



impacts to the consumer when consumed. *Chlormequat pesticide is banned from use on oats or any other food products grown in the United States and is approved in this country for agricultural commercial use solely on ornamental plants.*

2. Defendant markets the Products as being made with “whole grains,” which it touts all over the packaging as healthy, including through the yellow “Whole Grain Stamp.” Defendant is a member of the Whole Grains Council, an entity that created and issues the stamps, which “helps consumers find whole grain foods and understand their health benefits.”<sup>2</sup> But Defendant’s promotion of the whole grains as healthy is misleading as the whole grain oats used by Defendant introduce the presence (or risk) of chlormequat, a harmful chemical pesticide, into the Products. Yet, Defendant wholly omits from the Products’ packaging that they contain (or risk containing) chlormequat.

3. Reasonable consumers, like Plaintiffs, do not expect that a manufacturer will promise the salutary benefits of “whole grains” when the use of those grains is introducing the presence (or risk) of a harmful chemical into the food. Quaker knows that consumers expect that foods it promotes as healthy will not contain (or risk containing) harmful toxins, contaminants, and chemicals. If such substances are contained (or risk being contained) in the food, reasonable consumers expect that this will be disclosed on the products’ packaging so they have full and fair information to decide for themselves whether to consume the product and at what amount, if any.

4. Consumers trust Quaker. Quaker intentionally positions itself in the market as being one of the most trustworthy companies in the United States so that consumers will accept and view it as such. It then uses that carefully cultivated reputation for being trustworthy to sell

---

<sup>2</sup> <https://wholegrainscouncil.org/> (last visited July 12, 2024).

more products. That is the image Quaker projects with the American icon of the Quaker on every package.

5. Quaker was recently chosen as the number one food and beverage company on *Newsweek*'s list of America's most trustworthy companies.<sup>3</sup> According to *Newsweek*, Quaker "credits its lasting success to what it calls the 'the Quaker standard' that begins with the grain."<sup>4</sup> Quaker also stated that it "'has been a trusted household staple for nearly 150 years, and we take pride in being the go-to source for the goodness that comes from the mighty oat. Since 1877, we have been making delicious and nutritious oats people know, trust and love with unmatched oat expertise and unwavering commitment to quality.'"<sup>5</sup>

6. But the whole grain oats are misrepresented by Quaker as healthy on the packaging of the Products when, in fact, their use is introducing the presence (or risk) of the dangerous pesticide chlormequat, and this is nowhere disclosed on the packaging.

7. Plaintiffs bring this class action against Defendant for unfair and deceptive business practices, as well as for unjust enrichment, due to the presence (or risk) of dangerous chlormequat in the Products, including those that Plaintiffs purchased. Plaintiffs seek injunctive and monetary relief on behalf of the proposed Class, including (i) corrective advertising disclosing that the "whole grains" in the Products contain (or risk containing) chlormequat; (ii) requiring full disclosure of such substance on Defendant's packaging; (iii) requiring testing for such substance and disclosure of such testing; and (iii) restoring monies to Plaintiffs and the members of the proposed Class(es) as defined below.

---

<sup>3</sup> <https://www.newsweek.com/these-are-9-most-trustworthy-food-beverage-companies-us-1885581> (last visited July 12, 2024).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

## II. PARTIES

### *Plaintiffs*

8. Plaintiff Daniel Tepper is a citizen and resident of the State of New York. During the applicable statute of limitations period, Plaintiff Tepper purchased in New York several of the Products, including the Quaker Instant Oatmeal Flavor Variety that included the Maple & Brown Sugar, which he purchased on numerous occasions and paid up to the regular retail price; and the Quaker Oats Oatmeal Squares Brown Sugar, which he purchased on numerous occasions and paid up to the regular retail price, including on January 28, 2022 at Costco in Port Chester, New York for \$7.99, that were manufactured and produced by Defendant that contained (or were at risk of containing) undisclosed dangerous chlormequat. Plaintiff Tepper relied on the packaging in making his purchases, including that the Products were healthy because they were made with “whole grain,” which was misleading in light of the fact that the whole grain oats in the Products contained (or risked containing) chlormequat, and the omission that the Products contained (or risked containing) chlormequat. Plaintiff Tepper was unaware that the Products contained (or risked containing) chlormequat and would not have purchased the Products or would have paid less than he did if that were fully disclosed. As a result of Defendant’s deceptive conduct as alleged herein, Plaintiff Tepper was injured when he paid the purchase price and/or a price premium for the Products that did not deliver what Defendant promised. Plaintiff Tepper paid the above sum in reliance that the packaging of the Products was accurate and that there were no material misrepresentations or omissions. Plaintiff Tepper would purchase the Products again if Defendant eliminated the chlormequat from the Products. Damages can be calculated through expert testimony at trial.

9. Plaintiff Lilian Fitzgerald is a citizen and resident of the State of New York. During the applicable statute of limitations period, Plaintiff Fitzgerald purchased the Quaker Instant Oatmeal Maple & Brown Sugar in New York on numerous occasions and paid up to the regular retail price, that was manufactured and produced by Defendant that contained (or was at risk of containing) undisclosed dangerous chlormequat. Plaintiff Fitzgerald relied on the packaging in making her purchase, including that the Product was healthy because it was made with “whole grain,” which was misleading in light of the fact that the whole grain oats in the Products contained (or risked containing) chlormequat, and the omission that the Products contained (or risked containing) chlormequat. Plaintiff Fitzgerald was unaware that the Product contained (or risked containing) chlormequat and would not have purchased the Product or would have paid less than she did if that were fully disclosed. As a result of Defendant’s deceptive conduct as alleged herein, Plaintiff Fitzgerald was injured when she paid the purchase price and/or a price premium for the Product that did not deliver what Defendant promised. Plaintiff Fitzgerald paid the above sum in reliance that the packaging of the Product was accurate and that there were no material misrepresentations or omissions. Plaintiff Fitzgerald would purchase the Product again if Defendant eliminated the chlormequat from the Products. Damages can be calculated through expert testimony at trial.

10. Plaintiff Gwendolyn Crockran is a citizen and resident of the State of Illinois. During the applicable statute of limitations period, Plaintiff Crockran purchased in Illinois several of the Products, including the Quaker Instant Oatmeal Maple & Brown Sugar, which she purchased on numerous occasions and paid up to the regular retail price; the Quaker Chewy Dark Chocolate Chunk Granola Bars, which she purchased on numerous occasions and paid up to the regular retail price; and the Quaker Old Fashioned Oats, which she purchased on numerous occasions and paid

up to the regular retail price, including on August 8, 2021 at Walmart in Niles, Illinois for \$3.98, that were manufactured and produced by Defendant that contained (or were at risk of containing) undisclosed dangerous chlormequat. Plaintiff Crockran relied on the packaging in making her purchases, including that the Products were healthy because they were made with “whole grain,” which was misleading in light of the fact that the whole grain oats in the Products contained (or risked containing) chlormequat, and the omission that the Products contained (or risked containing) chlormequat. Plaintiff Crockran was unaware that the Products contained (or risked containing) chlormequat and would not have purchased the Products or would have paid less than she did if that were fully disclosed. As a result of Defendant’s deceptive conduct as alleged herein, Plaintiff Crockran was injured when she paid the purchase price and/or a price premium for the Products that did not deliver what Defendant promised. Plaintiff Crockran paid the above sum in reliance that the packaging of the Products was accurate and that there were no material misrepresentations or omissions. Plaintiff Crockran would purchase the Products again if Defendant eliminated the chlormequat from the Products. Damages can be calculated through expert testimony at trial.

***Defendant***

11. Defendant Quaker Oats is an Illinois corporation with a principal place of business in Chicago, Illinois.

12. Defendant packages, labels, markets, advertises, formulates, manufactures, distributes, and sells the Products throughout the United States, including Illinois, New York, California, Michigan, Missouri, New Jersey, Washington, and Minnesota.

13. Defendant’s website is <https://www.quakeroats.com/>.

### III. JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1332(d)(2), because at least one Class Member is of diverse state citizenship from Defendant, there are more than 100 Class members, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

15. The Northern District of Illinois has personal jurisdiction over Defendant as Defendant conducts substantial business in this District and has its principal place of business in this District.

16. Venue is proper in this District under 28 U.S.C. §1391(b) because Defendant has its principal place of business in this District and because a substantial part of the events giving rise to the conduct alleged in this Complaint occurred in, were directed to, and emanated from this District.

### IV. DETAILED ALLEGATIONS

#### The EWG Peer-Reviewed Study, Other Studies, and the Dangers of Chlormequat

17. Chlormequat is a plant growth regulator pesticide used on grain crops that stops plants from bending over.

18. A recent peer-reviewed Study by the Environmental Working Group (“EWG”), published on or about February 15, 2024, in the Journal of Exposure & Environmental Epidemiology, titled “A Pilot Study of Chlormequat in Food and Urine from Adults in the United States from 2017 to 2023,” showed the presence of chlormequat in certain oat-based foods sold in the United States, including the Products.<sup>6</sup>

---

<sup>6</sup> Temkin, A.M., Evans, S., Spyropoulos, D.D. *et al.* A pilot study of chlormequat in food and urine from adults in the United States from 2017 to 2023. *J Expo Sci Environ Epidemiol* 34, 317–321

19. For example, the Study found the following amounts of chlormequat, measured in parts per billion (“ppb”), in the Products<sup>7</sup>:

- Quaker Old Fashioned Oats: 291 ppb (June 2022); 209 ppb (May 2023);
- Quaker Instant Oatmeal Maple & Brown Sugar: 170 ppb (August 2022); 112 ppb (May 2023);
- Quaker Oatmeal Squares Honey Nut: 160 ppb (June 2022); 189 ppb (May 2023);
- Quaker Oatmeal Squares Brown Sugar: 90 ppb (August 2022); 199 ppb (May 2023);
- Quaker Simply Granola Oats, Honey & Almond: 70 ppb (August 2022); 69 ppb (May 2023); and
- Quaker Chewy Dark Chocolate Chunk Granola Bars: 80 ppb (August 2022); 60 ppb (May 2023).<sup>8</sup>

---

(2024). <https://doi.org/10.1038/s41370-024-00643-4>, also available at [https://www.nature.com/articles/s41370-024-00643-4?utm\\_medium=affiliate&utm\\_source=commission\\_junction&utm\\_campaign=CONR\\_PF018\\_ECOM\\_GL\\_PHSS\\_ALWYS\\_DEEPLINK&utm\\_content=textlink&utm\\_term=PID100093539&CJEVENT=6e2ac7fad4d611ee836e69fe0a82b824](https://www.nature.com/articles/s41370-024-00643-4?utm_medium=affiliate&utm_source=commission_junction&utm_campaign=CONR_PF018_ECOM_GL_PHSS_ALWYS_DEEPLINK&utm_content=textlink&utm_term=PID100093539&CJEVENT=6e2ac7fad4d611ee836e69fe0a82b824) (last visited July 12, 2024) (hereinafter cited as “Study”).

<sup>7</sup> *Id.*, Table S-2.

<sup>8</sup> Although Plaintiffs had bought the indicated Products on numerous occasions during the relevant statute of limitations, *see supra*, Plaintiffs’ counsel tested the sole Product that any of the Plaintiffs still possessed (the Quaker Instant Oatmeal Maple & Brown Sugar, in Plaintiff Tepper’s possession). That testing showed the Product contained approximately 4 ppb of chlormequat. Plaintiffs’ counsel also purchased and tested the Quaker Instant Oatmeal Maple & Brown Sugar and Quaker Oats Old Fashioned Oats. That testing showed those Products contained approximately 44.9 ppb and 39 ppb, respectively, of chlormequat. These results, along with the testing performed on two separate occasions (2022 and 2023) by EWG included in its peer-reviewed Study, all indicate the presence of chlormequat in the Products. Certain of the Products were recalled by Quaker in December 2023 and January 2024 due to possible salmonella, including certain batches of the Quaker Chewy Dark Chocolate Chunk Granola Bars; Quaker Simply Granola Oats, Honey & Almond; Quaker Oatmeal Squares Brown Sugar; and Quaker Oatmeal Squares Honey Nut. *See* <https://contact.pepsico.com/quaker/article/voluntary-quaker-recall> (last



20. The Study also examined urine levels of chlormequat in humans in the United States for samples collected in 2017, 2018-2022, and 2023. While chlormequat was found in lower concentrations in 2017 through 2022, there was a significant increase in samples from 2023. The Study also found chlormequat in 77 of 96, or 80%, of all the urine samples.<sup>9</sup> Coupled with the findings discussed above of chlormequat in oat-based foods, this “rais[ed] concerns about current exposure levels.”<sup>10</sup>

21. Disturbingly, according to EWG, “the chemical is linked to reproductive and developmental problems in animal studies,” which suggest “similar harm to humans.”<sup>11</sup> According to EWG, “[t]he ubiquity of this little-studied pesticide in people raises alarm bells about how it could potentially cause harm without anyone knowing they’ve consumed it.”<sup>12</sup>

22. Numerous studies have demonstrated the dangers of chlormequat with regard to reproduction, growth and development. For example, exposure to chlormequat chloride has been found to negatively impact embryonic growth and growth hormones in rats.<sup>13</sup> Specifically, the 2020 study found that when pregnant rats were exposed to chlormequat, it elevated growth

---

visited July 12, 2024); [https://contact.pepsico.com/files/quaker/documents/1706650879/Full%20Quaker%20\(Only\)%20Recall%20List%20\[January%2030%20at%203.30%20P.M.\].pdf](https://contact.pepsico.com/files/quaker/documents/1706650879/Full%20Quaker%20(Only)%20Recall%20List%20[January%2030%20at%203.30%20P.M.].pdf) (last visited July 12, 2024). As such, certain of the Products have not been widely available for purchase since then.

<sup>9</sup> Study, *supra* n.6 (Results).

<sup>10</sup> Study, *supra* n.6 (Abstract).

<sup>11</sup> <https://www.ewg.org/news-insights/news-release/2024/02/new-peer-reviewed-ewg-study-finds-little-known-toxic-crop> (last visited July 12, 2024); *see also* <https://www.ewg.org/research/ewg-investigation-dangerous-agricultural-chemical-chlormequat-found-popular-oat-based#:~:text=This%20level%20%E2%80%93%20EWG's%20health%20benchmark,on%20a%20typical%20serving%20size> (studies cited therein) (last visited July 12, 2024).

<sup>12</sup> <https://www.ewg.org/news-insights/news-release/2024/02/new-peer-reviewed-ewg-study-finds-little-known-toxic-crop> (last visited July 12, 2024).

<sup>13</sup> Xiagedeer B, Hou X, Zhang Q, Hu H, Kang C, Xiao Q, Hao W. Maternal chlormequat chloride exposure disrupts embryonic growth and produces postnatal adverse effects. *Toxicology*. 2020 Sep. Epub 2020 Jul 2. <https://pubmed.ncbi.nlm.nih.gov/32622971/> (last visited July 12, 2024).

hormone levels in the embryos and harmed the health of the babies after birth.<sup>14</sup> Another study found the size of femurs and tibias, as well as bone mineral density, were significantly decreased in pubertal rats that consumed chlormequat chloride.<sup>15</sup> This sheds a jarring light on the effects chlormequat has on reproduction. What's more, researchers have concluded that the ingestion of chlormequat may lead to skeletal development damage in rats.<sup>16</sup> A more recent study on rats found that exposure may restrain the onset of puberty in the fetus of pregnant females and impair reproductive functions in males.<sup>17</sup> The results of these tests raise obvious safety concerns for humans.

