

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS DIVISION

CASSANDRA NEUBAUER, individually and  
on behalf of all similarly-situated current  
citizens of Illinois and the United States,

Plaintiffs,

v.

RED LOBSTER HOSPITALITY LLC AND  
CONTINENTAL MILLS, INC.,

Defendants.

No. \_\_\_\_\_

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332(d), 1441(a), and 1446, defendants Red Lobster Hospitality LLC<sup>1</sup> and Continental Mills Inc. (together “Defendants”) remove this case from the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois, to the United States District Court for the Southern District of Illinois. For the reasons explained below, this Court has original jurisdiction over this case pursuant to the Class Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1332(d); *see also* 28 U.S.C. § 1453(b).

**I. THE STATE COURT ACTION**

On March 4, 2024 Plaintiff Cassandra Neubauer filed a Class Action Complaint in the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois, captioned *Cassandra Neubauer v. Red Lobster Hospitality LLC et al.*, 24-L-0361 (the “State Court Action”). Pursuant to 28 U.S.C. § 1446(a), a copy of the Complaint filed in the State Court Action is attached hereto as Exhibit A. A copy of the summons is attached hereto as Exhibit B. Red Lobster was served on March 20, 2024 and Continental Mills was served on March 28, 2024. A copy of the Proof of Service as to Continental Mills is attached here as Exhibit C.

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<sup>1</sup> Red Lobster Hospitality LLC joins Continental Mills, Inc. in this Notice of Removal per 28 U.S.C. § 1446(b)(2)(C) (“If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.”)

The Complaint alleges five causes of action against Defendants: (1) violation of Illinois Consumer Fraud Act (“ICFA”), 815 ILCS 505/2 (Deceptive Practices), (2) violation of Illinois Consumer Fraud Act (“ICFA”), 815 ILCS 505/2 (Unfair Practices), (3) Breach of Express Warranty, (4) Breach of Implied Warranty and (5) unjust enrichment. Compl. ¶¶ 69–103. These claims arise out of Defendants’ allegedly false and deceptive marketing and sale of the Red Lobster™ Cheddar Bay Biscuit® Mix (the “Product”).

Plaintiff brings this action as a putative class action. Plaintiff seeks to represent a class of “All Illinois citizens who purchased the Red Lobster™ Cheddar Bay Biscuit® Mix for personal, family, or household use in the five years preceding the filing of this Complaint up through the date of notice (the “Class Period”) and/or All United States citizens who purchased the Red Lobster™ Cheddar Bay Biscuit® Mix in the United States during the Class Period for personal, family, or household use.” Compl. ¶ 59.

Plaintiff seeks an “award [of] compensatory damages to Plaintiff and the proposed Classes,” or, alternatively, disgorgement. Compl. at 18 (Prayer for Relief). Plaintiff alleges that she and each class member would not have purchased the Product or would have paid less for it had the labels not been false or misleading. Compl. ¶¶ 38, 42. Plaintiff also seeks an award of “reasonable and necessary attorneys’ fees and costs,” and “all such other and further relief as may be just and proper.” Compl. at 18 (Prayer for Relief).

## II. GROUNDS FOR REMOVAL

### A. This action is removable under the Class Action Fairness Act of 2005.

“[A]ny civil action brought in State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . .” 28 U.S.C. § 1441(a). This action is removable under § 1441 because the District Courts of the United States have original jurisdiction over it pursuant to the Class Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1332(d); *see also* 28 U.S.C. § 1453(b) (setting procedure for removing class actions).

CAFA gives federal courts original jurisdiction over putative class actions in which: (1) the aggregate number of members in the proposed class is 100 or more; (2) the amount in

controversy “exceeds the sum or value of \$5,000,000, exclusive of interests and costs”; and (3) the parties are minimally diverse, meaning, “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2), (d)(5)(B). For the following reasons, and as shown in the accompanying declaration of Rob Dilworth, these requirements are met, and this matter is removable.

**1. This is a putative class action in which the aggregate number of members is 100 or more.**

This action is a putative class action within the meaning of CAFA. CAFA defines “class action” as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B). Plaintiff filed this action under 735 ILCS 5/2-801, which provides that “[a]n action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class” provided that the action satisfies four requirements—numerosity, commonality, adequacy of representation, and that the “class action is an appropriate method” for resolving the dispute. The requirements of 735 ILCS 5/2-801 parallel Federal Rule of Civil Procedure 23. *See* Fed. R. Civ. P. 23(a) (requirements for class certification are commonality, typicality, numerosity, and adequacy of representation).

Plaintiff’s putative class action likewise contains 100 or more members. Plaintiffs seek to represent a class of “[a]ll current Illinois citizens” and “[a]ll current citizens of the United States” who purchased the Product during the Class Period. Compl. ¶ 59. Plaintiff alleges that “the Class consists of at least hundreds of purchasers. Accordingly, it would be impracticable to join all Class Members before the Court.” Compl. ¶ 61. By Plaintiff’s own allegations, this element is met.

**2. The aggregate amount in controversy exceeds \$5,000,000**

CAFA permits courts to aggregate the claims of the individual class members “to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs.” 28 U.S.C. § 1332(d)(6). A defendant seeking to remove a case must assert “a short and

plain statement of the grounds for removal” and defendant’s allegations of the amount in controversy “should be accepted when not contested by the plaintiff or questioned by the court.” *Sabrina Roppo v. Travelers Commercial Ins. Co.*, 869 F.3d 568, 579 (7th Cir. 2017); *see also Blomberg v. Serv Corp. Int’l*, 639 F.3d 761, 763 (7th Cir. 2011) (a removing party must establish the amount in controversy by a good faith estimate that is “plausible and adequately supported by the evidence.”). If defendant’s assertions are challenged, it bears the burden of establishing the amount in controversy by a preponderance of the evidence. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 553–54 (2014). “This burden is not ‘daunting’ and only requires that the defendant ‘provide evidence establishing that it is more likely than not that the amount in controversy exceeds [\$5,000,000].’” *Blevins v. Republic Refrigeration, Inc.*, 2015 WL 12516693, at \*6 (C.D. Cal. Sept. 25, 2015) (citation omitted) (alterations in original). Defendant may submit this evidence in opposition to plaintiff’s motion to remand. *Dart Cherokee*, 135 S. Ct. at 554 (“Evidence establishing the amount is required . . . only when the plaintiff contests, or the court questions, the defendant’s allegations.”).

Here, Plaintiff’s request for compensatory damages puts more than \$5,000,000 in controversy.<sup>2</sup> Plaintiff claims that if consumers had known the Product’s actual serving size, “[they] would either not have purchased the Product or would have paid less for it.” Compl. ¶ 42. Plaintiff asserts her experiences are typical of those of the putative class members. Compl. ¶ 63. Thus, Plaintiff seeks for herself and the putative class compensatory damages corresponding to the amount Illinois and nationwide consumers spent on the Product during the Class Period.

As explained in the declaration of Rob Dilworth filed in support of this Notice of Removal, Continental Mills total sales of the Product nationwide was more than \$170 million and in Illinois was more than \$4.5 million over a comparable five-year period (2019, 2020, 2021, 2022, and 2023). *See* Declaration of Rob Dilworth (“Dilworth Decl.”) ¶ 6; Compl. ¶ 59 (defining “Class Period” as including the five-year period prior to the filing of the Complaint). Given the breadth

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<sup>2</sup> Defendants dispute that Plaintiff is entitled to any relief.



of Plaintiff’s compensatory damages request and her apparent intent to seek a complete refund of the purchase price paid, Compl. ¶ 18, Defendants could be potentially liable for actual damages equal to the total *retail* sales figure over the five-year class period, which exceeds \$170 million.

“Plaintiffs also bring claims under ICFA, which permits the recovery of punitive damages.” *Schwartz*, 2019 WL 126188, at \*2. “Where both actual and punitive damages are recoverable under a complaint each must be considered to the extent claimed in determining the jurisdictional amount.” *Cadek v. Great Lakes Dragaway, Inc.*, 58 F.3d 1209, 1211 (7th Cir. 1995). “If punitive damages are available, subject matter jurisdiction exists unless it is legally certain that the plaintiff will be unable to recover the requisite jurisdictional amount.” *LM Ins. Corp. v. Spaulding Enters. Inc.*, 533 F.3d 542, 551 (7th Cir. 2008). Here, Plaintiff does in fact expressly request punitive damages. Compl. at 18 (Prayer for Relief).

As this Court previously found, it is not “legally certain that plaintiff will be unable to recover the requisite jurisdictional amount,” especially given Defendants’ potential exposure on punitive damages. *Spaulding*, 533 F.3d at 551; *Schwartz*, 2019 WL 126188, at \*3. To the contrary, Continental Mills sold more than \$170 million of the Product during a five-year period, a number that is necessarily lower than the retail sales figure and already significantly exceeds the jurisdictional threshold. This element is satisfied.

### **3. The parties are minimally diverse.**

The parties are minimally diverse because “any member of [the class] of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

Plaintiff is a citizen of Illinois who resides—and on information and belief are domiciled—in Madison County, Illinois. Compl. ¶ 14; *Seaboard Fin. Co. v. Davis*, 276 F. Supp. 507, 509 (N.D. Ill. 1967) (“The domicile is the state in which a person resides with the intention of remaining”). Plaintiff seeks to represent a class of Illinois and United States purchasers. Compl. ¶ 59. It stands to reason that at least one of those individuals is domiciled in Illinois.

Defendants are not citizens of Illinois. Red Lobster is a Delaware limited liability company with its principal place of business in Orlando, Florida and Continental Mills is a Washington

Corporation with its principal place of business in Tukwila, Washington. *See* Compl. ¶¶ 15, 16; *Basden v. AG Growth Int'l, Inc.*, 2012 WL 3610112, at \*1 (S.D. Ill. Aug. 21, 2012) (“A corporation is a citizen of the state in which it is incorporated *and* maintains its primary place of business.”). Thus, Plaintiff is a citizen of different states from Defendants, and CAFA’s minimal diversity requirements are met. *See* 28 U.S.C. § 1332(d)(2).

**B. There are no barriers to removal.**

This action does not fall within the exclusions to removal jurisdiction described in 28 U.S.C. §§ 1332(d)(4), (d)(9), or 28 U.S.C. § 1453(d).<sup>3</sup>

Section 1332(d)(4) requires a federal court to decline jurisdiction over a class action when, among other things, “greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed,” and at least one defendant whose “alleged conduct forms a significant basis for the claims asserted by the proposed class . . . is a citizen of the State in which the action was originally filed.” 28 U.S.C. § 1332(d)(4)(A); *see also* 28 U.S.C. § 1332(d)(4)(B) (similarly excluding cases where “two thirds or more of” the class members and “the primary defendants, are citizens of the State in which the action was originally filed”). Section 1332(d)(4) does not apply here because Defendants are not citizens of Illinois, the state in which the action was originally filed. Compl. ¶¶ 15, 16.<sup>4</sup>

Sections 1332(d)(9) and 1453(d) exempt certain securities and corporate governance cases from CAFA’s broad jurisdictional grant. *See* 28 U.S.C. § 1332(d)(9) (explaining that § 1332(d)(2) does not apply to cases arising under several sections of the Securities Act of 1933, several sections of the Securities Exchange Act of 1934, and certain state corporate governance laws); *id.* § 1453(d)

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<sup>3</sup> Defendants are not a “State[], State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief.” 28 U.S.C. § 1332(d)(5)(A) therefore does not preclude this Court’s jurisdiction.

<sup>4</sup> For the same reason, this Court may not decline to assert jurisdiction over this case under 28 U.S.C. § 1332(d)(3) (permitting a district court to decline jurisdiction over “a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate *and the primary defendants are citizens of the State in which the action was originally filed . . .*”).

(same). Those provisions do not bar jurisdiction here because Plaintiff’s claims do not arise under the Securities Act of 1933 or the Securities Exchange Act of 1934, nor do they involve state-centric corporate governance issues. *See* Compl. ¶¶ 46–68 (claims arising under Illinois common law and consumer protection statutes).

**C. Venue and intra-district assignment are proper.**

The Southern District of Illinois, East St. Louis division is the proper venue and intra-district assignment for this action upon removal because this “district and division embrace” the Circuit Court for the 20th Judicial Circuit County of St. Clair, where the Complaint was filed and is currently pending. *See* 28 U.S.C. § 1441(a).

**D. Defendants have satisfied all other requirements of the removal procedure.**

This Notice of Removal is timely filed. Continental Mills, the later-served Defendant, was served on March 28, 2024. Defendants filed and served this Notice of Removal within 30 days of service of the Complaint in compliance with 28 U.S.C. § 1446(b).

As required by 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Defendants are being filed herewith. These documents are attached hereto as Exhibits A–C. A true and correct copy of the state court’s docket is attached hereto as Exhibit D.

Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly serve on Plaintiff and file with the Circuit Court a “Notice to Adverse Party and State Court of Removal to Federal Court.” Defendants will also file with this Court a “Certificate of Service of Notice to Adverse Party and State Court of Removal to Federal Court.”

**III. RESERVATION OF RIGHTS AND DEFENSES**

Defendants expressly reserve all their defenses and rights, and none of the foregoing shall be construed as in any way conceding the truth of any of Plaintiff’s allegations or waiving any of their defenses. *See, e.g., Key v. DSW, Inc.*, 454 F. Supp. 2d 684, 691 (S.D. Ohio 2006) (“[T]he fact that Defendant removed the case does not mean that Defendant concedes that Plaintiff has adequately alleged appropriate damages.”).

#### IV. CONCLUSION

WHEREFORE, Defendants request that this Court consider this Notice of Removal as provided by law governing the removal of cases to this Court, that this Court take such steps as are necessary to achieve the removal of this matter to this Court from St. Clair County Circuit Court, and that this Court will make such other orders as may be appropriate to effect the preparation and filing of a true record in this cause of all proceedings that may have been had in the state court action.

DATED: April 23, 2024

By: /s/ Emily R. Craven  
One of the Attorneys for Red Lobster  
Hospitality LLC and Continental Mills,  
Inc.

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**CERTIFICATE OF SERVICE**

I, Emily R. Craven, certify that on April 23, 2024, at my direction the foregoing **NOTICE OF REMOVAL** was electronically filed with the Clerk of the Court using the CM/ECF system and served the following attorneys by email:

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Nelson & Nelson, Attorneys at Law, P.C.  
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Stuart L. Cochran (pro hac vice application forthcoming)  
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Attorneys for the Putative Class

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Emily Craven  
Emily Craven

# EXHIBIT A

Electronically Filed  
Kinnis Williams, Sr.  
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Denim Jackson  
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St. Clair County  
3/4/2024 10:01 AM  
26570318

**CIRCUIT COURT FOR THE 20<sup>TH</sup> JUDICIAL CIRCUIT  
COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

CASSANDRA NEUBAUER, individually )  
and on behalf of all other similarly situated )  
current citizens of Illinois and the United )  
States, )

Plaintiff, )

No. 24-LA-0361

v. )

RED LOBSTER HOSPITALITY LLC and )  
CONTINENTAL MILLS, INC., )

Defendants. )

Serve: Red Lobster Hospitality LLC  
c/o Corporate Creations Network Inc.  
1521 Concord Pike, Suite 201  
Wilmington, DE 19803

Continental Mills, Inc.  
c/o CT Corporation System  
208 S. LaSalle St., Suite 814  
Chicago, IL 60604-1101

**CLASS-ACTION COMPLAINT**

Plaintiff, Cassandra Neubauer, individually and on behalf of all other similarly situated current citizens of Illinois and current citizens of the United States, alleges the following facts and claims upon personal knowledge, investigation of counsel, information and belief.

**SUMMARY OF THE CASE**

1. Defendants Red Lobster Hospitality LLC (“Red Lobster”) and Continental Mills, Inc. (“Continental Mills”) (collectively, “Defendants”) jointly manufacture, market, label, and sell

Red Lobster™ Cheddar Bay Biscuit® Mix (the “Product”) throughout the United States.

2. On the front of their Biscuit Mix box, Defendants represent that the Product “makes 10 biscuits.”

3. On the back of the box, on the Nutrition Facts panel, Defendants represent that the Product contains “about 10 servings” and “makes 10 biscuits.”<sup>1</sup>

4. A serving of the Product, according to Defendants’ labels, is equal to 1/3 cup.

5. Defendants presumably determine the purported number of servings in each box by dividing the net weight of the box in grams (322) by what Defendants claim is the weight of 1/3 cup of their Product – namely 32 grams.

6. In reality, 1/3 cup of the Defendants’ Product weighs approximately 46.9 grams.

7. Substituting the correct weight of a 1/3 cup of the Product, Defendants’ Biscuit box actually makes approximately seven biscuits, not ten, because  $(322 \text{ grams}) / (46.9 \text{ grams/serving})$  is equal to 6.9 servings.

8. Thus, Defendants misrepresent the number of servings in the Product by an average of 3.1 servings per box, or 31.38%.

9. Defendants are fully aware of their misrepresentation.

10. Defendants have or should have measured their Product and determined that 1/3 cup of their Product weighs substantially more than 32 grams on their label.

11. Defendants caused economic harm to Plaintiff and the Classes because they

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<sup>1</sup> FDA regulations specify that “[t]he number of servings shall be rounded to the nearest whole number except for the number of servings between 2 and 5 servings .... The number of servings between 2 and 5 servings shall be rounded to the nearest 0.5 serving. Rounding should be indicated by the use of the term *about* (e.g., about 2 servings, about 3.5 servings).” 21 C.F.R. § 101.9(b)(8)(i). FDA has further clarified in an industry guidance document that “[f]or packages containing five or more servings, round the number of servings to the nearest whole serving.” FDA, A FOOD LABELING GUIDE: GUIDANCE FOR INDUSTRY 52 (2013). The FDA does not require, endorse or suggest the casual imprecision of “about” regarding the number of servings, as employed by Defendants.



received fewer servings than what Defendants promised on their label.

12. Plaintiff and purchasers of the Product received on average 31.38% fewer servings than they bargained and paid for.

13. This case seeks to recover 31.38% of all retail sales of the Product in damages, or \$0.92 for every box of the Product sold to consumers due to Defendants' breach of an express and implied warranties, false, deceptive, misleading and unfair marketing and advertising in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), and unjust enrichment. Plaintiff also seeks injunctive relief.

### **PARTIES**

14. Plaintiff Cassandra Neubauer is an Illinois citizen residing in Madison County, Illinois. Plaintiff purchased the Product approximately once per year during the Class Period (as defined below) from Schnucks on Troy Road in Edwardsville, Illinois. As recently as January or February 2023, Plaintiff purchased the Product at Schnucks for personal, family, or household purposes after reviewing the packaging label and noting that it claimed to contain 10 servings per container. The purchase price of the Product was \$2.89 per container.

15. Defendant Red Lobster Hospitality LLC is a Delaware limited liability company with its principal place of business in Orlando, Florida. Red Lobster maintains a physical presence in St. Clair County doing business at 110 Ludwig Drive in Fairview Heights, Illinois.

16. Defendant Continental Mills, Inc. is a Washington corporation registered to do business in Illinois with its principal place of business in Tukwila, Washington.

### **JURISDICTION AND VENUE**

17. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court.

18. Plaintiff believes and alleges that the total value of her individual claims is, at most, equal to the refund of the purchase price she paid for the Product. There is therefore no diversity jurisdiction over this case.

19. Because the value of Plaintiff's claims is typical of all Class Members with respect to the value of the claim, the total damages of Plaintiff and Class Members, inclusive of costs and attorneys' fees is far less than the five-million dollars (\$5,000,000) minimum threshold to create federal court jurisdiction. There is therefore no CAFA jurisdiction for this case.

20. Defendants cannot plausibly allege that it had sufficient sales of the Product during the Class Period to establish an amount in controversy that exceeds CAFA's jurisdictional threshold.

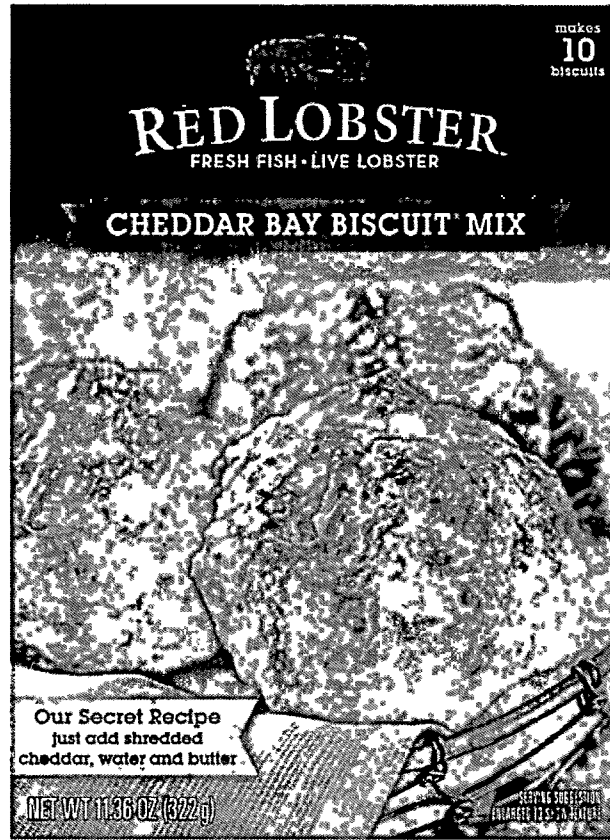
21. This Court has personal jurisdiction over Defendants because Defendants have more than minimum contacts with the State of Illinois and has purposefully availed itself of the privilege of conducting business in this state. In addition, as explained below, Defendants committed affirmative tortious acts within the State of Illinois that gives rise to civil liability, including distributing the Biscuit Mix for sale throughout the State of Illinois and the United States.

22. Venue is proper in this forum pursuant to 735 ILCS 5/2-101 because Red Lobster can be found in this county.

#### **ALLEGATIONS OF FACT**

23. Defendants jointly produce, market, and sell the Product throughout the State of Illinois and the United States.

24. The front label of the Product states that it makes 10 biscuits:



The Nutrition Facts panel on the Product's label states that the Product contains about 10 servings per container.

25. The Nutrition Facts panel on the Product's label states that the Product's serving size is 1/3 cup, each weighing 32 grams.

<b>Nutrition Facts</b>	
About 10 servings per container	
Serving size 1/3 cup mix (32g) & 1/8 tsp garlic herb blend (0.4g)	
Amount per serving	
<b>Calories</b>	<b>150</b>
% Daily Value*	
Total Fat 7g	9%
Saturated Fat 3g	15%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 400mg	17%
Total Carbohydrate 19g	7%
Dietary Fiber 0g	0%
Total Sugars < 1g	
Includes 0g Added Sugars	0%
Protein 2g	
Vitamin D 0mcg	0%
Calcium 40mg	4%
Iron 1.1mg	6%
Potassium 30mg	0%

\* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**BISCUIT MIX INGREDIENTS:** Enriched bleached flour (wheat flour, malted barley flour, niacin, reduced iron, thiamin mononitrate, riboflavin, folic acid), palm and soybean oil, Less than 2% of: baking soda, salt, sodium aluminum phosphate, monocalcium phosphate, dextrose, buttermilk, ascorbic acid, enzymes.

**GARLIC HERB BLEND INGREDIENTS:** Garlic powder, maltodextrin, salt, onion powder, hydrolyzed soy protein, torula yeast, dehydrated parsley, malic acid, sugar, natural and artificial flavors (maltodextrin, butter oil), corn oil, silicon dioxide (anti-caking agent).

**CONTAINS:** Wheat, Milk, Soy.

May contain eggs and tree nuts.

26. Preliminary testing of 168 samples from twelve different containers from twelve different lots of the Product shows, however, that a 1/3 cup serving of the Product actually weighs 46.9 grams, on average.

27. Using the correct weight of a serving size of the Product, the Product on average contains 3.1 servings less than represented.

28. Thus, the Product on average contains 31.38% less servings than represented by Defendant.

29. The Product therefore only makes about 6.9 – not 10 – biscuits.

30. Defendants placed the Product with the misleading label into the stream of commerce, where it was purchased by Plaintiff and Class Members.

31. At all times, Defendants intended Plaintiff and Class Members to rely on their serving-size representations.

32. Plaintiff and Class Members relied on the Product's label to state the truth about the number of servings in the biscuit mix box.

33. Plaintiff and Class Members expected to receive the number of servings stated on the label.

34. Plaintiff and Class Members did not get what they paid for.

35. Plaintiff and Class Members received a Product that was inferior to the Product as described on the label by the Defendants in that the Product contained far fewer biscuits than were promised.

36. Because Plaintiff and Class Members received fewer servings than represented, the value of the Product was materially less than its value as represented by Defendants.

37. Plaintiff and Class Members did not, nor could be expected to know, that the Product would not provide the number of servings promised on the Product's front label and Nutrition Facts panel.

38. The Product was worth less than what Plaintiff paid, and she would not have paid as much absent Defendants' false and misleading serving-size statements.

39. Plaintiff intends to, seeks to, and will purchase the Product again when she can do so with the assurance that Product's representations are accurate. However, unless the Court intervenes, Plaintiff cannot determine whether Defendants' representations on the label are accurate without purchasing the Product again – in which case she risks future economic harm.

40. Defendants' serving-size misrepresentation is material in that it concerns the type of information upon which a reasonable consumer would be expected to rely in deciding whether to purchase the Product.

41. As a result of the misrepresented serving size, Plaintiff and Class Members paid for servings they did not receive.

42. Plaintiff and Class Members would either not have purchased the Product or would have paid less for it had they known the truth.

43. Plaintiff and Class Members have been deceived by Defendants' misrepresentation.

44. At all times, Defendants' misrepresentation was known or intentional. Defendants knew: (a) the weight of the serving size of the Product; (b) that the Product's front panel and Nutrition Facts panel misrepresented the amount of servings; (c) that reasonable consumers would view, assume true, and rely upon information on the label in making their purchasing decisions; and (d) that it was fraudulently charging consumers for servings of the Product they did not receive.

45. Plaintiff provided Continental Mills with pre-suit notice of a breach of warranty on June 30, 2023.

46. Plaintiff provided Red Lobster with pre-suit notice of a breach of warranty on November 28, 2023

47. Defendants' unfair and deceptive practices continue as of the time of the filing of this Complaint and there is no reason to believe that Defendants will discontinue those practices voluntarily.

#### **JOINT AND SEVERAL LIABILITY**

48. The Product's packaging states that the Product is: "Produced Exclusively for Red Lobster by Continental Mills, Inc."

49. Red Lobster registered the phrase “Cheddar Bay Biscuits” on December 21, 2004.<sup>2</sup>

50. Red Lobster registered the mark reproduced below on August 11, 2015, “for Biscuit mixes; Seasonings; Spices.”<sup>3</sup>



51. Defendants affix Red Lobster’s mark five times on the packaging: on the front, back, one side, top, and bottom panels.

52. The Product’s front panel states that the Product is “Our Secret Recipe.”

53. The Product’s back panel states that the Product is: “Straight from our kitchens to yours, it’s our secret Red Lobster Cheddar Bay Biscuit recipe! Just add water, cheddar and butter to create the same Cheddar Bay Biscuits we serve in our restaurants.”

54. The Product’s side panel states: “QUALITY PLEDGE You can count on Continental Mills for the highest quality products.”

55. The Product’s side panel states: “FIND A RESTAURANT For a restaurant near you, call 1-800-562-7837 or visit our web site at [www.RedLobster.com](http://www.RedLobster.com).”

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<sup>2</sup>[https://tsdr.uspto.gov/#caseNumber=76526845&caseSearchType=US\\_APPLICATION&caseType=DEFAULT&searchType=statusSearch](https://tsdr.uspto.gov/#caseNumber=76526845&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch) (last viewed on January 19, 2024).

<sup>3</sup>[https://tsdr.uspto.gov/#caseNumber=86281765&caseSearchType=US\\_APPLICATION&caseType=DEFAULT&searchType=statusSearch](https://tsdr.uspto.gov/#caseNumber=86281765&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch) (last viewed on January 19, 2024).

56. Defendants acted jointly in the production, marketing, labeling and sale of the Product, using Red Lobster's exclusive mark and representations to promote and distribute the Product.

57. Defendants' coordinated actions and representations contribute to the overall deceptive nature of the Product's packaging and marketing.

58. As such, Defendants are jointly and severally liable for any damages caused to Plaintiff and Class Members resulting from their unfair and deceptive practices.

### **CLASS ALLEGATIONS**

59. Pursuant to 735 ILCS 5/2-801 *et. seq.*, Plaintiff brings this action on her own behalf and on behalf of proposed Classes of all other similarly situated persons ("Class Members" of the "Classes") consisting of:

All Illinois citizens who purchased the Red Lobster™ Cheddar Bay Biscuit® Mix for personal, family, or household use in the five years preceding the filing of this Complaint up through the date of notice (the "Class Period"); and/or

All United States citizens who purchased the Red Lobster™ Cheddar Bay Biscuit® Mix in the United States during the Class Period for personal, family, or household use.

60. Specifically excluded from the Classes are Defendants; Defendants' officers, directors, or employees; any entity in which Defendants have a controlling interest; any affiliate, legal representative, heir, or assign of Defendants and any person acting on their behalf. Also excluded from the Classes are any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, all State agencies; and any juror assigned to this action.

61. Upon information and belief, the Classes consist of at least hundreds of purchasers. Accordingly, it would be impracticable to join all Class Members before the Court.



62. There are numerous and substantial questions of law or fact common to all of the members of the Classes and which predominate over any individual issues. Included within the common question of law or fact are:

- a. whether the number of servings on the Product label is false, misleading, and deceptive;
- b. whether Defendants violated ICFA by selling the Product with false, misleading, and deceptive representations;
- c. whether Defendants' acts constitute deceptive, unfair or fraudulent business acts and practices or deceptive, untrue, and misleading advertising;
- d. whether Defendants breached express and/or implied warranties to Plaintiff and the Class Members;
- e. whether Defendants intended that Plaintiff and the Class Members would rely on its representations;
- f. whether Defendants were unjustly enriched; and
- g. the proper measure of damages sustained by Plaintiff and Class Members.

63. Plaintiff's claims are typical of the claims of Class Members, in that they are based on the same conduct and practices of Defendants, the legal claims are the same, and the central liability questions are the same.

64. Class Members and Plaintiff have no interests adverse to the interests of other Class Members.

65. Plaintiff will fairly and adequately protect the interests of Class Members and has retained competent and experienced counsel.

66. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other group

method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. the common questions of law and fact presented predominate over any individualized questions;
- b. absent a Class, the Class Members will continue to suffer damage and Defendants' unlawful conduct will continue without remedy while Defendants profit from and enjoys their ill-gotten gains;
- c. given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendants committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. when the liability of Defendants have been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. this action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and members of the Classes can seek redress for the harm caused to them by Defendants.

67. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants.

68. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

**CLAIMS FOR RELIEF**

**COUNT I**  
**(Breach of Express Warranty)**

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

70. Defendants made the affirmation of fact and the promise to Plaintiff and the Class Members that the Product makes 10 biscuits and contains about 10 servings per container, guaranteeing to Plaintiff and the Class Members that the Product was in conformance with the representations.

71. These affirmations of fact and promises became part of the basis of the bargain of Plaintiff's and Class Members' purchases, and Plaintiff and Class Members relied on the affirmations when making their purchasing decisions.

72. Defendants breached their express warranty by providing Plaintiff and Class Members with fewer servings than represented on the Product packaging.

73. As a result of Defendants' breach of warranty, Plaintiff and the Class Members have been deprived of the benefit of their bargain in that they bought the Product that was not what it was represented to be, and they have spent money on a Product that had less value than was reflected in the inflated price they paid for the Product.

74. As a proximate result of Defendants' breach of express warranty, Plaintiff and Class Members suffered economic damages, including the value of the servings they did not receive, or 31.38% of the purchase price, as well as any other damages proximately caused by Defendants' breach of express warranty.

**Count II**  
**Breach of Implied Warranty**

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

76. By advertising and selling the Product issue, Defendants made implied promises and affirmations of fact concerning the Product, as described here in. These implied warranties became part of the basis of the bargain between Plaintiff and the members of the Class, and the Defendants.

77. Defendants, through their advertising and labeling, impliedly warranted that the Product comports with the label representations, that the label representations are accurate, and that the Product contains sufficient ingredients to provide the stated number of servings.

78. Defendants breached the warranty implied in the contract for the sale of the Product because the Product cannot pass without objection in the trade under the contract description, the Product was not a fair average quality within the description, and the Product was not as represented. As a result, Plaintiff and Class Members did not receive the goods as impliedly warranted by Defendants to be merchantable.

79. At the time of the purchase, Plaintiff and members of the Classes did not know, and had no reason to know, that the Product was not as it was warranted to be.

80. Defendants knew that the Product was not as they warranted it to be.

81. Plaintiff and members of the Classes purchased the Product.

82. Plaintiff provided Defendants with pre-suit notice of the breach of warranty.

83. As the direct and proximate result of Defendants' breach of implied warranty, Plaintiff and members of the Classes were harmed in the amount of the purchase price they paid

for the Product. Plaintiff and members of the Classes have suffered and continue to suffer economic losses and other general and specific damages including, but not limited to, the amount paid for the Product, and any interest that would have accrued on those monies in an amount to be proven at trial.

**COUNT III**  
**Violation of ICFA**  
**(Deceptive Practices)**

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

85. Defendants engaged in a deceptive practice by misrepresenting the number of servings in the Product. The Product was therefore worth less than the Product as represented.

86. Defendants' misrepresentation is material because it conveyed false information that Plaintiff and Class Members relied on when considering whether to purchase the Product.

87. Defendants engaged in these deceptive practices in the course of their trade or commerce because Defendants are in the business of manufacturing, distributing, and selling the Product, and it does so throughout Illinois and in St. Clair County.

88. Defendants' deceptive practices proximately caused Plaintiff and Class Members damages, in that they received less servings than advertised. Plaintiff and Class Members therefore did not receive the benefit of their bargain.

89. Plaintiff's and Class Members' damages include the value of the servings they did not receive, or the difference between what they paid for the Product and what the Product was actually worth. Because the Product was not as represented, the Product as sold was worth less than the Product as represented, and Plaintiff and Class Members paid an excess amount for it.

Had Plaintiff and Class Members known the truth, they would have paid less for the Product by 31.38%.

**COUNT IV**  
**Violation of ICFA**  
**(Unfair Practices)**

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

91. Defendants engaged in unfair acts or practices by weighing a serving size of the Product inaccurately or failing to weigh it at all.

92. Defendants engaged in these unfair acts or practices in the course of their trade or commerce because Defendants are in the business of manufacturing, distributing, and selling the Product, and it does so throughout Illinois and in St. Clair County.

93. Defendants' unfair acts or practices offend public policy and are immoral, unethical, oppressive, or unscrupulous, because they affect the serving size and the associated nutritional facts of the Product. In other words, Plaintiff and Class Members are not receiving truthful information about how much of the Product they are ingesting and its nutritional value.

94. Defendants' acts are also unfair because they are against the public policy set forth in the Illinois Food, Drug and Cosmetic Act, 410 ILCS 620/11, which provides that a food is misbranded if its labeling is false or misleading in any particular. 410 ILCS 620/11(a).

95. Defendants' unfair practices proximately caused Plaintiff and Class Members damages, in that they received 31.38% less servings than promised. Plaintiff and Class Members therefore did not receive the benefit of their bargain.

96. Plaintiff's and Class Members' damages include the value of the servings they did not receive or the difference between what they paid for the Product and what the Product was

actually worth. Because the Product was not as represented, the Product as sold was worth less than the Product as represented, and Plaintiff and Class Members paid an excess amount for it. Had Plaintiff and Class Members known the truth, they would have paid 31.38% less for the Product.

97. Plaintiff's and Class Members' damages are substantial, are not outweighed by any countervailing benefits, and are damages Plaintiff and Class Members could not reasonably have avoided.

**COUNT V**  
**(Unjust Enrichment)**

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

99. Plaintiff and Class Members enriched Defendants by conferring a benefit on Defendants through their purchases of the Product.

100. Defendants accepted and retained the benefits Plaintiff and Class Members bestowed on them in the form of the profits and revenues they received as a result of their purchase of the Product.

101. Because Plaintiff and Class Members conferred the financial benefits on Defendants as a result of Defendants' fraudulent and misleading representations and unfair actions, it would be inequitable and unjust for Defendants to retain those benefits.

102. Defendants have been enriched at Plaintiff's and Class Members' expense.

103. Plaintiff and Class Members are therefore entitled to restitution, and Defendants should be required to disgorge their ill-gotten enrichment.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all similarly situated persons, prays  
the Court:

- a. enter judgment jointly and severally against Defendants and in favor of Plaintiff and the Classes including an award of all recoverable damages;
- b. grant certification of this case as a class action;
- c. appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- d. award compensatory damages to Plaintiff and the proposed Classes or, alternatively, require Defendant to disgorge or pay restitution;
- e. award statutory and punitive damages to Plaintiff and the proposed Classes;
- f. award pre- and post-judgment interest;
- g. award reasonable and necessary attorneys' fees and costs to Class counsel; and
- h. for all such other and further relief as may be just and proper.

Dated: March 4, 2024

Respectfully submitted,

By: /s/ David C. Nelson  
David C. Nelson (ARDC 6225722)  
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Dallas, TX 75231  
Tel: 214-865-3804  
Email: scochran@condontobin.com

*Attorneys for Plaintiff and the Putative Classes*

# **EXHIBIT B**



**Corporate Creations Network Inc.**  
801 US Highway 1 North Palm Beach, FL 33408

Red Lobster Hospitality, LLC  
Service of Process  
Red Lobster  
P.O. Box 6508  
Orlando FL 32802-6508

March 21, 2024

## SERVICE OF PROCESS NOTICE

The following is a courtesy summary of the enclosed document(s). **ALL information should be verified by you.**

Item: 2024-308

Note: Any questions regarding the substance of the matter described below, including the status or how to respond, should be directed to the contact set forth in line 12 below or to the court or government agency where the matter is being heard. **IMPORTANT:** All changes or updates to the SOP contact individuals or their contact information must be submitted in writing to SOPcontact@corpcreations.com. Any changes will become effective upon written confirmation of Corporate Creations.

1.	<b>Entity Served:</b>	Red Lobster Hospitality, LLC	
2.	<b>Title of Action:</b>	Cassandra Neubauer, etc. vs. Red Lobster Hospitality LLC and Continental Mills, Inc.	
3.	<b>Document(s) Served:</b>	Summons Class-Action Complaint Affidavit of Damages Entry of Appearance	
4.	<b>Court/Agency:</b>	St. Clair County Circuit Court, Illinois	
5.	<b>State Served:</b>	Delaware	
6.	<b>Case Number:</b>	24LA0361	
7.	<b>Case Type:</b>	Breach of Express Warranty	
8.	<b>Method of Service:</b>	Hand Delivered	
9.	<b>Date Received:</b>	Wednesday 03/20/2024	
10.	<b>Date to Client:</b>	Thursday 03/21/2024	
11.	<b># Days When Answer Due: Answer Due Date:</b>	30 Friday 04/19/2024	<b>CAUTION:</b> Client is solely responsible for verifying the accuracy of the estimated Answer Due Date. To avoid missing a crucial deadline, we recommend immediately confirming in writing with opposing counsel that the date of the service in their records matches the Date Received.
12.	<b>Sop Sender:</b> <small>(Name, City, State, and Phone Number)</small>	David C. Nelson Belleville, IL 618-277-4000	
13.	<b>Shipped To Client By:</b>	Email Only with PDF Link	
14.	<b>Tracking Number:</b>		
15.	<b>Handled By:</b>	081	
16.	<b>Notes:</b>	Also Attached: * Plaintiff's Motion For Class Certification	

NOTE: This notice and the information above is provided for general informational purposes only and should not be considered a legal opinion. The client and their legal counsel are solely responsible for reviewing the service of process and verifying the accuracy of all information. At Corporate Creations, we take pride in developing systems that effectively manage risk so our clients feel comfortable with the reliability of our service. We always deliver service of process so our clients avoid the risk of a default judgment. As registered agent, our role is to receive and forward service of process. To decrease risk for our clients, it is not our role to determine the merits of whether service of process is valid and effective. It is the role of legal counsel to assess whether service of process is invalid or defective. Registered agent services are provided by Corporate Creations Network Inc.

This form is approved by the Illinois Supreme Court and must be accepted in all Illinois Courts.  
Forms are free at [ilcourts.info/forms](http://ilcourts.info/forms).

<b>STATE OF ILLINOIS, CIRCUIT COURT</b>  St. Clair <input checked="" type="radio"/> COUNTY		<b>SUMMONS</b>	For Court Use Only   2024 MAR 20 AM 10:53 CLERK OF COURT ST. CLAIR COUNTY
<b>Instructions ▼</b> Enter above the county name where the case was filed.  Enter your name as Plaintiff/Petitioner.  Below "Defendants/ Respondents," enter the names of all people you are suing.  Enter the Case Number given by the Circuit Clerk.	Cassandra Neubauer, individually and on behalf of all other similarly situated current citizens of Illinois and the United States, <b>Plaintiff / Petitioner</b> (First, middle, last name)  v.  <b>Defendants / Respondents</b> (First, middle, last name) <u>Red Lobster Hospitality LLC and Continental Mills, Inc.</u>  <input type="checkbox"/> <b>Alias Summons</b> (Check this box if this is not the 1 <sup>st</sup> Summons issued for this Defendant.)		<b>24LA0361</b>  Case Number

**IMPORTANT: You have been sued.**

- Read all documents attached to this Summons.
- You **MUST** file an official document with the court within the time stated on this Summons called an *Appearance* and a document called an *Answer/Response*. If you do not file an *Appearance* and *Answer/Response* on time, the judge may decide the case without hearing from you. This is called "default." As a result, you could lose the case.
- All documents referred to in this Summons can be found at [ilcourts.info/forms](http://ilcourts.info/forms). Other documents may be available from your local Circuit Court Clerk's office or website.
- After you fill out the necessary documents, you need to electronically file (e-file) them with the court. To e-file, you must create an account with an e-filing service provider. For more information, go to [ilcourts.info/efiling](http://ilcourts.info/efiling). If you cannot e-file, you can get an exemption that allows you to file in-person or by mail.
- You may be charged filing fees, but if you cannot pay them, you can file an Application for Waiver of Court Fees.
- It is possible that the court will allow you to attend the first court date in this case in-person or remotely by video or phone. Contact the Circuit Court Clerk's office or visit the Court's website to find out whether this is possible and, if so, how to do this.
- Need help? Call or text Illinois Court Help at 833-411-1121 or go to [ilcourthelp.gov](http://ilcourthelp.gov) for information about going to court, including how to fill out and file documents. You can also get free legal information and legal referrals at [illinoislegalaid.org](http://illinoislegalaid.org). All documents referred to in this Summons can be found at [ilcourts.info/forms](http://ilcourts.info/forms). Other documents may be available from your local Circuit Court Clerk's office or website.
- ¿Necesita ayuda? Llame o envíe un mensaje de texto a Illinois Court Help al 833-411-1121, o visite [ilcourthelp.gov](http://ilcourthelp.gov) para obtener información sobre los casos de la corte y cómo completar y presentar formularios.

