

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

SHANNAH BURTON, individually and )  
on behalf of all other similarly-situated )  
current citizens of Illinois, )  
 )  
Plaintiff, )  
 )  
v. ) No. 18-L-**350**  
 )  
CEDARLANE NATURAL FOODS, INC., )  
 )  
Defendant. )

**CLASS ACTION COMPLAINT**

Plaintiff, Shannah Burton, individually and on behalf of all other similarly-situated current citizens of Illinois, alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

**CASE SUMMARY**

1. This case arises out of Defendant Cedarlane Natural Foods, Inc.'s ("Defendant") deceptive, unfair, and false practices regarding its All Natural Gluten Free Roasted Chili Relleno; All Natural Gluten Free Garden Vegetable Enchiladas; All Natural Gluten Free Garden Vegetable & Mozzarella Egg White Omelette; All Natural Baked Stacked Eggplant; and All Natural Gluten Free Roasted Chile and Cheese Egg White Frittata (the "Products").

2. On the label of the Products, Defendant deceptively, falsely, and unfairly represents that the Products' ingredients are "All Natural," which deceives consumers into believing that the Products only contain natural ingredients.

3. The Products, however, are not "All Natural" because they contain Xanthan Gum (the "Synthetic Ingredient"), which is a synthetic ingredient.

4. The FDA does not object to the use of the term “natural” to describe a food if the food does not contain any added color, artificial flavors, or synthetic substances.<sup>1</sup> Likewise, Plaintiff and reasonable consumers reasonably believe, define, and assume that Products labeled “All Natural” do not contain any added color, artificial flavors, or synthetic substances.

5. Because the Products contain the Synthetic Ingredient, the representation that the Products are “All Natural” is unfair, false, deceptive, and misleading.

6. By claiming that the Products are “All Natural,” Defendant deceives consumers into believing that the Products are only comprised of natural ingredients, when they in fact contain the Synthetic Ingredient.

7. Plaintiff brings this case to recover damages for Defendant’s false, deceptive, unfair, and misleading marketing and advertising in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”) and Illinois common law.

#### **THE PARTIES**

8. Plaintiff, Shannah Burton is an Illinois citizen residing in St. Clair County, Illinois. On a few occasions during the Class Period (as defined below), including in January or February 2017, Plaintiff purchased the Defendant’s All Natural Gluten Free Roasted Chili Relleno and All Natural Gluten Free Garden Vegetable & Mozzarella Egg White Omelette at Dierbergs in Shiloh, Illinois, for personal purposes after reviewing the “All Natural” label, which deceived her. If Plaintiff had known the Products were not in fact “All Natural” she would not have purchased them or would have paid less for them. The purchase price of each of the Products was \$3.99 each. Plaintiff’s claim is typical of all class members in this regard. The

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<sup>1</sup> <http://www.fda.gov/aboutfda/transparency/basics/ucm214868.htm>

label of each of the Products is substantially similar in claiming that the Sauce is “All Natural” when it is not.

9. The labels of each of the Products — including those Plaintiff has not purchased — are substantially similar in that each claims the Products are “All Natural” and lists the Synthetic Ingredient. Accordingly, Plaintiff has standing to pursue claims relating to Products she did not actually purchase.

10. Upon information and belief, Defendant Cedarlane Natural Foods, Inc., is a California corporation with its headquarters and principal place of business in Carson, California.

#### **JURISDICTION AND VENUE**

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

12. 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 Product. There is therefore no diversity jurisdiction over this case.

13. 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.

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

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

16. 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.

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

#### **FACTUAL ALLEGATIONS**

18. Defendant manufactures, sells, and distributes the Products.

19. Knowing that consumers like Plaintiff are increasingly interested in purchasing healthy, natural, “green” Products that do not contain potentially harmful synthetic ingredients and chemicals, Defendant has sought to take advantage of this growing market by labeling certain Products as being “All Natural.”

20. By affixing such labels to the packaging of the Products, Defendant can entice consumers like Plaintiff to pay a premium for the supposed “All Natural” Products.

21. The labels of the Products are deceptive, unfair, false, and misleading in that Defendant prominently represents that the Products are “All Natural.” The label of each of the Products is substantially similar in claiming that the Sauce is “All Natural” when it is not.

22. The Products, however, are not “All Natural” because they contain the Synthetic Ingredient.

23. Xanthan Gum is a synthetic thickener that is commercially manufactured by the likes of Cargill by fermenting bacteria with a carbohydrate (often GMO corn syrup), which is then sterilized and dried with isopropyl alcohol or ethanol before being pressed and ground for distribution. 7 C.F.R. 205.605(b) identifies Xanthan Gum as a synthetic substance.

24. Plaintiff and reasonable consumers reasonably believe and assume that Products labeled “All Natural” do not contain any synthetic substances.

25. Neither Plaintiff nor any reasonable consumer would expect synthetic, potentially harmful ingredients to be in Products labeled “All Natural.”

26. Neither Plaintiff nor any reasonable consumer when reviewing the Products’ labels would know or should know that the Synthetic Ingredient was not in fact natural.

27. As a result of Defendant’s deceitful labels, Defendant was able to charge, and Plaintiff and class members paid, a premium for the supposed “All Natural” Products. Because they are not in fact “All Natural,” the Products were worth less than they were represented to be, and Plaintiff and class members paid extra for them.

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

### **CLASS ALLEGATIONS**

29. Pursuant to 735 ILCS 5/2-801 *et. seq.*, Plaintiff brings this action on her 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 Cedarlane All Natural Gluten Free Roasted Chili Relleno; All Natural Gluten

Free Garden Vegetable Enchiladas; All Natural Gluten Free Garden Vegetable & Mozzarella Egg White Omelette; All Natural Baked Stacked Eggplant; and/or All Natural Gluten Free Roasted Chile and Cheese Egg White Frittata in the five years preceding the filing of the Petition in this case (the “Class Period”).

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

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

32. 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 representation that the Products are “All Natural” is unfair, false, misleading, and deceptive;
- b. whether Defendant violated the ICFA by selling the Products with false, misleading, and deceptive representations;
- c. whether Defendant intended that Plaintiff and the Class Members would rely on its “All Natural” representations;
- d. whether Defendant’s acts constitute deceptive, unfair, and fraudulent business acts and practices or deceptive, untrue, and misleading merchandising practices;
- e. whether Defendant has been unjustly enriched; and
- f. the proper measure of damages sustained by Plaintiff and Class Members.

33. The claims of the 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, there is a sufficient relationship between the damage to Plaintiff and Defendant's conduct affecting Class Members, and Plaintiff has no interests adverse to the interests other Class Members.

34. Plaintiff 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.

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

- a. the claim presented in this case predominates over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. absent a Class, the Class Members will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and 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.

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

37. 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 One – Violation of the ICFA**

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

39. The ICFA declares the following to be unlawful: “Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact...in the conduct of any trade or commerce[.]” 815 Ill. Comp. Stat. Ann. 505/2.



40. Defendant's conduct in advertising and selling the Products as "All Natural" when they in fact contain the Synthetic Ingredient constitutes the act, use and employment of deception, fraud, false pretenses, false promises, misrepresentation, and unfair practices in the conduct of Defendant's trade or commerce.

41. Defendant intended that Plaintiff and the Class Members would rely on its "All Natural" representations. Defendant is aware that consumers like Plaintiff and Class Members are becoming more and more interested in purchasing natural, healthy Products that do not contain synthetic, potentially harmful ingredients. Defendant intended to prey on this interest.

42. The "All Natural" misrepresentation is material because it concerns the type of information upon which a reasonable consumer would be expected to rely in deciding whether to purchase.

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

44. Defendant's practice of advertising and selling the Products as "All Natural" when they in fact contain the Synthetic Ingredient is also unfair. The practice offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are increasingly interested in purchasing and using healthy, truly natural Products without synthetic substances. Selling the Products as "All Natural" when they are not offends the public's expectation to be told the truth about the Products they are buying.

45. Defendant's conduct causes substantial injury to consumers. Not only are consumers being misled into purchasing Products that are not what they are represented to be, but exposing consumers to unwanted and potentially harmful synthetic ingredients is substantially injurious.

46. Neither Plaintiff nor any reasonable consumer would expect to find synthetic ingredients in Products labeled “All Natural.”

47. Neither Plaintiff nor any reasonable consumer when reviewing the Products’ labels would know nor should know that the Synthetic Ingredient is not natural.

48. Because the Products are not “All Natural” as they are represented to be, the Products as sold were worth less than the Products as represented, and Plaintiff and Class Members paid a premium for them. Had the truth be known, Plaintiff and Class Members would not have purchased the Products.

49. Plaintiff and Class Members were deceived by the “All Natural” labels on the Products and suffered economic damages as a proximate result of Defendant's unlawful conduct as alleged herein, including the difference between the actual value of the Products and the value of the Products if they had been as represented.

### **Count Two – Unjust Enrichment**

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

51. By purchasing the Products, Plaintiff and the class members conferred a benefit on Defendant in the form of the purchase price of the fraudulent Products.

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

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

54. 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, pray 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;
- c. award compensatory damages to Plaintiff and the proposed Class, or, alternatively, require Defendant to disgorge or pay restitution of its ill-gotten gains;
- d. award pre- and post-judgment interest;
- e. award reasonable and necessary attorneys' fees and costs; and
- f. for all such other and further relief, as may be just and proper.

Dated May 18, 2018

Shannah Burton, Individually, and on Behalf of a Class of Similarly Situated Individuals, Plaintiff

By:



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