

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: 15-21402CA01

JOHN SCHOTT, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

CLASS REPRESENTATION

v.

LENNY & LARRY'S, INC.,

Defendant.

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff JOHN SCHOTT ("Plaintiff") alleges the following based upon personal knowledge as to himself and his own acts, and upon information and belief and the investigation by Plaintiff's counsel, which included, among other things, a review of public documents, marketing materials, and announcements made by Defendant, LENNY & LARRY'S, INC. ("Defendant" or "Lenny & Larry's") as to all other matters. Plaintiff believes that substantial additional evidentiary support exists for the allegations set forth herein and will be available after a reasonable opportunity for discovery.

JURISDICTION AND VENUE

1. This is an action for damages that exceed \$15,000.00, exclusive of interest, court costs, and attorneys' fees.

2. Venue is proper in this County, where the Plaintiff resides and where the cause of action accrued.

PARTIES

3. Plaintiff John Schott resides in Miami Dade County, Florida.

4. During the Class Period – specifically from March 2013 through June 2015 – he purchased Lenny & Larry’s “The Complete Cookie Family” cookie products and other related “all natural” baked goods products from various locations, including a 7-Eleven store located at 114 East Flagler Street, Miami, Florida 33131.

5. Defendant Lenny & Larry’s, Inc. is a corporation organized and existing under the laws of the State of California, with its listed and principal place of business located at 8809-11 Amigo Avenue, Northridge, California 91423.

6. Lenny & Larry’s distributes, markets, and sells its products in Florida.

NATURE OF THE ACTION AND ALLEGATIONS OF THE CASE

7. Defendant is falsely marketing and selling “vegan”¹ “all natural” cookies to consumers.

8. Defendant claims its cookies are made without artificial ingredients and are thereby more healthy for human consumption than other baked goods brands.

9. However, the cookies Defendant is selling do have artificial ingredients, contrary to Defendant’s false marketing.

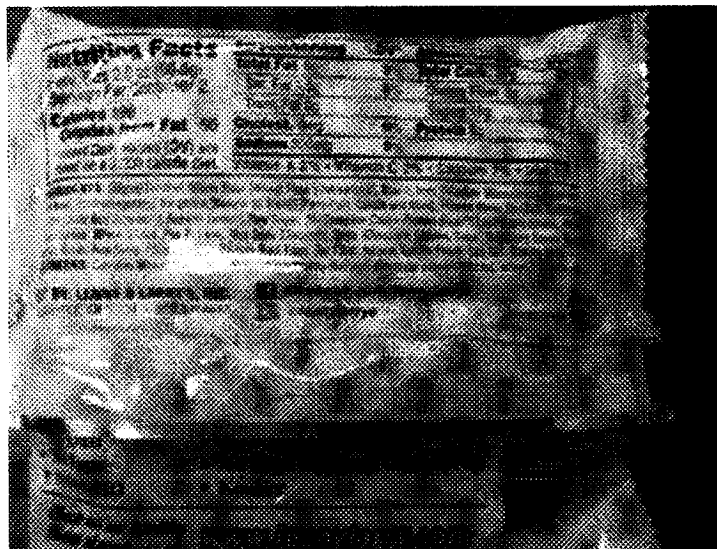
THE UNLAWFUL CONDUCT

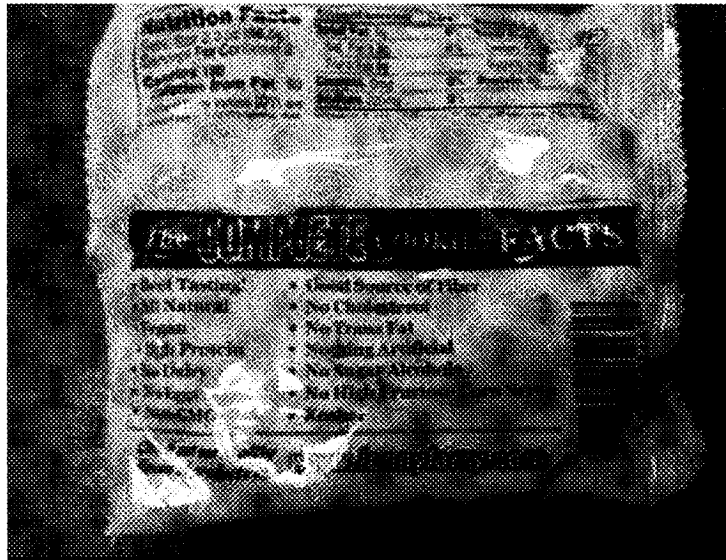
10. Defendant manufactures, markets, distributes, and sells a variety of vegan “all natural” cookies and other similar baked good products throughout the State of Florida.

¹ The Merriam-Webster Dictionary defines vegan as “a person who does not eat any food that comes from animals....” <http://www.merriam-webster.com/dictionary/vegan>.

11. The products Defendant sells are known as “The Complete Cookie Family” and exist in a variety of flavors such as Peanut Butter and Chocolate Chip (hereinafter, “the Product”).

12. Following are the packaging and labeling for Lenny & Larry’s “The Complete Cookie Family” cookie products and other related “all natural” baked goods:





13. Defendant markets and advertises its product as a healthy alternative made without artificial ingredients, despite including artificial, synthetic ingredients such as thiamine mononitrate and riboflavin.

14. Defendant falsely advertises its products as “all natural” with the intent of enticing consumers to purchase its products on the belief that they are more beneficial to their health than other brands.

15. Defendant dupes consumers into believing its marketing ploy through its packaging shown above, including use of the large-lettered statement “all natural.”

16. Furthermore, Defendant markets its baked goods as “all natural” on its website stating that it “could have easily taken shortcuts to produce our products like using preservatives, hydrolyzed gelatin or collagen, sugar alcohols and more but we made a conscious choice very early on to stay with All Natural ingredients.”²

² <http://www.lennylarry.com/product-info/> (last visited August 7, 2015).

17. But the product actually contains various artificial ingredients and Defendant has not stated either on its packaging or its website whether it is responsible for growing its own food or obtaining its raw materials from certified organic producers.

18. Lenny & Larry's products include thiamine mononitrate and riboflavin as ingredients.

19. Thiamine mononitrate is a well-known synthetic chemical compound derived from the pure thiamine chemical compound.³

20. Furthermore, riboflavin, known also as Vitamin B2, is synthetically created through acetic acid and nitrogen, or using genetically modified bacteria and fermentation.⁴

21. On "The Complete Cookie Family" cookie products, Defendant advertises that its cookies are "Vegan" and contain "No Eggs, No Dairy." However, within the ingredient listing on the rear side of a "Complete Cookie Family" cookie product, Defendant in its own admission states that its products are "Manufactured in a facility that also processes...milk, egg."

22. This disclaimer creates a significant cloud of doubt as to whether Defendant's products are actually vegan.

23. Plaintiff purchased Lenny & Larry's "The Complete Cookie Family" cookie products and other related "all natural" baked goods products during the Class Period. Plaintiff purchased Lenny & Larry's baked goods products based on his reasonable belief that he was purchasing healthy alternatives free of artificial ingredients.

24. Plaintiff was sold a false product that Defendant knew was not as it advertised. Had Plaintiff known that Defendant's product was not "all natural" he would not have purchased

³ <http://www.globalhealingcenter.com/natural-health/synthetic-vs-natural-vitamins/> (last visited August 7, 2015).

⁴ <http://wellnessplus.net/?p=843> (last visited August 7, 2015).

Defendant's baked goods products at the premium price advertised compared to competitor brands.

25. The Class is so numerous that joinder of all members is impracticable.

26. There are questions of law or fact common to the Class. The common questions include, *inter alia*, the following: Whether Defendant engaged in unfair methods of competition, and/or unconscionable acts and practices, in the conduct of its labeling and advertising of Lenny & Larry's "The Complete Cookie Family" cookie to mislead Plaintiff into purchasing these products at a premium price, thereby unjustly enriching themselves.

27. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class.

28. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature and will fairly and adequately protect the interests of the Class.

29. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

30. Defendant acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

31. The common questions of law and fact predominate over questions affecting any individual Class member.

32. Plaintiff anticipates that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

CLASS ACTION ALLEGATIONS

34. Plaintiff brings this action individually and as a class action pursuant to Florida Rule of Civil Procedure 1.220 on behalf of himself and the Class defined as follows:

- (a) All persons in Florida who purchased the Product from January 1, 2013 until the date notice is disseminated; and who purchased the Product for personal or household use and not for resale or distribution purposes.
- (b) Specifically excluded from this Class are Defendant; the officers, directors, or employees of Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, or assign of Defendant.
- (c) Also excluded from the Class are those who assert claims for personal injury as well as any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

35. The Class is sufficiently numerous, as each includes thousands of persons who have purchased the Product. Thus, joinder of such persons in a single action or bringing all members of the Class before the Court is impracticable. The question is one of a general or common interest of many persons and it is impractical to bring them all before the Court. The disposition of the claims of the members of the Class in this class action will substantially benefit both the parties and the Court.

36. There are questions of law and fact common to each Class member, including whether Defendant's advertising, labels and packaging include uniform misrepresentations. The members of each Class were and are similarly affected by having purchased the Product for its intended and foreseeable purpose as promoted, marketed, advertised, packaged, and labeled by Defendant as set forth in detail herein, and the relief sought herein is for the benefit of Plaintiff and other members of the Class. Thus, there is a well-defined community of interest in the questions of law and fact involved in this action and affecting the parties.

37. Plaintiff asserts claims that are typical of the claims of each respective Class member. Plaintiff and all members of the Class have been subjected to the same wrongful conduct. Plaintiff paid a premium for the Product based on Defendant's misrepresentations. Plaintiff and the members of the Class have thus all overpaid for the Product.

38. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action and has retained counsel experienced in litigation of this nature to represent him. Plaintiff anticipates no difficulty in the management of this litigation as a class action.

39. Class certification is appropriate because Defendant has acted on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole. Defendant utilizes an integrated, nationwide messaging campaign that includes uniform misrepresentations that misled Plaintiff and the other members of the Class.

40. Class certification is appropriate because common questions of law and fact substantially predominate over any questions that may affect only individual members of the Class. Among these common questions of law and fact are:

- a. whether Defendant misrepresented or omitted material facts in connection with the promotion, marketing, advertising, packaging, labeling, and sale of the Product;
- b. whether Defendant's labeling of the Product is likely to deceive the members of the Class;
- c. whether Defendant's conduct is unethical, oppressive, unscrupulous, and/or substantially injurious to consumers;
- d. whether Defendant represented that the Product has characteristics, benefits, uses, or qualities that it does not have;
- e. whether Defendant's acts and practices in connection with the promotion, marketing, advertising, packaging, labeling, distribution, and sale of the Product violated the laws alleged herein;
- f. whether Plaintiff and members of the Class are entitled to injunctive and other equitable relief; and
- g. whether Defendant was unjustly enriched by their conduct.

41. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by the members of the Class. Similar or identical statutory and common law violations and deceptive business practices are involved. Individual questions, if any, pale by comparison to the numerous common questions that predominate.

42. The injuries sustained by Plaintiff and the members of the Class flow, in each instance, from a common nucleus of operative facts – Defendant’s misconduct.

43. Plaintiff and the members of the Class have been damaged by Defendant’s misconduct. The members of the Class have paid for a product that would not have been purchased in the absence of Defendant’s deceptive scheme, or, alternatively, would have been purchased at a lesser price.

44. Proceeding as a class action provides substantial benefits to both the parties and the Court because this is the most efficient method for the fair and efficient adjudication of the controversy. Members of the Class have suffered and will suffer irreparable harm and damages as a result of Defendant’s wrongful conduct. Because of the nature of the individual claims of the members of the Class, few, if any, could or would otherwise afford to seek legal redress against Defendant for the wrongs complained of herein, and a representative class action is therefore the appropriate, superior method of proceeding and essential to the interests of justice insofar as the resolution of claims of the members of the Class is concerned. Absent a representative class action, members of the Class would continue to suffer losses for which they would have no remedy, and Defendant would unjustly retain the proceeds of its ill-gotten gains. Even if separate actions could be brought by individual members of the Class, the resulting multiplicity of lawsuits would cause undue hardship, burden, and expense for the Court and the litigants, as well as create a risk of inconsistent rulings, which might be dispositive of the interests of the other members of the Class who are not parties to the adjudications and/or may substantially impede their ability to protect their interests.

CAUSE OF ACTION

(Unjust Enrichment)

45. Plaintiff repeats and incorporates by reference the allegations set forth above as if fully set forth herein.

46. Plaintiff relied on the representations Defendant made regarding that its baked good products were “all natural and vegan” and Plaintiff paid a premium price for this.

47. Plaintiff’s purchase of Defendant’s products and Defendant’s receipt of revenues indicates that Defendant was aware of the false benefit its products conferred on Plaintiff.

48. Defendant has significantly profited from its unlawful marketing and labeling of its products as “all natural” albeit knowing the products it labeled on its product packaging included artificial ingredients.

49. Defendant has significantly profited from its unlawful marketing and labeling creating a questionable impression about whether the materials it incorporates into its products are organic and “all natural” if it does not state where it obtains these ingredients.

50. Defendant attempts to mislead the Plaintiff by using a “flap” to cover up the actual ingredients.

51. Plaintiff does not have an adequate remedy at law against Defendant.

52. Defendant’s fraudulent business tactics, as alleged herein, are considered “unfair” business practices as they wrongfully deprived Plaintiff of his money and trust.

53. Plaintiff is entitled to restitution of the amounts paid for Lenny & Larry’s “The Complete Cookie Family” cookie products and other related “all natural” baked goods products. Had Plaintiff known these products were falsely labeled and included artificial ingredients, Plaintiff would not have purchased Defendant’s products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief against Defendant as follows:

- a. that the Court certify the Class under Rule 1.220 of the Florida Rules of Civil Procedure and appoint Plaintiff as Class Representative and his attorneys as Class Counsel to represent the members of the Class;
- b. that the Court declare that Defendant's conduct violates the law referenced herein;
- c. that the Court preliminarily and permanently enjoin Defendant from conducting their business through the unlawful, unfair, or fraudulent business acts or practices, untrue, and misleading labeling and marketing and other violations of law described in this Complaint;
- d. that the Court order Defendant to conduct a corrective advertising and information campaign advising consumers that the Product does not have the characteristics, uses, benefits, and quality Defendant has claimed;
- e. that the Court order Defendant to implement whatever measures are necessary to remedy the unlawful, unfair, or fraudulent business acts or practices, untrue and misleading advertising, and other violations of law described in this Complaint;
- f. that the Court order Defendant to notify each and every individual and/or business who purchased the Product of the pendency of the claims in this action in order to give such individuals and businesses an opportunity to obtain restitution from Defendant;
- g. that the Court order Defendant to pay restitution to restore to all affected persons all funds acquired by means of any act or practice declared by this Court to be an

- unlawful, unfair, or a fraudulent business act or practice, untrue or misleading labeling, advertising, and marketing, plus pre- and post-judgment interest thereon;
- h. that the Court order Defendant to disgorge all monies wrongfully obtained and all revenues and profits derived by Defendant as a result of its acts or practices as alleged in this Complaint;
 - i. that the Court award damages to Plaintiff and the Class;
 - j. that the Court award Plaintiff and the Class their attorneys' fees and costs pursuant to statute, the common fund doctrine, and/or any other appropriate legal theory; and
 - k. that the Court grant such other and further relief as may be just and proper.

JURY DEMAND

54. Plaintiff demands a trial by jury on all causes of action so triable.

DATED: September 17, 2015


By: Jared H. Beck

BECK & LEE TRIAL LAWYERS
JARED H. BECK
ELIZABETH LEE BECK
Corporate Park at Kendall
12485 SW 137th Ave., Suite 205
Miami, Florida 33186
Telephone: (305) 234-2060
Facsimile: (786) 664-3334
jared@beckandlee.com
elizabeth@beckandlee.com

[additional counsel on following page]

ANTONINO G. HERNANDEZ P.A.
ANTONINO G. HERNANDEZ
4 SE 1st Street, 2nd Floor
Miami, Florida 33131
Telephone: (305) 282-3698
Facsimile: (786) 513-7748
Hern8491@bellsouth.net

CULLIN O'BRIEN LAW, P.A.
CULLIN O'BRIEN
6541 NE 21st Way
Fort Lauderdale, Florida 33108
Telephone: (561) 676-6370
Facsimile: (561) 320-0285
cullin@cullinobrienlaw.com

Counsel for Plaintiff and the Proposed Class