

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
CASE NO.: 14-80764-CIV-BLOOM

LUKASZ MONKA as an individual, and on  
behalf of all similarly situated,

Plaintiff,

vs.

JAG SPECIALTY FOODS, LLC, a New  
York limited liability company,

Defendant.

\_\_\_\_\_ /

**JOINT MOTION FOR ENTRY OF CONSENT FINAL JUDGMENT**

Plaintiff, LUKASZ MONKA (“MONKA”), individually, and Defendant, JAG SPECIALTY FOODS, LLC (“JAG”) (collectively, the “Parties”), through their respective undersigned counsel, hereby advise the Court that the parties entered into a Confidential Settlement Agreement, effective February 2, 2015, (the “Agreement”). Pursuant to the Parties’ Agreement, MONKA and JAG move this Court for the entry of a permanent injunction on the First Cause of Action of MONKA’s Class Action Complaint which alleges violation of Florida’s Unfair and Deceptive Trade Practices Act, and dismissal with prejudice of all other claims asserted, or claims that could have been asserted, in the Class Action Complaint, and state as follows:

1. On or about June 9, 2014, MONKA filed a Complaint in the United States District Court for the Southern District of Florida (“Action”). The Complaint alleged that JAG improperly labeled certain breadstick products as “all natural” and claimed that JAG’s conduct violated Florida’s Deceptive and Unfair Trade Practices Act (FDUTPA), constituted negligent

misrepresentation, breached an express warranty, violated the Magnuson-Moss Warranty Act, and for unjust enrichment.

2. The Complaint identified seven products at issue. The one product variety alleged to have been personally purchased by MONKA is the Angonoa's Sesame Breadsticks. (collectively the "Products").

3. The Complaint asserted that the Action would seek relief on behalf of a putative class of Florida residents. The alleged class period began June 2010.

4. There is no pending Motion to Certify Class and no class has been certified in the Action. Accordingly, this is not a class-wide settlement.

5. The Parties have conducted an investigation of the facts and have analyzed the relevant legal issues in regard to the claims that would be asserted against JAG in the Action and the potential defenses to such claims. MONKA and MONKA's Counsel believe that the claims have merit. JAG and its counsel believe that the claims are without merit and that it has complete defenses to them.

6. The Parties also have considered the uncertainties of further litigation (including motion practice, class certification, and trial), the benefits to be obtained under the Agreement, and the costs, risks, and delays associated with the prosecution of a potentially complex and time-consuming litigation and the likely appeals of any rulings in favor of MONKA or JAG.

7. The Parties participated in arm's-length negotiations and eventually reached this Agreement, which includes non-monetary and monetary terms, fully settling this Action.

8. Pursuant to the Agreement, JAG consents to the entry of a permanent injunction as follows:

JAG represents that it fully ceased production of the "All Natural" packaging as of February 2013, and denies that the packaging was misleading or was otherwise

in violation of any state or federal law or regulation. Notwithstanding JAG's representation and denial, to the extent that the packaging for the entire breadstick line has not already removed the "All Natural" language from the packaging, on or before sixty (60) calendar days after this Agreement's effective date, JAG agrees to no longer market, advertise, or label the Products identified in Monka Complaint as "all natural," and to no longer sell to distributors or retailers any of the Products if the packaging for the Products bears the label "all natural." However, this stipulated injunctive relief does not prevent JAG from resuming distribution of the Product's containing the "all natural" statement in the future should the statement, in JAG's opinion become true, accurate, and not misleading, in that they no longer contain unnatural, artificial, and synthetic ingredients, including those derived from GMO's. If JAG chooses to resume distribution of the Products containing the "all natural" language 60 days after the execution of this agreement, JAG shall provide Monka's Counsel with copies of any scientific evidence, documentation and/or third party verification it is relying upon at that time showing that the Product does not the contested ingredients. This injunction does not require JAG to control or attempt to control what third parties do with marketing, advertising, or packaging materials, and does not require JAG to recall packaging with the "All Natural" language placed in the chain of commerce in 2012 and 2013.

9. As consideration for entry of the consent permanent injunction on the First Cause of Action and satisfaction of the monetary terms, MONKA, individually, agrees to the dismissal with prejudice of all remaining claims asserted, or that could have been asserted, in the Class Action Complaint.

WHEREFORE, Plaintiff MONKA and Defendant JAG jointly request that this Honorable Court enter Consent Final Judgment of Permanent Injunction and dismissal with prejudice of all other claims in the form attached hereto, and grant such further and other relief as the Court deems just and proper.

DATED: February 5, 2015

Respectfully submitted,

By: /s/ Joshua H. Eggnatz  
Joshua H. Eggnatz, Esq.  
Fla. Bar No.: 0067926  
Michael J. Pascucci, Esq.  
Fla. Bar No.: 0083397

By: /s/ Keith R. Gaudio  
Keith R. Gaudio  
Fla. Bar No.: 0034436  
KEITH R GAUDIOSO, P.A.  
The Ingraham Building, 8<sup>th</sup> Floor

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THE EGGNATZ LAW FIRM, P.A.  
5400 S. University Dr., Ste. 413  
Davie, Florida 33328  
Tel: (954) 889-3359  
Fax: (954) 889-5913  
E-Mail address: [jeggnatz@eggnatzlaw.com](mailto:jeggnatz@eggnatzlaw.com)  
Attorney for Plaintiff  
LUKASZ MONKA

25 Southeast Second Avenue  
Miami, Florida 33131  
Tel: (305) 755-5322  
Fax: (305) 351-8781  
E-Mail address: [kgaudioso@me.com](mailto:kgaudioso@me.com)

Attorney for Defendant  
JAG SPECIALTY FOODS, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5<sup>th</sup> day of February, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notice of Electronic Filing generated by CM/ECF to: Joshua Eggnatz, Esq. and Michael J. Pascucci, Esq. – The Eggnatz Law Firm, P.A., 5400 S. University Drive, Suite 413, Davie, Florida 33328; and Howard W. Rubinstein, Esq. – The Law Offices of Howard W. Rubinstein, P.A., 1615 Forum Place, Suite 4C, West Palm Beach, Florida 33401.

/s/ Keith R. Gaudioso  
Keith R Gaudioso (Fla. Bar No.: 0034436)

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**CONSENT FINAL JUDGMENT OF PERMANENT INJUNCTION**

This matter is before the Court on the Parties' Joint Motion for Entry of Consent Final Judgment. The Court has been advised that the parties have reached a private party settlement of this action, and the Court having reviewed the pleadings, motions and documents of record, finds that:

- A. There is no pending Motion to Certify Class and no class has been certified in the Action;
- B. Pursuant to the Parties' settlement, Defendant consents to the entry of permanent injunctive relief inuring to the benefit of the individual named Plaintiff; and
- C. The Parties negotiated in good faith and reached an arm's-length compromise of the claims alleged in Plaintiff's Class Action Complaint.

Accordingly, it is hereby

ORDERED AND ADJUDGED that:

- 1. Defendant JAG SPECIALTY FOODS, LLC is hereby permanently enjoined as follows:

JAG represents that it fully ceased production of the "All Natural" packaging as of February 2013, and denies that the packaging was misleading or was otherwise

in violation of any state or federal law or regulation. Notwithstanding JAG's representation and denial, to the extent that the packaging for the entire breadstick line has not already removed the "All Natural" language from the packaging, on or before sixty (60) calendar days after this Agreement's effective date, JAG agrees to no longer market, advertise, or label the Products identified in Monka Complaint as "all natural," and to no longer sell to distributors or retailers any of the Products if the packaging for the Products bears the label "all natural." However, this stipulated injunctive relief does not prevent JAG from resuming distribution of the Product's containing the "all natural" statement in the future should the statement, in JAG's opinion become true, accurate, and not misleading, in that they no longer contain unnatural, artificial, and synthetic ingredients, including those derived from GMO's. If JAG chooses to resume distribution of the Products containing the "all natural" language 60 days after the execution of this agreement, JAG shall provide Monka's Counsel with copies of any scientific evidence, documentation and/or third party verification it is relying upon at that time showing that the Product does not the contested ingredients. This injunction does not require JAG to control or attempt to control what third parties do with marketing, advertising, or packaging materials, and does not require JAG to recall packaging with the "All Natural" language placed in the chain of commerce in 2012 and 2013..

2. All remaining claims in the Class Action Complaint, and all claims that could have been asserted therein, are hereby dismissed with prejudice.

3. The Parties shall each bear their own attorneys' fees and costs.

4. The Court reserves jurisdiction to enforce the Parties' Confidential Settlement Agreement dated February 2, 2015.

DONE AND ORDERED at West Palm Beach, Florida, this \_\_\_\_\_ day of February 2015.

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BETH BLOOM  
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record