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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No.

CLASS ACTION COMPLAINT FOR

(1) VIOLATION OF UNFAIR BUSINESS PRACTICES ACT;

(2) VIOLATION OF UNFAIR COMPETITION LAW;

(3) VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT;

(4) UNJUST ENRICHMENT; AND

(5) BREACH OF EXPRESS WARRANTY

DEMAND FOR JURY TRIAL

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

counsel, allege as follows:

I. JURISDICTION AND VENUE

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

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

II. NATURE OF THE CASE

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

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

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

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

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

http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/allergens/ucm362510.htm

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

"(3) The labeling claim "gluten-free" means:

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

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

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

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

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

(B) Inherently does not contain gluten; and

(ii) Any unavoidable presence of gluten in the food bearing the claim in its labeling is below 20 ppm gluten (i.e., below 20 mg gluten per kg of food)."

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

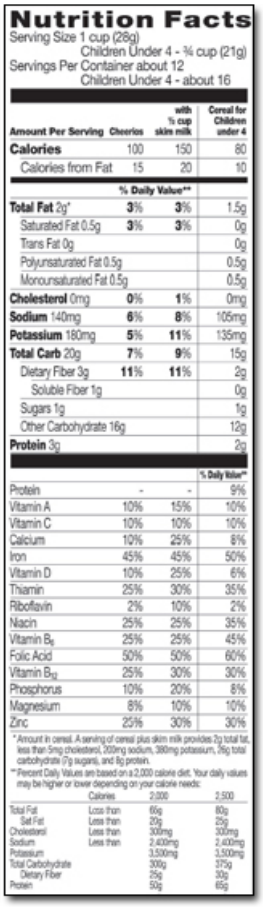
9. General Mills' sales materials reflected that the company viewed the "gluten free" designation as a way to boost sales. A sales release announcing "Cheerios is going gluten-free!"

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

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

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

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



Nutrition Facts

Serving Size 1 cup (28g)
Children Under 4 - ¾ cup (21g)
Servings Per Container about 12
Children Under 4 - about 16

Amount Per Serving	Cheerios	with ½ cup skim milk	Cereal for Children under 4
Calories	100	150	80
Calories from Fat	15	20	10
		% Daily Value**	
Total Fat 2g*	3%	3%	1.5g
Saturated Fat 0.5g	3%	3%	0g
Trans Fat 0g			0g
Polyunsaturated Fat 0.5g			0.5g
Monounsaturated Fat 0.5g			0.5g
Cholesterol 0mg	0%	1%	0mg
Sodium 140mg	6%	8%	105mg
Potassium 180mg	5%	11%	135mg
Total Carb 20g	7%	9%	15g
Dietary Fiber 3g	11%	11%	2g
Soluble Fiber 1g			0g
Sugars 1g			1g
Other Carbohydrate 16g			12g
Protein 3g			2g
			% Daily Value**
Protein	-	-	9%
Vitamin A	10%	15%	10%
Vitamin C	10%	10%	10%
Calcium	10%	25%	8%
Iron	45%	45%	50%
Vitamin D	10%	25%	6%
Thiamin	25%	30%	35%
Riboflavin	2%	10%	2%
Niacin	25%	25%	35%
Vitamin B_6	25%	25%	45%
Folic Acid	50%	50%	60%
Vitamin B_{12}	25%	30%	30%
Phosphorus	10%	20%	8%
Magnesium	8%	10%	10%
Zinc	25%	30%	30%

* Amount in cereal. A serving of cereal plus skim milk provides 2g total fat, less than 5mg cholesterol, 200mg sodium, 380mg potassium, 26g total carbohydrate (7g sugars), and 8g protein.
** Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g
Protein		50g	65g

Ingredients: Whole Grain Oats, Corn Starch, Sugar, Salt, Tripotassium Phosphate. Vitamin E (mixed tocopherols) **Added to Preserve Freshness.**

Vitamins and Minerals: Calcium Carbonate, Iron and Zinc (mineral nutrients), **Vitamin C** (sodium ascorbate), **A B Vitamin** (niacinamide), **Vitamin B_6** (pyridoxine hydrochloride), **Vitamin A** (palmitate), **Vitamin B_1** (thiamin mononitrate), **A B Vitamin** (folic acid), **Vitamin B_{12}, Vitamin D_3.**

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

GLUTEN FREE

Not made with genetically modified ingredients.
Trace amounts of genetically modified (also known as "genetically engineered") material may be present due to potential cross contact during manufacturing and shipping.

May be mfg. under U.S. Pat. No. 7,021,525 & Pat. Pend.

Exchange: 1 1/2 starch
Based on Academy of Nutrition and Dietetics and American Diabetes Association criteria

This package is sold by weight, not by volume. You can be assured of proper weight even though some settling of contents normally occurs during shipment and handling.

F 3842756115 SSG 3890456115

Nutrition Facts

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

Amount Per Serving	Honey Nut Cheerios	with ½ cup skim milk
Calories	110	150
Calories from Fat	15	15
	% Daily Value**	
Total Fat 1.5g*	2%	2%
Saturated Fat 0g	0%	0%
Trans Fat 0g		
Polyunsaturated Fat 0.5g		
Monounsaturated Fat 0.5g		
Cholesterol 0mg	0%	1%
Sodium 160mg	7%	9%
Potassium 115mg	3%	9%
Total Carbohydrate 22g	7%	9%
Dietary Fiber 2g	8%	8%
Soluble Fiber less than 1g		
Sugars 9g		
Other Carbohydrate 11g		
Protein 2g		
Vitamin A	10%	15%
Vitamin C	10%	10%
Calcium	10%	25%
Iron	25%	25%
Vitamin D	10%	25%
Thiamin	25%	30%
Riboflavin	25%	35%
Niacin	25%	25%
Vitamin B_6	25%	25%
Folic Acid	50%	50%
Vitamin B_{12}	25%	35%
Phosphorus	8%	20%
Magnesium	6%	10%
Zinc	25%	30%

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

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

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

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

Vitamins and Minerals: Calcium Carbonate, Zinc and Iron (mineral nutrients), Vitamin C (sodium ascorbate), A B Vitamin (niacinamide), Vitamin B_6 (pyridoxine hydrochloride), Vitamin B_2 (riboflavin), Vitamin B_1 (thiamin mononitrate), Vitamin A (palmitate), A B Vitamin (folic acid), Vitamin B_{12}, Vitamin D_3.

CONTAINS ALMOND INGREDIENTS.

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

GLUTEN FREE

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

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

F 3860022109 SSG 3572469109

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

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

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

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

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

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

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

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

III. PARTIES

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

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

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

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

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

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

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

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

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

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

IV. CLASS ACTION ALLEGATIONS

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

32. The proposed Class is defined as:

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

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

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

a. Numerosity and Ascertainability

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

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

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

b. Typicality

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

c. Adequate Representation

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

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

d. Predominance of Common Issues

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

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

a. whether the Cheerios contained gluten;

b. whether Defendants knew or should have known that the Cheerios contained gluten;

c. whether Defendants failed to take the steps necessary to ensure that the Cheerios cereals did not contain gluten;

d. whether Defendants made material misrepresentations regarding the Cheerios cereals labeled as "Gluten Free;"

e. whether Defendants had a duty to disclose the true nature of the Cheerios cereals to Plaintiffs and Class Members;

f. whether Defendants omitted and failed to disclose material facts about the Cheerios cereals;

g. whether Defendants' concealment of the true nature of the Cheerios would have induced a reasonable consumer to act to their detriment by purchasing the Cheerios; and

h. whether Plaintiffs and Class Members are entitled to injunctive and equitable relief.

e. Superiority

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

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

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

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

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

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

a. Representing to Plaintiffs and the general public that Cheerios' gluten free label on the box meant that the contents met all Food and Drug Administration standards for such labeling and were safe for consumption by persons sensitive to gluten, when, in fact, the Defendants knowingly failed to take necessary measures to ensure their products were gluten free;

b. Engaging in advertising programs designed to create the image, impression and belief by consumers that Cheerios cereals were free of gluten and safe for consumption by persons sensitive to gluten, even though their Cheerios cereals contained gluten that far exceeded the amount specified by the FDA for

designating products as gluten free;

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

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

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

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

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

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

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

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

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

personal and/or household use.

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION
Unjust Enrichment

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION
Breach of Express Warranty

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

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

Members about the true nature of the "Gluten Free" Cheerios;

C. an order enjoining Defendants to desist from further deceptive distribution, marketing and sales of non-compliant "Gluten Free" Cheerios;

D. an award to Plaintiffs and Class Members of compensatory, exemplary, punitive and statutory penalties and damages, including interest, in an amount to be proven at trial;

E. an award to Plaintiffs and Class Members for the return of the purchase prices of the "Gluten Free" Cheerios, with interest from the time it was paid, for the reimbursement of the reasonable expenses occasioned by the sale, for damages and for reasonable attorneys' fees;

F. a declaration that General Mills must disgorge, for the benefit of Plaintiffs and Class Members, all or part of the ill-gotten profits received from the sale of "Gluten Free" Cheerios, and make full restitution to Plaintiffs and Class Members;

G. an award of attorneys' fees and costs, as allowed by law;

H. an award of pre-judgment and post-judgment interest, as provided by law;

I. leave to amend this Complaint to conform to the evidence produced at trial; and

J. such other relief as may be appropriate under the circumstances.

DATED: October 30, 2015

CUTTER LAW, P.C.

By: /s/ John R. Parker, Jr.
C. BROOKS CUTTER

JOHN R. PARKER, JR.
Attorneys for Plaintiff

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

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

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

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

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

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

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

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

/s/ John R. Parker, Jr.

John R. Parker, Jr.