

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

<p>ORGANIC CONSUMERS ASSOCIATION, 6771 South Silver Hill Drive, Finland, MN 55603; MOMS ACROSS AMERICA, 24000 Alicia Parkway #17-236, Mission Viejo, CA 92691; and BEYOND PESTICIDES, 701 E Street, SE, Suite 200, Washington, DC 20003, on behalf of the general public,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>GENERAL MILLS, INC., 1 General Mills Boulevard, Minneapolis, MN 55426,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. <u>2016 CA 006309 B</u></p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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COMPLAINT

On behalf of the general public, Plaintiffs Organic Consumers Association (“OCA”), Moms Across America (“MAA”), and Beyond Pesticides, non-profit organizations (collectively, “Plaintiffs”), by and through their counsel, bring this action against Defendant General Mills, Inc. and its wholly owned subsidiaries (collectively, “General Mills” or “Defendant”) regarding the deceptive labeling, marketing, and sale of Defendant’s Nature Valley granola products (collectively, “Nature Valley” or the “Products”), and allege the following based upon information, belief, and the investigation of their counsel:

INTRODUCTION

1. Aware of the health risks and environmental damage caused by chemical-laden foods, especially packaged foods, consumers increasingly demand foods that are natural and whole, and that omit chemicals.

2. General Mills knows that consumers seek out and wish to purchase whole, natural foods that do not contain chemicals, and that consumers will pay more for foods that they believe to be natural than they will pay for foods that they do not believe to be natural.

3. To capture this growing market, General Mills aggressively advertises and

promotes its Nature Valley products as “Made with 100% Natural Whole Grain Oats.”



4. These claims are false, deceptive, and misleading. The oat products at issue are not “made with 100% Natural whole grain oats,” but instead the oats contain the chemical glyphosate, a potent biocide and human endocrine disruptor, with detrimental health effects that are still becoming known.

5. No reasonable consumer, seeing these representations, would expect that the oats or any ingredients in the Products to contain something that is unnatural.

6. Specifically, the products at issue¹ include, but are not limited to:

¹ Discovery may demonstrate that additional General Mills products are within the scope of this Complaint.

- a. Crunchy granola bars (Oats ‘n Honey, Peanut Butter, Maple Brown Sugar, Vanilla Almond Nut & Seed, Coconut, Pecan, and other varieties);
- b. Trail Mix chewy granola bars (Fruit & Nut, Dark Chocolate & nut, and other varieties);
- c. Sweet & Salty Nut granola bars (Peanut, Almond, and other varieties);
- d. Breakfast Biscuits (Honey, Blueberry, Lemon Poppy Seed, and other varieties);
- e. Biscuits (with Almond Butter, with Peanut Butter, and other varieties);
- f. Oatmeal Squares (Blueberry, Peanut Butter, Cinnamon Brown Sugar, Banana Bread & Dark Chocolate, and other varieties);
- g. Oatmeal Bars (Peanut Butter, Cinnamon Brown Sugar, and other varieties); and
- h. Oatmeal Bistro Cups (Brown Sugar Pecan, Apple Cinnamon Almond, and other varieties) (collectively, “Nature Valley” or the “Products”).

7. Tests conducted by an independent laboratory using liquid chromatography mass spectrometry with a reporting limit of 0.02 parts per million (ppm), revealed the amount of glyphosate in the Nature Valley to be 0.45 ppm.

8. General Mills does not disclose that glyphosate is present in the Products; instead, it falsely claims that the Products are natural and “Made with 100% Natural Whole Grain Oats.”

9. The exact source of glyphosate in these oat products is known only to General Mills and its suppliers.² However, glyphosate is also used when the oat crops are sprayed with the chemical in order to dry them and produce an earlier, more uniform harvest—a practice with no health benefits, meant only to increase yield.

² Based on initial testing and research, the oats are most likely the source of glyphosate in the Products. Further discovery will reveal the precise source of the glyphosate.

10. By deceiving consumers about the nature, quality, and/or ingredients of its Nature Valley products, General Mills is able to sell a greater volume of the Products, to charge higher prices for the Products, and to take away market share from competing products, thereby increasing its own sales and profits.

11. Consumers lack the scientific knowledge necessary to determine whether the Products are in fact “Made with 100% Natural Whole Grain Oats,” to know or to ascertain the true ingredients and quality of the Products, or to assess the safety of ingesting glyphosate.

12. Reasonable consumers must and do rely on General Mills to report honestly what the Products contain, and whether the oats are in fact “100% Natural.”

13. Across all Nature Valley products, General Mills conceals the presence of glyphosate, fails to disclose to consumers of the presence of glyphosate, and fails to disclose to consumers the harmful effects of ingesting glyphosate.

14. General Mills intended for consumers to rely on its representations, and reasonable consumers did in fact so rely. As a result of its false and misleading labeling and omissions of fact, General Mills was and is able to sell the Products to the general public of the District of Columbia and to realize sizeable profits.

15. General Mills’ false and misleading representations and omissions violate the District of Columbia Consumer Protection Procedures Act (“DC CPPA”), D.C. Code §§ 28-3901, *et seq.*

16. Because General Mills’ labeling and advertising of the Products tends to mislead and is materially deceptive about the true nature, quality, and ingredients of the Products, Plaintiffs bring this deceptive advertising case on behalf of the general public, and seek relief including an injunction to halt General Mills’ false marketing and sale of the Products, and a court-ordered corrective advertising campaign to inform the public of the true nature of the Products.

JURISDICTION AND VENUE

17. This Court has personal jurisdiction over the parties in this case. Plaintiffs, by filing this Complaint, consent to this Court having personal jurisdiction over them.

18. Beyond Pesticides maintains its headquarters in the District of Columbia.

19. The OCA maintains a presence in the District of Columbia.

20. This Court has personal jurisdiction over General Mills pursuant to D.C. Code § 13-423. General Mills has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, General Mills is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, or otherwise purposefully avails itself of the laws of this District through its marketing and sales of the Products in this District.

21. This Court has subject matter jurisdiction over this action pursuant to D.C. Code §§ 28-3905(k)(1)(B), (k)(1)(C), (k)(1)(D), and (k)(2).

22. Venue is proper in this District under 28 U.S.C. § 1391(b). Substantial acts in furtherance of the alleged improper conduct, including the dissemination of false and misleading information regarding the nature and quality of the Products, occurred within this District. The Products are available for purchase at retail stores in the District of Columbia.

PARTIES

23. The OCA is a 501(c)(3) non-profit public-interest organization that deals with crucial issues of truth in advertising, accurate food labeling, food safety, genetic engineering, children's health, corporate accountability, environmental sustainability, and related topics.

24. The OCA performs its work throughout the United States, including in the District of Columbia. Some of the OCA's staff resides in or near the District of Columbia, including its political director. The OCA has members who reside in the District of Columbia.

25. The OCA was formed in 1998 in the wake of backlash by consumers against the U.S. Department of Agriculture's controversial proposed national regulations for organic food.

In its public education, network building, and mobilization activities, the OCA works with a broad range of public interest organizations to challenge industrial agriculture, corporate globalization, and to inspire consumers to “Buy Local, Organic, and Fair Made.” The OCA’s website, publications, research, and campaign staff provide an important service for hundreds of thousands of consumers and community activists every month. Its media team provides background information, interviews, and story ideas to television and radio producers and journalists on a daily basis.

26. Thus, the OCA’s focus is on representing the views and interests of consumers by educating consumers on food safety, industrial agriculture, genetic engineering, corporate accountability, and environmental sustainability issues. The OCA uses funds it raises to educate consumers, increasing their awareness and knowledge of the agricultural production, and to protect the environment by regenerating organic and/or sustainable agriculture. The OCA also uses its funds and member base to pressure food companies to adopt honest labeling practices, to the benefit of consumers.

27. On August 22, 2016, OCA purchased, at a Harris Teeter store located at 1632 Kalorama Rd. NW in Washington, D.C., a box of Nature Valley Oats ‘n Honey Crunchy granola bars in order to evaluate their purported qualities as a natural product “made with 100% natural whole grain oats.”

28. MAA is a grass-roots, 501(c)(3) non-profit organization that educates and empowers communities and individuals about issues involving toxins, pesticides, and genetically modified organisms in the food supply in order to support healthy communities.

29. MAA performs its work throughout the United States, including in the District of Columbia. Some of MAA’s consultants and volunteers reside in or near the District of Columbia. MAA has members who reside in the District of Columbia and need to feed their children as toxin-free as possible due to health issues.

30. MAA’s mission is to raise awareness about toxic exposure, empower grass-roots

leadership, and create healthy communities, which it advances by supporting the local activities of its members, initiating educational campaigns, and sharing solutions with activists nationwide.

31. Specific to the issue of glyphosate, MAA has undertaken various activities to educate the public about the individual and collective health benefits of organic, glyphosate-free foods. MAA has disseminated studies and reports regarding glyphosate through MAA's website and written about glyphosate on MAA's blog; gathered and shared testimonials from people who benefit from avoiding genetically modified foods, which resist and therefore contain glyphosate; conducted billboard, radio, and other media campaigns urging farmers, food manufacturers, and consumers to switch to organic foods in order to avoid genetically modified organisms and toxins such as glyphosate; tested for glyphosate in water, urine, and breast milk; and created data sheets and other informational materials for activists.

32. On May 4, 2016, MAA purchased, at a Walgreens store located at 801 7th St. NW in Washington, D.C., a box of Nature Valley Oats 'n Honey Crunchy granola bars in order to evaluate their purported qualities as a natural product "made with 100% natural whole grain oats."

33. Beyond Pesticides is a 501(c)(3) non-profit public-interest organization headquartered in the District of Columbia that works with allies in protecting public health and the environment to lead the transition to a world free of toxic pesticides. The organization's primary goal is to effect change through local action, assisting individuals and community-based organizations to stimulate discussion on the hazards of toxic pesticides, while providing information regarding safe alternatives.

34. Beyond Pesticides promotes safe air, water, land, and food, and works to protect public health and the environment by encouraging a transition away from the use of toxic pesticides, including glyphosate, the main chemical at issue in this lawsuit. With the resources of Beyond Pesticides made available to the public on a national scale, Beyond Pesticides contributes to a significant reduction in unnecessary pesticide use, thus improving protection of

public health and the environment.

