

U.S. DISTRICT COURT
WESTERN DIST ARKANSAS
FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS**
FAYETTEVILLE DIVISION

CHRIS R. JOHNSON, Clerk
By
Deputy Clerk

Jared Gabriele, individually and on behalf of
all others similarly situated,

Plaintiff,

-against-

CONAGRA FOODS, INC.

Defendant.

CLASS ACTION COMPLAINT

Case No. 14-5183 TLB

JURY TRIAL DEMANDED

Plaintiff, Jared Gabriele, brings this lawsuit against Defendant ConAgra Foods, Inc. (“ConAgra” or “Defendant”). In order to remedy the harm arising from Defendant’s illegal conduct which has resulted in unjust profits, Plaintiff brings this action on behalf of Plaintiff and a statewide class of Arkansas consumers who, within the last five years, purchased Hunt’s Diced Tomatoes, Hunt’s Crushed Tomatoes, Hunt’s Stewed Tomatoes, Hunt’s Whole Tomatoes, Hunt’s Tomato Paste, Hunt’s Tomato Puree and Hunt’s Tomato Sauce, including variations of each, referred to herein as (the “Purchased Products,” “ConAgra Products,” “Hunt’s Products” and/or “Misbranded Food Products”).¹

DEFINITIONS

1. “Class Period” is June 18, 2009 to the present.
2. Over the last five years, Plaintiff, Jared Gabriele, has purchased Hunt’s Diced Tomatoes, Hunt’s Crushed Tomatoes, Hunt’s Stewed Tomatoes, Hunt’s Whole Tomatoes, Hunt’s Tomato Paste, Hunt’s Tomato Puree and Hunt’s Tomato Sauce, including variations of each. The canned tomato industry sometimes refers to these as the “seven segments.” Hereinafter (the “Purchased Products”). Pictures of the Purchased Products are attached as Exhibit “1.”

¹ This case only includes the “Purchased Products.”

3. ConAgra represents that its products are “100% Natural,” which they are not. ConAgra also represents that its products are “free of artificial ingredients and preservatives,” which they are not.

4. “Misbranded Food Products” and/or “ConAgra Products” are the Purchased Products identified herein.

5. The issue in this case is the label violations and/or misrepresentations on the label of the ConAgra Products. The representations that the ConAgra Products are “100% Natural” are false and misleading because the ConAgra Products contain artificial ingredients and are not “100% Natural.” The representations that the ConAgra Products are “free of artificial ingredients and preservatives” are false because the ConAgra Products do contain artificial ingredients and preservatives. The use of the terms “100% Natural” and “free of artificial ingredients and preservatives” is in violation of A.C.A. § 20-56-209; A.C.A. § 20-56-214; and A.C.A. § 20-56-215.

SUMMARY OF THE CASE

6. Under Arkansas law, a food product that is misbranded cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless. The sale, purchase or possession of misbranded food is a criminal act in Arkansas and food companies are subject to seizure of misbranded products. This “misbranding” – standing alone without any allegations of deception by Defendant other than the failure to disclose as per its duty, the material fact that the product was illegal, entitles Plaintiff to relief even absent review of or reliance on the labels by Plaintiff and is a strict liability claim.

7. The label on the ConAgra Products – aside from being unlawful under Arkansas law – is also misleading, deceptive, unfair and fraudulent. The use of the terms “100% Natural” and “free of artificial ingredients and preservatives” is a deceptive representation that hides from the consumer that the product contains artificial ingredients and preservatives. Plaintiff reviewed the

label on the Purchased Products and reasonably relied in substantial part on the label, and was thereby deceived, in deciding to purchase this product. Plaintiff did not know the ConAgra Products were not 100% Natural and not free of artificial ingredients and preservatives. The very fact that Defendant sold such illegal ConAgra Products and did not disclose this fact to consumers is a deceptive act in and of itself. Plaintiff would not have purchased a product that is illegal to own or possess. Had Defendant informed Plaintiff of this fact, Plaintiff would not have purchased the ConAgra Products. Plaintiff relied upon ConAgra's implied representation that Defendant's product was legal that arose from Defendant's material omission of the fact that its products were in fact, actually illegal to sell and/or possess.

8. Plaintiff did not know, and had no reason to know, that Defendant's products were misbranded under Arkansas law and that the products bore false food labeling claims, despite failing to meet the requirements to make those food labeling claims. Similarly, Plaintiff did not know, and had no reason to know, that Defendant's products were false and misleading.

9. Arkansas laws require truthful, accurate information on the labels of packaged foods. The law is clear: misbranded food cannot legally be sold, possessed, has no economic value and is legally worthless. Purchasers of misbranded food are entitled to a refund of their purchase price.

10. Arkansas laws regulate the content of labels on packaged food. Under Arkansas law, food is "misbranded" if "its labeling is false or misleading in any particular," or if it does not contain certain information on its label or its labeling. A.C.A. § 20-56-209.

11. Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, the entire food is misbranded, and no other statement in the labeling cures a misleading statement.

12. Under Arkansas law, a food product that is "misbranded" cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless. Plaintiff and members of the Class

who purchased these products paid an unwarranted premium for these products.

13. If ConAgra is going to make a claim on a food label, the label must meet certain legal requirements that help consumers make informed choices and ensure that they are not misled and that label claims are truthful, accurate, and backed by scientific evidence. These laws recognize that reasonable consumers are likely to choose products claiming to have a health or nutritional benefit over otherwise similar food products that do not claim such benefits.

14. As described more fully below, Defendant has sold products that are misbranded and are worthless because (i) the labels violate Arkansas law and, separately, (ii) Defendant made, and continues to make, false, misleading and deceptive claims on its labels.

15. Under Arkansas law, Defendant's food labeling practices are both (i) unlawful; and (ii) deceptive and misleading to consumers because their warranties and representations as to the content of the products falsely conceal that the product contains unnatural ingredients.

BACKGROUND

16. ConAgra's products, with their distinctive packaging, are available at most major supermarket chains throughout Arkansas.

17. ConAgra uses the term "100% Natural" to make its products appear healthier than competitor's products that do not claim to be "100% Natural." This illegal label is used to increase sales and to charge a premium by making the product seem healthier than it is in reality.

18. ConAgra uses the term "free of artificial ingredients and preservatives" to make its products appear healthier than competitor's products that do not claim to be free of artificial ingredients or preservatives." This illegal label is used to increase sales and to charge a premium by making the product seem healthier than it is in reality.

19. Plaintiff read and relied upon this misleading and deceptive language, "100% Natural" and "free of artificial ingredients and preservatives" when making his decision to purchase the ConAgra Products. If not for this misrepresentation, Plaintiff would not have purchased the

ConAgra Products. Plaintiff therefore suffered injury as Plaintiff lost money buying ConAgra's deceptively labeled food product when Plaintiff could have chosen to purchase alternative products that did not artificial ingredients and preservatives, or a product that was truly "100% Natural," or to refrain from buying the product at all. Plaintiff specifically relied on the products' ingredient labeling when Plaintiff made the decision to purchase the products listed above and attached hereto collectively as Exhibit "1." This product was a mislabeled food product and, as a result, Plaintiff suffered injury.

20. Exemplar labels of the products purchased by Plaintiff are provided in Exhibit "1." This exhibit is true, correct and accurate photographs of ConAgra's "100% Natural" and "free of artificial ingredients and preservatives" package label.

21. At all times during the Class Period, the above listed ConAgra Products were represented to be "100% Natural" and "free of artificial ingredients and preservatives."

22. ConAgra's representations that the ConAgra Products are "100% Natural" are false. The ConAgra Products contains artificial ingredients and are therefore, not "100% Natural."

23. ConAgra's representations that the ConAgra Products are "free of artificial ingredients and preservative" are false. The ConAgra Products contain artificial ingredients and preservative and are therefore, not free of artificial ingredients and preservatives.

24. If a manufacturer makes a claim on a food label, the label must meet certain legal requirements that help consumers make informed choices and ensure that they are not misled. As described more fully below, Defendant has made, and continues to make, unlawful as well as false and deceptive claims in violation of Arkansas laws that govern the types of representations that can be made on food labels. These laws recognize that reasonable consumers are likely to choose products claiming to be natural or to have a health or nutritional benefit over otherwise similar food products that do not claim such properties or benefits or that discloses certain ingredients. More importantly, these laws recognize that the failure to disclose the presence of risk-increasing nutrients

is deceptive because it conveys to consumers the impression that a food makes only positive contributions to a diet, or does not contain any nutrients at levels that raise the risk of diet-related diseases or health-related conditions.

25. Defendant has made, and continues to make, false and deceptive claims on its Misbranded Food Products by representing that the product contains “100% Natural” ingredients, when they do not.

26. Defendant has made, and continues to make, false and deceptive claims on its Misbranded Food Products in violation of Arkansas laws by representing its Misbranded Food Products to be “free of artificial ingredients and preservatives” when they are not.

27. Defendant’s violations of law include the illegal advertising, marketing, distribution, delivery and sale of Defendant’s Misbranded Food Products to consumers in Arkansas.

28. Consumers have paid a premium price for the Misbranded Food Products that they have been misled into believing contain “100% Natural” ingredients and are “free of artificial ingredients and preservatives.”

29. Plaintiff read the labels on Defendant’s Misbranded Food Products, including the “100% Natural” claims and the “free of artificial ingredients and preservatives” claims.

30. Plaintiff reasonably relied on Defendant’s package labeling, including the “100% Natural” claims and the “free of artificial ingredients and preservatives claims.”

31. After Plaintiff learned that Defendant’s Misbranded Food Products were falsely labeled, he stopped purchasing them.

PARTIES

32. Plaintiff, Jared Gabriele, is a resident of Bella Vista, Benton County, Arkansas who purchased the ConAgra Misbranded Food Products during the five (5) years prior to the filing of this Complaint (the “Class Period”).

33. ConAgra Foods, Inc. is a Delaware corporation doing business in the State of

Arkansas.

34. Defendant is a leading producer of retail food products, including the product described herein. Defendant sells its Misbranded Food Products to consumers through grocery and other retail stores throughout Arkansas.

JURISDICTION AND VENUE

35. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d) because this is a class action in which: (1) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs; (2) a member of the class of plaintiffs is a citizen of a State different from a defendant; and (3) the number of members of the Class in the aggregate is greater than 100.

36. The Court has personal jurisdiction over Defendant because the wrongdoing alleged herein occurred in Arkansas. Defendant also has sufficient minimum contacts with Arkansas and have otherwise intentionally availed themselves of the markets in Arkansas through the promotion, marketing, and sale of products sufficient to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

37. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (3) because a substantial part of the events or omissions giving rise to these claims occurred in this District, a substantial part of the property that is the subject of this action is situated in this District, and Defendant is subject to the Court's personal jurisdiction with respect to this action.

FACTUAL ALLEGATIONS

A. Identical Arkansas Laws Regulate Food Labeling

38. Food manufacturers are required to comply with state laws and regulations that govern the labeling of food products. First and foremost among these is the A.C.A. § 20-56-201, *et seq.*

39. Arkansas law provides in relevant part that food shall be deemed misbranded "[i]f its

labeling is false or misleading in any particular." Arkansas also discourages the misbranding of food through the availability of remedies pursuant to the state's consumer protection laws. Therefore, any labeling violation of A.C.A. § 20-56-201, *et seq*, is also a violation of Arkansas common law and the Arkansas Deceptive Trade Practices Act.

B. Defendant's Use of "100% NATURAL" is Unlawful

40. The term "natural" adds a premium to food products and makes them appear fresher, minimally processed and safer. Seeking to profit from consumers' desire for natural food products and recognizing that the labeling of products as "all natural" or "100% natural" implicitly conveys to consumers that the products carry health benefits important to consumers, ConAgra has falsely represented its Hunt's canned tomato products as all natural when that is not true. On the principal display panel of its product labels, ConAgra claims that such products are "100% Natural" despite the fact that they contain a host of artificial and synthetic ingredients which have undergone substantial processing and which include various artificial chemical preservatives and coloring agents and other chemicals that have been classified by regulators as being synthetic and artificial and which have been held to preclude the labeling of the very types of products at issue here as being "natural."

41. Consumers reasonably expect that products carrying a "100% natural" claim must not contain any artificial flavoring, color ingredients, chemical preservatives, or artificial or synthetic ingredients, and be only minimally processed by a process that does not fundamentally alter the raw product. Consumers expect food labeled "100% Natural" to be free of artificial preservatives, coloring agents and other chemicals that were present in Defendant's purportedly "100% Natural" products.

I. ConAgra Falsely Labels Its Hunt's Canned Tomato Products as "100% Natural."

42. Defendant has unlawfully labeled a number of its products as being "100% Natural"

when they actually contain artificial ingredients and/or chemical preservatives. These include Defendant's canned tomato products.

43. Defendant includes the phrase "100% Natural" at the top of the principal display panel on the product labels of its Hunt's brand canned tomato products, despite the fact that Defendant's canned tomato products contain the ingredients citric acid and/or calcium chloride.

44. The back panel of ConAgra's product labels for its Hunt's canned tomato products lists citric acid as an ingredient, and sometimes also lists calcium chloride. The product label for Hunt's Diced Tomatoes lists both citric acid and calcium chloride but not in a way that would cause a consumer to doubt the "100% Natural" claim as Defendant unlawfully fails to indicate these ingredients are being used as chemical preservatives or firming agents. The product label for Hunt's Tomato Paste lists citric acid but not in a way that would cause a consumer to doubt the "100% Natural" claim as Defendant unlawfully fails to indicate this ingredient is being used as a chemical preservative firming agent.

45. Citric acid and calcium chloride are food additives which are chemicals that help preserve texture and flavor the food. Specifically, calcium chloride is used as a food preservative and is used as a firming agent for canned tomato products.

46. According to applicable laws and regulations, citric acid may only be used for acidification purposes while calcium chloride may only be used as a firming agent. These uses are both artificial and form a chemical preservation, thus rendering the "100% Natural" label statement false and misleading, which results in the Hunt's canned tomato products being misbranded under Arkansas law.

47. The addition of calcium chloride and citric acid to these products preclude use of the term "natural" to describe this product.

48. The term "natural" means that nothing artificial or synthetic has been included in, or has been added to, a food that would normally be expected to be in the food.

49. Defendant's claims of "100% Natural" on its tomato products are false and misleading and the tomato products are misbranded under Arkansas law. Misbranded products cannot be legally sold or held and are legally worthless.

50. Plaintiff purchased Hunt's canned tomato products in reliance on Defendant's false representations that the products were "100% Natural." Had Plaintiff known this representation was false, he would not have bought the products or paid a premium for them. Plaintiff had other alternatives that lacked such ingredients and Plaintiff also had cheaper alternatives.

C. **Defendant Violates Arkansas Law by Making Unlawful and False Claims that its Misbranded Food Products are "Free of Artificial Ingredients and Preservatives" and by Failing to Disclose on its Misbranded Food Products' Labels the Presence of Preservatives in those Products as Required by Arkansas Law**

51. Defendant's Misbranded Food Products were misbranded because they contained chemical preservatives but failed to disclose that fact.

52. For example, while Defendant's Hunt's brand "100% Natural" canned tomato products, such as the diced tomatoes and tomato paste, purchased by Plaintiff, contain citric acid, which is used in those products as an acidulant, which is a type of chemical preservative designed to retard spoilage in canned vegetables, their labels fail to disclose the fact that the citric acid is being used as a preservative in those products by including a parenthetical such as (preservative) or (to retard spoilage) after the term citric acid in the ingredient statement. Because Defendant unlawfully fails to indicate these ingredients are being used as chemical preservatives or firming agents a reasonable consumer would have no reason to doubt the preservative free claim.

53. Similarly, while a number of Defendant's Hunt's Brand "100% Natural" canned tomato products, such as the diced tomatoes purchased by Plaintiffs, contain calcium chloride, which is used in those products as a firming agent, which is a type of chemical preservative designed to prevent canned vegetables from becoming soft and mushy, their labels fail to disclose the fact that the calcium chloride is being used as a preservative in those products by including a parenthetical

such as (firming agent) after the term calcium chloride in the ingredient statement.

54. A reasonable consumer would expect that when the Defendant made a representation on its products' labels that such products were "free of artificial ingredients & preservatives" that such a representation was true. A reasonable consumer would also expect that when Defendant lists its products' ingredients that it would make all disclosures required by law, such as the disclosure of chemical preservatives and coloring mandated by Arkansas law.

55. Plaintiff saw Defendant's label representations that its products were "free of artificial ingredients & preservative" and relied on them in the reasonable expectation that such a representation was true. Plaintiff based his purchasing decisions in part on the belief that these products did not contain chemical preservatives or artificial ingredients.

56. Plaintiff did not know, and had no reason to know, that Defendant's Misbranded Food Products contained undisclosed chemical preservatives and other artificial ingredients because (1) the Defendant falsely represented on its label that the products were "free of artificial ingredients & preservatives;" and (2) failed to disclose those chemical preservatives and artificial ingredients as required by Arkansas law.

57. Consumers are thus misled into purchasing Defendant's products with false and misleading labeling statements and ingredient descriptions.

58. Had Plaintiff been aware that the Misbranded Food Products he purchased contained chemical preservatives and artificial ingredients, he would not have purchased the products. Plaintiff had other alternatives that lacked such ingredients and Plaintiff also had cheaper alternatives.

59. Because of their false label representations and omissions about chemical preservatives and artificial ingredients, Defendant's Misbranded Food Products are misbranded under Arkansas law. Misbranded products cannot be legally sold and are legally worthless. Plaintiff and Members of the Class who purchased these products paid an unwarranted premium for these

products.

D. Defendant has Knowingly Violated Arkansas Laws

60. Defendant has violated A.C.A. § 20-56-209 by, inter alia, failing to reveal material facts on the label of Defendant's Misbrand Food Product.

61. Defendant has violated Arkansas A.C.A. § 20-56-209 because Defendant's Misbranded Food Products are fabricated from two (2) or more ingredients, but fail to utilize the common or usual name of each ingredient on their labeling.

62. Defendant has violated Arkansas A.C.A. § 20-56-209 because words, statements, or other information required pursuant to Arkansas's food labeling laws to appear on the label or labeling are not prominently placed upon the label or labeling with conspicuousness, as compared with other words, statements, designs, or devices in the labeling and in terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

63. Defendant has violated Arkansas A.C.A. § 20-56-209 because, for all the reasons set forth herein, Defendant's Misbranded Food Products labeling is false and misleading in one or more ways. Among other things, the labeling is false and misleading because it: (1) falsely represents that the ConAgra Products are "100% Natural," when they are not; and (2) falsely represents that the ConAgra Products are "free of artificial ingredients & preservatives," when they are not.

64. Defendant has violated Arkansas A.C.A. § 20-56-215 which make it unlawful to manufacture, sell, deliver, hold, or offer to sell any misbranded food.

65. Defendant has violated Arkansas A.C.A. § 20-56-214 and § 20-56-215 which make it unlawful to falsely or misleadingly advertise food or food.

66. Defendant has a duty to disclose the true nature of the contents of Defendant's Misbranded Food Products and failed to abide by that duty.

67. Significantly, the food labeling laws of Arkansas, Defendant's violations of the food labeling laws of Arkansas (including all of the aforementioned provisions) are strict liability crimes

for which no showing of intent to deceive or defraud is required.

68. Under the food labeling laws of Arkansas, it is a strict liability crime to, inter alia, manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.

69. By manufacturing and selling misbranded products, Defendant has committed a predicate unlawful act, regardless of any misrepresentation or reliance thereon.

70. Because Defendant's Misbranded Food Products are misbranded and illegal they have a value of zero. Plaintiff and other consumers were injured when paying money for a worthless product.

E. Plaintiff Purchased Defendant's Misbranded Food Product

71. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy diet.

72. Plaintiff read and reasonably relied on the labels on Defendant's Purchased Products before purchasing it as described herein. Plaintiff relied on Defendant's labeling as described herein and based and justified the decision to purchase Defendant's product, in substantial part, on the label.

73. At point of sale, Plaintiff did not know, and had no reason to know, that the Purchased Products was unlawful and misbranded as set forth herein, and would not have bought the product had Plaintiff known the truth about it, *i.e.*, that the product was illegal to purchase and possess.

74. After Plaintiff learned that Defendant's Purchased Products was falsely labeled, Plaintiff stopped purchasing them.

75. As a result of Defendant's unlawful misrepresentations, Plaintiff and thousands of others in Arkansas purchased the Purchased Product.

76. Defendant's labeling as alleged herein is false and misleading and was designed to increase sales of the product at issue. Defendant's misrepresentations are part of its systematic

labeling practice and a reasonable person would attach importance to Defendant's misrepresentations in determining whether to purchase the product at issue.

77. A reasonable person would also attach importance to whether Defendant's product is "misbranded," i.e., legally salable, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the product at issue. Plaintiff would not have purchased Defendant's product had Plaintiff known it was not capable of being legally sold or held.

78. Plaintiff's purchases of the Purchased Products damaged Plaintiff because misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless.

Plaintiff Jared Gabriele

79. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy diet. During the class period, Plaintiff read the labels on Defendant's Misbranded Food Products before purchasing the product. Based on those representations, Plaintiff purchased the ConAgra Products at grocery stores and third-party retailers in and around Fayetteville, Arkansas. At point of sale, Plaintiff did not know, and had no reason to know, that Defendant's claims on its label were unlawful and unauthorized as set forth herein. Had Plaintiff known Defendant's products that Plaintiff purchased were not "100% Natural" and were not "free of artificial ingredients & preservatives," Plaintiff would not have purchased the products. As a result, Plaintiff suffered injury-in-fact and lost money.

80. Plaintiff was deceived because the ConAgra Products were not "100% Natural."

81. Plaintiff was deceived because the ConAgra Products were not "free of artificial ingredients & preservatives."

82. Defendant's labeling, advertising and marketing as alleged herein are false and misleading and were designed to increase sales of the products at issue. Defendant's

misrepresentations and material omissions are part of an extensive labeling, advertising and marketing campaign, and a reasonable person would attach importance to Defendant's misrepresentations and material omissions in determining whether to purchase the products at issue.

83. A reasonable person would also attach importance to whether Defendant's product was legal for sale, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the product at issue. Plaintiff would not have purchased Defendant's Misbranded Food Products had Plaintiff known they were not capable of being legally sold or held.

CLASS ACTION ALLEGATIONS

84. Plaintiff brings this action as a class action pursuant to the Arkansas Rule of Procedure 23 on behalf of the following class:

All persons who purchased ConAgra Hunt's Diced Tomatoes, Hunt's Crushed Tomatoes, Hunt's Stewed Tomatoes, Hunt's Whole Tomatoes, Hunt's Tomato Paste, Hunt's Tomato Puree and Hunt's Tomato Sauce, including variations of each, in Arkansas, since June 18, 2009 (the "Class").

85. The following persons are expressly excluded from each Class: (1) Defendant and its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its staff.

86. This action can be maintained as a class action because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

87. Numerosity: Based upon Defendant's publicly available sales data with respect to the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that joinder of all Class members is impracticable.

88. Common Questions Predominate: This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include:

- a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by failing to properly package and label its food products it sold to consumers;
- b. Whether the food product at issue was misbranded as a matter of law;
- c. Whether Defendant made unlawful and misleading ingredient representations and warranties with respect to its food products sold to consumers;
- d. Whether Defendant violated the Arkansas Food, Drug and Cosmetic Act (A.C.A. § 20-56-201, *et. seq.*);
- e. Whether Defendant violated the Arkansas Deceptive Trade Practices Act (A.C.A. § 4-88-101, *et. seq.*);
- f. Whether Defendant breached its implied warranty of merchantability;
- g. Whether Defendant breached its express warranties;
- h. Whether Defendant was negligent in its labeling and advertising of the ConAgra Product;
- i. Whether Defendant unlawfully sold the misbranded product in violation of the labeling laws of Arkansas;
- j. Whether Defendant's unlawful, unfair and deceptive practices harmed Plaintiff and the Class;
- k. Whether Plaintiff and the Class have been damaged by the unlawful actions of the Defendant and the amount of damages to the Class; and
- l. Whether Defendant were unjustly enriched by their deceptive practices.

89. Typicality: Plaintiff's claims are typical of the claims of the members of each Class because Plaintiff bought Defendant's Misbranded Food Products during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and each Class sustained similar injuries arising out of Defendant's conduct in violation of Arkansas law. The injuries of each member of each Class were caused directly by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members of each class and represents a common thread of misconduct resulting in injury to all members of each Class. Plaintiff' claims arise from the same practices and course of conduct that give rise to the claims of each member of the Class and are based on the same legal theories.

90. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiff has retained competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the members of the class and will diligently discharge those duties by seeking the maximum possible recovery for the Class.

91. Superiority: There is no plain, speedy or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of each Class member's rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

92. Predominance: The prerequisites to maintaining a class action pursuant to ARK. R. CIV. P. 23 are met as questions of law or fact common to each class member predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

93. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

CAUSES OF ACTION

FIRST CAUSE OF ACTION (Violation of A.C.A. § 4-88-101 et seq.)

94. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

95. Defendant's conduct constitutes unlawful deceptive and unconscionable trade practices. Defendant's conduct was consumer-oriented and this conduct had broad impact on consumers at large. Defendant engaged in false, misleading and unlawful advertising, marketing and labeling of Defendant's Misbranded Food Products. Defendant's manufacturing, distribution and sale of Defendant's Misbranded Food Products were similarly unlawful.

96. Defendant unlawfully sold Defendant's Misbranded Food Products in Arkansas during the Class Period.

97. As fully alleged above, by advertising, marketing, distributing and selling mislabeled and misbranded Defendant's Misbranded Food Products to Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas, Defendant engaged in, and continue to engage in, unlawful deceptive and unconscionable trade practices.

98. Defendant's misleading marketing, advertising, packaging and labeling of Defendant's Misbranded Food Products were likely to deceive reasonable consumers.

99. Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were deceived.

100. Defendant has engaged in unlawful deceptive and unconscionable trade practices.

101. Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were injured by Defendant's unlawful deceptive and unconscionable trade practices.

102. Defendant's fraud and deception caused Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas to purchase Defendant's Misbranded Food Products that they would otherwise not have purchased had Plaintiff known the true nature of these products.

103. Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were injured as a result of Defendant's unlawful deceptive and unconscionable trade practices.

104. In violation of the labeling laws of the state of Arkansas and A.C.A. §§ 4-88-107 and 4-88-108, Defendant sold to Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas, a product that was not capable of being sold legally, and which has no economic value. Defendant's violation of A.C.A. §§ 4-88-107 and 4-88-108 remains ongoing.

105. As a direct and proximate cause of Defendant violation of A.C.A. §§ 4-88-107 and 4-88-108, Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were injured when they paid for this illegal and worthless products. Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas have been damaged in an amount to be determined at trial.

106. As a result of Defendant's unlawful deceptive and unconscionable trade practices, Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas, pursuant to A.C.A. § 4-88-113 and A.C.A. §§ 4-88-107 and 4-88-108, are entitled to damages and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas any money paid for Defendant's Misbranded Food Products.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

107. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

108. As a result of Defendant's unlawful and deceptive actions described above, Defendant was enriched at the expense of Plaintiff and the Class through the payment of the purchase price for the Misbranded Food Product.

109. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that they received from the Plaintiff and the Class, in light of the fact that the Misbranded Food Products purchased by Plaintiff and the Class was an illegal product and was not what Defendant represented it to be. Thus, it would be unjust and inequitable for Defendant to retain the benefit without restitution to the Plaintiff and the Class for the monies paid to Defendant for the Misbranded Food Product.

THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)

110. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

111. Implied in the purchase of the Misbranded Food Products by Plaintiff and the Class is the warranty that the purchased products are legal and can be lawfully sold and possessed.

112. Defendant knowingly and intentionally misbranded their Misbranded Food Product.

113. Defendant knew those Misbranded Food Products was illegal.

114. When Defendant sold this product it impliedly warranted that the product was legal and could be lawfully possessed and/or sold and therefore, merchantable.

115. Plaintiff would not have knowingly purchased a product that was illegal to own or possess.

116. No reasonable consumer would knowingly purchase a product that is illegal to own or possess.

117. The purchased Misbranded Food Products was unfit for the ordinary purpose for

which Plaintiff and the Class purchased them.

118. In fact, this Misbranded Food Products was illegal, misbranded, and economically worthless.

119. As a result, Plaintiff and the Class were injured through their purchase of an unsuitable, useless, illegal and unsellable product.

120. By reason of the foregoing, Plaintiff and the Class were damaged in the amount they paid for Misbranded Food Product.

121. Notice of the Breach of Warranty has been provided to Defendant prior to the filing of this breach of warranty claim.

FOURTH CAUSE OF ACTION
(Breach of Express Warranty)

122. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

123. ConAgra falsely represented that the ConAgra Products were “100% Natural” and “free of artificial ingredients & preservatives” when, in fact, the products contained artificial ingredients and preservatives. The “100% Natural” and “free of artificial ingredients & preservatives” representations and warranties were false. The ConAgra Products was not “100% Natural” and were not “free of artificial ingredients & preservatives.”

124. Defendant’s representations of fact and/or promises on the labels relating to their Misbranded Food Products created express written warranties that the product would conform to Defendant’s representation of fact and/or promises.

125. The Defendant’s descriptions of their Misbranded Food Products became part of the bases of the bargains, creating express written warranties that the product purchased by Plaintiff and the other Class Members would conform to Defendant’s descriptions and specifications. The Misbranded Food Products purchased by Plaintiff did not so conform.

126. Defendant provided warranties that its Misbranded Food Products was labeled in

compliance with state law and were not misbranded under state law. Defendant breached these express written warranties.

127. As a result of the foregoing, Plaintiff and the other Class Members have suffered damages, in that the value of the product they purchased was less than warranted by Defendant.

128. Defendant engaged in a scheme of offering the Misbranded Food Products for sale to Plaintiff and members of the Class by way of, inter alia, false and misleading product packaging and labeling.

129. In furtherance of its plan and scheme, Defendant prepared and distributed within Arkansas via product packaging and labeling, statements that misleadingly and deceptively represented that the Misbranded Food Products were “100% Natural” and “free of artificial ingredients and preservatives.”

130. Plaintiff and the Class were the intended targets of such representations and warranties.

131. Plaintiff and the Class reasonably relied on Defendant’s representations and warranties.

132. Plaintiff asserts this cause of action for violations of Arkansas law pertaining to express warranties. Plaintiff and the Class were injured as a result of Defendant’s breach of their express warranties about the Misbranded Food Products. Plaintiff and the Class are entitled to damages arising from the breach of warranty.

133. Notice of the Breach of Warranty has been provided to Defendant prior to the filing of this breach of warranty claim.

FIFTH CAUSE OF ACTION
(Negligence)

134. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

135. In making representations of fact to Plaintiff and the other Class members about their

Misbranded Food Product, Defendant failed to lawfully label or advertise their Misbranded Food Products and violated their duties to disclose the material facts alleged above. Among the direct and proximate causes of said failure to disclose were the negligence and carelessness of Defendant.

136. Plaintiff and the other Class members, as a direct and proximate cause of Defendant's breaches of their duties, reasonably relied upon such representations to their detriment. By reason thereof, Plaintiff and the other Class members have suffered damages.

137. As described above, Defendant's actions violated a number of express statutory provisions designed to protect Plaintiff and the Class. Defendant's illegal actions constitute negligence per se. Moreover, the statutory food labeling and misbranding provisions violated by Defendant are strict liability provisions.

138. As alleged above, Plaintiff and the Class were injured by Defendant's unlawful actions and are entitled to recover an amount to be determined at trial due to the injuries and loss they suffered as a result of Defendant's negligence.

JURY DEMAND

Plaintiff hereby demands a trial by jury of his claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated persons, prays for judgment against Defendant as follows:

- A. For an order certifying this case as a class action and appointing Plaintiff and Plaintiff's counsel to represent the Class;
- B. For an order awarding, as appropriate, damages, restitution, or disgorgement to Plaintiff and the Class including all monetary relief to which Plaintiff and the Class are entitled; and
- C. For an order awarding pre-judgment and post-judgment interest.

Dated: June 18, 2014.

Respectfully submitted,



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