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 NORTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

EMC

19 **ROY WERBEL**, individually and on
 20 behalf of all others similarly situated,

CV 10 1660
 Case No.:

Plaintiff,

: **COMPLAINT FOR INJUNCTIVE**
 : **RELIEF, RESTITUTION AND**
 : **DAMAGES**

23 *vs.*

: *Class Action*

25 **KELLOGG USA**, a Michigan
 26 corporation,

: *Jury Demand*

27 *Defendant.*

1 Plaintiff Roy Werbel, by and through his attorneys of record, hereby complains
2 and alleges as follows:

3 I. JURISDICTION AND VENUE

4 1. This Court has jurisdiction over the subject matter presented by this
5 Complaint because it is a class action arising under the Class Action Fairness Act of 2005
6 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the
7 original jurisdiction of the Federal Courts of any class action in which any member of the
8 Plaintiff Class is a citizen of a state different from any defendant, and in which the matter
9 in controversy exceeds in the aggregate the sum of \$5,000,000, exclusive of interest and
10 costs. Plaintiff alleges that the total claims of individual class members in this action are
11 well in excess of \$5,000,000 in the aggregate, exclusive of interest and costs, as required
12 by 28 U.S.C. § 1332(d)(2), (5). Plaintiff is a citizen of California, whereas, as set forth
13 below, Kellogg may be considered a citizen of Michigan. Therefore, diversity of
14 citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A). Furthermore,
15 Plaintiff alleges that more than two-thirds of all of the members of the proposed Plaintiff
16 Class in the aggregate are citizens of a state other than California, where this action is
17 originally being filed, and that the total number of members of the proposed Class is
18 greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B).

19 2. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) because
20 Defendant conducts business within, may be found in, and is subject to personal
21 jurisdiction in this district.

22 3. The original of the "Declaration of Harold M. Hewell Pursuant to Civil
23 Code §1780(c) of the Consumer Legal Remedies Act, Civil Code §§1750 et seq."
24 regarding venue under the California Consumer Legal Remedies Act is submitted as
25 Exhibit "A" to this Complaint, and is incorporated herein by reference.

26 II. PARTIES

27 4. Plaintiff is an individual consumer, who at all times material herein, was
28 and is a resident of the State of California. For purposes of diversity jurisdiction, he is a

1 "citizen" of California. He respectfully requests a jury trial.

2 5. Defendant Kellogg USA ("Kellogg") is a corporation organized and
3 existing under the laws of Michigan with its principal office located at One Kellogg
4 Square, Battle Creek, Michigan 49016. It lists with the California Secretary of State a
5 registered agent listing of C T Corporation System, 818 West Seventh Street, Los
6 Angeles, California 90017. For diversity purposes, Kellogg may be considered to be a
7 citizen of Michigan. The company's brands include as "Kellogg's Froot Loops" cereal
8 ("Product"). Kellogg products are manufactured in 17 countries and marketed in more
9 than 180 countries around the world. At all times relevant hereto, Kellogg was and is
10 doing business in the County of San Francisco.

11 III. GENERAL ALLEGATIONS

12 6. Plaintiff is informed and believes, and thereon alleges that, at all times
13 herein mentioned, the subsidiaries, affiliates and other related entities of Kellogg were
14 the agents, servants and employees of Kellogg, and at all times herein mentioned, each
15 was acting within the purpose and scope of said agency and employment, and Kellogg
16 ratified and approved the acts of said agents and employees.

17 7. Plaintiff also is informed and believes, and thereon alleges that, at all times
18 herein mentioned, the employees of Kellogg, its subsidiaries, affiliates and other related
19 entities were the agents, servants and employees of Kellogg, and at all times herein
20 mentioned, each was acting within the purpose and scope of said agency and
21 employment, and that Kellogg ratified and approved the acts of said agents and
22 employees.

23 8. Whenever reference in this Complaint is made to any act or transaction of
24 Kellogg, such allegation shall be deemed to mean that the principals, officers, directors,
25 employees, agents, and/or representatives of Kellogg committed, knew of, performed,
26 authorized, ratified and/or directed such act or transaction on behalf of Kellogg while
27 actively engaged in the scope of their duties.

28 9. All allegations herein are based on information and belief and/or are likely

1 to have evidentiary support after reasonable opportunity for further investigation and
2 discovery.

3 IV. FACTUAL ALLEGATIONS

4 10. Defendant Kellogg manufactures, markets, and promotes the Product
5 referenced above. In addition to the use of the word, "Froot" in the product name,
6 pictures of brightly colored cereal made to resemble fruit are depicted on the principal
7 display panel ("PDP") of the Product, as well as pictures of actual fruit.

8 11. In truth, however, the product contains no actual fruit of any kind; the
9 fruit-like flavor derives from "natural flavors." *Natural flavoring provides no nutritional*
10 *value.*¹

11 12. If the consumer takes the box from the shelf and examines the fine print of
12 the ingredient list, he or she will discover that the only fruit content is a small amount of
13 "natural orange, lemon, cherry, raspberry, blueberry, lime, and other natural flavors" –
14 tenth in order on the ingredient list, just after "reduced iron," and just before "red #40."

15 13. The other ingredients in the Product are, according to Kellogg: sugar; corn
16 flour; wheat flour; oat flour: partially hydrogenated vegetable oil (one or more of:
17 coconut, cottonseed, and soybean); salt; sodium ascorbate and ascorbic acid (vitamin
18 C); niacinamide; reduced iron; red#40; blue #2; zinc oxide; yellow #6; turmeric color;
19 pyridoxine hydrochloride (vitamin B6); blue #1; riboflavin (vitamin B2); thiamin
20 hydrochloride (vitamin B1); annatto color; vitamin A palmitate; BHT (preservative);
21 folic acid; vitamin B12; and vitamin D. True and correct representations of this Product
22 are attached hereto as Exhibit "B" and incorporated by reference herein.

23 14. Plaintiff contends that Defendant's marketing of the Product in this
24 manner is deceptive and likely to mislead and deceive a "reasonable consumer" such as
25 himself, in violation of California statutes and common law causes of action that parallel,
26 and do not conflict with, the labeling requirements established by the Federal Food,

27
28 ¹ 21 CFR § 101.22(a)(3)

1 Drug, and Cosmetic Act ("FDCA").² See California's Sherman Food, Drug, and
2 Cosmetic Law.³

3 15. There can be only one purpose for the use of the fanciful word "Froot" in
4 the Product name, as well as the depiction of fruit-like cereal and actual fruit on the PDP:
5 to convince the consumer that Froot Loops have redeeming fruit content – that it's not
6 *all* sugar and flour.

7 16. This is false, however. As noted above, the Product contains no nutritional
8 fruit content whatsoever. There are many other names that Kellogg could have used for
9 the Product that would not be misleading, and would have conveyed the actual nature of
10 the Product. Additionally, Kellogg could have depicted the Product on the PDP in a
11 variety of other ways other than using actual fruit and fruit-like cereal.

12 17. There can be no other reason for the marketing scheme employed here
13 other than to add a nutritional gloss to a cereal laden with sugar and carbohydrates.
14 Kellogg is no novice at marketing and it does not employ amateurs to develop the
15 promotion of its products.

16 18. During the past four years, Plaintiff, at various times purchased the
17 Product, in large part because he had been exposed to advertising and representations of
18 Kellogg as set forth above. He was misled by the packaging and marketing, which by
19 design and intent convey the message that the Product contains real, nutritious fruit. He
20 trusted the Kellogg label because of the company's long history of producing other

21
22 ² Codified at 21 U.S.C. §§ 301, et seq., with implementing regulations found at 21 C.F.R.
23 §§ 1.1, et seq.