35. Beyond Pesticides has historically taken a two-pronged approach to the pesticide problem by identifying the risks of conventional pest management practices and promoting non-chemical and least toxic management alternatives. For example, Beyond Pesticides produces the quarterly newsletter “Pesticides and You,” which provides in-depth articles and a voice for pesticide safety and alternatives. In 2015, they published a front page article in Pesticides and You, titled Glyphosate Causes Cancer, and urged members and supporters to take action and let elected officials know they are not okay with glyphosate on our lawns and in our food. Additionally, its “Daily News Blog” provides the most current information on pesticide issues, and has featured articles on glyphosate 321 times since 2007, with 42 articles written in 2014, 61 in 2015 and 48 articles on glyphosate so far in 2016. Beyond Pesticides also disseminates information regarding glyphosate through the creation of fact sheets made available to the public through their website.

36. Beyond Pesticides submitted comments to EPA in 2009 during the glyphosate registration review period, asking them to cancel glyphosate’s registration due to the human and environmental risks, as well as the availability of alternatives. In July 2013, Beyond Pesticides, along with twenty-two other organizations, called on the Environmental Protection Agency not to increase the allowable residue limits for glyphosate on certain food commodities, saying that an increase in glyphosate tolerances and associated increases in glyphosate use puts the public at additional, unreasonable risk. In 2016 Beyond Pesticides once again sent a letter to and met with EPA officials requesting the routine testing of glyphosate.

37. Beyond Pesticides also holds an annual national conference that draws the attendance of around 200-250 people. It is in a different location each year, and in 2016 took place in Portland, Maine. One of the keynote speakers was Aaron Blair, Ph.D., a National Cancer Institute researcher and the overall chair of the International Agency for Research on Cancer’s (IARC) evaluation panel that found glyphosate to be a carcinogen. He spoke about the

research process that evaluated this chemical's harmful effects on human health.

38. In addition, Beyond Pesticides regularly engages its members to take action regarding glyphosate. Not only does Beyond Pesticides have 1,427 members, their list serve reaches 43,524 people who have signed up to receive emails. In 2013, Beyond Pesticides sent an alert requesting members and people on the list serve to take action to stop the proposed increase of glyphosate food tolerance levels; in 2014 they sent an alert to Connecticut members asking them ban the allowance of glyphosate-tolerant Kentucky Bluegrass, and sent three alerts urging EPA to reject a new herbicide formulated with glyphosate and 2,4-D; in 2015 Beyond Pesticides sent another action alerts regarding glyphosate's recent cancer determination from the International Agency for Research on Cancer, asking supporters to tell EPA and USDA to stop glyphosate use.

39. Finally, Beyond Pesticides has worked for over thirty years to develop and uphold the standard associated with organic production, including raising consumer awareness as to what organic is, and why it is preferable to conventionally grown foods. The rampant use of the term "natural" over the past decade by companies like Nature's Valley has undermined the organic system, prompting Beyond Pesticides and its allies to call on FDA to ban the word "natural" on labeling, or to define via an official rulemaking what makes a product "natural." These concerns stem from consumer confusion over the difference between the terms organic and natural.

40. On August 22, 2016, Beyond Pesticides purchased, at a CVS store located at 661 Pennsylvania Ave SE in Washington, D.C., Nature Valley Oats 'n Honey Crunchy granola bars in order to evaluate their purported qualities as a natural product "made with 100% natural whole grain oats."

41. At all times mentioned herein, General Mills, Inc. was a Delaware corporation headquartered in Minneapolis, Minnesota, and a leading global manufacturer and marketer of branded consumer foods sold through retail stores. General Mills was and is, at all relevant

times, engaged in commercial transactions throughout the District of Columbia, including this judicial District, as well as internet sales.

42. General Mills manufactures and/or causes the manufacture of oat-based food products, and markets and distributes the products in retail stores in the District of Columbia and throughout the United States. General Mills makes, markets, sells, and distributes food products under various trademarks, including Nature Valley.

43. Upon information and belief, General Mills has caused harm to the general public of the District of Columbia.

44. The OCA, MAA, and Beyond Pesticides are acting for the benefit of the general public as private attorneys general pursuant to D.C. Code § 28-3905(k)(1). The OCA, MAA, and Beyond Pesticides are non-profit organizations pursuant to D.C. Code § 28-3901(a)(14). The OCA is a public-interest organization pursuant to D.C. Code § 28-3901(a)(15).

FACTUAL ALLEGATIONS

45. Plaintiffs bring this suit for injunctive and equitable relief under the DC CPPA, D.C. Code § 28-3901 *et seq.*, against General Mills based on misrepresentations and omissions committed by General Mills regarding the Products, which General Mills falsely and deceptively labels and markets as “Made with 100% Natural Whole Grain Oats,” when in fact the Products are not made with **100% natural** whole grain oats.

