

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PALM BEACH DIVISION

Civil Case No.:

| | |
|---|--|
| NICHOLE GRIFFITH , as an individual, and : | : |
| on behalf of all others similarly situated, | : <u>CLASS ACTION COMPLAINT</u> |
| | : |
| <i>Plaintiff</i> , | : |
| vs. | : <i>Jury Trial Requested</i> |
| | : |
| GRUMA CORPORATION , a Nevada : | : |
| corporation, | : |
| | : |
| <i>Defendant.</i> | : |

CLASS ACTION COMPLAINT
FOR EQUITABLE RELIEF AND DAMAGES

Plaintiff, Nichole Griffith, by and through her undersigned counsel, hereby files this Class Action Complaint, individually, and on behalf of all others similarly situated—and makes these allegations based on information and belief and/or which are likely to have evidentiary support after a reasonable opportunity for further discovery—against Defendant, GRUMA CORPORATION (“GRUMA” or “Defendant”), to challenge Defendant’s violations of Florida state law based on its unlawful, deceptive, and misleading business practices, whereby Plaintiff seeks certification of this matter as a class action, by submitting this Class Action Complaint and alleging as follows:

I. INTRODUCTION

1. Defendant, GRUMA, markets, advertises, sells and distributes Mission® Restaurant Style Tortilla Rounds, Mission® Restaurant Style Tortilla Strips and Mission® Restaurant Style Tortilla Triangles (the “Products” or “Product”) to Florida purchasers in, but not

limited to, food chains, mass discounters, mass merchandisers, club stores, convenience stores, drug stores and dollar store's. In marketing and advertising the Products, Defendant made and continues to make false and misleading claims regarding its representation that the Products are "All Natural."

2. At issue here is Defendant's false, deceptive, and misleading statement that is likely to deceive reasonable consumers. Defendant has mistakenly or misleadingly represented that the Products are "All Natural," when in fact, they are not, because they contain bio-engineered food, more commonly known as Genetically Modified Organisms ("GMOs") in the form of genetically modified corn ingredients ("GM corn").

3. Defendant's "All Natural" statement prominently displayed on the Products' packaging and/or labeling is false, misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the Class, because the Products are not "All Natural," due to the presence of GE corn in the Products.

4. GMOs are plants that grow from seeds in which DNA splicing has been used to place genes from another source into a plant. Contrary to Defendant's express or implied representations, the Product uses plants or plant derivatives grown or created from GMOs.

5. Defendant's marketing of the Product as "All Natural" is false because GMOs' genetic makeup has been altered through biotechnology to exhibit characteristics that do not otherwise occur in nature.¹ Genetic engineering is different from natural/conventional plant breeding, and poses distinct health risks.

1. Eng, Monica. "Debate rages over labeling biotech foods; Industry resists listing genetically modified ingredients; consumer worries continue." L.A. Times. June 2, 2011. BUSINESS; Business Desk; Part B; Pg. 4.

6. Accordingly, Plaintiff has brought this class action for injunctive relief, restitution, disgorgement and damages against Defendant for false and misleading advertising in violation the Florida Deceptive and Unfair Trade Practices Act, FLA. STAT. §§ 501.201, et seq. (“FDUTPA”), and for Unjust Enrichment. Plaintiff’s state law claims mirror the labeling, packaging, and advertising requirements mandated by federal regulations and laws, as more fully described below.

7. Plaintiff seeks an Order prohibiting Defendant from including genetically modified ingredients in its “All Natural” Products or, in the alternative, from representing the Products are “All Natural” when they are not, because bio-engineered corn is not “All Natural.”

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000.00, exclusive of interest and costs.

9. Plaintiff alleges that the total claims of the individual members of the Plaintiff Class in this action are in excess of \$5,000,000.00 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). As set forth below, Plaintiff is a citizen of Florida, and Defendant can be considered a citizen of Texas or Nevada. Therefore, diversity of citizenship exists under CAFA and diversity jurisdiction, as required by 28 U.S.C. §§ 1332(a)(1), (d)(2)(A). Furthermore, the total number of members of the proposed Plaintiff Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B).

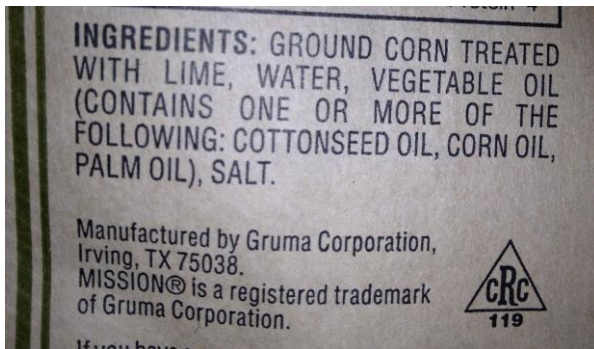
10. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(a) because, as set forth below, Defendant conducts business in, and may be found in, this district, and Plaintiff purchased the subject Product of this action in this judicial district, and resides in this judicial district.

III. PARTIES

11. Plaintiff, Griffith, is an individual more than 18 years old, and is a citizen and resident of Jupiter, Palm Beach County, Florida. Plaintiff respectfully requests a jury trial on all claims. Plaintiff purchased one of the Products several times in Florida, within this judicial district, during the four (4) years prior to filing of this Complaint (the “Class Period”). Plaintiff purchased the Product for personal use during the Class Period.

12. Plaintiff purchased one of the Products approximately three times during the years 2012 and 2013, from a supermarket located within this judicial district; a Publix Supermarket located on West Indiantown Road, Jupiter FL, 33478.

13. Plaintiff purchased one of the Mission® Restaurant Style Tortilla Strips that claims to be “All Natural,” although it contains GMOs. Plaintiff paid approximately \$3.99, plus tax, each time she purchased the Product. A color copy of the packaging and ingredient list for the Product purchased by Plaintiff is depicted below:



14. In purchasing the Products, Plaintiff reasonably read and relied on the material statement that the Products are “All Natural” prominently displayed on the Products’ front labeling/packaging. The “All Natural” statement appears uniformly on all the Products at issue. Plaintiff understood Defendant’s statement that the Products were “All Natural” to mean that the Products contained no GM ingredients. Whether the Products contained GM ingredients and/or were “All Natural” affected the Plaintiff, and she did not know, or have any reason to know, the Products contained GM ingredients.

15. If Plaintiff had known the Product was not all natural, she would not have purchased it, and she would not have paid the premium price charged for it. The Product was rendered valueless for Plaintiff because she thought she had purchased a Product with all natural ingredients. Plaintiff had other alternatives that lack GM ingredients. Plaintiff also had alternative comparable products that contain GM ingredients, but were less expensive and not labeled as "All Natural." Plaintiff has been damaged by her purchase of the Products because the Product is worth less than what Plaintiff paid for it and/or Plaintiff did not receive what she reasonably intended to receive when purchasing the Product.

16. Defendant Gruma Corporation is a wholly owned subsidiary of the Mexican food company Gruma, S.A.B. de C.V. Defendant is incorporated in Nevada and maintains its principle place of business is 1159 Cottonwood Lane, Suite 200, Irving, Texas 75038. Therefore, Gruma can be considered a "citizen" of the State of Nevada or Texas for purposes of diversity jurisdiction or diversity of citizenship. Defendant lists with the Florida Secretary of State a Registered Agent designated as the Corporation Service Company, 1201 Hays Street, Tallahassee, FL 32301.

17. Defendant is the owner, manufacturer and distributor of the Products, and is the company that created and/or authorized the false, misleading and deceptive labeling and advertising for the Products and is the company that promoted, marketed, and sold the Products at issue in this judicial district.

18. The labeling and advertising for the Product relied upon by Plaintiff was prepared and/or approved by Defendant and its agents, and was disseminated by Defendant and its agents through labeling and advertising containing the misrepresentations alleged herein. The labeling

and advertising for the Products was designed to encourage consumers to purchase the Products and reasonably misled the reasonable consumer, i.e. Plaintiff and the Class.

19. Defendant also knew or should have known that the Products contain, and continue to contain, ingredients that have grown from seeds that were genetically modified in laboratories. Defendant affirmatively misrepresented, and continues to misrepresent, the uses and benefits of the Products to convince the public to purchase and use the Products, resulting in significant detriment to the consuming public.

20. Plaintiff alleges that, at all relevant times, Defendant and its subsidiaries, affiliates, and other related entities, as well as their respective employees, were the agents, servants and employees of Defendant, and at all relevant times, each acted within the purpose and scope of that agency and employment. Plaintiff further alleges on information and belief that at all times relevant herein, the distributors and retailers who delivered and sold the Products, as well as their respective employees, also were Defendant's agents, servants and employees, and at all times herein, each was acting within the purpose and scope of that agency and employment.

21. Additionally, Plaintiff alleges that, in committing the wrongful acts alleged herein, Defendant, in concert with its subsidiaries, affiliates, and/or other related entities and their respective employees, planned, participated in and furthered a common scheme to induce members of the public to purchase the Products by means of false, misleading, deceptive and fraudulent representations, and that Defendant participated in the making of such representations in that it disseminated those misrepresentations and/or caused them to be disseminated.

22. Whenever reference in this Complaint is made to any act by Defendant or its subsidiaries, affiliates, distributors, retailers and other related entities, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives

of Defendant committed, knew of, performed, authorized, ratified and/or directed that act or transaction on behalf of Defendant while actively engaged in the scope of their duties.

IV. FACTUAL ALLEGATIONS

Plaintiff's State Law Claims are Consistent with Federal Regulations

23. Defendant has uniformly represented and continues to represent that the Products are "All Natural," prominently displaying this language in large letters on the front of the Products' packaging, and in other advertising such as print and online advertisements stating the Products are "All Natural." Contrary to Defendant's representations, however, the Products are not "All Natural," because they contain bio-engineered corn (GM corn and/or GM corn ingredients), which is not natural.

24. Food manufacturers must comply with federal and state laws and regulations governing labeling food products. Among these are the Federal Food, Drug and Cosmetic Act (FDCA) and its labeling regulations, including those set forth in 21 C.F.R. part 101.

25. Florida and federal law have placed similar requirements on food companies that are designed to ensure that the claims companies are making about their products to consumers are truthful and accurate.

26. Plaintiff is explicitly alleging only violations of Florida state law that is identical and/or mirrors the labeling, packaging, and advertising requirements mandated by federal regulations and laws, including but not limited to, the Federal Food, Drug, and Cosmetic Act (FD&C Act), the Federal Food and Drug Association (F.D.A.), the Federal Trade Commission (F.T.C.), and the Nutrition Labeling and Education Act (N.L.E.A.).

27. Defendant's Product label is misleading and deceptive pursuant to Florida's Food Safety Act, FLA. STAT. §§ 500.01, *et seq.*—identical in all material aspects hereto—to the Food

and Drug Administration's ("FDA") Federal Food Drug and Cosmetic Act ("FFDCA"), 21 U.S.C. §§ 343, 343-1. Plaintiffs claim does not seek to contest or enforce anything in Florida's Food Safety Act that is beyond the FFDCA or FDA regulation requirements.

28. For example, the Florida Food Safety Act, Fla. Stat. § 500.01, states:

Purpose of chapter.—This chapter is intended to:

(1) Safeguard the public health and promote the public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit, flowing from intrastate commerce in food;

(2) Provide legislation which shall be uniform, as provided in this chapter, and administered so far as practicable in conformity with the provisions of, and regulations issued under the authority of, the Federal Food, Drug, and Cosmetic Act; the Agriculture Marketing Act of 1946; and likewise uniform with the Federal Trade Commission Act, to the extent that it expressly prohibits the false advertisement of food; and

(3) Promote thereby uniformity of such state and federal laws and their administration and enforcement throughout the United States and in the several states.

Fla. Stat. § 500.02(1)–(3).

29. In addition, in Florida, "A food is deemed to be misbranded: If its labeling is false or misleading in any particular." Fla. Stat. § 500.11(1)(a).

30. Likewise, the F.D.A. regulation on misbranded foods states, "A food shall be deemed to be misbranded—False or misleading label [i]f its labeling is false or misleading in any particular." 21 U.S.C. § 343.

31. Furthermore, this District Court recently entered an Order denying a defendant's (Campbell's) motion to dismiss, in *Mark Krzykwa v. Campbell Soup Co.*, Case No. 12-62058-CIV-DIMITROULEAS (S.D. Fla., May 28, 2013) (DE 37). This District Court concluded, "Plaintiff's state consumer protection law claims are not preempted by federal regulations." *Id.* at

p. 6 (citing *Jones v. ConAgra Foods, Inc.*, 2012 WL 6569393, *6 (N.D. Cal. Dec. 17, 2012)). Additionally, this District Court ruled that the primary jurisdiction doctrine does not apply “because the FDA has repeatedly declined to adopt formal rule-making that would define the word ‘natural.’” *Id.* at p. 8. Last, this Court has stated “Plaintiff’s claims are not preempted. Accordingly, Defendant’s argument that Plaintiff’s claims fall under FDUPTA’s safe harbor provision correspondingly fails.” *Id.* at p. 9.²

The Products Are Not “All Natural”

32. Defendant manufactures, distributes, markets, advertises, and sells the Products, which claims to be “All Natural,” when in fact, they are not, because they contains GMOs in the form of corn and/or corn derivatives within its ingredients. Although Defendant markets the Products as “All Natural,” it fails to also disclose material information about the Products; the fact that they contains GMOs.

33. The terms Bio-engineered foods, bio-tech foods, GM foods, or GMOs (genetically-modified organisms) commonly refers to the use of recombinant DNA transfer techniques to transfer genetic material between organisms in a way that would not take place naturally. This modification takes place in a laboratory through a process whereby the genes of one species are inserted into the plant, thus forcibly introducing foreign DNA into the plant’s cells.³

2. See also *Krzykwa v. Cambell Soup Co.*, Case No. 12-62058-CIV-DIMITROULEAS, Order Denying Defendant’s Motion to Stay, or in the Alternative For Reconsideration (S.D. Fla., August 12, 2013) (DE 53).

3. Michael Antoniou, Claire Robinson, & John Fagan, Earth Open Source, *GMO Myths & Truths: An Evidence-Based Examination of the Claims Made for the Safety and Efficacy of Genetically Modified Crops* 10 (June 2012) (“GMO Myths & Truths”), (available at http://earthopensource.org//_Myths_and_Truths/_Myths_and_Truths_1.3b.pdf).

34. Since the seeds from which the corn ingredients have been genetically modified to add or include additional genes and/or DNA, the corn ingredients and the Products themselves are, therefore, not “All Natural.”

35. One common example is the use of *Bacillus thuringiensis*, (B.t.) genes into corn. B.t. is a bacterium that produces crystal proteins that are lethal to insect larvae. Using B.t. crystal protein genes in corn enable the corn to produce its own pesticides against insects. However, this alters the corn, thereby rendering it not natural, and certainly not “All Natural,” and is just one example how the existence of GMOs in the Products makes the “All Natural” claim blatantly false and misleading.

36. GMOs are plants that grow from seeds that have been modified in a laboratory through the genetic modification process. The experimental technology of genetic modification merges DNA from different species, creating unstable combinations of plant, animal, bacterial and viral genes that cannot occur in nature or in traditional crossbreeding.⁴

37. Thus, genetic modification differs completely from natural breeding because natural breeding can only take place between closely related forms of life, and genetic modification is a laboratory-based technique.

38. The Product is simply not “All Natural,” and it would be unreasonable for Defendant to contend otherwise. Genetically modified corn products contain genes and/or DNA that would not normally be in them, and that cannot be achieved through traditional crossbreeding, and are thus not natural, thereby causing the Product to fail to be “All Natural.”

4. See Non-GMO Project, GMO FACTS: Frequently Asked Questions, <http://www.nongmoproject.org/learn-more/> (last visited August 11, 2013).

39. Defendant's "All Natural" statement prominently displayed on the Products' packaging and/or labeling is false, misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the Class, because the Product is not "All Natural," due to the presence of GMOs.

40. During the Class Period, Defendant has claimed, and continues to claim, in its advertising and marketing of the Products that the Products are "All Natural." Each Products' label states, in large bold lettering in the upper left-hand corner of the Products' packaging, that it is "All Natural."

41. According to the World Health Organization, of which the United States is Member State, "GMOs can be defined as organisms in which the genetic material (DNA) has been *altered in a way that does not occur naturally*. The technology is often called 'modern biotechnology' or 'gene technology,' sometimes also 'recombinant DNA technology' or 'genetic engineering.' It allows selected individual genes to be transferred from one organism into another, also between non-related species."⁵

42. In addition, the Supreme Court has held a naturally occurring DNA segment is a product of nature and not patent eligible, but that synthetically created DNA was not naturally occurring and, therefore, is not precluded from patent eligibility. *See Ass'n. for Molecular Pathology v. Myriad Genetics, Inc.*, No. 12-398, 2013 WL 2631062, --- S. Ct. --- (June 13, 2013). Because naturally occurring genes cannot be patented, it follows that genes that can be patented are not naturally occurring. Accordingly, because GMO seeds can be and are patented, they cannot be "natural" and Defendant's Products containing GMO ingredients are not properly labeled as "All Natural."

5. WORLD HEALTH ORGANIZATION, 20 Questions on Genetically Modified (GM) Foods, <http://www.who.int/foodsafety/publications/biotech/20questions/en/index.html> (last visited August, 12, 2013).

43. Likewise, in *Briseno v. Conagra Foods, Inc.*, the defendant's Wesson Canola Oil label stated the product was "100% Natural." 2011 U.S. Dist. LEXIS 154750, *4 (C.D. Cal. Nov. 23, 2011). The plaintiff contended that contrary to this representation, the defendant used plants grown from GM seeds, and that the resulting GMOs are not "natural." Like the Plaintiff in this case, Briseno's primary argument was not that ConAgra was required to state whether its products were made from genetically modified plants on its labels, rather, he contended that ConAgra's affirmative decision to label its products "100% Natural" was deceptive and misleading, given that the products were made from genetically modified organisms. *Id.* at *13-14. Although the court in *Briseno* acknowledged that requiring an outright labeling of GMO was pre-empted, it nonetheless acknowledged that the claim "100% Natural" could be misleading to a reasonable consumer. *Id.* at *19-21.

44. Plaintiff, and all other similarly situated reasonable consumers, believed that when Defendant used the term "All Natural," that Defendant meant natural to mean to the ordinary dictionary definition of the term. The ordinary dictionary definitions of the word "natural" include: "being in accordance with or determined by nature," "having or constituting a classification based on features existing in nature," "having a specified character by nature," "occurring in conformity with the ordinary course of nature," "growing without human care," "not cultivated," "existing in or produced by nature; not artificial," and "relating to or being natural food."⁶

6. See Merriam-Webster Online, <http://www.merriam-webster.com/dictionary/natural> (last visited August 11, 2013).

45. As a result, Defendant has made false and misleading material statements and representations regarding the Products that have been relied upon by Plaintiff and members of the Class.

46. Because the Products contain GMOs and are thus not “All Natural,” Defendant’s advertising and labeling is deceptive and likely to mislead reasonable consumers, such as Plaintiff and members of the Class.

47. Plaintiff, like members of the Class, purchased the Product relying on the material misrepresentation that it was “All Natural” at the time of purchase.

48. Defendant’s “All Natural” representations convey a series of express and implied claims which Defendant knows are material to the reasonable consumer and which Defendant intends for consumers to rely upon when purchasing its products. The advertising and marketing for the Products creates the uniform, false and misleading impression that the Products are comprised of only all natural ingredients.

Plaintiff and the Class Suffered Damages

49. All Consumers who purchased the Products were exposed to the same “All Natural” claim. Unfortunately for consumers, they were charged a premium for these alleged “All Natural” products. Defendant’s prominent “All Natural” statement is false, misleading and likely to deceive reasonable consumers, such as Plaintiff and members of the Class, due to the presence of GMOs. The misbranded Products are not natural because a genetically modified corn product contains genes and/or DNA that would not normally be found in it

50. Defendant then charged a premium for the tortilla Products that were not all natural, and that contain the same genetically modified ingredients contained in its other less expensive comparable tortilla varieties.

51. Consumers such as Plaintiff expect that products labeled “All Natural” will be just that. To be natural, a food should contain no artificial or synthetic ingredients, and both it and its ingredients should have no more processing than something which could be made in a household kitchen.

52. Reasonable consumers must and do rely on food companies such as Defendant to honestly report the nature of a food’s ingredients, and food companies such as Defendant intend and know that consumers rely upon food labeling statements in making his purchasing decisions. Such reliance by consumers is also eminently reasonable, since Defendant is prohibited from making false or misleading statements on their products under federal and Florida law

53. Plaintiff and members of the Class have been economically damaged by their purchase of the Products because they are not “All Natural.”

54. Plaintiff has been damaged by her purchase of the Products because the Products are worth less than what Plaintiff paid for them and/or Plaintiff did not receive what she reasonably intended to receive.

55. Plaintiff contends that the Products were rendered valueless; because they were not what Defendant represented them to be. Thus, Plaintiff and the Class have been economically damaged in the amount of the full retail sales price charged for each purchase of the Products throughout the Class period, plus tax.

56. Alternatively, because the Products are worth less than what Plaintiff and the Class paid for them, Plaintiff contends that a minimum, she and the Class have been economically damaged in the amount of the difference between the premium price charged for the Product, and the true value of the Product. Because the Product is worth less than what it is

represented to be, the “All Natural” labeling allows Defendant to charge a price premium for the Product above its true value.

57. Additionally, Plaintiff contends that Defendant should cease labeling the Products “All Natural,” because they contains GMO’s, or, in the alternative, Defendant should be prohibited from including genetically modified ingredients in its “All Natural” Products.

58. Plaintiff therefore brings this class action to secure, among other things, equitable relief and damages for the Class against Defendant for false and misleading advertising in violation of Florida’s Deceptive and Unfair Trade Practices Act, Fla. Stat. §§501.201 et. seq., along with unjust enrichment.

V. CLASS ACTION ALLEGATIONS

59. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

60. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this class action and seeks certification of the claims and certain issues in this action on behalf of a Class defined as:

All Florida persons who have purchased the Products, Mission® Restaurant Style Tortilla Rounds, Mission® Restaurant Style Tortilla Strips and Mission® Restaurant Style Tortilla Triangles, during the period extending from August 2009.

61. Plaintiff reserves the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified. Excluded from the Class are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant’s officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also

excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

62. This action is maintainable as a class action under Rule 23(a) and (b)(1), (b)(2), and/or (b)(3).

63. Defendant's practices and omissions were applied uniformly to all members of the Class, including any subclass, arising out of the Florida statutory and common law claims alleged herein, so that the questions of law and fact are common to all members of the Class and any subclass.

64. All members of the Class and any subclass were and are similarly affected by the deceptive labeling of the Product, and the relief sought herein is for the benefit of Plaintiff and members of the Class and any subclass.

65. Based on the annual sales of the Product, which is estimated to be in the millions, and the popularity of the Product, it is apparent that the number of consumers in both the Class and any subclass is so large as to make joinder impractical, if not impossible.

66. Questions of law and fact common to the Plaintiff Class and any subclass exist that predominate over questions affecting only individual members, including, *inter alia*:

- a. Whether Defendant's practices and representations related to the marketing, labeling and sales of the Product were unfair, deceptive and/or unlawful in any respect, thereby violating Florida Deceptive and Unfair Trade Practices Act, *inter alia*, sections 501.201 to 501.213, *Florida Statutes*;
- b. Whether Defendant was unjustly enriched as a result of its practices and representations related to the marketing, labeling and sales of the Products in Florida;

- c. Whether all of the ingredients contained in the Products are all natural;
- d. Whether the claim “All Natural” on the Products’ label and advertising is material to a reasonable consumer;
- e. Whether a reasonable consumer is likely to be deceived by a claim that a product is “All Natural” when the Product contains or is made from genetically modified ingredients; and
- f. Whether Defendant’s conduct as set forth above economically injured consumers and if so, the extent of the injury.

67. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Plaintiff Class and any subclass, as the claims arise from the same course of conduct by Defendant, and the relief sought within the Class and any subclass is common to the members of each.

68. Plaintiff will fairly and adequately represent and protect the interests of the members of the Plaintiff Class and any subclass.

69. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation.

70. Certification of this class action is appropriate under Federal Rule of Civil Procedure 23 because the questions of law or fact common to the respective members of the Class and any subclass predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for a fair and efficient decree of the claims.

71. Absent a class action, it would be highly unlikely that the representative Plaintiff or any other members of the Class or any subclass would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery.

72. Certification is also appropriate because Defendant acted, or refused to act, on grounds generally applicable to both the Class and any subclass, thereby making appropriate the relief sought on behalf of the Class and any subclass as respective wholes. Further, given the large number of consumers of the Product, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

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

74. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

**VI. FIRST CAUSE OF ACTION:
VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE
PRACTICES ACT, FLA. STAT. § 501.201, ET SEQ.**

75. Plaintiff re-alleges and incorporates by reference verbatim the allegations set forth in paragraphs one (1) through seventy-four (74) of this Complaint.

76. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 201.213, *Florida Statutes*.

77. FDUTPA is, “a consumer protection law intended to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the course of any trade or commerce.” *Tuckish v. Pompano Motor Co.*, 337 F. Supp. 2d 1313, 1319 (S.D. Fla. 2004); FLA. STAT. § 501.202. In the interests of consumer protection, FDUTPA should be “liberally construed.” *Samuels v. King Motor Co.*, 782 So. 2d 489, 499 (Fla. 4th DCA 2001).

78. The sale of the Products at issue in this cause was a “consumer transaction” within the scope of the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 201.213, *Florida Statutes*.

79. Plaintiff is a “consumer” as defined by Section 501.203, *Florida Statutes*. Defendant’s Product is a “good,” within the meaning of the Act. Defendant is engaged in trade or commerce within the meaning of the Act.

80. Section 501.204(1), *Florida Statutes* declares as unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

81. Section 501.204(2), *Florida Statutes* states that “due consideration be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Trade Commission Act.” Defendant’s unfair and deceptive practices are likely to mislead – and have misled – the consumer acting reasonably under the circumstances and, therefore, violate Section 500.04, *Florida Statutes* and 21 U.S.C. Section 343.

82. Defendant has violated the Act by engaging in the unfair and deceptive practices described above, which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers. Specifically, Defendant has represented that the Product

is “All Natural,” when in fact; it is not, because it contains bioengineered corn, also known as genetically modified corn. Defendant’s advertising and labeling of the Products misleads reasonable consumers to believe that the Product is all natural, when it is not.

83. Defendant violated Florida’s Deceptive and Unfair Trade Practices Act by engaging in unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of its business. “Deception occurs if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.” *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003).

84. The material misrepresentations and omissions alleged herein constitute deceptive and unfair trade practices, in that they were intended to and did deceive Plaintiff and the general public, into believing that the Products were “All Natural.” Reasonable consumers do not expect “All Natural” products to contain genetically modified ingredients. The above discussed advertising and labeling of the Product is likely to, and does, mislead reasonable consumers.

85. Unlike common law fraud, subjective evidence of reliance on the part of each putative Class member is not required under FDUPTA. *See Davis v. Powertel, Inc.*, 776 So. 2d 971, 974 (Fla. 1st DCA 2000); *Nelson v. Mead Johnson Nutrition Co.*, 270 F.R.D. 689, 692 (S.D. Fla. 2010); *State, Office of Atty. Gen., Dept. of Legal Affairs v. Wyndham Int’l, Inc.*, 869 So. 2d 592, 598 (Fla. 1st DCA 2004); *Latman v. Costa Cruise Lines, N.V.*, 758 So. 2d 699, 703 (Fla. 3d DCA 2000). Thus, “the question is not whether the plaintiff actually relied on the alleged deceptive trade practice, but whether the practice was likely to deceive a consumer acting reasonably in the same circumstance.” *Davis*, 776 So. 2d at 974; *Urquhart v. Manatee*

Mem'l Hosp., No. 8:06-cv-1418, 2007 WL 781738, at *4 (M.D. Fla. Mar. 13, 2007). Nevertheless, Plaintiff and Class Members did rely on Defendant's statements and advertising, believing that the Product is All/100% Natural, when, in fact, as set forth in detail above, it is not.

86. Plaintiff and Class Members have been aggrieved by Defendant's unfair and deceptive practices in that they purchased and consumed Defendant's Products.

87. As a result of Defendant's deceptive and unfair acts, Plaintiff and Class members are entitled to damages in an amount to be proven at trial, but not less than the difference between the premium price paid for the Products and the price they would have paid had they known that the Product is not "All Natural," or a return of 100% of the purchase price. The price Plaintiff and Class members would have paid is no more than the market value of the Products, had Plaintiff and Class members known that the Products contain GMOs.

88. Defendant is aware that the claims that it makes about the Products are false and misleading.

89. The misrepresentation by Defendant is material and constitutes an unlawful business practice.

90. The damages suffered by the Plaintiff and the Class were directly and proximately caused by the deceptive, misleading and unfair practices of Defendant, as described above.

91. Pursuant to Section 501.211(1), *Florida Statutes*, Plaintiff and the Class also seek a declaratory judgment and court order enjoining the above described wrongful acts and practices of the Defendant and for restitution and disgorgement.

92. Additionally, pursuant to sections 501.211(2) and 501.2105, *Florida Statutes*, Plaintiff and the Class make claims for damages, pre-judgment interest, attorney's fees and costs.

93. The amount of which interest is to be calculated is a sum certain and capable of calculation, and Plaintiff and Florida purchasers of the Product are entitled to interest in an amount according to proof.

**VII. SECOND CAUSE OF ACTION:
UNJUST ENCRICHMENT**

94. Plaintiff re-alleges and incorporates by reference verbatim the allegations set forth in paragraphs one (1) through seventy-four (74) of this Complaint.

95. Plaintiff and Class members directly conferred a benefit on Defendant by purchasing the Product at a premium price. Defendant's marketing and labeling of the Products was directed to Plaintiff and the Class.

96. Defendant has misleadingly claimed its Products to be "All Natural," when in fact, they are not, because they contain GMO corn and/or GMO corn derivatives.

97. Defendant is aware that the claims that it makes about the Products are false, deceptive, and/or misleading.

98. Defendant's marketing and labeling of the Product is directly targeted at consumers, and the Product's label does not change from the time it leaves the Defendant's hands until it reaches the ultimate consumer.

99. The Products are marketed to, and intended to be purchased and consumed by the ultimate consumer, and the Product is intended for human consumption, is in a sealed package prepared by the manufacturer, and has a label with representations to the ultimate consumer.

100. Defendant received money from the sales paid by Plaintiff and Class members and thus knew of the benefit conferred upon them.

101. Defendant accepted and retained the benefit in the amount of the profits it earned from sales to Plaintiff and Class members.

102. Defendant has profited from its unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiff and Class members, under circumstances in which it would be unjust for Defendant to be permitted to retain the benefit.

103. As a result of buying the Products, Plaintiff and the Class purchased and ingested genetically modified organisms, which is inherently not "All Natural."

104. The Products labeling is insufficient, as it misleads the consumer to believe that the statements are true, when in fact, they are not. Defendant misleads consumers in to believing that the Product is "All Natural," when in fact, it is not, because it contains GMOs.

105. Under the circumstances, it would be inequitable for Defendant to retain the benefit of the premium price paid for the Product, when the Product does not deliver the edible goods as advertised. Plaintiff and the Class Members did not receive the benefit of their bargain, because, in purchasing the Product, they did not get what they paid for.

106. Plaintiff and Class members (in the alternative to the other claims pleaded herein) do not have an adequate remedy at law against Defendant.

107. Plaintiff and Class members are entitled to restitution of the excess amount paid for the Product, over and above what they would have paid had they known that the Product contained GMOs. Alternatively, the Product was rendered valueless such that Plaintiff and the Class are entitled to restitution in an amount not less than the purchase price of the Products.

108. Plaintiff and Class Member are also entitled to disgorgement of the profits Defendant derived from the sale of the Products.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated, prays for relief pursuant to each cause of action set forth in this Complaint as follows:

1. For an order certifying that the action may be maintained as a class action, certifying Plaintiff as representative of the Class, and designating her counsel as counsel for the Class;

2. For an award of equitable relief as follows:

(a) Enjoining Defendant from making any claims for the Products found to violate FDUTPA as set forth above;

(b) Requiring Defendant to make full restitution of all monies wrongfully obtained as a result of the conduct described in this Complaint; and

(c) Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct described in this Complaint.

3. For actual damages to be determined at trial;

4. For reasonable attorney's fees;

5. For an award of costs;

6. For pre- and post-judgment interest on any amounts awarded; and

8. Providing such further relief as maybe just and proper.

IX. JURY DEMAND

Plaintiff respectfully demands a trial by jury on all issues so triable.

DATED: August 12, 2013

Respectfully Submitted,

By: /s/ Joshua H. Eggnatz
Joshua H. Eggnatz, Esq.
Fla. Bar. No.: 0067926
THE EGGNATZ LAW FIRM, P.A.
1920 N. Commerce Parkway, Suite 1
Weston, FL 33326
Tel: (954) 634-4355
Fax: (954) 634-4342
JEggnatz@EggnatzLaw.com

*Attorney for Plaintiff and the
Proposed Class*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

NICHOLE GRIFFITH, as an individual, and on behalf of others similarly situated

(b) County of Residence of First Listed Plaintiff Palm Beach County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) The Eggnatz Law Firm, P.A. 1920 N. Commerce Parkway, Ste. 1, Weston, FL 33326, (954)634-4355

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

DEFENDANTS

GRUMA CORPORATION., a Nevada Corporation

County of Residence of First Listed Defendant NV and Dallas Cnty, TX (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF PTF DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business In This State
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 4 4 5 5 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PERSONAL INJURY, HABES CORPUS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment
8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

a) Re-filed Case YES NO b) Related Cases YES NO

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1332 (d)(2): Claims for Violations of Florida's Deceptive & Unfair Trade Practices Act, et al. LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE August 12, 2013 SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature: /s/ Joshua H. Eggnatz

FOR OFFICE USE ONLY

RECEIPT # aaaaaaaaaa AMOUNT aaaaaaaaaa IFP aaaaaaaaaa JUDGE aaaaaaaaaa "MAG JUDGE" aaaaaaaaaa

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

)
)
)
)
)
)
)
)
)
)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: