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

HEATHER ERWIN and ASHLEY PRICE,)
 individually and on behalf of all other)
 similarly-situated current Illinois citizens,)

Plaintiffs,)

v.)

No. 20-L0759

JIMMY JOHN'S LLC and)
 JIMMY JOHN'S FRANCHISE, LLC,)

Defendants.)

CLASS ACTION COMPLAINT

Plaintiffs, Heather Erwin and Ashley Price, individually and on behalf of all other similarly-situated current citizens of Illinois, allege the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

CASE SUMMARY

1. This case arises out of Jimmy John's LLC and Jimmy John's Franchise, LLC's (collectively, "Defendants") deceptive, unfair, and false practices regarding its Jimmy's All Natural Triple Chocolate Chunk Cookie and Jimmy's All Natural Raisin Oatmeal Cookie (the "Cookies").

2. On the label of the Cookies, Defendants intentionally, deceptively, falsely, and unfairly represent that the Cookies are "All Natural*." Small print on the bottom of the label states "*Minimally processed, no artificial ingredients" which deceives consumers into believing that the Cookies do not contain highly processed, artificial, and/or non-natural ingredients.

3. The Cookies, however, contain refined flour, niacin, reduced iron, thiamine mononitrate, riboflavin, folic acid, sugar, milk powder, soy lecithin, and baking soda, all of which are highly processed, artificial, and/or non-natural ingredients (the “Manufactured Ingredients”).

4. Plaintiffs and reasonable consumers reasonably believe, define, and assume that Cookies labeled “All Natural,” “minimally processed,” and “no artificial ingredients” do not contain highly processed, artificial, and/or non-natural ingredients.

5. Because the Cookies contain the Manufactured Ingredients, the representations that the Cookies are “All Natural,” are “minimally processed,” and contain “no artificial ingredients” are unfair, false, deceptive, and misleading.

6. By claiming that the Cookies are “All Natural,” “minimally processed,” and contain “no artificial ingredients,” Defendants deceive consumers into believing that the Cookies do not contain highly processed, artificial, and/or non-natural ingredients, when they in fact contain the Manufactured Ingredients.

7. Plaintiffs bring this case against Defendants jointly and severally to recover damages for Defendants’ 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

8. Plaintiff Heather Erwin is an Illinois citizen residing in St. Clair County, Illinois. On many occasions during the Class Period (as defined below), Plaintiff purchased the Defendants’ Cookies as part of her regular lunch at Jimmy John’s in Belleville, Illinois, for personal purposes after reviewing the “All Natural*” and “*Minimally processed, no artificial

ingredients” representations on the Cookies’ labels, which deceived her. Plaintiff purchased the Cookies because of the representations mentioned above. If Plaintiff had known the Cookies in fact contained highly processed, artificial, and/or non-natural ingredients, she would not have purchased them or would have paid less for them. The purchase price of the Cookies was \$1.75 per cookie.

9. Plaintiff Ashley Price is an Illinois citizen residing in St. Clair County, Illinois. On at least three occasions during the Class Period (as defined below), Plaintiff purchased the Defendants’ Cookies at Jimmy John’s in Belleville and Collinsville, Illinois, for personal purposes after reviewing the “All Natural*” and “*Minimally processed, no artificial ingredients” representations on the Cookies’ labels, which deceived her. If Plaintiff had known the Cookies in fact contained highly processed, artificial, and/or non-natural ingredients, she would not have purchased them or would have paid less for them. The purchase price of the Cookies was \$1.75 per cookie.

10. Defendant Jimmy John’s LLC is a Delaware limited liability company with its headquarters and principal place of business in Champaign, Illinois.

11. Defendant Jimmy John’s Franchise, LLC is a Delaware limited liability company with its headquarters and principal place of business in Champaign, Illinois.

JURISDICTION AND VENUE

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

13. This Court has personal jurisdiction over Defendants because Defendants are Illinois residents. In addition, as explained below, Defendants have jointly and severally

committed affirmative tortious acts within the State of Illinois that give rise to civil liability, including distributing the fraudulent Cookies for sale throughout the State of Illinois.

14. 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.

FACTUAL ALLEGATIONS

15. Defendants produce, market, and sell foodstuffs—including the Cookies—throughout the State of Illinois.

16. As part of its packaging, labeling, and sales, Defendants affixed labels to the Cookies that claim the Cookies are “All Natural[,]” “minimally processed,” and contain “no artificial ingredients.”

17. By affixing such labels to the packaging of the Cookies, Defendant can entice consumers like Plaintiffs to pay a premium for supposedly “All Natural” Cookies.

18. The labels of the Cookies are deceptive, unfair, false, and misleading in that Defendants prominently represent that the Cookies are “All Natural,” when they are not, are “minimally processed,” when they are not, and contain “no artificial ingredients,” when they do.

19. The Cookies are not free of highly processed, artificial, and/or non-natural ingredients because they contain the Manufactured Ingredients, specifically:

- a. **Wheat flour.** Enriched wheat flour is a highly processed material made by processing grain to a superfine level and removing the outer portion of the seed. This removes nutrients, some of which are then artificially reintroduced (see niacin, reduced iron, thiamine mononitrate, riboflavin, and folic acid below).¹

¹ See, e.g., 21 C.F.R. § 137.165 (regulating enriched flour).

- b. **Niacin.** Niacin is a white, crystalline acid that as a food additive is artificially derived through chemical processes at large industrial facilities.² It is added to enriched flour due to the number of nutrients stripped from wheat during the industrial milling process.
- c. **Reduced iron.** Reduced iron is a metallic powder artificially derived through chemical processes, which “reduce” oxidized iron by a reaction with chemical compounds. Then, like niacin, it is added to enriched flour due to nutrient stripping during the intensive milling process.
- d. **Thiamine mononitrate.** Thiamine mononitrate is artificially “prepared from thiamine hydrochloride by dissolving the hydrochloride salt in alkaline solution followed by precipitation of the nitrate half-salt with a stoichiometric amount of nitric acid.” 21 CFR § 184.1878. The results of this artificial chemical process are then introduced into refined flour as an additive.
- e. **Riboflavin.** Riboflavin is a vitamin artificially produced at industrial levels by fermenting the fungus *Ashbya gossypii* in a chemical compound comprised of, e.g., glucose and corn steep liquor.³
- f. **Folic acid.** Folic acid is a man-made, artificial version of folate, a vitamin occurring in green vegetables and citrus.⁴ It is synthetic, derived at the industrial scale through chemical processes for use as a food additive.

² E.g., Lonza, Niacin and Niacinamide: A Commitment to Quality (2015), <http://www.ethorn.com/ssw/files/Lonza.pdf>.

³ E.g., Fred W. Tanner and Virgil F. Pfeifer, *Production of Riboflavin by Fermentation*, USDA, <https://naldc.nal.usda.gov/download/IND43894159/PDF>.

⁴ E.g., <https://medlineplus.gov/ency/article/002408.htm>; <https://www.healthline.com/nutrition/folic-acid-vs-folate#section3>.

- g. **Sugar.** Sugar is a highly processed food. Sugar is refined through a multi-step process, first by removing liquor from sugar crystals, mixing raw sugar with syrup, processing the result through a centrifuge, and then decolorizing. One popular decolorizing technique pumps sugary liquid through granular activated carbon, another uses ion exchange resin (a polymer). After decolorization, water is boiled off to allow sugar crystals to grow. This is a highly refined, multi-step process far removed from the food's natural state.
- h. **Brown sugar.** Brown sugar is typically highly processed sugar mixed with molasses, itself a highly processed substance left from the sugar refining process.
- i. **Milk powder and dry milk.** Milk powder and dry milk are highly processed ingredients. They are made by taking pasteurized milk, evaporating it, and then spraying the concentrate into heat which solidifies the milk particles. (Milk powder contains more protein than dry milk, but the processing steps are similar.) These highly refined foods undergo extensive processing.
- j. **Soy lecithin.** Soy lecithin is a highly refined food additive. It is made by ... "degumming crude soy oil, [by adding] steam ... in a batch or continuous process. The emulsion is then agitated ... as the phosphatides hydrate and agglomerate, forming a heavy oil-insoluble sludge, which is separated from the oil by use of a centrifuge. The sludge coming from the degumming centrifuge ... may then be bleached once or twice, typically with hydrogen peroxide, to reduce its color from

brown or beige to light yellow. Fluidizing additives such as soy oil, fatty acids, or calcium chloride can then be added Finally the product is film or batch dried.”⁵

- k. **Baking soda.** Baking soda is typically artificially made by dissolving soda ash in water, which is then treated with carbon dioxide. Baking soda, or sodium bicarbonate, then precipitates from the solution.

20. In sum, the Cookies contain a long list of ingredients reasonable consumers would consider non-natural, artificial, and/or highly processed, in contradiction of the claims on the front of the labels.⁶

21. Defendants then intentionally and willfully placed the Cookies with the misleading labels into the stream of commerce with the intent to induce consumers to purchase the cookies because of Defendants’ false representations. Just as Defendants intended, Defendants’ false and deceptive representations caused Plaintiffs and Class Members to purchase the Cookies.

22. Defendants’ actions directly and proximately caused damages including economic harm to the Plaintiffs and Class Members in the following way: Defendants used the misleading labels that they knew to be false and deceptive in order to increase their profits by promising reasonable consumers healthy, minimally processed ingredients while delivering cheaper, less healthy, highly processed ingredients. Reasonable consumers, including Plaintiffs and Class Members, expecting the promised natural, minimally processed ingredients, thereby lost the benefit of the bargain because they did not receive what they were promised on the label i.e. what

⁵ <http://www.soyinfocenter.com/HSS/lecithin1.php>.

⁶ Jimmy John’s own website also makes this distinction. *See* <https://www.jimmyjohns.com/about-us/our-food/> (visited Jan. 4, 2020) (identifying meat, but not cookies, as “natural” and “minimally processed”, while noting the caramel coloring on the meat as *not* minimally processed). Like many of the ingredients in the cookies, caramel coloring is typically made by highly refining carbohydrates. *See, e.g.*, <https://labdoor.com/article/caramel-color-an-overview> (visited Jan. 4, 2020).

they paid for. More, Plaintiffs and Class Members paid a price premium for the Cookies that they would not and should not have paid absent Defendants' misrepresentations.

23. Plaintiffs and reasonable consumers reasonably believe and assume that Cookies labeled "All Natural," "minimally processed," and "no artificial ingredients" do not contain any highly processed, artificial, and/or non-natural ingredients.

24. Neither Plaintiffs nor any reasonable consumer would expect highly processed, artificial, and/or non-natural ingredients to be in Cookies labeled "All Natural," "minimally processed," and "no artificial ingredients."

25. Neither Plaintiffs nor any reasonable consumer when reviewing the Cookies' labels would know or should know that the Cookies contained the Manufactured Ingredients.

26. As a result of Defendants' deceitful labels, Defendants were able to charge, and Plaintiffs and Class Members paid, a premium for the Cookies supposedly free of the Manufactured Ingredients. Because the Cookies are not in fact free of highly processed, artificial, and/or non-natural ingredients, the Cookies were worth less than they were represented to be, and Plaintiffs and Class Members paid extra for them.

27. Defendants' misrepresentations constitute unfair and deceptive acts and practices, in that Defendants used and employed deception, fraud, false pretense, false promise, and misrepresentation as those words are construed under the ICFA.

CLASS ALLEGATIONS

28. 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 all other similarly situated persons ("Class Members" of the "Class") consisting of:

All current citizens of Illinois who purchased Jimmy's All Natural Triple Chocolate Chunk Cookies and/or Jimmy's All Natural Raisin Oatmeal Cookies in the five years preceding the filing of the Complaint (the "Class Period").

29. 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 Defendants have 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.

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

31. 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 representations that the Cookies are "All Natural[.]" "minimally processed," and contain "no artificial ingredients" are unfair, false, misleading, and deceptive;
- b. whether Defendants intended that Plaintiffs and the Class Members would rely on their "all natural[.]" "minimally processed," and "no artificial ingredients" representations;
- c. whether Defendants violated the ICFA by selling the Cookies with false, misleading, and deceptive representations;
- d. whether Defendants breached express warranties;

- e. whether Defendants' acts constitute deceptive, unfair, and fraudulent business acts and practices or deceptive, untrue, and misleading merchandising practices;
- f. whether Defendants have been unjustly enriched; and
- g. the proper measure of damages sustained by Plaintiffs and Class Members.

32. 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 Defendants' conduct affecting Class Members, and Plaintiffs have no interests adverse to the interests other Class Members.

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

34. 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 Defendants' unlawful conduct will continue without remedy while Defendants profit from and enjoy their 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 Defendants committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;

- d. when the joint and several liability of Defendants 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 members of the Class can seek redress for the harm caused to them by Defendants.

35. 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 Defendants.

36. 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. Thus, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

Count I – Violation of the ICFA

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

38. 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 ILCS 505/2.

39. Defendants’ conduct in advertising and selling the Cookies as being “All Natural[,]” “minimally processed,” and having “no artificial ingredients” when they in fact contain the Manufactured Ingredients constitutes the act, use and employment of deception, fraud, false pretenses, false promises, misrepresentation, and unfair practices in the conduct of Defendants’ trade or commerce. All of Defendants’ conduct was intentional, willful and with intent to economically harm the Plaintiffs and the Class.

40. Defendants intended that Plaintiffs and the Class Members would rely on their “All Natural,” “minimally processed,” and “no artificial ingredients” representations. Defendants are aware that consumers like Plaintiffs and Class Members are becoming more and more interested in purchasing products that do not contain potentially harmful highly processed, artificial, and/or non-natural ingredients. Defendants intended to prey on this interest.

41. The “All Natural,” “minimally processed,” and “no artificial ingredients” misrepresentations are material because they concerns the type of information upon which a reasonable consumer would be expected to rely in deciding whether to purchase the Cookies.

42. Because Defendants are in the business of selling the Cookies, Defendants committed the unfair and deceptive acts in the conduct of its trade and commerce.

43. Defendants’ practice of advertising and selling the Cookies as being “All Natural,” “minimally processed,” and having “no artificial ingredients” when they in fact contain the Manufactured Ingredients 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 highly processed, artificial, and/or non-natural ingredients. Selling the Cookies as being “All Natural” when they are not, as being “minimally processed” when they are not, and as containing “no artificial ingredients” when they do, offends the public’s expectation to be told the truth about the products they are buying.

44. Defendants’ conduct directly and proximately caused substantial injury to Plaintiffs, the Class and reasonable consumers. Defendants knowingly and willfully misled consumers into purchasing Cookies that are not what they are represented to be, and not what the consumers paid for. Moreover, Defendants knowingly and willfully charged a premium for the Cookies as if the Cookies were the superior and more expensive product that Defendants represented them to be. Finally, Defendants exposed consumers to unwanted, highly processed and artificial and non-natural ingredients.

45. Neither Plaintiffs nor any reasonable consumer would expect to find the Manufactured Ingredients in Cookies labeled “All Natural,” “minimally processed,” or “no artificial ingredients.”

46. Neither Plaintiffs nor any reasonable consumer when reviewing the Cookies’ labels would know nor should know that Manufactured Ingredients are highly processed, artificial, and/or non-natural ingredients.

47. Defendants knowingly, willfully, and intentionally labeled and marketed their Cookies as being “All Natural[,]” “minimally processed,” and having “no artificial ingredients,” despite knowing they contained the Manufactured Ingredients.

48. Knowingly and intentionally including the Manufactured Ingredients in its Cookies labeled and marketed as being “All Natural[,]” “minimally processed,” and having “no

artificial ingredients” demonstrates a conscious disregard for Plaintiffs’ and Class Members’ welfare.

49. Because the Cookies are not “All Natural” as they are represented to be, are highly processed rather than “minimally processed” as claimed, and do contain the Manufactured Ingredients in spite of the “no artificial ingredients” representation, the Cookies as sold were worth less than the Cookies 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 Cookies.

50. Plaintiffs and Class Members were deceived by the “All Natural,” “minimally processed,” and/or “no artificial ingredients” claims on the Cookies and suffered economic damages as a proximate result of Defendants’ joint and several unlawful conduct as alleged herein, including the difference between the actual value of the Cookies and the value of the Cookies if they had been as represented.

Count II – Breach of Express Warranty, in the Alternative

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

52. Defendants made the affirmations of fact and the promise to Plaintiffs and the Class Members that the Cookies are “All Natural,” “minimally processed,” and contain “no artificial ingredients,” guaranteeing to Plaintiff and the Class Members that the Cookies were in conformance with those representations.

53. These affirmations of fact and promise became part of the basis of the bargain in which Plaintiffs and Class Members purchased Defendants' Cookies, and Plaintiffs and Class Members relied on the affirmations when making their purchasing decisions.

54. Defendants breached their express warranty that the Cookies were "All Natural," "minimally processed," and contained "no artificial ingredients" by providing Plaintiffs and Class Members with Cookies that contained the Manufactured Ingredients.

55. Defendants knew that the particular Cookies Plaintiffs bought in fact contained the Manufactured Ingredients when they manufactured and distributed the Cookies. Therefore, Plaintiffs were not required to give Defendants pre-suit notice of the nonconforming goods because Defendants knew that every single Cookie manufactured contained the Manufactured Ingredients, as demonstrated by its packaging, labels, and website. Further, Defendants' fraudulent practices and breach such as putting Manufactured Ingredients in the Cookies and labeling them as being "All Natural," "minimally processed," and containing "no artificial ingredients" constitute an incurable defect in that Plaintiffs have already consumed the Cookies and in that, until very recently, Defendants refused to sell their Cookies with accurate labeling.

56. As a result of Defendants' joint and several breach of warranty, Defendants have directly and proximately injured and caused damages to Plaintiffs and the Class Members by depriving them of the benefit of their bargain in that they bought Cookies that were not what they were represented to be; Plaintiffs and the class have spent money on Cookies that had less value than was reflected in the premium purchase price they paid for the Cookies.

57. Because Defendants made the affirmations of fact and promise directly on their own labels and packaging, privity is not required to bring this claim.

Count III – Unjust Enrichment, in the Alternative

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

59. By purchasing the Cookies, Plaintiffs and the Class Members conferred a benefit on Defendants in the form of the purchase price of the fraudulent Cookies.

60. Defendants appreciated the benefit because, were consumers not to purchase the Cookies, Defendants would have no sales and make no money.

61. Defendants' 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 Defendants' fraudulent and misleading representations about the Cookies.

62. Equity cannot in good conscience permit Defendants 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, prays the Court:

- a. grant certification of this case as a class action;
- b. appoint Plaintiffs as Class Representatives and Plaintiffs' counsel as Class Counsel;
- c. award compensatory damages to Plaintiffs and the proposed Class, or, alternatively, require Defendants to disgorge or pay restitution of their ill-gotten gains;
- d. award treble damages under Count I;
- e. award pre- and post-judgment interest;

- f. award reasonable and necessary attorneys' fees and costs;
- g. award punitive damages; and
- h. for all such other and further relief, as may be just and proper.

Dated: October 1, 2020

Heather Erwin and Ashley Price, individually, and on behalf of a class of similarly situated current Illinois citizens, Plaintiffs

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