46. In fact, the Products contain glyphosate, a potent and *unnatural* biocide.

47. American consumers increasingly and consciously seek out natural and healthful food products.

48. Once a small niche market, natural and healthful foods are now sold by conventional retailers, and their sales continue to soar.

49. The trend toward natural and healthful food products includes, for many consumers, a preference for whole grains over processed or otherwise refined grains.

50. Consumers value natural foods, including whole grains, for myriad health,

environmental, and political reasons, including avoiding chemicals and additives, attaining health and wellness, helping the environment, and financially supporting companies that share these values.

A. General Mills Cultivates a “Natural” Brand Image for Nature Valley

51. General Mills knows that consumers seek out and wish to purchase whole, natural foods that do not contain artificial chemicals, and that consumers will pay more for foods that they believe to be natural than they will pay for foods that they do not believe to be natural.

52. A recent nationally representative Consumer Reports survey of 1,005 adults found that more than half of consumers usually seek out products with a "natural" food label, often in the false belief that they're produced without genetically modified organisms, hormones, pesticides, or artificial ingredients. *See* Consumer Reports National Research Center, *Natural Food Labels Survey* (2015).³

53. To capture this market, General Mills markets Nature Valley as a natural and healthful brand that is “Made with 100% Natural Whole Grain Oats.”

54. General Mills does not disclose the presence in the Products of glyphosate.

55. General Mills cultivates an image of Nature Valley as a healthful, wholesome, impurity-free brand—the kind of company whose label claims can be trusted, stating on its website: “*Nature Valley* created the granola bar category in 1975. Much has changed in nearly four decades. One thing hasn't. No matter how many new flavors we create, be assured that with *Nature Valley* you're always getting *The Taste Nature Intended*.” *See* <http://www.generalmills.com/Brands/Snacks/nature-valley>, last visited July 26, 2016 (italics in original).

56. General Mills presents itself as a leader in the production of oats, touting their

³ Available at http://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf, last visited August 19, 2016

health benefits and environmentally friendly properties:

Oats are at the core of General Mills' business.

Our company has brought the power of oats to consumers since 1941, when we introduced *Cheerioats*— the first ready-to-eat cereal made from oats.

We believe in the goodness of oats. They are nutrient-dense, affordable, naturally gluten-free and come in convenient forms.

Oats are unique in many ways:

- They have the highest concentrations of protein among common varieties of whole grains, more soluble fiber than most other whole grains, are a top source of the soluble fiber, beta-glucan, and contain unique antioxidants.
- Oats naturally taste good and, when roasted, develop a nutty oat flavor.
- Oats are a sustainable crop – oats are a hardy grain that require little water to grow.

See <http://www.generalmills.com/en/Health/well-being/whole-grain>, last visited July 26, 2016.

57. General Mills also promotes the health benefits of its products, explaining, “Eating grains, especially whole grains, provides health benefits. People who eat whole grains as part of a healthy diet have a reduced risk of some chronic diseases. Grains provide many nutrients that are vital for the health and maintenance of our bodies.” *See id.*

58. Nowhere on its website does General Mills mention the presence of glyphosate in the Products.

59. Nowhere on its website does General Mills disclose the health risks of ingesting glyphosate.

60. Nowhere on its website does General Mills explain the environmental risks presented by glyphosate.

B. General Mills Presents Nature Valley Oats as “100% Natural” and “Healthy”

61. General Mills prominently labels Nature Valley Crunchy Oats ‘n Honey granola bars as “Made with 100% Natural Whole Grain Oats.” These representations appear on the front label of the product.

62. General Mills states, on the back labels of its Nature Valley Crunchy Oats ‘n Honey granola bars, “Nature Valley™ Crunchy bars start with the **best ingredients** from nature like 100% natural whole grain oats and honey.” The back of the label lists the product’s main ingredient as “Whole Grain Oats.”

63. Should any consumer seek further information, General Mills’ Nature Valley website declares: “Nature Valley Crunchy bars start with the best ingredients from nature like 100% natural whole grain oats and honey.” *See* www.naturevalley.com/crunchy/, last visited July 26, 2016.

64. The Nature Valley website states: “Our bars come straight from nature. Sun-dried raisins. Crunchy peanuts. Sweet cranberries. Wholesome almonds and oats. And an occasional dash of rich dark chocolate. Take them on the trail, put them in your pack, stock a drawer at work – no matter where you are, our bars keep you going for all of life’s adventures.” *See* http://www.naturevalley.com/nature_valley_products/, last visited July 26, 2016.

65. Regarding Nature Valley Biscuits, the website states: “Nature Valley Biscuits® combine a delicious crispy texture, and the goodness of 100% natural whole grain oats.” *See, e.g.,* www.naturevalley.com/nv-products/blueberry-biscuits/, last visited July 26, 2016.

66. Regarding Nature Valley Bistro Cups Oatmeal, the website declares: “Made with 100% natural whole grain oats simply brew, stir and enjoy!” *See* www.naturevalley.com/nv-products/brown-sugar-pecan-bistro-cups/, last visited July 26, 2016.

67. Several retailer websites extol the purported health benefits of the Products: “It’s not only wholesome but also **healthy** and makes snack time a lot of fun.” *See* <http://www.annassupermarket.com/#!/product/prd1/2489707351/nature-valley-value-pack-24-bars>, last visited August 11, 2016; <https://www.diapers.com/p/nature-valley-crunchy-granola-bars-value-pack-oats-n-honey-0-74-oz-24-ct-210256>, last visited August 11, 2016; <https://www.amazon.com/Nature-Valley-Oats-Honey-Value/dp/B00MFC60K0>, last visited August 11, 2016 (emphasis added).

68. Upon information and belief, General Mills has profited enormously from its falsely marketed products and its carefully orchestrated label and image.

69. Representing that a product is “Natural,” “Made with 100% Natural Whole Grain Oats,” and “healthy” is a (false) statement of fact.

70. Failing to disclose that a product contains glyphosate and the dangers of ingesting glyphosate are omissions of relevant fact.

71. Consumers reasonably believe that a product or ingredient represented as natural or 100% natural does not contain synthetic ingredients and that a product labeled “made with 100% natural whole grain oats” does not contain synthetic chemicals in its oat ingredients.

72. Consumers reasonably believe that a product or ingredient represented as natural or 100% natural does not contain biocides and that a product labeled “made with 100% natural whole grain oats” does not contain a biocide in its oat ingredients.

73. In 2014, the Consumer Reports National Research Center conducted a nationally representative phone survey to assess consumer opinion regarding food labeling. *See* <http://www.greenerchoices.org/pdf/consumerreportsfoodlabelingsurveyjune2014.pdf>, last visited July 26, 2016.

74. Sixty-six percent of all respondents in the Consumer Reports survey said that a “natural” label on packaged and processed foods means that “no toxic pesticides were used.” *See id.*

75. General Mills knows and intends that when consumers see the product labels or advertisements promising the product is “Natural,” “Made with 100% Natural Whole Grain Oats,” and “healthy” consumers will understand that to mean that, at the very least, the oats or other ingredients in the product do not contain synthetic ingredients or harmful chemicals.

76. Consumers reasonably expect that if a product contains a harmful substance, the presence of that substance will be disclosed, and they will be informed of the dangers associated with the substance.

C. **Glyphosate Is Neither Natural Nor Healthful**

77. General Mills' representations that the Products are "Natural" or "Made with 100% Natural Whole Grain Oats" are false. In fact, quantitative testing revealed that the Products contain glyphosate.

78. The Products thus are not "Natural" and they are not "Made with 100% Natural Whole Grain Oats," and labeling or advertising the Products as such is misleading and deceptive.

79. Because of the adverse health effects of glyphosate, which are becoming more widely known, the Products are not "healthy."

80. General Mills has a duty to not misrepresent the Products by disclosing the presence of glyphosate and the dangers associated with glyphosate.

81. On information and belief, glyphosate is, by volume, the world's most widely produced herbicide.

82. Glyphosate was invented by the agrochemical and agricultural biotechnology corporation Monsanto, which began marketing the herbicide in 1974 under the trade name Roundup, after DDT was banned.⁴

83. By the late 1990s, use of Roundup had surged as a result of Monsanto's strategy of genetically engineering seeds to grow food crops that could tolerate high doses of the herbicide. The introduction of these genetically engineered seeds enabled farmers more easily to control weeds on their crops.⁵

84. Monsanto also encouraged farmers to use Roundup as a desiccant to dry out their crops in order to harvest them faster.

85. Today, glyphosate is routinely sprayed directly on a host of non-genetically

⁴ See <https://www.organicconsumers.org/news/monsantos-roundup-enough-make-you-sick>, last visited July 20, 2016.

⁵ See *id.*

modified crops, including oats.⁶

86. On information and belief, this use of glyphosate is not for any health or environmental purpose, and stems solely from a desire to increase crop yield.

87. Between 1996 and 2011, herbicide use in the United States *increased* by 527 million pounds, despite Monsanto's claims that genetically modified crops would *reduce* pesticide and herbicide use.⁷

88. In 2015, the International Agency for Research on Cancer (IARC), a research arm of the World Health Organization, declared glyphosate a category 2A "probable" human carcinogen.

89. A summary of the study underlying this declaration was published in *The Lancet Oncology*, Vol. 16, No. 5 (May 2015).⁸

90. The IARC study noted such carcinogenic risk factors as DNA damage to human cells resulting from exposure to glyphosate. *See id.*

91. Glyphosate is a suspected human endocrine disruptor, with estrogenic effects even at extremely low concentrations.⁹

92. In November 2015, the European Food Safety Agency published conclusions suggesting that the combined use of glyphosate with other chemicals posed greater potential health risks than when glyphosate is used alone.

⁶ *See id.*

⁷ *See id.*

⁸ Available at <http://www.thelancet.com/journals/lanonc/article/PIIS1470-2045%2815%2970134-8/abstract> (last visited July 26, 2016).

⁹ *See* Thongprakaisang, S. *et al.*, "Glyphosate induces human breast cancer cells growth via estrogen receptors," 59 *Food & Chem. Toxicol.* 129 (June 2013), *abstract available at* <http://www.ncbi.nlm.nih.gov/pubmed/23756170>, last visited July 26, 2016; *see also, e.g.*, Gasnier, C. *et al.*, "Glyphosate-based herbicides are toxic and endocrine disruptors in human cell lines," 262(3) *Toxicology* 184 (Aug. 21, 2009), *abstract available at* <http://www.ncbi.nlm.nih.gov/pubmed/19539684>, last visited July 26, 2016.

