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N.D. CALIF. SAN JOSE

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**RS**

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN JOSE DIVISION

**PVT**

18 ROBERT CHACANACA and VICTOR  
19 GUTTMANN, on Behalf of Themselves and  
20 All Others Similarly Situated,

Case No:

**10-00502**  
CLASS ACTION

Plaintiffs,

**COMPLAINT FOR VIOLATIONS OF  
THE LANHAM ACT,  
UNFAIR COMPETITION LAW,  
COMMON LAW OF UNFAIR  
COMPETITION, FALSE  
ADVERTISING LAW, AND  
CONSUMER LEGAL  
REMEDIES ACT**

v.

21 THE QUAKER OATS COMPANY,

Defendant.

DEMAND FOR JURY TRIAL

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1 Plaintiffs Robert Chacanaca and Victor Guttmann, on behalf of themselves, all others  
2 similarly situated, and the general public, by and through undersigned counsel, hereby sue  
3 Defendant The Quaker Oats Company ("Quaker") and, upon information and belief and  
4 investigation of counsel, allege as follows:

5 **JURISDICTION**

6 1. This Court has original jurisdiction over this action under 28 U.S.C. §1331 and 15  
7 U.S.C. §1121.

8 2. This Court also has original jurisdiction under 28 U.S.C. §1332(d)(2) (The Class  
9 Action Fairness Act) because the matter in controversy exceeds the sum or value of \$5,000,000  
10 exclusive of interest and costs. Further, more than two-thirds of the members of the Class reside  
11 in states other than the state of which Defendant is a citizen.

12 **VENUE**

13 3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because Plaintiffs  
14 reside in and suffered injuries as a result of Defendant's acts in this district, many of the acts and  
15 transactions giving rise to this action occurred in this district, and Defendant (1) is authorized to  
16 conduct business in this district and has intentionally availed itself of the laws and markets of  
17 this district through the promotion, marketing, distribution, and sale of its products in this  
18 district; (2) resides in this district; and (3) is subject to personal jurisdiction in this district.

19 **INTRADISTRICT ASSIGNMENT**

20 4. This civil action primarily arose in the county of Monterey and further is related  
21 to *Rosen v. Unilever United States*, No. 5:09-cv-02563 JW, an action pending in the San Jose  
22 Division. This action should therefore be assigned to the San Jose Division.

23 **INTRODUCTION**

24 5. Plaintiffs Robert Chacanaca and Victor Guttmann repeatedly purchased packaged  
25 food products made by Quaker in California during the class period defined herein. Quaker  
26 falsely markets its products as healthful despite the fact that they have dangerous levels of  
27 artificial trans fat, a toxic food additive banned in many parts of the world.

28 6. Quaker falsely labels Chewy Granola Bars as "0g trans fat" when they contain  
29 dangerous amounts of artificial trans fat, a toxic product that causes cancer, diabetes, and heart  
30 disease, and is banned in an increasing number of United States and foreign jurisdictions.

31 7. Plaintiffs seek an order that compels Quaker to (1) cease marketing its products  
32 using the misleading tactics complained of herein, (2) conduct a corrective advertising campaign,

1 (3) restore the amounts by which Quaker was unjustly enriched, (4) destroy all misleading and  
2 deceptive materials and products, and (5) compensate Plaintiffs and the Plaintiff Class for  
3 purchasing and consuming these products.

4 **PARTIES**

5 14. Defendant Quaker Foods, Inc. is a Delaware corporation with its principal place  
6 of business in California. Quaker is the manufacturer of Chewy Granola Bars, which contain  
7 artificial trans fat.

8 15. Plaintiffs are residents of California who repeatedly purchased Quaker Chewy  
9 Granola Bars for their own use in various California stores during the class period defined below.

10 **SUMMARY OF THE STRONG EVIDENCE OF HEALTH**  
11 **DANGERS OF ARTIFICIAL TRANS FAT**

12 **Artificial trans fat is a manufactured food product whose basic chemical structure is**  
13 **different from natural fat molecules.**

14 16. Trans fat is naturally found in trace amounts in foods derived from ruminant  
15 animals, primarily in red meat.<sup>1</sup>

16 17. Also known as vaccenic acid, natural trans fat has never been linked to any  
17 negative health effect in human beings and is chemically different than artificial trans fat.

18 18. Initial studies on rats seem to indicate that consumption of vaccenic acid is  
19 beneficial to health.<sup>2</sup>

20 19. Artificial trans fat is manufactured in an industrial process called hydrogenation,  
21 in which hydrogen atoms are added to normal vegetable oil by heating the oil to temperatures  
22 above 400 degrees Fahrenheit in the presence of ion donor catalyst metals such as rhodium,  
23 ruthenium, and nickel.<sup>3</sup>

24 20. Nearly all the trans fat in the U.S. diet is the artificial fat present in partially  
25 hydrogenated vegetable oil ("PHVO").<sup>4</sup>

26 \_\_\_\_\_  
27 <sup>1</sup> Dariush Mozaffarian *et al.*, *Trans Fatty Acids and Cardiovascular Disease*, 354 New Eng. J.  
28 Med. 1601, 1608 (2008).

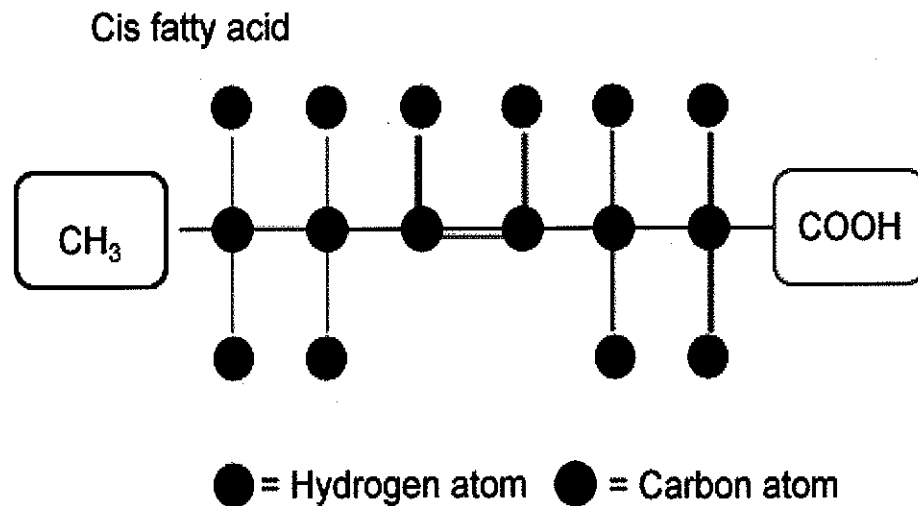
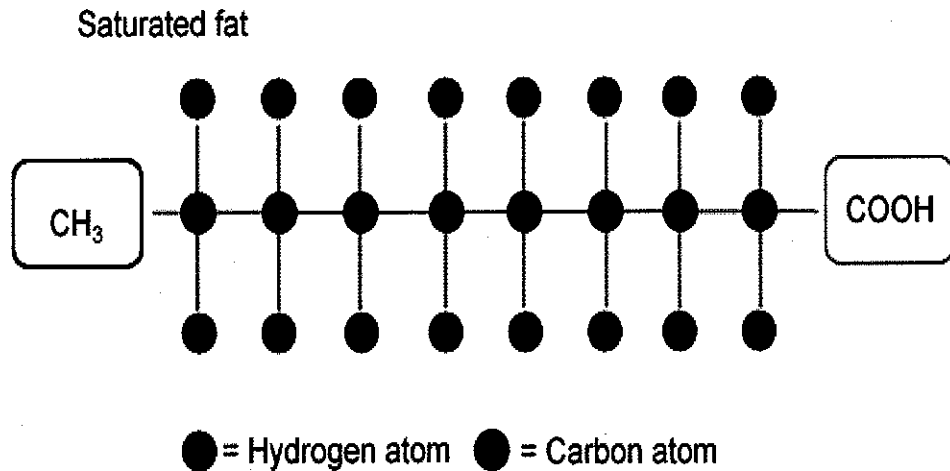
29 <sup>2</sup> Ye Wang *et al.*, *Trans-11 Vaccenic Acid Dietary Supplementation Induces Hypolipidemic*  
30 *Effects on JCR:LA-cp Rats*, 138 J. Nutrition 2117 (November 2008).

31 <sup>3</sup> See Alice H. Lichtenstein, *Trans Fatty Acids, Plasma Lipid Levels, and Risk of Developing*  
32 *Cardiovascular Disease*, 95 Circulation 2588, 2588-90 (1997).

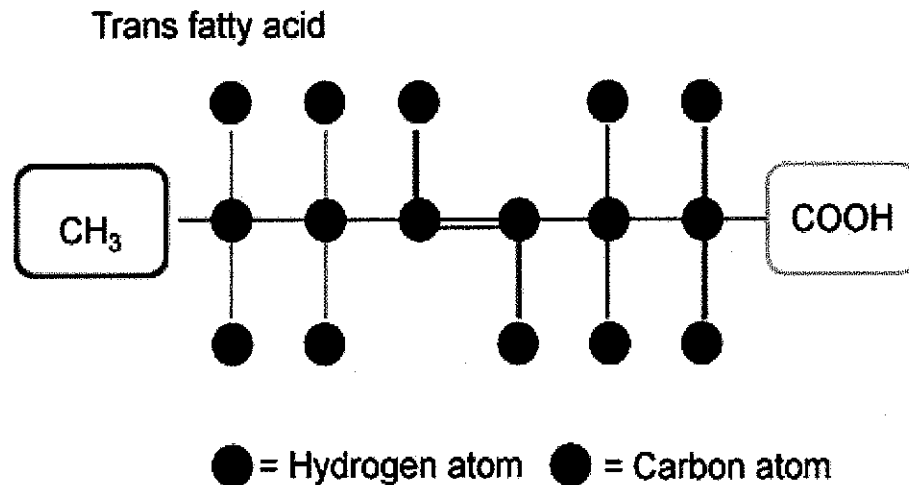
<sup>4</sup> See Mozaffarian, 354 New Eng. J. Med. at 1608.

1 21. PHVO was invented in 1901 and patented in 1902 by German chemist Wilhelm  
 2 Normann. Trans fat molecules chemically differ from the natural fat molecules in other food  
 3 products, as shown in the illustrations that follow.

4 22. Natural fat, except the trace amounts of natural trans fat from ruminant animals,  
 5 comes in two varieties: (1) fats that lack carbon double bonds ("saturated fat") and (2) fats that  
 6 have carbon double bonds with the hydrogen atoms on the same side on the carbon chain ("cis  
 7 fat"). Trans fat, however, has double bonds on opposite sides of its carbon chain.



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23. PHVO was initially a “wonder product” attractive to the packaged food industry because it combines the low cost of unsaturated cis fat with the flexibility and long shelf life of saturated fat. Like cis fat, PHVO is manufactured from lower-cost legumes,<sup>5</sup> while saturated fat is derived from relatively expensive animal and tropical plant sources.<sup>6</sup>

24. Like natural saturated fat, PHVO has a long shelf life, physical solidity, and flavor stability. The industrial process that adds hydrogen ions to normal vegetable oil improves food texture and permits food products to withstand heavy mechanical processing and high temperatures.<sup>7</sup> Given its versatility, PHVO was recently used in 40 percent of processed packaged foods.<sup>8</sup>

25. Artificial trans fat does not exist in nature, and the human body has not evolved to digest it. The same unusual and unnatural chemical structure that gives artificial trans fat properties attractive from an industrial perspective makes it highly toxic to human health.

**Trans fat causes cardiovascular disease, type 2 diabetes, and cancer.**

<sup>5</sup> e.g., corn oil, soybean oil, peanut oil

<sup>6</sup> e.g., butter, cream, tallow, coconut oil

<sup>7</sup> See Alberto Ascherio *et al.*, *Trans Fatty Acids & Coronary Heart Disease*, 340 *New Eng. J. Med.* 94, 94-8 (1999). See also Ctr. for Food Safety & Applied Nutrition, U.S. Food & Drug Admin., *Questions & Answers About Trans Fat Nutrition Labeling (Update 2006)* (2003), available at <http://www.cfsan.fda.gov/%7Edms/qatrans2.html#fn>.