24 ³ Cal. Health and Safety Code §§ 109875 et seq. (The FDCA labeling regulations also
25 have been incorporated into California law by reference. California Section 110100 of
26 the California Health and Safety Code provides: "All food labeling regulations and any
27 amendments to those regulations adopted pursuant to the federal act, in effect on
28 January 1, 1993, or adopted on or after that date shall be the food labeling regulations of
this state.")

1 wholesome breakfast cereals

2 19. However, Plaintiff has since learned that many popular foods and
3 beverages are marketed as if they are made with fruit, but actually contain little or no fruit
4 at all.

5 20. The Strategic Alliance for Healthy Food and Activity Environments
6 (hereinafter "Strategic Alliance") has published the results of a study examining the
7 ingredients of widely advertised foods with references to fruit on the packaging. A true
8 and correct copy of the study, annotated to highlight references to the Product, is
9 attached hereto as Exhibit "C" and incorporated by reference.

10 21. The study concluded, among other things, that despite advertising and
11 packaging that suggests the presence of fruit, more than half of the food products studied
12 – including the Product - contain no fruit at all. The study concluded that there is reason
13 to be concerned that current packaging labels and advertising are misleading consumers
14 about the nutritional value of some of the most popular foods and snacks.

15 22. The concern that the Strategic Alliance expressed in its report is reflected
16 in a 2003 communication from Susan Stiglitz, a trademark attorney with the U.S. Patent
17 and Trademark Office who was writing to a representative of Defendant regarding
18 pending trademark issues related to the Product. As She stated:

19 **DISCLAIMER**

20 The applicant must disclaim the descriptive wording "FROOT" apart from
21 the mark as shown. Trademark Act Section 6, 15 U.S.C. Section 1056;
22 TMEP sections 1213 and 1213.03(a). The wording is merely descriptive
23 because it refers immediately to a feature of the cereal goods; *as these*
24 *goods appear to contain fruit* or a fruit flavor, this term is descriptive and
must be disclaimed.

25 (Emphasis added.) A true and correct copy of relevant portions of the trademark
26 application file are attached hereto as Exhibit "D" and incorporated herein by reference.
27 Ms. Stiglitz' comments can be first found on page 134, and then on pages 149, 156, 222
28 and 229 of Exhibit D.

1 Class is so numerous that joinder of all members would be impracticable. Based on the
2 annual sales of the Product and the popularity of the Product, it is apparent that the
3 number of consumers of the Product, both nationwide and in California alone would at
4 least be in the many tens of thousands, thereby making joinder impossible.

5 29. Questions of law and fact common to the Plaintiff Class and the subclasses
6 exist that predominate over questions affecting only individual members, including,
7 inter alia, the following:

- 8 (a) Whether Defendant's practices and representations made in connection
9 with the advertising, marketing, promotion, labeling and sales of the
10 Product as set forth herein were deceptive, unlawful or unfair in any
11 respect, thereby violating California's Unfair Competition Law
12 ("UCL), California Bus. & Prof. Code § 17200 et seq.;
- 13 (b) Whether Defendant's practices and representations made in
14 connection with the advertising, marketing, promotion, labeling and
15 sales of the Product as set forth herein were deceptive in any respect,
16 thereby violating California's False Advertising Law ("FAL"),
17 California Bus. & Prof. Code § 17500 et seq.;
- 18 (c) Whether Defendant's practices and representations made in
19 connection with the advertising, marketing, promotion, labeling and
20 sales of the Product as set forth herein were deceptive and/or
21 misleading in any respect;
- 22 (d) Whether Defendant breached any implied warranties in connection
23 with the practices and representations made in the advertising,
24 marketing, promotion, labeling and sales of the Product as set forth
25 herein, at the expense of and to the detriment of Plaintiff and Class
26 members;
- 27 (e) Whether Defendant violated Civil Code §1770(a)(5) et seq.
28 ("CLRA") by the practices and representations made in connection

1 with the advertising, marketing, promotion, labeling and sales of the
2 Product as set forth herein; and

3 (f) Whether Defendant's conduct as set forth herein injured consumers,
4 and if so, the extent of the injury.

5 30. The claims asserted by Plaintiff in this action are typical of the claims of the
6 members of the Plaintiff Class and all subclasses as described herein, the claims arise
7 from the same course of conduct by Kellogg, and the relief sought is common.

8 31. Plaintiff will fairly and adequately represent and protect the interests of the
9 members of the Plaintiff Class and all subclasses. Plaintiff has retained counsel
10 competent and experienced in both consumer protection and class action litigation.

11 32. Certification of this class action is appropriate under FRCP 23(b) and
12 California Code of Civil Procedure § 382, and California Civil Code § 1781, because the
13 questions of law or fact common to the respective Class members predominate over
14 questions of law or fact affecting only individual members. This predominance makes
15 class litigation superior to any other method available for the fair and efficient
16 adjudication of these claims. Absent a class action, it would be highly unlikely that the
17 representative Plaintiff or any other Class member would be able to protect their own
18 interests, because the cost of litigation through individual lawsuits might exceed
19 expected recovery. Certification also is appropriate because Kellogg acted or refused to
20 act on grounds generally applicable to the Class, thereby making appropriate final
21 injunctive relief with respect to the Class as a whole. Further, given the large number of
22 consumers of the Product, allowing individual actions to proceed in lieu of a class action
23 would run the risk of yielding inconsistent and conflicting adjudications.

24 33. A class action is a fair and appropriate method for the adjudication of the
25 controversy, in that it will permit a large number of claims to be resolved in a single
26 forum simultaneously, efficiently, and without the unnecessary hardship that would
27 result from the prosecution of numerous individual actions and the duplication of
28 discovery, effort, expense and burden on the courts that such individual actions would

1 engender. The benefits of proceeding as a class action, including providing a method for
2 obtaining redress for claims that it would not be practicable to pursue individually,
3 outweigh any difficulties that might be argued with regard to the management of this
4 class action.

5 **VI. FIRST CAUSE OF ACTION**
6 **(Cal. Bus. & Prof. Code § 17200, et seq.)**

7 34. Plaintiff realleges and incorporates by reference the allegations set forth in
8 each of the preceding paragraphs of this Complaint.

9 35. This cause of action is brought on behalf of Plaintiff and members of the
10 general public pursuant to California Bus. & Prof. Code § 17200, et seq., which provides
11 that “unfair competition shall mean and include any unlawful, unfair or deceptive
12 business act or practice and unfair, deceptive, untrue or misleading advertising and any
13 act prohibited by Chapter 1 (commencing with Section 17500) as Part 3 of Division 7 of
14 the Business and Professions Code.”

15 36. Plaintiff alleges that Kellogg committed the unlawful, unfair, and deceptive
16 practices set forth above in this Complaint.

17 37. These practices offend public policy, are unconscionable, are oppressive
18 and unscrupulous, and cause substantial injury to consumers.

19 38. The acts and concealment of material facts, as described in this Complaint,
20 have a capacity, tendency or likelihood to deceive or confuse the “reasonable consumer”
21 regarding the contents and nutritional value of the Product.

22 39. Plaintiff alleges that Kellogg committed an unfair business act or practice
23 as set forth above. The utility of Kellogg’s misleading and/or deceptive advertising,
24 promotion, labeling and/or marketing for the purpose of selling the Product is
25 negligible, if any, when weighed against the extent of harm to the general public, Plaintiff
26 and Class members. The harmful impact upon members of the general public and the
27 Class who were and are misled and deceived with respect to Kellogg’s advertising,
28 promotion, marketing and labeling of the Product far outweighs any reasons or

1 justifications by Kellogg for engaging in these practices. As alleged in this Complaint,
2 Kellogg had an improper motive (profit over truthful advertising, promotion, labeling
3 and marketing) in misrepresenting and/or omitting the nature of the Product in its
4 advertising, promotion, marketing and labeling. These deceptive and misleading
5 practices were and are under the sole control of Kellogg, and they were deceptively
6 hidden from members of the general public in Kellogg's advertising, promotion,
7 marketing and labeling of the Product.

8 40. As a purchaser of the Product, and as a member of the general public in
9 California who has been injured by Kellogg's unlawful and/or unfair practices, Plaintiff is
10 entitled to and does bring this class action seeking all available remedies under
11 California's Unfair Competition Law, including declaratory and injunctive relief and
12 restitution, as well as attorneys' fees and costs.

13 41. Kellogg committed a deceptive act or practice by making written and oral
14 material representations and omissions as set forth above that have a capacity, tendency,
15 or likelihood to deceive or confuse a reasonable consumer as to the Product's actual
16 nature, as described above.

17 42. The violations of the CLRA, set forth in detail below, constitute a predicate
18 violation of the UCL's "unlawful prong," and substantiate the deception inherent in the
19 representations made by Kellogg.

20 43. The unfair, deceptive and/or unlawful acts and practices of Kellogg, as
21 alleged in this Complaint, present a threat to members of the general public in that
22 Kellogg is able to carry on this scheme of misrepresentation and omission without
23 consequence.

24 44. Plaintiff alleges that Kellogg continues these unfair, deceptive and/or
25 unlawful business practices described herein.

26 45. Kellogg's acts, misrepresentations, concealment of material facts, and
27 failures to disclose as alleged in this Complaint, constitute unfair, deceptive and/or
28 unlawful business practices within the meaning of the California Bus. & Prof. Code §

1 17200, et seq. Plaintiff and members of the general public were, and are likely to be
2 deceived by Kellogg's scheme to misrepresent the fruit content of the Product, as alleged
3 in this Complaint.

4 46. Pursuant to California Bus. & Prof. Code § 17203, Plaintiff, on behalf of
5 himself and members of the general public, seeks an order of this Court:

6 (a) Enjoining Kellogg from continuing to engage, use, or employ any
7 business practice found by this Court to be unfair, deceptive and/or
8 unlawful under the UCL; and

9 (b) Restoring all monies that may have been acquired by Kellogg as a result
10 of such unlawful, unfair, or deceptive act or practices.

11 47. Plaintiff and members of the general public may be irreparably harmed
12 and/or denied an effective and complete remedy if such an order is not granted. The
13 unfair, deceptive and/or unlawful acts and practices of Kellogg, as described above,
14 present a serious threat to Plaintiff and members of the general public.

15 48. As a result of Kellogg's violation of the UCL, Plaintiff and the Class are
16 entitled to restitution for out-of-pocket expenses and economic harm suffered.

17 49. Pursuant to Civil Code § 3287(a), Plaintiff and the Class are further
18 entitled to pre-judgment interest as a direct and proximate result of Kellogg's wrongful
19 conduct. The amount of damages suffered by Plaintiff and the Class as a result of said
20 acts is a sum certain and capable of calculation and Plaintiff and Class members are
21 entitled to interest in an amount to be set forth according to proof.

22 **VII. SECOND CAUSE OF ACTION**

23 **(Cal. Bus. & Prof. Code §17500, et seq.)**

24 50. Plaintiff realleges and incorporates by reference the allegations set forth in
25 each of the preceding paragraphs of this Complaint.

26 51. In violation of California Bus & Prof. Code § 17500, Kellogg has
27 disseminated, or caused to be disseminated, deceptive and misleading statements in
28 advertisements, promotion labeling and/or marketing for the Product as set forth above.

1 52. Kellogg's representations in the advertisements, promotions, labeling
2 and/or marketing of the Product are deceptive and misleading because the Product
3 contains only nominal fruit content.

4 53. Plaintiff alleges that Kellogg continues to disseminate, or cause to be
5 disseminated, the deceptive and misleading representations described herein.

6 54. Kellogg is disseminating representations about the Product, which by their
7 very nature are deceptive and misleading within the meaning of California Bus. & Prof.
8 Code §17500, et seq. Such representations are likely to deceive a reasonable consumer
9 and present a continuing threat to the general public; they will continue to mislead
10 consumers into purchasing the Product on deceptive premises. The violations of the
11 CLRA, set forth in detail below, constitute a predicate violation of the FAL as alleged
12 herein and substantiate the deception inherent in the representations made by Kellogg.

13 55. In making and disseminating the representations alleged herein, Kellogg
14 knew or should have known that they were deceptive and misleading, and it acted in
15 violation of California Bus. & Prof. Code § 17500, et seq.

16 56. As a direct and proximate result of Kellogg's wrongful conduct, Plaintiff
17 and the Class members have suffered substantial monetary and non-monetary damage.
18 Pursuant to California Business and Professions Code § 17535, Plaintiff, on behalf of
19 himself and members of the general public, seek an order of this Court:

- 20 (a) Enjoining Kellogg from continuing to engage, use, or employ any
21 business practice this Court finds to be in violation of the FAL; and
22 (b) Restoring all monies that may have been acquired by means of
23 Kellogg's deceptive and misleading statements described herein.

24 57. If Kellogg's conduct is not enjoined, Plaintiff and the members of the Class
25 will continue to be damaged by Kellogg's deceptive and misleading advertising.

26 58. Pursuant to Civil Code § 3287(a), Plaintiff and members of the Class are
27 further entitled to pre-judgment interest as a direct and proximate result of Kellogg's
28 wrongful conduct. The amount of funds paid by Plaintiff and Class members as a result

1 of said acts was a sum certain and capable of calculation, and Plaintiff and Class members
2 are entitled to interest in an amount to be set forth according to proof.

3 **VIII. THIRD CAUSE OF ACTION**

4 **(Intentional Misrepresentation)**

5 59. Plaintiff realleges and incorporates by reference the allegations set forth in
6 each of the preceding paragraphs of this Complaint.

7 60. Kellogg has represented to the public, including Plaintiff, by packaging,
8 advertising, labeling and other means that the Product has nutritional fruit content that it
9 does not have, as set forth in detail above and incorporated herein. Plaintiff and each
10 Class member were exposed to these representations each time they purchased the
11 Product at the point of sale for each purchase of the Product.

12 61. Kellogg's representations were deceptive in that the Product contains no
13 fruit content of any nutritional value.

14 62. At the time Kellogg made the representations herein alleged, Kellogg knew
15 the representations were deceptive.

16 63. Kellogg intentionally made the representations above for the purpose of
17 deceiving Plaintiff and Class members into purchasing a product that is not what it is
18 represented to be, thereby depriving them of the benefit of their bargain.

19 64. Plaintiff and Class members reasonably relied upon Defendant's
20 representations as set forth above, because they believed Defendant to be a reputable
21 company.

22 65. As a proximate result of these acts, Plaintiff and other consumers were
23 induced to spend an amount of money to be determined at trial on the Product; the
24 deceptive representations described above cost them money because they received a
25 Product of less value than they paid for it, a product they would not had purchased but
26 for the misrepresentations.

27 66. Plaintiff and other consumers, in purchasing, using, and consuming the
28 Product as herein alleged, relied upon Kellogg's above representations, all to their

1 damage as hereinabove alleged. In doing the things aforementioned, Kellogg was guilty
2 of malice, oppression, and fraud, and Plaintiff and Class members are, therefore, entitled
3 to recover exemplary or punitive damages.

4 **IX. FOURTH CAUSE OF ACTION**

5 **(Breach of Implied Warranties)**

6 67. Plaintiff realleges and incorporates by reference the allegations set forth in
7 each of the preceding paragraphs of this Complaint.

8 68. Kellogg represented to consumers, including Plaintiff and other Class
9 members, by packaging, advertising, labeling and other means described in detail above
10 and incorporated herein, that the Product was a substantially fruit-based product
11 deriving nutritional value from fruit.

12 69. Kellogg is a merchant of food products, and knew the qualities sought in
13 the Product by Plaintiff and Class members; there was in the sale of the Product an
14 implied warranty that the goods were merchantable and fit for the purpose they were
15 sought.

16 70. Kellogg breached the warranties implied in the contract for sale of the
17 Product as it does not have the characteristics, qualities, and uses represented by
18 Defendant and sought by Plaintiff and Class members.\

19 71. In fact, the Product contains only nominal fruit content of no nutritional
20 value, as set forth above.

21 72. As a result thereof, Plaintiff and other consumers did not receive goods as
22 impliedly warranted by Kellogg.

23 73. As a proximate result of these breaches of warranty by Kellogg, Plaintiff
24 and Class members suffered damages in an amount to be determined at trial, in that,
25 among other things, they were induced to spend an amount of money on the Product;
26 the breach of implied warranties described above cost them money because they
27 received a Product of less value than they paid for it, a product they would not had
28 purchased but for the express warranties.

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**X. FIFTH CAUSE OF ACTION:
(Consumers Legal Remedies Act)**

74. Plaintiff realleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

75. This cause of action is brought pursuant to the CLRA.

76. Plaintiff and each member of the Class are "consumers" within the meaning of Civil Code §1761(d).

77. The purchases of the Product by Plaintiff and each member of the Class were and are "transactions" within the meaning of Civil Code §1761(e).

78. Kellogg's marketing, promotion, and sales of the Product within California, as alleged herein, violated and continues to violate the CLRA in at least the following respects as set forth in detail above:

- (a) In violation of Civil Code §1770(a)(2), Kellogg misrepresented the composition or contents of the Product;
- (b) In violation of Civil Code §1770(a)(5), Kellogg represented that the Product has characteristics, ingredients, uses, and benefits which it does not have;
- (c) In violation of Civil Code §1770(a)(7), Kellogg represented that the Product is of a particular standard, quality, or grade, which it is not; and
- (d) In violation of Civil Code §1770(a)(9), Kellogg advertised the Product with an intent not to sell the Product as advertised.

79. Plaintiff seeks and is entitled to equitable relief in the form of an order:

- (a) Enjoining Defendant from continuing to engage in any practice determined by this Court to violate the CLRA;
- (b) Requiring Defendant to make full restitution of all monies wrongfully obtained as a result of the conduct described above;
- (c) Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct described above; and

1 (d) Enjoining Defendant from such deceptive business practices in the
2 future.

3 80. Pursuant to the requirements of the CLRA, Plaintiff, by and through
4 counsel, is notifying Defendant in writing of the particular violations of Section 1770 of
5 the CLRA and is demanding certain corrective actions. Plaintiff is sending that notice by
6 certified mail, return-receipt requested. In the event that Defendant fail to respond to
7 Plaintiff's demand within thirty days of that letter, and pursuant to section 1782 of the
8 CLRA, Plaintiff will amend this pleading to request statutory damages, actual damages,
9 plus punitive damages, interest and attorneys' fees.

10 81. Regardless of an award of damages, however, Plaintiff seeks and is entitled
11 to, pursuant to Section 1780(a)(2) of the CLRA, an order for the equitable relief
12 described above, as well as costs, attorney's fees and any other relief which the Court
13 deems proper.

14 **XI. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, and
16 for Class members as private attorneys general under California Business and
17 Professions Code § 17204, prays for relief pursuant to each cause of action set forth in
18 this Complaint as follows:

- 19 1. For an order certifying that the action may be maintained as a class action.
- 20 2. For an award of equitable relief as follows:
 - 21 (a) Enjoining Defendant from making any claims for the Product found to
 - 22 violate the UCL, FAL or CLRA as set forth above;
 - 23 (b) Requiring Defendant to make full restitution of all monies wrongfully
 - 24 obtained as a result of the conduct described in this Complaint; and
 - 25 (c) Requiring Defendant to disgorge all ill-gotten gains flowing from the
 - 26 conduct described in this Complaint.

27 3. For an award of attorney's fees pursuant to, inter alia, §1780(d) of the
28 CLRA and Code of Civil Procedure §1021.5.

