

Electronically Filed
Kinnis Williams, Sr.
Circuit Clerk
Cheri Johnson
24LA1405
St. Clair County
10/16/2024 9:07 AM
29793786

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

KATHERINE SEPER, individually and)
on behalf of all others similarly situated,)

Plaintiff,)

v.)

NTC MARKETING INC.,)

Defendant.)

No. ~~XXXX-24-LA-~~

24LA1405

Serve: NTC Marketing Inc.
c/o Christopher J. Derose, CEO
6400 Sheridan Drive, Ste. 236
Williamsville, NY 14221

CLASS-ACTION COMPLAINT

Plaintiff, Katherine Seper, individually and on behalf of all others similarly situated, 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 Defendant NTC Marketing Inc.’s (“Defendant”) deceptive, unfair, and false merchandising practices regarding its Libby’s® brand Chunk Pineapple and Sliced Pineapple “packed in 100% pineapple juice” (collectively, the “Fruit”).

2. On the label of the Fruit, Defendant prominently represents that the Fruit is “packed in 100% pineapple juice” which leads Illinois citizens to believe that the juice in the container is in fact 100% pineapple juice and contains no other Additive.

3. However, the Fruit does not contain “100% juice” as defined by the FDA or as the phrase is understood by reasonable consumers – only water, juice concentrate and certain additives.

4. Defendant’s Fruit contains a food additive known as citric acid (the “Additive”).

5. As such, Defendant’s Fruit are inferior to competing products that contain fruit packed in 100% pineapple juice without additives or fruit in plain water.

6. Defendant does not tell its consumers why the Additive is included with the fruit, nor the function it might serve.

7. Citric acid is not juice. It is a commercially manufactured food additive sold in the form of a white powder and 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.

8. The Additive in the Fruit is neither naturally occurring nor natural ingredients that are somehow removed from and then added back to the Fruit.

9. The Fruit contains the Additive in direct contravention to the label’s express representation that the fruit is “packed in 100% pineapple juice.”

10. Plaintiff and reasonable consumers reasonably interpret the label to denote that Defendant’s Fruit is packed in juice that contains no Additive.

11. Because the Fruit does not contain only actual juice but also contains the Additive, the representation that the Fruit is “packed in 100% pineapple juice” is unfair, false, deceptive, and misleading.

12. Defendant’s misrepresentation unlawfully causes Plaintiff and Class Members to pay an inflated price for the Fruit in that superior products such as Dole canned pineapple that actually contain juice and/or do not contain additives are sold for the same price at Walmart;

additionally, products that are not in 100% juice and contain additives can be purchased for lower prices.

13. 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 Illinois common law, the Illinois Uniform Deceptive Trade Practices Act ("IUDPTA"), and the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), and bases the claims of class members from other states and territories on their states' and territories' respective consumer protection statutes and under the common law or case law of those states.

PARTIES

14. Plaintiff, Katherine Seper, is an Illinois citizen residing in St. Clair County, Illinois. Plaintiff purchased Defendant's Libby's® brand Chunk Pineapple and Sliced Pineapple "packed in 100% pineapple juice" at Dollar Tree in St. Clair County, Illinois and Walmart in Monroe County, Illinois, for personal, family, or household purposes after reviewing the packaging label and noting that it said "packed in 100% pineapple juice," on numerous occasions during the Class Period (as defined below), including purchases of some as recently as December 2023. The purchase price of the Fruit was approximately \$1.25 per can. Plaintiff's claim is typical of all Class Members in this regard.

15. Defendant, NTC Marketing Inc. is a New York corporation with its principal place of business in Williamsville, New York.

JURISDICTION AND VENUE

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

17. 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.

18. 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.

19. 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.

20. 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.

21. 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

22. Defendant produces, markets, and sells the Fruit throughout the United States, including in St. Clair County.

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

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

25. Reasonable consumers 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.

26. 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.

27. 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 "packed in 100% pineapple juice" is a material fact.

28. Defendant claims that the Fruit is "packed in 100% pineapple juice" when it actually contains the Additive. Because the Additive is not juice, the claim "packed in 100% pineapple juice" is inaccurate, deceptive, unfair, and misleading to purchasers.

29. Reasonable consumers, including Plaintiff, therefore pay more for the Fruit "packed in 100% pineapple 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.

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

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

32. 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 "packed in 100% pineapple 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 the Additive while claiming no additives were present.

33. 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.

34. 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 "packed in 100% pineapple juice," which it intended consumers to rely upon whenever they read the label and purchased the product.

35. Empirical data has shown that labeling claims like the one at issue are often assigned a particular value by food manufacturers and/or third parties that provide such data for them. In other words, food manufacturers often know to the penny how much more money they can charge if they label their product, for instance, as containing no artificial preservatives. Plaintiff does not yet have access to this data, but upon information and belief, Defendant has such data and relies upon it when choosing the statements it places on labels to entice sales and in setting its prices. This data will be revealed in discovery and will evidence the price premium damages alleged herein.

36. 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 on June 6, 2024.

37. 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

38. Plaintiff brings this action pursuant to 735 ILCS 5/2-801 *et. seq.*, on her own behalf and on behalf of two classes of other similarly situated persons defined as follows:

All individuals who purchased in Illinois Libby's® brand Chunk Pineapple and/or Sliced Pineapple with the label "packed in 100% pineapple juice" in the five years preceding the filing of this Complaint (the "Class Period"); and

All individuals who purchased in the United States Libby's® brand Chunk Pineapple and/or Sliced Pineapple with the label "packed in 100% pineapple juice" during the Class Period.

39. 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) Defendant, its officers, directors, or employee; any entity in which Defendant has a controlling interest or which has a controlling interest in Defendant; any affiliate, legal representative, heir, successor, or assign of Defendant or any person acting on its behalf; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; (d) any judicial officer in the lawsuit and/or persons within the third degree of consanguinity to such judge; and (e) any juror assigned to this action.

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

41. 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 number of servings on the label of the Fruit is false, misleading, and deceptive;
- b. whether Defendant's breached express and/or implied warranties to Plaintiff and the Class Members;
- c. whether Defendant violated IUDTPA by selling the Fruit with false, misleading, and deceptive representations;
- d. whether Defendant violated ICFA by selling the Fruit with false, misleading, and deceptive representations;
- e. whether Defendant's acts constitute deceptive, unfair or fraudulent business acts and practices or deceptive, untrue, and misleading advertising;
- f. whether Defendant intended that Plaintiff and the Class Members would rely on its representations;
- g. whether Defendant was unjustly enriched; and
- h. the proper measure of damages sustained by Plaintiff and Class Members.

42. 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.

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

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

45. 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 Classes can seek redress for the harm caused to them by Defendant.

46. 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.

47. 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

Breach of Express Warranty

48. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs 1-47 as if fully set forth herein.

49. Defendant made the affirmation of fact and the promise to Plaintiff and the Class Members that the Fruit is “packed in 100% pineapple juice” guaranteeing to Plaintiff and the Class Members that the Fruit was in conformance with the representation.

50. This affirmation of fact and promise became part of the basis of the bargain in which Plaintiff and Class Members purchased the Fruit, and it was material to Plaintiff’s and Class Members’ purchasing decisions.

51. Defendant breached its express warranty that the Fruit is “packed in 100% pineapple juice” by providing Plaintiff and Class Members with Fruit containing the Additive.

52. 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.

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

54. 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.

55. Nonetheless, Plaintiff has provided Defendant with written notice of its breach of warranty on June 6, 2024.

56. 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 II

Violation of IUOTPA

57. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs 1-47 as if fully set forth herein.

58. Defendant in the course of its business: (1) represents that the Fruit has characteristics and quantities that it does not have; (2) represents that the Fruit is of a particular standard, quality, or grade when it is of another; and (3) advertises the Fruit with the intent not to sell it as advertised. Namely, Defendant misrepresents and advertises that the Fruit is "packed in 100% pineapple juice," when it contains the Additive.

59. Plaintiff is likely to be damaged by Defendant's practices because Plaintiff intends to, seeks to, and will purchase the Fruit again when she can do so with the assurance that representations on the Fruit are accurate. However, unless the Court intervenes, Plaintiff cannot determine whether Defendant's representations on the label are accurate without purchasing the Fruit again – in which case she risks future economic harm.

60. Plaintiff therefore seeks injunctive relief, including the prohibition of the sales of the Fruit in Illinois.

COUNT III

Violation of ICFA and All Other State Consumer Protection Statutes (Deceptive Practices)

61. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs 1-47 as if fully set forth herein.

62. 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.

63. The consumer protection statutes of other states and territories are similarly designed to prevent deceptive practices.

64. Defendant engaged in a deceptive practice by misrepresenting that the Fruit is “packed in 100% pineapple juice,” when the product actually contains the Additive. 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.

65. 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 additives and that are consistent with representations made on their packaging. Defendant intended to prey on those interests.

66. 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.

67. 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.

68. Defendant's deceptive practices proximately caused Plaintiff and consumers actual damages, because:

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

69. These damages include the purchase price of the product or the difference between what Plaintiff and Class Members 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 been known, Plaintiff and Class Members would not have purchased the product at all, or would have paid less for them.

COUNT IV

Violation of ICFA and All Other State Consumer Protection Statutes (Unfair Practices)

70. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs 1-47 as if fully set forth herein.

71. 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.

72. The consumer protection statutes of other states and territories are similarly designed to prevent unfair practices.

73. Defendant engaged in unfair acts or practices by including the Additive in the Fruit without including the phrase “with added ingredients” to modify the “packed in 100% pineapple juice” claim on the Fruit’s label.

74. Defendant intended that Plaintiff and reasonable consumers would rely on the unfair acts or practices because Defendant did not disclose the presence of the Additive on the front of the label of the Fruit. Rather, Defendant said the product is “packed in 100% pineapple 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 additive and that are consistent with representations made on their packaging. Defendant intended to prey on these interests.

75. 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.

76. Defendant’s unfair acts or practices offend public policy by representing that the Fruit is “packed in 100% pineapple juice” without being accompanied by a phrase indicating that

the Fruit contains the Additive. Public policy is embodied by federal regulations, which provide 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.

77. Defendant's unfair acts and practices further offend Illinois public policy in that they also violate the Illinois Food, Drug, and Cosmetic Act, 410 ILCS 620/11, because the labels of the Fruit are false and misleading as described herein.

78. Defendant's unfair acts or practices are also immoral, unethical, oppressive, or unscrupulous because clandestinely adding ingredients to the Fruit without adequately disclosing the fact that the Fruit contains Additive 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.

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."

79. 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 on the Fruit's label and packaging.

80. 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 Additive in fruit labeled "packed in 100% pineapple juice;"
- b. consumers purchase the product believing they will receive fruit "packed in 100% pineapple juice," but they do not actually receive fruit IN 100% JUICE because of the presence of the Additive; and
- c. consumers therefore do not receive the benefit of the bargain.

81. These damages include the purchase price of the product or the difference between what Plaintiff and Class Members 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.

82. These damages to Plaintiff and Class Members are substantial, are not outweighed by any countervailing benefits to Plaintiff and Class Members and are damages the Plaintiff and Class Members could not reasonably have avoided because they have no control over the representations Defendant puts on the Fruit's label and packaging.

COUNT IV

In the alternative, Unjust Enrichment

83. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs 1-47 as if fully set forth herein.

84. 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.

85. 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.

86. 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.

87. 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. enter judgment jointly and severally against Defendant and in favor of Plaintiff and the Classes including an award of all recoverable damages;
- b. grant certification of this case as a class action;
- c. appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- d. enjoin the sales of the Pastas in Illinois;
- e. award compensatory damages to Plaintiff and the proposed Classes or, alternatively, require Defendant to disgorge or pay restitution;

- f. award statutory and punitive damages to Plaintiff and the proposed Classes;
- g. award pre- and post-judgment interest;
- h. award reasonable and necessary attorneys' fees and costs to Class counsel; and
- i. for all such other and further relief as may be just and proper.

Dated: October 16, 2024

Respectfully submitted,

By: /s/David C. Nelson
David C. Nelson (ARDC 6225722)
NELSON & NELSON, ATTORNEYS AT LAW, P.C.
420 North High Street, P.O. Box Y
Belleville, IL 62222
Tel: 618-277-4000
Email: dnelson@nelsonlawpc.com

Matthew H. Armstrong (ARDC 6226591)
ARMSTRONG LAW FIRM LLC
2890 W. Broward Blvd. Unit B, #305
Ft. Lauderdale, FL 33312
Tel: 314-258-0212
Email: matt@mattarmstronglaw.com

Robert L. King (ARDC 6209033)
THE LAW OFFICE OF ROBERT L. KING
9506 Olive Blvd., Suite 224
St. Louis, MO 63132
Tel: 314-246-0702
Email: king@kinglaw.com

Stuart L. Cochran (*pro hac vice application forthcoming*)
Texas State Bar No. 24027936
CONDON TOBIN SLADEK THORNTON NERENBERG PLLC
8080 Park Ln., Ste 700
Dallas, TX 75231
Tel: 214-865-3804
Email: scochran@condontobin.com

Attorneys for Plaintiff and the Putative Class

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Katherine Seper, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff St. Clair County, IL
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Nelson & Nelson, Attorneys at Law, P.C.
420 North High St., P.O. Box Y, Bellville, IL 62222
(618) 277-4000

DEFENDANTS

NTC Marketing Inc.

County of Residence of First Listed Defendant Erie County, NY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Robert P. Berry, Berry Silberberg Stokes PC
16150 Main Circle Drive, Suite 120, St. Louis, MO 63017
(314) 480-5881

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. Sections 1332(d); 1441(a); 1446; 1453
 Brief description of cause:
 Class action claims for breach of express warranty, Illinois IUDPTA, Illinois ICFA, unjust enrichment.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

11/22/2024

SIGNATURE OF ATTORNEY OF RECORD

/s/ Robert P. Berry

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____