23. Chlormequat is banned from use on oats or any other food products grown in the United States and is approved in this country for agricultural commercial use solely on ornamental plants.<sup>18</sup> While, since 2018, the U.S. Environmental Protection Agency ("EPA") has allowed *imports* of oats and oat-based foods containing a *limited quantity* of chlormequat,<sup>19</sup> Quaker does not disclose on the packaging from where it obtains the oats it uses in the Products or whether it

---

<sup>14</sup> *Id.*

<sup>15</sup> Huang D, Wu S, Hou X, Jia L, Meng Q, Chu H, Jiang J, Shang L, Hao W. The skeletal developmental toxicity of chlormequat chloride and its underlying mechanisms. *Toxicology*. 2017 Apr 15. Epub 2017 Feb 16. <https://pubmed.ncbi.nlm.nih.gov/28214531/> (last visited July 12, 2024).

<sup>16</sup> *Id.*

<sup>17</sup> Xiao Q, Hou X, Kang C, Xiagedeer B, Hu H, Meng Q, Jiang J, Hao W. Effects of prenatal chlorocholine chloride exposure on pubertal development and reproduction of male offspring in rats. *Toxicol Lett*. 2021 Oct 15. Epub 2021 Aug 16. <https://pubmed.ncbi.nlm.nih.gov/34411681/>. *see also* Hou X, Huang D, Meng Q, Zhang Q, Jia L, Wang S, Cheng Z, Wu S, Shang L, Jiang J, Hao W. Pubertal chlorocholine chloride exposure inhibits testicular testosterone synthesis by down-regulating steroidogenic enzymes in adult rats. *Toxicol Lett*. 2018 May 15. Epub 2018 Feb 12. <https://pubmed.ncbi.nlm.nih.gov/29447956/> (last visited July 12, 2024).

<sup>18</sup> *See* 40 C.F.R. § 180.698 n.2; *see also* Study, *supra* n.6 (chlormequat "currently only allowed for use on ornamental plants in the U.S") (Introduction).

<sup>19</sup> *See* 40 C.F.R. § 180.698.

tests the Products to determine the amount of chlormequat in them (from imported or domestic oats).

24. Good manufacturing practices do not require the use of chlormequat in processing and packaging of these Products. Certain oat-based organic products that were tested in May 2023 by EWG did not contain detectable levels of chlormequat, including 365 Whole Foods Market Organic Chocolate Chip Chewy Granola snack bar, 365 Whole Foods Market Organic French Vanilla Granola, 365 Whole Foods Market Organic Old Fashioned Rolled Oats, Simple Truth Organic Instant Oatmeal Maple & Brown Sugar, Simple Truth Organic Oats & Honey Granola Clusters, and even Quaker Oats' own Instant Oatmeal Organic Maple & Brown Sugar.<sup>20</sup>

25. Consumers lack the scientific knowledge necessary to determine whether the Products do in fact contain (or risk containing) chlormequat, or to ascertain the true nature of the quality of the Products. Reasonable consumers therefore must and do rely on Defendant to be transparent and properly disclose on the packaging all material information regarding the Products and their safety and not to misrepresent the nature and qualities of the Products.

26. Yet, the main thrust of Defendant's marketing message to promote the Products on the packaging is that they are made from healthy "whole grains" when in fact those whole grains introduce the presence (or risk) of a dangerous pesticide into the Products. As such, the "whole grains" marketing message is a deceptive half-truth at best because it is misleading and deceptive to tout the healthiness of whole grains when they are introducing the presence (or risk) of chlormequat into the Products. Moreover, the Products' packaging fails to disclose the inclusion (or risk) of chlormequat.

---

<sup>20</sup> See Study, *supra* n.6, Table S-2.

The “Whole Grain” Material Misrepresentation on the Packaging of the Products

27. Each of the Products contains a statement on the packaging that the Product is made with “whole grains.” *See* Exhibit A. That statement is accompanied by language that, while somewhat different on each of the packages, conveys the overall impression that the whole grains are healthy. For example, as shown on Exhibit A:

◦ the Old Fashioned Oats cylindrical packages say on the front, “100% Whole Grain Oats” and “Lasting energy from 100% whole grain oats.” *Id.* at 13. The packages say on the back/side, “100% whole grain oats support a heart-healthy lifestyle+ with beta-glucan, a soluble fiber ... Quaker only mills oats that meet strict quality standards to help you get the best start to your day.” *Id.* at 15. The packages further say on the back/side, “Made with whole grains to provide a good source of fiber, and energy to help keep you going,” *id.*, and “Diets rich in whole grain foods and other plant foods and low in saturated fat and cholesterol may help reduce the risk of heart disease.” *Id.* at 17.

◦ the Instant Oatmeal Maple & Brown Sugar packages (and the variety packages containing the Maple & Brown Sugar flavor) say on the front: “100% Whole Grain Oats” and “Heart Healthy [in a red heart]” and “Diets rich in whole grains foods and other plant foods and low in saturated fat and cholesterol may help reduce the risk of heart disease.” *Id.* at 10. On the back, the packages say, “100% Whole Grains,” “Heart Healthy Diets rich in whole grain foods and other plant foods and low in saturated fat and cholesterol may help reduce the risk of heart disease.” *Id.* at 12.

◦ the Oatmeal Squares Brown Sugar packages say on the front: “Heart Healthy [in a red heart] 100% Whole Grains” and “Diets rich in whole grains foods and other plant foods and low in saturated fat and cholesterol may help reduce the risk of heart disease.” *Id.* at 4. On the back, the packages say: “They’re made with whole grains+...” and the + says, “Made with 46 grams of whole grains per serving which provide a good source of fiber, and energy to keep you going.” *Id.* at 6. The back of the packages also say again: “Diets rich in whole grain foods and other plant foods and low in saturated fat and cholesterol may help reduce the risk of heart disease.” *Id.*

◦ the Oatmeal Squares Honey Nut packages say on the front: “Heart Healthy [in a red heart] 100% Whole Grains” and “Diets rich in whole grains foods and other plant foods and low in saturated fat and cholesterol may help reduce the risk of heart disease.” *Id.* at 7. On the back, the packages say: “They’re made with whole grains+...” and the + says, “Made with whole grains which provide a good source of fiber, and energy to keep you going.” *Id.* at 9. The back of the packages also say again: “Diets rich in whole grain foods and other plant foods and low in saturated fat and cholesterol may help reduce the risk of heart disease.” *Id.*

◦ the Simply Granola Oats Honey & Almond packages say: “42G of Whole Grains Heart Healthy [in a red heart]” and “Diets rich in whole grain foods and other plant foods and low in saturated fat and cholesterol may help reduce the risk of heart disease.” *Id.* at 18. On the back of the packages, it says: “has ...genuine whole grain oats”; “Whole Grain Oats [with picture

of same]” and “Made with 42g of Whole Grains\* which provide energy to help keep you going.” *Id.* at 20.

° the Quaker Chewy Dark Chocolate Chunk Granola Bars packages say on the front: “Made with 100% Whole Grains & Other Delicious Ingredients.” *Id.* at 1. On the back of the packages, it says, “Made with 10g Whole Grains.” *Id.* at 2.

28. When the words “whole grains” are viewed in context of the whole package, they create the impression that the use of whole grains renders the Products healthy for consumers and that consumers should include as many whole grains as possible in their diets.<sup>21</sup>

29. Each of the Products also prominently displays a yellow stamp that represents that the Product has some percentage of “whole grain” – either 50%+ (the Quaker Chewy Dark Chocolate Chunk Granola Bars) or 100% (all of the other Products) and lists the website for the Whole Grains Council that created and issues the Stamp: WholeGrainsCouncil.org. Quaker is a member of the Whole Grains Council.<sup>22</sup>

30. The 100% Whole Grain Stamp appears as follows:



31. The Whole Grains Council website describes its mission, in pertinent part, as: “The Whole Grains Council helps consumers find whole grain foods and understand their health benefits...”<sup>23</sup> On the “About Us” page of the website, it states that the Whole Grains Council

<sup>21</sup> See Plaintiffs’ Consumer Study, described *infra*, and specifically ¶ 52.

<sup>22</sup> <https://wholegrainscouncil.org/about-us/members-list> (last visited July 12, 2024).

<sup>23</sup> <https://wholegrainscouncil.org/> (last visited July 12, 2024).

“does advocacy work, helping to increase consumption of whole grains for better health and working to increase the supply of whole grain foods.”<sup>24</sup> That webpage further explains the origins of the Whole Grains Council:

In April 2002 a group of concerned millers, manufacturers, scientists and chefs gathered in San Diego at a Whole Grains Summit organized by Oldways Preservation Trust. They decided to band together to promote increased consumption of whole grains, and, jointly with Oldways, developed and are carrying out a campaign to encourage others to join in this important effort.

The first formal meeting of the WGC took place July 15, 2003. At this meeting, participants outlined goals for the fledgling organization, and decided how the important work of the WGC would be funded. Nine industry members stepped forward as sponsors to achieve the following goals:

- To clarify the definition of “whole grain,” document the health benefits of whole grains, and advocate additional whole-grain health research.
- To educate consumers about the benefits of whole grains.
- To help Americans find whole grains, with a packaging symbol, and educate them on cooking whole grains.
- To promote whole grains through a positive message about their benefits, rather than by criticizing refined grains.
- To serve as a conduit between science, industry and consumers.
- To help grain-product companies, retailers and restaurants meet the needs of health-conscious consumers with appealing whole grain products.<sup>25</sup>

32. Under the heading, “Our Accomplishments to Date,” the Whole Grains Council website states, *inter alia*, that since its founding, it has “[m]anaged a continuing campaign to educate the media and the public about the health benefits and delicious tastes of whole grains,” and, importantly, “[l]aunched the Whole Grain Stamp, creating a familiar packaging symbol that helps consumers select and buy whole grain products.”<sup>26</sup>

33. The Whole Grain Stamp page on the website states that “[t]he Whole Grain Stamp features a stylized sheaf of grain on a golden-yellow background with a bold black border.

---

<sup>24</sup> <https://wholegrainscouncil.org/about-us> (last visited July 12, 2024).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

Its eye-catching design makes the Whole Grain Stamp easy to spot on food packages. Busy shoppers welcome this easy shortcut for finding products offering at least a half serving of whole grains.”<sup>27</sup>

34. In an FAQ on the website, in response to the questions: “How do companies qualify to use the Stamp? How do I know I can trust the Stamp?” it states, “A. Companies must be members of the Whole Grains Council, and must file information about each potentially-qualifying product with the Council. We carefully review the product, and approve or deny use of the Stamp. Companies also sign a legal agreement that they will abide by all rules and guidelines of the Stamp program. So you can trust the Stamp to help you find legitimate whole grain products containing at least half a serving of whole grain. If you want more details about how products qualify for the Whole Grain Stamp, it’s all explained on the How to Use the Stamp page of this website.”<sup>28</sup>

35. The Whole Grains Council website also has a page entitled, “Health Studies,” which states, “Every day, more and more studies show the benefits of whole grains. We regularly post new studies here, where you can browse through them at random. Or you can use our filters to hone in on a specific question, such as ‘Does barley reduce the risk of diabetes?’ or ‘What’s the research about whole grains and hypertension?’”<sup>29</sup> Consumers can specifically search for Health Studies on oats.<sup>30</sup>

36. The Whole Grains Council website, under the heading, “It’s Working,” states, “The Whole Grain Stamp is successful and sought by consumers who are trying to improve their health

---

<sup>27</sup> <https://wholegrainscouncil.org/whole-grain-stamp> (last visited July 12, 2024).

<sup>28</sup> <https://wholegrainscouncil.org/whole-grain-stamp/stamp-faq-consumers> (last visited July 12, 2024).

<sup>29</sup> <https://wholegrainscouncil.org/whole-grains-101/health-studies> (last visited July 12, 2024).

<sup>30</sup> [https://wholegrainscouncil.org/whole-grains-101/health-studies/search?keys=&grain%5B%5D=75&items\\_per\\_page=12](https://wholegrainscouncil.org/whole-grains-101/health-studies/search?keys=&grain%5B%5D=75&items_per_page=12) (last visited July 12, 2024).

by eating more whole grains. Evidence for the success of the Whole Grain Stamp as a consumer awareness tool is growing. This page explains the market penetration of the Whole Grain Stamp and details just a few indications of its success.”<sup>31</sup> For example, the page refers to a 2015 Whole Grain Consumer Insight Survey conducted by the Whole Grain Council, and the associated page for consumers to click notes that 79% of consumers “would use the STAMP when deciding whether or not to buy a product.”<sup>32</sup> The page also refers to other consumer surveys, including the Harris Interactive Survey for Uncle Ben’s that “found that the majority of consumers said that seeing the Whole Grain Stamp on a package would make them more likely to buy that food product. This shows that the Stamp is meeting its goal of helping consumers find whole grain products.”<sup>33</sup>

37. The foregoing information on the Whole Grains Council website demonstrates why Quaker is a member of the Council and includes the Whole Grain Stamp on each of the Products: the Stamp fully supports Quaker’s marketing message that the whole grains in the Products render them healthy.

38. But while the packaging of the Products touts the healthiness of the whole grains, it is misleading in light of the fact that the whole grains are introducing into the Products the presence (or risk) of the pesticide chlormequat, material information a consumer would want to know. *See infra* at ¶¶ 41-55 (materiality).

---

<sup>31</sup> <https://wholegrainscouncil.org/whole-grain-stamp/its-working> (last visited July 12, 2024).

<sup>32</sup> [https://wholegrainscouncil.org/sites/default/files/thumbnails/image/wgsurvey\\_ig\\_2015\\_wgsales.jpg](https://wholegrainscouncil.org/sites/default/files/thumbnails/image/wgsurvey_ig_2015_wgsales.jpg) (last visited July 12, 2024).

<sup>33</sup> <https://wholegrainscouncil.org/whole-grain-stamp/its-working> (last visited July 12, 2024).



The Omission of Material Information from the Packaging

39. The Products’ packaging fails to disclose the presence (or risk) of the pesticide chlormequat, material information a consumer would want to know. *See infra* at ¶¶ 41-55 (materiality).

40. Consumers lack the scientific knowledge necessary to determine whether the Products do in fact contain (or have a risk of containing) chlormequat, or to ascertain the true nature of the quality of the Products. Reasonable consumers therefore must and do rely on Defendant to be transparent and properly disclose on the packaging all material information regarding the Products and their safety. Yet the presence (or risk) of the pesticide chlormequat is nowhere disclosed on the Products’ packaging.

Numerous Facts Show The Materiality Of The Misrepresentations and Omissions

41. Defendant’s website confirms that it knows and understands that consumers consider eating nutritious, safe, and healthy foods to be important. In fact, Defendant’s website contains a page entitled, “Health & Nutrition,” where it states that Quaker Oats and Oatmeals are “Delicious and nutritious to help support your healthy lifestyle.”<sup>34</sup>

42. The website also touts the purportedly high standards to which Defendant adheres regarding its oats, stating the following under the heading, “The Quaker Standard”:

“2017 marks 140 years of The Quaker Oats Company. Our success and leadership follows a commitment to a level of excellence we call ‘The Quaker Standard’, a practice that transcends our entire supply chain. This has led us to invest in world-class, industry-leading science, technology and talent. The result—an unsurpassed ability to transform the oat into products that allow people to benefit from their goodness. We work hard to advance the oat to its fullest potential so we can help people reach their fullest

---

<sup>34</sup> <https://www.quakeroats.com/extraordinary-oats/keep-your-heart-healthy> (last visited July 12, 2024).

potential. Of course, we also take pride in making the best darn oatmeal every morning.”<sup>35</sup>

43. The website further assures consumers that “[i]t is clear that scientists have only scratched the surface on the potential of oats. The Quaker Oats Center of Excellence aims to study and discover the benefits of oats through scientific investigations, agricultural science and great-tasting, nutritious innovations.”<sup>36</sup>

44. Moreover, every package of Quaker Oats Products contains the American icon of a Quaker.



45. As explained on the website, in 1877, “Quaker Oats registered as the first trademark for a breakfast cereal. The trademark was registered with the U.S. Patent Office as ‘a figure of a man in 'Quaker garb.’ Both former owners, Henry Seymour and William Heston, claimed to have selected the Quaker name as a symbol of good quality and honest value.”<sup>37</sup> Thereafter, in 1881, “Henry Parsons Crowell buys the bankrupt Quaker Mill in Ravenna, OH, and its most important

---

<sup>35</sup> <https://www.quakeroats.com/oats-do-more/why-oats/our-oat-story> (last visited July 12, 2024).

<sup>36</sup> <https://www.quakeroats.com/about-quaker-oats/quaker-oats-center-of-excellence/explore-the-power-of-the-oat> (last visited July 12, 2024).

<sup>37</sup> <https://www.quakeroats.com/about-quaker-oats/quaker-history> (last visited July 12, 2024).

asset – the brand name Quaker.”<sup>38</sup> Thus, the very essence of the company revolves around the American ideals of “good quality and honest value,”<sup>39</sup> including honesty about the oats Quaker uses.

46. As Quaker recently stated in *Newsweek*, it “credits its lasting success to what it calls ‘the Quaker standard’ that begins with the grain.”<sup>40</sup> Quaker also stated that it “‘has been a trusted household staple for nearly 150 years, and we take pride in being the go-to source for the goodness that comes from the mighty oat. Since 1877, we have been making delicious and nutritious oats people know, trust and love with unmatched oat expertise and unwavering commitment to quality.’”<sup>41</sup> Quaker thus knows that consumers trust and rely on its representations that the whole grain oats are healthy and consider such information important in making a purchasing decision of the Products.

47. Moreover, the Whole Grains Council website also confirms that the whole grains representation is important to consumers.<sup>42</sup> As noted above, that website, under the heading, “It’s Working,” states, “The Whole Grain Stamp is successful and sought by consumers who are trying to improve their health by eating more whole grains. Evidence for the success of the Whole Grain Stamp as a consumer awareness tool is growing. This page explains the market penetration of the Whole Grain Stamp and details just a few indications of its success.”<sup>43</sup> For example, the page refers to a 2015 Whole Grain Consumer Insight Survey conducted by the Whole Grain Council, and the associated page notes that 79% of consumers “would use the STAMP when deciding

---

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> <https://www.newsweek.com/these-are-9-most-trustworthy-food-beverage-companies-us-1885581> (last visited July 12, 2024).

<sup>41</sup> *Id.*

<sup>42</sup> *See supra* ¶¶ 29 to 36.

<sup>43</sup> <https://wholegrainscouncil.org/whole-grain-stamp/its-working> (last visited July 12, 2024).

whether or not to buy a product.”<sup>44</sup> The page also refers to other consumer surveys, including the Harris Interactive Survey for Uncle Ben’s that “found that the majority of consumers said the seeing the Whole Grain Stamp on a package would make them more likely to buy that food product. This shows that the Stamp is meeting its goal of helping consumers find whole grain products.”<sup>45</sup>

48. Despite the marketing of the Products as healthy due to the inclusion of “whole grains,” this marketing message is deceptive because the whole grain oats used by Defendant are introducing the presence (or risk) of toxic chlormequat into the Products. And nowhere does Defendant disclose on the packaging the presence (or risk) of toxic chlormequat in the Products.

49. Following the news of the Study, consumers informed Quaker on its website that they are upset that the Products contain (or risk containing) chlormequat, showing the materiality of the misrepresented and omitted information.

★★★★★ 1 out of 5 stars.

· 2 months ago LinU

**“Something’s off**

Oats don’t seem to cook up the same. So disappointing and frustrating. Purchased huge box from Costco. On top of that, I just learned that “Quaker Oats might contain chlormequat, a pesticide linked to infertility in animals.” I grew up eating these but I guess I will have to give up on Quaker products and find something organic/pesticide-free at a health food store. Feeling betrayed.”

★★★★★ 1 out of 5 stars.

· 2 months ago Greed kills101

**“An excellent source of chlormequat**

Quaker and GM should be ashamed of the poison they release from this product.”

---

44

[https://wholegrainscouncil.org/sites/default/files/thumbnails/image/wgsurvey\\_ig\\_2015\\_wgsales.jpg](https://wholegrainscouncil.org/sites/default/files/thumbnails/image/wgsurvey_ig_2015_wgsales.jpg) (last visited July 12, 2024).

<sup>45</sup> <https://wholegrainscouncil.org/whole-grain-stamp/its-working> (last visited July 12, 2024).

Goorganic – 2 months ago

“on my second box of your oatmeal. Thought I would get healthy for 2024. Now I am worried [sic] that I have consumed poison into my body from your product . grew up on them, trusted them to feed my child, now I am freaked out . How dare ypu [sic] play with our health this way.”<sup>46</sup>

50. Plaintiffs’ counsel conducted a survey (“Plaintiffs’ Consumer Survey”) that further confirms the materiality of the misrepresentations and omissions.

51. Plaintiffs’ Consumer Survey consisted of 401 adults over the age of 18 who had purchased at least one of the Products in the past 12 months in the States at issue. One question asked what the respondents would expect to find in products containing oats, like oatmeal, cereal, or granola bars, based on the labels (each was shown the front and back of one of the Products, as well as the Whole Grain Stamp), and provided a list of 20 possible responses, and only 4 out of 401 (1%) picked the response “Pesticide.”<sup>47</sup>

52. Another question in Plaintiffs’ Consumer Survey was as follows:

“With regards to this specific packaging, does the phrase ‘whole grains’ on the label indicate that the food... (Select all that apply)

...contains grains

...is healthy

...is a non-genetically modified organism (non-GMO) product

...contain the pesticide known as Chlormequat Chloride (“Chlormequat”)

...is fresh

Other (please specify)”

The results show that 278 out of 401 respondents (69.3%) answered “is healthy”; only 25 out of 401 (6.2%) answered “contains the pesticide known as Chlormequat Chloride (‘Chlormequat’).”

---

<sup>46</sup> <https://www.quakeroats.com/products/hot-cereals/old-fashioned-oats> (last visited July 12, 2024).

<sup>47</sup> The 20 possible responses were: Cow’s milk, Whey, Sugar, Vegetable oil, Lactose, Minerals, Soy, Preservatives, Sucrose, Arsenic, Lead, Pesticide, Vitamin C, Calcium, Folic Acid, Salt, Vitameatavegamin, Whole Grain Oats, Iron, None of the above.

53. Another question in Plaintiffs' Consumer Survey asked respondents, "Please select how important, if at all, would it be to your purchasing decision if the products containing oats, like oatmeal, cereal, or granola bars, you purchased contained, or risked containing, even a small amount of the pesticide known as Chlormequat Chloride ("Chlormequat"). The results show that 366 out of 401 (91.2%) answered Important or Very important; only 35 out of 401 (8.7%) answered "Not at all important."

54. Another question in Plaintiffs' Consumer Survey asked, "Do you expect a company to test for the pesticide called Chlormequat?" The results show that 341 out of 401 (85%) answered Yes; only 60 out of 401 (15%) answered No. Another question asked, "In your opinion, should a company disclose Chlormequat testing results to consumers?" 367 out of 401 (91.5%) answered Yes; only 34 out of 401 (8.5%) answered No.

55. These results in Plaintiffs' Consumer Survey confirm that: (1) based on the Products' packaging, the vast majority of consumers do not expect products containing oats, like oatmeal, cereal, or granola bars, to contain pesticide; (2) nearly 70% of consumers believed that the words "whole grains" on the Products' packaging indicated the food was healthy and the vast majority did not believe those words on the packaging indicated the food contained chlormequat; (3) the vast majority of consumers said it would be important or very important to their purchasing decisions when buying products containing oats, like oatmeal, cereal, or granola bars, if the products contained, or risked containing, even a small amount of chlormequat; (4) the vast majority of consumers expect a company to test for chlormequat; and (5) the vast majority of consumers believe that a company should disclose chlormequat testing results.

## **V. CLASS ACTION ALLEGATIONS**

56. Pursuant to the provisions of Rules 23(a), 23(b)(2), 23(b)(3) and/or 23(c)(4) of the Federal Rules of Civil Procedure, Plaintiffs bring this class action on behalf of themselves and a multi-state Class defined as:

All persons who, during the applicable statute of limitations period to the present, purchased the Products in Illinois, New York, California, Michigan, Missouri, New Jersey, Washington and Minnesota for personal and/or household use, and not for resale (the “Multi-State Class”).

57. In the alternative, pursuant to the provisions of Rules 23(a), 23(b)(2), 23(b)(3) and/or 23(c)(4) of the Federal Rules of Civil Procedure, Plaintiff Crockran brings this class action on behalf of herself and an Illinois Class defined as:

All persons who, during the applicable statute of limitations period to the present, purchased the Products in Illinois for personal and/or household use, and not for resale (the “Illinois Class”).

58. In the alternative, pursuant to the provisions of Rules 23(a), 23(b)(2), 23(b)(3) and/or 23(c)(4) of the Federal Rules of Civil Procedure, Plaintiffs Tepper and Fitzgerald bring this class action on behalf of themselves and a New York Class defined as:

All persons who, during the applicable statute of limitations period to the present, purchased the Products in New York for personal and/or household use, and not for resale (the “New York Class”).

59. The Multi-State Class and the Illinois and New York Classes are collectively referred to as the “Class.” The Class excludes Defendant, any parent companies, subsidiaries, and/or affiliates, officers, directors, legal representatives, employees, co-conspirators, all governmental entities, and any judge, justice, or judicial officer presiding over this matter.

60. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because all elements of Fed. R. Civ. P. 23(a), (b)(2)-(3), as well as 23(c)(4), are satisfied. Plaintiffs can

prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in an individual action alleging the same claims.

61. Numerosity: All requirements of Fed. R. Civ. P. 23(a)(1) are satisfied. The members of the Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are thousands of members of the Class, the precise number of Class members is unknown to Plaintiffs. Plaintiffs believe that the identity of Class members is known or knowable by Defendant or can be discerned through reasonable means. Class members may be identified through objective means. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

62. Commonality and Predominance: All requirements of Fed. R. Civ. P. 23(a)(2) and 23(b)(3) are satisfied. This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, but not limited to:

- a. whether Defendant engaged in the deceptive and misleading business practices alleged herein;
- b. whether the misrepresentations and/or omissions by Defendant were likely to deceive a reasonable consumer;
- c. whether Defendant knew or should have known that the Products contain (or risk containing) toxic chlormequat;
- d. whether Defendant made misrepresentations by advertising the Products as healthy because they contained “whole grains” when those whole grain oats introduced the presence (or risk) of toxic chlormequat into the Products;



- e. whether Defendant failed to disclose that the Products contain (or risk containing) toxic chlormequat;
- f. whether Defendant was unjustly enriched by its actions;
- g. whether the misrepresented and/or omitted facts are material to a reasonable consumer;
- h. whether Plaintiffs and members of the Class were injured and suffered damages;
- i. whether Plaintiffs and members of the Class are entitled to declaratory and injunctive relief; and
- j. whether Plaintiffs and members of the Class are entitled to damages and, if so, the measure of such damages.

63. Typicality: All requirements of Fed. R. Civ. P. 23(a)(3) are satisfied. Plaintiffs are members of the Class, having purchased for personal/household use the Products that were manufactured by Defendant. Plaintiffs' claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through Defendant's conduct.

64. Adequacy of Representation: All requirements of Fed. R. Civ. P. 23(a)(4) are satisfied. Plaintiffs are adequate Class representatives because they are each a member of the Class they seek to represent and their interests do not conflict with the interests of the other members of the Class that they seek to represent. Plaintiffs are committed to pursuing this matter for the Class with the Class' collective best interests in mind. Plaintiffs have retained counsel competent and experienced in complex class action litigation of this type, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs and their counsel will fairly and adequately protect the Class' interests.

65. Predominance and Superiority: All requirements of Fed. R. Civ. P. 23(b)(3) are satisfied. As described above, common issues of law or fact predominate over individual issues. Resolution of those common issues in Plaintiffs' individual cases will also resolve them for the Class' claims. In addition, a class action is superior to any other available means for the fair and efficient adjudication of this controversy and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for members of the Class to individually seek redress for Defendant's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

66. Cohesiveness: All requirements of Fed. R. Civ. P. 23(b)(2) are satisfied. Defendant has acted, or refused to act, on grounds generally applicable to the Class, making final declaratory or injunctive relief appropriate.

## **VI. CAUSES OF ACTION**

### **COUNT I**

#### **Violations of Multiple State Consumer Fraud and Deceptive Business Practice Laws (On Behalf of Plaintiffs and the Multi-State Class)**

67. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 66 as though fully set forth herein.

68. Plaintiffs bring this Claim individually and on behalf of the other members of the Multi-State Class defined above.

69. The Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1, *et seq.*, the “ICFA”), prohibits unfair or deceptive acts or practices in connection with any trade or commerce, including, among other things, “the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, ... whether any person has in fact been misled, deceived, or damaged thereby.” The ICFA also prohibits suppliers from representing that their goods are of a particular quality or grade that they are not.

70. Defendant’s misrepresentations and omissions constitute unfair competition or unfair, unconscionable, deceptive, fraudulent, or unlawful acts or business practices in violation of the ICFA and the following State consumer protection statutes, which are materially similar to the ICFA: the New York Consumer Law for Deceptive Acts and Practices, N.Y. Gen. Bus. Law § 349, and New York Consumer Law for False Advertising, N.Y. Gen Bus. Law § 350; the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*; the Michigan Consumer Fraud Act, Mich. Stat. § 445.901 *et seq.*; the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.*; the New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1 *et seq.*; the Washington Consumer Protection Act, Wash. Rev. Code Ann. §§ 19.86.10, *et seq.*; and the Minnesota Prevention of Consumer Fraud Act, Minn. Stat § 325F.68, *et seq.* (collectively with the ICFA, the “State Statutes”).

71. Plaintiffs and the members of the Multi-State Class are consumers within the meaning of the State Statutes as applicable.

72. Defendant’s unfair and deceptive practices took place in the course of trade or commerce.

73. As discussed above, Defendant's Products contain (or risk containing) dangerous chlormequat. Defendant knew or should have known that its Products contained (or risked containing) dangerous chlormequat but made material misrepresentations and/or omissions regarding these facts on its packaging for the Products.

74. Plaintiffs and the Multi-State Class would not have purchased the Products at issue had they known the truth about the presence (or risk) of dangerous chlormequat, or they would have paid less than they did for the Products.

75. Defendant violated the State Statutes by making material representations and/or omissions regarding the presence (or risk) therein of dangerous chlormequat.

76. If Defendant had not sold the Products containing (or risking containing) dangerous chlormequat, Plaintiffs and the members of the Multi-State Class would not have suffered the extent of damages caused by Defendant's sales.

77. Defendant's practices, acts, policies, and course of conduct violate the State Statutes in that, among other things, Defendant knowingly made material misrepresentations and/or omissions on its packaging for the Products to Plaintiffs and the Multi-State Class at the time they purchased the Products, including the fact that Defendant's products contained (or risked containing) dangerous chlormequat.

78. The aforementioned conduct constitutes an unconscionable commercial practice.

79. Defendant had a duty to disclose that the Products contained (or risked containing) dangerous chlormequat because it had exclusive knowledge of material facts not known to Plaintiffs or other consumers and it actively concealed material facts from Plaintiffs and other consumers. Defendant also chose to speak about the whole grains and thus had a duty to tell the

whole truth about the fact that they were introducing into the Products the presence (or risk) of dangerous chlormequat.

80. Defendant intended for Plaintiffs and the members of the Multi-State Class to rely on these deceptive and unfair practices when Plaintiffs and the Multi-State Class purchased the Products.

81. Members of the public, including Plaintiffs and the members of the Multi-State Class, were deceived by Defendant's material misrepresentations and/or failures to disclose.

82. Such acts and practices by Defendant are and were likely to mislead a reasonable consumer purchasing the Products from Defendant. Said acts and practices are material as described hereinabove.

83. Defendant has engaged and continues to engage in deceptive conduct in violation of the State Statutes.

84. As a direct and proximate cause of Defendant's conduct, Plaintiffs and the Multi-State Class members suffered damages as alleged above. Pursuant to the State Statutes, Plaintiffs individually, and members of the Multi-State Class, are entitled to recover costs and reasonable attorneys' fees in this action to the extent available. Plaintiffs also seek declaratory and injunctive relief as described herein.

85. In addition to or in lieu of actual damages, because of the injury, Plaintiffs and the Multi-State Class members seek statutory damages and/or punitive damages for each injury and violation which has occurred, as available under the State Statutes.

**COUNT II**

**In the alternative to Count I, Violations of the ICFA (815 ILCS 505/1, *et seq.*,  
(On behalf of Plaintiff Crockran and the Illinois Class))**

86. Plaintiff Crockran repeats and realleges the allegations contained in paragraphs 1 through 66 as though fully set forth herein.

87. Plaintiff Crockran brings this Claim individually and on behalf of the other members of the Illinois Class defined above.

88. The ICFA prohibits unfair or deceptive acts or practices in connection with any trade or commerce, including, among other things, “the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, ... whether any person has in fact been misled, deceived, or damaged thereby.” The ICFA also prohibits suppliers from representing that their goods are of a particular quality or grade that they are not.

89. In its advertising and sale of goods throughout Illinois, Defendant conducts trade or commerce within the meaning of the ICFA.

90. Plaintiff Crockran and the members of the Illinois Class are consumers within the meaning of the ICFA.

91. Defendant’s misrepresentations and omissions constitute unfair competition or unfair, unconscionable, deceptive, fraudulent, or unlawful acts or business practices in violation of the ICFA.

92. Defendant violated the ICFA by deceptively and misleadingly misrepresenting material facts as described hereinabove and omitting that the Products contained (or risked containing) dangerous chlormequat.

93. Defendant's misrepresentations and omissions, concealment, and other deceptive conduct described herein were directed at the consumer public at-large as they repeatedly occurred in the course of Defendant's business and were capable of deceiving a substantial portion of the consuming public.

94. The facts misrepresented, concealed or not disclosed by Defendant were material facts in that Plaintiff Crockran and the Illinois Class, and other reasonable consumers, would have considered them important in deciding whether to purchase the Products. Had Plaintiff Crockran and members of the Illinois Class known the Products contained (or risked containing) chlormequat, they would not have purchased the Products or paid a premium price.

95. Defendant alone possessed the information that was material to Plaintiff Crockran and the Illinois Class and misrepresented and failed to disclose such material information to consumers.

96. Defendant has engaged and continues to engage in deceptive conduct in violation of the ICFA.

97. Defendant's misrepresentations and omissions and other deceptive conduct caused Plaintiff Crockran and the Illinois Class to suffer injury in the form of actual damages when they purchased the Products that were worth less than the price paid and that they would not have purchased at all had they known the Products contained (or risked containing) dangerous chlormequat.

98. Defendant intended for Plaintiff Crockran and the Illinois Class to rely on its misrepresentations, omissions, concealment, and other deceptive conduct regarding the Products when purchasing the Products, unaware of the undisclosed material facts.

99. Defendant knowingly made material misrepresentations and omissions on its packaging for the Products to Plaintiff Crockran and the Illinois Class at the time they purchased the Products, including the fact that Defendant's products contained (or risked containing) dangerous chlormequat.

100. As a direct and proximate result of these violations, Plaintiff Crockran and the Illinois Class have been harmed, and that harm will continue until Defendant is enjoined from further misrepresenting and omitting the truth about the Products, that they contain (or risk containing) dangerous chlormequat.

101. Pursuant to Section 10a of the ICFA, Plaintiff Crockran, on behalf of herself and the Illinois Class, is entitled to actual damages, compensatory damages, injunctive and declaratory relief, attorneys' fees, and costs.

### **COUNT III**

#### **In the alternative to Count I, Violations of the New York Consumer Law for Deceptive Acts and Practices, N.Y. Gen. Bus. Law § 349 (On behalf of Plaintiffs Tepper and Fitzgerald and the New York Class)**

102. Plaintiffs Tepper and Fitzgerald (the "New York Plaintiffs") repeat and reallege the allegations contained in paragraphs 1 through 66 as though fully set forth herein.

103. The New York Plaintiffs bring this Claim individually and on behalf of the other members of the New York Class defined above.

104. New York General Business Law ("GBL") § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce.

105. In its advertising and sale of goods throughout New York, Defendant conducts business, trade, and commerce within the meaning of GBL § 349.



106. Defendant violated GBL § 349 by making material misrepresentations and omissions on the packaging of the Products regarding the presence (or risk) of dangerous chlormequat in the Products.

107. Defendant's misrepresentations, omissions, concealment, and other deceptive conduct described herein were directed at the consumer public at-large as they repeatedly occurred in the course of Defendant's business and were capable of deceiving a substantial portion of the consuming public.

108. The facts misrepresented, concealed, or not disclosed by Defendant were material facts in that the New York Plaintiffs and the New York Class, and other reasonable consumers, would have considered them important in deciding whether to purchase the Products, as described herein. Had the New York Plaintiffs and members of the New York Class known the Products contained (or risked containing) chlormequat, they would not have purchased the Products or paid a premium price.

109. Defendant alone possessed the information that was material to the New York Plaintiffs and the New York Class and misrepresented and failed to disclose such material information to consumers.

110. Defendant knew or should have known that the Products contained (or risked containing) dangerous chlormequat, a fact nowhere disclosed on the packaging of the Products.

111. Defendant purposely misrepresented, concealed, and did not disclose material facts regarding the presence (or risk) of dangerous chlormequat to consumers, including the New York Plaintiffs and the New York Class.

112. Defendant has engaged and continues to engage in deceptive conduct in violation of GBL § 349.

113. Defendant's misrepresentations and omissions and other deceptive conduct caused the New York Plaintiffs and the New York Class to suffer injury in the form of actual damages when they purchased the Products that were worth less than the price paid and that they would not have purchased at all had they known the Products contained (or risked containing) dangerous chlormequat.

114. Defendant intended for the New York Plaintiffs and the New York Class to rely on its misrepresentations, omissions, concealment, and other deceptive conduct regarding the Products when purchasing the Products, unaware of the undisclosed material facts.

115. Defendant knowingly made material misrepresentations and omissions on its packaging for the Products to the New York Plaintiffs and the New York Class at the time they purchased the Products, including the fact that Defendant's products contained (or risked containing) dangerous chlormequat.

116. As a direct and proximate result of these violations, the New York Plaintiffs and the New York Class have been harmed, and that harm will continue until Defendant is enjoined from further omitting the truth about the Products, that they contain (or risk containing) dangerous chlormequat.

117. Pursuant to GBL § 349(h), the New York Plaintiffs, on behalf of themselves and the New York Class, seek injunctive and declaratory relief, as well as actual damages or \$50 (whichever is greater), and statutory damages of three times the actual damages (up to \$1,000) due to Defendant's willful and/or knowing violations, and attorneys' fees.

**COUNT IV**

**In the alternative to Count I, Violations of the New York Consumer Law for False Advertising, N.Y. Gen Bus. Law § 350  
(On behalf of the New York Plaintiffs and the New York Class)**

118. The New York Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 66 as though fully set forth herein.

119. The New York Plaintiffs bring this Claim individually and on behalf of the other members of the New York Class defined above.

120. New York GBL § 350 prohibits false advertising in the conduct of any business, trade, or commerce.

121. Pursuant to GBL § 350-a.1., false advertising is defined as “advertising, including labeling, of a commodity ... if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations....”

122. In its advertising and sale of goods throughout New York, Defendant conducts business, trade and commerce within the meaning of GBL § 350.

123. Defendant violated GBL § 350 by making material misrepresentations and omissions on the packaging of the Products regarding the presence (or risk) of dangerous chlormequat in the Products.

124. Defendant’s misrepresentations, omissions, concealment, and other deceptive conduct described herein were directed at the consumer public at-large as they repeatedly occurred in the course of Defendant’s business and were capable of deceiving a substantial portion of the consuming public.

125. The facts misrepresented, concealed, or not disclosed by Defendant were material facts in that the New York Plaintiffs and the New York Class, and other reasonable consumers, would have considered them important in deciding whether to purchase the Products, as described herein. Had the New York Plaintiffs and the New York Class known the Products contained (or risked containing) chlormequat, they would not have purchased the Products or paid a premium price.

126. Defendant alone possessed the information that was material to the New York Plaintiffs and the New York Class and misrepresented and failed to disclose such material information to consumers.

127. Defendant knew or should have known that the Products contained (or risked containing) dangerous chlormequat, a fact nowhere disclosed on the packaging of the Products.

128. Defendant purposely misrepresented, concealed, and did not disclose material facts regarding the presence (or risk) of dangerous chlormequat to consumers, including the New York Plaintiffs and the New York Class.

129. Defendant has engaged and continues to engage in deceptive conduct in violation of GBL § 350.

130. Defendant's misrepresentations and omissions and other deceptive conduct caused the New York Plaintiffs and the New York Class to suffer injury in the form of actual damages when they purchased the Products that were worth less than the price paid and that they would not have purchased at all had they known the Products contained (or risked containing) dangerous chlormequat.

131. Defendant intended for the New York Plaintiffs and the New York Class to rely on its misrepresentations, omissions, concealment, and other deceptive conduct regarding the Products when purchasing the Products, unaware of the undisclosed material facts.

132. Defendant knowingly made material misrepresentations and omissions on its packaging for the Products to the New York Plaintiffs and the New York Class at the time they purchased the Products, including the fact that Defendant's products contained (or risked containing) dangerous chlormequat.

133. As a direct and proximate result of these violations, the New York Plaintiffs and the New York Class have been harmed, and that harm will continue until Defendant is enjoined from further omitting the truth about the Products, that they contain (or risk containing) dangerous chlormequat.

134. Pursuant to GBL § 350-E, the New York Plaintiffs, on behalf of themselves and the New York Class, seek injunctive and declaratory relief, as well as actual damages or \$500 (whichever is greater), and statutory damages of three times the actual damages (up to \$10,000) due to Defendant's willful and/or knowing violations, and attorneys' fees.

**COUNT V**  
**Unjust Enrichment**  
**(On Behalf of Plaintiffs and the Class)**

135. Plaintiffs, individually and on behalf of the Class, repeat and re-allege the allegations contained in paragraphs 1 through 66 as though fully set forth herein.

136. Plaintiffs and the Class conferred a monetary benefit on Defendant. Specifically, they purchased the Products from Defendant and provided Defendant with their monetary payment. However, in exchange, Plaintiffs and the Class received from Defendant goods that

contained (or risked containing) dangerous chlormequat through material misrepresentations and omissions.

137. Defendant knew that Plaintiffs and the Class conferred a benefit on them and accepted or retained that benefit. Defendant profited from Plaintiffs' purchases and used Plaintiffs' and the Class' monetary payments for business purposes.

138. Defendant misrepresented and failed to disclose to Plaintiffs and the Class that its Products contained (or risk containing) dangerous chlormequat.

139. If Plaintiffs and the Class knew that Defendant's Products contained (or risked containing) dangerous chlormequat as alleged herein, they would not have purchased the Products or would have paid less for them than they did.

140. Plaintiffs and the Class have no adequate remedy at law.

141. Under the circumstances, it would be unjust for Defendant to be permitted to retain any of the benefits that Plaintiffs and the Class conferred on it.

142. Defendant should be compelled to disgorge into a common fund or constructive trust, for the benefit of Plaintiffs and the Class members, proceeds that they unjustly received from them. In the alternative, Defendant should be compelled to refund the amounts that Plaintiffs and the Class members overpaid.

## **VII. REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of the Class, respectfully request that the Court:

- a) Certify the Class, and appoint Plaintiffs and their counsel to represent the Class;
- b) Find that Defendant engaged in the unlawful conduct as alleged herein;

- c) Enjoin Defendant from engaging in such conduct and order any further declaratory and/or injunctive relief as appropriate, including (i) corrective advertising disclosing that the “whole grains” in the Products contain (or risk containing) chlormequat; (ii) requiring full disclosure of such substance in Defendant’s packaging; and (iii) requiring testing for such substance and disclosure of such testing results;
- d) Enter a monetary judgment in favor of Plaintiffs and the Class to compensate them for the injuries suffered, together with pre-judgment and post-judgment interest, statutory and punitive damages, and penalties where appropriate;
- e) Require Defendant to rectify all damages caused by its misconduct;
- f) Award Plaintiffs and the Class reasonable attorneys’ fees and costs of suit, as allowed by law; and
- g) Award such other and further relief as this Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.

Dated: July 12, 2024

Respectfully submitted,

/s/ Janine L. Pollack

Janine L. Pollack

Lori G. Feldman

**GEORGE FELDMAN MCDONALD, PLLC**

745 Fifth Avenue, Suite 500

New York, NY 10151

Phone: (917) 983-2707

Fax: (888) 421-4173

Email: [jpollack@4-justice.com](mailto:jpollack@4-justice.com)

Email : [lfeldman@4-justice.com](mailto:lfeldman@4-justice.com)

Emial : [Eservice@4-justice.com](mailto:Eservice@4-justice.com)

David J. George\*  
Brittany Sackrin\*  
**GEORGE FELDMAN MCDONALD, PLLC**  
9897 Lake Worth Road, Suite 302  
Lake Worth, Florida 33467  
Phone: (561) 232-6002  
Fax: (888) 421-4173  
Email: DGeorge@4-justice.com  
Email: BSackrin@4-justice.com  
Email: EService@4-justice.com

Rebecca A. Peterson  
**LOCKRIDGE GRINDAL NAUEN P.L.L.P.**  
100 Washington Avenue South  
Suite 2200  
Minneapolis, Minnesota 55401  
Phone: (612) 339-6900  
Fax: (612) 339-0981  
Email: [rapeterson@locklaw.com](mailto:rapeterson@locklaw.com)

Joshua D. Arisohn\*  
Caroline C. Donovan\*  
**BURSOR & FISHER, P.A.**  
1330 Avenue of the Americas, 32nd Floor  
New York, NY 10019  
Phone: (646) 837-7150  
Fax: (212) 989-9163  
Email: jarisohn@bursor.com  
Email: cdonovan@bursor.com

*Counsel for Plaintiffs*

\*Pro hac vice admission forthcoming