

ORIGINAL

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*10/27/11  
9/14/34*

**FILED**  
Los Angeles Superior Court

OCT 28 2011

John A. Clark, Executive Officer/Clerk  
By SHAUNYA WESLEY Deputy

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7 Attorneys for Plaintiff and the Proposed Class  
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BY FAX

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
20 COUNTY OF LOS ANGELES

21 KIRA LEWIS, on behalf of herself and all others  
22 similarly situated,

23 Plaintiff,

24 vs.

25 GENERAL MILLS, INC.,  
26

27 Defendant.  
28

Case No. BC472451

**CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL**

CHECK: 395.00  
CASH:  
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CIVIL CASE: BC472451 LEADER#: 0310  
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10/28/2011

Los Angeles Superior Court

FILED

John W. Clark, Executive Director  
PHARMACY BOARD

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FOR COMPLETE DETERMINATION OF THE

PHARMACY BOARD OF CALIFORNIA

1 Plaintiff Kira Lewis ("Plaintiff"), on behalf of herself and all others similarly situated, and by  
2 and through her undersigned counsel, alleges the following based upon her own personal knowledge  
3 and the investigation of her counsel. Plaintiff believes that substantial evidentiary support will exist  
4 for the allegations set forth herein after a reasonable opportunity for discovery.

#### 5 NATURE OF THE ACTION

6 1. This is a proposed class action against General Mills, Inc. ("General Mills" or  
7 "Defendant") for misleading consumers about the nature of the ingredients of its cereal products sold  
8 under the Kix brand name, namely Original Kix Crispy Corn Puffs and Honey Kix Crispy Corn  
9 Puffs ("Kix", "Product", or "Products").

10 2. During a period of time at some point from October 26, 2005, to the present (the  
11 "Class Period"), Defendant engaged in a widespread marketing campaign to mislead consumers  
12 about the nature of the ingredients in Kix. Specifically, Defendant made the misleading statements  
13 that its Products are "made with All Natural Corn" or are "made with All Natural Corn & Honey."  
14 Defendant was thereby able to command a premium price by deceiving consumers about the  
15 attributes of its Products and distinguishing the Products from similar cereals. For example, a recent  
16 study found that Original Kix Crispy Corn Puffs was 36% more expensive per ounce than an organic  
17 alternative, Nature's Path unsweetened organic corn puffs. Cornucopia Institute, *Cereal Crimes:  
18 How "Natural" Claims Deceive Consumers and Undermine the Organic Label - A Look Down the  
19 Cereal and Granola Aisle* (2011), available at <http://www.cornucopia.org/2011/10/natural-vs-organic-cereal/>. Defendant was motivated to mislead consumers for no other reason than to take  
20 away market share from competing products, thereby increasing its own profits.

21 3. Defendant conveyed this message through a significant marketing and advertising  
22 campaign on the Kix packaging, website, and advertisements. For example, General Mills places the  
23 label "made with All Natural Corn" on its Original Kix Crispy Corn Puffs cereal and the label "made  
24 with All Natural Corn & Honey" on its Honey Kix Crispy Corn Puffs cereal. The Kix Product  
25 packaging also includes the sentence: "Made with simple, good-for-you ingredients like all-natural  
26 whole grain corn, KIX® cereal is a tasty way to kick off a great day."  
27

28

1           4.     The representation that Kix is "made with All Natural Corn" or is "made with All  
2 Natural Corn & Honey" is central to the marketing of the Products, and is displayed, along with the  
3 phrase "Kid Tested, Mother Approved®," prominently on the Product labels, the Kix website, and  
4 all Kix advertisements.

5           5.     A 2010 poll by the Hartman Group found that a majority of consumers erroneously  
6 believed the term "natural" implied absence of genetically modified organisms ("GMOs"). The  
7 Hartman Group, *Beyond Organic and Natural* (2010) (as quoted in Canada Organic Trade  
8 Association, *Consumer Confusion About the Difference: "Natural" and "Organic" Product Claims*  
9 (August 2010)). Similarly, two polls from 2009 and 2010 showed a majority of consumers said the  
10 "natural" label was either "important" or "very important." Context Marketing, *Beyond Organic:  
11 How Evolving Consumer Concerns Influence Food Purchases* (2009), available at [www.  
12 contextmarketing.com](http://www.contextmarketing.com).

13           6.     Furthermore, Defendant's Kix packaging and marketing targets children with various  
14 promotional gimmicks, such as: 1) the phrase "Kid-Tested, Mother Approved®", 2) the phrase  
15 "great Kix taste = happy kids", 3) Box Tops for Education®, and 4) a "Message to Moms"  
16 accompanied by a cartoon child's face.

17           7.     Unfortunately for consumers and their children, Kix is not "made with All Natural  
18 Corn." Rather, the corn is derived from unnatural genetically modified plants. Recent GMO testing  
19 of Kix shows that Kix contains GMO corn. Cornucopia Institute, *Cereal Crimes: How "Natural"  
20 Claims Deceive Consumers and Undermine the Organic Label - A Look Down the Cereal and  
21 Granola Aisle* (2011), available at <http://www.cornucopia.org/2011/10/natural-vs-organic-cereal/>.

22  
23           8.     Further testing by an independent lab hired by Plaintiff's counsel has confirmed that  
24 Kix contains GMO corn.

25           9.     Monsanto Company, an agricultural company that pioneered GMO seeds, defines  
26 GMO on its website as organisms with their "genetic makeup altered to exhibit traits that are not  
27 naturally theirs. In general, genes are taken (copied) from one organism that shows a desired trait  
28 and transferred into the genetic code of another organism." See

1 <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited October 28, 2011)  
2 (emphasis added). Therefore, "unnatural" is the defining characteristic of GMO foods.

3 10. Because of this, Defendant's claim that Kix is "made with All Natural Corn" or is  
4 "made with All Natural Corn & Honey" is false, misleading, and designed to deceive consumers into  
5 purchasing its Products. Plaintiff brings this action to stop Defendant's misleading practice.

#### 6 JURISDICTION AND VENUE

7 11. This Complaint is filed, and these proceedings are instituted, pursuant to California  
8 Business and Professions Code §§ 17203 and 17535, to recover damages and to obtain other relief  
9 that Plaintiff and the class have sustained as a result of violations by Defendant of California  
10 Business and Professions Code §§ 17200 *et seq.* and 17500 *et seq.*, as well as Consumers Legal  
11 Remedies Act – Cal. Civ. Code § 1750 *et seq.* (under which only injunctive relief is sought at this  
12 point).

13 12. Venue as to Defendant is proper in this Court pursuant to California Code of Civil  
14 Procedure § 395. Substantial acts in furtherance of the alleged improper conduct occurred within  
15 this jurisdiction. Plaintiff resides within this jurisdiction and bought Defendant's Products within  
16 this jurisdiction.

17 13. No portion of this Complaint is brought pursuant to federal law.

18 14. The claims of each member of the Class do not exceed seventy-five thousand dollars  
19 (\$75,000) exclusive of interest and costs.

#### 20 PARTIES

21 15. Plaintiff Kira Lewis is a citizen of California because Plaintiff is domiciled in Encino,  
22 California, and has no intention of changing her domicile. Plaintiff Lewis bought an 8.7 oz. box of  
23 Kix cereal on or about August 19, 2011 for \$3.29 at a Ralphs store on Ventura Boulevard in Encino,  
24 CA. Plaintiff Lewis relied upon the statement that the product was "Made With All Natural Corn" in  
25 deciding to purchase the Product. Had Plaintiff known at the time that the Product was not, in fact,  
26 made with "All Natural Corn", but instead, made with GMOs, she would not have purchased the  
27 product

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1 16. Defendant General Mills is a Delaware corporation with its principal place of  
2 business in Minneapolis, Minnesota. It markets and distributes Kix.

3 **SUBSTANTIVE ALLEGATIONS**

4 17. GMOs have created controversy around the world due to concerns about food safety,  
5 the effect on natural ecosystems, gene flow into non-GM crops, and other issues. One consumer  
6 response has been to purchase products represented as "natural" rather than food products that are  
7 derived from GMOs.

8 18. A product that is derived from GMOs is unnatural by definition. Monsanto Company  
9 defines GMO on its website as organisms with their "genetic makeup altered to exhibit traits that  
10 are not naturally theirs. In general, genes are taken (copied) from one organism that shows a  
11 desired trait and transferred into the genetic code of another organism." See  
12 <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited October 28, 2011)  
13 (emphasis added).

14 19. Furthermore, the World Health Organization defines GMOs as "organisms in which  
15 the genetic material (DNA) has been altered in a way that does not occur naturally... It allows  
16 selected individual genes to be transferred from one organism into another, also between non-related  
17 species." See <http://www.who.int/foodsafety/publications/biotech/20questions/en/> (last visited  
18 October 28, 2011) (emphasis added).

19 20. Based on the definitions above and the public understanding, an important  
20 characteristic of a product derived from GMOs is that it is unnatural.

21 21. Defendant has engaged in a widespread marketing and advertising campaign to  
22 portray its Products as being "made with All Natural Corn" or "made with All Natural Corn &  
23 Honey."

24 22. Defendant engaged in this misleading and deceptive campaign to charge a  
25 premium and take away market share from other similar products. A recent study compared the  
26 prices of Original Kix Crispy Corn Puffs and an organic alternative, Nature's Path unsweetened  
27 organic corn puffs. The Kix cereal was 36% more expensive per ounce than the Nature's Path  
28 cereal. Cornucopia Institute, *Cereal Crimes: How "Natural" Claims Deceive Consumers and*

1 *Undermine the Organic Label – A Look Down the Cereal and Granola Aisle* (2011), available at  
2 <http://www.cornucopia.org/2011/10/natural-vs-organic-cereal/>.

3       23. Defendant sells two types of Kix cereal under the General Mills label that are widely  
4 consumed by both children and adults. Original Kix Crispy Corn Puffs is sold with a label on the  
5 front of the box that states prominently "made with All Natural Corn." The Original Kix Crispy  
6 Corn Puffs cereal box displays the "made with All Natural Corn" label in a bright green color. The  
7 box, by virtue of the combination of this label with the phrase "Kid Tested, Mother Approved®" and  
8 the image of the cereal made in the shape of corn, is designed to evoke wholesomeness and  
9 healthiness. Similarly, Honey Kix Crispy Corn Puffs is sold with a label on the front of the box that  
10 states prominently "made with All Natural Corn & Honey." The Honey Kix Crispy Corn Puffs  
11 cereal box displays the "made with All Natural Corn & Honey" label in bright white and yellow.  
12 The box, by virtue of the combination of this label with the phrase "Kid Tested, Mother  
13 Approved®", is designed to evoke wholesomeness and health.

14       24. Defendant also advertises Kix as being "made with All Natural Corn" or "made with  
15 All Natural Corn & Honey" on its website and in print. For example, the Kix website describes its  
16 cereal as follows: (1) "Original Kix stays true to the 70-year-old recipe of wholesome grains like all-  
17 natural whole grain corn"; (2) "Honey Kix contains the wholesome goodness of Original Kix with a  
18 touch of all-natural honey straight from the hive."

19       25. In September 2010, General Mills issued a press release that claimed the following:  
20       With the same great taste kids have loved for more than 70  
21       years, Kix introduces a new look for Original Kix and Honey  
22       Kix. **Now with only eight ingredients – each of them all-**  
23       **natural** – the "Kid-Tested Mother-Approved®" cereal has no  
24       artificial colors, no artificial flavors, or no artificial  
25       preservatives. Kix has whole grain corn and is an excellent  
26       source of iron and a good source of calcium, fiber, and  
27       vitamins C and D.

28

1 General Mills, News release, *Survey reveals cereal tops the list of preferred ways to serve a*  
2 *quick and nutritious breakfast* (2010), available at  
3 <http://www.generalmills.com/en/Media/NewsReleases/Library/2010/September/Kix.aspx>  
4 (emphasis added).

5 26. Furthermore, Defendant targets children with various promotional gimmicks. For  
6 instance, the phrase "Kid-Tested, Mother Approved®" appears prominently on the packaging. The  
7 phrase "great Kix taste = happy kids" also appears on the packaging. The Box Tops for Education®  
8 promotion is described in the following manner:

9 We know that a good education for your kids is just as important to  
10 you as good nutrition. That's why KIX is proud to support Box Tops  
11 for Education®. Visit [boxtops4education.com](http://boxtops4education.com) to learn how you can  
12 use box tops to earn money for your kids' schools, and help support  
13 all the great local programs that nurture eager young minds.

14 27. Finally, the packaging includes a "Message to Moms" accompanied by a cartoon  
15 child's face, which says:

16 Since we made our first batch of crispy corn puffs in 1937, KIX® has  
17 been dedicated to helping kids get a bright start to their day. Our  
18 promise is simple: we'll always give you a cereal that provides good  
19 nutrition your kids need and great taste your kids love.

20 28. Supporting the misleading and deceptive nature of the Defendant's claims about Kix,  
21 a study conducted by the Rudd Center for Food Policy and Obesity at Yale University found that  
22 specific nutrition-related health claims on cereal boxes result in parents believing those products to  
23 be healthier than other children's cereals. Such claims also lead to greater willingness in parents to  
24 buy those cereals for their children. See <http://opac.yale.edu/news/article.aspx?id=8782> (last visited  
25 October 4, 2011).

26 29. As stated herein, such statements and the wide-spread marketing campaign portraying  
27 the Products as being "made with All Natural Corn" or "made with All Natural Corn & Honey" are  
28 misleading and deceptive because the Products are derived from unnatural GMOs.



- 1 c. Whether Defendant participated in and pursued the common course  
2 of conduct complained of herein;
- 3 d. Whether Defendant's labeling, marketing, advertising, and/or  
4 selling of its Products as being "made with All Natural Corn" or  
5 "made with All Natural Corn & Honey" constitutes an unfair or  
6 deceptive consumer sales practice; and
- 7 e. Whether Defendant was unjustly enriched.

8 34. Plaintiff's claims are typical of those of the Class because Plaintiff, like all members  
9 of the Class, purchased Defendant's Products bearing the "made with All Natural Corn" or "made  
10 with All Natural Corn & Honey" label at a premium price in a typical consumer setting and  
11 sustained damages from Defendant's wrongful conduct.

12 35. Plaintiff will fairly and adequately protect the interests of the Class and has retained  
13 counsel that is experienced in litigating complex class actions. Plaintiff has no interests which  
14 conflict with those of the Class.

15 36. A class action is superior to other available methods for the fair and efficient  
16 adjudication of this controversy.

17 37. The prerequisites to maintaining a class action for injunctive or equitable relief are  
18 met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby  
19 making appropriate final injunctive or equitable relief with respect to the Class as a whole.

20 38. The prosecution of separate actions by members of the Class would create a risk of  
21 establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For  
22 example, one court might enjoin Defendant from performing the challenged acts, whereas another  
23 might not. Additionally, individual actions may be dispositive of the interests of the Class even  
24 though certain Class members are not parties to such actions.

25 39. Defendant's conduct is generally applicable to the Class as a whole and Plaintiff  
26 seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's  
27 systematic policies and practices make declaratory relief with respect to the Class as a whole  
28 appropriate.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 (California's Business and Professions Code § 17200 *et seq.* -

4 **Unlawful Business Acts and Practices)**

5 40. Plaintiff repeats each and every allegation contained in the paragraphs above and  
6 incorporates such allegations by reference herein.

7 41. Defendant designed the false, misleading, and deceptive "made with All Natural  
8 Corn" label and marketing materials with intent to sell, distribute, and increase the consumption of  
9 its Products.

10 42. Defendant designed the false, misleading, and deceptive "made with All Natural Corn  
11 & Honey" label and marketing materials with intent to sell, distribute, and increase the consumption  
12 of its Products.

13 43. Defendant's violations constitute unlawful business acts and practices, which caused  
14 Plaintiff and Class members to suffer pecuniary loss. Specifically, Defendant's false, deceptive, and  
15 misleading "made with All Natural Corn" label and "made with All Natural Corn & Honey" label  
16 caused consumers to purchase Defendant's Products and to pay a premium for those Products,  
17 believing they were not made using genetically modified organisms and that, therefore, the Products  
18 were superior to other cereals when, in fact, Defendant's Products were made with GMOs and were  
19 not superior to other cereals on that basis.

20 44. In this regard, Defendant's manufacturing, marketing, advertising, packaging,  
21 labeling, distributing, and selling of the Products violate California's Business and Professions Code  
22 § 17200 *et seq.* by virtue of violating the Consumers Legal Remedy Act, California Civil Code  
23 § 1750 *et seq.* ("CLRA").

24 45. The business acts and practices alleged above are unlawful under California's  
25 Business and Professions Code § 17200 also by virtue of violating § 17500 *et seq.*, which forbids  
26 untrue advertising and misleading advertising.

27 46. As a result of the business acts and practices described above, Plaintiff and the Class,  
28 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future

1 conduct on the part of the Defendant and such other orders and judgments which may be necessary  
2 to disgorge Defendant's ill-gotten gains and to restore to any person in interest any money, such as  
3 the approximately 36% premium, paid for the Products as a result of the wrongful conduct of  
4 Defendant.

5 47. The above-described unlawful business acts and practices of Defendant present a  
6 threat and reasonable likelihood of deception to Plaintiff and members of the Class in that Defendant  
7 has systematically perpetrated and continues to perpetrate such acts or practices upon members of  
8 the Class by means of misleading manufacturing, marketing, advertising, packaging, labeling,  
9 distributing, and selling of its Products.

10 48. THEREFORE, Plaintiff prays for relief as set forth below.

11 **SECOND CAUSE OF ACTION**

12 (California's Business and Professions Code § 17200 *et seq.* -

13 Unfair Business Acts and Practices)

14 49. Plaintiff repeats each and every allegation contained in the paragraphs above and  
15 incorporates such allegations by reference herein.

16 50. Such acts of Defendant, as described above, constitute unfair business acts and  
17 practices.

18 51. Plaintiff and other members of the Class who purchased Defendant's Products  
19 suffered a substantial injury by virtue of buying a product they would not have purchased absent  
20 Defendant's unfair marketing, advertising, packaging, and labeling or by paying for the unfairly  
21 marketed, advertised, packaged, and labeled Products.

22 52. There is no benefit to consumers or competition from deceptively marketing,  
23 advertising, packaging, and labeling cereal. Indeed, the harm to consumers and competition is  
24 substantial.

25 53. Plaintiff and other members of the Class who purchased Defendant's Products had no  
26 way of reasonably knowing that the Product they bought was not as marketed, advertised, packaged,  
27 and labeled. Thus, they could not have reasonably avoided the injury each of them suffered.

28

1 54. The gravity of the consequences of Defendant's conduct as described above  
2 outweighs any justification, motive, or reason therefor, particularly considering the available legal  
3 alternatives which exist in the marketplace, and is immoral, unethical, unscrupulous, offends  
4 established public policy, or is substantially injurious to Plaintiff and other members of the Class.

5 55. As a result of the business acts and practices described above, Plaintiff and the Class,  
6 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future  
7 conduct on the part of Defendant and such other orders and judgments which may be necessary to  
8 disgorge Defendant's ill-gotten gains and to restore to any person in interest any money, such as the  
9 approximately 36% premium, paid for the Products as a result of the wrongful conduct of Defendant.

10 56. THEREFORE, Plaintiff prays for relief as set forth below.

11 **THIRD CAUSE OF ACTION**

12 **(California's Business and Professions Code § 17200 *et seq.* -**  
13 **Fraudulent Business Acts and Practices)**

14 57. Plaintiff repeats each and every allegation contained in the paragraphs above and  
15 incorporates such allegations by reference herein.

16 58. Such acts of Defendant, as described above, constitute fraudulent business practices  
17 under California's Business and Professions Code § 17200 *et seq.*

18 59. As more fully described above, Defendant's misleading marketing, advertising,  
19 packaging, and labeling of the Products is likely to deceive reasonable consumers. Indeed, Plaintiff  
20 and other members of the Class were unquestionably deceived regarding the characteristics of  
21 Defendant's Products, as Defendant's marketing, advertising, packaging, and labeling of its Products  
22 misrepresents and/or omits the true nature and quality of Defendant's Products. Said acts constitute  
23 fraudulent business acts and practices.

24 60. This fraud and deception caused Plaintiff and members of the Class to purchase more  
25 of Defendant's Products than they would have or to pay more than they would have for the Products  
26 had they know the Products' true nature or quality.

27 61. As a result of the business acts and practices described above, Plaintiff and the Class,  
28 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future

1 conduct on the part of Defendant and such other orders and judgments which may be necessary to  
2 disgorge Defendant's ill-gotten gains and to restore to any person in interest any money, such as the  
3 approximately 36% premium, paid for the Products as a result of the wrongful conduct of Defendant.

4 62. THEREFORE, Plaintiff prays for relief as set forth below.

5 **FOURTH CAUSE OF ACTION**

6 **(California's Business and Professions Code § 17500 et seq. -**

7 **Misleading and Deceptive Advertising)**

8 63. Plaintiff repeats each and every allegation contained in the paragraphs above and  
9 incorporates such allegations by reference herein.

10 64. Plaintiff asserts this cause of action for violations of California's Business and  
11 Professions Code § 17500 et seq. for misleading and deceptive advertising against Defendant.

12 65. At all material times, Defendant engaged in a scheme of offering its Products for sale  
13 to Plaintiff and other members of the Class by way of, *inter alia*, commercial marketing and  
14 advertising, product packaging and labeling, and other promotional materials. These materials  
15 misrepresented and/or omitted the true nature and quality of the Products. Said advertisements and  
16 inducements were made within the State of California and throughout the United States and come  
17 within the definition of advertising as contained in Business and Professions Code § 17500 et seq., in  
18 that such promotional materials were intended as inducements to purchase the Products, are  
19 statements disseminated by the Defendant to Plaintiff and the Class, and were intended to reach  
20 Plaintiff and members of the Class. Defendant knew, or in the exercise of reasonable care should  
21 have known, that these statements were misleading and deceptive.

22 66. In furtherance of said plan and scheme, Defendant has prepared and distributed within  
23 the State of California and throughout the United States - via commercial marketing and advertising,  
24 product packaging and labeling, and other promotional materials - statements that misleadingly and  
25 deceptively represent the true nature and quality of Defendant's Products. Consumers, including  
26 Plaintiff, necessarily and reasonably relied on these materials, believing the Products were made  
27 without the use of genetically modified organisms, and were therefore superior to other products,  
28 when in fact the Products were made using genetically modified organisms, and were therefore not

1 superior to other products on that basis. Consumers, including Plaintiff and the Class, were among  
2 the intended targets of such representations.

3 67. The above acts of Defendant, in disseminating said misleading and deceptive  
4 statements to consumers, including Plaintiff and members of the Class, were and are likely to  
5 deceive reasonable consumers, including Plaintiff and other members of the Class, by obfuscating  
6 the true nature and quality of the Products, all in violation of the "misleading prong" of Business and  
7 Professions Code § 17500.

8 68. As a result of the above violations of the "misleading prong" of Business and  
9 Professions Code § 17500 *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiff  
10 and the other members of the Class. Plaintiff and the Class, pursuant to Business and Professions  
11 Code § 17535, are entitled to an order of this Court enjoining such future conduct on the part of  
12 Defendant and such other orders and judgments which may be necessary to disgorge Defendant's ill-  
13 gotten gains and restore to any person in interest any money, such as the approximately 36%  
14 premium, paid for the Products as a result of the wrongful conduct of Defendant.

15 69. THEREFORE, Plaintiff prays for relief as set forth below.

16 **FIFTH CAUSE OF ACTION**

17 (California's Business and Professions Code § 17500 *et seq.* -

18 **Untrue Advertising)**

19 70. Plaintiff repeats each and every allegation contained in the paragraphs above and  
20 incorporates such allegations by reference herein.

21 71. Plaintiff asserts this cause of action for violations of California's Business and  
22 Professions Code § 17500 *et seq.* for untrue advertising against Defendant.

23 72. At all material times, Defendant has engaged in a scheme of offering the Products for  
24 sale to Plaintiff and other members of the Class by way of, *inter alia*, commercial marketing and  
25 advertising, product packaging and labeling, and other promotional materials. These materials  
26 misrepresented and/or omitted the true nature and quality of the Products. Said advertisements and  
27 inducements were made within the State of California and throughout the United States and come  
28 within the definition of advertising as contained in Business and Professions Code § 17500 *et seq.* in

1 that such promotional materials were intended as inducements to purchase the Products, are  
2 statements disseminated by the Defendant to Plaintiff and the Class, and were intended to reach  
3 Plaintiff and members of the Class. Defendant knew, or in the exercise of reasonable care should  
4 have known, that these statements were untrue.

5 73. In furtherance of said plan and scheme, Defendant has prepared and distributed within  
6 the State of California and throughout the United States – via commercial marketing and advertising,  
7 product packaging and labeling, and other promotional materials – statements that falsely advertise  
8 the Products as being “made with All Natural Corn” or “made with All Natural Corn & Honey” and  
9 as therefore being superior to other cereals. Consumers, including Plaintiff and the Class, are among  
10 the intended targets of such representations and would reasonably be deceived by such promotional  
11 materials.

12 74. The above acts of Defendant in disseminating said untrue advertising throughout the  
13 State of California and throughout the United States deceived Plaintiff and the other members of the  
14 Class by obfuscating the nature and quality of Defendant’s Products, all in violation of the “untrue  
15 prong” of Business and Professions Code § 17500.

16 75. As a result of the above violations of the “untrue prong” of Business and Professions  
17 Code § 17500 *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiff and the other  
18 members of the Class. Plaintiff and the Class, pursuant to Business and Professions Code § 17535,  
19 are entitled to an order of this Court enjoining such future conduct on the part of Defendant, and  
20 such other orders and judgments which may be necessary to disgorge Defendant’s ill-gotten gains  
21 and restore to any person in interest any money, such as the approximately 36% premium, paid for  
22 the Products as a result of the wrongful conduct of Defendant.

23 76. THEREFORE, Plaintiff prays for relief as set forth below.

24 **SIXTH CAUSE OF ACTION**

25 (California Consumers Legal Remedies Act – Cal. Civ. Code § 1750 *et seq.*)

26 (Injunctive Relief Only)

27 77. Plaintiff repeats each and every allegation contained in the paragraphs above and  
28 incorporates such allegations by reference herein.

11/15/2011



1 86. Defendant provided Plaintiff and other members of the Class with written express  
2 warranties including, but not limited to, warranties that its Products were "made with All Natural  
3 Corn" or "made with All Natural Corn & Honey," as set forth above.

4 87. Defendant breached these warranties. This breach resulted in damages to Plaintiff  
5 and other members of the Class, who overpaid for the Products, which were not "made with All  
6 Natural Corn" or "made with All Natural Corn & Honey" in that they contained unnatural GMOs  
7 and did not otherwise conform to Defendant's warranties.

8 88. As a proximate result of the breach of warranties by Defendant, Plaintiff and Class  
9 members have suffered damages in an amount to be determined at trial in that, among other things,  
10 they purchased and paid for Products that did not conform to what was promised as promoted,  
11 marketed, advertised, packaged and labeled by Defendant, and they were deprived of the benefit of  
12 their bargain and spent money on Products that did not have any value or had less value than  
13 warranted, or Products that they would not have purchased and used had they known the true facts  
14 about them.

15 89. Therefore, Plaintiff prays for relief as set forth below.

16 **EIGHTH CAUSE OF ACTION**

17 **(Breach of Implied Warranty of Merchantability)**

18 90. Plaintiff realleges and incorporate the above paragraphs of this Class Action  
19 Complaints as if set forth herein.

20 91. Plaintiff and other Class members purchased Defendant's Products, which were  
21 promoted, marketed, advertised, packaged, and labeled as being "made with All Natural Corn" or  
22 "made with All Natural Corn & Honey," as set forth above. Pursuant to these sales, Defendant  
23 impliedly warranted that its Products would be merchantable and fit for the ordinary purposes for  
24 which such goods are used and would conform to the promises or affirmations of fact made in the  
25 Products' promotions, marketing, advertising, packaging, and labels. In doing so, Plaintiff and other  
26 Class members relied on Defendant's representations that the Products had particular characteristics,  
27 as set forth above, and, at or about that time, Defendant sold the Products to Plaintiff and other Class  
28 members. By its representations regarding the reputable nature of the company and related entities,



1 Class members bought the Products from Defendant relying on Defendant's skill and judgment in  
2 furnishing suitable goods as well as its representation that its Products were "made with All Natural  
3 Corn" or "made with All Natural Corn & Honey," as set forth above. However, Defendant's  
4 Products were not "made with All Natural Corn" or "made with All Natural Corn & Honey" in that  
5 they contained GMOs.

6 97. Defendant breached the warranty implied at the time of sale in that Plaintiff and Class  
7 members did not receive Products that were "made with All Natural Corn" or "made with All  
8 Natural Corn & Honey" as represented, and thus the goods were not fit for the purpose as promoted,  
9 marketed, advertised, packaged, labeled, or sold.

10 98. As a result of this breach of warrant by Defendant, Plaintiff and Class members have  
11 suffered damages in an amount to be determined at trial in that, among other things, they purchased  
12 and paid for Products that did not conform to what was promised as promoted, marketed, advertised,  
13 packaged, and labeled by Defendant, and they were deprived of the benefit of their bargain and spent  
14 money on Products that did not have any value or had less value than warranted or products they  
15 would not have purchased and used had they known the true facts about them.

16 99. Therefore, Plaintiff prays for relief as set forth below.

17 **TENTH CAUSE OF ACTION**

18 **(Deceit and/or Misrepresentation)**

19 100. Plaintiff realleges and incorporate the above paragraphs of this Class Action  
20 Complaint as if set forth herein.

21 101. Defendant, through their labeling, advertising, and marketing of the Products, makes  
22 uniform representations and offers regarding the quality of the Products, as described above.  
23 Defendant engaged in, and continues to engage in, such fraudulent, misrepresentative, false, and/or  
24 deceptive acts with full knowledge that such acts were, and are, in fact, misrepresentative, false, or  
25 deceptive.

26 102. The aforementioned misrepresentations, deceptive, and/or false acts and omissions  
27 concern material facts that are essential to the analysis undertaken by Plaintiff, and those similarly  
28 situated, in deciding whether to purchase Defendant's Products.

1 103. Plaintiff, and those similarly situated, would have acted differently had they not been  
2 misled - i.e. they would not have paid money for the Products in the first place.

3 104. Defendant has a duty to correct the misinformation it disseminates through its  
4 advertising of the Products. By not informing Plaintiff, and those similarly situated, Defendant  
5 breached this duty. Defendant also gained financially from, and as a result of, this breach.

6 105. By and through such deceit, misrepresentations, and/or omissions, Defendant  
7 intended to induce Plaintiff, and those similarly situated, to alter their position to their detriment.

8 106. Plaintiff, and those similarly situated, justifiably and reasonably relied on Defendant's  
9 misrepresentations, and, as such, were damaged by Defendant.

10 107. As a direct and proximate result of Defendant's deceit and/or misrepresentations,  
11 Plaintiff, and those similarly situated, have suffered damages in an amount equal to the amount they  
12 paid for Defendant's Products. The exact amount of this difference will be proven at trial.

13 108. Defendant acted with intent to defraud, or with reckless or negligent disregard of the  
14 rights of, Plaintiff and those similarly situated.

15 109. Plaintiff, and those similarly situated, are entitled to punitive damages.

16 110. Therefore, Plaintiff prays for relief as set forth below.

17 **ELEVENTH CAUSE OF ACTION**

18 **(Unjust Enrichment)**

19 111. Plaintiff realleges and incorporate the above paragraphs of this Class Action  
20 Complaint as if set forth herein.

21 112. As a result of Defendant's deceptive, fraudulent, and misleading labeling,  
22 advertising, marketing, and sales of the Products, Defendant was enriched, at the expense of  
23 Plaintiff, and all others similarly situated, through the payment of the purchase price for Defendant's  
24 Products.

25 113. Under the circumstances, it would be against equity and good conscience to permit  
26 Defendant to retain the ill-gotten benefits that it received from Plaintiff, and all others similarly  
27 situated, in light of the fact that the Products purchased by Plaintiff, and all others similarly situated,  
28 were not what Defendant purported them to be. Thus, it would be unjust or inequitable for

1 Defendant to retain the benefit without restitution to Plaintiff, and all others similarly situated, for  
2 the monies paid to Defendant for such Products.

3 114. Therefore, Plaintiff prays for relief as set forth below.

4 **PRAYER FOR RELIEF**

5 THEREFORE, Plaintiff pray for judgment as follows:

- 6 A. Certification of the Class, certifying Plaintiff as representative of the Class, and
- 7 designating her counsel as counsel for the Class;
- 8 B. A declaration that Defendant has committed the violations alleged herein;
- 9 C. For restitution and disgorgement pursuant to, without limitation, California's Business &
- 10 Professions Code §§ 17200 *et seq.* and 17500 *et seq.*;
- 11 D. For declaratory and injunctive relief pursuant to, without limitation, California's Business
- 12 & Professions Code §§ 17200 *et seq.* and 17500 *et seq.*;
- 13 E. For declaratory and injunctive relief only pursuant to California Civil Code § 1780, as
- 14 Plaintiff through this Complaint at this point expressly does not seek any monetary type of relief
- 15 pursuant to the CLRA;
- 16 F. An award of compensatory damages, the amount of which is to be determined at trial;
- 17 G. For punitive damages;
- 18 H. For interest at the legal rate on the foregoing sums;
- 19 I. For costs of suit incurred; and
- 20 J. For such further relief as this Court may deem just and proper.

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**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: October 28, 2011

**REESE RICHMAN LLP**



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