<sup>8</sup> Mary Carmichael, *The Skinny on Bad Fat*, *Newsweek*, Dec. 1, 2003, at 66. See also Kim Severson, *Hidden Killer. It's Trans Fat. It's Dangerous. And It's In Food You Eat Every Day*, *S.F. Chron.*, Jan. 30, 2002.

1 • **Heart Disease**

2 26. In a joint Dietary Guidelines Advisory Committee Report, the U.S. Department of  
3 Health and Human Services and the U.S. Department of Agriculture recognized “[t]he  
4 **relationship between trans fatty acid intake and LDL cholesterol is direct and progressive,**  
5 **increasing the risk of cardiovascular disease.”**<sup>9</sup>

6 27. Food products with trans fat harm the heart by “rais[ing] the concentration of the  
7 most dangerous form of serum cholesterol (LDL cholesterol)” and “lower[ing] a protective form  
8 of serum cholesterol (HDL cholesterol).”<sup>10</sup>

9 28. The American Heart Association notes “**trans fats raise your bad (LDL)**  
10 **cholesterol levels and lower your good (HDL) cholesterol levels. Eating trans fats increases**  
11 **your risk of developing heart disease.”**<sup>11</sup>

12 29. After an extensive evaluation of the scientific literature on the trans fat/Coronary  
13 Heart Disease connection, the FDA concluded:

14 based on the consistent results across a number of the most persuasive types of  
15 study designs (i.e., intervention trials and prospective cohort studies) that were  
16 conducted using a range of test conditions and across different geographical  
17 regions and populations...the available evidence for an adverse relationship  
18 between trans fat intake and CHD [Coronary Heart Disease] risk is strong.<sup>12</sup>

19 30. Trans fat raises the risk of CHD more than any other known nutritive product.<sup>13</sup>

20 31. Removing 2% of daily calories from trans fat from the American diet “would  
21 prevent approximately 30,000 premature coronary deaths per year, and epidemiologic evidence  
22 suggests this number is closer to 100,0000 premature deaths annually.”<sup>14</sup>

23 32. A study on the impact of trans fatty acids on heart health provides evidence that:

24 <sup>9</sup> Dep’t of Health & Human Serv. & U.S. Dep’t of Agric., 2005 Dietary Guidelines Advisory  
25 Committee Report, Section 10 (2005).

26 <sup>10</sup> *Id.*

27 <sup>11</sup> Am. Heart Ass’n., *Trans Fat Overview*, available at  
28 <http://www.americanheart.org/presenter.jhtml?identifier=3045792>.

29 <sup>12</sup> Ctr. for Food Safety & Applied Nutrition, U.S. Food & Drug Admin., Questions & Answers  
30 About Trans Fat Nutrition Labeling.

31 <sup>13</sup> Mozaffarian, 354 New Eng. J. Med. at 1603.

32 <sup>14</sup> Alberto Ascherio *et al.*, *Trans Fatty Acids & Coronary Heart Disease*, 340 New Eng. J. Med.  
94, 94-8 (1999).

1 [E]ven the lower estimates from the effects [of PHVO] on blood lipids would  
2 suggest that more than 30,000 deaths per year may be due to the consumption of  
3 partially hydrogenated vegetable fat. Furthermore, the number of attributable  
4 cases of nonfatal coronary heart disease will be even larger.<sup>15</sup>

5 33. Since “the adverse effect of trans fatty acids is stronger than that of saturated fatty  
6 acids,” saturated fat consumption would need to be reduced by 10 percent of caloric intake to  
7 have the same impact.<sup>16</sup>

8 34. “10 to 19 percent of CHD events in the United States could be averted by  
9 reducing the intake of trans fat.”<sup>17</sup>

10 35. By raising LDL levels and lowering HDL levels, trans fat causes a wide variety of  
11 dangerous heart conditions, including low flow-mediated vasodilation, coronary artery disease,  
12 and primary cardiac arrest.

13 36. After conducting a crossover diet trial, Danish researchers determined that healthy  
14 men and women who maintained a high-trans fat diet had 21 percent lower protective HDL  
15 levels and 29 percent lower flow-mediated vasodilation (“FMD”) than those on a high-saturated  
16 fat diet. Since FMD measures the percent increase between the diameter of the artery at ordinary  
17 and at maximum dilation, low FMD is “a risk marker of coronary heart disease.”<sup>18</sup>

18 37. Australian researchers observed that heart attack patients possess elevated  
19 amounts of trans fat in their adipose tissue, strongly linking heart disease with long-term  
20 consumption of trans fat.<sup>19</sup>

21 38. By taking blood samples from 179 survivors of cardiac arrest and 285 randomly-  
22 selected control patients and comparing the top fifth with the bottom fifth of participants by trans  
23 fat intake, another study published in the American Heart Association’s *Circulation* found that  
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25 <sup>15</sup> W.C. Willett *et al.*, *Trans Fatty Acids: Are the Effects only Marginal?* 84 Am. J. Pub. Health  
26 722, 723 (1994).

27 <sup>16</sup> Mozaffarian, 354 New Eng. J. Med. at 1609.

28 <sup>17</sup> See Mozaffarian, 354 New Eng. J. Med. at 1611.

29 <sup>18</sup> Nicole M. De Roos *et al.*, *Replacement of Dietary Saturated Fatty Acids by Trans Fatty Acids*  
30 *Lowers Serum HDL Cholesterol and Impairs Endothelial Function in Healthy Men and Women*,  
21 Am. Heart Assoc. 1233, 1233-37 (2001).

31 <sup>19</sup> Peter M. Clifton *et al.*, *Trans Fatty Acids In Adipose Tissue And The Food Supply Are*  
32 *Associated With Myocardial Infarction*. 134 J. of Nutrition 874, 874-79 (2004).

1 the largest consumers of trans fat have three times the risk of suffering primary cardiac arrest,  
2 even after controlling for a variety of medical and lifestyle risk factors.<sup>20</sup>

3 • **Diabetes**

4 39. Artificial trans fat causes type 2 diabetes.<sup>21</sup>

5 40. A 14-year study of 84,204 women found that for every 2 percent increase in  
6 energy intake from trans fat, the relative risk of type 2 diabetes was 1.39. In other words, each 2  
7 percent of calories from artificial trans fat increases the risk of type 2 diabetes by 39 percent.<sup>22</sup>

8 • **Cancer**

9 41. Trans fat is a known carcinogen shown to cause breast, prostate, and colorectal  
10 cancer.

11 42. A 13-year study of 19,934 French women showed 75 percent more women  
12 contracted breast cancer in the highest quintile of trans fat consumption than did those in the  
13 lowest.<sup>23</sup>

14 43. In a 25-year study of 14,916 U.S. physicians, the doctors in the highest quintile of  
15 trans fat intake had over a 100% greater risk of developing prostate cancer than the doctors in the  
16 lowest quintile.<sup>24</sup>

17 44. A study of 1,012 American males observing trans fat intake and the risk of  
18 prostate cancer found “[c]ompared with the lowest quartile of total trans-fatty acid consumption,  
19 the higher quartiles gave odds ratios (ORs) equal to 1.58,” meaning those in the highest quartile  
20 are 58% more likely to contract prostate cancer than those in the lowest.<sup>25</sup>

21 45. A 600-person study found an 86 percent greater risk of colorectal cancer in the  
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24 <sup>20</sup> Rozenn N. Lemaitre *et al.*, *Cell Membrane Trans-Fatty Acids and the Risk of Primary Cardiac*  
*Arrest*, 105 *Circulation* 697, 697-701 (2002).

25 <sup>21</sup> Am. Heart Ass’n., *Trans Fat Overview*.

26 <sup>22</sup> Jorge Salmeron *et al.*, *Dietary Fat Intake and Risk of Type 2 Diabetes in Women*, 73 *Am. J. of*  
27 *Clinical Nutrition* 1019, 1023 (2001).

28 <sup>23</sup> Véronique Chajès *et al.*, *Association between Serum Trans-Monounsaturated Fatty Acids and*  
*Breast Cancer Risk in the E3N-EPIC Study*. 167 *Am. J. of Epidemiology* 1312, 1316 (2008).

29 <sup>24</sup> Jorge Chavarro *et al.*, *A Prospective Study of Blood Trans Fatty Acid Levels and Risk of*  
30 *Prostate Cancer*., 47 *Proc. Am. Assoc. of Cancer Research* 95, 99 (2006).

31 <sup>25</sup> Xin Liu *et al.*, *Trans-Fatty Acid Intake and Increased Risk of Advanced Prostate Cancer:*  
*Modification by RNASEL R462Q Variant*, 28 *Carcinogenesis* 1232, 1232 (2007).  
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1 highest trans fat consumption quartile.<sup>26</sup>

2 46. A 2,910-person study found “trans-monounsaturated fatty acids...were dose-  
3 dependently associated with colorectal cancer risk,” which showed “the importance of type of fat  
4 in the etiology and prevention of colorectal cancer.”<sup>27</sup>

5 47. The serious health conditions caused by trans fat consumption only occur from  
6 artificial trans fat, not the trace natural trans fat found in ruminant sources:

7 Of four prospective studies evaluating the relation between the intake of trans  
8 fatty acids from ruminants and the risk of CHD, none identified a significant  
9 positive association, whereas three identified nonsignificant trends toward an  
10 inverse association. ... [T]he sum of the current evidence suggests that the public  
11 health implications of consuming trans fats from ruminant products are relatively  
12 limited.<sup>28</sup>

13 **The grave, concrete risks of artificial trans fat consumption far outweigh any**  
14 **conceivable benefits of Quaker’s conduct.**

15 48. There is no health benefit to artificial trans fat consumption and “no safe level” of  
16 artificial trans fat intake.<sup>29</sup>

17 49. According to the established consensus of the scientific community, consumers  
18 should keep their consumption of trans fat “as low as possible.”<sup>30</sup>

19 50. As Dariush Mozaffarian, M.D., notes in the New England Journal of Medicine:  
20 [F]rom a nutritional standpoint, the consumption of trans fatty acids results in  
21 considerable potential harm but no apparent benefit. ... Thus, complete or near-  
22 complete avoidance of industrially produced trans fat—a consumption of less than  
23 0.5 percent of the total energy intake—may be necessary to avoid adverse effects  
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25 <sup>26</sup> L.C. Vinikoor *et al.*, *Consumption of Trans-Fatty Acid and its Association with Colorectal*  
26 *Adenomas*, 168 Am. J. of Epidemiology 289, 294 (2008).

27 <sup>27</sup> Evropi Theodoratou *et al.*, *Dietary Fatty Acids and Colorectal Cancer: A Case-Control Study*,  
166 Am. J. of Epidemiology 181 (2007).

28 <sup>28</sup> Mozaffarian, 354 New Eng. J. Med. at 1608-1609.

29 <sup>29</sup> Food & Nutrition Bd., Inst. of Med., *Dietary Reference Intakes For Energy, Carbohydrate,*  
30 *Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids* (2005).

31 <sup>30</sup> Food & Nutrition Bd., Inst. of Med., *Dietary Reference Intakes For Energy, Carbohydrate,*  
32 *Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids* 424 (2005).

1 and would be prudent to minimize health risks.<sup>31</sup>

2 **Trans fat is so inherently dangerous that it is being banned in an increasing**  
3 **number of American states and European countries.**

4 51. In 2008, California became the first state to ban all restaurant food with artificial  
5 trans fat, a law affecting approximately 88,000 eating establishments. Trans fats are now banned  
6 in restaurants as of January 1, 2010 and will be removed from retailers starting January 1, 2011.

7 52. New York City banned all trans fat in its 20,000 food establishments in 2006.  
8 Similar laws exist in Philadelphia; Baltimore; Stamford, Connecticut; and Montgomery County,  
9 Maryland.

10 53. A 2004 Danish law restricted all foods to under 2 percent of calories from trans  
11 fat. Switzerland made the same restriction in 2008.<sup>32</sup>

12 54. After conducting a surveillance study of Denmark's trans fat ban, researchers  
13 concluded the change "did not appreciably affect the quality, cost or availability of food" and did  
14 not have "any noticeable effect for the consumers."<sup>33</sup>

15 55. In 2006, a trans fat task force co-chaired by Health Canada and the Heart and  
16 Stroke Foundation of Canada recommended capping trans fat content at 2 percent of calories for  
17 tub margarines and spreads and 5 percent for all other foods. On September 30, 2009, British  
18 Columbia became the first province to impose these rules on all restaurants, schools, hospitals,  
19 and special events.<sup>34</sup>

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26 <sup>31</sup> Mozaffarian, 354 New Eng. J. Med. at 1609.

27 <sup>32</sup> Andrew Collier, *Deadly Fats: Why Are We still Eating Them?*, The Independent (UK), June  
28 10, 2008.

29 <sup>33</sup> Mozaffarian, 354 New Eng. J. Med. at 1610; *see also* High Levels of Industrially Produced  
30 Trans Fat in Popular Fast Food, 354 New Eng. J. Med. 1650, 1652 (2006).

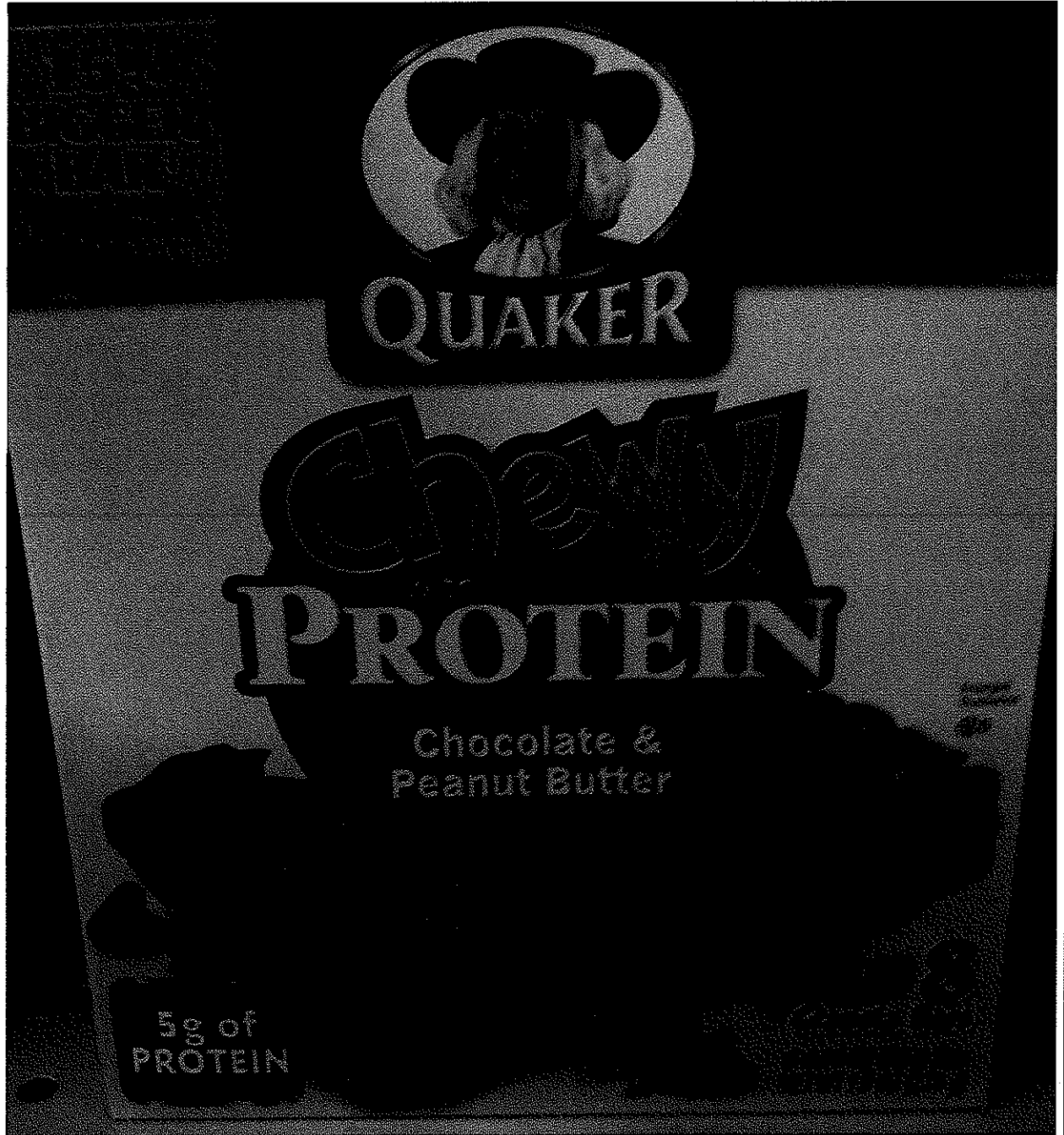
31 <sup>34</sup> *Province Restricts Trans Fat in B.C.*, British Columbia Ministry of Healthy Living and Sport  
32 Press Release (2009), available at [http://www2.news.gov.bc.ca/news\\_releases\\_2005-2009/2009HLS0013-000315.htm](http://www2.news.gov.bc.ca/news_releases_2005-2009/2009HLS0013-000315.htm).

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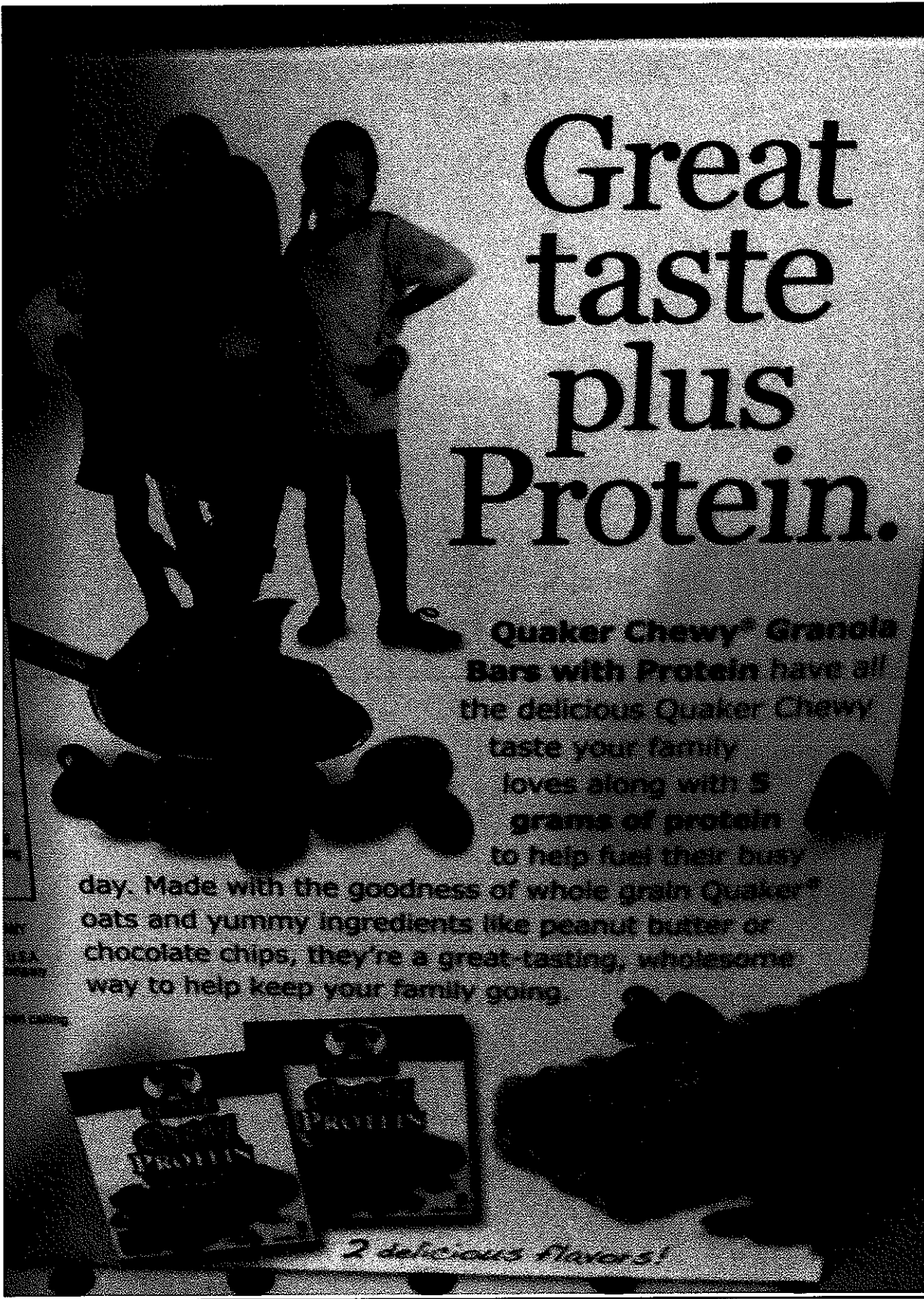
**SPECIFIC MISREPRESENTATIONS, MATERIAL OMISSIONS, AND DECEPTIVE ACTS**

56. Both Quaker Granola Bar products pictured below contain partially hydrogenated oil, a form of artificial trans fat.

**Chewy with Protein: Chocolate & Peanut Butter**



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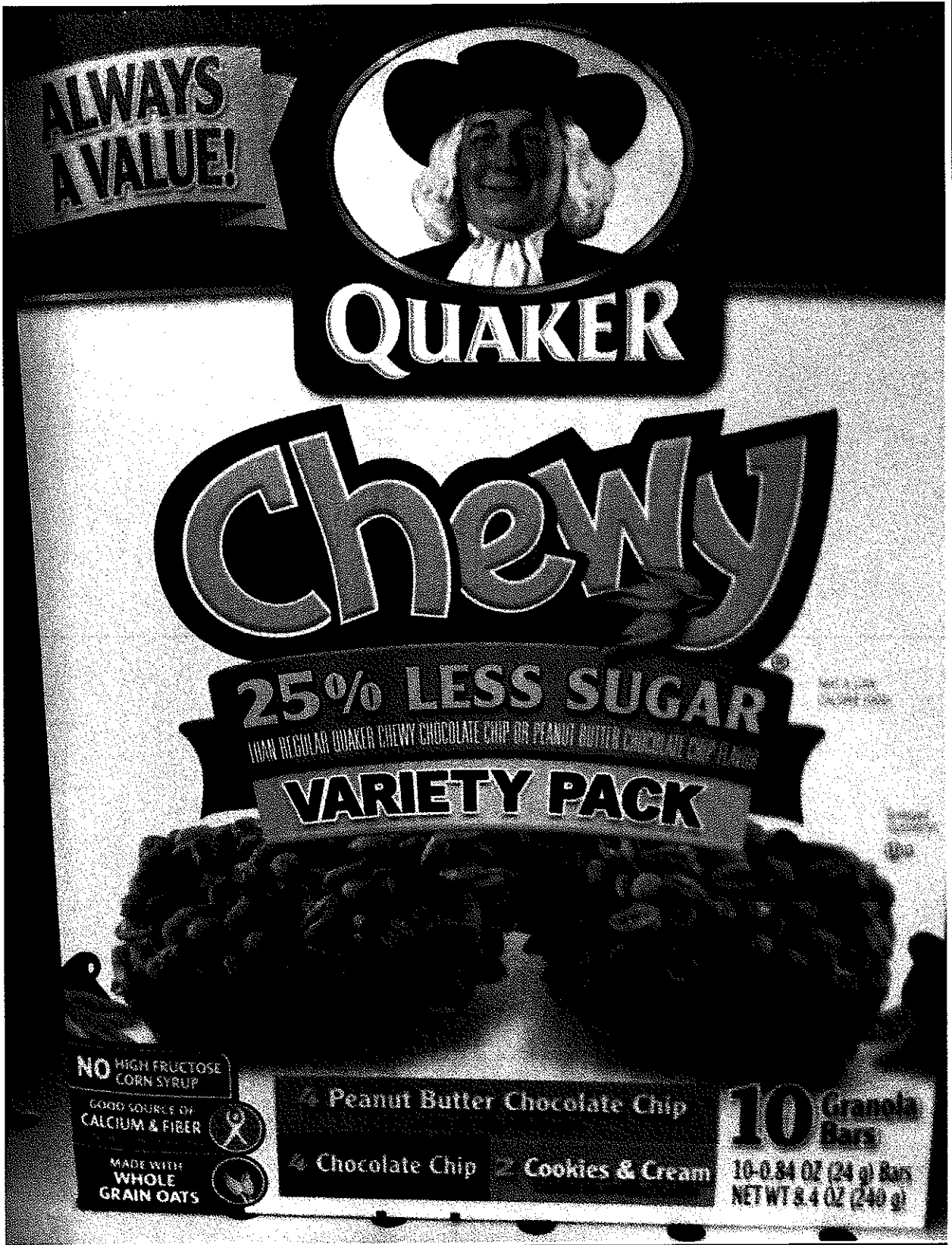
# Great taste plus Protein.

**Quaker Chewy® Granola Bars with Protein** have all the delicious Quaker Chewy taste your family loves along with 5 grams of protein to help fuel their busy

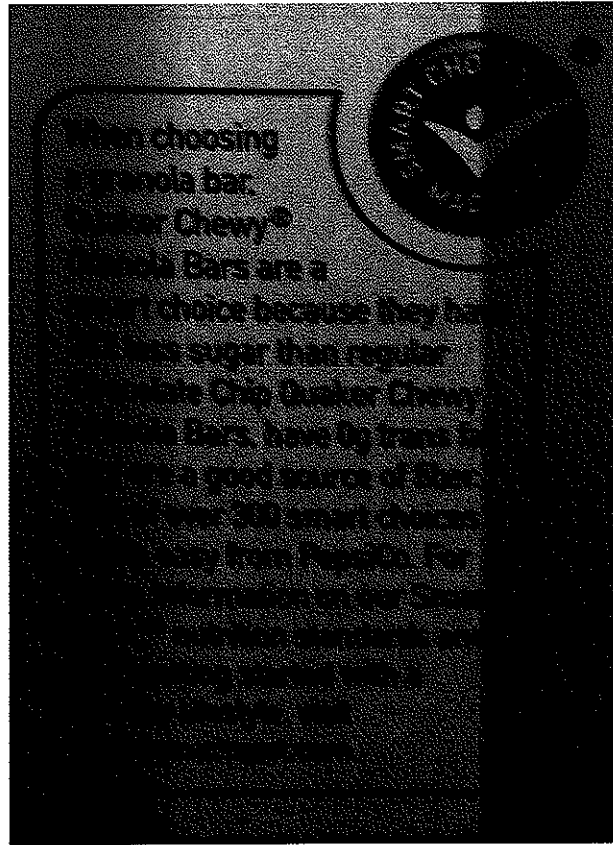
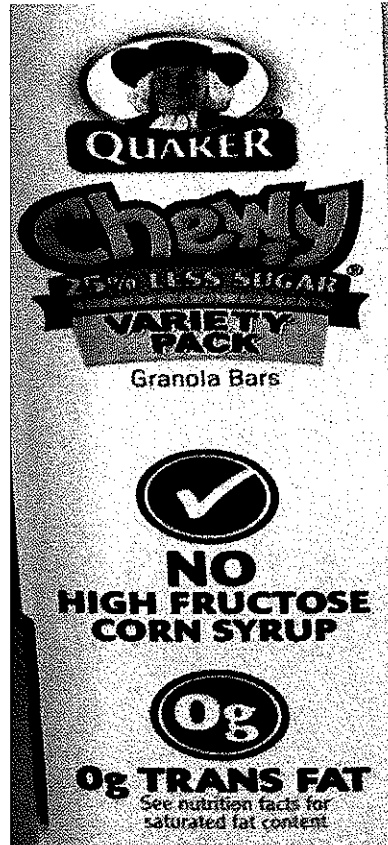
day. Made with the goodness of whole grain Quaker® oats and yummy ingredients like peanut butter or chocolate chips, they're a great-tasting, wholesome way to help keep your family going.

*2 delicious flavors!*

1 Chewy 25% Less Sugar Variety Pack



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- 1           64. Questions of law and fact common to Plaintiffs and the Class include:
- 2           a. Whether Quaker contributed to, committed, and/or is responsible for the conduct
- 3           alleged herein;
- 4           b. Whether Quaker's conduct constitutes the violations of law alleged herein;
- 5           c. Whether Quaker acted willfully, recklessly, negligently, or with gross negligence
- 6           in the violations of law alleged herein; and
- 7           d. Whether Class members are entitled to compensatory, injunctive, and other
- 8           equitable relief.

9           65. By purchasing and/or using these products, all Class members were subjected to

10           the same wrongful conduct.

11           66. Absent these material deceptions, misstatements, and omissions, Plaintiffs and

12           other Class members would not have purchased these Quaker products.

13           67. Plaintiffs' claims are typical of the Class's claims. Plaintiffs will fairly and

14           adequately protect the interests of the Class, have no interests that are incompatible with the

15           interests of the Class, and have retained counsel competent and experienced in class litigation.

16           68. The Class is sufficiently numerous, as it includes hundreds of thousands of

17           individuals who purchased Quaker Chewy Granola Bars throughout the United States.

18           69. Class representation is superior to other options for the resolution of the

19           controversy. The relief sought for each Class member is small. Absent the availability of class

20           action procedures, it would be infeasible for Class members to redress the wrongs done to them.

21           70. Quaker has acted on grounds applicable to the Class, thereby making appropriate

22           final injunctive relief or declaratory relief concerning the Class as a whole.

23           71. Questions of law and fact common to the Class predominate over any questions

24           affecting only individual members.

25           **Quaker fraudulently concealed the health hazards of consuming its products.**

26           72. Quaker has tolled any applicable statute of limitations by affirmatively concealing

27           and publically misrepresenting its violations of law as described herein. A reasonable consumer

28           would have relied on the deceptive and false claims made on the packaging of Quaker products,

29           and through the exercise of reasonable diligence would not have discovered the violations

30           alleged herein because Quaker actively and purposefully concealed the truth regarding its

31           products.

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1 **FIRST CAUSE OF ACTION**

2 **False Advertising under the Lanham Act, 15 U.S.C. § 1125 *et seq.***

3 73. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if  
4 set forth in full herein.

5 74. Quaker has made and distributed, in interstate commerce and in this District,  
6 products that make false or misleading statements of fact regarding their content. All of the  
7 products described herein were placed into interstate commerce by Quaker and sold throughout  
8 the country and this District.

9 75. These products contain on their labels actual misstatements and/or misleading  
10 statements and failures to disclose, including, among others, the statement that such products  
11 contain “no” or “0g” trans fat.

12 76. These false and/or misleading statements and omissions actually deceive, or have  
13 a tendency to deceive, any reasonable consumer. This deception is material in that it is likely to  
14 influence the purchasing decision of a reasonable consumer.

15 77. Plaintiffs seek an order directing Quaker to destroy all misleading and deceptive  
16 advertising materials and products in accordance with 15 U.S.C. § 1118.

17 78. Plaintiffs further seek an injunction under 15 U.S.C. § 1116 restraining Quaker,  
18 its agents, employees, representatives, and all persons acting in concert with Quaker from  
19 engaging in further acts of false advertising, and ordering removal of all of Quaker’s false  
20 advertisements and products possessing misleading statements or omissions of fact.

21 **SECOND CAUSE OF ACTION**

22 **Violations of the California Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*,**  
23 **and the Common Law of Unfair Competition**

24 79. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if  
25 set forth in full herein.

26 80. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or fraudulent business  
27 act or practice.”

28 81. The acts, omissions, misrepresentations, practices, and non-disclosures of Quaker  
29 as alleged herein constitute “unlawful” business acts and practices in that Quaker’s conduct  
30 violates the Lanham Act, the False Advertising Law and the Consumer Legal Remedies Act.

31 82. The acts, omissions, misrepresentations, practices, and non-disclosures of Quaker  
32 as alleged herein constitute “unfair” business acts and practices in that Quaker’s conduct is

1 immoral, unscrupulous, and offends public policy. Further, the gravity of Quaker's conduct  
2 outweighs any conceivable benefit of such conduct.

3 83. The acts, omissions, misrepresentations, practices, and non-disclosures of Quaker  
4 as alleged herein constitute "fraudulent" business acts and practices in that Quaker's conduct has  
5 a tendency to deceive the Class and the general public.

6 84. By violating the California Unfair Competition Law, Quaker also violated the  
7 common law of unfair competition.

8 85. In accordance with Bus. & Prof. Code § 17203, Plaintiffs seek an order enjoining  
9 Quaker from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and  
10 practices and to commence a corrective advertising campaign.

11 86. Plaintiffs further seek an order for the disgorgement and restitution of all monies  
12 from the sale of these products, which were acquired through acts of unlawful, unfair, and/or  
13 fraudulent competition.

14 **THIRD CAUSE OF ACTION**

15 **Violations of the California False Advertising Law,**

16 **Bus. & Prof. Code § 17500 *et seq.***

17 87. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if  
18 set forth in full herein.

19 88. In violation of Bus. & Prof. Code § 17500 *et seq.*, the advertisements, labeling,  
20 policies, acts, and practices described herein were designed to, and did, result in the purchase and  
21 use of the products without the knowledge that these products contained toxic artificial trans fat.

22 89. Quaker knew and reasonably should have known that the labels on these products  
23 were untrue and/or misleading.

24 90. As a result, Plaintiffs, the Class, and the general public are entitled to injunctive  
25 and equitable relief, restitution, and an order for the disgorgement of the funds by which Quaker  
26 was unjustly enriched.

27 **FOURTH CAUSE OF ACTION**

28 **Violations of the Consumer Legal Remedies Act,**

29 **Civ. Code § 1750 *et seq.***

30 91. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if  
31 set forth in full herein.

32 92. The CLRA prohibits deceptive practices in connection with the conduct of a

1 business that provides goods, property, or services primarily for personal, family, or household  
2 purposes.

3 93. Quaker's policies, acts, and practices were designed to, and did, result in the  
4 purchase and use of the products primarily for personal, family, or household purposes, and  
5 violated and continue to violate the following sections of the CLRA:

- 6 a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which  
7 they do not have.
- 8 b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade  
9 if they are of another.
- 10 c. § 1770(a)(9): advertising goods with intent not to sell them as advertised.
- 11 d. § 1770(a)(16): representing the subject of a transaction has been supplied in  
12 accordance with a previous representation when it has not.

13 94. As a result, Plaintiffs and the Class have suffered irreparable harm and are entitled  
14 to injunctive relief and restitution.

15 95. In compliance with Civ. Code § 1782, Plaintiffs have given written notice to  
16 Quaker of their claims.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated, and the  
19 general public, pray for judgment and relief against Defendants as follows:

- 20 A. Declaring this action to be a proper class action.
- 21 B. An order enjoining Quaker from marketing its products that contain artificial trans  
22 fat as "0g trans fat";
- 23 C. An order compelling Quaker to conduct a corrective advertising campaign to  
24 inform the public that its products contain unsafe amounts of trans fat at consumers' actual  
25 consumption levels.
- 26 D. An order requiring Quaker to disgorge all monies, revenues, and profits obtained  
27 by means of any wrongful act or practice.
- 28 E. An order compelling Quaker to destroy all misleading and deceptive advertising  
29 materials and products as provided by 15 U.S.C. § 1118.
- 30 F. An order requiring Quaker to pay restitution to restore all funds acquired by  
31 means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent  
32 business act or practice, untrue or misleading advertising, or a violation of the CLRA, plus pre-

1 and post-judgment interest thereon;

2 G. Costs, expenses, and reasonable attorneys' fees;

3 H. Any other and further relief the Court deems necessary, just, or proper.

4 **JURY DEMAND**

5 Plaintiffs demand a trial by jury on all causes of action so triable.

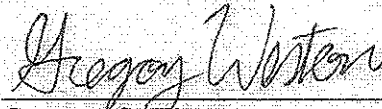
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7 DATED: February 3, 2010

Respectfully Submitted,

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