IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

MARIO ALIANO, *individually and on behalf of all others similarly situated,*	)	
Plaintiff,	)	**Case No. 1:16-cv-03087**
vs.	)	**Honorable Judge Rebecca R. Pallmeyer**
THE QUAKER OATS COMPANY,	)	**Honorable Magistrate Judge Jeffrey Cole**
Defendant.	)	

COURTNEY DREY, *individually and on behalf of all others similarly situated,*	)	
Plaintiff,	)	**Case No. 1:16-cv-04293**
vs.	)	**Honorable Judge Rebecca R. Pallmeyer**
THE QUAKER OATS COMPANY,	)	**Honorable Magistrate Judge Jeffrey Cole**
Defendant.	)	

DEFENDANT QUAKER OATS COMPANY'S
MOTION TO TRANSFER OR STAY

INTRODUCTION

In these actions, Plaintiffs Mario Aliano and Courtney Drey each filed complaints against Quaker Oats Company ("Quaker") that copy a complaint filed earlier in the Central District of California under the caption, *Eisenlord v. The Quaker Oats Co.*, No. 16-cv-01442 (C.D. Cal.) (filed March 1, 2016). All of these actions allege that the same statements made about the same products were misleading for the same reason. The claims in all three cases are substantively identical. Plaintiffs in all three cases also seek the same relief on behalf of the same putative nationwide class of purchasers of Quaker Oats products. To litigate these actions in separate jurisdictions would waste the resources of this Court, the parties, and third parties, not to mention risk inconsistent judicial determinations on identical issues. Indeed, Plaintiffs Aliano and Drey have formally and explicitly acknowledged the importance of centralizing these cases in one forum. *See* Aliano Mot. for Coordination or Consolidation & Transfer, MDL No. 2718 (J.P.M.L.), ECF No. 1 ¶¶ 7, 8; Interested Party Response in Support of Pl.'s Mot. For Transfer, MDL No. 2718 (J.P.M.L.), ECF No. 20 ("Drey MDL Response") at 1-3.

Under the first-to-file rule, a district court may dismiss, transfer, or stay an action that duplicates another which was filed first. The rule promotes the "interest of judicial economy" by avoiding "simultaneous litigation of essentially identical claims in two federal district courts." *Alchemist Jet Air, LLC v. Century Jets Aviation, LLC*, No. 08-5386, 2009 WL 1657570, at *5 n.4 (N.D. Ill. June 12, 2009). A transfer here would serve not only the interests of judicial economy but also the interests of justice by avoiding potentially conflicting rulings on identical legal and factual issues. Quaker therefore respectfully requests that the Court transfer the two actions here to the Central District of California under the first-to-file rule. Alternatively, Quaker requests that the Court stay the actions during the pendency of the first-filed action.

BACKGROUND

These actions are two of four putative class actions pending in federal court alleging that flavor name statements on packaging of certain Quaker Maple & Brown Sugar instant oatmeal products[1] are misleading because those products purportedly do not contain maple syrup or maple sugar. *See Eisenlord v. The Quaker Oats Co.*, No. 16-cv-01442 (C.D. Cal.) (filed Mar. 1, 2016); *Aliano v. Quaker Oats Co.*, No. 1:16-cv-03087 (N.D. Ill.) (filed Mar. 11, 2016); *Gates v. Quaker Oats Co.*, No. 1:16-cv-01944 (D.N.J.) (filed Apr. 7, 2016); *Drey v. Quaker Oats Co.*, No. 1:16-cv-04293 (N.D. Ill.) (filed Apr. 13, 2016). The first of the actions was filed in the Central District of California by Darren Eisenlord on March 1, 2016. *See* Ex. 1 ("Eisenlord Compl.").

Mario Aliano filed his action ten days later on March 11, 2016.[2] Aliano's first amended complaint, the operative complaint in this action ("Aliano Compl"), filed on March 18, 2016

[1] The products challenged in all three of the *Eisenlord*, *Aliano*, and *Drey* complaints (the "Products") are: Quaker Oats Maple & Brown Sugar Instant Oatmeal (Classic Recipe); Quaker Oats Maple & Brown Sugar High Fiber Instant Oatmeal; Quaker Oats Maple & Brown Sugar Gluten Free Instant Oatmeal; Quaker Oats Maple & Brown Lower Sugar Instant Oatmeal, Quaker Oats Maple & Brown Sugar Weight Control Instant Oatmeal; and Quaker Oats Maple & Brown Sugar Organic Instant Oatmeal. Eisenlord Compl. ¶ 21; Aliano Compl. ¶ 15; Drey Compl. ¶ 12.

[2] Aliano and his counsel have filed at least 17 class actions together, including a number of follow-on and copycat actions in this Court and the Central District of California. *See, e.g.*, *Aliano v. The Honest Company, Inc.*, No. 16-cv-02934 (C.D. Cal.) (follow-on to action filed in the Central District of California); *Aliano v. CVS Pharmacy, Inc.*, No. 16-cv-03372 (N.D. Ill.) (follow-on to an action filed in Eastern District of New York); *Aliano v. Louisville Distilling Co., LLC*, No. 15-cv-00794 (N.D. Ill.); *Aliano v. WhistlePig LLC*, No. 14-cv-10148 (N.D. Ill.); *Aliano v. Fifth Generation, Inc.*, No. 14-cv-10086 (N.D. Ill.) (follow-on action to an action filed in Southern District of California); *Aliano v. Airgas USA, LLC*, No. 12-cv-06415 (N.D. Ill.); *Aliano v. Radioshack Corp.*, No. 11-cv-07819 (N.D. Ill.) (follow-on to an action filed in Northern District of Illinois); *Aliano v. Ferriss*, No. 11-cv-01421 (N.D. Ill.); *Aliano v. Molson Coors Brewing Co.*, No. 09-cv-06246 (N.D. Ill.); *Aliano v. Comcast of Chicago, Inc.*, No. 08-cv-05320 (N.D. Ill.) (follow-on to numerous other actions and transferred to the Eastern District of Pennsylvania); *Aliano v. Lifelock, Inc.*, No. 08-cv-04401 (N.D. Ill.) (follow-on to numerous other actions and transferred to the District of Arizona); *Aliano v. Texas Roadhouse Holdings LLC*, No. 07-cv-04108 (N.D. Ill.) (follow-on to action filed in the Western District of Pennsylvania); *Aliano v. Champs Sports Bar & Grill, Inc.*, No. 07-cv-03816 (N.D. Ill.); *Aliano v. Maxmara Retail, Ltd.*, No. 07-cv-03817 (N.D. Ill.); *Aliano v. Stuart Weitzman Retail Stores, Inc.*, No. 07-cv-03814 (N.D. Ill.); *Aliano v. Attitudes Restaurant & Bar, Ltd.*, No. 07-cv-03619 (N.D. Ill.); *Aliano v. Pub 222, Inc.*, No. 07-cv-03618 (N.D. Ill.).

(No. 1:16-cv-03087, ECF No. 6), lifts many paragraphs from the *Eisenlord* complaint verbatim,[3] and many more with only minor revisions. About a month later, Courtney Drey filed her action. Her complaint ("Drey Compl."), filed on April 13, 2016 (No. 1:16-cv-04293, ECF No. 1), also significantly copies the *Eisenlord* complaint.[4]

All three plaintiffs allege that the packaging for the same six Products contains "a prominent image of a glass pitcher of maple syrup" and the flavor name "Maple and Brown Sugar" in "bold." Aliano Compl. ¶ 19; Eisenlord Compl. ¶ 22; Drey Compl. ¶ 16. All three plaintiffs also assert that maple syrup and maple sugar are "premium ingredients." Aliano Compl. ¶ 11; Eisenlord Compl. ¶ 13; Drey Compl. ¶ 10. All three plaintiffs also assert that maple syrup is "a source of beneficial antioxidants" shown to have health benefits. Aliano Compl. ¶ 12; Eisenlord Compl. ¶ 15; Drey Compl. ¶ 10. All three cases also rest on the primary contention that the labels at issue are false or misleading because the Products do "not contain any maple syrup or maple sugar", and assert that "members of the Class have been harmed because they overpaid for the products" and would not have purchased them "had they known that the products did not contain any maple syrup or maple sugar." Aliano Compl. ¶¶ 21, 25; Eisenlord Compl. ¶¶ 24, 28; Drey Compl. ¶¶ 18, 27.

These allegations form the basis of all three plaintiffs' claims, a number of which are identical. For instance, all three plaintiffs bring claims for violations of California's Consumer Legal Remedies Act and Unfair Competition Law (Aliano Compl. ¶ 85; Eisenlord Compl. ¶¶ 71,

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[3] *Compare* Aliano Compl. ¶¶ 11, 12, 13, 14, 17, 24, *with* Eisenlord Compl. ¶¶ 13, 15, 16, 17, 20, 27.

[4] Drey's counsel, Mr. Christopher Langone, has worked with Aliano's counsel, Thomas Zimmerman, in the past representing the same plaintiffs in *In re Target Corp. Customer Security Breach Litigation*, No. 13-cv-09070 (N.D. Ill.). Aliano's counsel also tagged *Drey* as related to Aliano's MDL petition on April 26, 2016, before the complaint was even served on Quaker. MDL No. 2718 (J.P.M.L), ECF No. 12. Aliano's counsel also filed a motion seeking to have *Drey* reassigned to this Court, before the *Drey* complaint was served on Quaker. No. 1:16-cv-03087 (N.D. Ill.), ECF No. 25.

87; Drey Compl. ¶ 63), and common-law fraudulent misrepresentation (Aliano Compl. ¶ 112; Eisenlord Compl. ¶ 52; Drey Compl. ¶ 93). All three plaintiffs also seek to represent a nationwide class of consumers who purchased the Products. *See* Aliano Compl. ¶ 33; Eisenlord Compl. ¶ 36; Drey Compl. ¶ 30. And all three plaintiffs also seek similar relief, including damages, injunctive relief, and attorneys' fees and costs. *See* Aliano Compl. at 21-22; Eisenlord Compl. at 19-20; Drey Compl. at 12, 17. None of the cases has proceeded to discovery, and no dispositive motions have been filed in any case.

On April 8, 2016, Aliano moved to transfer and centralize the actions as part of an MDL. *See* Aliano Mem. In Support of Mot. for Coordination or Consolidation & Transfer, MDL No. 2718, ECF No. 1-1 (J.P.M.L.) ("Aliano MDL Mot."). Aliano represented to the J.P.M.L. panel that centralization was necessary and important in order to "promote the just and efficient conduct of the respective multidistrict actions by eliminating the potential for conflicting contemporaneous rulings by coordinate district courts." Aliano MDL Mot. at 3. Drey subsequently joined Aliano's arguments. *See* Drey MDL Response. The J.P.M.L. denied Aliano's motion, but suggested that the parties seek "transfer of the later-filed cases under the 'first-to-file rule' to streamline this litigation." No. 16-cv-03087, ECF No. 29 at 2.

Quaker is therefore filing this motion to transfer *Aliano* and *Drey* to the Central District of California under the first-to-file rule. Quaker is also moving to transfer the Gates case currently pending in the District of New Jersey, to the Central District of California under the first-to-file rule.[5]

[5] Notably, Mr. Zimmerman is also working with plaintiff's counsel in the *Gates* copycat action, Stephen P. Denittis. The two have been serving as co-lead counsel together, and representing the same plaintiffs together, for the past three years in *In re Subway Footlong Sandwich Marketing and Sales Practices Litig.*, No. 13-MD-02439 (E.D. Wisc.), ECF No. 10.

ARGUMENT

The Court should transfer these actions to the Central District of California pursuant to the first-to-file rule so that they can be consolidated with the substantively identical *Eisenlord* action before a single federal district court—centralization that Aliano and Drey have formally acknowledged is necessary. In the alternative, the Court should stay these actions pending resolution of *Eisenlord*. To allow all three actions to proceed simultaneously would needlessly squander judicial and party resources and risk conflicting rulings on the same issues.

I. The Court Should Transfer The Actions Here Under The First-To-File Rule.

The first-to-file rule allows a district court to transfer an action "'whenever it is duplicative of a parallel action already pending in another federal court.'" *Schwarz v. Nat'l Van Lines, Inc.*, 317 F. Supp. 2d 829, 833 (N.D. Ill. 2004) (quoting *Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir. 1993)). A transfer on this ground is warranted "so long as 'the principles that govern requests for transfer do not indicate otherwise.'" *Humphrey v. United Healthcare Servs., Inc.*, No. 14-1157, 2014 WL 3511498, at *3 (N.D. Ill. July 16, 2014) (quoting *Research Automation, Inc. v. Schrader-Bridgeport Int'l, Inc.*, 626 F.3d 973, 980 (7th Cir. 2010)). The two actions here without question duplicate the earlier-filed *Eisenlord* action, and the other principles governing transfer requests support transfer here.

A. These Actions Duplicate The *Eisenlord* Action.

"Generally, courts will find that cases are identical if they involve the same issues and the same parties." *Humphrey*, 2014 WL 3511498, at *2. Aliano's complaint literally copies the allegations in Eisenlord's complaint word for word, which in itself demonstrates that both actions involve the same issues. Drey's complaint in turn copies both of these complaints to a significant degree. All three actions challenge the same labels, on the same products, under the

same theory. In addition, all cases raise the same or highly similar claims and seek the same relief. Moreover, all three plaintiffs seek to represent a nationwide class of consumers who purchased the relevant products, and seek relief against the same Defendant. In short, the cases are "nearly identical." Aliano MDL Motion at 1.

1. Same Issues: "Claims need not be identical to satisfy the 'same issues' requirement[.] Rather, it is sufficient if the issues substantially overlap." *Humphrey*, 2014 WL 3511498, at *2 (citations and alterations omitted). Issues substantially overlap when "they are based on the same underlying facts." *Jaramillo v. DineEquity, Inc.*, 664 F. Supp. 2d 908, 916 (N.D. Ill. 2009). The Court accordingly found this requirement satisfied in *Askin v. Quaker Oats Co.*, No. 11-111, 2012 WL 517491, at *1 (N.D. Ill. Feb. 15, 2012), where the plaintiff raised similar allegations to those at issue here—that certain Quaker products contained misleading labels. The Court explained that Askin's complaint was "largely a word-for-word copy" of a complaint filed earlier in the Northern District of California. *Id.* at *3. It specified "the same Quaker products as bearing misleading labels," and identified "the same key phrases" "as the sources of the misrepresentations." *Id*. Thus, the Court concluded, Askin could "hardly argue with any credibility . . . that there [were] substantial differences in the underlying allegations." *Id.*

The same is true here. "[A]ll of the actions assert putative consumer classes, each apparently nationwide in scope and alleging injury from the same underlying circumstances." Drey MDL Response at 2. In fact, Aliano's and Drey's underlying factual allegations are indistinguishable from Eisenlord's. All three plaintiffs challenge the same Maple and Brown Sugar flavor names and vignettes on the same six products as the sources of the alleged misrepresentations. *See* Drey MDL Response at 2; Aliano MDL Motion at 4-6. That is, they each allege that the Products' packaging includes "a prominent image of a glass pitcher of maple

syrup" and "bold" use of the flavor name "Maple & Brown Sugar." Aliano Compl. ¶¶ 15, 19; Eisenlord Compl. ¶¶ 21, 22; Drey Compl. ¶ 16. All three plaintiffs further assert that the Products do "not contain any maple syrup or maple sugar" (Aliano Compl. ¶ 21; Eisenlord Compl. ¶ 24; Drey Compl. ¶ 18) and that class members "have been harmed because they overpaid for the products" and "would not have purchased" them "had they known that the products did not contain any maple syrup or maple sugar" (Aliano Compl. ¶ 25; Eisenlord Compl. ¶ 28; Drey Compl. ¶ 27). The issues are therefore the same in all three actions.

