

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

<p>SAMARA DALY and ZARA PAKROO, on behalf of themselves and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>XOCHITL, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. _____</p> <p>CLASS ACTION COMPLAINT</p> <p><u>DEMAND FOR JURY TRIAL</u></p> <p>ECF CASE</p>
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Plaintiffs Samara Daly and Zara Pakroo, on behalf of themselves and all others similarly situated, by and through their undersigned counsel, allege the following based upon their own personal knowledge and the investigation of their counsel.

NATURE OF THE ACTION

1. This is a proposed class action against Xochitl, Inc. (“Xochitl”) for misrepresenting that its corn chips (the “Chips”) are all natural and contain no genetically modified organisms (“GMO”), when, in fact, 75% of the corn used in the Chips is genetically modified.

2. Through its deceptive practice of marketing and selling its Chips as all natural and not containing GMOs when the majority of the corn used in the Chips is genetically modified, Defendant is able to command a premium price by deceiving consumers about the nature of the Chips. Defendant’s deception also allows it to distinguish its Chips from the numerous other similar and otherwise indistinguishable corn chips available in the market.

3. Were it not for Defendant’s unfair and deceptive practices, Plaintiffs and the members of the Classes would not have purchased Defendant’s Chips or paid a price premium to purchase them. Plaintiffs bring this action to stop Defendant’s deceptive practice of representing that its Chips do not contain GMOs when they do.

JURISDICTION AND VENUE

4. This court has jurisdiction over all causes of action asserted herein, pursuant to 28 U.S.C. § 1332(d), because the aggregate claims of the Classes (as defined below) exceed the sum or value of \$5,000,000.00, exclusive of interest and costs, and there is diversity of citizenship between members of the proposed Classes and Defendant.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391. A substantial part of the events or omissions giving rise to Plaintiff Daly’s claims, including the dissemination of false

information regarding the Chips and Plaintiff Daly's purchases, occurred within this District.

PARTIES

6. Plaintiff Samara Daly is a citizen of New York residing in Brooklyn. Prior to the commencement of this action, Ms. Daly bought Defendant's Chips on a regular basis from retail locations in Brooklyn. Plaintiff purchased the Chips, for which she paid a price premium over otherwise similar chips that did not claim to be GMO free or all natural, because she wanted chips that were not made from GMOs. Had Plaintiff known at the time that the Chips did, in fact, contain corn derived from GMOs, Plaintiff would not have purchased the Chips or paid a price premium to purchase them. Further, if Ms. Daly knew the Chips' labels were truthful and non-misleading, she would continue to purchase the Chips in the future. At present, however, Ms. Daly cannot be confident that the labeling of the Chips is, and will be, truthful and non-misleading.

7. Plaintiff Zara Pakroo is a citizen of Wisconsin residing in Bayside. Prior to the commencement of this action, Ms. Pakroo bought Defendant's Chips on a regular basis from retail locations in Wisconsin. Plaintiff purchased the Chips, for which she paid a price premium over otherwise similar chips that did not claim to be GMO free or all natural, because she wanted chips that were not made from GMOs. Had Plaintiff known at the time that the Chips did, in fact, contain corn derived from GMOs, Plaintiff would not have purchased the Chips or paid a price premium to purchase them. Further, if Ms. Pakroo knew the Chips' labels were truthful and non-misleading, she would continue to purchase the Chips in the future. At present, however, Ms. Pakroo cannot be confident that the labeling of the Chips is, and will be, truthful and non-misleading.

8. Defendant Xochitl, Inc., is a corporation with its principal place of business in Irving, Texas. On information and belief, Defendant is incorporated under the laws of the State of Texas. Defendant markets its Chips to consumers and sells them to distributors throughout the

United States, including in New York and Wisconsin.

SUBSTANTIVE ALLEGATIONS

9. Many consumers are seriously concerned about the prevalence of GMOs in food products, and they make their purchasing decisions accordingly. In fact, many reasonable consumers choose to purchase, and pay a price premium, for products that do not contain GMOs.

10. Indeed, GMOs have created widespread controversy due to concerns about food safety, the effect on natural ecosystems, gene flow (a/k/a “gene migration” or “genetic drift”) into non-GMO crops, and other issues. One consumer response to such concerns has been to purchase products that do not contain GMOs but that are instead “all natural.”

11. Xochitl takes advantage of consumers’ preference for products that do not contain GMOs by intentionally and prominently labeling its packages in a manner that causes consumers to reasonably believe that its Chips do not contain genetically modified corn.

12. To that end, Xochitl explicitly and prominently represents to consumers on the front and side of the Chips package that the product contains “No GMO.” Consequently, all purchasers of the Chips are exposed to Defendant’s false and misleading “No GMO” representation.

13. That representation is false. In fact, according to an October 2014 report from Consumer Reports, who conducted independent tests on the Chips, “the amount of genetically modified corn in the six samples we tested averaged more than 75 percent.”¹

14. As a result of its “No GMO” representation, Defendant is able to, and does, charge a substantial price premium for its Chips as compared to products that are comparable but for Defendant’s deception.

¹ See <http://consumerreports.org/cro/2014/10/where-gmos-hide-in-your-food/index.htm>.

15. Xochitl also prominently and uniformly represents that its Chips are “All Natural” on the front and sides of the Chips’ packaging. Consequently, all purchasers of the Chips are exposed to Defendant’s false and misleading “All Natural” representation.

16. However, the representation that the Chips are all natural is false because they are in fact made with man-made, unnatural, genetically modified corn.

17. A product that is derived from GMOs is unnatural by definition, and consumers reasonably view GMOs as unnatural.

18. Natural breeding can take place only between closely related life forms -- *e.g.*, wheat plants with other wheat plants. Natural breeding techniques cannot add the genes of a different organism -- *e.g.*, adding fish genes to wheat plants. Instead, to add genes of an organism to a different organism, scientists must use genetic engineering, producing an organism that could not otherwise exist in nature.

19. Genetically modified ingredients are fundamentally different from naturally existing ingredients. Inserting foreign genes will alter even the original genes, just as inserting a new letter can alter the meaning of a word. The foreign genes will reduce or increase the natural gene’s function, sometimes blocking the natural gene’s expression altogether. These unexpected consequences can yield alterations in the nutritional content of the food, toxic and allergenic effects, poor crop performance, and generations of environmental damage.

20. Indeed, “unnatural” is a defining characteristic of GMO foods. For example, the Monsanto Company, an agricultural company that pioneered GMO seeds, defines GMOs as “[p]lants or animals that have had their **genetic makeup altered to exhibit traits that are not naturally theirs**. In general, genes are taken (copied) from one organism that shows a desired

trait and transferred into the genetic code of another organism.”² Additionally, the World Health Organization defines GMOs as “organisms in which the genetic material (DNA) has been **altered in a way that does not occur naturally**. It allows selected individual genes to be transferred from one organism into another, also between non-related species.”³

21. Indeed, research shows that a majority of consumers expect “natural” foods to be free of GMOs.⁴ Research also shows that many consumers consider the absence of GMOs from food to be important.⁵ Indeed, “it is not unreasonable, as a matter of law, for a consumer to believe that non-organic foods labeled as ‘All Natural’ do not possess GMOs.” *Ault v. J.M. Smucker Co.*, No. 13-3409, 2014 WL 1998235, at * 6 (S.D.N.Y. May 15, 2014).

22. As a result of its “all natural” representation, Defendant is able to, and does, charge a substantial price premium for its Chips as compared to products that are comparable but for Defendant’s deception.

CLASS ALLEGATIONS

23. Plaintiff Samara Daly brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following subclass (the “New York Class”):

All persons who purchased Defendant’s Chips in New York during the

² Monsanto | Glossary, <http://www.monsanto.com/newsviews/Pages/glossary.aspx#g> (last visited Feb. 10, 2014) (emphasis added).

³ See WHO | 20 questions on genetically modified foods, <http://www.who.int/foodsafety/publications/biotech/20questions/en/> (last visited Feb. 10, 2014) (emphasis added).

⁴ See Cornucopia Institute, *Cereal Crimes: How “Natural” Claims Deceive Consumers and Undermine the Organic Label – A Look Down the Cereal and Granola Aisle*, at 29 (2011), available at <http://www.cornucopia.org/2011/10/natural-vs-organic-cereal/> (“Cornucopia Cereal Report”); The Hartman Group, *Beyond Organic and Natural* (2010), available at <http://www.hartman-group.com/publications/reports/beyond-organic-and-natural/> (“Beyond Organic Report”).

⁵ See Cornucopia Cereal Report at 29; see also Beyond Organic Report at 4 (showing that a significant percentage of consumers consider “GMO-free” to be an “important” or “very important” claim on food packaging or menus).

applicable limitations period. Excluded from the New York Class are current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors, or assigns, and any entity in which they have or have had a controlling interest. Also excluded from the New York Class is the judicial officer to whom this lawsuit is assigned.

24. Plaintiff Zara Pakroo brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following subclass (the "Wisconsin Class"):

All persons who purchased Defendant's Chips in Wisconsin during the applicable limitations period. Excluded from the Wisconsin Class are current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors, or assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Wisconsin Class is the judicial officer to whom this lawsuit is assigned.

25. Herein, Plaintiffs refer to the New York Class and the Wisconsin Class, together, as the "Class" or the "Classes."

26. Plaintiffs reserve the right to revise the Class definitions based on facts learned in the course of litigating this matter.

27. At this time, Plaintiffs do not know the exact number of the members of the Classes; however, given the nature of the claims and the number of retail stores selling Defendant's Chips in New York and Wisconsin, Plaintiff believes the Class members are so numerous that joinder of all members is impracticable.

28. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual Class members include but are not limited to:

- a. Whether Defendant labeled, marketed, and/or advertised Chips to Plaintiffs and those similarly situated using false, misleading, and/or deceptive statements or representations, including statements or

representations concerning whether the corn in Chips is genetically modified;

- b. Whether Defendant omitted and/or misrepresented material facts in connection with the sales of Chips;
- c. Whether Defendant's labeling, marketing, advertising, and/or selling of the Products with the representation "Active Naturals" herein constitutes a deceptive consumer sales practice;
- d. Whether Defendant warranted that its Chips did not contain GMOs but were instead "all natural" and whether Defendant breached that warranty; and
- e. Whether Defendant has been unjustly enriched.

29. Plaintiffs' claims are typical of those of the members of the Classes because Plaintiffs and the other members of the Classes sustained damages arising out of the same wrongful conduct, as detailed herein.

30. Plaintiffs will adequately protect the interests of the members of the Classes. Plaintiffs have retained counsel that are experienced in litigating complex class actions, including litigation related to false and deceptive labeling. Neither Plaintiffs nor their counsel have any interests adverse to those of the other members of the Classes.

31. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the

potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

32. The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive or equitable relief with respect to the Classes as a whole.

33. The prosecution of separate actions by members of the Classes would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interests of all members of the Classes, although certain members of the Classes are not parties to such actions.

34. Defendant's conduct is generally applicable to the Classes as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Classes as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Classes as a whole appropriate.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Violation of the New York General Business Law § 349) (By Plaintiff Daly, On Behalf of the New York Class)

35. Plaintiff Daly repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

36. As detailed more fully herein, Defendant engaged in deceptive acts and practices by falsely and misleadingly marketing its Chips to consumers, including through the use of false and misleading labeling.

37. As fully alleged above, by advertising, marketing, distributing, and/or selling Chips

to Plaintiff and the other members of the New York Class, Defendant engaged in and continues to engage in deceptive acts, practices, and omissions.

38. Plaintiff Daly and the other members of the New York Class further seek to enjoin such unlawful deceptive acts and practices as described above. Each of the Class members will be irreparably harmed unless the unlawful actions of the Defendant are enjoined in that Defendant will continue to falsely and misleadingly advertise that the Chips do not contain GMOs and are “all natural” when in fact the Chips are made with genetically modified corn. Absent injunctive relief, Defendant will continue to manufacture and sell Chips by representing that they are “all natural” and do not contain GMOs when they in fact do, to the detriment of consumers.

39. By reason of the foregoing, Defendant’s conduct, as alleged herein, constitutes deceptive acts and practices in violation of New York General Business Law § 349, and Defendant is liable to Plaintiff Daly and the other members of the New York Class for the actual damages that they have suffered as a result of Defendant’s actions. The amount of such damages is to be determined at trial, but will not be less than \$50.00. Therefore, Plaintiff Daly prays for relief as set forth below.

SECOND CAUSE OF ACTION

(Violation of the W.S.A. 100.18) (By Plaintiff Pakroo, On Behalf of the Wisconsin Class)

40. Plaintiff Pakroo repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

41. As detailed more fully herein, Defendant, with the intent to sell or increase the consumption of Chips, makes, publishes, disseminates, circulates and places before the public in Wisconsin an advertisement in the form of package labeling which contains the representation and statement that the Chips are “all natural” and do not contain GMOs, which is untrue, deceptive,

and misleading.

42. Defendant made its “No GMO” and “All Natural” representations with the intent that consumers would be induced to purchase its Chips at a premium price.

43. That representation was untrue because the Chips contain genetically modified corn and are not all natural.

44. Defendant’s “No GMO” and “All Natural” misrepresentations caused pecuniary injury to Plaintiff Pakroo and the Wisconsin Class because Defendant is able to and does charge a price premium for its Chips as a direct result of these misrepresentations, and Plaintiff Pakroo and the Wisconsin class paid that price premium because they believed that the Chips did not contain GMOs. Plaintiff Pakroo and the Wisconsin Class also suffered pecuniary injury because they paid for a product that purportedly had a material characteristic (namely, being made from natural, rather than genetically modified, corn) when it did not, and thus Plaintiff Pakroo and the Wisconsin Class were deprived of the benefit of their bargain. Plaintiff Pakroo and the Wisconsin Class also suffered pecuniary injury because they would not have purchased the Chips had they not been deceived as to the natural nature of the Chips.

45. Plaintiff Pakroo and the other members of the Wisconsin Class further seek to enjoin such unlawful deceptive acts and practices as described above. Each of the Class members will be irreparably harmed unless the unlawful actions of the Defendant are enjoined in that Defendant will continue to falsely and misleadingly advertise that the Chips do not contain GMOs and are “all natural” when in fact the Chips are made with genetically modified corn. Absent injunctive relief, Defendant will continue to manufacture and sell Chips by representing that they are “all natural” and do not contain GMOs when they in fact do, to the detriment of Wisconsin consumers.

46. By reason of the foregoing, Defendant's conduct, as alleged herein, constitutes untrue, deceptive and misleading statements and representations in violation of Wis. Stat. Ann. § 100.18, and Defendant is liable to Plaintiff Pakroo and the other members of the Wisconsin Class for the actual damages that they have suffered as a result of Defendant's actions. The amount of such damages is to be determined at trial. Therefore, Plaintiff Pakroo prays for relief as set forth below.

THIRD CAUSE OF ACTION

**(Violation of the W.S.A. 100.20)
(By Plaintiff Pakroo, On Behalf of the Wisconsin Class)**

47. Plaintiff Pakroo repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

48. Wis. Admin. Code. § ATCP 90.10(1) provides that food sold or distributed for sale in Wisconsin shall be labeled in compliance with applicable rules adopted by the United States food and drug administration under, among other regulations, 21 C.F.R. § 102.

49. 21 C.F.R. § 102.5 provides that the common or usual name of a food shall include the percentages of any characterizing ingredients or components when the proportion of such ingredients or components in the food has a material bearing on price or consumer acceptance or when the labeling or the appearance of the food may otherwise create an erroneous impression that such ingredients or components are present in an amount greater than is actually the case.

50. Defendant's Chip label does not conform with 21 C.F.R. § 102.5 because it fails to identify or disclose the fact that 75% of the characterizing ingredient is genetically modified corn, which has a material bearing on the price of Chips as well as consumer acceptance of tortilla corn chips.

51. Defendant's Chip label also fails to conform with 21 C.F.R. § 102.5 because the

label otherwise creates an erroneous impression that the Chips contain no corn that is genetically modified when 75% of the corn is in fact genetically modified.

52. Defendant's "No GMO" and "All Natural" misrepresentations caused pecuniary injury to Plaintiff Pakroo and the Wisconsin Class because Defendant is able to and does charge a price premium for its Chips as a direct result of these misrepresentations, and Plaintiff Pakroo and the Wisconsin class paid that price premium because they believed that the Chips did not contain GMOs. Plaintiff Pakroo and the Wisconsin Class also suffered pecuniary injury because they paid for a product that purportedly had a material characteristic (namely, being made from natural rather than genetically modified corn) when it did not, and thus Plaintiff Pakroo and the Wisconsin Class were deprived of the benefit of their bargain. Plaintiff Pakroo and the Wisconsin Class also suffered pecuniary injury because they would not have purchased the Chips had they not been deceived as to the natural nature of the Chips.

53. By reason of the foregoing, Defendant's conduct, as alleged herein, violated W.S.A. § 100.20, and Defendant is liable to Plaintiff Pakroo and the other members of the Wisconsin Class for the actual damages that they have suffered as a result of Defendant's actions. The amount of such damages is to be determined at trial. Therefore, Plaintiff Pakroo prays for relief as set forth below.

FOURTH CAUSE OF ACTION

(Breach of Express Warranties under New York and Wisconsin Common Law)

54. Plaintiffs repeat each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

55. Defendant provided Plaintiffs and other members of the Classes with written express warranties, including, but not limited to, warranties that its Chips are "No GMO" and "All

Natural,” as set forth above.

56. Defendant breached these warranties by providing unnatural Chips that contained genetically modified corn and that did not conform to Defendant’s warranties.

57. This breach resulted in damages to Plaintiffs and the other members of the Classes who bought Defendant’s Chips but did not receive the goods as warranted in that the Chips were not natural because they contained genetically modified corn.

58. As a proximate result of Defendant’s breach of warranties, Plaintiffs and the other members of the Classes have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for Chips that did not conform to what Defendant promised on its packaging and labeling, and they were deprived of the benefit of their bargain and spent money on Chips that did not have any value or had less value than warranted or Chips that they would not have purchased and used had they known the true facts about them.

59. Therefore, Plaintiffs prays for relief as set forth below.

FIFTH CAUSE OF ACTION

**(Unjust Enrichment under New York Common Law)
(By Plaintiff Daly, On Behalf of the New York Class)**

60. Plaintiff Daly repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

61. As a result of Defendant’s deceptive, fraudulent, and misleading labeling, advertising, marketing, and sales of the Chips, Defendant was enriched at the expense of Plaintiff Daly and the other members of the New York Class, through the payment of the inflated purchase price for Defendant’s Chips.

62. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from Plaintiff Daly and the other

members of the New York Class, in light of the fact that the Chips purchased by Plaintiff Daly and the other members of the New York Class were not what Defendant purported them to be. Thus, it would be unjust or inequitable for Defendant to retain the benefit without restitution to Plaintiff Daly and the other members of the New York Class for the monies paid to Defendant for the Chips.

63. Therefore, Plaintiff Daly prays for relief as set forth below.

SIXTH CAUSE OF ACTION

(Unjust Enrichment under Wisconsin Common Law) (By Plaintiff Pakroo, On Behalf of the Wisconsin Class)

64. Plaintiff Pakroo repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

65. As a result of Defendant's deceptive, fraudulent, and misleading labeling, advertising, marketing, and sales of the Chips, Defendant was enriched at the expense of Plaintiff Pakroo and the other members of the Wisconsin Class, through the payment of the inflated purchase price for Defendant's Chips.

66. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from Plaintiff Pakroo and the other members of the Wisconsin Class in light of the fact that the Chips purchased by Plaintiff Pakroo and the other members of the Wisconsin Class were not what Defendant purported them to be. Thus, it would be unjust or inequitable for Defendant to retain the benefit without restitution to Plaintiff Pakroo and the other members of the Wisconsin Class for the monies paid to Defendant for Chips.

67. Therefore, Plaintiff Pakroo prays for relief as set forth below.

PRAYER FOR RELIEF

THEREFORE, Plaintiffs demand judgment as follows:

A. For an order certifying the proposed Class herein under Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3); appointing Plaintiffs as representatives of the respective Classes as set forth herein; and appointing their undersigned counsel as counsel to the Classes;

B. For a declaration that Defendant is financially responsible for notifying the members of the Classes of the pendency of this suit;

C. For declaratory and injunctive relief pursuant to Section 349 of the New York General Business Law and W.S.A. § 100.18, without limitation;

D. Monetary damages, including but not limited to any compensatory, incidental, or consequential damages in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law with respect to the common law claims alleged;

E. Statutory damages in the maximum amount provided by law;

F. Punitive damages in accordance with proof and in an amount consistent with applicable precedent;

G. For an order awarding Plaintiffs and the other Class members the reasonable costs and expenses of suit, including their attorneys' fees; and

H. For any further relief that the Court may deem appropriate.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: New York, New York
October 17, 2014

By: /s/ Kim Richman

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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

SAMARA DALY and ZARA PAKROO, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff Kings County, New York
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Reese Richman LLP, 875 Avenue of the Americas, 18th Floor, New York, New York 10001, Telephone: (212) 643-0500

DEFENDANTS

XOCHITL, INC.

County of Residence of First Listed Defendant Dallas County, Texas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

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

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

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(d)

Brief description of cause:

False and misleading labeling, marketing, and advertising of food products

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/17/2014

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Kim E. Richman, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☒ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☒ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

Not applicable to Plaintiffs, who are individual persons.

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes

☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes

(If yes, please explain)

☒ No

I certify the accuracy of all information provided above.

Signature: Kim E. Richman

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

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

)
)
)
)
)
)
)
)
)
)
)

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

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

A lawsuit has been filed against you.

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

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

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____ .

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: