

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COREY GILBERT, and on behalf of all)	
Others similarly situated,)	
Plaintiff,)	
)	
v.)	
)	
AMY'S KITCHEN, INC.,)	Civil Action No. _____
)	
Defendant.)	

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Amy's Kitchen, Inc. ("Amy's Kitchen"), by and through its undersigned counsel, removes the above-captioned action from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. § 1441(a), 1446, 1453, on the grounds that federal jurisdiction exists under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(2)(A).

I. BACKGROUND

1. On October 21, 2013, plaintiff Corey Gilbert, on behalf of himself and all others similarly situated, filed this action, captioned *Gilbert v. Amy's Kitchen, Inc.*, in the Circuit Court of Cook County, Illinois, and the case was docketed at 2013 L 011629. A true and correct copy of plaintiff's Complaint and Summons are attached hereto as Exhibits 1 and 2, respectively.

2. Process was served on Amy's Kitchen on November 18, 2013.

3. Plaintiff alleges that Amy's Kitchen has "unlawfully utilized the illegal term 'Evaporated Cane Juice' on its packaging, hiding from its consumers the fact that it adds sugar to

its products.” Ex. 1 at ¶ 26. The sole cause of action alleged in the Complaint is for violation of the Illinois Consumer Fraud and Deceptive Practices Act (“ICFA”). *Id.* at ¶¶ 59-69.

4. Plaintiff seeks relief on behalf of a purported class of “[a]ll Illinois citizens who, within the Class Period, purchased one or more of the . . . Class Products,” defined as “products that . . . use[] . . . unlawful labels containing the unlawful term ‘evaporated cane juice.’” Ex. 1 at ¶ 6, 17.

5. The “Class Period” alleged in the Complaint is October 21, 2010 to the present. Ex. 1 at ¶ 4.

6. The Complaint seeks restitution of the purchase price paid by plaintiff and the putative consumer class, injunctive relief, all equitable remedies available (including disgorgement), attorneys’ fees and costs, punitive damages, and pre- and post-judgment interest. Ex. 1 at ¶¶ 6, 17, 69, Prayer.

7. Amy’s Kitchen has not filed an answer or responsive pleading to the Complaint.

II. JURISDICTIONAL REQUIREMENTS SATISFIED

8. CAFA sets forth three requirements to invoke federal jurisdiction: (1) a class action comprised of 100 or more members, (2) in which any member of a class of plaintiffs is a citizen of a state different from any defendant, and (3) in which the amount in controversy exceeds \$5,000,000. 28 U.S.C. § 1332(d)(2), (d)(5). All three requirements are satisfied here.

A. This Case Is A Putative Class Action Comprised Of At Least 100 Members

9. The action is a “class action” as defined in 28 U.S.C. § 1332(A)(1)(B), and the members of the putative class are “believed to number in the tens of thousands.” Ex. 1 at ¶ 18; *see also id.* at ¶¶ 16, 17.

B. Minimal Diversity Exists Pursuant To 28 U.S.C. § 1332(d)(2)(A)

10. Plaintiff is a member of the putative class. Ex. 1 at ¶¶ 16-17, 30. Plaintiff is an individual purportedly domiciled in the State of Illinois, Cook County. *Id.* at ¶ 7.

11. Both at the time plaintiff filed the Complaint in the Circuit Court of Cook County, Illinois, and continuing to the present, defendant Amy's Kitchen was and is a corporation organized and existing under the laws of the State of California, with a principal place of business located at 1650 Corporate Circle, Suite 200, Petaluma, California 94955. Ex. 1 at ¶ 11; Declaration of Andy Kopral ("Kopral Decl."), attached as Exhibit 3, at ¶ 2.

12. Plaintiff has brought this action on behalf of himself, an Illinois citizen, and a putative class consisting of "[a]ll Illinois citizens who, within the Class Period, purchased one or more of the" Amy's Kitchen products "which listed 'evaporated cane juice' as an ingredient on the product label." Ex. 1 at ¶ 17; *see also id.* at ¶ 6.

13. Based on the foregoing, minimal diversity exists because at least one member of the class is a citizen of a different state than Amy's Kitchen. *See* 28 U.S.C. § 1332(d)(2)(A).

C. The Amount In Controversy Exceeds \$5,000,000

14. "Unless recovery of an amount exceeding the jurisdictional minimum is legally impossible, the case belongs in federal court. Only jurisdictional *facts*, such as which state issued a party's certificate of incorporation, or where a corporation's headquarters are located, need be established by a preponderance of the evidence." *Back Doctors Ltd. v. Metro. Prop. & Cas. Ins. Co.*, 637 F.3d 827, 830 (7th Cir. 2011). "When removing a suit, the defendant as proponent of federal jurisdiction is entitled to present its own estimate of the stakes; it is not bound by the plaintiff's estimate." *Id.* (citations omitted). "Once this has been done, and supported by proof

of any contested jurisdictional facts, the presumption is the one stated in *St. Paul Mercury*: the estimate of the dispute's stakes advanced by the proponent of federal jurisdiction controls unless a recovery that large is legally impossible." *Id.*

15. Plaintiff's attempt to limit in the Complaint the amount in controversy to less than \$5,000,000 (Ex. 1 at ¶ 15) is therefore not controlling and cannot be used to determine the aggregate amount in controversy for jurisdiction under CAFA. *Back Doctors*, 637 F.3d at 830; *see also Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1346-47 (2013) ("a named plaintiff cannot bind precertification class members" as to the amount in controversy).

16. Although Amy's Kitchen denies any liability to plaintiff and the putative class, and further denies that plaintiff and the putative class have incurred any compensable damages, the aggregate value of the amount in controversy in this case exceeds \$5,000,000, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2).¹

17. Plaintiff has pled that the products at issue here are any Amy's Kitchen products "that bear the identical unlawful and illegal label statement" (*i.e.*, "evaporated cane juice") and were purchased by Illinois citizens since October 21, 2010. Ex. 1 at ¶¶ 4, 6, 17. Plaintiff has requested, *inter alia*, restitution/restoration to the putative class members of "any money paid" by the putative class members for the products at issue. *Id.* at ¶ 69. Revenue to Amy's Kitchen from the sales during the Class Period of the products at issue, to its customers in Illinois, are no less than \$5,469,798. Koprak Decl. at ¶ 3.

18. Thus, Amy's Kitchen has made a showing that, if plaintiff prevails, recovery in this action will exceed the mandatory minimum threshold for jurisdiction under CAFA (*i.e.*,

¹ The "amount in controversy" analysis detailed in the text is only one of multiple ways in which the allegations in the Complaint, fairly read, establish an amount in controversy exceeding \$5,000,000.

\$5,000,000). Such recovery is not “legally impossible,” so the jurisdictional minimum has been established.

19. Because this is (1) a putative class action comprised of 100 or more members, (2) in which any member of the putative class is a citizen of a state different from the defendant’s state of citizenship, and (3) the aggregate amount of damages sought is in excess of \$5,000,000, this case falls within the subject matter jurisdiction of this Court pursuant to 28 U.S.C. § 1332 and is therefore removable pursuant to 28 U.S.C. § 1441.

III. OTHER STATUTORY REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED

20. Plaintiff filed this action in the Circuit Court of Cook County, Illinois. Therefore, venue is proper in the United States District Court for the Northern District of Illinois, Eastern Division, because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

21. No previous application has been made for the relief requested herein.

22. Pursuant to 28 U.S.C. § 1446(a), copies of all process and pleadings served upon Amy’s Kitchen are attached as exhibits hereto. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be promptly served upon plaintiff and promptly filed with the clerk of the Circuit Court of Cook County, Illinois.

WHEREFORE, defendant Amy’s Kitchen respectfully removes this action from the Circuit Court of Cook County, Illinois, docketed at 2013 L 011629, to this Court.

DATED: December 17, 2013

Respectfully submitted,

AMY'S KITCHEN, INC.

By: /s/ Matthew D. Provance
One of its Attorneys

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CERTIFICATE OF SERVICE

I, Matthew Provance, an attorney, certify that I caused a copy of the attached **Defendant Amy's Kitchen, Inc.'s Notice of Removal** and all Exhibits thereto to be served by sending the same by U.S. Mail, first class, postage prepaid, on December 17, 2013, addressed to the following:

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Counsel for Plaintiff

Dated: December 17, 2013

By: /s/ Matthew D. Provance

Matthew D. Provance

Counsel for Defendant Amy's Kitchen, Inc.

EXHIBIT 1

#47988

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION
CLERK DOROTHY BROWNCOREY GILBERT,
and on behalf of all others similarly situated,

Plaintiffs,

v.

No.

Plaintiffs Demand Trial by Jury

AMY'S KITCHEN, INC.

Defendants.

PLAINTIFF'S COMPLAINT AT LAW

Plaintiff COREY GILBERT, individually and on behalf of all other individuals similarly situated, through their attorneys MALATESTA LAW OFFICES LLC, complaining of Defendant AMY'S KITCHEN, INC. ("Amy's Kitchen"), state as follows:

INTRODUCTION

1. This case seeks to recover for the injuries suffered by Plaintiff and the Class as a direct result of the Defendant's unlawful sale of misbranded food products. Defendant's actions violate the Illinois Consumer Fraud and Deceptive Practices Act. Defendant packaged and labeled its food products in violation of the Illinois Food, Drug and Cosmetic Act, 410 ILCS 620 *et seq.* ("IFDCA") which adopts and incorporates relevant provisions of the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.* ("FDCA") and the relevant regulations adopted pursuant to that act. These violations render Defendant's food products "misbranded."

2. Under Illinois law, misbranded food products cannot be legally sold or possessed, have no economic value, and are legally worthless. Indeed, the sale or possession of misbranded food products is a criminal act in Illinois.

3. By selling such illegal products to unsuspecting consumers, including Plaintiff, Defendant profited at Plaintiff's expense and unlawfully deprived Plaintiff of money he paid to purchase food products that were illegal to sell, possess, or resell and had no economic value.

4. The "Class Period" is October 21, 2010 to the present.

5. "Purchased Products" are those products that were purchased by Plaintiff during the Class Period. Plaintiff COREY GILBERT purchased AMY'S KITCHEN's Asian Noodle Stir-Fry, Roasted Vegetable Lasagna, and Baked Ziti Bowl.

6. "Class Products" are the Purchased Products and Defendant's other products that bear the identical unlawful and illegal label statement as that found on the Purchased Products. AMY'S KITCHEN uses the unlawful labels containing the unlawful term "Evaporated Cane Juice" (sometimes "ECJ") for all the Class Products as is more fully described below. ECJ is a term which is illegal to use to describe "sugar" or "dried cane sirup" on food labels under Illinois law.

PARTIES

7. Plaintiff COREY GILBERT is a resident and citizen of Cook County in the State of Illinois. During the Class Period, Plaintiff COREY GILBERT purchased, in Chicago, Illinois, AMY'S KITCHEN products that unlawfully listed the term ECJ on their labels as an ingredient. These products included AMY'S KITCHEN's Asian Noodle Stir-Fry, Roasted Vegetable Lasagna, and Baked Ziti Bowl.

8. Defendant, AMY'S KITCHEN manufactured, advertised, marketed, and sold illegal products labeled as containing ECJ to tens of thousands of consumers residing in Illinois who are similarly situated to the named Plaintiff and constitute "the Class" on whose behalf this cause of action is filed.

9. Defendant, Amy's Kitchen, regularly and systematically conducts business in and throughout Cook County, Illinois.

JURISDICTION AND VENUE

10. Plaintiff COREY GILBERT is a resident of Cook County, Illinois.

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11. Defendant AMY'S KITCHEN is a California corporation that maintains its principal place of business in California.

12. This Court has jurisdiction over this matter pursuant to 735 ILCS 5/2-209 in that Defendants have transacted business and committed tortious acts relating to the matters complained of here in this State.

13. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 because the Defendants transact continuous business in Cook County, Illinois, and because at least a substantial part of the conduct giving rise to this Complaint occurred in Cook County, Illinois.

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

15. There is no federal diversity jurisdiction. Plaintiff and each separate Class Member has individual damages of less than \$75,000. The aggregate amount in controversy of the Class Members' claims does not and will not exceed \$5,000,000 including compensatory damages, restitution, injunctive relief, interest costs and attorney's fees.

CLASS ALLEGATIONS

16. This action is brought by Plaintiff GILBERT individually and on behalf of the class persons defined infra, pursuant to Section 801 *et seq.* of the Illinois Code of Civil Procedure, 735 ILCS 5/2-801 *et seq.*

17. Plaintiff brings this action individually and on behalf of the following class (the "Class"):

All Illinois citizens who, within the Class Period, purchased one or more of the following AMY'S KITCHEN products which listed "evaporated cane juice" as an ingredient on the product label:

Amy's Kitchen Products
Light in Sodium Spinach Pizza
Organic Vegetarian Baked Beans
Organic Low Fat Butternut Squash Soup
Low Fat Cream of Tomato Soup
Chunky Tomato Bisque

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Asian Noodle Stir-Fry
Vegetable Parmesan Bowl
Gluten Free Indian Aloo Mattar Wrap
Gluten Free Tofu Scramble Breakfast Wrap
Breakfast Scramble
Orange Cake
Gluten Free Pound Cake
Gluten Free Chocolate Chip Shortbread Cookies
Gluten Free Almond Shortbread Cookies
Gluten Free Classic Shortbread Cookies
Margherita Pizza
Organic Light in Sodium Chunky Tomato Bisque Soup
Organic Cream of Tomato Soup
Thai Coconut Soup (Tom Kha Phak)
Organic Light in Sodium – Cream of Tomato Soup
Organic Alphabet Soup
Southern Dinner
Light and Lean Italian Vegetable Soup
Spinach Pizza in a Pocket Sandwich
Cheese Pizza in a Pocket Sandwich
Light in Sodium – Vegetable Lasagna
Roasted Vegetable Lasagna
Light in Sodium Family Marinara Pasta Sauce
Lemon Poppy Seed Cake
Chocolate Cake – Gluten Free
Chocolate Cake
Gluten Free Non Dairy Burrito
Gluten Free Cheddar Burrito
Black Bean Tamale Verde
Cheese Tamale Verde
Enchilada Verde Whole Meal
Light & Lean Cheese Pizza
Light & Lean Italian Vegetable Pizza
Light & Lean Sweet & Sour Bowl
Light & Lean Black Bean & Cheese Enchilada
Light & Lean Roasted Polenta
Baked Ziti Bowl
Teriyaki Bowl
Apple Toaster Pops

Strawberry Toaster Pops
Cheese Pizza Toaster Pops
Gluten Free Teriyaki Wrap
Teriyaki Wrap
Breakfast Scramble Wrap

18. The members of the Class, being geographically dispersed and believed to number in the tens of thousands, are so numerous that joinder of them in a single action is impracticable. 735 ILCS 5/2-801(1).

19. There are predominant questions of law and fact that are common to all class members pursuant to 735 ILCS 5/2-801(2). These common questions of law or fact predominate over any questions or issues affecting the individual Class and their members.

20. Plaintiff can and will fairly and adequately represent and protect the interests of the Class, 735 ILCS 5/2-801(3). The claims of Plaintiff are substantially similar, if not identical to, those of absent Class members.

21. There are questions of law or fact that are common to the Class which overwhelmingly predominate over any individual issues, such that by prevailing on Plaintiff's own claims, Plaintiff will necessarily establish Defendant's liability as to all Class.

22. Without the Class's representation provided by Plaintiff, virtually none of the Class members will receive legal representation or redress for their injuries.

23. Plaintiff and his counsel have the necessary financial resources to adequately and vigorously litigate this class action.

24. Plaintiff and Class counsel are aware of their fiduciary responsibilities to the Class members and are determined to diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

25. A class action is the superior method for the fair and efficient adjudication of this controversy pursuant to 735 ILCS 5/2-801(4), given that:

- (a) Common questions of law and fact so overwhelmingly predominate over any individual questions that may arise such that there would be enormous

economic benefit to the Court and the parties in litigating the common issues on class-wide, instead of an individual, basis;

- (b) Few Class members have any interest in individually controlling the prosecution of separate actions and any that do may opt out;
- (c) Class treatment is required for optimal deterrence and compensation and for limiting the court-awarded reasonable legal expenses incurred by the Class' members;
- (d) Despite the size of individual Class members' claims, their aggregate volume, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this class action to be litigated on a cost-effective basis, especially when compared with repetitive individual litigations; and
- (e) No unusual difficulties are likely to be encountered in the management of this class action insofar as Defendant's liability turns on substantial questions of law or fact that are common to the Class and that predominate over any individual questions.
- (f) Tens of thousands of consumers have been affected by AMY'S KITCHEN'S illegal production and sale of products listing the unlawful term ECJ as an ingredient of the product, however, the amount in controversy for the individual consumer might not justify the expense of pursuing individual litigation.

FACTUAL ALLEGATIONS

26. AMY'S KITCHEN products are available at most major supermarket chains from coast to coast. Amy's Kitchen claims that it has "always been sensitive to the needs and concerns of our customers," and that consumers "have the right to know what's in the food we eat and feed our families." So AMY'S KITCHEN implores its customers to "(j)oin us as we take our fight for the right to know what is in our food to the FDA." Many of AMY'S KITCHEN's product ingredient labels include the phrase "(no hidden ingredients)." Its website even includes a link for "Healthy Living" which contains an excerpt of an April 10, 2012 article by Keith Nunes entitled "Study Pegs Cost of Obesity at \$190.2 Billion per Year." Yet, while declaring the consumer's right to know about the ingredients in food, AMY'S KITCHEN has unlawfully

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utilized the illegal term "Evaporated Cane Juice" on its packaging, hiding from its consumers the fact that it adds sugar to its products.

27. On and before October 21, 2010, and at all relevant times, Plaintiff COREY GILBERT and the Class purchased the AMY'S KITCHEN food products mentioned in Paragraph 17, supra.

28. On and before October 21, 2010, and at all relevant times, AMY'S KITCHEN unlawfully listed "Evaporated Cane Juice" on its package labels, instead of describing the ingredient by its common and usual name: "sugar."

29. On and before October 21, 2010, and at all relevant times, AMY'S KITCHEN used the term "Evaporated Cane Juice" on its product labels to make its products appear healthier than products that contain added sugar as an ingredient. Through the use of this illegal label, AMY'S KITCHEN increased sales and charged a premium by making a product seem healthier..

30. On and before October 21, 2010, and at all relevant times, Plaintiff COREY GILBERT purchased the AMY'S KITCHEN's Asian Noodle Stir-Fry, Roasted Vegetable Lasagna, and Baked Ziti Bowl products; however, AMY'S KITCHEN markets and sells a number of products that contain the term "evaporated cane juice" or "organic evaporated cane juice" on the product label; (collectively known as the "ECJ labeling").

31. On and before October 21, 2010, and at all relevant times, each of the AMY'S KITCHEN products in Paragraph 17, supra listed "Evaporated Cane Juice" as an ingredient.

32. The ingredient AMY'S KITCHEN identifies as "Evaporated Cane Juice" on its products' label is not derived from a fruit or vegetable.

33. The ingredient AMY'S KITCHEN identifies as "Evaporated Cane Juice" on its products' label is "sugar."

34. On and before October 21, 2010, and at all relevant times, AMY'S KITCHEN failed to accurately identify sugar on its list of ingredients for its products. Rather, the label

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identifies "Evaporated Cane Juice" as an ingredient, the ingredient is not "juice," but is "sugar" or "syrup."

35. Section § 101.4 (a)(1) of the Code of Federal Regulations, which Illinois has adopted, provides that "[i]ngredients required to be declared on the label or labeling of a food...shall be listed by common or usual name..." 21 C.F.R. § 102.5. That provision requires that the label accurately describe the basic nature of the food or its characterizing properties or ingredients, and prohibits the use of a term like ECJ that is "confusingly similar to the name of any other food that is not reasonably encompassed within the same name."

36. ECJ is not the common or usual name of the ingredient on AMY'S KITCHEN's labels. AMY'S KITCHEN is required to use "sugar" as the name for that ingredient on those labels.

37. The ingredient AMY'S KITCHEN identifies on its product label as "Evaporated Cane Juice" is not a juice as defined by the federal regulations. 21 C.F.R. § 120.1(a) (defining "juice" as "the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree..."). AMY'S KITCHEN's "Evaporated Cane Juice" ingredient does not meet that definition.

38. Instead, the ingredient listed as "Evaporated Cane Juice" on Defendant's labels is really "sucrose" as defined in 21 C.F.R. § 184.1854; that provision requires that sucrose be identified as sugar on the product label. 21 C.F.R. § 184.1854 (stating that the definition of sugar/sucrose covers products "obtained by crystallization from sugar cane or sugar beet juice that has been extracted by pressing or diffusion, then clarified and evaporated"); See also 21 C.F.R. § 101.4(b)(20) ("[f]or purposes of ingredient labeling, the term sugar shall refer to sucrose, which is obtained from sugar cane or sugar beets in accordance with the provisions of 184.1854 of this chapter").

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39. 21 C.F.R. § 184.1854 lists the chemical names, CAS number and structure of sugar/sucrose (C12 H22 O11, CAS Reg. No. 57-50-11-1, β -D-fructofuranosyl- α -D-glucopyranoside) as well as its common names (sugar, sucrose, cane sugar, or beet sugar).

40. Those federal regulations, as well as the others discussed *infra*, have been adopted by Illinois pursuant to the Illinois' Food, Drug and Cosmetic Act. AMY'S KITCHEN's use of the term "Evaporated Cane Juice" as an ingredient violates the plain terms of those regulations.

41. A label containing the term ECJ to describe sugar (1) is "false" (e.g., states the product is a juice when it is not); and (2) violates a number of labeling regulations designed to ensure that companies like Defendant label their products with the common and usual names of the ingredients they use and accurately describe the ingredients they utilize. The term ECJ fails to reveal the basic nature of the food and its characterizing properties, *i.e.* the ingredient is sugar or syrup and not juice.

42. FDCA regulations, which the Illinois' Food, Drug and Cosmetic Act incorporate into Illinois law, provide that "Evaporated Cane Juice" is not the common and usual name for an ingredient.

43. The federal regulations are clear. ECJ is an unlawful term because it is not the common or usual name for sugar. It is not a juice.

44. Defendant could easily have complied with the labeling regulations by simply calling its sweetener "sugar" (or "dried cane sirup") instead of ECJ. The use of the term "Evaporated Cane Juice" renders the label unlawful and the resulting sale of the product illegal.

45. Plaintiff and the Class paid a premium price for these products that fail to comply with mandatory labeling requirements and standards established by law such that the products are misbranded and rendered unfit for sale. These products are illegal to sell or possess. In fact, the products were worthless due to their illegality and thus the unjustified premium paid for these products equaled their purchase price.

46. Plaintiff and the Class paid a premium price for AMY'S KITCHEN products with the illegal term ECJ listed on their labels.

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47. Plaintiff and the Class have been damaged by AMY'S KITCHEN's illegal conduct in that they purchased misbranded and worthless products that were illegal to sell or possess based on Defendant's illegal labeling of the products.

48. Plaintiff and the Class would not have purchased the products had they known that the products were illegal to sell or possess.

49. Plaintiff and the Class would not have purchased the products had they known the products contain added sugar, beyond the sugar that naturally exists in the other ingredients in the products

DEFENDANT'S CONDUCT IS UNLAWFUL

50. Plaintiff's case is brought pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505 *et seq.* ("ICFA"). Defendant packaged and labeled the Purchased Products and Class Products in violation of the IFDCA which adopts and incorporates all relevant aspects of the federal Food Drug & Cosmetics Act, 21 U.S.C. § 301 *et. seq.* ("FDCA"). See 410 ILCS 620/9 (West 2008); 410 ILCS 620/11 (West 2008). Purchased Products and Class Products with this identical type of ECJ labeling violations are "misbranded" as a matter of law.

51. Sections 101.3 and 102.5 of the Code of Federal Regulations, which have been adopted by Illinois, prohibit companies like Defendant from referring to foods by anything other than their common and usual names.

52. Section 101.4 of the Code of Federal Regulations, which has been adopted by Illinois, prohibits companies like Defendant from referring to ingredients by anything other than their common and usual names. It specifically provides in subsection (b)(20) that "[f]or purposes of ingredient labeling, the term sugar shall refer to sucrose, which is obtained from sugar cane or sugar beets in accordance with the provisions of 184.1854 of this chapter." 21 C.F.R. § 101.4(b)(20).

53. AMY'S KITCHEN has violated these regulatory provisions detailed above by failing to use the common or usual name for sugar as mandated by law. In particular, AMY'S

KITCHEN used the unlawful term ECJ on its products in violation of numerous federal and state labeling regulations designed to protect consumers from illegally misbranded products. The ingredient it identifies as "ECJ" is not a "juice." It is "sugar" as per the regulations adopted by the Illinois Food, Drug and Cosmetic Act.

54. Defendant AMY'S KITCHEN violated 21 CFR §§ 101.4 and 102.5 (adopted and incorporated by reference by IFDCA, 410 ILCS 620/9) and 410 ILCS 620/11. Section 620/11 of the Illinois Food, Drug and Cosmetic Act states that a product is misbranded if the common and usual ingredient names are not used. Therefore, AMY'S KITCHEN violated the ICFA by misbranding its products with ECJ instead of using the term "sugar."

55. AMY'S KITCHEN's act of selling an illegally misbranded product violates section 620/3.1 of the Illinois Food, Drug and Cosmetic Act (410 ILCS 620/3.1), which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded

56. Pursuant to section 620/5 of the Illinois' Food, Drug and Cosmetic Act (410 ILCS 620/5), the sale of such a misbranded product (*i.e.* one whose label fails to use the common and usual ingredient name as required by law) constitutes a criminal act punishable by up to thirty days in jail. As a result, the injury to the Class arises from Defendant illegally selling a product it misbranded, the sale of which is a criminal act. Plaintiff and the Class have been unlawfully deprived of money because Defendant sold them a worthless, illegal product that could not be legally sold or possessed. Due to the law's prohibition of possession of such a product, consumers have been unwittingly placed, solely and directly by AMY'S KITCHEN's conduct, in a position that no reasonable consumer would choose: possession of an illegal product. Consumers have thus been directly injured by Defendant's illegal act of unlawfully selling them an illegal product.

57. The term ECJ is unlawful because the term does not represent the common or usual name of a food or ingredient. Foods that bear labels that contain the term ECJ are misbranded as a matter of law.

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58. Under Illinois law, a food product that is misbranded cannot be legally manufactured, advertised, distributed, possessed or sold. Because these products are illegal to possess, they have no economic value and are legally worthless. Indeed, the sale or possession of misbranded food is a criminal act in Illinois.

CAUSE OF ACTION

VIOLATION OF CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

59. Plaintiff repeats and realleges the allegation of paragraphs 1 through 58 as if fully set forth herein.

60. Under Illinois law, unlawful injury causing conduct, such as Defendant's unlawful sale of an illegal product, is the only element necessary for an ICFA claim. Plaintiff's claims are based on Illinois food labeling laws which are identical to the federal law that Illinois adopted as noted above.

61. On and before October 21, 2010, and at all relevant times, Defendant, AMY'S KITCHEN sold Purchased Products and Class Products in Illinois during the Class Period.

62. On and before October 21, 2010, and at all relevant times, Defendant, AMY'S KITCHEN had a duty to follow requirements of the Illinois' Food, Drug and Cosmetic Act which adopts and incorporates all relevant aspects of the federal Food Drug & Cosmetics Act, 21 U.S.C. § 301 *et. seq.*

63. On and before October 21, 2010, and at all relevant times, Defendant, AMY'S KITCHEN, knew of its legal and statutory obligations concerning the duty to follow requirements of the Illinois Food, Drug and Cosmetic Act which adopts and incorporates all relevant aspects of the federal Food Drug & Cosmetics Act, 21 U.S.C. § 301 *et. seq.*

64. On and before October 21, 2010, and at all relevant times, Defendant, AMY'S KITCHEN, sold to Plaintiff and the Class, Purchased Products and Class Products that were not

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capable of being sold or held legally and have no economic value and which were legally worthless. Plaintiff and the Class lost money as a direct result of Defendant's unlawful conduct.

65. Plaintiff and the Class would not have purchased the products had they known that the products were illegal to sell or possess.

66. Plaintiff and the Class would not have purchased the products had they known the products contain added sugar, beyond the sugar that naturally exists in the other ingredients in the products

67. On and before October 21, 2010, and at all relevant times, Defendant, AMY'S KITCHEN's, business practices are unlawful under ICFA 815 ILCS 505/2 by virtue of Defendant's violations of the misbranded food provisions of Section 3 and Section 11 of the Illinois' Food, Drug and Cosmetic Act.

68. On and before October 21, 2010, and at all relevant times, Defendant AMY'S KITCHEN's unlawful business acts present a threat and a reasonable continued likelihood of injury to Plaintiff and the Class.

69. As a result of Defendant AMY'S KITCHEN's illegal business practices, Plaintiff and the Class, pursuant to ICFA 815 ILCS 505/10a, are entitled to an order enjoining such future conduct and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any Class Member any money paid for the Purchased Products and Class Products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment, jointly and severally as follows:

A. For an order certifying this case as a state wide Class action and appointing Plaintiff and his counsel to represent the Class;

B. For an order awarding, as appropriate, restitution pursuant to the ICFA to Plaintiff and the Class;

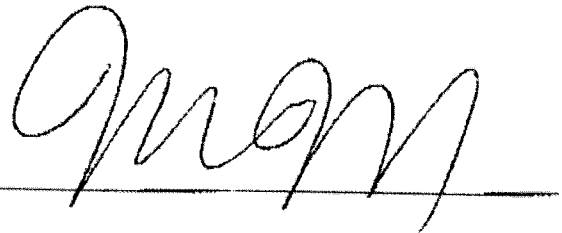
C. For an order requiring Defendant to immediately cease and desist from selling its Class Products noted above in violation of law; enjoining Defendant from continuing to market,

advertise, distribute, and sell these products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;

- D. For all equitable remedies available;
- E. For an order awarding attorneys' fees and costs;
- F. For an order awarding punitive damages;
- G. For an order awarding pre-and post-judgment interest;
- H. That all issues of fact in this matter be determined by a jury; and
- I. For an order providing such further relief as this Court deems proper.

Dated: October 21, 2013

By: _____



Malatesta Law Offices LLC
134 N. LaSalle Suite 425
Chicago, IL 60602
Phone (312) 445-0514
Fax (312) 264-0650

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EXHIBIT 2

2120 - Served
 2220 - Not Served
 2320 - Served By Mail
 2420 - Served By Publication
 SUMMONS

2121 - Served
 2221 - Not Served
 2321 - Served By Mail
 2421 - Served By Publication
 ALIAS - SUMMONS

(2/28/11) CCG N001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT, LAW DIVISION

No. 2013 L 011629

SHERIFF PLEASE SERVE:

AMY'S KITCHEN, 1650 CORPORATE CIRCLE

PETALUMA, CA 94954-6950

COREY GILBERT, and on behalf of all others similarly situated,
 (Name all parties)

v.

AMY'S KITCHEN

☒ SUMMONS ☐ ALIAS SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

- ☒ Richard J. Daley Center, 50 W. Washington, Room 801, Chicago, Illinois 60602
- | | | |
|---|--|--|
| <input type="radio"/> District 2 - Skokie
5600 Old Orchard Rd.
Skokie, IL 60077 | <input type="radio"/> District 3 - Rolling Meadows
2121 Euclid
Rolling Meadows, IL 60008 | <input type="radio"/> District 4 - Maywood
1500 Maybrook Ave.
Maywood, IL 60153 |
| <input type="radio"/> District 5 - Bridgeview
10220 S. 76th Ave.
Bridgeview, IL 60455 | <input type="radio"/> District 6 - Markham
16501 S. Kedzie Pkwy.
Markham, IL 60428 | <input type="radio"/> Child Support
28 North Clark St., Room 200
Chicago, Illinois 60602 |

You must file within 30 days after service of this Summons, not counting the day of service.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.: 47988

Name: MICHAEL J. MALATESTA

Atty. for: PLAINTIFF

Address: 134 N. LASALLE STREET, SUITE 425

City/State/Zip: CHICAGO, ILLINOIS 60602

Telephone: 312-445-0514

WITNESS, DOROTHY BROWN, 2013

CLERK OF CIRCUIT COURT

Date of service: 12/17/13, 2013

(To be inserted by officer or copy left with defendant or other person)

Service by Facsimile Transmission will be accepted at:

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COREY GILBERT, and on behalf of all)
Others similarly situated,)
Plaintiff,)

v.)

AMY'S KITCHEN, INC.,)

Defendant.)

Civil Action No. _____

DECLARATION OF ANDY KOPRAL

I, Andy Kopral, declare as follows:

1. I am the Treasurer for defendant Amy's Kitchen, Inc. ("Amy's Kitchen"). I have personal knowledge of the matters stated in this declaration and could and would competently testify to them if called as a witness. I submit this declaration in support of Amy's Kitchen's Notice of Removal.

2. Amy's Kitchen is a corporation organized and existing under the laws of the State of California. Its principal place of business is located at 1650 Corporate Circle, Suite 200, Petaluma, California 94955.

3. In my position as Treasurer for Amy's Kitchen, I monitor and review the revenues earned by Amy's Kitchen based on its sales. Based on reliable business records maintained by Amy's Kitchen and at my disposal and under my custody and control, I am aware that during the time period of October 21, 2010 to December 1, 2013, Amy's Kitchen had sales of no less than \$5,469,798 into Illinois of its products that listed "evaporated cane juice" as an ingredient on the product label.

I declare under penalty of perjury under the laws of the State of Illinois and the United States that the foregoing is true and correct.

Executed this 17th day of December, 2013, at Petaluma, California.



Andy Kopral