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County of San Diego

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Clerk of the Superior Court  
By N. Adams ,Deputy Clerk

Attorneys for Plaintiff and the putative class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN DIEGO**

JESSICA ARGUETA, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

GENERAL MILLS, INC., a Delaware  
corporation, d/b/a FRUITY CHEERIOS,

Defendant.

Case No. 25CU054520C

**CLASS ACTION COMPLAINT**

## I. INTRODUCTION

1. Defendant sells a cereal product named “Fruity Cheerios” (“the Product”). To increase profits at the expense of consumers and fair competition, Defendant deceptively sells the Product in oversized packaging that does not reasonably inform consumers that they are mostly buying air. In short, Defendant dupes consumers into paying extra for empty space.

2. Several state and federal courts have found that cases involving materially identical claims are actionable and meritorious. *See, e.g., Reyes v. Just Born, Inc.*, 729 F. Supp. 3d 971, 975-80 (C.D. Cal. Apr. 8, 2024) (Vera, J.); *Coleman v. Mondelez Int’l Inc.*, No. 2:20-cv-08100 (C.D. Cal. July 26, 2021); and *Thomas v. Nestle USA, Inc.*, No. BC649863 (Cal. Super. Ct. L.A. Cty. April 29, 2020).

3. The below pictures illustrate the deceptive nature of the packaging. In summary, actual cereal occupies only a fraction of the exterior space represented by the package:



**II. PARTIES**

4. Plaintiff is a resident of California. Within the statute of limitations period, Plaintiff purchased the Product for personal use. In making the purchase, Plaintiff relied upon the opaque packaging, including the size of the package and product label, and that was designed to encourage consumers like Plaintiff to purchase the Product. Plaintiff understood the size of the package and product label to indicate that the amount of product contained therein was commensurate with the size of the package, and would not have purchased the Product, or would not have paid a price premium for the Product, had plaintiff known that the size of the package and product label were false and misleading. Plaintiff intends to purchase the Product in the future but cannot reasonably do so without an injunctive relief order from the Court ensuring Defendant's packaging, labeling, and filling of the Product is accurate and lawful, at which point Plaintiff will reasonably be able to rely upon Defendant's representations about the Product.

5. Defendant markets the product directly via its website as well as through its agents to consumers nationwide, including in California. Defendant has substantial contacts with and receives substantial benefits and income from and through the State of California. Indeed, Defendant has offices in California and is actively hiring employees in California. See <https://careers.generalmills.com/na/jobs?keywords=&location=california&country=United%2520States%7CCanada%7CMexico> (last accessed October 7, 2025).

**III. JURISDICTION AND VENUE**

6. As a court of general jurisdiction, this Court has jurisdiction over all claims presented to it.

7. Defendant is subject to jurisdiction under California's "long-arm" statute found at California Code of Civil Procedure section 410.10 because the exercise of jurisdiction over Defendant is not "inconsistent with the Constitution of this state or the United States."

8. Venue is proper in this County as many class members purchased the product and were deceived and injured in this County.

#### IV. FACTUAL BACKGROUND

9. While the amount of product inside any product packaging is material to any reasonable consumer seeking to purchase that product, over 60% of consumers report that they have been misled by food packaging and labeling.<sup>1</sup> The average consumer spends only 13 seconds deciding whether to make an in-store purchase;<sup>2</sup> this decision is heavily dependent on a product's packaging, including the package dimensions. Research has demonstrated that packages that seem larger are more likely to be purchased because consumers expect package size to accurately represent the quantity of the good being purchased.<sup>3</sup>

10. Defendant chose a certain size package for its Product to convey to consumers that they are receiving an amount of product commensurate with the size of the package.

11. Slack-fill is the difference between the actual capacity of a package and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for illegitimate or unlawful reasons.

12. Defendant falsely represents the quantity of product in each of the Product's opaque package. The size of each package leads reasonable consumers to believe they are purchasing a package full of product when, in reality, consumers are actually receiving significantly less than what is represented by the size of the package.

13. Even if consumers had a reasonable opportunity to review, prior to the point of sale, other representations of quantity, such as net weight or serving disclosures, they did not and would not have reasonably understood or expected such representations to translate to a quantity product meaningfully different from the size of the package. Low income consumers, like Plaintiff, are most likely to be misled by slack fill misrepresentations.<sup>4</sup>

14. Prior to the point of sale, the Product's packaging does not allow for confirmation of

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<sup>1</sup> <https://www.shorr.com/resources/blog/2020-food-packaging-consumer-behavior-report/#:~:text=In%20fact%2C%2066%25%20of%20respondents,and%20food%20packaging%20moving%20forward> (last visited October 2025).

<sup>2</sup> Randall Beard, *Make the Most of Your Brand's 20-Second Window*, NIELSEN, Jan. 13, 2015, <https://www.nielsen.com/insights/2015/make-the-most-of-your-brands-20-second-window/> (last visited October 2025).

<sup>3</sup> P. Raghubir & A. Krishna, *Vital Dimensions in Volume Perception: Can the Eye Fool the Stomach?*, 36 J. MARKETING RESEARCH 313-326 (1999).

<sup>4</sup> <https://www.canr.msu.edu/news/americans-pay-attention-to-food-labels-but-are-confused-by-what-information-matters> (last accessed October 2025).

1 the contents of the Product. The Product’s opaque packaging prevents a consumer from observing the  
2 contents before opening. Even if a reasonable consumer were to “shake” or otherwise inspect the  
3 package before opening it, the reasonable consumer would not be able to discern the presence of any  
4 nonfunctional slack-fill, let alone the significant amount of nonfunctional slack-fill that is present in  
5 the package.

6 15. The other information that Defendant provides about the quantity of product on the  
7 front and back labels of the Product does not enable reasonable consumers to form any meaningful  
8 understanding about how to gauge the quantity of contents of the Product as compared to the size of  
9 the package itself. For instance, the front of the Product’s packaging does not have any labels that  
10 would provide Plaintiff with any meaningful insight as to the amount of product to be expected, such  
11 as a fill line.

12 16. Disclosures of net weight and serving sizes in ounces, pounds, or grams do not allow  
13 the reasonable consumer to make any meaningful conclusions about the quantity of product contained  
14 in the Products’ packages that would be different from their expectation that the quantity of product is  
15 commensurate with the size of the package.

16 17. Plaintiff had dual motivations for purchasing the product. First, Plaintiff is a consumer  
17 rights “tester” who creates public benefit by ensuring that companies comply with their obligations  
18 under California law. Second, Plaintiff was genuinely interested in consuming the product, and did so  
19 – with disappointment that the package was mostly empty.

20 18. Plaintiff’s status as a dual motivation tester is both necessary and appropriate. First, it  
21 is “necessary and desirable for committed individuals to bring serial litigation” to enforce and advance  
22 consumer protection statutes. *See Langer v. Kiser*, 57 F.4th 1085, 1097 (9th Cir. 2023). Second,  
23 nearly all consumers have dual motives, as there are usually multiple reasons behind their purchasing  
24 decisions. *See Cordes v. Boulder Brands USA, Inc.*, 2018 WL 6714323, at \*3 (C.D. Cal. 2018).

25 19. To be clear, Plaintiff would not have purchased the Product had plaintiff known that the  
26 Product contained slack-fill that serves no functional or lawful purpose, and would have consumed the  
27 entirety of the contents if the package was filled to plaintiff’s expectations.

1 **A. None of the Slack-Fill Statutory Exceptions Apply to the Product**

2 20. Under applicable state law, any opaque food package is considered to be filled as to be  
3 misleading if it contains nonfunctional slack-fill. Nonfunctional slack-fill is empty space within  
4 packaging that is filled to less than its capacity for reasons other than provided for in the enumerated  
5 slack fill exceptions.

6 21. The slack-fill in the Product's packages does not protect the contents of the packages.  
7 In fact, empty space does not protect the Product. Plaintiff is informed and believes and thereon  
8 alleges that multiple units of the Product are shipped together from the manufacturer of the Product to  
9 either distributors and/or retailers in sturdy, cardboard boxes designed to protect the contents of the  
10 Product from damage during shipping and handling.

11 22. The machines used to package the Product would not be affected if there was more  
12 product added. At most, a simple recalibration of the machines would be required. Upon information  
13 and belief, adjusting these machines is rather simple.

14 23. Because the packages are filled to as little as more than half of their capacity,  
15 Defendant can increase the Product's fill level significantly without affecting how the packages are  
16 sealed, or it can disclose the fill-level on the outside labeling to inform consumers of the amount of  
17 product actually in the package, consistent with the law.

18 24. The slack-fill present in the Product's packages is not a result of the product settling  
19 during shipping and handling. Given the Product's density, shape, and composition, any settling  
20 occurs immediately at the point of fill. No measurable product settling occurs during subsequent  
21 shipping and handling.

22 25. The packages do not perform a specific function that necessitates the slack-fill. This  
23 safe harbor would only apply if a specific function were "inherent to the nature of the food and []  
24 clearly communicated to consumers." (Cal. Bus. & Prof. Code § 12606.2(c)(4).) The packages do not  
25 perform a function that is inherent to the nature of the food. Defendant did not communicate a specific  
26 function to consumers, making this provision inapplicable.

27 26. The Product's packaging is not reusable or of any significant value to the Product  
28 independent of its function to hold the Product. The packages are intended to be discarded

1 immediately after the Product is used.

2 27. The slack-fill present in the packages does not accommodate required labeling,  
3 discourage pilfering, facilitate handling, or prevent tampering.

4 28. Defendant can easily increase the quantity of product in each package (or, alternatively,  
5 decrease the size of the packages) significantly.

6 29. Because none of the safe harbor provisions apply to the Product's packaging, the  
7 packages contain nonfunctional slack-fill and are, therefore, misleading as a matter of law.

8 30. Defendant's false, deceptive, and misleading label statements are unlawful under state  
9 consumer protection and packaging laws.

10 31. Defendant's misleading and deceptive practices proximately caused harm to Plaintiff by  
11 causing Plaintiff to spend more money than Plaintiff would have otherwise spent had Plaintiff known  
12 the extent of the Product's non-functional slack-fill.

13 32. Plaintiff seeks damages and, in the alternative, restitution. Plaintiff is permitted to seek  
14 equitable remedies in the alternative because Plaintiff has no adequate remedy at law.

15 33. The elements of Plaintiff's equitable claim are different and do not require the same  
16 showing as Plaintiff's legal claim under the CLRA.

17 34. Plaintiff's equitable claim seeking restitution is predicated on specific statutory  
18 provisions under the CFPLA, which prohibits food containers that are "filled as to be misleading."  
19 (Cal. Bus. & Prof. Code § 12606.2(b).) "A container that does not allow the consumer to fully view its  
20 contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill.  
21 Slackfill is the difference between the actual capacity of a container and the volume of product  
22 contained therein. Nonfunctional slack fill is the empty space in a package that is filled to  
23 substantially less than its capacity for reasons other than any one or more of the following [enumerated  
24 reasons]." *Id.* § 12606.2(c). Plaintiff may be able to prove these more straightforward factual  
25 elements, and thus prevail, while not being able to prove one or more elements of Plaintiff's legal  
26 claim under the CLRA seeking damages governed by the reasonable consumer test.

27 35. In addition, to obtain a full refund as damages, Plaintiff must show that the Product that  
28 Plaintiff bought has essentially no market value. In contrast, Plaintiff can seek restitution without

1 making this showing. This is because Plaintiff purchased a Product that Plaintiff would not otherwise  
2 have purchased, but for Defendant's representations. Obtaining a full refund at law is less certain than  
3 obtaining a refund in equity.

4 36. Finally, legal damages are inadequate to remedy the imminent threat of future harm that  
5 Plaintiff faces. Only an injunction can remedy this threat of future harm.