It is immaterial that, in addition to claims under California law, Aliano and Drey raise claims under the laws of Illinois and other states as well. As this Court explained in *Askin*, "whether cases are substantially similar is a question of substance rather than form." 2012 WL 517491, at *4. "As long as the underlying facts are the same . . . the fact that the two complaints allege violations of different state laws is not enough to render them substantially dissimilar for purposes of the first-to-file analysis." *Id.* The Court in *Askin* compared two of the very claims at issue here: one under the Illinois Consumer Fraud and Business Practices Act to one under California's Unfair Competition Law. *Id.* The Court found that any differences were "insignificant" because "even comparing the claims under the relevant California and Illinois statutes, the same underlying facts will be used to support the claims of deceptive practices." *Id.* That is true of all of Aliano's and Drey's other claims—including those under the consumer fraud and deceptive trade practices acts of various other states—because they also rely on the "same underlying facts." *Id.*

2. <u>Same Parties</u>: The actions here also involve the same parties as in *Eisenlord*. The defendant in each is undisputedly Quaker. For the plaintiffs, "the relevant question is whether the class members would be the same in the two actions, not whether the named plaintiffs are the

same." *Humphrey*, 2014 WL 3511498, at *3. Putative class members need not be absolutely identical so long as they are "substantially similar." *Askin*, 2012 WL 517491, at *4.

As plaintiffs admit, "[t]he putative class definitions in each action" here "encompass the same groups of . . . consumers." Drey MDL Response at 2; Aliano MDL Motion at 6 ("all three federal court cases seek to represent the same nationwide class of persons"). Aliano and Drey seek to represent a class of "[a]ll persons in the United States who purchased" the Products (Aliano Compl.¶ 33; Drey Compl. ¶ 30), and Eisenlord seeks to represent "[a]ll individuals nationwide who, from four years prior to the filing of this Complaint through to the date of certification purchased" the Products (Eisenlord Compl. ¶ 36). All three plaintiffs seek "relief on behalf of a nationwide class, regardless of where within the United States the class members purchased or used the products," and accordingly, the parties in *Eisenlord* are "substantially similar to the parties in th[ese] case[s]." *Askin*, 2012 WL 517491, at *4. Any minor differences in the scope of the nationwide class that each plaintiff ultimately seeks to certify are immaterial because there need only be "substantial similarity" between the parties, not exact identity. *Id.*

That each plaintiff seeks to also represent a state subclass does not change the analysis. *See* Aliano Compl. ¶ 34 ("All Illinois residents who purchased" the products); Eisenlord Compl. ¶ 36 ("All individuals who, from four years prior to the filing of this Complaint through to the date of certification purchased any of the following products in California"); Drey Compl. ¶ 31 ("All California residents who purchased" the products). As an initial matter, the subclasses in *Drey* and *Eisenlord* are *identical*. Moreover, each putative subclass is by definition subsumed in the nationwide class, and so neither would introduce new parties. *See Herrera v. Wells Fargo Bank, N.A.*, No. 11-1485, 2011 WL 6141087, at *2 (N.D. Cal. Dec. 9, 2011) ("[T]he absence of a California subclass from the [Texas] action is not determinative").

B. The Other Relevant Factors Support Transfer.

Given the substantial overlap between the actions here and *Eisenlord*, the first-to-file rule warrants transfer to the Central District of California "so long as 'the principles that govern requests for transfer do not indicate otherwise.'" *Humphrey*, 2014 WL 3511498, at *3 (quoting *Research Automation*, 626 F.3d at 980). Those principles are set forth in 28 U.S.C. § 1404(a) "and constitute two separate prongs—convenience and the interest[s] of justice"—both of which favor transfer here. *Id.*

1. <u>The Interests of Justice</u>: The interests of justice generally "relat[e] to the efficient administration of the court system." *Research Automation*, 626 F.3d at 978. They "may be determinative in a particular case, even if the convenience of the parties and witnesses might call for a different result." *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 220 (7th Cir. 1986). The interests of justice heavily support transfer to the Central District of California because in plaintiff's own words "centralization is necessary in order to avoid duplication of discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary." Aliano MDL Motion at 3.

First, "it cannot be in the interests of justice to allow two nearly-identical lawsuits between the same parties to proceed in two different courts at the same time" because "the untenable outcome of redundant and possibly conflicting decisions" could arise. *Zurich Am. Ins. Co. v. Pillsbury Co.*, 264 F. Supp. 2d 710, 711 (N.D. Ill. 2003); *see also* Drey MDL Response at 2 ("Without oversight by a single judge, the potential remains for inconsistent determinations that threaten to impede the orderly resolution of the Related Actions."). That risk is heightened here, where at least one question of uniform federal law—whether plaintiffs' claims are preempted—is present. The Nutrition Labeling and Education Act expressly preempts any state

labeling requirement "that is not identical to" certain federal standards. 21 U.S.C. § 343-1(a)(3). Thus, courts have held in analogous circumstances that, when plaintiffs "see[k] to impose requirements that are 'not identical' to this regulatory scheme," their claims are preempted as a matter of federal law.[6]

The same is true of the claims in all three complaints here. The applicable federal regulations unequivocally permit representations regarding a product's "primary recognizable flavor(s)" (e.g., "maple" or "brown sugar") by "word [or] vignette," even if the product "is commonly expected to contain a characterizing food ingredient" (e.g., maple or brown sugar) but "contains no such ingredient." 22 C.F.R. § 101.22(i)(1)(i). Thus, under federal law, Quaker may use the words "maple and brown sugar" to describe the flavor regardless of whether the challenged products contain maple syrup or maple sugar,[7] as long as a representation is also made (as it is here) that the products contain natural and/or artificial flavors. Numerous plaintiffs have raised similar claims contending that representations regarding the characterizing flavor of a product are misleading, and these claims—challenging cereals to fruit snacks, and blueberry to vegetable flavors—have consistently been dismissed as preempted by the express language of 21 C.F.R. § 101.22.[8] Plaintiffs in *Eisenlord*, *Aliano*, and *Drey* nonetheless challenge Quaker's

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[6] *Dvora v. General Mills, Inc.*, No. 11-cv-1074, 2011 WL 1897349, at *4 (C.D. Cal. May 16, 2011); *see also Turek v. General Mills, Inc.*, 662 F.3d 423, 427 (7th Cir. 2011) ("The disclaimers that the plaintiff wants added to the labeling [of the challenged products] are not identical to the labeling requirements imposed on such products by federal law, and so they are barred.")

[7] Quaker does not concede that the products do not contain ingredients derived from maple.

[8] *See, e.g.*, *Dvora*, 2011 WL 1897349, at *4-6 (dismissing claims challenging blueberry and pomegranate images and flavor labeling accompanied by "naturally and artificially flavored" statements as squarely preempted under federal law); *Henry v. Gerber Prods. Co.*, No. 15-cv-02201, 2016 WL 1589900, at *6-7 (D. Or. Apr. 18, 2016) (dismissing claims challenging banana images and "Banana" flavor labeling on Puffs products not containing any banana as preempted by the "characterizing flavor" regulation); *Bell v. Campbell Soup Co.*, 65 F. Supp. 3d 1328, 1332 (N. D. Fla. 2014) (dismissing as preempted claims challenging depictions of pomegranates and blueberries and "Pomegranate Blueberry" flavor labeling on juice products); *Samet v. Procter & Gamble Co.*, No. 5:12-cv-1891, 2013 WL 3124647, at *6 (N.D. Cal.

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flavor representations, setting up a direct conflict with federal law.

This preemption question will arise on a motion to dismiss in all of the actions. Absent a transfer or stay, multiple courts will have to confront the question, which will waste judicial resources and potentially disrupt the uniformity of federal law and food-labeling on this issue.

In the unlikely event that the complaints survive motions to dismiss, the different courts would also have to determine other overlapping issues, including whether to certify overlapping classes. For these reasons, both Aliano and Drey supported consolidation of the actions. *See* Aliano MDL Motion at 7 ("Transferring the Scheduled Actions to a single judge will preserve judicial resources by avoiding the need for several federal judges in multiple districts to address identical legal issues and similar factual patterns."); Drey MDL Response at 1 ("Consolidating the Related Actions here would prevent duplicative discovery and eliminate the potential for inconsistent pre-trial determinations involving discovery and class certification, thereby promoting the just and efficient conduct of the Related Actions.").

Second, "related litigation should be transferred to a forum where consolidation is feasible." *Coffey*, 796 F.2d at 221. As demonstrated above, "there is [more than] sufficient overlap to make consolidation feasible" here as a substantive matter. *McFatridge v. Scottsdale Indemn. Co.*, No.10-5599, 2011 WL 831173, at *5 (N.D. Ill. Mar. 2, 2011). All three actions are also at a sufficiently "early stage" that "consolidation thus is feasible" as a procedural matter. *First Health Grp. Corp. v. Allcare Health Mgmt. Sys., Inc.*, No. 01-1790, 2001 WL 686777, at *2 n.2 (N.D. Ill. June 15, 2001). No case has yet begun motion to dismiss briefing.

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June 18, 2013) (dismissing as preempted challenge to depictions of strawberries, blueberries, and raspberries not contained in snack products and "Mixed Berry" flavor labeling where the labels included the words "artificially flavored").

No other consideration relating to the interests of justice weighs against transfer. As for familiarity with the applicable law, both courts are "equally familiar with the federal law" governing preemption, *Toddy Gear, Inc. v. Cleer Gear, LLC*, No. 13-1926, 2013 WL 6153052, at *4 (N.D. Ill. Nov. 22, 2013), and each court "faces the same learning curve" on state law questions. *Lafleur v. Dollar Tree Stores, Inc.*, No. 11-cv-8473, 2012 WL 2280090, at *6 (N.D. Ill. June 18, 2012). There is no indication that questions of Illinois' (or other states' consumer protection) laws will be "so unique as to be beyond the comprehension" of the Central District of California, so this factor is neutral. *Amoco Oil Co. v. Mobil Oil Corp.*, 90 F. Supp. 2d 958, 962 (N.D. Ill. 2000). The Products at issue are also sold nationwide. Hence, "there is no compelling community interest" in this Court. *LaFleur*, 2012 WL 2280090, at *7 (citation omitted).

2. Convenience: The first-to-file rule, and the considerations of justice incorporated therein, independently justify a transfer here "even if the convenience of the parties and witnesses might call for a different result." *Coffey*, 796 F.2d at 220. Even so, the convenience factors here either favor transfer or are neutral. Those factors include: "(1) the plaintiff's choice of forum; (2) the situs of the material events; (3) the relative ease of access to the sources of proof; (4) the convenience of the witnesses; and (5) the convenience of the parties." *Humphrey*, 2014 WL 3511498, at *3 (citation omitted).

First, the Central District of California is convenient for all of the parties. Aliano, the *sole* Plaintiff from Illinois, cannot plausibly argue that it would be inconvenient for him to litigate in the Central District of California. Aliano has filed multiple actions in that district in the last year-and-half alone and is currently litigating those cases in the Central District of California (with his same counsel, Thomas Zimmerman). *See Aliano v. The Honest Company, Inc.*, No. 16-cv-02394 (C.D. Cal.); Complaint, *Aliano v. Nat'l Football League*, No. 15-cv-05508

(C.D. Cal. filed July 21, 2015), ECF No. 1; Notice of Appearance of Thomas Zimmerman on Behalf of Mario Aliano (filed February 19, 2016), *In re Nat'l Football Leagues Sunday Ticket Antitrust Litig.*, No. 15-ML-02668 (C.D. Cal.), ECF No. 68. Litigating in the Central District of California is clearly convenient for Aliano. Besides, any supposed inconvenience to Aliano can be mitigated through an agreement to depose him in Illinois. *Jaramillo*, 664 F. Supp. 2d at 915 ("Because Defendants have agreed to take Plaintiffs' depositions in Illinois, they will not be inconvenienced by a transfer of this action."). Nor is there any indication that Drey, who lives *in California* (*see* Drey Compl. ¶ 6) would be more inconvenienced by litigating in the Central District of California than litigating in this Court.

Litigating the actions in the Central District of California is also convenient for Quaker. Quaker's counsel are located in Los Angeles (convenient for the Central District of California) and Washington, D.C., and in the unlikely event that the actions survive motions to dismiss, Quaker could as easily produce documents in California as it could in Illinois. Quaker has consistently taken the position that it is equally convenient to litigate in California as it is in Illinois. *See Askin*, 2012 WL 517491, at *5 ("Quaker assert[ed] that document production can move forward as easily in California as in any other jurisdiction."). Quaker has also efficiently litigated in California consolidated litigation challenging labeling on its products in the past. *See In re Quaker Oats Labeling Litigation*, No. 10-cv-0502 RS (N.D. Cal.).

Second, "convenience should not be assessed in a vacuum"; the question is not "whether [Illinois] is more convenient than California in the abstract but instead whether sanctioning a second, nearly identical action here is more convenient than transferring the case for the purpose of consolidation. When considered in that light, convenience weighs in favor of transfer." *Wiley v. Gerber Prods. Co.*, 667 F. Supp. 2d 171, 173 (D. Mass. 2009). In the unlikely event that the

cases proceed to discovery, allowing the *Drey* and *Aliano* actions to move forward in Illinois would require the same witnesses to have to go through duplicative discovery proceedings (including depositions) in separate cases proceeding in separate jurisdictions. That substantial inconvenience outweighs any marginal convenience of litigating in Illinois as well.

Third, Aliano's and Drey's choice of forum should be discounted because both plaintiffs seek to bring claims on behalf of a class of purchasers nationwide. Many courts give less weight to plaintiff's choice of forum in class actions. For instance, the Court in *Jaramillo* explained that the plaintiff's choice of forum "is greatly discounted in class actions" because if a nationwide class is certified, the plaintiff's "choice of venue will not be the home venue for all plaintiffs and any venue selected is bound to be inconvenient to some plaintiffs." 664 F. Supp. 2d at 914. Because there are putative class representatives in California who can litigate on behalf of the class, Aliano's and Drey's choice of forum should be discounted. *Id.* at *2 (collecting cases).

Moreover, as Quaker has amply demonstrated, the plaintiffs in *Aliano* and *Drey* have engaged in an already time consuming and expensive set of procedural maneuvers that are the opposite of efficient and that demonstrate the need for the first-to-file rule. They have refused to consent to reasonable extension requests; they have declined to brief first-to-file issues in this Court, instead filing a "shotgun" MDL petition the day after the *Gates* action in New Jersey was filed and before it was served on Quaker; and they continue to proliferate cases in an effort to wrest "control" of these cases from the first-filed group of plaintiffs' counsel. No. 16-cv-03087 (N.D. Ill.), ECF Nos. 11, 12, 16, 17, 18, 24. Quaker has already incurred needless expense addressing an MDL petition, filing motions to seek limited extensions to respond to the complaint because Aliano would not waive service, and appearing multiple times for status and presentment hearings, with no sign that this gamesmanship will end in the absence of a transfer

order from this Court. Convenience plainly requires the transfer of these cases to California, where one of the plaintiffs (Drey) actually *lives*, and where the other plaintiff (Aliano) is *actively litigating* two cases with the same counsel. The convenience factors strongly support transfer.

II. In The Alternative, The Court Should Stay These Actions.

If the Court does not transfer these actions, it should at least stay them pending resolution of *Eisenlord*. "In determining whether a second-filed case should be stayed, this [C]ourt considers (i) whether a stay will unduly prejudice or tactically disadvantage the non-moving party, (ii) whether a stay will simplify the issues in question and streamline the trial, and (iii) whether a stay will reduce the burden of litigation on the parties and on the court." *Askin*, 2012 WL 517491, at *6 (citation omitted). All three of these factors point toward a stay.

"[T]here is no reason to think that allowing the California litigation to proceed" will cause Aliano or Drey "undue harm." *Askin*, 2012 WL 517491, at *6. Their claims will be "preserved" in this Court; and they suffer no prejudice just because they are denied the opportunity "of being the first to certify a nationwide class." *Id.* In addition, "[g]iven the similarity of the claims," the resolution of *Eisenlord* will "simplify questions such as whether federal regulations leave room for [the] state law claims" and "prevent unnecessary duplication of both the underlying substantive questions . . . and the appropriateness of allowing the claims to proceed on behalf of a nationwide class." *Id.* These simplifications will directly "reduce the burden" on the parties and this Court. *Id.* (citation omitted). Whether by stay or transfer, these actions should not proceed in this Court while *Eisenlord* proceeds in California.

CONCLUSION

The Court should transfer these actions to the Central District of California; or in the alternative stay these actions pending resolution of *Eisenlord*.

Dated: June 20, 2016

Respectfully submitted,

BY: */s/ Andrew S. Tulumello*

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on June 20, 2016, he caused to the foregoing document to be electronically filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, using the Court's CM/ECF system, which shall send notification of such filing to all counsel of record.

/s/ Erik J. Ives

EXHIBIT 1

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(Additional counsel on signature page)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DARREN EISENLORD, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

THE QUAKER OATS COMPANY; and DOES 1 through 5,

Defendant.

Case No. 2:16-cv-1442

CLASS ACTION COMPLAINT FOR:

1. **Fraudulent Inducement**
2. **Cal. Comm. Code § 2313**
3. **Cal. Civil Code §1750**
4. **Cal. Bus. & Profs. Code §17500; and**
5. **Cal. Bus. & Profs. Code §17200**

DEMAND FOR JURY TRIAL

Plaintiff Darren Eisenlord brings this action on his own behalf and on behalf of the Class he seeks to represent, based upon his own personal knowledge as to himself

and his own acts and upon information and belief and the investigation of his counsel as to all other matters, and alleges as follows:

NATURE OF THE CASE

1. The Quaker Oats Company manufactures, markets, distributes, and sells a variety of Quaker Oats Maple & Brown Sugar Instant Oatmeal products. The company mislabels and falsely advertises these products as containing maple syrup or maple sugar when these products do not contain any maple syrup or maple sugar.

2. The Quaker Oats Company's conduct breaches its express warranties with consumers, constitutes false advertising, and violates the California Consumer Legal Remedies Act, the California False Advertising Law, the California Unfair Competition Law, the California Sherman Food, Drug, and Cosmetic Law, the Federal Food, Drug, and Cosmetic Act, and constitutes fraudulent inducement.

3. Plaintiff brings this action on behalf of himself and a class of purchasers to stop Defendants from mislabeling food products as containing maple syrup and maple sugar when they are not ingredients in the product. In addition, Plaintiff, on behalf of himself and the proposed class, seeks restitution and other equitable, injunctive, declaratory, and monetary relief as set forth below.

PARTIES

4. Plaintiff Darren Eisenlord ("Plaintiff") is a resident of Los Angeles County, California. He purchased Instant Oatmeal Maple and Brown Sugar at a Target store located in Los Angeles County, California.

5. Defendant The Quaker Oats Company ("Defendant") is a New Jersey corporation and has its principal place of business in Chicago, Illinois. It maintains a registered agent for service of process at 818 West Seventh Street, Suite 930, Los Angeles, CA 90017.

6. Plaintiff is currently ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued herein under the

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fictitious names Does 1 through 5, inclusive, and therefore, sues such Defendants by such fictitious names. Plaintiff will seek leave to amend this complaint to allege the true names and capacities of said fictitiously named Defendants when their true names and capacities have been ascertained. Plaintiff is informed and believes and based thereon alleges that each of the fictitiously named Doe Defendants is legally responsible in some manner for the events and occurrences alleged herein, and for the damages suffered by Plaintiff.

7. Plaintiff is informed and believes and based thereon alleges that all defendants, including the fictitious Doe Defendants, were at all relevant times acting as actual agents, conspirators, ostensible agents, partners and/or joint venturers and employees of all other defendants, and that all acts alleged herein occurred within the course and scope of said agency, employment, partnership, and joint venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge, consent, authorization and ratification of their co-Defendants; however, each of these allegations are deemed "alternative" theories whenever not doing so would result in a contraction with the other allegations.

8. All Defendants, including Does 1 through 5, are collectively referred to as "Defendants."

9. Whenever this complaint refers to any act of Defendants, the allegations shall be deemed to mean the act of those defendants named in the particular cause of action, and each of them, acting individually, jointly and severally, unless otherwise alleged.

JURISDICTION & VENUE

10. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d), because (a) at least one member of the putative class is a citizen of a state different from Defendants, (b) the amount in controversy exceeds $5,000,000,

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exclusive of interest and costs, and (c) none of the exceptions under that subsection apply to this action.

11. This Court has personal jurisdiction over Defendants because they conduct operations and/or sales in California, are registered to do business in California, and the acts alleged herein originated in this District.

12. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in this District.

COMMON ALLEGATIONS OF FACT

Consumer Preferences and Expectations Regarding Products Containing Maple Syrup and Maple Sugar

13. Maple syrup and maple sugar are premium ingredients that companies add to sweeten food products.

14. They are preferred over other sweeteners for a variety of reasons relating to taste, quality, health benefits, origin, and other reasons.

15. Maple syrup contains an abundant amount of naturally occurring minerals such as calcium, manganese, potassium and magnesium. It is also a source of beneficial antioxidants that have shown to help prevent cancer, support the immune system, lower blood pressure and slow the effects of aging. See http://vermontmaple.org (last visited Feb. 29, 2016).

16. Maple syrup is believed to have a higher nutritional value than all other common sweeteners. See http://vermontmaple.org (last visited Feb. 29, 2016).

17. Maple sugar is made when all of the water in the maple syrup is boiled away. It is then stirred while very hot allowing any water that is left to evaporate as steam. The result is a dry pure granular maple sugar that can be substituted for white processed granulated sugar. See http://vermontmaple.org/maple-products/maple-sugar/ (last visited Feb. 29, 2016).

18. Defendants claim to use maple syrup and maple sugar in their Quaker Oats Maple & Brown Sugar Instant Oatmeal products. These products prominently

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display the words "maple and brown sugar" on their packaging along with images of a pitcher of maple syrup.

19. Consumers reasonably rely on the name of these products along with these images and statements to indicate that the products contain maple syrup and/or maple sugar.

20. Food products that are represented as containing maple syrup or maple sugar command a premium in the marketplace. In addition, companies increase sales when they represent that a product contains these ingredients.

Defendants Mislabel Quaker Oats Maple & Brown Sugar Instant Oatmeal Products As Containing Maple Syrup and/or Maple Sugar.

21. Defendants manufacture, promote, and distribute, and sell Quaker Instant Oatmeal Maple and Brown Sugar throughout the nation, including the following products: Quaker Oats Maple & Brown Sugar Instant Oatmeal, Quaker Oats Maple & Brown Sugar High Fiber Instant Oatmeal, Quaker Oats Maple & Brown Sugar Gluten Free Instant Oatmeal, or Quaker Oats Maple & Brown Low Sugar Instant Oatmeal, Quaker Oats Maple & Brown Sugar Weight Control Instant Oatmeal and Quaker Oats Maple & Brown Sugar Organic Instant Oatmeal.

22. On the front packaging of all of these products, Defendants place a prominent image of a glass pitcher of maple syrup and the words "maple and brown sugar" appear in bold in the name of the product.

23. The front packaging of these products is the same or substantially similar as depicted in Exhibit "A" attached to this Complaint.

24. However, these products do not contain any maple syrup or maple sugar, and are therefore misbranded under state and federal laws.

25. In making their purchasing decisions, consumers, including Plaintiff and Class Members, rely on the labeling (such as the name of these products, images of maple syrup, and the declaration of maple sugar on the front packaging) to inform them of whether the products contain maple syrup and/or maple sugar.

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26. The presence of maple sugar and/or maple syrup, premium ingredients, in these products has a material bearing on a consumers' (including Plaintiff and Class Members') decision to buy them.

27. According to the Vermont Maple Sugar Makers' Association and over ten other maple industry groups, this business practices injures consumers and maple syrup manufacturers:

> This unchecked misbranding has an adverse impact on manufacturers of products containing real maple syrup, as it allows cheaper products not containing premium ingredients to compete with those actually containing maple syrup. Further, it deceives consumers into believing they are purchasing a premium product when, in fact, they have a product of substantially lower quality.

See Feb. 15, 2016 Letter from Vermont Maple Sugar Makers' Association to the Food and Drug Administration available at https://consumermediallc.files.wordpress.com/2016/02/fdamaple.pdf (last visited March 1, 2016).

28. Accordingly, Plaintiff and members of the Class have been harmed because they overpaid for the products (or would not have purchased the products) had they known that the products did not contain any maple syrup or maple sugar.

Plaintiff's Individual Allegations

29. In or around June 2014, Plaintiff purchased Quaker Instant Oatmeal Maple and Brown Sugar at a Target store located in Los Angeles County, California.

30. Plaintiff searched for instant oatmeal items that contained maple syrup and/or maple sugar.

31. Plaintiff viewed and relied upon the name of the product and a prominent image of maple syrup on the product packaging. These images and statements were the same as or substantially similar to the representations depicted in Exhibit A attached to the Complaint.

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32. Because he was purchasing a product that was labeled as containing maple sugar and/or maple syrup ingredients, he reasonably believed that it, in fact, contained these ingredients.

33. Plaintiff relied on these advertisements when forming his purchasing decision.

34. Had Plaintiff known that the product did not contain maple syrup or maple sugar as an ingredient, he would not have purchased it. As a result, Plaintiff has suffered damages.

35. In addition to monetary damages, Plaintiff seeks injunctive relief to stop Defendants from mislabeling its products and to inform consumers that the products do not contain any maple syrup or maple sugars.

CLASS ACTION ALLEGATIONS

36. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and a class defined as follows:

> **Nationwide Class**: All individuals nationwide who, from four years prior to the filing of this Complaint through to date of certification purchased any of the following products: Quaker Oats Maple & Brown Sugar Instant Oatmeal (Classic Recipe), Quaker Oats Maple & Brown Sugar High Fiber Instant Oatmeal, Quaker Oats Maple & Brown Sugar Gluten Free Instant Oatmeal, or Quaker Oats Maple & Brown Low Sugar Instant Oatmeal, Quaker Oats Maple & Brown Sugar Weight Control Instant Oatmeal, Quaker Oats Maple & Brown Sugar Organic Instant Oatmeal.
>
> **California Subclass**: All individuals who, from four years prior to the filing of this Complaint through to date of certification purchased any of the following products in California: Quaker Oats Maple & Brown Sugar Instant Oatmeal (Classic Recipe), Quaker Oats Maple & Brown Sugar High Fiber Instant Oatmeal, Quaker Oats Maple & Brown Sugar Gluten Free Instant Oatmeal, or Quaker Oats Maple & Brown Low Sugar Instant Oatmeal, Quaker Oats Maple & Brown Sugar Weight Control Instant Oatmeal or Quaker Oats Maple & Brown Sugar Organic Instant Oatmeal.

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37. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest in Defendants, and Defendants' agents, legal representatives, predecessors, successors, assigns, and employees. Also excluded from the Class are the judge and staff to whom this case is assigned, and any member of the judge's immediate family.

38. Plaintiff reserves the right to revise the definition of the Class based on facts learned during discovery.

39. The exact number of persons in the Class, as herein identified and described, is unknown but is estimated to number in the thousands. The Class is so numerous that joinder of individual members herein is impracticable.

40. Plaintiff will fairly and adequately represent and protect the interests of the other members of each Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the other members of the Class.

41. Absent a class action, most members of the Class would find the cost of litigating their claims to be prohibitive, and will have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

42. Defendants have acted and failed to act on grounds generally applicable to the Plaintiff and the other members of the Class in falsely advertising and mislabeling it products as containing maple syrup or maple sugar, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward members of the Class.

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43. The factual and legal basis of Defendants' liability to Plaintiff and to the other members of the Class are the same, resulting in injury to the Plaintiff and to all of the other members of the Class as a result of the Defendants' conduct of falsely advertising and mislabeling it products as containing maple syrup or maple sugar. Plaintiff and members of the Class have suffered harm and damages as a result of Defendants' unlawful and wrongful conduct.

44. There are many questions of law and fact common to the claims of Plaintiff and the other members of the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include but are not limited to the following:

(a) Whether Defendants' name of the product and use of images of maple syrup constituted an express warranty that the product contained maple syrup and/or maple sugars;

(b) Whether Defendants breached their express warranties with Plaintiff and class members;

(c) Whether Defendants' labeling is unlawful, unfair, deceptive, or misleading to reasonable consumers under the UCL;

(d) Whether Defendants' conduct violates the Cal. Bus. & Profs. Code §17200, the Cal. Civil Code §1750, and the Cal. Civil Code 17500;

(e) Whether Defendants' product contain maple syrup or maple sugars;

(f) Whether a reasonable consumer would expect that products advertised with an image of maple syrup and including "Maple and Brown Sugar" in the name of the product would in fact contain maple syrup or maple sugar as an ingredient;

(g) Whether, as a result of Defendants' conduct, Plaintiff and the class members are entitled to equitable relief and/or other relief, and, if so, the nature of such relief; and

(h) The method of calculation and extent of damages for Plaintiff and members of the Class.

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FIRST CLAIM FOR RELIEF
Fraudulent Inducement
(On behalf of Plaintiff and the Nationwide Class)

45. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

46. As described with particularity above, Defendants have used and continue to use, marketing tactics they know or reasonably should know are false and misleading.

47. To induce Plaintiff and the Class into purchasing their products, Defendants affirmatively represented that their products contained maple syrup and/or maple sugars.

48. Defendants' affirmative representations were, in fact, false. In particular, Defendants products do not contain these ingredients.

49. The representations made by Defendants were material terms in their transactions with Plaintiff and the Class because they directly affected their choices to purchase Defendants' products

50. Defendants, as the manufacturers and designers of the food and its packaging, knew or should have known, with the exercise of reasonable care, that the products they were offering to consumers do not contain any maple syrup or maple sugar and that consumers would be misled into believing that the products contained those ingredients.

51. Defendants knew or should have known that a number of groups in the maple sugar and syrup industry have jointly complained about this issue as negatively affecting consumers' ability to make informed decisions and causing unfair competition.

52. Therefore, Defendants intentionally designed their public representations to mislead consumers about the ingredients and quality of their products.

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53. Defendants made these representations with the intent to induce Plaintiff and the Class to rely upon them by purchasing certain candies.

54. Plaintiff and the Class were misled by these representations.

55. They would not have purchased (or would have paid less) for Defendant's products but for the misrepresentations alleged herein.

56. As a result of their reasonable reliance on Defendants' misrepresentations, Plaintiff and the Class have suffered actual monetary damages in the form of the price paid for Defendants' candies.

57. Plaintiff therefore prays for relief in the amount of the price paid for Defendants' products.

SECOND CLAIM FOR RELIEF
Violation of the California Commercial Code, Section 2313,
Breach of Express Warranty
(On behalf of Plaintiff Eisenlord and the California Subclass)

58. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

59. Defendants produced, advertised, marketed, distributed, and sold products with the affirmation of fact, promise, and description on the packaging that the product contained maple syrup or maple sugar.

60. Plaintiff and members of the Class relied on these affirmations of fact, promises, and descriptions in that they were part of the basis of the bargain under which Plaintiff and members of the Class purchased Defendants' products.

61. Defendants breached these express warranties by producing, distributing, and marketing products to Plaintiff and Class members that did not conform to the affirmations of fact, promises, and/or descriptions made on the packaging (, that the product contained maple syrup or maple sugar).

62. Defendants have been on notice of their breach of these express warranties as they manufactured the product and designed the labeling. Further, they

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knew or should have known that a number of groups in the maple sugar and syrup industry have jointly complained about this issue as negatively affecting consumers and the industry alike.

63. As a proximate result of Defendants' breach of its express warranty, Plaintiff and members of the Class sustained damages, including but not limited to the purchase price of the product and/or the premium paid for the product.

64. Plaintiff, on behalf of himself and the Class, is entitled to damages and other legal and equitable relief including, a right of reimbursement, as well as costs, expenses and attorneys' fees.

65. Plaintiff brings this action as a private attorney general, and to vindicate and enforce an important right affecting the public interest. Plaintiff and the Class are therefore entitled to an award of attorneys' fees under Code of Civil Procedure section 1021.5 for bringing this action.

THIRD CLAIM FOR RELIEF
Violations of the Consumers Legal Remedies Act,
California Civil Code Section 1750, et seq.
(On behalf of Plaintiff Eisenlord and the California Subclass)

66. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

67. The California Consumer Legal Remedies Act, Section 1750 of the California Civil Code, protects consumers against fraud, unlawful practices, and unconscionable commercial practices in connection with the sale of any merchandise.

68. Plaintiff and members of the Class are "consumers" as defined by Section 1761(d) of California Code because they sought or acquired Defendants' goods for personal, family, or household purposes.

69. Defendants' instant oatmeal products are "goods" within the meaning of Section 1761(a) of the California Civil Code as they are tangible chattels bought for personal, family, or household purposes.

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70. Defendants manufactured, licensed, distributed, marketed, and sold products as containing maple syrup or maple sugar when, in fact, they do not. Such conduct constitutes a violation of the California Consumer Legal Remedies Act as specified below.

71. Defendants' conduct violated and continues to violate the Consumer Legal Remedies Act by engaging in the following practices proscribed by section 1770(a), subsections (2), (5), (7), and (9) of the California Civil Code, respectively, in transactions with Plaintiff and members of the Class, which were intended to result in, and did result in, the sale of the products in that Defendants: misrepresenting the source, sponsorship, approval, or certification of goods or services; misrepresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have; representing that goods or services are of a particular standard, quality, or grade…if they are of another; and advertising goods or services with intent not to sell them as advertised.

72. Plaintiff and other members of the Class reasonably relied upon and were deceived by Defendants' representations that its products contain maple syrup or maple sugars.

73. Pursuant to section 1782(d) of the California Civil Code, Plaintiff, on behalf of himself and the Class seek a Court order enjoining Defendants from such future conduct and any other such orders that may be necessary to rectify the fraudulent, unlawful, unconscionable commercial practices, and fraudulent business practices of Defendants, including requiring Defendants to cease mislabeling of its products as containing maple syrup or maple sugars.

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FOURTH CLAIM FOR RELIEF
Violations of the False Advertising Act,
California Civil Code Section 17500, *et seq.*,

(On behalf of Plaintiff Eisenlord and the California Subclass)

74. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

75. Section 17500 of the California False Advertising Act prohibits the dissemination of statements that are untrue, misleading, and which are known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

76. Defendants' acts and practices violated Section 17500 of the California False Advertising Act. Defendants disseminated untrue and misleading statements to Plaintiffs and members of the Class by mislabeling its products as containing maple syrup or maple sugars.

77. Defendants' statements were untrue and misleading in material respects because Plaintiff and the Class would not have purchased, or would not have paid as much for, the product had they known that did not contain any maple syrup or maple sugars.

78. Defendants' use of statements and imagery on the product packaging and name had the capacity, likelihood and tendency to deceive and confuse consumers into believing that the product contained maple syrup and/or maple sugar.

79. Defendants, as the manufacturers and designers of the food and its packaging, knew or should have known, with the exercise of reasonable care, that the products they were offering to consumers do not contain any maple syrup or maple sugar and that consumers would be misled into believing that the products contained those ingredients. Therefore, Defendants' knew or should have known that their statements were untrue and misleading.

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80. Plaintiff and members of the Class were induced to purchase and/or pay a premium for Defendants' product based on Defendants' untrue and misleading statements.

81. Plaintiff and members of the Class were aware of and reasonably relied on Defendants' untrue and misleading statements.

82. Defendants disseminated untrue and misleading statements about the ingredients and quality of its products with the intent not to sell them as advertised.

83. Pursuant to section 17535 of the California Business and Professions Code, Plaintiff, on behalf of himself and the Class seeks restitution and a Court order enjoining Defendants from such future conduct and any other such orders as may be necessary to rectify Defendants' mislabeling and false advertising, including requiring Defendants to cease misrepresenting that its products contain maple syrup or maple sugars.

84. Plaintiff brings this action as a private attorney general, and to vindicate and enforce an important right affecting the public interest. Plaintiff and the Class are therefore entitled to an award of attorneys' fees under Code of Civil Procedure section 1021.5 for bringing this action.

FIFTH CLAIM FOR RELIEF
Violations of California Business & Professions Code, Section 17200, et seq., Unlawful, Unfair and Fraudulent Business Acts and Practices

(On behalf of Plaintiff Eisenlord and the California Subclass)

85. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

86. Defendants' acts and practices as detailed herein constitute acts of unfair competition. Defendants have engaged in unlawful, unfair or fraudulent business acts and/or practices within the meaning of California Business & Professions Code,

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section 17200, *et seq*. Defendants need only violate one of the three prongs to be held strictly liable.

87. Defendants have engaged in "unlawful" business acts and practices by manufacturing, promoting, and distributing products as containing maple syrup or maple sugars, when, in fact, none of those ingredients are in the product.

88. Defendants' business acts and practices violate the California Business and Professions Code, section 17500, *et seq*. and the California Consumer Legal Remedies Act, California Civil Code, Section 1750, *et seq*., as alleged herein.

89. Defendants' acts and practices are further "unlawful" because they violate the Defendant's conduct is further "unlawful" because it violates the Federal Food, Drug, and Cosmetic Act ("FDCA"), specifically, (1) 21 U.S.C. § 343(a), which deems food misbranded when the label contains a statement that is "false or misleading in any particular;" (2) 21 C.F.R. § 101.13(i)(3), which bars nutrient content claims voluntarily placed on the front of a product label that are "false or misleading in any respect;" (3) 21 C.F.R. § 101.14 requiring claims to be "complete, truthful, and not misleading," and which "enables the public to comprehend the information; and 21 CFR § 102.5, which governs "characterizing properties or ingredients," and requires that "the common or usual name of a food shall include the percentage(s) of any characterizing ingredient(s) or component(s) when the proportion of such ingredient(s) or component(s) in the food has a material bearing on price or consumer acceptance or when the labeling or the appearance of the food may otherwise create an erroneous impression that such ingredient(s) or component(s) is present in an amount greater than is actually the case."

90. Defendants declare "maple" on their packaging as a characterizing ingredient even where maple syrup (as defined in 21 CFR § 168.140(a)) is not actually present in the product. Maple is a substance derived from the heat treatment

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of sap from the maple tree. None of the ingredients in Defendants' products qualify as maple syrup under this definition.

91. Maple syrup, a premium ingredient, has a material bearing on the price and/or consumer acceptance of food products that contain it, which is why it is frequently an ingredient named in the title of foods or displayed on its packaging. Thus, if a product name includes "maple," or its packaging emphasizes the presence of maple (e.g., through images of maple syrup), but the product does not actually contain any maple syrup, it is unlawfully misbranded under the FDA's regulations.

92. Defendant's conduct further violates The California Sherman Food, Drug, and Cosmetic Law ("Sherman Law"), Cal. Health & Safety Code § 110660, which deems food products "misbranded" if their labeling is "false or misleading in any particular," and Health & Safety Code § 110670, which bars nutrient content claims voluntarily placed on the front of a product label that fail to comply with the federal regulation for nutrient content claims (*i.e.*, "may not be false or misleading in any respect"), and Health & Safety Code § 110395, which adopts all FDA food labeling regulations as state regulations and provides; and Health & Safety Code § 110290 which provides that "in determining whether the labeling or advertisement of a food . . . is misleading, all representations made or suggested by statement, word, design, device, sound, or any combination of these shall be taken into account. The extent that the labeling or advertising fails to reveal facts concerning the food . . . or consequences of customary use of the food . . . shall also be considered").

93. All of the challenged advertisements and statements made by Defendants thus constitute violations of the Sherman Law and the FDCA, and as such, violate the "unlawful" prong of the UCL.

94. Plaintiff reserves the right to identify additional provisions of the law violated by Defendants as further investigation and discovery warrants.

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95. Defendants' failure to comply with the above statutes and regulations constitute an unlawful business act or practice.

96. Section 17200 of the California Business & Professional Code also prohibits any "unfair business act or practice." As described above, Defendants have engaged in "unfair" business acts or practices in that they falsely labeled products as containing maple syrup or maple sugar, when, in fact, those products do not contain any of those ingredients.

97. The gravity of the harm to Plaintiff and the Class outweighs any arguable utility of Defendants' conduct. Plaintiff's injury is substantial, is not outweighed by any countervailing benefit to consumers or competition, and is not one that consumers could have reasonably avoided.

98. Defendants' conduct offends California public policy tethered to the California Consumer Legal Remedies Act, the California False Advertising Law, the California Sherman Law, and the FDCA, Act, which are intended to preserve fair competition, to protect consumers from market distortions, and to allow consumers to make informed choices in their purchasing food products.

99. Defendants' actions are immoral, unethical, unscrupulous, and offend established public policy, and have injured Plaintiff and other members of the Class.

100. Section 17200 also prohibits any "fraudulent business act or practice." Defendants' conduct constituted "fraudulent" business acts or practices in that their conduct had a tendency and likelihood to deceive persons to whom such conduct was and is targeted by falsely labeling products as containing maple syrup or maple sugar, when, in fact, they do not.

101. Plaintiff and members of the Class were deceived by Defendants' representations as to whether the products contained maple syrup or maple sugar.

102. Plaintiff and members of the Class reasonably relied on Defendants' representations. As the California Supreme Court has explained, "Simply stated:

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labels matter. The marketing industry is based on the premise that labels matter, that consumers will choose one product over another similar product based on its label and various tangible and intangible qualities they may come to associate with a particular source." *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 328 (2011).

103. Plaintiff and members of the Class have suffered injuries as a direct and proximate result of the unlawful, unfair, and fraudulent business practices of Defendants in that they purchased products that they would not have purchased, or they would have paid less for the products, had they known that the products did not contain any maple syrup or maple sugars.

104. Pursuant to section 17203 of the California Business and Professions Code, Plaintiff, on his own behalf and on behalf of the Class, seeks restitution and a Court order enjoining Defendants from such future conduct and any other such orders that may be necessary to rectify the unlawful, unfair, and fraudulent business practices of Defendants, including requiring Defendants to cease mislabeling its products as containing maple syrup and maple sugars.

105. Plaintiff brings this action as a private attorney general, and to vindicate and enforce an important right affecting the public interest. Plaintiff and the Class are therefore entitled to an award of attorneys' fees under Code of Civil Procedure section 1021.5 for bringing this action.

WHEREFORE, Plaintiff Darren Eisenlord, on behalf of himself and the Class, prays for the following relief:

a. An order certifying the Class as defined above;

b. An award of actual damages;

c. An injunction requiring Defendants to cease misrepresenting that its products contain maple syrup and/or maple sugar and requiring Defendants to provide a notice to consumers who already purchased the product;

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d. For any and all other relief available under Business and Professions Code sections 17200, *et. seq.*, including but not limited to disgorgement of profits received through Defendants' unfair business practices and restitution;

e. An award of reasonable attorneys' fees and costs;

f. For pre-judgment interest on the sums owing; and

g. For such other and further relief as the Court deems just and proper.

Dated: March 1, 2016

Respectfully submitted,

By: /s/ Suzanne Havens Beckman
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Attorneys for Plaintiff Darren Eisenlord, individually and on behalf of a class of similarly situated individuals

JURY DEMAND

Plaintiff demands a trial by jury of all causes of action and matters so triable.

Dated: March 1, 2016

Respectfully submitted,

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Attorneys for Darren Eisenlord, individually and on behalf of a class of similarly situated individuals

EXHIBIT A


Classic
RECIPE
QUAKER
Est 1877
INSTANT OATMEAL
Maple & Brown Sugar
NATURAL & ARTIFICIAL FLAVORS
Heart Healthy Oatmeal
SERVING SUGGESTION
per packet
160 CALORIES
0.5g SAT FAT 2% DV
260mg SODIUM 11% DV
12g SUGARS
3g FIBER 12% DV
IRON 15% DV
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.
10 - 1.51 OZ (43 g) PACKETS NET WT 15.1 OZ (430 g)

DECLARATION OF SUZANNE HAVENS BECKMAN

I, Suzanne Havens Beckman, hereby declare on oath as follows:

1. I am an attorney licensed to practice law in the state of California. I am over the age of 18 years and I have personal knowledge of the matters attested to herein. If called upon to testify, I would and could competently do so.

2. I make this declaration pursuant to California Civil Code section 1780(d) on behalf of my client, Plaintiff Darren Eisenlord, on behalf of himself and all others similarly situated.

3. Defendant The Quaker Oats Company is a New Jersey corporation and has its principal place of business in Chicago, Illinois. It maintains a registered agent for service of process at 818 West Seventh Street, Suite 930, Los Angeles, CA 90017 and is doing business in the state of California.

4. The transaction or any substantial portion of the transaction occurred in Los Angeles County.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 1st day of March 2016 at Orinda, California.

By:/s/ Suzanne Havens Beckman
Suzanne Havens Beckman
One of the Attorneys for Plaintiff