**Plaintiff/Petitioner:**

**Do not use this form** in these types of cases:

- |                      |                              |                               |
|----------------------|------------------------------|-------------------------------|
| • All criminal cases | • Order of protection        | • Adult guardianship          |
| • Eviction           | • Paternity                  | • Detinue                     |
| • Small Claims       | • Stalking no contact orders | • Foreclosure                 |
| • Divorce            | • Civil no contact orders    | • Administrative review cases |

For eviction, small claims, divorce, and orders of protection, use the forms available at [ilcourts.info/forms](http://ilcourts.info/forms). If your case is a detinue, visit [illinoislegalaid.org](http://illinoislegalaid.org) for help.

**If you are suing more than 1 Defendant/Respondent**, attach an *Additional Defendant/Respondent Address and Service Information* form for **each** additional Defendant/Respondent.

Enter the Case Number given by the Circuit Clerk: \_\_\_\_\_

In **1a**, enter the name and address of the first Defendant/ Respondent you are serving. If you are serving a Registered Agent, include the Registered Agent's name and address here.

In **1b**, enter a second address for the first Defendant/ Respondent, if you have one.

In **1c**, check how you are sending your documents to this Defendant/ Respondent.

**1. Defendant/Respondent's address and service information:**

- a. Defendant/Respondent's primary address/information for service:  
 Name (First, Middle, Last): Red Lobster Hospitality LLC  
 Registered Agent's name, if any: Corporate Creations Network Inc.  
 Street Address, Unit #: 1521 Concord Pike Suite 201  
 City, State, ZIP: Wilmington, DE 19803  
 Telephone: \_\_\_\_\_ Email: \_\_\_\_\_
- b. If you have more than one address where Defendant/Respondent might be found, list that here:  
 Name (First, Middle, Last): \_\_\_\_\_  
 Street Address, Unit #: \_\_\_\_\_  
 City, State, ZIP: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Email: \_\_\_\_\_
- c. Method of service on Defendant/Respondent:  
 Sheriff  Sheriff outside Illinois: \_\_\_\_\_  
*County & State*  
 Special process server  Licensed private detective

Check here if you are serving more than 1 Defendant/ Respondent. Attach an *Additional Defendant/ Respondent Address and Service Information* form for each additional Defendant/Respondent and write the number of forms you attached.

In **2a**, enter the amount of money owed to you. Check **2b** if you are asking for the return of tangible personal property.

In **3**, enter your complete address, telephone number, and email address, if you have one.

**I am serving more than 1 Defendant/Respondent.**

I have attached \_\_\_\_\_ *Additional Defendant/Respondent Address and Service Information* forms.

**2. Information about the lawsuit:**

- a. Amount claimed: \$ in excess of \$50,000
- b. I am asking for the return of tangible personal property (items in the Defendant/Respondent's possession).

**3. Contact information for the Plaintiff/Petitioner:**

Name (First, Middle, Last): Attorney David C. Nelson  
 Street Address, Unit #: 420 North High St., P.O. Box Y  
 City, State, ZIP: Belleville, IL 62220  
 Telephone: 618-277-4000 Email: dnelson@nelsonlawpc.com

**GETTING COURT DOCUMENTS BY EMAIL:** You should use an email account that you do not share with anyone else and that you check every day. If you do not check your email every day, you may miss important information, notice of court dates, or documents from other parties.

**Important information for the person getting this form**

You have been sued. Read all of the documents attached to this *Summons*. To participate in the case, you must follow the instructions listed below. If you do not, the court may decide the case without hearing from you and you could lose the case. *Appearance* and *Answer/Response* forms can be found at: [ilcourts.info/forms](http://ilcourts.info/forms).

Check **4a** or **4b**. If Defendant/Respondent only needs to file an *Appearance* and *Answer/Response* within 30 days, check box **4a**. Otherwise, if the clerk gives you a court date, check box **4b**.

**4. Instructions for person receiving this Summons (Defendant):**

- a. To respond to this *Summons*, you must file *Appearance* and *Answer/Response* forms with the court within 30 days after you have been served (*not counting the day of service*) by e-filing or at:  
 Address: St. Clair County Courthouse, #10 Public Square  
 City, State, ZIP: Belleville, IL 62220



In **4a**, fill out the address of the court building where the Defendant may file or e-file their Appearance and Answer/ Response.

In **4b**, fill out:

- The court date and time the clerk gave you.
- The courtroom and address of the court building.
- The call-in or video information for remote appearances (if applicable).
- The clerk's phone number and website. All of this information is available from the Circuit Clerk.

b. Attend court:  
 On: \_\_\_\_\_ at \_\_\_\_\_  a.m.  p.m. in \_\_\_\_\_  
Date Time Courtroom

**In-person at:**  
 \_\_\_\_\_  
Courthouse Address City State ZIP

OR  
**Remotely** (You may be able to attend this court date by phone or video conference. This is called a "Remote Appearance"):

By telephone: \_\_\_\_\_  
Call-in number for telephone remote appearance

By video conference: \_\_\_\_\_  
Video conference website

\_\_\_\_\_  
Video conference log-in information (meeting ID, password, etc.)

Call the Circuit Clerk at: \_\_\_\_\_ or visit their website  
Circuit Clerk's phone number

at: \_\_\_\_\_ to find out more about how to do this.  
Website

**STOP!**  
 The Circuit Clerk will fill in this section.

**Witness this Date:** \_\_\_\_\_  
 3/12/2024  
**Clerk of the Court:** Denim Jackson



Seal of Court  
**KINNIS WILLIAMS, SR. Circuit Clerk**

**STOP! The officer or process server will fill in the Date of Service**

**Note to officer or process server:**

- If 4a is checked, this *Summons* must be served within 30 days of the witness date.
- If 4b is checked, this *Summons* must be served at least 21 days before the court date, unless 2b is also checked.
  - If 4b and 2b are checked, the *Summons* must be served at least 3 days before the court date.

Date of Service: \_\_\_\_\_  
(Date to be entered by an officer or process server on the copy of this Summons left with the Defendant or other person.)

Enter the Case Number given by the Circuit Clerk: \_\_\_\_\_

This form is approved by the Illinois Supreme Court and must be accepted in all Illinois Courts.  
Forms are free at [ilcourts.info/forms](http://ilcourts.info/forms).

<b>STATE OF ILLINOIS, CIRCUIT COURT</b>  _____ COUNTY	<b>PROOF OF SERVICE OF SUMMONS AND COMPLAINT/PETITION</b>	<i>For Court Use Only</i>
<b>Instructions</b> Enter above the county name where the case was filed.  Enter your name as Plaintiff/Petitioner.  Enter the names of all people you are suing as Defendants/Respondents.  Enter the Case Number given by the Circuit Clerk.	Cassandra Neubauer, individually and on behalf of all other similarly situated current citizens of Illinois and the United States, <b>Plaintiff / Petitioner</b> (First, middle, last name)  v.  Red Lobster Hospitality LLC and Continental Mills, Inc. <b>Defendant / Respondent</b> (First, middle, last name)  <input type="checkbox"/> <b>Alias Summons</b> (Check this box if this is not the 1 <sup>st</sup> Summons issued for this Defendant.)	24LA0361  <b>Case Number</b>

**\*\*Stop. Do not complete the form. The sheriff or special process server will fill in the form. Give them one copy of this blank Proof of Service form for each Defendant/Respondent.\*\***

My name is \_\_\_\_\_ and I state  
*First, Middle, Last*

I served the **Summons and Complaint/Petition on the Defendant/Respondent**

\_\_\_\_\_ as follows:  
*First, Middle, Last*

Personally on the Defendant/Respondent:  
 Male    Female    Non-Binary   Approx. Age: \_\_\_\_\_ Race: \_\_\_\_\_  
 On this date: \_\_\_\_\_ at this time: \_\_\_\_\_  a.m.    p.m.  
 Address, Unit#: \_\_\_\_\_  
 City, State, ZIP: \_\_\_\_\_

On someone else at the Defendant/Respondent's home who is at least 13 years old and is a family member or lives there:  
 On this date: \_\_\_\_\_ at this time: \_\_\_\_\_  a.m.    p.m.  
 Address, Unit#: \_\_\_\_\_  
 City, State, ZIP: \_\_\_\_\_  
 And left it with: \_\_\_\_\_  
*First, Middle, Last*  
 Male    Female    Non-Binary   Approx. Age: \_\_\_\_\_ Race: \_\_\_\_\_  
 and by sending a copy to this defendant in a postage-paid, sealed envelope to the above address on this date: \_\_\_\_\_

On the Corporation's agent, \_\_\_\_\_  
*First, Middle, Last*  
 Male    Female    Non-Binary   Approx. Age: \_\_\_\_\_ Race: \_\_\_\_\_  
 On this date: \_\_\_\_\_ at this time: \_\_\_\_\_  a.m.    p.m.  
 Address: \_\_\_\_\_  
 City, State, ZIP: \_\_\_\_\_

I was not able to serve the *Summons* and Complaint/Petition on Defendant/Respondent:

\_\_\_\_\_  
*First, Middle, Last*

I made the following attempts to serve the *Summons* and Complaint/Petition on the Defendant/Respondent:

1. On this date: \_\_\_\_\_ at this time: \_\_\_\_\_  a.m.  p.m.  
 Address: \_\_\_\_\_  
 City, State, ZIP: \_\_\_\_\_  
 Other information about service attempt: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2. On this date: \_\_\_\_\_ at this time: \_\_\_\_\_  a.m.  p.m.  
 Address: \_\_\_\_\_  
 City, State, ZIP: \_\_\_\_\_  
 Other information about service attempt: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

3. On this date: \_\_\_\_\_ at this time: \_\_\_\_\_  a.m.  p.m.  
 Address: \_\_\_\_\_  
 City, State, ZIP: \_\_\_\_\_  
 Other information about service attempt: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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**CIRCUIT COURT FOR THE 20<sup>TH</sup> JUDICIAL CIRCUIT  
COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

CASSANDRA NEUBAUER, individually )  
and on behalf of all other similarly situated )  
current citizens of Illinois and the United )  
States, )

Plaintiff, )

No. 24-LA-0361

v. )

RED LOBSTER HOSPITALITY LLC and )  
CONTINENTAL MILLS, INC., )

Defendants. )

Serve: Red Lobster Hospitality LLC  
c/o Corporate Creations Network Inc.  
1521 Concord Pike, Suite 201  
Wilmington, DE 19803

Continental Mills, Inc.  
c/o CT Corporation System  
208 S. LaSalle St., Suite 814  
Chicago, IL 60604-1101

**CLASS-ACTION COMPLAINT**

Plaintiff, Cassandra Neubauer, individually and on behalf of all other similarly situated current citizens of Illinois and current citizens of the United States, alleges the following facts and claims upon personal knowledge, investigation of counsel, information and belief.

**SUMMARY OF THE CASE**

1. Defendants Red Lobster Hospitality LLC (“Red Lobster”) and Continental Mills, Inc. (“Continental Mills”) (collectively, “Defendants”) jointly manufacture, market, label, and sell

Red Lobster™ Cheddar Bay Biscuit® Mix (the “Product”) throughout the United States.

2. On the front of their Biscuit Mix box, Defendants represent that the Product “makes 10 biscuits.”

3. On the back of the box, on the Nutrition Facts panel, Defendants represent that the Product contains “about 10 servings” and “makes 10 biscuits.”<sup>1</sup>

4. A serving of the Product, according to Defendants’ labels, is equal to 1/3 cup.

5. Defendants presumably determine the purported number of servings in each box by dividing the net weight of the box in grams (322) by what Defendants claim is the weight of 1/3 cup of their Product – namely 32 grams.

6. In reality, 1/3 cup of the Defendants’ Product weighs approximately 46.9 grams.

7. Substituting the correct weight of a 1/3 cup of the Product, Defendants’ Biscuit box actually makes approximately seven biscuits, not ten, because  $(322 \text{ grams}) / (46.9 \text{ grams/serving})$  is equal to 6.9 servings.

8. Thus, Defendants misrepresent the number of servings in the Product by an average of 3.1 servings per box, or 31.38%.

9. Defendants are fully aware of their misrepresentation.

10. Defendants have or should have measured their Product and determined that 1/3 cup of their Product weighs substantially more than 32 grams on their label.

11. Defendants caused economic harm to Plaintiff and the Classes because they

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<sup>1</sup> FDA regulations specify that “[t]he number of servings shall be rounded to the nearest whole number except for the number of servings between 2 and 5 servings .... The number of servings between 2 and 5 servings shall be rounded to the nearest 0.5 serving. Rounding should be indicated by the use of the term *about* (e.g., about 2 servings, about 3.5 servings).” 21 C.F.R. § 101.9(b)(8)(i). FDA has further clarified in an industry guidance document that “[f]or packages containing five or more servings, round the number of servings to the nearest whole serving.” FDA, A FOOD LABELING GUIDE: GUIDANCE FOR INDUSTRY 52 (2013). The FDA does not require, endorse or suggest the casual imprecision of “about” regarding the number of servings, as employed by Defendants.

received fewer servings than what Defendants promised on their label.

12. Plaintiff and purchasers of the Product received on average 31.38% fewer servings than they bargained and paid for.

13. This case seeks to recover 31.38% of all retail sales of the Product in damages, or \$0.92 for every box of the Product sold to consumers due to Defendants' breach of an express and implied warranties, false, deceptive, misleading and unfair marketing and advertising in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), and unjust enrichment. Plaintiff also seeks injunctive relief.

#### **PARTIES**

14. Plaintiff Cassandra Neubauer is an Illinois citizen residing in Madison County, Illinois. Plaintiff purchased the Product approximately once per year during the Class Period (as defined below) from Schnucks on Troy Road in Edwardsville, Illinois. As recently as January or February 2023, Plaintiff purchased the Product at Schnucks for personal, family, or household purposes after reviewing the packaging label and noting that it claimed to contain 10 servings per container. The purchase price of the Product was \$2.89 per container.

15. Defendant Red Lobster Hospitality LLC is a Delaware limited liability company with its principal place of business in Orlando, Florida. Red Lobster maintains a physical presence in St. Clair County doing business at 110 Ludwig Drive in Fairview Heights, Illinois.

16. Defendant Continental Mills, Inc. is a Washington corporation registered to do business in Illinois with its principal place of business in Tukwila, Washington.

#### **JURISDICTION AND VENUE**

17. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court.

18. Plaintiff believes and alleges that the total value of her individual claims is, at most, equal to the refund of the purchase price she paid for the Product. There is therefore no diversity jurisdiction over this case.

19. Because the value of Plaintiff's claims is typical of all Class Members with respect to the value of the claim, the total damages of Plaintiff and Class Members, inclusive of costs and attorneys' fees is far less than the five-million dollars (\$5,000,000) minimum threshold to create federal court jurisdiction. There is therefore no CAFA jurisdiction for this case.

20. Defendants cannot plausibly allege that it had sufficient sales of the Product during the Class Period to establish an amount in controversy that exceeds CAFA's jurisdictional threshold.

21. This Court has personal jurisdiction over Defendants because Defendants have more than minimum contacts with the State of Illinois and has purposefully availed itself of the privilege of conducting business in this state. In addition, as explained below, Defendants committed affirmative tortious acts within the State of Illinois that gives rise to civil liability, including distributing the Biscuit Mix for sale throughout the State of Illinois and the United States.

22. Venue is proper in this forum pursuant to 735 ILCS 5/2-101 because Red Lobster can be found in this county.

#### **ALLEGATIONS OF FACT**

23. Defendants jointly produce, market, and sell the Product throughout the State of Illinois and the United States.

24. The front label of the Product states that it makes 10 biscuits:





The Nutrition Facts panel on the Product's label states that the Product contains about 10 servings per container.

25. The Nutrition Facts panel on the Product's label states that the Product's serving size is 1/3 cup, each weighing 32 grams.

<b>Nutrition Facts</b>	
About 10 servings per container	
<b>Serving size</b> 1/3 cup mix (32g) & 1/8 tsp garlic herb blend (0.4g)	
<b>Amount per serving</b>	
<b>Calories</b> 150	
% Daily Value*	
<b>Total Fat</b> 7g	9%
Saturated Fat 3g	15%
Trans Fat 0g	
<b>Cholesterol</b> 0mg	0%
<b>Sodium</b> 400mg	17%
<b>Total Carbohydrate</b> 19g	7%
Dietary Fiber 0g	0%
Total Sugars < 1g	
Includes 0g Added Sugars	0%
<b>Protein</b> 2g	
Vitamin D 0mcg	0%
Calcium 40mg	4%
Iron 1.1mg	6%
Potassium 30mg	0%

\* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

**BISCUIT MIX INGREDIENTS:** Enriched bleached flour (wheat flour, malted barley flour, niacin, reduced iron, thiamin mononitrate, riboflavin, folic acid), palm and soybean oil, Less than 2% of: baking soda, salt, sodium aluminum phosphate, monocalcium phosphate, dextrose, buttermilk, ascorbic acid, enzymes.

**GARLIC HERB BLEND INGREDIENTS:** Garlic powder, maltodextrin, salt, onion powder, hydrolyzed soy protein, torula yeast, dehydrated parsley, malic acid, sugar, natural and artificial flavors (maltodextrin, butter oil), corn oil, silicon dioxide (anti-caking agent).

**CONTAINS:** Wheat, Milk, Soy.  
May contain eggs and tree nuts.

26. Preliminary testing of 168 samples from twelve different containers from twelve different lots of the Product shows, however, that a 1/3 cup serving of the Product actually weighs 46.9 grams, on average.

27. Using the correct weight of a serving size of the Product, the Product on average contains 3.1 servings less than represented.

28. Thus, the Product on average contains 31.38% less servings than represented by Defendant.

29. The Product therefore only makes about 6.9 – not 10 – biscuits.

30. Defendants placed the Product with the misleading label into the stream of commerce, where it was purchased by Plaintiff and Class Members.

31. At all times, Defendants intended Plaintiff and Class Members to rely on their serving-size representations.

32. Plaintiff and Class Members relied on the Product's label to state the truth about the number of servings in the biscuit mix box.

33. Plaintiff and Class Members expected to receive the number of servings stated on the label.

34. Plaintiff and Class Members did not get what they paid for.

35. Plaintiff and Class Members received a Product that was inferior to the Product as described on the label by the Defendants in that the Product contained far fewer biscuits than were promised.

36. Because Plaintiff and Class Members received fewer servings than represented, the value of the Product was materially less than its value as represented by Defendants.

37. Plaintiff and Class Members did not, nor could be expected to know, that the Product would not provide the number of servings promised on the Product's front label and Nutrition Facts panel.

38. The Product was worth less than what Plaintiff paid, and she would not have paid as much absent Defendants' false and misleading serving-size statements.

39. Plaintiff intends to, seeks to, and will purchase the Product again when she can do so with the assurance that Product's representations are accurate. However, unless the Court intervenes, Plaintiff cannot determine whether Defendants' representations on the label are accurate without purchasing the Product again – in which case she risks future economic harm.



40. Defendants' serving-size misrepresentation is material in that it concerns the type of information upon which a reasonable consumer would be expected to rely in deciding whether to purchase the Product.

41. As a result of the misrepresented serving size, Plaintiff and Class Members paid for servings they did not receive.

42. Plaintiff and Class Members would either not have purchased the Product or would have paid less for it had they known the truth.

43. Plaintiff and Class Members have been deceived by Defendants' misrepresentation.

44. At all times, Defendants' misrepresentation was known or intentional. Defendants knew: (a) the weight of the serving size of the Product; (b) that the Product's front panel and Nutrition Facts panel misrepresented the amount of servings; (c) that reasonable consumers would view, assume true, and rely upon information on the label in making their purchasing decisions; and (d) that it was fraudulently charging consumers for servings of the Product they did not receive.

45. Plaintiff provided Continental Mills with pre-suit notice of a breach of warranty on June 30, 2023.

46. Plaintiff provided Red Lobster with pre-suit notice of a breach of warranty on November 28, 2023

47. Defendants' unfair and deceptive practices continue as of the time of the filing of this Complaint and there is no reason to believe that Defendants will discontinue those practices voluntarily.

#### **JOINT AND SEVERAL LIABILITY**

48. The Product's packaging states that the Product is: "Produced Exclusively for Red Lobster by Continental Mills, Inc."

49. Red Lobster registered the phrase “Cheddar Bay Biscuits” on December 21, 2004.<sup>2</sup>

50. Red Lobster registered the mark reproduced below on August 11, 2015, “for Biscuit mixes; Seasonings; Spices.”<sup>3</sup>



51. Defendants affix Red Lobster’s mark five times on the packaging: on the front, back, one side, top, and bottom panels.

52. The Product’s front panel states that the Product is “Our Secret Recipe.”

53. The Product’s back panel states that the Product is: “Straight from our kitchens to yours, it’s our secret Red Lobster Cheddar Bay Biscuit recipe! Just add water, cheddar and butter to create the same Cheddar Bay Biscuits we serve in our restaurants.”

54. The Product’s side panel states: “QUALITY PLEDGE You can count on Continental Mills for the highest quality products.”

55. The Product’s side panel states: “FIND A RESTAURANT For a restaurant near you, call 1-800-562-7837 or visit our web site at [www.RedLobster.com](http://www.RedLobster.com).”

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<sup>2</sup>[https://tsdr.uspto.gov/#caseNumber=76526845&caseSearchType=US\\_APPLICATION&caseType=DEFAULT&searchType=statusSearch](https://tsdr.uspto.gov/#caseNumber=76526845&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch) (last viewed on January 19, 2024).

<sup>3</sup>[https://tsdr.uspto.gov/#caseNumber=86281765&caseSearchType=US\\_APPLICATION&caseType=DEFAULT&searchType=statusSearch](https://tsdr.uspto.gov/#caseNumber=86281765&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch) (last viewed on January 19, 2024).

56. Defendants acted jointly in the production, marketing, labeling and sale of the Product, using Red Lobster's exclusive mark and representations to promote and distribute the Product.

57. Defendants' coordinated actions and representations contribute to the overall deceptive nature of the Product's packaging and marketing.

58. As such, Defendants are jointly and severally liable for any damages caused to Plaintiff and Class Members resulting from their unfair and deceptive practices.

### **CLASS ALLEGATIONS**

59. Pursuant to 735 ILCS 5/2-801 *et. seq.*, Plaintiff brings this action on her own behalf and on behalf of proposed Classes of all other similarly situated persons ("Class Members" of the "Classes") consisting of:

All Illinois citizens who purchased the Red Lobster™ Cheddar Bay Biscuit® Mix for personal, family, or household use in the five years preceding the filing of this Complaint up through the date of notice (the "Class Period"); and/or

All United States citizens who purchased the Red Lobster™ Cheddar Bay Biscuit® Mix in the United States during the Class Period for personal, family, or household use.

60. Specifically excluded from the Classes are Defendants; Defendants' officers, directors, or employees; any entity in which Defendants have a controlling interest; any affiliate, legal representative, heir, or assign of Defendants and any person acting on their behalf. Also excluded from the Classes are any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, all State agencies; and any juror assigned to this action.

61. Upon information and belief, the Classes consist of at least hundreds of purchasers. Accordingly, it would be impracticable to join all Class Members before the Court.

62. There are numerous and substantial questions of law or fact common to all of the members of the Classes and which predominate over any individual issues. Included within the common question of law or fact are:

- a. whether the number of servings on the Product label is false, misleading, and deceptive;
- b. whether Defendants violated ICFA by selling the Product with false, misleading, and deceptive representations;
- c. whether Defendants' acts constitute deceptive, unfair or fraudulent business acts and practices or deceptive, untrue, and misleading advertising;
- d. whether Defendants breached express and/or implied warranties to Plaintiff and the Class Members;
- e. whether Defendants intended that Plaintiff and the Class Members would rely on its representations;
- f. whether Defendants were unjustly enriched; and
- g. the proper measure of damages sustained by Plaintiff and Class Members.

63. Plaintiff's claims are typical of the claims of Class Members, in that they are based on the same conduct and practices of Defendants, the legal claims are the same, and the central liability questions are the same.

64. Class Members and Plaintiff have no interests adverse to the interests of other Class Members.

65. Plaintiff will fairly and adequately protect the interests of Class Members and has retained competent and experienced counsel.

66. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other group



method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. the common questions of law and fact presented predominate over any individualized questions;
- b. absent a Class, the Class Members will continue to suffer damage and Defendants' unlawful conduct will continue without remedy while Defendants profit from and enjoys their ill-gotten gains;
- c. given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendants committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. when the liability of Defendants have been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. this action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and members of the Classes can seek redress for the harm caused to them by Defendants.

67. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants.

68. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

**CLAIMS FOR RELIEF**

**COUNT I**  
**(Breach of Express Warranty)**

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

70. Defendants made the affirmation of fact and the promise to Plaintiff and the Class Members that the Product makes 10 biscuits and contains about 10 servings per container, guaranteeing to Plaintiff and the Class Members that the Product was in conformance with the representations.

71. These affirmations of fact and promises became part of the basis of the bargain of Plaintiff's and Class Members' purchases, and Plaintiff and Class Members relied on the affirmations when making their purchasing decisions.

72. Defendants breached their express warranty by providing Plaintiff and Class Members with fewer servings than represented on the Product packaging.

73. As a result of Defendants' breach of warranty, Plaintiff and the Class Members have been deprived of the benefit of their bargain in that they bought the Product that was not what it was represented to be, and they have spent money on a Product that had less value than was reflected in the inflated price they paid for the Product.

74. As a proximate result of Defendants' breach of express warranty, Plaintiff and Class Members suffered economic damages, including the value of the servings they did not receive, or 31.38% of the purchase price, as well as any other damages proximately caused by Defendants' breach of express warranty.

**Count II**  
**Breach of Implied Warranty**

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

76. By advertising and selling the Product issue, Defendants made implied promises and affirmations of fact concerning the Product, as described here in. These implied warranties became part of the basis of the bargain between Plaintiff and the members of the Class, and the Defendants.

77. Defendants, through their advertising and labeling, impliedly warranted that the Product comports with the label representations, that the label representations are accurate, and that the Product contains sufficient ingredients to provide the stated number of servings.

78. Defendants breached the warranty implied in the contract for the sale of the Product because the Product cannot pass without objection in the trade under the contract description, the Product was not a fair average quality within the description, and the Product was not as represented. As a result, Plaintiff and Class Members did not receive the goods as impliedly warranted by Defendants to be merchantable.

79. At the time of the purchase, Plaintiff and members of the Classes did not know, and had no reason to know, that the Product was not as it was warranted to be.

80. Defendants knew that the Product was not as they warranted it to be.

81. Plaintiff and members of the Classes purchased the Product.

82. Plaintiff provided Defendants with pre-suit notice of the breach of warranty.

83. As the direct and proximate result of Defendants' breach of implied warranty, Plaintiff and members of the Classes were harmed in the amount of the purchase price they paid



for the Product. Plaintiff and members of the Classes have suffered and continue to suffer economic losses and other general and specific damages including, but not limited to, the amount paid for the Product, and any interest that would have accrued on those monies in an amount to be proven at trial.

**COUNT III**  
**Violation of ICFA**  
**(Deceptive Practices)**

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

85. Defendants engaged in a deceptive practice by misrepresenting the number of servings in the Product. The Product was therefore worth less than the Product as represented.

86. Defendants' misrepresentation is material because it conveyed false information that Plaintiff and Class Members relied on when considering whether to purchase the Product.

87. Defendants engaged in these deceptive practices in the course of their trade or commerce because Defendants are in the business of manufacturing, distributing, and selling the Product, and it does so throughout Illinois and in St. Clair County.

88. Defendants' deceptive practices proximately caused Plaintiff and Class Members damages, in that they received less servings than advertised. Plaintiff and Class Members therefore did not receive the benefit of their bargain.

89. Plaintiff's and Class Members' damages include the value of the servings they did not receive, or the difference between what they paid for the Product and what the Product was actually worth. Because the Product was not as represented, the Product as sold was worth less than the Product as represented, and Plaintiff and Class Members paid an excess amount for it.

Had Plaintiff and Class Members known the truth, they would have paid less for the Product by 31.38%.

**COUNT IV**  
**Violation of ICFA**  
**(Unfair Practices)**

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

91. Defendants engaged in unfair acts or practices by weighing a serving size of the Product inaccurately or failing to weigh it at all.

92. Defendants engaged in these unfair acts or practices in the course of their trade or commerce because Defendants are in the business of manufacturing, distributing, and selling the Product, and it does so throughout Illinois and in St. Clair County.

93. Defendants' unfair acts or practices offend public policy and are immoral, unethical, oppressive, or unscrupulous, because they affect the serving size and the associated nutritional facts of the Product. In other words, Plaintiff and Class Members are not receiving truthful information about how much of the Product they are ingesting and its nutritional value.

94. Defendants' acts are also unfair because they are against the public policy set forth in the Illinois Food, Drug and Cosmetic Act, 410 ILCS 620/11, which provides that a food is misbranded if its labeling is false or misleading in any particular. 410 ILCS 620/11(a).

95. Defendants' unfair practices proximately caused Plaintiff and Class Members damages, in that they received 31.38% less servings than promised. Plaintiff and Class Members therefore did not receive the benefit of their bargain.

96. Plaintiff's and Class Members' damages include the value of the servings they did not receive or the difference between what they paid for the Product and what the Product was

actually worth. Because the Product was not as represented, the Product as sold was worth less than the Product as represented, and Plaintiff and Class Members paid an excess amount for it. Had Plaintiff and Class Members known the truth, they would have paid 31.38% less for the Product.

97. Plaintiff's and Class Members' damages are substantial, are not outweighed by any countervailing benefits, and are damages Plaintiff and Class Members could not reasonably have avoided.

**COUNT V**  
**(Unjust Enrichment)**

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

99. Plaintiff and Class Members enriched Defendants by conferring a benefit on Defendants through their purchases of the Product.

100. Defendants accepted and retained the benefits Plaintiff and Class Members bestowed on them in the form of the profits and revenues they received as a result of their purchase of the Product.

101. Because Plaintiff and Class Members conferred the financial benefits on Defendants as a result of Defendants' fraudulent and misleading representations and unfair actions, it would be inequitable and unjust for Defendants to retain those benefits.

102. Defendants have been enriched at Plaintiff's and Class Members' expense.

103. Plaintiff and Class Members are therefore entitled to restitution, and Defendants should be required to disgorge their ill-gotten enrichment.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all similarly situated persons, prays  
the Court:

- a. enter judgment jointly and severally against Defendants and in favor of Plaintiff and the Classes including an award of all recoverable damages;
- b. grant certification of this case as a class action;
- c. appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- d. award compensatory damages to Plaintiff and the proposed Classes or, alternatively, require Defendant to disgorge or pay restitution;
- e. award statutory and punitive damages to Plaintiff and the proposed Classes;
- f. award pre- and post-judgment interest;
- g. award reasonable and necessary attorneys' fees and costs to Class counsel; and
- h. for all such other and further relief as may be just and proper.

Dated: March 4, 2024

Respectfully submitted,

By: /s/ David C. Nelson  
David C. Nelson (ARDC 6225722)  
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*Attorneys for Plaintiff and the Putative Classes*



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**CIRCUIT COURT FOR THE 20<sup>TH</sup> JUDICIAL CIRCUIT  
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CASSANDRA NEUBAUER, individually )  
and on behalf of all other similarly situated )  
current citizens of Illinois and the United )  
States, )

Plaintiff, )

No. 24-LA-0361

v. )

RED LOBSTER HOSPITALITY LLC and )  
CONTINENTAL MILLS, INC., )

Defendants. )

**AFFIDAVIT OF DAMAGES**

This affidavit is made pursuant to Supreme Court Rule 222(b). Under the penalties of perjury as provided by Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the money damages sought by Plaintiff herein do exceed \$50,000.00.

Dated: March 4, 2024

Respectfully submitted,

By: /s/David C. Nelson

David C. Nelson (ARDC 6225722)  
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*Attorneys for Plaintiff and the Putative Class*



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CONTINENTAL MILLS, INC., )

Defendants. )

**ENTRY OF APPEARANCE**

NOW COMES DAVID C. NELSON and the law firm of NELSON & NELSON,  
ATTORNEYS AT LAW, P.C., and hereby enter their appearance as attorneys of record for the  
Plaintiff, Cassandra Neubauer, in the above-entitled proceedings.

Dated: March 4, 2024

Respectfully Submitted,

By: /s/David C. Nelson  
David C. Nelson (ARDC 6225722)  
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*Attorneys for Plaintiff and the Putative Class*

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CASSANDRA NEUBAUER, individually )  
and on behalf of all other similarly situated )  
current citizens of Illinois and the United )  
States, )

Plaintiff, )

No. 24-LA-0361

v. )

RED LOBSTER HOSPITALITY LLC and )  
CONTINENTAL MILLS, INC., )

Defendants. )

**ENTRY OF APPEARANCE**

NOW COMES MATTHEW H. ARMSTRONG and the law firm of ARMSTRONG  
LAW FIRM LLC, and hereby enter their appearance as attorneys of record for the Plaintiff,  
Cassandra Neubauer, in the above-entitled proceedings.

Dated: March 4, 2024

Respectfully Submitted,

By: /s/ Matthew H. Armstrong  
Matthew H. Armstrong (ARDC 6226591)  
ARMSTRONG LAW FIRM LLC  
2890 W. Broward Blvd. Unit B, #305  
Ft. Lauderdale, FL 33312  
Tel: 314-258-0212  
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*Attorneys for Plaintiff and the Putative Class*

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**CIRCUIT COURT FOR THE 20<sup>TH</sup> JUDICIAL CIRCUIT  
COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

CASSANDRA NEUBAUER, individually )  
and on behalf of all other similarly situated )  
current citizens of Illinois and the United )  
States, )

Plaintiff, )

No. 24-LA-0361

v. )

RED LOBSTER HOSPITALITY LLC and )  
CONTINENTAL MILLS, INC., )

Defendants. )

**ENTRY OF APPEARANCE**

NOW COMES ROBERT L. KING and THE LAW OFFICE OF ROBERT L. KING, and  
hereby enter their appearance as attorneys of record for the Plaintiff, Cassandra Neubauer, in the  
above-entitled proceedings.

Dated: March 4, 2024

Respectfully Submitted,

By: /s/ Robert L. King  
Robert L. King (ARDC 6226591)  
THE LAW OFFICE OF ROBERT L. KING  
9506 Olive Blvd., Suite 224  
St. Louis, MO 63132  
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*Attorneys for Plaintiff and the Putative Class*

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24LA0361  
St. Clair County  
3/4/2024 10:01 AM  
26570318

**CIRCUIT COURT FOR THE 20<sup>TH</sup> JUDICIAL CIRCUIT  
COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

CASSANDRA NEUBAUER, individually )  
and on behalf of all other similarly situated )  
current citizens of Illinois and the United )  
States, )

Plaintiff, )

No. 24-LA- 0361

v. )

RED LOBSTER HOSPITALITY LLC and )  
CONTINENTAL MILLS, INC., )

Defendants. )

**PLAINTIFF’S MOTION FOR CLASS CERTIFICATION**

COMES NOW Plaintiff, Cassandra Neubauer, individually and on behalf of all other similarly situated current citizens of Illinois and current citizens of the United States, by and through counsel and moves for certification of Classes defined as follows:

All Illinois citizens who purchased the Red Lobster™ Cheddar Bay Biscuit® Mix for personal, family, or household use in the five years preceding the filing of this Complaint up through the date of notice (the “Class Period”); and/or

All United States citizens who purchased the Red Lobster™ Cheddar Bay Biscuit® Mix in the United States during the Class Period for personal, family, or household use.

Excluded from the Classes are: (a) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in which Defendant has a controlling interest, to include, but not limited to, their legal representative, heirs, and successors; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (d) any judicial officer in the lawsuit and/or persons within the third degree of consanguinity to such judge.

Section 2-801 of the Illinois Code of Civil Procedure sets forth the prerequisites needed to maintain a class action. Under section 2-801, a class may be certified only if the following four



requirements are established: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; (3) the representative parties will fairly and adequately protect the interests of the class; and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy.” *Id.*

“To determine whether the proposed class should be certified, the court accepts the allegations of the complaint as true.” *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill.App.3d 538, 544-45 (5th Dist. 2003). “The trial court has broad discretion to determine whether a proposed class satisfies the requirements for class certification and should err in favor of maintaining class [certifications].” *Id.*

***1. The Classes Are So Numerous that Joinder of All Members is Impracticable.***

“[T]here is no magic number that clearly defines numerosity. Some evidence of the number of class members must be shown, but the exact class size is not required, and a good-faith estimate is sufficient when the number of class members is not readily ascertainable.” *Smith v. Ill. Cent. R.R. Co.*, 363 Ill. App. 3d 944, 954 (5th Dist. 2005), *rev'd on other grounds*, 223 Ill. 2d 441 (2006). The Fifth District noted with approval that certification of “a class of 40 to 50 ... was sufficient to satisfy the numerosity requirement.” *Id.* (citing *Sala v. Nat'l R.R. Passenger Corp.*, 120 F.R.D. 494, 497 (E.D. Pa. 1988)); *see also Cruz v. Unilock Chicago*, 383 Ill. App. 3d 752, 767-68 (1st Dist. 2008) (80 to 90 class members supported a finding of numerosity.). Where there are a number of potential claimants, and the individual amount claimed by each is small, making redress on an individual level difficult, if not impossible, Illinois courts have been particularly receptive to proceeding on a class action basis. *P.J.'s Concrete Pumping Serv., Inc. v. Nextel W. Corp.*, 345 Ill. App. 3d 992, 1004 (2d Dist. 2004) (“The consumer class action is an inviting

procedure to address alleged frauds that, like here, cause small damages to large groups”).The proposed class here satisfies the numerosity requirement because there are at least hundreds of consumers who have purchased the offending Biscuit Mix.

**2. *There Are Questions of Fact and Law Common to the Classes and Common Questions Predominate Over Any Questions Affecting Only Individual Members.***

“In order to satisfy the second requirement of section 2-801, namely that a common question of fact or law predominates over other questions affecting only individual class members, it must be shown that successful adjudication of the purported class representatives individual claims will establish a right of recovery in other class members.” *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 54 (1st Dist. 2007) (quoting *Hall v. Sprint Spectrum, L.P.*, 376 Ill. App. 3d 822, 830-32 (5th Dist. 2007)). As long as there are questions of fact or law common to the class and these predominate over questions affecting only individual members of such class, the statutory requisite is met. *Id.* (citing *Slimack v. Country Life Insurance Co.*, 227 Ill.App.3d 287, 292 (5th Dist. 1992)).

Determining whether issues common to the class predominate over individual issues requires the court to identify the substantive issues that will control the outcome, assess which issues will predominate, and then determine whether these issues are common to the class. Such an inquiry requires the court to look beyond the pleadings to understand the claims, defenses, relevant facts, and applicable substantive law.

*Id.* (citations omitted). “Once the basic determination has been made that a predominating common question of fact or law exists, the fact that there may be individual questions will not defeat the predominating common question. The requirement of individual proofs should not be a bar to a class action.

Certification require[s] only that there be either a predominating common issue of law or fact, not both. *Martin v. Heinold Commodities, Inc.*, 117 Ill. 2d 67, 81 (1994). And it has long been established that “[a] class action can properly be prosecuted where a defendant is alleged to have



acted wrongfully in the same basic manner as to an entire class. In such circumstances, the common class questions still predominate the case, and the class action is not defeated.” *Gordon v. Boden*, 224 Ill. App. 3d 195, 201 (1st Dist. 1991) (citations omitted). A common question may be shown when class members are aggrieved by the same or similar conduct. *Id.*

Among the several common, predominating questions this case presents (*see* Plaintiff’s complaints for others) is this core question: whether Defendants unlawfully charged Plaintiff and class members for servings of Biscuit Mix which they did not receive, in violation of the Illinois Consumer Fraud Act, thereby unjustly enriching itself.

**3. Plaintiff Will Fairly and Adequately Protect the Interests of the Classes.**

The purpose of the adequate representation requirement is to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim. *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 678 (2d Dist. 2006). The test to determine the adequacy of representation is whether the interests of those who are parties are the same as those who are not joined. Plaintiff’s interests are the same as those of class members because each was harmed in the same way, and each has the same interest in recovering for Defendant’s unfair practices.

**4. A Class Action Is an Appropriate Method for the Fair and Efficient Adjudication of the Controversy.**

The fourth requirement for class certification is that the class action is an appropriate method for fairly and efficiently adjudicating the controversy. *Ramirez*, 378 Ill. App. 3d at 56. In deciding whether the fourth requirement is met, a court considers whether a class action can best secure economies of time, effort, and expense or accomplish the other ends of equity and justice that class actions seek to obtain. *Id.*

Consumer class actions are “often the last barricade of consumer protection.” *Hall v. Sprint*

*Spectrum L.P.*, 376 Ill. App. 3d 822, 834 (5th Dist. 2007). “Because a consumer class action provides restitution to the injured and deterrence to the wrongdoer, the ends of equity and justice are accomplished. Furthermore, because there are numerous class members and common questions, a class action serves the economies of time, effort, and expense and prevents possible inconsistent results.” *Id.* The class action mechanism can best secure economies of time, effort, and expense or accomplish the other ends of equity and justice that class actions seek to obtain, because no individual class member would have the resources to pursue his or her claims absent the class mechanism, considering the amount in controversy for each claimant. In this case, as in *Hall*, “litigating the individual lawsuits would be a waste of judicial resources and addressing the common issues in one class action would aid judicial administration.” *Id.*

Plaintiff expressly reserves the right to amend this motion as this case progresses.

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order (1) certifying the classes as defined above; (2) appointing Plaintiff Cassandra Neubauer as Class Representative; (3) appointing David C. Nelson, Matthew H. Armstrong, Robert L. King and Stuart L. Cochran as Co-Class Counsel, (4) and for such further relief as the Court determines fair and just.

Dated: March 4, 2024

Cassandra Neubauer, individually and on behalf of all other similarly situated current citizens of Illinois and current citizens of the United States

By: /s/ David C. Nelson

David C. Nelson (ARDC 6225722)  
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St. Louis, MO 63132  
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Email: king@kinglaw.com

Stuart L. Cochran (*pro hac vice application forthcoming*)  
Texas State Bar No. 24027936  
CONDON TOBIN SLADEK THORNTON NERENBERG PLLC  
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*Attorneys for Plaintiff and the Putative Class*

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# EXHIBIT C

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SHERIFF'S OFFICE OF COOK COUNTY, ILLINOIS  
AFFIDAVIT OF SERVICE

CASE NUMBER: 24LA0361

MULT.SER. 1

DOC. TYPE: SUMMONS

DIST: 604 DC

DIE DATE: 04/11/2024

RECEIVED DATE: 03/25/2024

FILED DATE: 03/12/2024

DIST: 604 DC

DEFENDANT

CONTINENTAL MILLS, INC  
208 S LASALLE ST, STE 814  
CHICAGO, IL 60604

FOREIGN

PLAINTIFF

CASSANDRA NEUBAUER  
ATTORNEY  
NELSON AND NELSON  
420 N HIGH ST,  
BELLEVILLE, IL 62220  
(618) 277 - 4000

ATTACHED FEE AMOUNT:

SERVICE INFORMATION: R/A: CT CORP SYSTEM,

I CERTIFY THAT I SERVED THE DEFENDANT/RESPONDENT AS FOLLOWS:

(1) PERSONAL SERVICE:

BY LEAVING A COPY OF THE WRIT/ORDER WITH THE DEFENDANT/RESPONDENT PERSONALLY, AND INFORMING DEFENDANT/RESPONDENT OF CONTENTS.

(2) SUBSTITUTE SERVICE:

BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT AT THE DEFENDANTS USUAL PLACE OF ABODE WITH A FAMILY MEMBER OR PERSON RESIDING THERE, 13 YEARS OR OLDER, AND INFORMING THAT PERSON OF THE CONTENTS OF THE SUMMONS, ALSO, A COPY OF THE SUMMONS WAS MAILED TO THE DEFENDANT AT HIS OR HER USUAL PLACE OF ABODE ON THE \_\_\_ DAY OF \_\_\_ 20\_\_\_

(3) UNKNOWN OCCUPANTS:

BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT NAMING 'UNKNOWN OCCUPANTS' WITH A PERSON OF THE AGE OF 13 OR UPWARDS OCCUPYING SAID PREMISE.

X (4) CORP/CO/BUS/PART:

BY LEAVING THE APPROPRIATE NUMBER OF COPIES OF THE SUMMONS, COMPLAINTS, INTERROGATORIES, JUDGMENTS, CERTIFICATIONS AND NOTICES WITH THE REGISTERED AGENT, AUTHORIZED PERSON OR PARTNER OF THE DEFENDANT CORPORATION \_\_\_ COMPANY \_\_\_ BUSINESS \_\_\_ PARTNERSHIP

(5) PROPERTY RECOVERED:

NO ONE PRESENT TO RECEIVE ORDER OF COURT. ORDER POSTED IN PLAIN VIEW.

(6) S.O.S./D.O.I.:

BY LEAVING THE SUMMONS AND COMPLAINT WITH THE SECRETARY OF THE STATE/DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS, AN AGENT OF SAID DEFENDANT LISTED ABOVE. ANY AGENT OF SAID CORPORATION NOT FOUND IN THE COUNTY OF COOK

(7) CERTIFIED MAIL:

\*\*\*\*\*COMPLETE THIS SECTION IF WRIT IS A THIRD PARTY CITATION/GARNISHMENT \*\*\*\*\*

(8)

AND BY MAILING ON THE \_\_\_ DAY OF \_\_\_ 20\_\_\_ A COPY OF THE THIRD PARTY GARNISHMENT/CITATION SUMMONS AND NOTICE TO THE JUDGEMENT DEBTOR'S LAST KNOWN ADDRESS AS INDICATED IN THE NOTICE WITHIN (2) BUSINESS DAYS OF SERVICE UPON GARNISHEE/THIRD PARTY DEFENDANT.

THE NAMED DEFENDANT WAS NOT SERVED FOR THE GIVEN REASON BELOW:

- \_\_\_ (01) NO CONTACT
- \_\_\_ (02) MOVED
- \_\_\_ (03) EMPTY LOT
- \_\_\_ (04) NOT LISTED

- \_\_\_ (05) WRONG ADDRESS
- \_\_\_ (06) NO SUCH ADDRESS
- \_\_\_ (07) EMPLOYER REFUSAL
- \_\_\_ (08) CANCELLED BY PLAINTIFF.ATTY

- \_\_\_ (09) DECEASED
- \_\_\_ (10) NO REGISTERED AGENT
- \_\_\_ (11) OUT OF COOK COUNTY
- \_\_\_ (12) OTHER REASON (EXPLAIN)

RECEIVED

APR 08 2024

EXPLANATION:

DAVID C. NELSON

WRIT SERVED ON:

SEX: M/F RACE: B AGE: 27  
THIS 28 DAY OF Mar, 2024

THOMAS J. DART  
SHERIFF, BY: [Signature] 11216, DEPUTY

DATE	TIME(AM/PM)	STAR#
3/28	11:00	11216

RBENNETTOWNSEND



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**CIRCUIT COURT FOR THE 20<sup>TH</sup> JUDICIAL CIRCUIT  
COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

CASSANDRA NEUBAUER, individually )  
and on behalf of all other similarly situated )  
current citizens of Illinois and the United )  
States, )

Plaintiff, )

No. 24-LA-0361

v. )

RED LOBSTER HOSPITALITY LLC and )  
CONTINENTAL MILLS, INC., )

Defendants. )

Serve: Red Lobster Hospitality LLC  
c/o Corporate Creations Network Inc.  
1521 Concord Pike, Suite 201  
Wilmington, DE 19803

Continental Mills, Inc.  
c/o CT Corporation System  
208 S. LaSalle St., Suite 814  
Chicago, IL 60604-1101

**CLASS-ACTION COMPLAINT**

Plaintiff, Cassandra Neubauer, individually and on behalf of all other similarly situated current citizens of Illinois and current citizens of the United States, alleges the following facts and claims upon personal knowledge, investigation of counsel, information and belief.

**SUMMARY OF THE CASE**

1. Defendants Red Lobster Hospitality LLC (“Red Lobster”) and Continental Mills, Inc. (“Continental Mills”) (collectively, “Defendants”) jointly manufacture, market, label, and sell

Red Lobster™ Cheddar Bay Biscuit® Mix (the “Product”) throughout the United States.

2. On the front of their Biscuit Mix box, Defendants represent that the Product “makes 10 biscuits.”

3. On the back of the box, on the Nutrition Facts panel, Defendants represent that the Product contains “about 10 servings” and “makes 10 biscuits.”<sup>1</sup>

4. A serving of the Product, according to Defendants’ labels, is equal to 1/3 cup.

5. Defendants presumably determine the purported number of servings in each box by dividing the net weight of the box in grams (322) by what Defendants claim is the weight of 1/3 cup of their Product – namely 32 grams.

6. In reality, 1/3 cup of the Defendants’ Product weighs approximately 46.9 grams.

7. Substituting the correct weight of a 1/3 cup of the Product, Defendants’ Biscuit box actually makes approximately seven biscuits, not ten, because  $(322 \text{ grams}) / (46.9 \text{ grams/serving})$  is equal to 6.9 servings.

8. Thus, Defendants misrepresent the number of servings in the Product by an average of 3.1 servings per box, or 31.38%.

9. Defendants are fully aware of their misrepresentation.

10. Defendants have or should have measured their Product and determined that 1/3 cup of their Product weighs substantially more than 32 grams on their label.

11. Defendants caused economic harm to Plaintiff and the Classes because they

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<sup>1</sup> FDA regulations specify that “[t]he number of servings shall be rounded to the nearest whole number except for the number of servings between 2 and 5 servings .... The number of servings between 2 and 5 servings shall be rounded to the nearest 0.5 serving. Rounding should be indicated by the use of the term *about* (e.g., about 2 servings, about 3.5 servings).” 21 C.F.R. § 101.9(b)(8)(i). FDA has further clarified in an industry guidance document that “[f]or packages containing five or more servings, round the number of servings to the nearest whole serving.” FDA, A FOOD LABELING GUIDE: GUIDANCE FOR INDUSTRY 52 (2013). The FDA does not require, endorse or suggest the casual imprecision of “about” regarding the number of servings, as employed by Defendants.

received fewer servings than what Defendants promised on their label.

12. Plaintiff and purchasers of the Product received on average 31.38% fewer servings than they bargained and paid for.

13. This case seeks to recover 31.38% of all retail sales of the Product in damages, or \$0.92 for every box of the Product sold to consumers due to Defendants' breach of an express and implied warranties, false, deceptive, misleading and unfair marketing and advertising in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), and unjust enrichment. Plaintiff also seeks injunctive relief.

#### **PARTIES**

14. Plaintiff Cassandra Neubauer is an Illinois citizen residing in Madison County, Illinois. Plaintiff purchased the Product approximately once per year during the Class Period (as defined below) from Schnucks on Troy Road in Edwardsville, Illinois. As recently as January or February 2023, Plaintiff purchased the Product at Schnucks for personal, family, or household purposes after reviewing the packaging label and noting that it claimed to contain 10 servings per container. The purchase price of the Product was \$2.89 per container.

15. Defendant Red Lobster Hospitality LLC is a Delaware limited liability company with its principal place of business in Orlando, Florida. Red Lobster maintains a physical presence in St. Clair County doing business at 110 Ludwig Drive in Fairview Heights, Illinois.

16. Defendant Continental Mills, Inc. is a Washington corporation registered to do business in Illinois with its principal place of business in Tukwila, Washington.

#### **JURISDICTION AND VENUE**

17. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court.

18. Plaintiff believes and alleges that the total value of her individual claims is, at most, equal to the refund of the purchase price she paid for the Product. There is therefore no diversity jurisdiction over this case.

19. Because the value of Plaintiff's claims is typical of all Class Members with respect to the value of the claim, the total damages of Plaintiff and Class Members, inclusive of costs and attorneys' fees is far less than the five-million dollars (\$5,000,000) minimum threshold to create federal court jurisdiction. There is therefore no CAFA jurisdiction for this case.

20. Defendants cannot plausibly allege that it had sufficient sales of the Product during the Class Period to establish an amount in controversy that exceeds CAFA's jurisdictional threshold.

21. This Court has personal jurisdiction over Defendants because Defendants have more than minimum contacts with the State of Illinois and has purposefully availed itself of the privilege of conducting business in this state. In addition, as explained below, Defendants committed affirmative tortious acts within the State of Illinois that gives rise to civil liability, including distributing the Biscuit Mix for sale throughout the State of Illinois and the United States.

22. Venue is proper in this forum pursuant to 735 ILCS 5/2-101 because Red Lobster can be found in this county.

#### **ALLEGATIONS OF FACT**

23. Defendants jointly produce, market, and sell the Product throughout the State of Illinois and the United States.

24. The front label of the Product states that it makes 10 biscuits:



The Nutrition Facts panel on the Product's label states that the Product contains about 10 servings per container.

25. The Nutrition Facts panel on the Product's label states that the Product's serving size is 1/3 cup, each weighing 32 grams.

<b>Nutrition Facts</b>	
About 10 servings per container	
Serving size <b>1/3 cup mix (32g)</b> & 1/8 tsp garlic herb blend (0.4g)	
Amount per serving	
<b>Calories</b>	<b>150</b>
<small>% Daily Value*</small>	
<b>Total Fat</b> 7g	<b>9%</b>
Saturated Fat 3g	<b>15%</b>
Trans Fat 0g	
<b>Cholesterol</b> 0mg	<b>0%</b>
<b>Sodium</b> 400mg	<b>17%</b>
<b>Total Carbohydrate</b> 19g	<b>7%</b>
Dietary Fiber 0g	<b>0%</b>
Total Sugars < 1g	
Includes 0g Added Sugars	<b>0%</b>
<b>Protein</b> 2g	
Vitamin D 0mcg	<b>0%</b>
Calcium 40mg	<b>4%</b>
Iron 1.1mg	<b>6%</b>
Potassium 30mg	<b>0%</b>
<small>* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.</small>	

**BISCUIT MIX INGREDIENTS:** Enriched bleached flour (wheat flour, malted barley flour, niacin, reduced iron, thiamin mononitrate, riboflavin, folic acid), palm and soybean oil, Less than 2% of: baking soda, salt, sodium aluminum phosphate, monocalcium phosphate, dextrose, buttermilk, ascorbic acid, enzymes.

**GARLIC HERB BLEND INGREDIENTS:** Garlic powder, maltodextrin, salt, onion powder, hydrolyzed soy protein, torula yeast, dehydrated parsley, malic acid, sugar, natural and artificial flavors (maltodextrin, butter oil), corn oil, silicon dioxide (anti-caking agent).

**CONTAINS:** Wheat, Milk, Soy.  
May contain eggs and tree nuts.

26. Preliminary testing of 168 samples from twelve different containers from twelve different lots of the Product shows, however, that a 1/3 cup serving of the Product actually weighs 46.9 grams, on average.

27. Using the correct weight of a serving size of the Product, the Product on average contains 3.1 servings less than represented.

28. Thus, the Product on average contains 31.38% less servings than represented by Defendant.

29. The Product therefore only makes about 6.9 – not 10 – biscuits.



30. Defendants placed the Product with the misleading label into the stream of commerce, where it was purchased by Plaintiff and Class Members.

31. At all times, Defendants intended Plaintiff and Class Members to rely on their serving-size representations.

32. Plaintiff and Class Members relied on the Product's label to state the truth about the number of servings in the biscuit mix box.

33. Plaintiff and Class Members expected to receive the number of servings stated on the label.

34. Plaintiff and Class Members did not get what they paid for.

35. Plaintiff and Class Members received a Product that was inferior to the Product as described on the label by the Defendants in that the Product contained far fewer biscuits than were promised.

36. Because Plaintiff and Class Members received fewer servings than represented, the value of the Product was materially less than its value as represented by Defendants.

37. Plaintiff and Class Members did not, nor could be expected to know, that the Product would not provide the number of servings promised on the Product's front label and Nutrition Facts panel.

38. The Product was worth less than what Plaintiff paid, and she would not have paid as much absent Defendants' false and misleading serving-size statements.

39. Plaintiff intends to, seeks to, and will purchase the Product again when she can do so with the assurance that Product's representations are accurate. However, unless the Court intervenes, Plaintiff cannot determine whether Defendants' representations on the label are accurate without purchasing the Product again – in which case she risks future economic harm.

40. Defendants' serving-size misrepresentation is material in that it concerns the type of information upon which a reasonable consumer would be expected to rely in deciding whether to purchase the Product.

41. As a result of the misrepresented serving size, Plaintiff and Class Members paid for servings they did not receive.

42. Plaintiff and Class Members would either not have purchased the Product or would have paid less for it had they known the truth.

43. Plaintiff and Class Members have been deceived by Defendants' misrepresentation.

44. At all times, Defendants' misrepresentation was known or intentional. Defendants knew: (a) the weight of the serving size of the Product; (b) that the Product's front panel and Nutrition Facts panel misrepresented the amount of servings; (c) that reasonable consumers would view, assume true, and rely upon information on the label in making their purchasing decisions; and (d) that it was fraudulently charging consumers for servings of the Product they did not receive.

45. Plaintiff provided Continental Mills with pre-suit notice of a breach of warranty on June 30, 2023.

46. Plaintiff provided Red Lobster with pre-suit notice of a breach of warranty on November 28, 2023

47. Defendants' unfair and deceptive practices continue as of the time of the filing of this Complaint and there is no reason to believe that Defendants will discontinue those practices voluntarily.

#### **JOINT AND SEVERAL LIABILITY**

48. The Product's packaging states that the Product is: "Produced Exclusively for Red Lobster by Continental Mills, Inc."

49. Red Lobster registered the phrase “Cheddar Bay Biscuits” on December 21, 2004.<sup>2</sup>

50. Red Lobster registered the mark reproduced below on August 11, 2015, “for Biscuit mixes; Seasonings; Spices.”<sup>3</sup>



51. Defendants affix Red Lobster’s mark five times on the packaging: on the front, back, one side, top, and bottom panels.

52. The Product’s front panel states that the Product is “Our Secret Recipe.”

53. The Product’s back panel states that the Product is: “Straight from our kitchens to yours, it’s our secret Red Lobster Cheddar Bay Biscuit recipe! Just add water, cheddar and butter to create the same Cheddar Bay Biscuits we serve in our restaurants.”

54. The Product’s side panel states: “QUALITY PLEDGE You can count on Continental Mills for the highest quality products.”

55. The Product’s side panel states: “FIND A RESTAURANT For a restaurant near you, call 1-800-562-7837 or visit our web site at [www.RedLobster.com](http://www.RedLobster.com).”

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<sup>2</sup>[https://tsdr.uspto.gov/#caseNumber=76526845&caseSearchType=US\\_APPLICATION&caseType=DEFAULT&searchType=statusSearch](https://tsdr.uspto.gov/#caseNumber=76526845&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch) (last viewed on January 19, 2024).

<sup>3</sup>[https://tsdr.uspto.gov/#caseNumber=86281765&caseSearchType=US\\_APPLICATION&caseType=DEFAULT&searchType=statusSearch](https://tsdr.uspto.gov/#caseNumber=86281765&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch) (last viewed on January 19, 2024).

56. Defendants acted jointly in the production, marketing, labeling and sale of the Product, using Red Lobster's exclusive mark and representations to promote and distribute the Product.

57. Defendants' coordinated actions and representations contribute to the overall deceptive nature of the Product's packaging and marketing.

58. As such, Defendants are jointly and severally liable for any damages caused to Plaintiff and Class Members resulting from their unfair and deceptive practices.

### **CLASS ALLEGATIONS**

59. Pursuant to 735 ILCS 5/2-801 *et. seq.*, Plaintiff brings this action on her own behalf and on behalf of proposed Classes of all other similarly situated persons ("Class Members" of the "Classes") consisting of:

All Illinois citizens who purchased the Red Lobster™ Cheddar Bay Biscuit® Mix for personal, family, or household use in the five years preceding the filing of this Complaint up through the date of notice (the "Class Period"); and/or

All United States citizens who purchased the Red Lobster™ Cheddar Bay Biscuit® Mix in the United States during the Class Period for personal, family, or household use.

60. Specifically excluded from the Classes are Defendants; Defendants' officers, directors, or employees; any entity in which Defendants have a controlling interest; any affiliate, legal representative, heir, or assign of Defendants and any person acting on their behalf. Also excluded from the Classes are any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, all State agencies; and any juror assigned to this action.

61. Upon information and belief, the Classes consist of at least hundreds of purchasers. Accordingly, it would be impracticable to join all Class Members before the Court.

62. There are numerous and substantial questions of law or fact common to all of the members of the Classes and which predominate over any individual issues. Included within the common question of law or fact are:

- a. whether the number of servings on the Product label is false, misleading, and deceptive;
- b. whether Defendants violated ICFA by selling the Product with false, misleading, and deceptive representations;
- c. whether Defendants' acts constitute deceptive, unfair or fraudulent business acts and practices or deceptive, untrue, and misleading advertising;
- d. whether Defendants breached express and/or implied warranties to Plaintiff and the Class Members;
- e. whether Defendants intended that Plaintiff and the Class Members would rely on its representations;
- f. whether Defendants were unjustly enriched; and
- g. the proper measure of damages sustained by Plaintiff and Class Members.

63. Plaintiff's claims are typical of the claims of Class Members, in that they are based on the same conduct and practices of Defendants, the legal claims are the same, and the central liability questions are the same.

64. Class Members and Plaintiff have no interests adverse to the interests of other Class Members.

65. Plaintiff will fairly and adequately protect the interests of Class Members and has retained competent and experienced counsel.

66. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other group

method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. the common questions of law and fact presented predominate over any individualized questions;
- b. absent a Class, the Class Members will continue to suffer damage and Defendants' unlawful conduct will continue without remedy while Defendants profit from and enjoys their ill-gotten gains;
- c. given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendants committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. when the liability of Defendants have been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. this action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and members of the Classes can seek redress for the harm caused to them by Defendants.

67. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants.

68. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute. As a consequence, class treatment is a superior method for adjudication of the issues in this case.



**CLAIMS FOR RELIEF**

**COUNT I**  
**(Breach of Express Warranty)**

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

70. Defendants made the affirmation of fact and the promise to Plaintiff and the Class Members that the Product makes 10 biscuits and contains about 10 servings per container, guaranteeing to Plaintiff and the Class Members that the Product was in conformance with the representations.

71. These affirmations of fact and promises became part of the basis of the bargain of Plaintiff's and Class Members' purchases, and Plaintiff and Class Members relied on the affirmations when making their purchasing decisions.

72. Defendants breached their express warranty by providing Plaintiff and Class Members with fewer servings than represented on the Product packaging.

73. As a result of Defendants' breach of warranty, Plaintiff and the Class Members have been deprived of the benefit of their bargain in that they bought the Product that was not what it was represented to be, and they have spent money on a Product that had less value than was reflected in the inflated price they paid for the Product.

74. As a proximate result of Defendants' breach of express warranty, Plaintiff and Class Members suffered economic damages, including the value of the servings they did not receive, or 31.38% of the purchase price, as well as any other damages proximately caused by Defendants' breach of express warranty.

**Count II**  
**Breach of Implied Warranty**

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

76. By advertising and selling the Product issue, Defendants made implied promises and affirmations of fact concerning the Product, as described here in. These implied warranties became part of the basis of the bargain between Plaintiff and the members of the Class, and the Defendants.

77. Defendants, through their advertising and labeling, impliedly warranted that the Product comports with the label representations, that the label representations are accurate, and that the Product contains sufficient ingredients to provide the stated number of servings.

78. Defendants breached the warranty implied in the contract for the sale of the Product because the Product cannot pass without objection in the trade under the contract description, the Product was not a fair average quality within the description, and the Product was not as represented. As a result, Plaintiff and Class Members did not receive the goods as impliedly warranted by Defendants to be merchantable.

79. At the time of the purchase, Plaintiff and members of the Classes did not know, and had no reason to know, that the Product was not as it was warranted to be.

80. Defendants knew that the Product was not as they warranted it to be.

81. Plaintiff and members of the Classes purchased the Product.

82. Plaintiff provided Defendants with pre-suit notice of the breach of warranty.

83. As the direct and proximate result of Defendants' breach of implied warranty, Plaintiff and members of the Classes were harmed in the amount of the purchase price they paid

for the Product. Plaintiff and members of the Classes have suffered and continue to suffer economic losses and other general and specific damages including, but not limited to, the amount paid for the Product, and any interest that would have accrued on those monies in an amount to be proven at trial.

**COUNT III**  
**Violation of ICFA**  
**(Deceptive Practices)**

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

85. Defendants engaged in a deceptive practice by misrepresenting the number of servings in the Product. The Product was therefore worth less than the Product as represented.

86. Defendants' misrepresentation is material because it conveyed false information that Plaintiff and Class Members relied on when considering whether to purchase the Product.

87. Defendants engaged in these deceptive practices in the course of their trade or commerce because Defendants are in the business of manufacturing, distributing, and selling the Product, and it does so throughout Illinois and in St. Clair County.

88. Defendants' deceptive practices proximately caused Plaintiff and Class Members damages, in that they received less servings than advertised. Plaintiff and Class Members therefore did not receive the benefit of their bargain.

89. Plaintiff's and Class Members' damages include the value of the servings they did not receive, or the difference between what they paid for the Product and what the Product was actually worth. Because the Product was not as represented, the Product as sold was worth less than the Product as represented, and Plaintiff and Class Members paid an excess amount for it.

Had Plaintiff and Class Members known the truth, they would have paid less for the Product by 31.38%.

**COUNT IV**  
**Violation of ICFA**  
**(Unfair Practices)**

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

91. Defendants engaged in unfair acts or practices by weighing a serving size of the Product inaccurately or failing to weigh it at all.

92. Defendants engaged in these unfair acts or practices in the course of their trade or commerce because Defendants are in the business of manufacturing, distributing, and selling the Product, and it does so throughout Illinois and in St. Clair County.

93. Defendants' unfair acts or practices offend public policy and are immoral, unethical, oppressive, or unscrupulous, because they affect the serving size and the associated nutritional facts of the Product. In other words, Plaintiff and Class Members are not receiving truthful information about how much of the Product they are ingesting and its nutritional value.

94. Defendants' acts are also unfair because they are against the public policy set forth in the Illinois Food, Drug and Cosmetic Act, 410 ILCS 620/11, which provides that a food is misbranded if its labeling is false or misleading in any particular. 410 ILCS 620/11(a).

95. Defendants' unfair practices proximately caused Plaintiff and Class Members damages, in that they received 31.38% less servings than promised. Plaintiff and Class Members therefore did not receive the benefit of their bargain.

96. Plaintiff's and Class Members' damages include the value of the servings they did not receive or the difference between what they paid for the Product and what the Product was

actually worth. Because the Product was not as represented, the Product as sold was worth less than the Product as represented, and Plaintiff and Class Members paid an excess amount for it. Had Plaintiff and Class Members known the truth, they would have paid 31.38% less for the Product.

97. Plaintiff's and Class Members' damages are substantial, are not outweighed by any countervailing benefits, and are damages Plaintiff and Class Members could not reasonably have avoided.

**COUNT V**  
**(Unjust Enrichment)**

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

99. Plaintiff and Class Members enriched Defendants by conferring a benefit on Defendants through their purchases of the Product.

100. Defendants accepted and retained the benefits Plaintiff and Class Members bestowed on them in the form of the profits and revenues they received as a result of their purchase of the Product.

101. Because Plaintiff and Class Members conferred the financial benefits on Defendants as a result of Defendants' fraudulent and misleading representations and unfair actions, it would be inequitable and unjust for Defendants to retain those benefits.

102. Defendants have been enriched at Plaintiff's and Class Members' expense.

103. Plaintiff and Class Members are therefore entitled to restitution, and Defendants should be required to disgorge their ill-gotten enrichment.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all similarly situated persons, prays  
the Court:

- a. enter judgment jointly and severally against Defendants and in favor of Plaintiff and the Classes including an award of all recoverable damages;
- b. grant certification of this case as a class action;
- c. appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- d. award compensatory damages to Plaintiff and the proposed Classes or, alternatively, require Defendant to disgorge or pay restitution;
- e. award statutory and punitive damages to Plaintiff and the proposed Classes;
- f. award pre- and post-judgment interest;
- g. award reasonable and necessary attorneys' fees and costs to Class counsel; and
- h. for all such other and further relief as may be just and proper.

Dated: March 4, 2024

Respectfully submitted,

By: /s/ David C. Nelson  
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*Attorneys for Plaintiff and the Putative Classes*

# **EXHIBIT D**



Kinnis Williams Sr  
Circuit Clerk

## Case Register of Actions

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
ST. CLAIR COUNTY, ILLINOIS  
COURTS MANAGEMENT INFORMATION SYSTEM

As of Monday April 22, 2024 at 3:42 pm

Page: 1

24-LA-0361 - NEUBAUER VS RED LOBSTER HOSPITALITY LLC

Date	Event Description	Amount	Party Type	Party Name
04/10/2024	JUDGE REASSIGNED		ADMINISTRATION	
04/10/2024	ORD:ASSIGNMENT ORDER		ADMINISTRATION	
04/10/2024	ORD:ASSIGNMENT ORDER		ADMINISTRATION	
04/10/2024	DOC:SUMMONS RETURNED		ADMINISTRATION	
04/02/2024	DOC:SUMMONS RETURNED		ADMINISTRATION	
03/12/2024	DOC:SUMMONS ISSUED		ATTORNEY	NELSON, DAVID C
03/12/2024	DOC:SUMMONS ISSUED		ATTORNEY	NELSON, DAVID C
03/04/2024	DOC:AFFIDAVIT		ATTORNEY	NELSON, DAVID C
03/04/2024	DOC:COMPLAINT FILED		ATTORNEY	NELSON, DAVID C
03/04/2024	DOC:MOTION		ATTORNEY	NELSON, DAVID C
03/04/2024	DOC:OTHER DOCUMENT NOT LISTED		ATTORNEY	NELSON, DAVID C
03/04/2024	DOC:OTHER DOCUMENT NOT LISTED		ATTORNEY	NELSON, DAVID C
03/04/2024	DOC:OTHER DOCUMENT NOT LISTED		ATTORNEY	NELSON, DAVID C

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Red Lobster Biscuits Lawsuit Says Boxes of Cheddar Bay Biscuit Mix Make Fewer Servings Than Advertised](#)

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