6 **V. CLASS ACTION ALLEGATIONS**

7 37. The Class which Plaintiff seeks to represent comprises:

8 **All persons who purchased the Product in California for personal use**  
9 **during the four years prior to the filing of this Complaint.**

10 Excluded from the Class are Defendant's officers, directors, and employees, and any individual who  
11 received remuneration from Defendant in connection with that individual's use or endorsement of the  
12 Product. Said definition may be further defined or amended by additional pleadings, evidentiary  
13 hearings, a class certification hearing, and orders of this Court.

14 38. The Class is comprised of at least 50 people. The Class is so numerous that joinder of  
15 all members is impracticable.

16 39. Common questions of law and fact include:

- 17 a. The true nature and amount of product contained in each Product's packaging;
- 18 b. Whether the marketing, advertising, packaging, labeling, and other promotional  
19 materials for the Product are deceptive;
- 20 c. Whether Defendant misrepresented that the Product's packaging complied with  
21 California slack-fill regulations and statutes;
- 22 d. Whether the Product contains nonfunctional slack-fill in violation of 21 C.F.R. §  
23 100.100, *et seq.*;
- 24 e. Whether Defendant's conduct violates section 1770(a)(5) and (9) of the California Civil  
25 Code;
- 26 f. Whether Defendant made false and misleading representations in its advertising and  
27 labeling of the Product;
- 28 g. Whether Defendant knew or should have known that the misrepresentations were false;

- 1 h. Whether Plaintiff and the Class paid more money for the Product than they actually  
2 received;
- 3 i. How much more money Plaintiff and the Class paid for the Product than they actually  
4 received; and
- 5 j. Whether Defendant was unjustly enriched at the expense of Plaintiff and the Class  
6 members.

7 Plaintiff's claims are typical of the claims of the proposed Class, as the representations and  
8 omissions made by Defendant are uniform and consistent and are contained on packaging and labeling  
9 that was seen and relied on by Plaintiff and members of the Class.

10 40. Plaintiff will fairly and adequately represent and protect the interests of the proposed  
11 Class. Plaintiff has retained competent and experienced counsel in class action and other complex  
12 litigation.

13 41. Plaintiff and the Class have suffered injury in fact and have lost money as a result of  
14 Defendant's false, deceptive, and misleading representations. Plaintiff purchased the Product because  
15 of the size of the container and the product labels, which Plaintiff believed to be indicative of the  
16 amount of product contained therein.

17 42. The Class is identifiable and readily ascertainable. Notice can be provided to such  
18 purchasers using techniques and a form of notice similar to those customarily used in class actions and  
19 by Internet publication, radio, newspapers, and magazines.

20 43. A class action is superior to other available methods for fair and efficient adjudication  
21 of this controversy. The expense and burden of individual litigation would make it impracticable or  
22 impossible for the Class to prosecute their claims individually.

23 44. Defendant has acted on grounds generally applicable to the entire Class, thereby  
24 making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the  
25 Class as a whole. The prosecution of separate actions by individual Class members would create the  
26 risk of inconsistent or varying adjudications with respect to individual members of the Class that  
27 would establish incompatible standards of conduct for Defendant.

**VI. CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**COMMON LAW FRAUD**

45. The elements of cause of action for California common law fraud are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or “scienter”); (c) intent to induce reliance; (d) justifiable reliance; and (e) resulting damage. *See Lazar v. Superior Court*, 12 Cal.4th 631, 638 (1996).

46. Each element of the cause of action for fraud is present here, as shown by the following “Who, What, When, Where, and Why” summary:

- a. **Who:** The false representations were made by the Defendant and the individuals employed by Defendant who make packaging and labeling decisions.
- b. **What:** The false representation was the representation that the package was full of product, and the specific concealment was that the package was about half empty.
- c. **When:** The misrepresentation has been made continuously through the statute of limitations period, as it is made each time a package is sold – including when Plaintiff purchased the product prior to filing this Complaint.
- d. **Where:** The misrepresentation was made on Defendant’s website, marketing materials, and the packaging of the product.
- e. **Why:** Defendant made the misrepresentation to induce consumers to purchase the product, to cause them to pay more for the product, and to take market share and profits from its competitors.

47. **Knowledge:** Defendant knows that the packaging is about half empty, knows that consumers will purchase the Product based upon the belief that it is full, and knows that it is deceiving consumers.

48. **Intent to defraud:** Defendant intends for consumers to purchase the Product under the mistaken belief that the package is full so that Defendant can capture sales it would not have otherwise received and can increase profits.

49. **Justifiable reliance:** Plaintiff’s reliance on the size of the package was reasonable, as consumers reasonably expect that a package will be filled commensurate with its size.

1           50.     **Resulting damage:** Plaintiff was damaged by paying more for a product than Plaintiff  
2 would have paid and receiving less product than Plaintiff expected to receive. To be clear, Plaintiff  
3 changed position in reliance upon the fraud (by purchasing the product) and was damaged by that  
4 change of position (by receiving less than Plaintiff paid for and reasonably expected to receive).

5                             **SECOND CAUSE OF ACTION**

6                             **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

7                             **CALIFORNIA CIVIL CODE § 1750, *et seq.***

8           51.     The CLRA prohibits certain “unfair methods of competition and unfair or deceptive  
9 acts or practices” in connection with the sale of goods.

10          52.     The practices described herein, specifically Defendant’s packaging, advertising, and  
11 sale of the Product, were intended to result and did result in the sale of the Product to the consuming  
12 public and violated and continue to violate sections 1770(a)(5) and 1770(a)(9) of the CLRA by: (1)  
13 misrepresenting the approval of the Product as compliant with 21 C.F.R § 100.100 and the Sherman  
14 Law; (2) representing the Product has characteristics and quantities that it does not have; (3)  
15 advertising and packaging the Product with intent not to sell it as advertised and packaged; and (4)  
16 representing that the Product has been supplied in accordance with a previous representation as to the  
17 quantity of product contained within each package, when it has not.

18          53.     Defendant deceived Plaintiff by representing that the Product’s packaging, which  
19 includes significant nonfunctional slack-fill, actually conforms to federal and California slack-fill  
20 regulations and statutes including the Sherman Law and 21 C.F.R. § 100.100.

21          54.     Defendant packaged the Product in packages that contain significant nonfunctional  
22 slack-fill and made material misrepresentations to deceive Plaintiff and all consumers.

23          55.     Defendant deceived Plaintiff by misrepresenting the Product as having characteristics  
24 and quantities that it does not have, e.g., that the Product is free of nonfunctional slack-fill when it is  
25 not. In doing so, Defendant intentionally misrepresented and concealed material facts from Plaintiff.  
26 Said misrepresentations and concealment were done with the intention of deceiving Plaintiff and  
27 depriving Plaintiff of rights and money.

28          56.     Defendant knew that the Product’s packaging was misleading and deceptive.

57. Defendant's packaging of the Product was a material factor in Plaintiff's decision to purchase the Product. Based on Defendant's packaging of the Product, Plaintiff reasonably believed that Plaintiff would receive more product than actually received. Had Plaintiff known the truth of the matter, Plaintiff would have not have purchased the Product.

58. Plaintiff has suffered injury in fact and have lost money as a result of Defendant's unfair and unlawful conduct. Specifically, Plaintiff paid for product never received.

59. More than 30 days prior to filing this Complaint, Plaintiff notified Defendant of the particular alleged violations of Section 1770 and demanded that Defendant correct, repair, replace, or otherwise rectify the violation. Defendant has not fully complied with Plaintiff's request.

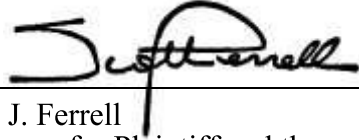
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment and relief on all causes of action as follows:

- A. An Order certifying the Class, appointing Plaintiff as class representative, and designating Plaintiff's counsel as counsel for the Class;
- B. An order requiring Defendant to add a conspicuous "fill line" to the front of the Product's packaging sold in California;
- C. Actual, statutory, and punitive damages;
- D. Attorneys' fees and costs; and
- E. All other relief at law or in equity that may be just and proper.

Dated: October 9, 2025

PACIFIC TRIAL ATTORNEYS, APC

By:   
Scott J. Ferrell  
Attorneys for Plaintiff and the putative class