

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 16-

JOSEPH PEREA,

Plaintiff,

v.

TATE'S BAKE SHOP, INC

Defendant.

COMPLAINT FOR DAMAGES

COMES NOW the Plaintiff, Joseph Perea, (hereinafter referred to as "Plaintiff") a pro- se Plaintiff, and sues the Defendant Tate's Bake Shop ("Defendant") and in support thereof states as follows:

1. Plaintiff sues Defendant alleging that Defendant's marketing, advertising and promotion of its beverage is misleading, inaccurate, and deceptive.
2. The unlawful marketing, advertising and promotion includes but is not limited to the following:

Marketing, advertising and promoting its products as "All Natural" when the products contain soy lecithin. The term "All Natural" is regularly used by manufacturers to describe a product that does not have any chemically altered or man-made ingredients, and that therefore is a more healthy choice than competing products that contain processed ingredients – and worth a premium price as

compared to products of the same size and types that are not all natural, because of that benefit. However, soy lecithin is made with unnatural ingredients and contains pesticides. It is thus not “All Natural.” The use by Tate’s Bake Shop of the term “All Natural” to describe its products when, in fact, the products are not, is misleading, inaccurate and deceptive.

3. Plaintiff’s claims against Defendant include (1) Florida Deceptive Trade Practices Act (2) Fraud in the Inducement (3) Negligent Misrepresentation (4) Breach of Express Warranty (5) Breach of the Implied Warranty of Merchantability and (6) Declarative Judgment

PARTIES

4. Plaintiff Joseph Perea, is a resident of Miami, Florida residing in Miami-Dade County, Florida and is over the lawful age of majority, and is otherwise *sui juris*.
5. Plaintiff purchased Chocolate Chip cookies from January 2015 through May 2015 at stores in Miami-Dade County including Whole Foods and Fresh Market supermarkets. Plaintiff purchased these cookies for consumption and not for resale within one year prior to the filing of the case at bar until present. The Tate’s Bake Shop cookies purchased were marketed, advertised or promoted as being “All Natural,” but they contained soy lecithin.
6. Defendant Tate’s Bake Shop is the manufacturer, seller and distributor of its cookie products that were unlawfully marketed, advertised and promoted to consumers, and which Plaintiff purchased. Defendant’s place of business is located in Southampton, New York. Defendant’s products however are sold throughout the United States, including the State of Florida, in Miami-Dade County, where the Plaintiff resides.

JURISDICTION AND VENUE

7. This is an action for monetary damages in excess of Fifteen Thousand Dollars (\$15,000) to redress the deprivation of rights secured to the Plaintiff, as a result of the unlawful actions of the Defendant.
8. At all times material hereto, the Defendant was and continues to be a foreign company, doing business in and engaging in substantial activities in Miami-Dade County, Florida.

GENERAL ALLEGATIONS

9. Defendant manufactures, distributes to its retailers, markets, advertises, promotes and sells through its retailers its cookie products throughout the State of Florida, including extensively in Miami-Dade County, Florida, where the Plaintiff resides.
10. Defendant's line of products encompasses a variety of cookie flavors.
11. Defendant maintains a website, tatesbakeshop.com. This website allows consumers, such as the Plaintiff, to view marketing, advertising and promotional information pertaining to its family of products.
12. In its marketing and advertising, Defendant promotes its chocolate cookies as "All Natural."
13. At stores in Miami-Dade County, Plaintiff bought Defendant's cookies which were promoted as all natural.
14. In fact, Defendant's chocolate chip cookies are not "All Natural" because they contain soy lecithin from genetically modified soy beans and are tainted with pesticides to create the soy lecithin.
15. Nearly 90% of the soy grown in the United States is genetically modified and heavily sprayed with pesticides.

16. Genetically modified organisms such as soy lecithin produced from soy beans are not safe to eat as the mutant genes within the GMOs create harm to the human body's digestive system.
17. To produce soy lecithin, soybean oil is extracted from the raw soybeans using a chemical solvent containing hexane. Hexane is a hydrocarbon obtained from petroleum. In other words, it is poisonous. The chemical solvent containing hexane and soybeans then goes through a degumming process, wherein water is mixed thoroughly with the soy oil until the lecithin becomes hydrated and separates from the oil. Then, the lecithin is dried and bleached using hydrogen peroxide. Hydrogen peroxide is an oxidizer, bleaching agent and disinfectant, not meant for consumption. Before the degumming step where lecithin is removed, the crude oil undergoes a multi-step process to remove the hexane.
18. The FDA does not regulate the amount of hexane residue in food products. The residual hexane concentration of soy oil could be up to 500-1000 ppm. It is clear that similar concentrations remain in the soy lecithin.
19. These small amounts of hexane, pesticides and chemicals may or may not harm all consumers, but the Plaintiff has been harmed as a result of the mixture of these pesticides with genetically modified soy beans (GMOs).
20. The soy beans used by the Plaintiff are genetically modified
21. Whether the small amounts of hexane, pesticides and chemicals harm consumers may also be irrelevant. The point is Defendant should not market its products containing soy lecithin as all natural, when they are not and when they cause harmful effects on the human body.
22. The product information on the label of Tate's Bake Shop Chocolate Chip Cookies, when

purchased by Plaintiff in or around January 2015 through May 2015, in Miami-Dade County, Florida was vague and poorly defined and provided misleading information to consumers such as the Plaintiff.

23. As a result of its misleading, inaccurate and deceptive marketing, advertising and promotion, Defendant was able to and did charge a premium price for its chocolate chip cookies -- a price higher than that charged for comparable products of the same size and type that were marketed, advertised or promoted as all natural.
24. At the time of each said purchase of Defendant's chocolate chip cookies, Plaintiff was willing to and did pay a premium price for Defendant's products that he thought was all natural and that he thought contained natural ingredients that Defendant claimed it had, but it did not.
25. However, in contrast to the manner in which Defendant marketed, advertised and promoted its chocolate chip cookies, the cookies bought by Plaintiff were not "All Natural," or they did not contain the natural ingredients that Defendant represented the product had.
26. As a result of Defendant's misleading, inaccurate, and deceptive marketing, advertising and promotion of its chocolate chip cookies, Plaintiff suffered an ascertainable loss in that he paid a premium price for these cookies, a price higher than that charged for comparable cookies of the same size and type that were not marketed, advertised or promoted as "All Natural," or as containing natural ingredients it said it had contained. Plaintiff received something less than and different from what was promised and bargained for.
27. From January 2015 through April or May 2015, the Plaintiff purchased chocolate chip

cookies from Tate's Bake Shop at local supermarkets in Miami-Dade County, such as Whole Foods Market or Fresh Market or Publix or Winn Dixie.

COUNT I
VIOLATION OF THE FLORIDA DECEPTIVE TRADE PRACTICES ACT

28. Plaintiff repeats and re-alleges each and every allegation above, as if set forth in full herein.
29. Defendant's business practices of marketing, advertising and promoting its cookies in a misleading, inaccurate, deceptive manner by misrepresenting its cookies as "All Natural" constitutes the use by Defendant of unconscionable commercial practices, deception, and misrepresentation and thus constitutes multiple, separate violations of the Florida Deceptive Trade Practices Act.
30. In marketing, advertising and promoting its cookies to consumers, including Plaintiff, Defendant made the material misrepresentations and omissions set forth in this Complaint in the State of Florida, including in Miami-Dade County.
31. Defendant's unlawful conduct set forth in this Complaint is material because it specifically misled and deceived Plaintiff into believing that its cookies were "All Natural" when, in fact, these cookies are not.
32. Defendant's unconscionable commercial practice, false promises, misrepresentations and omissions set forth in this Complaint are material in that they relate to matters which reasonable persons, including Plaintiff, would attach importance to in their purchasing decisions or conduct regarding the purchase of Defendant's cookies.
33. As a result of Defendant's practices as described herein, Plaintiff has suffered ascertainable loss of health in that Plaintiff's takes blood pressure medication for hypertension that has become heightened and debilitating causing disorders such as

anxiety disorder and chest pain. Plaintiff currently possesses cystic tumors in his kidneys and pancreas that are a result of the genetically modified organisms found in soy lecithin in Defendant's products. Plaintiff did not know soy lecithin was unnatural and could cause health complications. Plaintiff found out about the health complications of soy lecithin after he began to feel ill and researched its ingredients and the way it is produced and processed.

**COUNT II
FRAUDULENT INDUCEMENT**

34. Plaintiff repeats and re-alleges each and every allegation above, as if set forth in full herein.
35. Defendant, as the manufacturer of its chocolate chip cookies, distributes its products to retailers for sale to the public.
36. In marketing, advertising and promoting its chocolate chip cookies as "All Natural" Defendant induced Plaintiff to purchase its cookies from retailers in Miami, FL.
37. In marketing, advertising and promoting its chocolate chip cookies as being "All Natural" when in fact these cookies are made with hydrogen peroxide, hexane and GMOs, Defendant induced Plaintiff to purchase its cookies from retailers in Miami, FL.
38. Defendant's business practices of marketing, advertising and promoting its chocolate chip cookies in a misleading, inaccurate, deceptive manner by misrepresenting its cookies contained natural ingredients they do not contain or claiming its products are "All Natural" constituted evidence that Defendant knew or should have known was false and that Defendant intended for Plaintiff to rely on and which Plaintiff did rely on to his detriment.
39. Defendant's business practices of marketing, advertising and promoting its chocolate

chip cookies in a misleading, inaccurate, deceptive manner by misrepresenting its cookies as being “All Natural” when they contain “Soy Lecithin,” which is genetically modified and not all natural constitutes evidence that Defendant knew or should have known was false and that Defendant intended for Plaintiff to rely on and which Plaintiff did rely on to his detriment.

40. As a result of Defendant’s practices as described herein, Plaintiff has suffered ascertainable loss of health in that Plaintiff’s takes blood pressure medication for hypertension that has become heightened and debilitating causing disorders such as anxiety disorder and chest pain. Plaintiff currently possesses cystic tumors in his kidneys and pancreas that are a result of the genetically modified organisms found in soy lecithin in Defendant’s products. