

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

BRIAN STREET, SEBASTIAN
HEGUABURO, individually
and on behalf of all others similarly
situated,

Case No.:

Plaintiffs,

v.

HOME RUN INN FROZEN FOODS CORP.

Defendant.

CLASS ACTION COMPLAINT

Plaintiffs, Brian Street and Sebastian Heguaburo (“hereinafter Plaintiffs”), individually, and on behalf of all other similarly situated persons, by and through their undersigned counsel, bring this class action complaint against Home Run Inn Frozen Foods Corp.

SUMMARY OF THE CASE

1. Home Run Inn Frozen Foods Corp. (“Home Run Inn” or “Defendant”) is a company that produces, markets, and labels several frozen pizza products. Home Run Inn’s claims to sell “All Natural” products made from all natural ingredients.

2. Home Run Inn manufactures, markets and labels lines of Home Run Inn’s frozen pizza products sold with labels that, in describing the contents, display the words “All Natural”. In truth, Defendant’s Home Run Inn frozen pizza products contain genetically modified and hexane processed ingredients, such as corn oil.

Specifically, in regards to its Home Run Inn frozen food products, Home Run Inn makes the following false and deceptive claims:

- **All Natural** (Primary Display Panel).
- No Artificial Ingredients (Primary Display Panel).
- “Take a look at our **All Natural** Ingredients” (Secondary Display Panel).
- Or enjoy our frozen pizza made with the same **all-natural** ingredients, homemade sauces and sausage without a single additive or preservative.¹
- The same **All Natural** Ingredients from our pizzerias in your oven.²
- Same **all-natural** ingredients.³
- Home Run Inn pizzas are made with **all-natural** ingredients and do not contain preservatives.⁴

3. Home Run Inn’s frozen pizza products are not “All Natural” because they all contain ingredients that are sourced from genetically modified crops—such as corn. A genetically modified (“GM”) crop is a crop whose genetic material has been altered by humans using genetic engineering techniques. The World Health Organization defines genetically modified organisms (“GMOs”), which include genetically modified crops, as “organisms in which the genetic material (DNA) has been altered in a way that does not occur naturally.”⁵ GM crops are not natural, but man-made. There are wide-ranging controversies related to GM

¹ <http://www.homeruninnpizza.com/>

² <http://www.homeruninnpizza.com/frozen-pizza>

³ <http://www.homeruninnpizza.com/frozen-pizza>

⁴ <http://www.homeruninnpizza.com/pizza-with-integrity>

⁵ http://www.who.int/foodsafety/areas_work/food-technology/faq-genetically-modified-food/en/

crops, including health risks from ingesting GMO foods and negative environmental effects associated with growing GM crops. The use and labeling of GMO foods is the subject of a variety of laws, regulations, and protocols worldwide.

4. Genetically modified crops do not occur in nature, and are crops that are genetically manipulated from their natural state. Monsanto, one of the largest producers of genetically modified crop seeds, defines genetic modification (or genetic engineering) to mean “[t]he technique of removing, modifying or adding genes to a living organism via genetic engineering or other more traditional methods. Also referred to as gene splicing, recombinant DNA (rDNA) technology or genetic engineering.”⁶ Monsanto also 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.” *Id.*

5. The World Health Organization’s definition of GMO (referenced above) is consistent with Monsanto’s definition. The Organization also cautions that “All GM foods should be assessed before being allowed on the market.”⁷

6. Romer Labs, a company that provides diagnostic services to the agricultural industry, including tests to detect and determine the existence of GM crops, defines GM crops as “[a]griculturally important plants [that] are often genetically modified by the insertion of DNA material from outside the organism into the plant’s DNA sequence, allowing the plant to express

⁶ <http://www.monsanto.com/newsviews/pages/glossary.aspx#g>

⁷ http://www.who.int/topics/food_genetically_modified/en/

novel traits that normally would not appear in nature, such as herbicide or insect resistance. Seed harvested from GMO plants will also contain these modifications.”⁸

7. The market for natural products is large and ever growing and consumers are willing to pay a premium for products they believe to be natural, healthy, and/or free of GMOs.

8. Therefore, independent of the use of GMO crops in Home Run Inn’s frozen pizza products, “All Natural” claims are false because Home Run Inn’s frozen pizza products contain ingredients that are hexane processed and so heavily altered that they are no longer chemically the same as the raw ingredients.

9. Upon information and belief, Defendant knew and intended that consumers would pay a price premium for Home Run Inn’s frozen pizza products if they were labeled “All Natural.”

10. Additionally, in a November 16, 2011 FDA Warning Letter to Alexia Foods, Inc., the FDA specified that, “because your products contain synthetic ingredients, the use of the claim ‘All Natural’ on this product label is false and misleading, and therefore your product is misbranded under section 403(a)(1) of the [Federal Food, Drug, and Cosmetic] Act.”⁹ Similarly, because Defendant’s products contain genetically modified and hexane processed ingredients, the “All Natural” on Home Run Inn’s frozen pizza products is false and misleading, and therefore misbranded.

11. Defendant knowingly and purposefully failed to disclose to its consumers that its Home Run Inn’s frozen pizza products contain genetically modified and hexane processed

⁸ <http://www.romerlabs.com/en/knowledge/gmo/>

⁹ <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm281118.htm>

compounds, making these products falsely labeled and not actually “All Natural.” Home Run Inn’s frozen pizza products are listed and/or otherwise depicted herein.

12. As a consequence of Defendant’s unfair and deceptive practices, Plaintiffs, and members of the Class, purchased Home Run Inn’s frozen pizza products under the false impression that, by purchasing Defendant’s products they would be receiving products that were in fact “All Natural,” or products completely void of genetically modified and hexane processed ingredients.

13. Significantly, **each** consumer has been exposed to the **same** material misrepresentations and/or omissions, which are prominently displayed on the products packaging for Home Run Inn’s frozen pizza products prior to purchasing the products.

14. Under Federal and Florida state law, products such as Defendant’s frozen pizza products are “misbranded” if their “labeling is false or misleading in any particular,” or if they do not contain certain information on their labeling. *See* 21 U.S.C. § 343(a); Florida Food Safety Act § 500 *et seq.*; Fla. Stat. §§500.01-500.80 (2014).

15. Further, any violation of 21 U.S.C. § 343(a) also constitutes violations of the Florida Consumer Protection Statutes §501.201- §501.213, Florida Deceptive and Unfair Trade Practices Act, Negligent Misrepresentation, the Florida Misleading Advertising Statute §817.41, Breach of Express Warranties pursuant to Florida Statute §672.313 and UCC §2-313 and Unjust Enrichment. In this action, Plaintiffs assert claims under these state statutes, as well as under common law.

16. For the reasons stated herein, Defendant’s frozen pizza products sold in the United States are misbranded and illegal.

17. Plaintiffs now seek to stop Defendant’s unlawful conduct.

PARTIES

18. Plaintiff, Brian Street, purchased Defendant's Home Run Inn's frozen pizza products in this State and this District within the 4 years preceding the filing of this action (the "Class Period").

19. Plaintiff, Sebastian Heguaburo, purchased Defendant's Home Run Inn's frozen pizza products in this State and this District within the 4 years preceding the filing of this action (the "Class Period").

20. Plaintiffs are and, throughout the entire class period asserted herein, have been very concerned about, and try to avoid, consuming foods that are not natural—such as foods that contain synthetic, artificial, chemically processed, hexane processed and/or genetically modified ingredients. For this reason, Plaintiffs are willing to pay a premium price for foods that are in fact "All Natural." Based on the "All Natural" representation on Defendant's frozen pizza products labels, Plaintiffs and members of the Class reasonably believed the products they purchased were in fact "All Natural" and relied on this representation in making the purchases thereof.

21. Not only did Plaintiffs purchase Home Run Inn's frozen pizza products because the labels said they were "All Natural," Plaintiffs also paid more money for the products than they would have paid for other similar products that contained genetically modified and hexane processed ingredients.

22. Had Plaintiffs known the truth – that Home Run Inn's frozen pizza products were not "All Natural" – they would not have purchased these products, nor would they have paid the premium price for these products.

23. Defendant, Home Run Inn Frozen Foods Corp., is an Illinois Corporation, with its principal place of business located in Woodridge, IL.

24. Defendant is a corporation that produces, advertises, markets, sells and distributes Home Run Inn's frozen pizza products throughout the United States, including in this State, district, and division.

JURISDICTION AND VENUE

25. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d) because this is a class action in which: (1) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs; (2) a member of the class of Plaintiffs is a citizen of a State different from a defendant; and (3) the number of members of all proposed Plaintiffs classes in the aggregate is greater than 100.

26. This Court has personal jurisdiction over Defendant because a substantial portion of the wrongdoings alleged herein occurred in Florida. Defendant also has sufficient minimum contacts with Florida, and has otherwise intentionally availed itself of the markets in Florida through the promotion, marketing, and sale of products sufficient to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

27. Venue is proper in this District pursuant to 28 U.S.C. § 139(b)(2) and (3) because a substantial part of the events or omissions giving rise to these claims occurred in this District, a substantial part of the property that is the subject of this action is situated in this District, and Defendant is subject to the Court's personal jurisdiction with respect to this action.

FACTS RELEVANT TO ALL CLAIMS

Definition of “All-Natural”

28. Representing that food products or ingredients are “All Natural” is a statement of fact, and this term has been defined by the federal governmental agencies that regulate food companies such as Defendant.

29. Although the Food and Drug Administration (FDA) does not directly regulate the term “natural,” the FDA has established a policy defining the outer boundaries of the use of that term by clarifying that a product is not natural if it contains artificial color, artificial flavors, or synthetic substances.¹⁰ Specifically, the FDA states: “the agency will maintain its policy regarding the use of ‘natural,’ as meaning nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food.” 58 Fed. Reg. 2302, 2407 (Jan. 6, 2003).

30. In addition, in an FDA letter to Judges Yvonne Gonzalez Rogers, Jeffrey S. White, and Kevin McNulty, regarding a request for the agency to make a determination about whether and under what circumstances food products containing ingredients produced using certain synthetic and/or artificial ingredients may be labeled “natural,” the FDA wrote:

[The] FDA has not promulgated a formal definition of the term “natural” with respect to foods. The agency has, however, stated that its policy regarding the use of the term “natural” on food labeling means that “nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food.”

See 58 Fed. Reg. 2302, 2407 (1993).

31. A reasonable consumer’s understanding of the term “natural” comports with these federal definitions. A reasonable consumer’s understanding of the term “natural” means that

¹⁰ *See* www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM199361.pdf

nothing artificial or synthetic has been included in, or has been added to, a food labeled as “natural.” A reasonable consumer would also expect that Defendant’s products are truthfully labeled (i.e. that they are “All Natural”). In fact, Plaintiff’s understanding of the term “all natural” does in fact mean that nothing artificial, synthetic, or genetically modified has been included in, or has been added to, a food labeled as “all natural.” Plaintiff’s reliance was reasonable and justified in that Defendant appeared to be, and represented itself to be, a reputable business, and it distributed Home Run Inn’s frozen pizza products through reputable companies.

The Products’ Genetically Modified Ingredients

32. **Corn:** Most of the corn crop grown in the United States is genetically modified. Again, the issue is not that the use of genetically modified crops is unsafe, but that their use is clearly contrary to “All Natural.” The corn crops grown in the US are insect resistant, containing the gene from soil bacterium, *Bacillus thuringiensis* (Bt). “Plantings of Bt corn grew from about 8 percent of U.S. corn acreage in 1997 to 19 percent in 2000 and 2001, before climbing to 29 percent in 2003 and 81 percent in 2015.”¹¹ Additionally, “[t]he adoption of HT (herbicide-tolerant) corn, which had been slower in previous years, has accelerated, reaching 89 percent of U.S. corn acreage in 2014 and in 2015.”¹² When a crop contains both Bt and HT genetic modifications, they are referred to as a “stacked crop,” and “[p]lantings of stacked corn made up 77 percent of corn acres in 2015.”¹³ According to the USDA, all genetically engineered corn

¹¹ <http://www.ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-us/recent-trends-in-adoption.aspx>

¹² *Id.*

¹³ *Id.*

accounted for 92 percent of US corn crop acreage in 2015.¹⁴ This genetically modified corn is used to make corn oil.

33. **Hexane.** Hexane is a colorless, liquid chemical commonly extracted from petroleum and crude oil that gives off a subtle, gasoline-like odor. Hexane is a constituent of gasoline obtained from crude oil, natural gas liquids, or petroleum refinery processing. As recognized by the United States Occupational Safety and Health Administration (“OSHA”), hexane is a neurotoxin, which can cause irritation to the eyes and upper respiratory tract. Commercial hexane also contains benzene, a known hematologic poison linked to chronic leukemia. Hexane is used for purposes that include extracting edible oils from seeds and vegetables (such as corn oil). It is classified as an air pollutant by the Environmental Protection Agency and as a neurotoxin by the Centers for Disease Control and Prevention. Hexane is also used as an additive in consumer products including gasoline, glue, varnishes and inks, as a cleaning agent in textile, furniture and printing industries, as a special glue used in roofing, shoemaking and leather products, and extracting oil and grease contaminants from soil and water for analysis in laboratories.

34. According to its labels, Home Run Inn’s frozen pizza products contain the genetically modified ingredient corn oil.

35. The labeling of products as “All Natural,” carries implicit health benefits that are highly important to consumers—benefits that compel consumers to pay a premium price over comparable products that are not All natural. Over the years, Home Run Inn has cultivated and reinforced a corporate image that has catered to this “All Natural” theme and has boldly placed

¹⁴ *Id.*

this claim on each and every one of its Home Run Inn frozen pizza products, despite the fact Home Run Inn uses genetically modified ingredients in the products identified above.

36. Home Run Inn has used the “All Natural” label to shape its brand and sell its foods. Yet, the existence of genetically modified and hexane processed ingredients in its food renders the use of the label “All Natural,” false and misleading. In manufacturing its products, Home Run Inn had a choice between using natural, hexane processed or genetically modified ingredients. It purposefully chose to use genetically modified and hexane processed ingredients, but nonetheless labeled its food products as “All Natural.”

Home Run Inn’s Products Are Misbranded and Illegal

37. All containers of Home Run Inn’s frozen pizza products sold in the United States are misbranded, falsely labeled, and as such are illegal.

38. Their sale constitutes violations of the FDCA, Florida Consumer Protection Statutes §501.201- §501.213, Florida Deceptive and Unfair Trade Practices Act, Negligent Misrepresentation, the Florida Misleading Advertising Statute §817.41, Breach of Express Warranties pursuant to Florida Statute §672.313 and UCC §2-313, and Unjust Enrichment.

39. With the nutritional and health benefits of “All Natural” foods becoming widely known, consumer demand for these products has increased rapidly. It was this enormous new market that Defendant hoped to tap with the sale of its frozen pizza products.

40. Defendant knowingly and intentionally sold these misbranded and falsely labeled products to consumers (including Plaintiffs) with the intent to deceive them.

41. Plaintiffs purchased Home Run Inn’s frozen pizza products within the Class Period while reasonably relying on the truth and accuracy of Defendant’s product labels.

42. Despite the prevalence of genetically modified and hexane processed ingredients in the products, the front labels of Home Run Inn's frozen pizza products display the words "All Natural."

43. Home Run Inn misleads consumers into believing the Products consist of only "All Natural" ingredients, when they in fact contain genetically modified and hexane processed ingredients including, but not limited to, corn oil.

44. Plaintiffs were willing to pay a premium price for Home Run Inn's frozen pizza products because of the representation that they were "All Natural," and would not have purchased Home Run Inn's frozen pizza products, would not have paid as much for the products, or would have purchased alternative products in absence of the representations, or with the knowledge that the products contained ingredients sourced from GMO crops.

45. Plaintiffs paid for "All Natural" products, but received products that were not in fact "All Natural." Home Run Inn's frozen pizza products that Plaintiffs received were worth less than the products for which they paid. By purchasing products in reliance on advertising that is false, Plaintiffs have suffered injury in fact and lost money as a result of the unfair business practices alleged herein.

46. To some consumers, including Plaintiffs, processes and places of origin matter. Purchasing decisions are heavily influenced by information about production processes and places of origin, such as whether food is kosher or halal, whether wine is from a particular locale, whether a diamond is conflict-free, and whether food was produced by union workers, although these considerations have nothing to do with the product's function or performance.

47. For each consumer who relies on the truth and accuracy of a label and is deceived by misrepresentations into making a purchase, the economic harm is the same: the consumer has

purchased a product that he or she paid more for than he or she otherwise might have been willing to pay if the product had been labeled accurately. The economic harm—the loss of real dollars from a consumer’s pocket—is the same whether or not a court might objectively view the products as functionally equivalent.

48. When representations about processes and origins are not true, the consumer who cares about them has “not received the benefit of his or her bargain.”

49. There are “innumerable ways” for a plaintiff to show economic injury, including by showing that the consumer paid more than he or she would have paid otherwise, or entered a transaction that would otherwise have been unnecessary. Defendant’s misrepresentations that its Home Run Inn frozen pizza products are “All Natural” was an immediate cause of the injury-producing conduct as Plaintiffs acted upon reliance on the deceptive or misleading statements.

50. With respect to Home Run Inn’s frozen pizza products, Defendant has violated the FDCA and regulations promulgated thereunder. As a result, Defendant has violated various provisions of the Florida Food Safety Act, Fla. Stat. §§500-01-500.80 (2014).

51. Defendant has violated Fla. Stat. § 500.11(1)(f) (2014), because words, statements, or other information required, pursuant to the Florida Food Safety Act, to appear on the label or labeling were unlawfully placed upon the label or labeling, as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

52. Defendant has violated Florida Food Safety Act § 500.04(1) (2014), which makes it unlawful to manufacture, sell, deliver, possess, hold, or offer to sell any misbranded food.

53. Defendant has violated Fla. Stat. § 500.115 (2014), which provides that, “an advertisement of a food is deemed to be false if it is false or misleading in any particular.” Defendant’s product labels constitute false advertisement pursuant to Fla. Stat. § 500.115 (2014).

54. The FDCA generally prohibits misleading labeling. *See* 21 U.S.C. § 343(a) (“A food shall be deemed to be misbranded” if “its labeling is false or misleading in any particular.”). Defendant’s labeling is false and misled consumers because contrary to the “All Natural” claims, Home Run Inn’s frozen pizza products contain genetically modified and hexane processed corn oil. Thus, Defendant’s labeling violates the FDCA. Plaintiffs have not, however, sued because the conduct violates the FDCA. Rather, their claims are based on Florida statutes as well as the common law, law that could exist, even if the FDCA were never passed.

55. Plaintiff’s state law claims are aimed at Defendant’s intentional conduct of naming and labeling which are voluntary, and not specifically required conduct by the FDA regulations. Defendant selected the name and label described herein in order to maximize the label’s deceptive impact upon Plaintiffs and other consumers. Indeed, FDA regulations did not require Defendant to name its products using the terms “All Natural.” Defendant made these labeling decisions because of its marketing strategy. Defendant’s labeling and marketing misleads consumers into believing that its Home Run Inn’s frozen pizza products are “All Natural.” Defendant’s label is designed to cause consumers to purchase Home Run Inn’s frozen pizza products as a result of this deceptive message, and Defendant has succeeded.

56. The FDCA provides that only the federal government – and in limited cases, states – may bring suit to enforce its provisions. *See* 21 U.S.C. § 337. But it does not preempt all state law. *See* Nutrition Labeling and Education Act of 1990, Pub. L. No. 101-535, § 6(c)(1) (“The Nutrition Labeling and Education act of 1990 shall not be construed to preempt any provision of State Law, unless such provision is expressly preempted under... the Federal Food, Drug, and Cosmetic Act.”). Indeed, the Act expressly contemplates that states will enforce their own food labeling requirements. *See* 21 U.S.C. § 343-1(a). Such requirements, though, must be

“identical” to those provided by the FDCA. *Id.* To survive a preemption challenge, therefore, a state-law food labeling claim must thread a “narrow gap.” The plaintiffs must be suing for conduct that violated the FDCA, but the plaintiffs must not be suing *because* the conduct violates the FDCA. *Perez v. Nidek Co.*, 711 F. 3d 1109, 1120 (9th Cir. 2013). Plaintiffs here have threaded this gap.

57. It is plausible that a reasonable consumer, such as Plaintiffs and members of the Class, could interpret the words “All Natural” to mean that the products do not include genetically modified and hexane processed ingredients. It is plausible that a reasonable consumer would rely on Defendant’s “All Natural” claims and such reliance would be reasonable and justified in that Defendant appears to be, and represented itself to be, a reputable business, and it distributed the Products through reputable companies.

Defendant’s Strategy to Appeal to Health-Conscious Consumers

58. Defendant engaged in this fraudulent advertising and marketing scheme because it knew that its target market pays more for “All Natural” food products than for conventional food products. This is due to the association consumers make between “All Natural” food products and a wholesome way of life, the perceived higher quality, health and safety benefits of the products, and/or low impact on the environment.

Research studies illustrate that a company's marketing of products as “natural” increases the consumers’ willingness to pay (WTP) by up to twenty-five percent (25%) at the 95th percentile of consumers, and seventeen percent (17%) on average for all consumers. According to a June 2014 consumer report survey, many consumers feel that “natural” currently means no pesticides were used (66%), no artificial ingredients were used (66%), no artificial materials were used during processing (65%), and no GMOs were used (64%).

59. As such, Defendant's "All Natural" labeling is central to its marketing of the products and part of its overall strategy to capture the rapidly expanding natural foods market. As a result, Defendant commands a premium price for the products; using "All Natural" claims to distinguish them from its competitors' food products.

60. As Defendant is reasonably aware, many American consumers are health-conscious and seek out wholesome natural foods to keep a healthy diet. Because of this, consumers routinely take nutrition information into consideration in selecting and purchasing food items.

61. Consumers also value "All Natural" ingredients for countless other reasons, including perceived benefits of avoiding disease, helping the environment, assisting local farmers, assisting factory workers who would otherwise be exposed to synthetic and hazardous substances, and financially supporting the companies that share these values.

62. Consumers attribute a wide range of benefits to foods made entirely of natural ingredients. In fact, the market for "All Natural" food has grown rapidly in recent years, a trend that Defendant exploits through its false advertising. Catering to consumers' taste for natural foods is tremendously advantageous for business. In 2008, foods labeled with the word "natural" produced \$22.3 billion in sales, a 10% increase from 2007, and a 37% increase from 2004. In 2009, sales jumped again by an additional 4%.

63. It was in an effort to capture the growing demand and to entice consumers to purchase its products that Home Run Inn committed the unlawful acts detailed in this Complaint.

64. Consumers lack the ability to test or independently ascertain the accuracy of a food product label, especially at the point of sale. Reasonable consumers must and do rely on the

company to truthfully and accurately label its products in conformance with Federal regulations, policies, and guidelines.

65. As a result of its false and misleading labeling, Defendant was able to sell its products to consumers, throughout the United States and Florida. Home Run Inn has unjustly received significant profits from these false and deceptive label misrepresentations.

66. Consequently, consumers who purchased Home Run Inn's frozen pizza products suffered harm. Specifically, Plaintiffs were harmed by paying a higher price for Home Run Inn's frozen pizza products due to the false representations that Home Run Inn's frozen pizza products are "All Natural."

67. By clearly and prominently placing the "All Natural" claims on Home Run Inn's frozen pizza products packaging, Defendant ensured that all consumers purchasing Home Run Inn's frozen pizza products are exposed to these claims.

Defendant's Knowledge of the Falsity of its Advertising

68. Defendant had knowledge of the false representations that were made regarding Home Run Inn's frozen pizza products, insofar as all of those representations appeared on Home Run Inn's frozen pizza products packages.

69. Home Run Inn has knowledge of the federal regulations that apply to the labeling of its food products and, thus, was aware that some of the ingredients have been federally declared as genetically modified substances and/or require extensive processing to be safely used as a food ingredient. Defendant has retained expert nutritionists, food chemists, and other scientists, and has spent much time and money in developing its own food technologies, such that it was aware that the genetically modified and hexane processed ingredients used in its products are not natural.

70. As such, Defendant had knowledge of all facts demonstrating that its “All Natural” Home Run Inn’s frozen pizza products contain genetically modified and hexane processed ingredients, and that the products were falsely labeled. The misrepresentation and omissions were uniform and were communicated to Plaintiffs, and to each member of each class, at the point of purchase and consumption.

71. Plaintiffs read and reasonably relied on the labels as described herein when deciding to purchase Home Run Inn’s products. The front label of Home Run Inn’s frozen pizza products appear as follows:







72. At point of sale, Plaintiffs did not know, and had no reason to know, that Home Run Inn's frozen pizza products contained genetically modified produced ingredients, and therefore were not "All Natural" as labeled.

73. Plaintiffs relied on the deceptive or misleading statements and believed Defendant's products were in fact "All Natural". As already stated, processes of production of places and origin matter significantly to Plaintiffs, and such information heavily influences their purchasing decisions. When representations about processes and origins are not true, Plaintiffs have not received the benefit of his or her bargain.

74. But for Defendant's misrepresentations that its products are "All Natural," Plaintiffs would not have purchased the products mentioned herein. Plaintiffs valued the product as labeled more than the money he or she parted with. However, Plaintiffs valued the money they parted with more than the product as it actually is, which is not "All Natural".

75. Because of the misrepresentation, Plaintiffs were made to part with more money than he or she otherwise would have been willing to expend, i.e., that Plaintiffs paid more than he or she actually valued the product. That increment, the extra money paid, is economic injury and affords Plaintiffs standing to sue.

76. A reasonable person would attach importance to Defendant's misrepresentations in determining whether to purchase Home Run Inn's frozen pizza products.

CLASS ACTION ALLEGATIONS

77. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of the following class:

All persons in Florida who, within the Class Period, purchased Home Run Inn's frozen pizza products, labeled as "All Natural."

78. In the alternative, Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(c) on behalf of the following class:

All persons in the United States who, within the Class Period, purchased Home Run Inn's frozen pizza products, labeled as "All Natural."

79. The following persons are expressly excluded from the Class: (1) Defendant and its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its staff.

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

81. **Numerosity:** Based upon Defendant's publicly available sales data with respect to Home Run Inn's frozen pizza products, it is estimated that the Class numbers are potentially in the millions, and the joinder of all Class members is impracticable.

82. **Common Questions Predominate:** This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include, for example:

- a. Whether Defendant engaged in unfair, unlawful or deceptive business practices by failing to properly package and label Home Run Inn's frozen pizza products sold to consumers;
- b. Whether the food products at issue were misbranded or unlawfully packaged and labeled as a matter of law;
- c. Whether Defendant made unlawful and misleading claims regarding the "All Natural" characteristic of Home Run Inn's frozen pizza products;
- d. Whether Defendant uniformly conveyed to the Class that the Products were "All Natural."
- e. Whether Defendant's claims that the Products are "All Natural" are true or false, or likely to deceive a reasonable consumer.
- f. Whether Defendants violated Florida Consumer Protection Statutes §501.201-§501.213, Florida Deceptive and Unfair Trade Practices Act, Negligent Misrepresentation, the Florida Misleading Advertising Statute §817.41, Breach of Express Warranties pursuant to Florida Statute §672.313 and UCC §2-313, and Unjust Enrichment.
- g. Whether Plaintiffs and the Class are entitled to equitable relief;

- h. Whether Defendant's unlawful, unfair and/or deceptive practices harmed Plaintiffs and the Class;
- i. Whether Defendant acted negligently by its deceptive practices;
- j. Whether Defendant was unjustly enriched by its deceptive practices.

83. **Typicality:** Plaintiff's claims are typical of the claims of the Class because Plaintiffs purchased Defendant's products during the Class Period. Defendant's unlawful, unfair, and fraudulent actions concern the same business practices described herein, irrespective of where they occurred or were experienced. The injuries of each member of the Class were caused directly by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

84. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the Class. Neither Plaintiffs nor their counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiffs have retained competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiffs and their counsel have the necessary resources to adequately and vigorously litigate this class action, and Plaintiffs and their counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

85. **Superiority:** There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the

Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of Class members' rights and the disposition of their interests through actions to which they are not parties. Class Action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would create. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

86. The prerequisites to maintaining a class action equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate equitable relief with respect to the Class as a whole.

87. The prerequisites to maintaining a class action pursuant to Fed R. Civ. P. 23(b)(3) are met as questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

88. Plaintiffs and their counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

89. Plaintiffs are a member of the Class they seek to represent. Plaintiff's claims are typical of the Class members' claims. Plaintiffs will fairly and adequately protect the interests of the Class in that Plaintiff's claims are typical and representative of the Class.

90. There are no unique defenses that may be asserted against Plaintiffs individually, as distinguished from the Class. The claims of Plaintiffs are the same as those of the Class.

91. This class action is superior to any other method for the fair and efficient adjudication of this dispute.

CAUSES OF ACTION

COUNT I

VIOLATION OF FLORIDA CONSUMER PROTECTION ISTATUTES §501.201- §501.213, FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

92. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 92 above as if fully set forth herein.

93. Defendant's conduct constitutes unlawful, unfair and deceptive business acts and trade practices.

94. Defendant sold its products in Florida during the Class Period.

95. Florida Consumer Protection Statue §501.204 (2014) prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and any false or misleading advertising. For the reasons discussed above, Defendant has engaged in unfair, false, deceptive, business acts and false and misleading advertising in violation of Fla. Stat. §§501.201-501.213 (2014).

96. The Florida Deceptive and Unfair Trade Practices Act also prohibits any, "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in conduct of any trade or commerce." Defendant has violated Fla. Sat. §501.204's

prohibition against engaging in unlawful acts and practices by, *inter alia*, making the false and deceptive representations, as set forth more fully herein, and violating, 21 U.S.C. §331, 21 U.S.C. §362, 21 C.F.R. §1.21, and the common law.

97. Plaintiffs and the Class reserve the right to allege other violations of law which constitute other unlawful business acts or practices. Such conduct is ongoing to this date.

98. As stated in this Complaint, Plaintiffs allege violations of consumer protection, unfair competition, and truth-in-advertising laws in Florida resulting in harm to consumers. Defendant's conduct constitutes violations of the public policies against engaging in false and misleading advertising, unfair competition and deceptive conduct towards consumers as proscribed by Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§501.201-501.213 (2014).

99. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein.

100. Defendant's false claims, nondisclosures and misleading statements, as more fully set forth above and collectively as a scheme, were intentionally misleading and likely to deceive the consuming public within the meaning of the Florida Deceptive and Unfair Trade Practices Act.

101. Defendant's deceptive conduct constitutes a prohibited practice, which directly and proximately caused and continues to cause substantial injury to Plaintiffs and the other Class members. Plaintiffs and Class members have suffered injury in fact, actual damages, and have lost money because they purchased the products at the price they paid believing the labeling claims described above to be true.

102. Plaintiffs, on behalf of themselves, and all others similarly situated, seek restitution and disgorgement of all money obtained from Plaintiffs and the members of the Class collected as a result of unfair competitions, and all other relief this Court deems appropriate, consistent with Florida Deceptive and Unfair Trade Practices Act.

COUNT II

NEGLIGENT MISREPRESENTATION

103. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 92 above as if fully set forth herein.

104. During the relevant statutory time period, Defendant made false representations to Plaintiffs and Class Members as they pertain to the sale of its Home Run Inn's frozen pizza products.

105. The representation of material fact that Defendant's Home Run Inn's frozen pizza products are "All Natural" was false. The true facts are: 1.) Defendant's Home Run Inn's frozen pizza products are not "All Natural" and contain genetically modified and hexane processed ingredients; 2.) despite having knowledge that its Home Run Inn's frozen pizza products were not "All Natural," Defendant labeled its frozen pizza products as "All Natural;" 3.) Defendant charged a premium for its "All Natural" Home Run Inn frozen pizza products, despite their not being "All Natural."

106. When Defendant made the representations set forth above, it had no reasonable grounds for believing them to be true.

107. Defendant made the representations with the intention of inducing Plaintiffs and Class Members to act in reliance upon these representations in the manner alleged herein, or with the expectation that they would so act.

108. Plaintiffs and Class Members, at the time the representations were made by Defendant, were ignorant of the falsity of the representations and believed them to be true. In

reliance on these representations, Plaintiffs and Class Members were induced to and did pay monies to purchase Defendant's Home Run Inn frozen pizza products.

109. Had Plaintiffs and Class Members known the actual facts, they would not have taken such action. Furthermore, Defendant had no reason to believe that Plaintiffs and other consumers would act otherwise than to rely on the "All Natural" representation.

110. As a direct and proximate result of the Defendant's conduct as herein alleged, Plaintiffs and Class members paid monies to Defendant, through Defendant's regular retail sales channels, to which Defendant is not entitled, and have been damaged in an amount to be proven at trial.

111. As a direct and proximate result of Defendant's misrepresentations, Plaintiffs and Class members have sustained injuries by purchasing Home Run Inn frozen pizza products, which were not as represented, thus entitling Plaintiffs to judgment and equitable relief against Defendant, as well as restitution, attorneys' fees and costs, as set forth in the Prayer for Relief.

COUNT III

VIOLATION OF FLORIDA MISLEADING ADVERTISING STATUTE §817.41

112. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 92 above as if fully set forth herein.

113. §817.41, Fla. Stat. prohibits "any person to make or disseminate or cause to be made or disseminated before the general public of the state, or any portion thereof, any misleading advertisement. Such making or dissemination of misleading advertising shall constitute and is hereby declared to be fraudulent and unlawful, designed and intended for obtaining money or property under false pretenses."

114. Defendant made false representations of material fact that they knew, or should have known, were false.

115. By creating and disseminating the false and deceptive product labels, Defendant has falsely represented to the public that its products are “All Natural” when in fact they are not.

116. Defendant knew, or should have known, that the aforementioned false representations of material fact disseminated by the Defendant were false.

117. Defendant disseminated false representations of material fact with the intent to induce Plaintiffs, and other members of the Class, to rely on said false representations.

118. The false representations of material fact made by the Defendant were likely to deceive reasonable consumers.

119. The Plaintiffs, and other members of the Class, reasonably relied on the false representations of material fact made by the Defendant.

120. In relying on the false representations of material facts made by the Defendant, the Plaintiffs, and other members of the Class, were deceived.

121. As a direct and proximate cause of Defendant’s violation of Florida Statute §817.41, Plaintiffs and the members of the Class, were injured when they paid money for the Defendant’s misbranded and falsely labeled products.

122. As a result of Defendant’s unlawful false advertising practices, Plaintiffs and the members of the Class who purchased Defendant’s products in Florida and throughout the United States, are entitled to orders and judgments which may be necessary to disgorge Defendant’s ill-gotten gains and to restore to Plaintiffs and the members of the Class money paid for the Defendant’s products, both are amounts to be determined at trial.

123. Plaintiffs and the members of the Class are also entitled to costs, including reasonable attorney’s fees.

COUNT IV

**BREACH OF EXPRESS WARRANTY PURSUANT TO § 672.313 FLORIDA STATUTES
AND UNIFORM COMMERCIAL CODE §2-313**

124. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 92 above as if fully set forth herein.

125. Plaintiffs, and each member of the Class, formed a contract with Defendant at the time Plaintiffs and the other members of the Class purchased Home Run Inn's frozen pizza products. The terms of that contract included the express promise and affirmation of fact that the products were "All Natural." Home Run Inn's frozen pizza products' packaging and advertising constitute express warranties, became parts of the basis of the bargain, and are parts of a standardized contract between Plaintiffs and the members of the Class on the one end, and Defendant on the other.

126. Home Run Inn displayed the words "All Natural" on the front of the products' packaging, which created an express warranty. Home Run Inn breached this express warranty by including genetically modified and hexane processed ingredients that are "unnatural."

127. At the time of making this express warranty with respect to the "All Natural" nature of Home Run Inn's frozen pizza products, Defendant knew or should have known that it had breached the terms of the warranty with Plaintiffs and the Class, by providing Home Run Inn's frozen pizza products that proved to not be "All Natural."

128. Members of the public, including Plaintiffs, reasonably relied upon the skill and judgment of the Defendant, and upon said express warranty, when purchasing Home Run Inn's frozen pizza products.

129. Due to Defendant's illegal conduct as alleged herein, Plaintiffs and the Class could not have known about the genetically modified and hexane processed ingredients present in Home Run Inn's frozen pizza products.

130. As a direct and proximate result of Defendant's breach of express warranty with respect to Home Run Inn's frozen pizza products, Plaintiffs suffered injuries as set forth above, entitling Plaintiffs to judgment and equitable relief against Defendant, as well as restitution, including all monies paid for Home Run Inn's frozen pizza products and disgorgement of profits from Defendant received from sales of Home Run Inn's frozen pizza products, attorneys' fees, and costs, as set forth in the Prayer for Relief.

131. All conditions precedent to Defendant's liability under this contract, including providing Defendant with pre-suit notice, have been performed by Plaintiffs and the Class.

COUNT V

UNJUST ENRICHMENT

132. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 92 above as if fully set forth herein.

133. As a result of Defendant's fraudulent and misleading labeling, advertising, marketing, and sales of Home Run Inn's frozen pizza products, Defendant was enriched at the expense of Plaintiffs and the Class.

134. Defendant sold Home Run Inn's frozen pizza products, which were products that were illegally sold, illegally branded and had no economic value, to Plaintiffs and the Class.

135. It would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits it received from Plaintiffs and the Class in light of the fact that the products were not what Defendant purported them to be.

136. Thus, it would be unjust and inequitable for Defendant to retain the benefit without restitution to Plaintiffs and the Class of monies paid to Defendant for Home Run Inn's frozen pizza products at issue.

137. As a direct and proximate result of Defendant's actions, Plaintiffs and the Class have suffered damages in an amount to be proven at trial.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of their claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of all other similarly situated persons, pray for judgment against Defendant as follows:

- A. For an order certifying this case as a Class Action and appointing Plaintiffs and their counsel to represent the Class;
- B. That the Court adjudges and decrees that Defendant has engaged in the conduct alleged herein;
- C. Awarding declaratory relief as permitted by law or equity, including: Directing Defendant to identify, with Court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful;
- D. Ordering Defendant to engage in a corrective advertising campaign;
- E. Awarding Plaintiffs and the proposed Class member's damages;
- F. Awarding restitution and disgorgement to Plaintiffs and the other Class members;
- G. Awarding attorneys' fees and costs; and

H. Providing such further relief as may be just and proper.

Dated: October 14, 2016

Respectfully submitted,

/s/ Tim Howard

Tim Howard, J.D., Ph.D.

Florida Bar No.: 655325

HOWARD & ASSOCIATES, P.A.

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Tallahassee, FL 32309

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Fax: (850) 216-2537

tim@howardjustice.com

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

UNITED STATES DISTRICT COURT

for the

Northern District of Florida



BRIAN STREET, SEBASTIAN HEGUABURO,
individually and on behalf of all others
similarly situated,

Plaintiff(s)

v.

HOME RUN INN FROZEN FOODS CORP.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

HOME RUN INN FROZEN FOODS CORP.
1300 Internationale Parkway
Woodridge, IL 60517

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:

P. Timothy Howard, J.D., Ph.d.
HOWARD & ASSOCIATES, P.A.
2120 Killarney Way, Suite 125
Tallahassee, FL 32309

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: _____

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 \$ _____ 0.00 _____ .

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:

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

UNITED STATES DISTRICT COURT

for the

Northern District of Florida



BRIAN STREET, SEBASTIAN HEGUABURO,
individually and on behalf of all others
similarly situated

Plaintiff(s)

v.

Civil Action No.

HOME RUN INN FROZEN FOODS CORP.

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) HOME RUN INN FROZEN FOODS CORP
c/o Rock Fusco & Connelly, LLC
321 North Clark Street, Suite 2200
Chicago, IL 60517
Counsel for Defendant

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:

P.Timothy Howard, J.D., Ph.d.
HOWARD & ASSOCIATES
2120 Killarney Way, Suite 125
Tallahassee, FL 32309

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:

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 \$ _____ 0.00 _____ .

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: