

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

LESLIE REILLY, an individual,
on behalf of herself and all others similarly
situated,

Plaintiff,

v.

CHIPOTLE MEXICAN GRILL, INC.,
a Delaware corporation,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff Leslie Reilly (“Plaintiff”) hereby sues for herself and all others similarly situated, Defendant Chipotle Mexican Grill, Inc. (“Chipotle” or “Defendant”) and alleges as follows:

INTRODUCTION

1. Plaintiff brings this consumer class action on behalf of herself and all other persons who, from September 10, 2011 up to and including the present (the “Class Period”), purchased in Florida for consumption and not resale food products sold by Defendant containing “genetically modified organisms” (“GMO”).

2. During the Class Period, Chipotle engaged in a uniform campaign through which it purposefully misrepresented and continues to purposefully misrepresent to consumers that its food products contain only non-GMO ingredients. However, Chipotle’s meat products come from animals that feed on GMOs, including corn and soy. Additionally, Chipotle serves its meals with sour cream and cheese that come from dairy farms that feed the animals GMOs.

3. Chipotle's actions constitute violations of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201-501.2101. Chipotle has also been unjustly enriched as a result of its conduct at the Plaintiff's expense.

4. As a result of these unfair and deceptive practices, Chipotle has collected millions of dollars from the sale of its food products that it would not have otherwise earned.

PARTIES, JURISDICTION, AND VENUE

5. Plaintiff Leslie Reilly is a citizen of the State of Florida. During the Class Period, Plaintiff purchased Chipotle food products containing GMOs for personal consumption within the State of Florida.

6. Defendant Chipotle is a corporation organized and existing under the laws of the state of Delaware. Chipotle's headquarters is located in Denver, Colorado. Chipotle markets, advertises, and sells food products to tens of thousands of consumers nationwide, including Florida.

7. The Court has jurisdiction over Chipotle because its food products are advertised, marketed, and sold throughout Florida; Chipotle engaged in the wrongdoing alleged in this Complaint throughout the United States, including in Florida; Chipotle is authorized to do business in Florida; and Chipotle has sufficient minimum contacts with Florida and/or otherwise has intentionally availed itself of the markets in Florida, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Chipotle is engaged in substantial and not isolated activity within this state.

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a member of the putative

class is a citizen of a different state than Defendant, and the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

9. Venue is proper in this district because a substantial part of the events giving rise to Plaintiff's claims occurred in this district, and Chipotle is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

10. Chipotle owns and operates a national chain of Mexican fast-food "burrito" restaurants. During the Class Period, Chipotle has marketed itself as a healthier fast-food restaurant by claiming to serve food products that do not contain GMOs.

11. A GMO, a "genetically modified" or "genetically engineered" organism, is an organism whose genetic material has been altered in an unnatural way.¹ Scientists genetically modify organisms to introduce new features to the organisms; for example, plants may be genetically engineered to produce characteristics that are unnatural.²

12. Chipotle unfairly advertises and markets that its food products are made with non-GMO ingredients, even though it knows that its meat and dairy products come from animals that consume GMO feed. Meat and dairy products that come from animals that consume GMO feed are in fact GMO products, and not GMO-free as advertised and marketed by Chipotle

¹ *FDA's Role in Regulating Safety of GE Foods* (May 14, 2013) <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm352067.htm>. *See also Frequently asked questions on genetically modified foods* (May 2014), http://www.who.int/foodsafety/areas_work/food-technology/faq-genetically-modified-food/en/

² *Id.*

13. Chipotle maintains on its website that there is “no place for nontherapeutic antibiotics and synthetic hormones on the farms that produce our ingredients.”

14. Examples of Chipotle advertisements are provided below:



A FAREWELL TO GMOs

For the last 21 years we have been striving to make our ingredients better. Given that we don't think genetically modified organisms (GMOs) are better, we have replaced them with non-GMO ingredients. Now all of our food is non-GMO.

CHIPOTLE.COM/GMO



15. Chipotle claims to use ingredients that are GMO-free in order to capture health and environmentally conscious consumers who will pay premium prices for food products that are healthier and/or more environmentally-friendly.

16. Chipotle's advertising and marketing claims that its food products are made with only non-GMO ingredients and that all of its food products are non-GMO are false, misleading, and deceptive because its meat and dairy products come from animals that consume foods with GMO.

17. Chipotle intentionally conceals and/or fails to disclose to consumers that not all of the ingredients it uses in its food products are GMO-free to induce Plaintiff and putative class members to buy Chipotle food products.

18. In January 2001, the Food and Drug Administration ("FDA") issued Guidance for Industry: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering, which advised the industry about "bioengineered," or genetically engineered foods, and cautioned against misbranding foods by its labels, noting that "a food is misbranded if its labeling is false or misleading in any particular."³ It further advised:

[A] statement that an ingredient was not bioengineered could be misleading if there is another ingredient in the food that was bioengineered. The claim must not misrepresent the absence of bioengineered material...Even if the statement is true, it is likely to be misleading if consumers believe that the entire product or a larger portion of it than is actually the case is free of bioengineered material. It may be necessary to carefully qualify the statement in order to ensure that consumers understand its significance.⁴

³ *Draft Guidance for Industry: Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering; Draft Guidance* (January 2001), <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm059098.htm>.

⁴*Id.*

19. Despite the FDA Guidance, Chipotle continues to purposefully misrepresent to consumers, by way of its advertisements and billboards, that its food products contain only non-GMO ingredients.

20. Such claims mislead consumers into paying a premium price for products that do not satisfy the minimum standards established by law for those products and for inferior or undesirable ingredients or for products that contain ingredients that are not disclosed.

21. Chipotle's false, unlawful, and misleading food product descriptions render these food products misbranded under Florida law. Specifically, Section 500.04 of the Florida Food Safety Act prohibits the manufacture, sale or delivery of "misbranded food." Food is "misbranded" when "its labeling is false or misleading in any particular" or when a food is "offered for sale under the name of another food." Fla. Stat. § 500.11(1)(a) & (b). Misbranded products cannot be legally sold and are legally worthless.

22. Plaintiff and the class members paid a premium price for their Chipotle food products, relying on Chipotle's claim that the food products did not contain GMOs.

23. Plaintiff and the Class have been damaged by Chipotle's deceptive and unfair conduct in that they purchased a misbranded and worthless product or paid prices they otherwise would not have paid had Chipotle not misrepresented the ingredients in the food products.

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this case as a class action for violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. §§501.201-501.213 and common law. Plaintiff seeks certification of the following Class: All individuals who purchased any Chipotle food product containing GMOs for consumption and not resale in Florida after September 10, 2011 up to and

including the present (the “Class”). Excluded from the Class are employees, officers, and directors of Chipotle.

25. This action is proper for class treatment under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiff at this time, Plaintiff is informed and believes that there are thousands of Class members. Thus, the Class is so numerous that individual joinder of all Class members is impracticable.

26. Questions of law and fact arise from Defendant’s conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

- a. whether listing the food products as GMO-free is false and misleading;
- b. whether identifying the food products as GMO-free renders the products at issue misbranded;
- c. whether Chipotle failed to disclose to consumers that the meat and dairy it uses comes from animals that are fed GMOs;
- d. whether Chipotle engaged in a marketing practice intended to deceive consumers by stating that all of its food products were made with non-GMO ingredients;
- e. whether Chipotle’s marketing practices are unfair and deceptive in violation of FDUTPA;
- f. whether Chipotle has been unjustly enriched at the expense of Plaintiff and the other Class members by its misconduct;
- g. whether Chipotle must disgorge any and all profits it has made as a result of its misconduct; and
- h. whether Chipotle should be barred from marketing its products as GMO-free.

27. Plaintiff will fairly and adequately represent and pursue the interests of the Class. Plaintiff’s counsel has vast experience in litigating consumer class action cases. Plaintiff

understands the nature of her claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class.

**COUNT I- INJUNCTION FOR VIOLATIONS OF THE FLORIDA
DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

28. Plaintiff realleges and incorporates by reference paragraphs 1 - 27 herein and further alleges as follows:

29. This is a claim for an injunction for violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201-501.2101.

30. FDUTPA provides that unfair methods of competition, unconscionable acts and practices, and unfair or deceptive acts or practices in the conduct "of any trade or commerce" are unlawful. Fla. Stat. §501.204. Under FDUTPA, "trade or commerce" is defined to include any advertisement or solicitation relating to any "thing of value." Fla. Stat. §501.203(8).

31. Plaintiff and the other Class members are consumers as defined and construed under FDUTPA, Fla. Stat. §§501.201-501.213. Further, Plaintiff and the other Class members are "aggrieved" by the sale of food products listed as being "GMO-free" in that they purchased said products that in fact, contained GMOs.

32. The practices employed by Defendant, whereby Defendant unfairly advertised, promoted, and marketed that its products were made with non-GMO ingredients are unfair, deceptive, and misleading. In addition, the practice employed by Defendant, whereby Defendant sold, promoted and marketed that its products were made with non-GMO ingredients constitutes a *per se* violation of FDUTPA under Section 501.203(3)(c) because it is in violation of the Florida Food Safety Act, Fla. Stat. § 500.04 (1) and (2) in that said products are misbranded.

33. Chipotle should be enjoined from marketing their products as being made with non-GMO ingredients as described above pursuant to Fla. Stat. § 501.211(1).

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, respectfully demands a judgment enjoining Chipotle's conduct, awarding costs of this proceeding and attorney's fees, as provided by Fla. Stat. § 501.2105, and such other relief as this Court deems just and proper.

**COUNT II- VIOLATIONS OF THE FLORIDA
DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**

34. Plaintiff realleges and incorporates by reference paragraphs 1 - 27 herein and further alleges as follows:

35. This is a claim for violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201-501.2101.

36. FDUTPA provides that unfair methods of competition, unconscionable acts and practices, and unfair or deceptive acts or practices in the conduct "of any trade or commerce" are unlawful. Fla. Stat. §501.204. Under FDUTPA, "trade or commerce" is defined to include any advertisement or solicitation relating to any "thing of value." Fla. Stat. §501.203(8).

37. Plaintiff and the other Class members are consumers as defined and construed under FDUTPA, Fla. Stat. §§501.201-501.213.

38. The practices employed by Defendant, whereby Defendant unfairly advertised, promoted, and marketed its products as made with non-GMO ingredients are unfair, deceptive, and misleading. In addition, the practice employed by Defendant, whereby Defendant sold, promoted and marketed that its products were made with non-GMO ingredients constitutes a *per se* violation of FDUTPA under Section 501.203(3)(c) because it is in violation of the Florida Food Safety Act, Fla. Stat. § 500.04 (1) and (2) in that said products are misbranded.

39. Plaintiff and the other Class members suffered a loss as a result of Chipotle's deceptive and unfair trade acts. Specifically, as a result of Chipotle's deceptive and unfair trade

acts and practices, Plaintiff and the other Class members suffered monetary losses associated with the purchase of Chipotle food products containing ingredients with GMO, *i.e.*, the purchase price of the product and/or the premium paid by Plaintiff and the Class for said products.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, respectfully demands an award against Chipotle for actual and/or compensatory damages, in addition to the costs of this proceeding and attorney's fees, as provided by Fla. Stat. § 501.2105, and such other relief as this Court deems just and proper.

COUNT III- UNJUST ENRICHMENT

40. Plaintiff realleges and incorporates the allegations contained in paragraphs 1 - 27 herein and further alleges as follows:

41. Chipotle received certain monies that are excessive and unreasonable as a result of its uniform deceptive marketing of its products as being made with non-GMO ingredients when in fact it contained GMOs.

42. Plaintiff and the Class conferred a benefit on Chipotle through purchasing its food products under the belief that they did not contain GMOs, when in fact they did, and Chipotle has knowledge of this benefit and has voluntarily accepted and retained the benefits conferred on it.

43. Chipotle will be unjustly enriched if it is allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Chipotle and for which Chipotle has been unjustly enriched.

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, demands an award against Chipotle for the amounts equal to the amount each Class member enriched Chipotle and for which Chipotle has been unjustly enriched, and such other relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

44. Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: September 10, 2015

Respectfully submitted,

s/ Lance A. Harke _____

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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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS LESLIE REILLY, an individual, on behalf of herself and all others similarly situated DEFENDANTS CHIPOTLE MEXICAN GRILL, INC., a Delaware corporation

(b) County of Residence of First Listed Plaintiff Miami-Dade County, FL (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant Kent County, CO (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Harke Clasby & Bushman LLP 305 536-8220 9699 NE 2nd Avenue, Miami Shores, FL 33138 Attorneys (If Known)

(d) Check County Where Action Arose: [X] MIAMI-DADL [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST LUCIE [] INDIAN RIVER [] OKLAHOMA [] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
[] 1 U.S. Government Plaintiff [] 3 Federal Question (U.S. Government Not a Party) [] 2 U.S. Government Defendant [X] 4 Diversity (Indicate Citizenship of Parties in Item III)

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT REAL PROPERTY TORTS CIVIL RIGHTS PRISONER PETITIONS FORFEITURE/PENALTY LABOR IMMIGRATION LABORATORY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding [] 2 Removed from State Court [] 3 Re-filed (See VI below) [] 4 Reinstated or Reopened [] 5 Transferred from another district (specify) [] 6 Multidistrict Litigation [] 7 Appeal to District Judge from Magistrate Judgment [] 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION 28 U.S.C. § 1332. This is an action to recover damages sustained as a result of Defendant's sale of Chipotle Food LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: [X] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE 9/10/15 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT # AMOUNT JFP JUDGE MAG JUDGE

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

UNITED STATES DISTRICT COURT
for the
Southern District of Alabama

LESLIE REILLY, an individual, on behalf of herself
and all others similarly situated,

Plaintiff(s)

v.

CHIPOTLE MEXICAN GRILL, INC., a Delaware
corporation

Defendant(s)

Civil Action No. 1:15-cv-23425

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CHIPOTLE MEXICAN GRILL, INC.
By Serving its Registered Agent:
NRAI SERVICES, INC
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

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:

HARKE CLASBY & BUSHMAN LLP
9699 NW 2ND AVENUE
MIAMI SHORES, FL 33138

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.

CLERK OF COURT

Date: 09/10/2015

Signature of Clerk or Deputy Clerk