93. In light of those conclusions, in April 2016, following a review of products containing glyphosate and tallowamine, France’s health and safety agency announced its intention to ban weed-killers that combine the two chemicals.¹⁰

94. Glyphosate, as a biocide, functions by disrupting the shikimate pathway.¹¹

95. Although humans themselves do not have a shikimate pathway, the shikimate pathway is present in bacteria, including bacteria that inhabit the human gut and are essential to proper immune functioning.

96. Glyphosate thus is suspected to disrupt human immune function as well.

97. Studies examining low doses of glyphosate-based herbicides at levels that are generally considered “safe” for humans show that these compounds can nevertheless cause liver and kidney damage.¹²

98. Glyphosate is derived from the amino acid glycine.

99. To create glyphosate, one of the hydrogen atoms in glycine is artificially replaced

¹⁰ See “France to Ban Some Glyphosate Weedkillers Amid Health Concerns,” Reuters, Apr. 8, 2016, available at <http://www.reuters.com/article/us-france-glyphosate-idUSKCN0X512S>, last visited July 20, 2016.

¹¹ See, e.g., Heike, H. & N. Amrhein, “The Site of the Inhibition of the Shikimate Pathway by Glyphosate,” *Plant Physiol.* 66:823 (1980), available at <http://www.plantphysiol.org/content/66/5/823.full.pdf>, last visited July 26, 2016; see also <http://www.glyphosate.eu/glyphosate-mechanism-action>, last visited July 26, 2016.

¹² Myers, J., et al., “Concerns over use of glyphosate-based herbicides and risks associated with exposures: a consensus statement,” *Environ. Health* 2016 15:9, available at <https://ehjournal.biomedcentral.com/articles/10.1186/s12940-016-0117-0> (last visited July 26, 2016); see also Seralini, G.E., et al., “Republished study: long-term toxicity of a Roundup herbicide and a Roundup-tolerant genetically modified maize,” *Environ. Sci. Europe* 2014;26:14, available at <http://enveurope.springeropen.com/articles/10.1186/s12302-014-0014-5> (last visited July 26, 2016); Benedetti, A.L., “The effects of sub-chronic exposure of Wistar rats to the herbicide Glyphosate-Biocarb,” *Toxicol. Lett.* 2004;153(2):227–232, available at <http://www.ncbi.nlm.nih.gov/pubmed/15451553> (last visited July 26, 2016); Larsen, K., et al., “Effects of Sublethal Exposure to a Glyphosate-Based Herbicide Formulation on Metabolic Activities of Different Xenobiotic-Metabolizing Enzymes in Rats,” *Int. J. Toxicol.* 2014, available at <http://www.ncbi.nlm.nih.gov/pubmed/24985121> (last visited July 26, 2016); Mesnage R., et al., “Transcriptome profile analysis reflects rat liver and kidney damage following chronic ultra-low dose Roundup exposure,” *Environ. Health* 2015;14:70, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4549093/> (last visited July 26, 2016).

with a phosphonomethyl group.

100. Glyphosate is not “Natural.”

101. Glyphosate is not present in “100% Natural Whole Grain Oats.”

102. On information and belief, glyphosate is used to increase oat harvest for commercial purposes; is not necessary to successful planting, growing, or harvesting of oats; is not a “natural” method of growing or harvesting oats; is applied to oats as a drying agent shortly before harvest; and is applied for commercial purposes only.

103. Glyphosate is a dangerous substance, the presence and dangers of which should be disclosed.

D. Nature Valley’s Labels Are Misleading and Omit Material Facts

104. General Mills’ conduct in labeling or representing the Products as natural and “Made with 100% Natural Whole Grain Oats” deceived and/or was likely to deceive the public.

105. Consumers were deceived into believing that the listed ingredients were all the ingredients, and that the Products are natural, consisting of 100% natural oats, and that nothing in the oats was not natural.

106. Instead, the oats or other ingredients in the Products contain glyphosate, an *unnatural* biocide and probable human carcinogen, with myriad other potential health effects.

107. Consumers cannot discover the true nature of the Products from reading the label. Consumers could not discover the true nature of the Products even by visiting Nature Valley’s website, which makes no mention of glyphosate.

108. Discovery of the true nature of the ingredients requires knowledge of chemistry and access to laboratory testing that is not available to the average reasonable consumer.

109. General Mills deceptively and misleadingly conceals material facts about the Products, namely, that the Products are not “Natural,” “Made with 100% Natural Whole Grain Oats,” and “healthy,” because in fact the Products contain glyphosate; and the Products are not what a reasonable consumer would consider “Natural,” “Made with 100% Natural Whole Grain

Oats,” and “healthy,” because in fact they contain glyphosate.

110. General Mills fails to disclose to consumers of the dangers of consuming glyphosate.

111. The production process General Mills uses for the Products is known only to General Mills and its suppliers.

112. General Mills has not disclosed such information to Plaintiff.

113. Testing reveals the presence of glyphosate in the Products, but only General Mills knows the methods by which its oats are grown, harvested, and processed, or what would account for the presence of glyphosate in Nature Valley.

114. General Mills’ concealment tolls the applicable statute of limitations.

115. To this day, General Mills continues to conceal and suppress the true nature, identity, source, and method of production of Nature Valley.

E. General Mills Knew That Its Representations Were False

116. General Mills holds itself out to the public as a trusted expert in the growing, harvesting, and processing of oats.

117. General Mills knew what representations it made on the labels of Nature Valley. It also knew how the oats were grown, harvested, and processed, and that they contain glyphosate, an unnatural and dangerous biocide.

118. General Mills thus knew, or should have known, the facts demonstrating that the Products were mislabeled and falsely advertised, and that it had a duty to disclose the presence of glyphosate and the dangers associated with glyphosate.

119. Consumers frequently rely on label representations and information in making purchase decisions, especially in purchasing food.

120. Although reliance is not an element of the DCCPPA, General Mills made the false, misleading, and deceptive representations and omissions intending for consumers to rely upon these representations and omissions in purchasing the Products.

121. In making the false, misleading, and deceptive representations and omissions at issue, General Mills knew and intended that consumers would purchase the Nature Valley products when consumers would otherwise purchase a competing product.

122. In its 2015 Annual Report, General Mills recognized consumers' desire for natural foods:

Consumers are increasingly interested in natural foods with simple ingredients and are limiting things like gluten, simple carbohydrates and artificial ingredients. They also are looking for more protein, fiber, whole grains and organic products. And they are snacking more than ever. In categories where we applied a "consumer first" approach and responded to these changes, we posted good growth. For example, retail sales for our grain snacks grew 4 percent, and we gained nearly two points of market share on the strength of our Nature Valley and Fiber One brands.

See General Mills 2015 Annual Report at 3, available at <http://bit.ly/2a9PEcS>, last visited July 20, 2016.

123. Expanding its portfolio of "natural" and "organic" brands is a cornerstone of General Mills' business strategy:

U.S. industry sales for natural and organic foods have been growing at a double-digit pace over the past three years. And sales are projected to continue to grow at a double-digit rate. We've been building our capabilities for sourcing, manufacturing and marketing natural and organic brands for the past 15 years. With the acquisition of Annie's, Inc. in October 2014, we're now the fourth-largest natural and organic food manufacturer in the U.S. We have strong levels of innovation coming in 2016 across our brands, including new Cascadian Farm cereals, Annie's soups and Food Should Taste Good snack bars. We see great opportunities to grow our brands by innovating, and by increasing their distribution in natural and organic stores and in traditional grocery outlets.

See General Mills 2015 Annual Report at 6, available at <http://bit.ly/2a9PEcS>, last visited July 20, 2016.

124. Consumers are not only willing to pay more for a product with ingredients that purport to be "100% Natural" – they expect that product to be pesticide-free.

125. In making the false, misleading, and deceptive representations and omissions at issue, General Mills also knew and intended that consumers would pay more for products made of "Natural" or "100% Natural" ingredients that are free of unnatural agents than they would pay for products made of ingredients that are not "Natural" or "100% Natural," furthering General

Mills' private interest of increasing sales of its products and decreasing the sales of the all-natural and/or glyphosate-free products that are truthfully marketed by its competitors.

126. General Mills knows that consumers prefer "Natural" and "100% Natural" ingredients, and foods that do not contain dangerous or potentially dangerous chemicals. General Mills knows that consumers will pay more for "Natural" foods or foods with "100% Natural" ingredients or would not purchase the foods at all unless they were "Natural" or made with "100% Natural" ingredients and free from unnatural and dangerous chemicals.

127. Similarly, independent surveys confirm that consumers will purchase more "Natural" products than conventional products, and will pay more for "Natural" products.

128. Upon information and belief, General Mills has failed to remedy the problem with the Products, thus causing future harm to consumers.

129. Consumers are at risk of real, immediate, and continuing harm if the Products continue to be sold as is, and without adequate disclosure of the presence of glyphosate and of the health effects of ingesting glyphosate.

130. General Mills has failed to provide adequate relief to members of the consuming public as of the date of filing this Complaint.

131. Plaintiffs contend that the Products were sold pursuant to unfair and unconscionable trade practices because the sale of Nature Valley offends public policy and is immoral, unethical, oppressive, unscrupulous, and caused substantial economic injuries to consumers.

132. Reasonable consumers do not expect the Products, represented and advertised as "natural," "healthy," and "Made with 100% Natural Whole Grain Oats," to contain unnatural chemicals or ingredients such as glyphosate. Defendant's statements and other representations convey a series of express and implied claims and/or omissions which Defendant knows are material to the reasonable consumer in making a purchasing decision, and which Defendant intended for consumers to rely upon when choosing to purchase the Products.

133. Defendant misrepresented the nature, quality, and/or ingredients of the Products and/or failed to adequately disclose the health risks of ingesting the glyphosate contained in the Products, which was and is false, misleading, and/or likely to deceive reasonable consumers. Reasonable consumers expect the presence of such ingredients to be disclosed so that they can make informed purchasing decisions.

134. Accordingly, Plaintiffs OCA, MAA, and Beyond Pesticides seek declaratory relief in the form of an order declaring General Mills' conduct to be unlawful, as well as injunctive and equitable relief putting an end to General Mills' misleading and unfair business practices, including clear and full disclosure of the presence of glyphosate in the Products and of the health effects of ingesting glyphosate and/or a reformulation of the Products so that the Products no longer contain glyphosate.

CAUSE OF ACTION

VIOLATION OF THE DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT

135. Pursuant to D.C. Code §§ 28-3905(k)(1) and 28-3905(k)(2), the OCA, MAA, and Beyond Pesticides bring this Count against General Mills on behalf of the general public of the District of Columbia, for General Mills' violation of DC CPPA, D.C. Code § 28-3901, *et seq.*

136. Plaintiffs incorporate by reference all the allegations of the preceding paragraphs of this Complaint.

137. General Mills has labeled and advertised the Products as natural, 100% Natural, "healthy," and/or "Made with 100% Natural Whole Grain Oats" and has otherwise presented an image and marketing materials suggesting that the Products are natural, when in fact the Products contain unnatural chemical biocides.

138. General Mills' labeling and advertising of the Products misrepresents, tends to mislead, and omits facts regarding the source, characteristics, standard, quality, and grade of the Products.

139. General Mills' misleading labeling and advertising include statements that the Products are "natural," "healthy," and/or "Made with 100% Natural Whole Grain Oats."

140. General Mills' labeling and marketing materials make representations and use innuendo that tends to mislead reasonable consumers into believing that the Products are natural, with 100% natural ingredients, and does not contain any unnatural chemicals

141. The representations omit the truth about the Products, namely, that the Products and the oats or other ingredients in the Products contain glyphosate.

142. Nature Valley lacks the characteristics, ingredients, benefits, standards, qualities, or grades that General Mills states and implies in its labeling and advertisements.

143. These misstatements, innuendo, and omissions are material and have the tendency to mislead.

144. General Mills knowingly did not sell the Products as advertised.

145. The facts as alleged above demonstrate that General Mills has violated the DC CPPA, D.C. Code § 28-3901 *et seq.* Specifically, General Mills has violated D.C. Code § 28-3904, which makes it an unlawful trade practice to:

(a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . .

(d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;

(e) misrepresent as to a material fact which has a tendency to mislead;

(f) fail to state a material fact if such failure tends to mislead;

(f-1) [u]se innuendo or ambiguity as to a material fact, which has a tendency to mislead; ... [or]

(h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

146. The DC CPPA makes such conduct an unlawful trade practice “whether or not any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904.

147. Though Plaintiffs need not show proof of deception to succeed on their DC CPPA claim, consumers were in fact deceived. General Mills knew or should have known that reasonable consumers would believe that the Products were natural, “healthy,” and/or “Made with 100% Natural Whole Grain Oats” as labeled and advertised.

148. Plaintiffs have a sufficient nexus to consumers of the Products to adequately represent those interests.

149. Because General Mills misrepresents the characteristics, ingredients, and benefits of the Products; misrepresents the standard, quality, and grade of the Products; misrepresents, fails to state, and uses innuendo and ambiguity in ways which tend to mislead reasonable consumers with regard to material facts about the Products; and advertises the Products without the intent to sell the Products as advertised, General Mills’ labeling and marketing of the Products as “natural,” “healthy,” and/or “Made with 100% Natural Whole Grain Oats” violates D.C. Code §§ 28-3904(a), (d), (e), (f), (f-1), and (h).

150. General Mills is a “person” within the meaning of D.C. Code § 28-3901(a)(1), is a merchant under § 28-3901(a)(3), and provides “goods” within the meaning of § 28-3901(a)(7).

151. Pursuant to D.C. Code § 28-3905(k)(1)(C), “[a] nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.”

152. Pursuant to D.C. Code § 28-3905(k)(1)(D)(i), “a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer

or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.”

153. Via §§ 28-3905(k)(1)(C) and (k)(1)(D)(i), the DC CPPA allows for non-profit organizational standing and public interest organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of constitutional standing under Article III.

154. Plaintiffs OCA, MAA, and Beyond Pesticides are “person[s]” within the meaning of D.C. Code § 28-3901(a)(1) and “non-profit organization[s]” within the meaning of D.C. Code § 28-3901(a)(14). Plaintiff OCA is a “public interest organization” within the meaning of D.C. Code § 28-3901(a)(15).

155. Plaintiffs bring this Count against General Mills for General Mills’ violation of the DC CPPA, D.C. Code § 28-3901 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs OCA, MAA, and Beyond Pesticides pray for judgment against General Mills and request the following relief:

- A. a declaration that General Mills’ conduct is in violation of the DC CPPA;
- B. an order enjoining General Mills’ conduct found to be in violation of the DC CPPA, as well as corrective advertising;
- C. an order granting Plaintiffs costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and
- D. such further relief, including equitable relief, as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

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