

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION**

Brenna Center, individually and on behalf of all
others similarly situated,

Plaintiff,

-against-

OCEAN SPRAY CRANBERRIES, INC.

Defendant.

CLASS ACTION COMPLAINT

Case No.

CV14-929-7

JURY TRIAL DEMANDED

FILED FOR RECORD
2014 MAY 22 PM 4:25
WASHINGTON CO.
CIRCUIT CLERK
K. SYLVESTER

Plaintiff, Brenna Center, ("Brenna Center" or "Plaintiff"), brings this lawsuit against Defendant Ocean Spray Cranberries, Inc, ("Ocean Spray" 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 herself and a statewide class of Arkansas consumers who purchased Ocean Spray 100% Cranberry juice labeled as "NO SUGAR ADDED." This product is referred to herein as the "Misbranded Food Product" and/or the "Ocean Spray Product."

DEFINITIONS

1. "Class Period" is May 22, 2009 to the present.
2. The "Misbranded Food Product" and/or "Ocean Spray Product" is the Ocean Spray 100% Cranberry juice labeled as "NO SUGAR ADDED," sold during the Class Period.

SUMMARY OF THE CASE

3. Defendant packaged and labeled the Ocean Spray Product in violation of Arkansas law. The violation rendered the Ocean Spray Product "misbranded." Under Arkansas law, a food product that is misbranded cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold or possessed, have no economic value, and are legally worthless.

EXHIBIT

1

4. The labels on the Ocean Spray Product – aside from being unlawful under Arkansas law – are also misleading, deceptive, unfair and fraudulent. Plaintiff reviewed the labels on the respective Ocean Spray Product that she purchased, reasonably relied in substantial part on the labels, and was thereby deceived, in deciding to purchase the Ocean Spray Product. The very fact that Defendant sold the illegal Ocean Spray Product 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 Ocean Spray Product. Plaintiff relied upon the Defendant's implied representation that Defendant's products were legal that arose from Defendant's material omission of the facts that its products were in fact, actually illegal to sell or possess.

5. Plaintiff did not know, and had no reason to know, that Defendant's Ocean Spray Product was misbranded under Arkansas law and that the product bore misleading food labeling claims, despite failing to meet the requirements to make those food labeling claims. Plaintiff did not know, and had no reason to know, that Defendant's product labels were false and misleading.

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

7. 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. § 20-56-206.

8. Misbranding reaches not only false and untruthful claims, but also those claims that are misleading.

9. If manufacturers, like Defendant, are going to make a claim on a food label, the

label must meet certain legal requirements that are designed to help consumers make informed choices and ensure that they are not misled and that label claims are truthful, accurate, and backed by scientific evidence. As described more fully below, Defendant has sold the Ocean Spray Product that is misbranded and is worthless because (i) the label violates Arkansas law and, separately, (ii) Defendant made, and continues to make, false, misleading and deceptive claims on its labels.

10. Plaintiff brings this action under Arkansas law, to correct Defendant's food labeling practices which are both (i) unlawful and (ii) deceptive and misleading to consumers.

PARTIES

11. Plaintiff, Brenna Center, is a resident of Prairie Grove, Washington County, Arkansas, who purchased the Ocean Spray Product during the five (5) years prior to the filing of this Complaint (the "Class Period").

12. Defendant Ocean Spray Cranberries, Inc. is a Delaware corporation doing business in the State of Arkansas and throughout the United States of America. Ocean Spray's principal place of business is in Lakeville-Middleboro, Massachusetts.

13. Defendant sells its food products to consumers through grocery and other retail stores throughout Arkansas.

JURISDICTION AND VENUE

14. This Court has jurisdiction pursuant to Ark. Const., Amend. 80, § 6, and A.C.A. § 16-13-201(a). This Court also has jurisdiction pursuant to Rule 23 of the Arkansas Rules of Civil Procedure.

15. This Court has personal jurisdiction over Defendant, Ocean Spray, pursuant to A.C.A. § 16-4-101. At all times material to this action, Defendant was conducting business in the State of Arkansas. The Plaintiff purchased product sold and manufactured by the Defendant in

the State of Arkansas and part of the transactions which give rise to this action took place in Washington County, Arkansas.

16. Venue is proper in this judicial district pursuant to A.C.A. § 16-55-213, *et al*, on the grounds that Defendant's misconduct occurred, in part, in Washington County.

17. The named Plaintiff and the Class Members assert no federal question. The state law causes of action asserted herein are not federally pre-empted.

18. The named Plaintiff and the Class Members assert that the aggregate amount in controversy will not exceed the sum or value of \$4,999,999.00, including compensatory damages, and restitution. The aggregate amount in controversy of the Class Members' claims does not and will not exceed \$4,999,999.00, excluding interest. No Class Member has a claim which exceeds \$74,999.00, including compensatory damages, and restitution.

FACTUAL ALLEGATIONS

A. Defendant's Food Products are Misbranded with an Unlawful "NO SUGAR ADDED" Nutrient Content Claim

19. Ocean Spray produces a variety of products, including Ocean Spray 100% Cranberry juice.

20. Defendant's products are illegally misbranded because its labeling contains the unauthorized statement "NO SUGAR ADDED."

21. Regulations adopted under Arkansas law provide specific requirements for nutrient content claims that regulate "NO SUGAR ADDED" claims as a particular type of nutrient content claim.

22. Defendant claims that the Ocean Spray Product has "NO SUGAR ADDED." See, pictures of the Ocean Spray Product label, attached as Exhibit "1." The label of Defendant's Ocean Spray Product prominently states "NO SUGAR ADDED" on the front of the label.

23. Applicable regulations adopted under Arkansas law provide in pertinent part:

(2) The terms “no added sugar,” “without added sugar,” or “*no sugar added*” may be used only if:

(i) No amount of sugars or any other ingredient that contains sugars that functionally substitute for added sugars is added during processing or packaging; and

(ii) The product does not contain an ingredient containing added sugars such as jam, jelly, or *concentrated fruit juice*; and

(iii) The sugar content has not been increased above the amount present in the ingredients by some means such as the use of enzymes, except where the intended functional effect of the process is not to increase the sugars content of a food, and a functionally insignificant increase in sugars results; and

(iv) The food that it resembles and for which it substitutes normally contains added sugars; and

(v) *The product bears a statement that the food is not “low calorie” or “calorie reduced” (unless the food meets the requirements for a “low” or “reduced calorie” food) and that directs consumers’ attention to the nutrition panel for further information on sugar and calorie content.*

24. The Ocean Spray Product contains an ingredient containing added sugar, i.e. concentrated fruit juice. The Ocean Spray Product specifically contains grape juice, apple juice and pear juice, all containing added sugar. Defendant’s Ocean Spray Product does not satisfy the regulatory requirements for the use of the term “No Added Sugar” and is therefore misbranded under Arkansas law.

25. Notwithstanding the fact that Arkansas law bars the use of the term “No Added Sugar” on products containing an ingredient containing added sugars such as concentrated fruit juice, Defendants has touted its Ocean Spray Product as having “NO SUGAR ADDED” despite the addition of concentrated fruit juice containing added sugar.

26. Defendant is in violation of Arkansas law despite numerous enforcement actions and warning letters pertaining to several other companies addressing the type of misleading sugar-related nutrient content claims described herein.

27. Plaintiff did not know, and had no reason to know, that Defendant’s Ocean Spray

Product was misbranded.

28. Because of these improper "NO SUGAR ADDED" claims, Plaintiff purchased these products and paid a premium for them. The nutrient content claims regulations discussed herein are intended to ensure that consumers are not misled as to the actual or relative levels of nutrients in food products. Defendant has violated these referenced regulations.

29. The misrepresentation of "NO SUGAR ADDED" would be considered by a reasonable consumer when deciding to purchase Defendant's Ocean Spray Product. Defendant's utilization of unlawful "NO SUGAR ADDED" claims renders the labels of the Ocean Spray Product false and misleading. The failure to comply with the labeling requirements renders Defendant's Ocean Spray Product misbranded as a matter of Arkansas law. Misbranded products cannot be legally sold or possessed and are therefore, legally worthless.

30. Plaintiff read the "NO SUGAR ADDED" content claims on the Defendant's Ocean Spray Product and relied on the "NO SUGAR ADDED" content claims when making her purchase decisions. Plaintiff was misled because she erroneously believed the Defendant's misrepresentations that the Ocean Spray Product she was purchasing had no added sugar and the Ocean Spray Product met the minimum nutritional thresholds to make such claim. Plaintiff would not have purchased the Ocean Spray Product had she known that the Ocean Spray Product did not in fact qualify for the nutritional claims being made and failed to meet the minimum nutritional thresholds to make such claims.

31. Plaintiff was misled, by Defendant's unlawful labeling practices and actions, into purchasing the Ocean Spray Product that she would not have otherwise purchased had she known the truth about the Ocean Spray Product.

32. An exemplar label of the Ocean Spray Product is provided in Exhibit "1." This exhibit contains true, correct and accurate photographs of the Ocean Spray label. At all times

during the Class Period, the above listed Ocean Spray Product contained an unlawful "NO SUGAR ADDED" content claim.

B. Defendant has Knowingly Violated Arkansas Laws

33. Defendant has violated the Arkansas Food, Drug and Cosmetic Act (§ 20-56-201, *et. seq.*), which makes it unlawful to disseminate false or misleading food advertisements or statements on products and product packaging, labeling or any other medium used to directly or indirectly induce the purchase of a food product.

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

35. Defendant's Misbranded Food Product is misbranded under Arkansas law because its labels falsely represent "NO SUGAR ADDED."

C. Plaintiff Purchased Defendant's Misbranded Food Product

36. As described in Paragraph 2, Plaintiff purchased Ocean Spray 100% Cranberry juice. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy diet.

37. Plaintiff read and reasonably relied on the labels on Defendant's Ocean Spray Product before purchasing them as described herein. Plaintiff relied on Defendant's labeling as described herein and based the decision to purchase Defendant's Ocean Spray Product, in substantial part, on the label.

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

39. After Plaintiff learned that Defendant's Ocean Spray Product was falsely labeled, she stopped purchasing the Ocean Spray Product.

40. As a result of Defendant's unlawful misrepresentations, Plaintiff and thousands of

others in Arkansas purchased the Ocean Spray Product at issue.

41. Defendant's labeling is false and misleading and was designed to increase sales of the products at issue. Defendant's misrepresentations are part of their systematic labeling practices and a reasonable person would attach importance to Defendant's misrepresentations in determining whether to purchase the Ocean Spray Product at issue.

42. A reasonable person would also attach importance to whether Defendant's products are "misbranded," i.e., legally salable, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the Ocean Spray Product at issue. Plaintiff would not have purchased Defendant's Ocean Spray Product had she known they were not capable of being legally sold or held.

43. Plaintiff's purchases of the Ocean Spray Product damaged Plaintiff because misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless. Plaintiff was injured by Defendant's unlawful act of selling an illegal product that was illegal to sell or possess.

44. 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 Ocean Spray Product at issue.

45. A reasonable person would also attach importance to whether Defendant's products were legal for sale, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the Ocean Spray Product at issue. Plaintiff would not have purchased Defendant's Misbranded Food Product had they known they were not

capable of being legally sold or held.

46. Defendant's violations of Arkansas law include the illegal advertising, marketing, distribution, delivery and sale of Defendant's Misbranded Food Product to consumers in Arkansas.

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of the following class:

All persons who purchased Ocean Spray's 100% Cranberry juice labeled as "NO SUGAR ADDED," in Arkansas, since May 22, 2009 (the "Class")

48. The following persons are expressly excluded from the 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.

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

50. 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.

51. 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 products at issue were misbranded as a matter of Arkansas

law;

- c. Whether Defendant made unlawful and misleading "NO SUGAR ADDED" claims with respect to Ocean Spray Product 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 Ocean Spray Product;
- i. Whether Defendant were unjustly enriched by their deceptive practices; and
- j. Whether Defendant's unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class.

52. Typicality: Plaintiff's claims are typical of the claims of the members of the Class because Plaintiff bought Defendant's Ocean Spray Product 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 member sustained similar injuries arising out of Defendant's conduct in violation of Arkansas law. The injuries of each member of the Class were caused directly by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members, and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members, and are based on the same legal theories.

53. 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 Class members. Plaintiff has retained highly competent and experienced class

action attorneys to represent her 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 her 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.

54. Superiority: There is no plain, speedy or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by each member 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.

55. The prerequisites to maintaining a class action 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.

56. Plaintiff and Plaintiff's counsel are unaware of any difficulties likely 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.)

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

58. Defendant's conduct constitutes unlawful, deceptive and unconscionable trade practices. Defendants' 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 the Ocean Spray Product. Defendant's manufacturing, distribution and sale of the Ocean Spray Product were similarly unlawful and deceptive.

59. Defendant unlawfully sold the Ocean Spray Product in Arkansas during the Class Period.

60. As fully alleged above, by advertising, marketing, distributing and selling mislabeled and misbranded Ocean Spray Product to Plaintiff and other members of the Class who purchased the Ocean Spray Product in Arkansas, Defendant engaged in, and continues to engage in, unlawful, deceptive and unconscionable trade practices.

61. Defendant's misleading marketing, advertising, packaging and labeling of the Ocean Spray Product was likely to deceive reasonable consumers.

62. Plaintiff and other members of the Class who purchased the Ocean Spray Product in Arkansas were deceived.

63. Defendant has engaged in unlawful, deceptive and unconscionable trade practices.

64. Plaintiff and other members of the Class who purchased the Ocean Spray Product in Arkansas were injured by Defendant's unlawful, deceptive and unconscionable trade practices.

65. Defendants' fraud and deception caused Plaintiff and other members of the Class who purchased the Ocean Spray Product in Arkansas to purchase the Ocean Spray Product that they would otherwise not have purchased had they known the true nature of the product.

66. Plaintiff and other members of the Class who purchased the Ocean Spray Product in Arkansas were injured as a result of Defendant's unlawful, deceptive and unconscionable trade practices.

67. 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 the Ocean Spray Product in Arkansas, products that were not capable of being sold or possessed legally, and which have no economic value. Defendant's violation of A.C.A. §§ 4-88-107 and 4-88-108 remains ongoing.

68. As a direct and proximate cause of Defendant's violation of A.C.A. §§ 4-88-107 and 4-88-108, Plaintiff and the members of the Class who purchased the Ocean Spray Product in Arkansas were injured when they purchased these illegal and worthless products. Plaintiff and the members of the Class who purchased the Ocean Spray Product in Arkansas have been damaged in an amount to be determined at trial.

69. As a result of Defendant's unlawful, deceptive and unconscionable trade practices, Plaintiff and the members of the Class who purchased the Ocean Spray Product 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 the Ocean Spray Product in Arkansas any money paid for the Ocean Spray Product.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

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

71. 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 Ocean Spray Product.

72. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from the Plaintiff and the Class, in light of the fact that the Ocean Spray Product 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 and disgorgement to the Plaintiff and the Class for the monies paid to Defendant for the misbranded Ocean Spray Product.

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

73. Plaintiff repeats and re-alleges each of the above allegations as if fully set forth herein.

74. Implied in the purchase of the Misbranded Food Product by Plaintiff and the Class is the warranty that the purchased products are legal and can be lawfully resold and possessed.

75. Defendant knowingly and intentionally misbranded its Misbranded Food Product.

76. Defendant knew the Misbranded Food Product was illegal.

77. When Defendant sold the Misbranded Food Product it impliedly warranted that the product was legal and could be lawfully possessed and/or sold and therefore, merchantable.

78. Plaintiff would not have knowingly purchased products that were illegal to own or possess.

79. No reasonable consumer would knowingly purchase products that are illegal to

own or possess.

80. The purchased Misbranded Food Product was unfit for the ordinary purpose for which Plaintiff and the Class purchased them.

81. In fact, the Misbranded Food Product was illegal, misbranded, and economically worthless.

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

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

84. 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)

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

86. During the Class Period, the Ocean Spray Products have falsely warranted and represented that the Ocean Spray Product contained "NO SUGAR ADDED." These representations were false and a breach of warranty by Ocean Spray. Ocean Spray has used the terms "NO SUGAR ADDED" to represent that the Ocean Spray Product contained no added sugar.

87. Defendant's representations of fact and/or promises on the labels relating to their Misbranded Food Product created express written warranties that the products would conform to Defendant's representation of fact and/or promises.

88. The Defendant's descriptions of their Misbranded Food Product 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.

89. Defendant provided written warranties that its Misbranded Food Product was labeled in compliance with state law and were not misbranded under state law. Defendant breached these express written warranties.

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

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

92. 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 Product had no sugar added, which was false.

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

94. Plaintiff and the Class reasonably relied on Defendant's representations and warranties.

95. 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 Product. Plaintiff and the Class are entitled to damages arising from the breach of warranty.

96. 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)

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

98. In making representations of fact to Plaintiff and the other Class members about its Ocean Spray Product, Defendant failed to lawfully label or advertise its Ocean Spray Product and violated its 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.

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

100. As described above, Defendant's actions violated Arkansas law 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.

101. As alleged above, Plaintiff and the Class were injured by Defendant's statutory violations 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 her 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

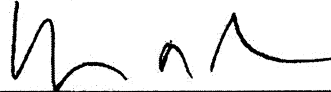
Plaintiff's counsel to represent the Class;

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: May 22, 2014

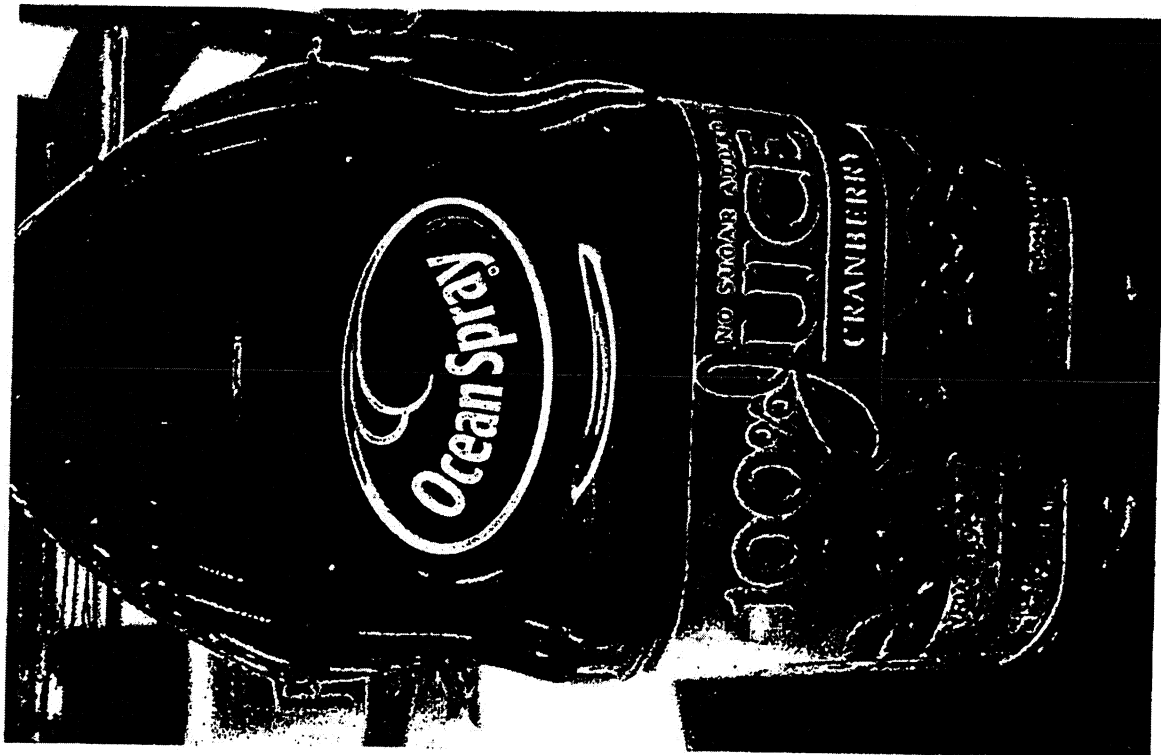
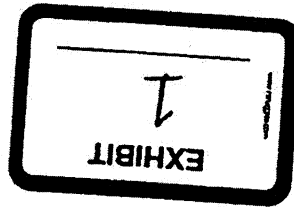
Respectfully submitted,

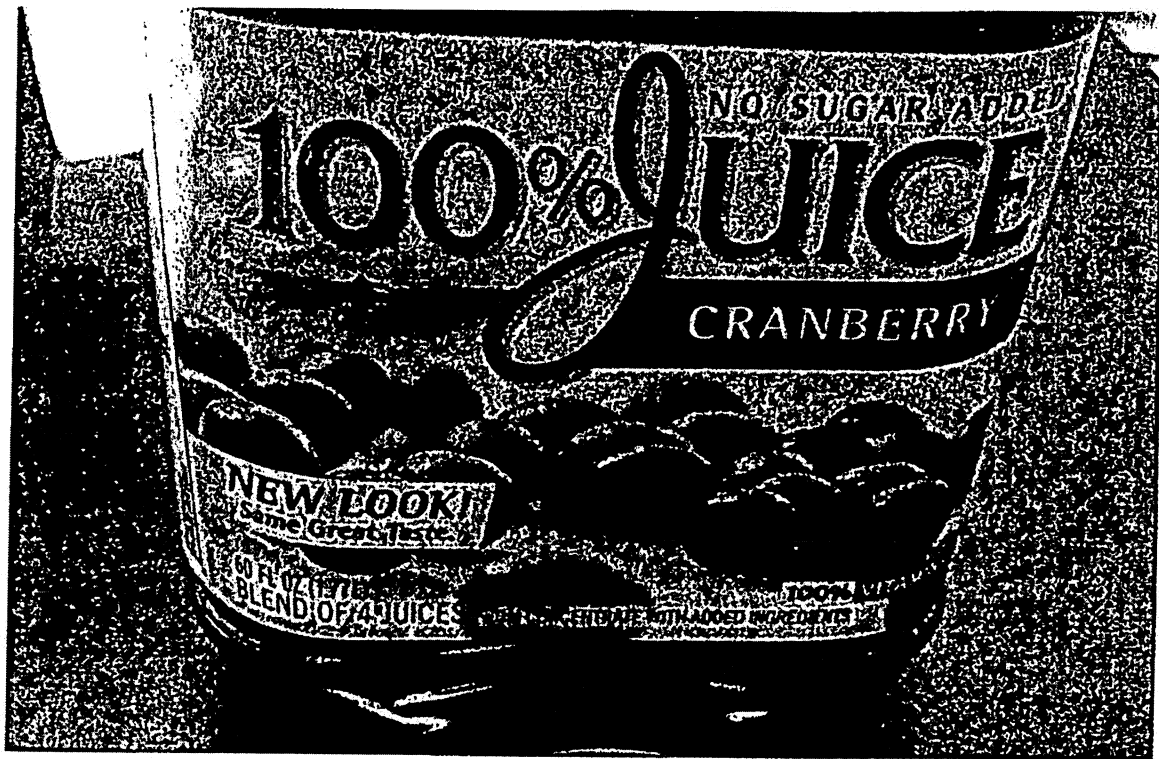


Kenneth R. Shemin
SHEMIN LAW FIRM, PLLC
3333 Pinnacle Hills Parkway, Suite 603
Rogers, AR 72758
Phone: (479) 250-4764
Fax: (479) 845-2198
Bar No. 78138

Thomas P. Thrash
THRASH LAW FIRM, P.A.
1101 Garland Street
Little Rock, AR 72201
Phone: (501) 374-1058
Fax: (501) 375-2222
Bar No. 80147

Attorneys for Plaintiff





Nutrition Facts

Contains 100% Juice

Serving Size 8 fl oz (240mL) 1 cup

Servings Per Container: About 8

Amount Per Serving

Calories 110 **Calories from Fat 0**

Item	Quantity	Unit Price	Total
1. 100% Cotton T-shirt	100	\$1.50	\$150.00
2. 100% Cotton T-shirt	100	\$1.50	\$150.00
3. 100% Cotton T-shirt	100	\$1.50	\$150.00
4. 100% Cotton T-shirt	100	\$1.50	\$150.00
5. 100% Cotton T-shirt	100	\$1.50	\$150.00
6. 100% Cotton T-shirt	100	\$1.50	\$150.00
7. 100% Cotton T-shirt	100	\$1.50	\$150.00
8. 100% Cotton T-shirt	100	\$1.50	\$150.00
9. 100% Cotton T-shirt	100	\$1.50	\$150.00
10. 100% Cotton T-shirt	100	\$1.50	\$150.00
Total Fat Og			0%

Sodium 15mg 1%

Calcium 190mg	8%
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Carbohydrate 28g

Protein Og 1

Vitamin C 100% • **Phosphorus 2%** • **Magnesium 2%**

1. What is the purpose of the study?

Values are based on a 2000 calorie diet.

INGREDIENTS: Oats, Raisins, Wheat, Apples, and Cinnamon.

[illegible]

1. **Costs**—The cost of the contract is the sum of the cost of the contract and the cost of the contract.

and freshness are within two weeks after opening.

[illegible]

100

The Grygleskis

Meet Our Growers

Hello! We're proud members of the Ocean Spray Cooperative, where the growers who harvest the cranberries also own the company.

We don't just grow cranberries; we also try to develop new varieties that are even more delicious with the same healthy benefits. While it can take years to develop a new cranberry variety, we keep busy by working on the land and enjoying the fruit of our labor in family recipes.

Ocean Spray

To learn more about our growers and products, visit oceanspray.com



THANKS FOR CHOOSING OCEAN SPRAY
For questions or comments please call 1-800-668-
MFG-AM to 4PM EST. Please have the entire pack

MANUFACTURED AND DISTRIBUTED BY:
Ocean Spray Cranberries, Inc. or its subsidiary
a Grower Cooperative, Lakewood, Middleboro,
Massachusetts 02349 USA

SAFETY CAP: Only purchase this product if
the cap and neckband are intact.

Tastes Good. Good for you!

Not a low calorie food. — Satisfaction facts for sugar and calorie
Each 12oz glass is equal to 1 cup of fruit. The USDA MyPlate tool
daily intake of 1 1/2 cups of fruit for a 2,000 calorie diet.

SUMMONS
IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

PLAINTIFF: Brenna Center, individually and on behalf of all others similarly situated

v.

Case No. CV-2014- 929-7

DEFENDANT: Ocean Spray Cranberries, Inc.

PLAINTIFF'S ATTORNEY: Kenneth R. Shemin
Shemin Law Firm, PLLC
3333 Pinnacle Hills Parkway
Suite 603
Rogers, AR 72758
Office: (479) 845-3305
Facsimile: (479) 845-2198

STATE OF ARKANSAS TO DEFENDANT: Ocean Spray Cranberries, Inc.

NOTICE

1. You are hereby notified that a lawsuit has been filed against you; the relief asked is stated in the attached complaint.

2. The attached complaint will be considered admitted by you and a judgment by default may be entered against you for the relief asked in the complaint unless you file a pleading and thereafter appear and present your defense. Your pleading or answer must meet the following requirements.

A. It must be in writing, and otherwise comply with the Arkansas Rules of Civil Procedure.

B. It must be filed in the court clerk's office within **thirty (30)** days from the day you were served with this summons.

3. If you desire to be represented by an attorney, you should immediately contact your attorney so that an answer can be filed for you within the time allowed.

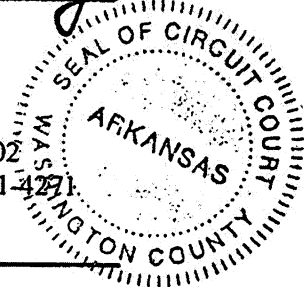
4. **ADDITIONAL NOTICES:** _____

WITNESS MY HAND AND SEAL OF THE COURT this 22 day of May, 2014.

Mr. Kyle Sylvester
Circuit Court Clerk
Courthouse
280 N. College Ave., Ste. 302
Fayetteville, Arkansas 72701-4271

By: _____

Deputy Clerk



STATE OF ARKANSAS)

)SS.

COUNTY OF _____)

On this _____ day of May, 2014, I have duly served the within writ, by delivering a copy and stating the substance thereof, to the within named _____.

Sheriff _____

Deputy Sheriff _____

Process Server _____

EXHIBIT

2

SHEMIN LAW FIRM
A PROFESSIONAL LIMITED LIABILITY COMPANY
3333 PINNACLE HILLS PARKWAY, SUITE 603
ROGERS, ARKANSAS 72758
TELEPHONE (479) 845-3305
FACSIMILE (479) 845-2198

KENNETH R. SHEMIN

Ken@sheminlaw.com

June 2, 2014

Via U.S. Certified Mail

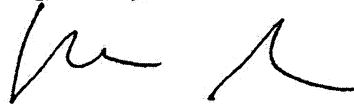
Corporation Trust Company
A/S for Ocean Spray Cranberries
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Re: Brenna Center v. Ocean Spray Cranberries, Inc.

Dear Sir and/or Madam:

Pursuant to the enclosed Summons and Complaint, please be advised that a lawsuit has been filed against you. In connection with that lawsuit, please find enclosed Plaintiff's First Set of Interrogatories as well as Plaintiff's First Set of Requests for Production of Documents..

Respectfully,



Kenneth R. Shemin

KRS/pb
Enclosure(s)
cc: Client

2011. I have worked at Ocean Spray since 2005 during which time I have supported the company's sales and marketing organization by managing Ocean Spray's use of syndicated data.

3. Syndicated data is information collected by companies such as The Nielsen Company/subsidiary ACNielsen ("Nielsen") and Information Resources, Inc. ("IRI"). Every product sold in supermarkets carries a unique Universal Product Code ("UPC") and companies like Nielsen and IRI collect information from supermarket or in-home scanners all over the country showing how many units of each product are sold to consumers. Scan data collected at the point of purchase also shows the price paid by the consumer. These companies then charge retailers subscription-based fees for access to the data. Ocean Spray and companies like it use such syndicated data for a variety of business planning and tracking purposes to assess a product's relative success in the national markets, or specific geographical markets, at specific retail chains, etc. Ocean Spray relies on such information because it does not sell directly to consumers, and it does not set retail prices, so Ocean Spray has no information of its own from which to derive such knowledge.

4. In my experience, virtually every company that manufactures food or beverage products for sale in supermarkets in the United States, relies on


syndicated data to track the sales of its products. Ocean Spray relies on syndicated data from Nielsen every day as part of the company's ordinary course of business. Every juice maker uses the information collected by IRI, Nielsen or both to determine how many units it is selling and to see to how other juice makers' products are performing. Syndicated data is a standard business tool in the manufactured food industry. I first became aware of how Nielsen data is collected and distributed via subscription to companies like Ocean Spray in 1999 when I was employed at Nielsen. I worked at Nielsen until I joined Ocean Spray in 2005.

5. Nielsen and IRI offers individual store level data for sale to its customers, though Ocean Spray only purchases total retailers and markets and does not purchase individual stores. Wal-Mart is one of Ocean Spray's biggest customers. In addition to utilizing Nielsen scan data to analyze Wal-Mart, when Ocean Spray wants to look more at Wal-Mart data as well as at their individual store level data, it can utilize Wal-Mart's proprietary Retail Link POS (Point of Sale) data which gives access to Ocean Spray sales and prices.

6. One of my employment responsibilities as manager of syndicated data at Ocean Spray is to track the performance of products in the marketplace. Ocean Spray examines the syndicated sales data to determine how 100% Juice Cranberry Flavored Blend is performing on an ongoing basis. Based upon my familiarity

with such data, I reviewed information for the May 2009 - May 2014 period to check the level of retail sales in Arkansas. The syndicated sales and Retail Link POS data show that the total amount of money paid by consumers in Arkansas to purchase Ocean Spray 100% Juice Cranberry Flavored blend in that time period was more than \$5 million.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. This declaration was executed on July 2, 2014 at 6pm.



Larissa Irrera