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**CIRCUIT COURT FOR THE 20<sup>TH</sup> JUDICIAL CIRCUIT  
COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

JAMIE JACKSON and TRENTON	)	
MCDONALD, individually and on	)	
behalf of all other similarly situated	)	
current Illinois citizens,	)	
	)	
Plaintiffs,	)	No. 20-L- 0678
	)	
v.	)	
	)	
SFC GLOBAL SUPPLY CHAIN, INC.,	)	
	)	
Defendant.	)	

**CLASS ACTION COMPLAINT**

Plaintiffs, Jamie Jackson and Trenton McDonald, individually and on behalf of all similarly situated current Illinois citizens, alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

**CASE SUMMARY**

1. This case arises out of Defendant SFC Global Supply Chain, Inc.’s (“Defendant”) deceptive, unfair, and false merchandising practices regarding its “Red Baron” brand Brick Oven Cheese Trio Pizza; Classic Crust Four Cheese Pizza; and Thin & Crispy Five Cheese Pizza (the “Pizzas”).

2. On the label of the Pizzas, Defendant prominently represents that the Pizzas have a “PRESERVATIVE FREE CRUST” and contain “NO ARTIFICIAL FLAVORS” which leads Illinois citizens to believe that the Pizzas do not contain any preservatives in the crust.

3. The Pizzas, however, contain Sodium Stearoyl Lactylate, Enzymes and Mono- and Diglycerides (the “Preservatives”). Sodium Stearoyl Lactylate and Enzymes work in combination as an anti-staling agent in breads to preserve the softness of the crust during the product’s shelf

life. Mono- and Diglycerides works as an anti-staling agent in baked goods by slowing the retrogradation of starch during the product's shelf life.

4. The Pizzas contain the Preservatives in direct contravention to their label's express representation that the pizzas have "PRESERVATIVE FREE CRUST."

5. The Pizzas also contain Modified Food Starch and Hydrolyzed Soy and Corn Protein, all of which are commercially-manufactured and highly processed, and which contain monosodium glutamate (or "MSG") as a byproduct of the protein processing. The only purpose for including these synthetic food additives in the Pizzas is to create an MSG-like flavor in the pizza sauce (the "Synthetic Flavor").

6. The Pizzas contain the Synthetic Flavor in direct contravention to their label's express representation that the pizzas have "NO ARTIFICIAL FLAVORS."

7. Plaintiffs and reasonable consumers reasonably believe, define, and assume that Pizzas labeled "PRESERVATIVE FREE CRUST" and "NO ARTIFICIAL FLAVORS" do not contain any preservatives in the crust or synthetic flavors.

8. Because the Pizzas contain the Preservatives and the Synthetic Flavor, the representation that the Pizzas have "PRESERVATIVE FREE CRUST" and "NO ARTIFICIAL FLAVORS" is unfair, false, deceptive, and misleading.

9. Plaintiffs bring this case to recover damages for Defendant's false, deceptive, unfair, and misleading marketing and advertising in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), and Illinois common law.

#### **PARTIES**

10. Plaintiff, Jamie Jackson, is an Illinois citizen residing in St. Clair County, Illinois. On at least a dozen or more occasions during the Class Period (as defined below), including in July

or August 2020, Plaintiff purchased Red Baron Brick Oven Cheese Trio Pizzas, Classic Crust Four Cheese Pizzas; and Thin & Crispy Five Cheese Pizzas at Schnuck's Market in Belleville, Illinois, for personal, family, or household purposes. The purchase price of the Pizzas was \$3.99. Plaintiff's claim is typical of all class members in this regard.

11. Plaintiff, Trenton McDonald, is an Illinois citizen residing in St. Clair County, Illinois. On at least a dozen or more occasions during the Class Period (as defined below), including in July or August 2020, Plaintiff purchased Red Baron Brick Oven Cheese Trio Pizzas, Classic Crust Four Cheese Pizzas; and Thin & Crispy Five Cheese Pizzas at IGA and Dollar General in Millstadt, Illinois, for personal, family, or household purposes. The purchase price of the Pizzas was \$3.99. Plaintiff's claim is typical of all class members in this regard.

12. Defendant SFC Global Supply Chain, Inc., is a Minnesota corporation with its principal place of business in Marshall, Minnesota.

### **JURISDICTION AND VENUE**

13. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court.

14. Plaintiffs believe and allege that the total value of their individual claims is, at most, equal to the purchase price paid for the Pizzas. There is therefore no diversity jurisdiction over this case.

15. Because the value of Plaintiffs' claims is typical of all class members with respect to the value of the claim, the total damages of Plaintiffs and Class Members, inclusive of costs and attorneys' fees is far less than the five-million dollars (\$5,000,000) minimum threshold to create federal court jurisdiction. There is therefore no CAFA jurisdiction for this case.

16. Defendant cannot plausibly allege that it had sufficient sales of the Pizzas in Illinois during the Class Period to establish an amount in controversy that exceeds CAFA's jurisdictional threshold.

17. This Court has personal jurisdiction over Defendant because Defendant has had more than minimum contacts with the State of Illinois and has purposefully availed itself of the privilege of conducting business in this state. In addition, as explained below, Defendant has committed affirmative tortious acts within the State of Illinois that give rise to civil liability, including distributing the fraudulently labeled Pizzas for sale throughout the State of Illinois.

18. Venue is proper in this forum pursuant to 735 ILCS 5/2-101 because the transactions out of which the causes of action arose occurred in this county.

19. Plaintiffs and Class Members do not seek to recover punitive damages or statutory penalties in this case.

#### **ALLEGATIONS OF FACT**

20. Defendant manufactures, sells, and distributes the Pizzas.

21. The Pizzas' label states: "PRESERVATIVE FREE CRUST" and "NO ARTIFICIAL FLAVORS."

22. Knowing that consumers like Plaintiffs are increasingly interested in purchasing products that do not contain potentially harmful preservatives or synthetic ingredients, Defendant sought to take advantage of this growing market by labeling its Pizzas as having "PRESERVATIVE FREE CRUST" and "NO ARTIFICIAL FLAVORS."

23. By affixing such a label to the packaging of the Pizzas, Defendant can entice consumers like Plaintiffs to pay a premium for the Pizzas or pay more for them than they otherwise would have had the truth been known.

24. The label of the Pizzas is deceptive, false, and misleading in that Defendant prominently represents that the Pizzas having “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS,” when they do not and are not.

25. The Pizzas are not in fact free of preservatives in the crust or artificial flavors because they contain the Preservatives and the Synthetic Flavor.

26. Consistent with FDA guidance, Plaintiffs and reasonable consumers reasonably believe and assume that Pizzas labeled “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS” do not contain any added preservatives or synthetic ingredients.

27. Neither Plaintiffs nor any reasonable consumer would expect to find the Preservatives or Synthetic Flavor in Pizzas labeled “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS.”

28. Neither Plaintiffs nor any reasonable consumer would know nor should know that the Pizzas contained the Preservatives and/or the Synthetic Flavor when reviewing the Pizzas’ label.

29. Because of Defendant’s deceitful label, Defendant could charge, and Plaintiffs and Class Members paid, a premium for the Pizzas.

30. The Pizzas, moreover, were worth less than they were represented to be, and Plaintiffs and Class Members paid extra for them due to the “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS” label.

31. Defendant’s misrepresentations violate the ICFA’s prohibition of “Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the

concealment, suppression or omission of such material fact...in the conduct of any trade or commerce[.]” 815 ILCS 505/2.

### CLASS ALLEGATIONS

32. Pursuant to 735 ILCS 5/2-801 et. seq., Plaintiffs bring this action on their own behalf and on behalf of a proposed class of (“Class Members” of the “Class”):

All current Illinois citizens who purchased Red Baron brand Brick Oven Cheese Trio Pizza; Classic Crust Four Cheese Pizza; and/or Thin & Crispy Five Cheese Pizza for personal, family or household purposes in the five years preceding the filing of this Petition (the “Class Period”).

33. Excluded from the Class are: (a) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in which Defendant has a controlling interest, to include, but not limited to, their legal representative, heirs, and successors; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (d) any judicial officer in the lawsuit and/or persons within the third degree of consanguinity to such judge.

34. Upon information and belief, the Class consists of hundreds of purchasers. Accordingly, it would be impracticable to join all Class Members before the Court.

35. There are numerous and substantial questions of law or fact common to all the members of the Class and which predominate over any individual issues. Included within the common question of law or fact are:

- a. whether the “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS” claims on the Pizzas’ label are false, misleading, and deceptive;

- b. whether Defendant violated the ICFA by selling the Pizzas with false, misleading, and deceptive representations;
- c. whether Defendant's acts constitute deceptive and fraudulent business acts and practices or deceptive, untrue, and misleading advertising;
- d. whether the label of the Pizzas creates false impressions and has the tendency and capacity to mislead consumers;
- e. whether Defendant breached an express warranty;
- f. whether Defendant was unjustly enriched; and
- g. the proper measure of damages sustained by Plaintiffs and Class Members.

36. The claims of the Plaintiffs are typical of the claims of Class Members, in that they share the above-referenced facts and legal claims or questions with Class Members, there is a sufficient relationship between the damage to Plaintiffs and Defendant's conduct affecting Class Members, and Plaintiffs have no interests adverse to the interests other Class Members.

37. Plaintiffs will fairly and adequately protect the interests of Class Members and have retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

38. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. the claim presented in this case predominates over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. absent a Class, the Class Members will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoy its ill-gotten gains;
- c. given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the

wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;

- d. when the liability of Defendant has been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. this action presents no difficulty that would impede its management by the court as a class action, which is the best available means by which Plaintiffs and Class Members can seek redress for the harm caused to them by Defendant.

39. Because Plaintiffs seek relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual member of the Class, which would establish incompatible standards of conduct for Defendant.

40. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. Therefore, class treatment is a superior method for adjudication of the issues in this case.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

##### **Violation of Illinois Consumer Fraud Act**

41. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if fully set forth herein.

42. The ICFA declares the following to be unlawful: “Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any



deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact...in the conduct of any trade or commerce[.]” 815 Ill. Comp. Stat. Ann. 505/2.

43. Defendant’s conduct in advertising and selling the Pizzas as having “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS” when they in fact contain Preservatives and the Synthetic Flavor constitutes unfair methods of competition and unfair or deceptive acts or practices in the conduct of Defendant’s trade or commerce.

44. Defendant intended that Plaintiffs and the Class Members would rely on its “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS” representations. Defendant is aware that consumers like Plaintiffs and Class Members are becoming more and more interested in purchasing products that do not contain potentially harmful preservatives or synthetic flavors. Defendant intended to prey on this interest.

45. The “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS” misrepresentations are material because they concern the type of information upon which a reasonable consumer would be expected to rely in deciding whether to purchase.

46. Because Defendant is in the business of selling the Pizzas, Defendant committed the unfair and deceptive acts in the conduct of its trade and commerce.

47. Defendant’s practice of advertising and selling the Pizzas as having a “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS” when they in fact contain the Preservatives and the Synthetic Flavor is also unfair. The practice offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are increasingly interested in purchasing and using products without preservatives or synthetic flavors. Selling the Pizzas as

having preservative free crusts and being without artificial flavors, when they do not and are not, offends the public's expectation to be told the truth about the products they are buying.

48. Defendant's conduct causes substantial injury to Plaintiffs and reasonable consumers. Not only are reasonable consumers being misled into purchasing Pizzas that are not what they are represented to be, but Defendant is exposing consumers to unwanted preservatives and synthetic flavors which is substantially injurious.

49. Neither Plaintiffs nor any reasonable consumer would expect to find the Preservatives or the Synthetic Flavor in Pizzas labeled "PRESERVATIVE FREE CRUST" and "NO ARTIFICIAL FLAVORS."

50. Neither Plaintiffs nor any reasonable consumer when reviewing the Pizzas' labels would know nor should know that Sodium Stearoyl Lactylate, Enzymes and Mono- and Diglycerides are preservatives.

51. Neither Plaintiffs nor any reasonable consumer when reviewing the Pizzas' labels would know nor should know that Modified Food Starch and Hydrolyzed Soy and Corn Protein operate as an artificial flavoring.

52. Defendant knowingly, willfully, and intentionally labeled and marketed its Pizzas as having "PRESERVATIVE FREE CRUST" and "NO ARTIFICIAL FLAVORS," despite knowing they contained the Preservatives and the Synthetic Flavor.

53. Knowingly and intentionally including the Preservatives and the Synthetic Flavor in its Pizzas labeled and marketed as having "PRESERVATIVE FREE CRUST" and "NO ARTIFICIAL FLAVORS" demonstrates a conscious disregard for Plaintiffs' and Class Members' welfare.

54. Because the Pizzas are not free of preservatives or artificial flavors as they are represented to be, the Pizzas as sold were worth less than the Pizzas as represented, and Plaintiffs and Class Members paid a premium for them. Had the whole truth been known, Plaintiffs and Class Members would not have purchased the Pizzas.

55. Plaintiffs and Class Members were deceived by the “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS” label on the Pizzas and suffered economic damages as a proximate result of Defendant's unlawful conduct as alleged herein, including the difference between the actual value of the Pizzas and the value of the Pizzas if they had been as represented.

### **Count II**

#### **In the Alternative, Breach of Express Warranty**

56. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if fully set forth herein.

57. Defendant made the affirmation of fact and the promise to Plaintiffs and the Class Members that the Pizzas are “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS,” guaranteeing to Plaintiffs and the Class Members that the Pizzas were in conformance with the representation.

58. This affirmation of fact and promise became part of the basis of the bargain in which Plaintiffs and Class Members purchased Defendant’s Pizzas, and Plaintiffs and Class Members relied on the affirmation when making their purchasing decisions.

59. Defendant breached its express warranty that the Pizzas have “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS” by providing Plaintiffs and Class Members with a product that contained the Preservatives and the Synthetic Flavor

60. As a result of Defendant’s breach of warranty, Plaintiffs and the Class Members

have been deprived of the benefit of their bargain in that they bought Pizzas that were not what they were represented to be, and they have spent money on Pizzas that had less value than was reflected in the premium purchase price they paid for the Pizzas.

61. Because Defendant made the affirmation of fact and promise directly on its own label and packaging, privity is not required to bring this claim.

62. Because Defendant has actual knowledge that its Pizzas contain the Preservatives and Synthetic Flavor in contravention of its “PRESERVATIVE FREE CRUST” and “NO ARTIFICIAL FLAVORS” representations, pre-suit notice of this claim is not required.

63. Plaintiffs and Class Members suffered economic damages as a proximate result of Defendant's unlawful conduct as alleged herein, including the difference between the actual value of the Pizzas and the value of the Pizzas if they had been as represented.

### **Count III**

#### **In the Alternative, Unjust Enrichment**

64. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if fully set forth herein.

65. By purchasing the Pizzas, Plaintiffs and the Class Members conferred a benefit on Defendant in the form of the purchase price of the Pizzas.

66. Defendant appreciated the benefit because, were consumers not to purchase the Pizzas, Defendant would have no sales and make no money.

67. Defendant's acceptance and retention of the benefit is inequitable and unjust and violates the fundamental principles of justice, equity, and good conscience because the benefit was obtained by Defendant's fraudulent and misleading representations about the Pizzas.

68. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at Plaintiffs' and Class Members' expense and in violation of Illinois law, and therefore restitution and/or disgorgement of such economic enrichment is required.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of all similarly situated persons, pray the Court:

- a. grant certification of this case as a class action;
- b. appoint Plaintiffs as Class Representative and Plaintiffs' counsel as Class Counsel;
- c. award compensatory damages to Plaintiffs and the proposed Class, or, alternatively, require Defendant to disgorge or pay restitution of its ill-gotten gains;
- d. award pre- and post-judgment interest;
- e. award reasonable and necessary attorneys' fees and costs; and
- g. for all such other and further relief as may be just and proper.

Dated: September 4, 2020

Respectfully submitted,

By:



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