. Upon closer inspection and after consuming the Products, it became  
28 clear that there are no strawberries included in the cereals. This is not only

1 disappointing but constitutes a clear case of false advertising, as the images  
2 prominently display strawberries, leading consumers to believe that they are  
3 purchasing a product with strawberries.

4 13. This misleading packaging has caused confusion and dissatisfaction  
5 and is a violation of consumer trust and rights. Consumers rely on honest and  
6 accurate product descriptions to make informed purchasing decisions.

7 14. The front of the Products packaging unambiguously displays  
8 strawberries in the Products with no adequate language on the front of the packaging  
9 to cure the unambiguous photographs of the alleged Products contained therein.

10 15. Also, there are many competing products that include strawberries in  
11 the cereal, including Honey Bunches of Oats with Real Strawberries, HEB Flakes  
12 with Strawberries, Trader Joes Flakes and Strawberries Cereal, and Great Value  
13 Strawberry Awake.

14 16. Kellogg s also sells competing cereal products that contain  
15 strawberries, including Special K Red Berries and Special K Chocolate Strawberry.

16 17. Further, there are competing products, such as Quaker Oats Oatmeal,  
17 that display strawberries and or fruit in the product, on the front of the product  
18 packaging, but also includes a disclosure on the front of the product packaging that  
19 informs consumers that the product does not include the fruit as pictured.

20 18. In February of 2024, Plaintiff sent a demand letter to Kellogg s in an  
21 attempt to obtain a change to the Products packaging, but Kellogg s failed to make  
22 any changes or provide additional disclosures.

23 19. During the Class Period (defined below), Plaintiff purchased a box of  
24 Kellogg s Frosted Flakes at a CVS store located at 313 Washington Street, San  
25 Diego, CA 92103, for approximately \$6.00.

26 20. Plaintiff viewed the box of the Frosted Flakes cereal prior to her  
27 purchase and determined to try the product because she believed that it contained  
28 strawberries.

1            21. After she opened the box, Plaintiff discovered that there were no  
2 strawberries in her box of Kellogg s Frosted Flakes and felt cheated especially  
3 because there was no indication on the front of the packaging for the product that  
4 would indicate to her that the product did not contain any strawberries.

5            22. If Plaintiff knew that Kellogg s Frosted Flakes contained no  
6 strawberries, she would not have purchased the product.

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**CLASS ACTION ALLEGATIONS**

9            23. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure  
10 23(a) and 23(b)(2) and (b)(3) on behalf of the following class:

11                             All persons who purchased Kellogg s Frosted Flakes, Rice Krispies,  
12 and or Corn Flakes branded cereals in the state of California, during  
13 the period between January 8, 2021, through the date of the final  
14 disposition of this action (the Class and the Class Period ).

15            24. Plaintiff reserves the right to amend the definition of the Class if  
16 discovery and further investigation reveals that the Class should be expanded or  
17 otherwise modified.

18            25. Plaintiff reserves the right to establish additional subclasses as  
19 appropriate.

20            26. This action is brought and properly may be maintained as a class action  
21 under the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(2)  
22 and (b)(3), and satisfies the requirements thereof.

23            27. There is a well-defined community of interest among members of the  
24 Class, and the disposition of the claims of these members of the Class in a single  
25 action will provide substantial benefits to all parties and to the Court.

26            28. The members of the Class are so numerous that joinder of all members  
27 of the Class is impracticable. At this time, Plaintiff believes that the Class includes  
28 thousands of members. Therefore, the Class is sufficiently numerous that joinder of

1 all members of the Class in a single action is impracticable under Federal Rule of  
2 Civil Procedure Rule 23(a)(1), and the resolution of their claims through the  
3 procedure of a class action will be of benefit to the parties and the Court.

4 29. Plaintiff's claims are typical of the claims of the members of the Class  
5 whom she seeks to represent because Plaintiff and each member of the Class has  
6 been subjected to the same deceptive and improper practices by Defendants and  
7 have been damaged in the same manner.

8 30. Plaintiff will fairly and adequately represent and protect the interests  
9 of the members of the Class as required by Federal Rule of Civil Procedure Rule  
10 23(a)(4). Plaintiff has no interests that are adverse to those of the members of the  
11 Class that she seeks to represent. Plaintiff is committed to the vigorous prosecution  
12 of this action and, to that end, Plaintiff has retained counsel that is competent and  
13 experienced in handling complex class action litigation on behalf of consumers.

14 31. A class action is superior to all other available methods of the fair and  
15 efficient adjudication of the claims asserted in this Complaint under Federal Rule  
16 of Civil Procedure 23(b)(3) because:

- 17 a. The expense and burden of individual litigation would not be  
18 economically feasible for members of the Class to seek to redress  
19 their claims other than through the procedure of a class action;
- 20 b. If separate actions were brought by individual members of the  
21 Class, the resulting multiplicity of lawsuits would cause members  
22 to seek to redress their claims other than through the procedure of  
23 a class action; and
- 24 c. Absent a class action, Defendant likely would retain the benefits of  
25 its wrongdoing, and there would be a failure of justice.

26 32. Common questions of law and fact exist as to the members of the  
27 Class, as required by Federal Rule of Civil Procedure 23(a)(2), and predominate

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1 over any questions that affect individual members of the Class within the meaning  
2 of Federal Rule of Civil Procedure 23(b)(3).

3 33. The common questions of fact include, but are not limited to, the  
4 following:

- 5 a. Whether Defendant s advertisements are materially misleading;
- 6 b. Whether Defendant engaged in unlawful, unfair, misleading, or  
7 deceptive business acts or practices;
- 8 c. Whether a reasonable consumer could be misled by Defendant s  
9 advertisements;
- 10 d. Whether Defendant s advertisements violated California s Unfair  
11 Competition Law;
- 12 e. Whether Defendant s advertisements violated California s False  
13 Advertising Law;
- 14 f. Whether Plaintiff and members of the Class are entitled to an  
15 award of reasonable attorneys fees, pre-judgment interest, and  
16 costs of this suit.

17 34. In the alternative, this action is certifiable under the provisions of  
18 Federal Rule of Civil Procedure 23(b)(2) because Defendant has acted or refused to  
19 act on grounds generally applicable to the Class, thereby making appropriate final  
20 injunctive relief or corresponding declaratory relief with respect to the Class as a  
21 whole and necessitating that any such relief be extended to members of the Class  
22 on a mandatory, class-wide basis.

23 35. Plaintiff is not aware of any difficulty that will be encountered in the  
24 management of this litigation that would preclude its maintenance as a class action.

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**I. CAUSE OF ACTION**

**COUNT I**

**C r U r C L UCL  
P d C**

36. Plaintiff incorporates by reference the allegations in every paragraph in this complaint.

37. Plaintiff brings this cause of action individually and on behalf of the Class.

38. Defendant has violated California's Unfair Competition Law (UCL) by engaging in unfair conduct.

39. As alleged in detail above, Defendant's labeling is false and misleading and is likely to deceive, and did deceive, Plaintiff and other reasonable consumers.

40. Plaintiff viewed and reasonably relied on Defendant's misrepresentations when purchasing Defendant's Products.

41. Class-wide reliance can be inferred because Defendant's misrepresentations were material, i.e., a reasonable consumer would consider them important in deciding whether to buy Defendant's Products.

42. Defendant's misrepresentations were a substantial factor in Plaintiff's purchase decisions and the purchase decisions of class members.

43. Plaintiff and class members were injured as a direct and proximate result of Defendant's conduct because: (a) they would not have purchased Defendant's Products if they had known that they did not contain strawberries and (b) they did not receive the benefit of their bargain as they did not receive the strawberries that they bargained and paid for.

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**COUNT II**

**C r A d r L  
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44. Plaintiff incorporates by reference the allegations in every paragraph in this complaint.

45. Plaintiff brings this cause of action individually and on behalf of the class.

46. As alleged in detail above, Defendant falsely advertised the Products by falsely representing that the Products contained strawberries.

47. Defendant s misrepresentations were likely to deceive, and did deceive, Plaintiff and other reasonable consumers. Defendant knew, or should have known through the exercise of reasonable care, that these statements were false and misleading.

48. Defendant s misrepresentations were intended to induce reliance, and Plaintiff saw, read, and reasonably relied on them when purchasing Defendant s Products.

49. Class-wide reliance can be inferred because Defendant s misrepresentations and omissions were material, i.e., a reasonable consumer would consider them important in deciding whether to buy the products.

50. Defendant s misrepresentations were a substantial factor in Plaintiff s purchase decisions and the purchase decisions of class members.

51. Plaintiff and class members were injured as a direct and proximate result of Defendant s conduct because: (a) they would not have purchased Defendant s Products if they had known that they did not contain strawberries and (b) they did not receive the benefit of their bargain as they did not receive the strawberries that they bargained and paid for.

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**COUNT III**

**C r C r L R d A  
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52. Plaintiff incorporates by reference the allegations in every paragraph in this complaint.

53. Plaintiff brings this cause of action individually and on behalf of the class.

54. Plaintiff and the class are consumers, as the term is defined by California Civil Code § 1761(d).

55. Plaintiff and the class have engaged in transactions with Defendant as that term is defined by California Civil Code § 1761(e).

56. The conduct alleged in this Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was undertaken by Defendant in transactions intended to result in, and which did result in, the sale of goods to consumers.

57. As alleged more fully above, Defendant made and disseminated untrue and misleading statements of facts in its advertisements and labels to class members. Defendant did this by advertising that the Products have strawberries, when in fact the Products did not have strawberries.

58. Defendant violated, and continues to violate, Section 1770(a)(5) of the California Civil Code by representing that goods have characteristics, ingredients, uses, benefits, or quantities which they do not have.

59. Defendant violated, and continues to violate, Section 1770(a)(9) of the California Civil Code by advertising goods with intent not to sell them as advertised.

60. Defendant's representations were likely to deceive, and did deceive, Plaintiff and reasonable consumers. Defendant knew, or should have known

1 through the exercise of reasonable care, that these statements were inaccurate and  
2 misleading.

3 61. Defendant s misrepresentations were intended to induce reliance, and  
4 Plaintiff saw, read, and reasonably relied on them when purchasing the Products.  
5 Defendant s misrepresentations were a substantial factor in Plaintiff s purchase  
6 decision.

7 62. In addition, class wide reliance can be inferred because Defendant s  
8 misrepresentations were material, i.e., a reasonable consumer would consider them  
9 important in deciding whether to buy the Products.

10 63. Defendant s misrepresentations were a substantial factor and  
11 proximate cause in causing damages and losses to Plaintiff and the class.

12 64. Plaintiff class members were injured as a direct and proximate result  
13 of Defendant s conduct because: (a) they would not have purchased Defendant s  
14 Products if they had known that they did not contain strawberries and (b) they did  
15 not receive the benefit of their bargain as they did not receive the strawberries that  
16 they bargained and paid for.

17 65. Accordingly, pursuant to California Civil Code § 1780(a)(2), Plaintiff,  
18 individually and on behalf of all other members of the class, seeks injunctive relief.

19 66. CLRA § 1782 NOTICE. On February 27, 2024, a CLRA demand letter  
20 was sent to Defendant s headquarters via process server, that provided notice of  
21 Defendant s violations of the CLRA and demanded that Defendant correct the  
22 unlawful, unfair, false and or deceptive practices alleged here. Defendant has  
23 determined not to make any corrections.

24

25 **II. R U S T O R R L I**

26 67. Plaintiff, on behalf of herself and the members of the Class, seek  
27 judgment as follows:

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1 a. Certifying the Class as requested herein, certifying Plaintiff as  
2 the representative of the Class, and appointing Plaintiff's counsel as counsel for the  
3 Class;

4 b. Ordering that Defendant is financially responsible for notifying  
5 all members of the Class of the alleged misrepresentations and omissions set forth  
6 herein;

7 c. Awarding Plaintiff and the members of the Class statutory  
8 damages or compensatory damages in an amount according to proof at trial;

9 d. Awarding interest on the monies wrongfully obtained from the  
10 date of collection through the date of entry of judgment in this action;

11 e. Awarding attorneys' fees, expenses, and recoverable costs  
12 reasonably incurred in connection with the commencement and prosecution of this  
13 action; and

14 f. Directing such other and further relief as the Court deems just  
15 and proper.

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17 **VIII. DEMAND FOR JURY TRIAL**

18 68. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure,  
19 Plaintiff demands a trial by jury as to all matters so triable.

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22 Dated: 1/13/25



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Dated: 1/8/25

  
\_\_\_\_\_  
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Dated: 1/8/25

  
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*\*pro hac vice motions to be filed*  
  
*Counsel for plaintiff  
and the proposed class*

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

Victoria Reyes, on behalf of herself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Allen R. Ball and Brett Yorke, Law Office of Ball & Yorke, 1001 Partridge Drive, St. 330, Ventura, CA 93003, 805-642-5177

DEFENDANTS

WK Kellogg Co,

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

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

Attorneys (If Known)

25CV0075 AJB MMP

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, HABES CORPUS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d), deceptive and unfair trade practices. Brief description of cause: Class action for false advertising.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 10,000,000. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/8/2024

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of attorney.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE