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L.A. COUNTY SHERIFF
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2022 5/25 15 AM 10:31

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

JAMIE JACKSON, individually and on)
behalf of all other similarly-situated)
citizens of Illinois and the United)
States,)

Plaintiff,)

v.)

No. 22-LA0022

DOLE PACKAGED FOODS, LLC,)

Defendant.)

Serve: Dole Packaged Foods, LLC
CT Corporation System RAGT
818 West 7th St.
Los Angeles CA 90017

2022 MAY 25 PM 2:09
L.A. COUNTY SHERIFF
CIVIL MGMT. BUREAU
LOS ANGELES OFFICE

CLASS ACTION COMPLAINT

Plaintiff, Jamie Jackson, individually and on behalf of all other similarly-situated citizens of Illinois and citizens of the United States, alleges the following facts and claims upon personal knowledge, investigation of counsel, information and belief.

NATURE OF THE CASE

1. This case arises out of deceptive, unfair, and false merchandising practices of Dole Packaged Foods LLC (“Defendant”) with respect to its Dole brand Cherry Mixed Fruit; Diced Apples; Diced Pears; Mandarin Oranges; Mixed Fruit; Pineapple Tidbits; Red Grapefruit Sunrise; Tropical Fruit; and Yellow Cling Diced Peaches with the label “in 100% fruit juice” (collectively, the “Fruit”).

2. On the label of the Fruit, Defendant prominently represents that the Fruit is “in 100% fruit juice,” which leads Illinois and United States consumers to believe that the juice in the container is in fact 100% fruit juice and contains no other added ingredients.

3. However, in addition to various fruit juices, the Fruit’s juice also contains ascorbic acid and citric acid (the “Added Ingredients”).

4. While ascorbic acid may be a source of Vitamin C, food-grade ascorbic acid is a commercially-manufactured food additive used in processed foods primarily as an antioxidant used to control the growth of microorganisms, i.e. a preservative.

5. Ascorbic acid is not fruit juice.

6. While citric acid may be found naturally in citrus fruits, food-grade citric acid is a commercially-manufactured food additive used in processed foods primarily as a pH adjuster to induce tart flavor and control the growth of microorganisms, i.e. a flavor agent and/or a preservative.

7. Citric acid is not fruit juice.

8. The Fruit contains the Added Ingredients in direct contravention to its express representation that it is “in 100% fruit juice.”

9. Plaintiff and reasonable consumers reasonably believe, define, and assume that Fruit labeled “in 100% fruit juice” is in fact in 100% fruit juice and does not contain any added ingredients.

10. Because the Fruit contains the Added Ingredients, the representation that the Fruit is “in 100% fruit juice” is unfair, false, deceptive, and misleading.

11. Defendant’s misrepresentation unlawfully causes Plaintiff and Class Members to pay an inflated price for the Fruit.

12. Plaintiff brings this case to recover damages and for injunctive relief as a result of Defendant's false, deceptive, and misleading marketing and advertising in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") and common law.

PARTIES

13. Plaintiff, Jamie Jackson, is an Illinois citizen residing in Mascoutah, St. Clair County, Illinois. On numerous occasions during the Class Period (as defined below), including as recently as April 1, 2021, Plaintiff purchased Defendant's Mixed Fruit at Schnuck's Market in Belleville for personal, family, or household purposes after reviewing the packaging label and noting that it said "in 100% fruit juice." The purchase price of the Fruit was \$3.29 per unit. Plaintiff's claim is typical of all class members in this regard. Moreover, the label of each of the Fruit is substantially similar such that Plaintiff has standing to bring claims on behalf of Fruit she has not actually purchased.

14. Defendant, Dole Packaged Foods, LLC, is a California limited liability partnership with its principal place of business in Westlake Village, California.

JURISDICTION AND VENUE

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

16. Plaintiff believes and alleges that the total value of her individual claims is, at most, equal to the refund of the purchase price she paid for the Fruit. There is therefore no diversity jurisdiction over this case.

17. Because the value of Plaintiff's claims is typical of all class members with respect to the value of the claim, the total damages of Plaintiff 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.

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

19. This Court has personal jurisdiction over Defendant because Defendant has 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 committed affirmative tortious acts within the State of Illinois that gives rise to civil liability, including distributing the Fruit for sale throughout the State of Illinois and the United States.

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

ALLEGATIONS OF FACT

21. Defendant produces, markets, and sells the Fruit throughout the United States, including Illinois.

22. Defendant affixed a label to the containers in which it sells its Fruit stating "in 100% fruit juice." The label misleads consumers because it misstates the ingredients in the Fruit.

23. Defendant then placed the Fruit with the misleading labels into the stream of commerce, where it was purchased by Plaintiff and Class Members.

24. Reasonable consumers in Illinois and in the United States assume that food product labeling is true and accurate, and manufacturers, including Defendant, know that reasonable consumers rely upon those labels in making their purchasing decisions.

25. Plaintiff and reasonable consumers rely on the truth and accuracy of Defendant's labels, including representations about the ingredients and contents when purchasing food products.

26. The misrepresentation described herein is material in that it concerns the type of information upon which a reasonable consumer would be expected to rely in deciding whether to purchase the Fruit. Specifically, the claim that the Fruit is "in 100% fruit juice" is a material fact.

27. Defendant claims that the Fruit is "in 100% fruit juice" when it actually contains the Added Ingredients. Because the Added Ingredients are not fruit juice, the claim "in 100% fruit juice" is inaccurate, deceptive, unfair, and misleading to purchasers.

28. Reasonable consumers, including Plaintiff, therefore pay more for the Fruit "in 100% fruit juice" that they do not actually receive, and for which they would have paid less or not purchased at all had the truth been known.

29. At all times, Defendant intended for consumers including the Plaintiff to rely on the label's representation that the Fruit is "in 100% fruit juice." Otherwise, the "in 100% fruit juice" representation serves no purpose.

30. Plaintiff and reasonable consumers have been actually deceived by Defendant's misrepresentation.

31. At all times, Defendant's misrepresentation was intentional. Defendant knew (a) what ingredients it was putting in the Fruit; (b) that its own label misrepresented what ingredients were in the Fruit; (c) that reasonable consumers would view, assume true, and rely upon information on the "in 100% fruit juice" representation in making their purchasing decisions; (d) that the label misstated the true nature of the ingredients in the Fruit; (e) that it was not giving the

consumer the benefit of the bargain; and (f) that it was fraudulently charging consumers for Fruit with Added Ingredients while claiming no Added Ingredients were present.

32. Defendant's misrepresentation constitutes unfair or deceptive acts or practices, including but not limited to the use or employment of a deception, fraud, false pretense, false promise, or misrepresentation within the meaning of the ICFA

33. As to the particulars of Defendant's fraudulent conduct, Defendant intentionally and knowingly misrepresented the ingredients in the Fruit by falsely claiming that the Fruit is "in 100% fruit juice," which it intended consumers to rely upon whenever they read the label and purchased the product.

34. Plaintiff provided pre-suit notice of a breach of warranty, having apprised the Defendant in writing of the problem with the Fruit that she purchased.

35. There is substantial danger that the Defendant's wrongful retail practices will continue because Defendant continues to advertise, distribute, label, manufacture, market and sell the Fruit in a false, misleading, unfair and deceptive manner, all while denying same.

CLASS ALLEGATIONS

36. Pursuant to 735 ILCS 5/2-801 *et. seq.*, Plaintiff brings this action on her own behalf and on behalf of proposed classes of all other similarly situated persons ("Class Members" of the "Class") consisting of:

The "Illinois Class" applicable to Count I:

All citizens of Illinois who purchased Dole brand Cherry Mixed Fruit; Diced Apples; Diced Pears; Mandarin Oranges; Mixed Fruit; Pineapple Tidbits; Red Grapefruit Sunrise; Tropical Fruit; and/or Yellow Cling Diced Peaches with the label "in 100% Fruit Juice" for personal, family, or household purposes during the five years preceding the filing of this Complaint (the "Class Period").

The “Nationwide Class” applicable to Counts II and III:

All current citizens of the United States who purchased Dole brand Cherry Mixed Fruit; Diced Apples; Diced Pears; Mandarin Oranges; Mixed Fruit; Pineapple Tidbits; Red Grapefruit Sunrise; Tropical Fruit; and Yellow Cling Diced Peaches with the label “in 100% Fruit Juice” for personal, family, or household purposes during the Class Period.

37. Excluded from the Classes 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, its 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.

38. Upon information and belief, the Classes consist of thousands of purchasers. Accordingly, it would be impracticable to join all Class Members before the Court.

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

- a. whether the Fruit labels are false, misleading, and deceptive;
- b. whether Defendant violated ICFA by selling the Fruit with false, misleading, and deceptive representations;
- c. whether Defendant’s acts constitute unfair, deceptive and/or fraudulent business acts and practices or deceptive, untrue, and misleading advertising;
- d. whether Defendant breached express and/or implied warranties to Plaintiff and the Class Members;
- e. whether Defendant intended that Plaintiff and the Class Members would rely on its representations;

- f. whether Defendant's acts constitute deceptive, unfair, and fraudulent business acts and practices or deceptive, untrue, and misleading merchandising practices;
- g. whether Defendant was unjustly enriched; and
- h. the proper measure of damages sustained by Plaintiff and Class Members.

40. The claims of Plaintiff are typical of the claims of Class Members, in that they share the above-referenced facts and legal claims or questions with Class Members and there is a sufficient relationship between the damage to Plaintiff and Defendant's conduct affecting the Classes.

41. Class Members and Plaintiff have no interests adverse to the interests of other Class Members.

42. Plaintiff will fairly and adequately protect the interests of Class Members and has retained competent and experienced counsel.

43. 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 Classes;
- b. absent Classes, the Class Members will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoys 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 Plaintiff and members of the Class can seek redress for the harm caused to them by Defendant.

44. Because Plaintiff seeks relief for all Class Members, the prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications with respect to individual member of the Classes, which would establish incompatible standards of conduct for Defendant.

45. 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 Classes would, as a practical matter, be dispositive of the interest of other members of the Classes who are not parties to the adjudication and may impair or impede their ability to protect their interests. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

COUNT I

Violation of ICFA applicable only to the Illinois Class (Deceptive Practices)

46. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs 1-45 as if fully set forth herein.

47. 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.

48. Defendant engaged in a deceptive practice by misrepresenting that the Fruit is “in 100% fruit juice,” when the product actually contains the Added Ingredients. The product was therefore worth less than the product as represented, consumers paid a price premium which they would not have paid absent Defendant’s misrepresentations, and consumers did not receive the benefit of their bargain.

49. Defendant intended Plaintiff and reasonable consumers would rely on the deceptive practice because Defendant is aware that consumers like Plaintiff and Class Members are interested in purchasing products without added ingredients and that are consistent with representations made on their packaging. Defendant intended to prey on these interests.

50. Defendant’s misrepresentation is material because it conveys false information that reasonable consumers would rely upon when considering whether or not to purchase the product.

51. Defendant’s deceptive practice occurred in the course of Defendant’s trade or commerce because Defendant is in the business of manufacturing, distributing, and selling the Fruit, and it does so throughout the United States, including throughout Illinois and in St. Clair County.

52. Defendant’s deceptive practices proximately caused Plaintiff and consumers actual damages, because:

- a. neither Plaintiff nor any reasonable consumer would expect to find the Added Ingredients in fruit labeled “in 100% fruit juice;”

- b. consumers purchase the product believing they will receive fruit in 100% fruit juice but they do not actually receive fruit in 100% fruit juice because of the presence of the Added Ingredients; and
- c. consumers therefore do not receive the benefit of the bargain.

53. These damages include the purchase price of the product or the difference between what Plaintiff paid for the product and what the product was actually worth, or the price premium associated with the deceptive practice. Because the product was not as represented, the product as sold was worth less than the product as represented, and Plaintiff and Class Members paid an excess amount for it. Had the truth be known, consumers would not have purchased the product at all, or would have paid less for them.

COUNT II

Violation of ICFA applicable only to the Illinois Class (Unfair Practices)

54. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs 1-45 as if fully set forth herein.

55. 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.

56. Defendant engaged in unfair acts or practices by including the Added Ingredients in the Fruit without including the phrase “with added ingredients” to modify the “in 100% fruit juice” claim on the Fruit’s label.

57. Defendant intended that Plaintiff and reasonable consumers would rely on the unfair acts or practices because Defendant did not disclose the presence of the Added Ingredients on the front of the label of the Fruit. Rather, Defendant said the product is “in 100% fruit juice,” intending that consumers would rely on the accuracy of the front of the label. Defendant is aware that consumers like Plaintiff and Class Members are interested in purchasing products without added ingredients and that are consistent with representations made on their packaging. Defendant intended to prey on these interests.

58. Defendant’s unfair acts or practices occurred in the course of Defendant’s trade or commerce because Defendant is in the business of manufacturing, distributing, and selling the Fruit, and it does so throughout the United States, including throughout Illinois and in St. Clair County.

59. Defendant’s unfair acts or practices offend public policy by representing that the Fruit is “in 100% fruit juice” without being accompanied by a phrase indicating that the Fruit contains the Added Ingredients. Public policy dictates that if canned or packaged fruit contains 100% juice and also contains non-juice ingredients, it must be accompanied by the phrase “with added ingredients.” *See* 21 C.F.R. 145.135(a)(4)(iv)¹ and 21 C.F.R. 101.30(b)(3)².

¹ “Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this Chapter.”

² “If the beverage contains 100 percent juice and also contains non- juice ingredients that do not result in a diminution of the juice soluble solids or, in the case of expressed juice, in a change in the volume, when the 100 percent juice declaration appears on a panel of the label that does not also bear the ingredient statement, it must be accompanied by the phrase “with added ____,” the blank filled in with a term such as “ingredient(s),” “preservative,” or “sweetener,” as appropriate (e.g., “100% juice with added sweetener”), except that when the presence of the non- juice ingredient(s) is declared as a part of the statement of identity of the product, this phrase need not accompany the 100 percent juice declaration.”

60. Defendant's unfair acts or practices are immoral, unethical, oppressive, or unscrupulous because clandestinely adding ingredients to the Fruit without adequately disclosing the fact that the Fruit contains added ingredients does not comport with reasonable consumers' expectations to be told the truth about what they are buying and putting into their bodies, or more to the point, into the bodies of their children. The policy requiring the Fruit to be accompanied by the phrase "with added ingredients" is to protect consumers from Defendant's unfair acts or practices. Defendant's failure to disclose such is unethical and oppressive because they are trusted to follow the law and adequately disclose what is in its products.

61. Defendant's unfair acts or practices leave the consumer with little alternative except to submit to it because consumers have no control over the representations Defendant puts onto the Fruit's label and packaging.

62. Defendant's unfair acts or practices proximately caused Plaintiff and consumers actual damages, because:

- a. neither Plaintiff nor any reasonable consumer would expect to find the Added Ingredients in fruit labeled "in 100% fruit juice;"
- b. consumers purchase the product believing they will receive fruit in 100% fruit juice but they do not actually receive fruit in 100% fruit juice because of the presence of the Added Ingredients; and
- c. consumers therefore do not receive the benefit of the bargain.

63. These damages include the purchase price of the product or the difference between what Plaintiff paid for the product and what the product was actually worth, or the price premium associated with the deceptive practice. Because the product was not as represented, the product as sold was worth less than the product as represented, and Plaintiff and Class Members paid an

excess amount for it. Had the truth be known, consumers would not have purchased the product at all, or would have paid less for them.

64. These damages to Plaintiff and consumers more generally are substantial, are not outweighed by any countervailing benefits to Plaintiff and consumers, and are damages the Plaintiff and reasonable consumers could not reasonably have avoided because consumers have no control over the representations Defendant puts onto the Fruit's label and packaging.

COUNT III

Breach of Express Warranty applicable to the Nationwide Class

65. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs 1-45 as if fully set forth herein.

66. Defendant made the affirmation of fact and the promise to Plaintiff and the Class Members that the Fruit is "in 100% fruit juice" guaranteeing to Plaintiff and the Class Members that the Fruit was in conformance with the representation.

67. This affirmation of fact and promise became part of the basis of the bargain in which Plaintiff and Class Members purchased the Fruit, and Plaintiff and Class Members relied on the affirmation when making their purchasing decisions.

68. Defendant breached its express warranty that the Fruit is "in 100% fruit juice" by providing Plaintiff and Class Members with Fruit containing the Added Ingredients.

69. As a result of Defendant's breach of warranty, Plaintiff and the Class Members have been deprived of the benefit of their bargain in that they bought Fruit that were not what they were was represented to be, and they have spent money on Fruit that had less value than was reflected in the premium purchase price they paid for the Fruit.

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

71. Because Defendant is the sole manufacturer and seller of the Fruit, it has actual knowledge that the Fruit are falsely labeled, and therefore pre-suit notice of this claim is not required.

72. Nonetheless, Plaintiff has provided Defendant with written notice of its breach of warranty.

73. As a proximate result of Defendant's breach of express warranty, Plaintiff and Class Members suffered economic damages, including the full purchase price of the Fruit or the premium paid for it.

COUNT IV

In the alternative, Unjust Enrichment applicable to the Nationwide Class

74. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs 1-45 as if fully set forth herein.

75. Plaintiff and the Class Members conferred a benefit on Defendant in that they purchased the Fruit that was manufactured, distributed, and sold by the Defendant.

76. Defendant appreciated the benefit because, were consumers not to purchase the Fruit, Defendant would have no sales and would make no money from the Fruit.

77. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's misleading representation about the ingredients in the Fruit.

78. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at Plaintiff 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, Plaintiff, individually and on behalf of all similarly situated persons, prays the Court:

- a. grant certification of this case as a class action;
- b. appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel for both Classes;
- c. issue appropriate injunctive relief;
- d. award compensatory damages to Plaintiff and the proposed Classes or, alternatively, require Defendant to disgorge or pay restitution;
- e. award statutory and punitive damages to Plaintiff and the proposed Classes;
- f. award pre- and post-judgment interest;
- g. award reasonable and necessary attorneys' fees and costs to Class counsel; and
- h. for all such other and further relief as may be just and proper.

Dated: January 12, 2022

Jamie Jackson, individually and on behalf of other similarly-situated citizens of Illinois and the United States, Plaintiff

By: /s/ David C. Nelson

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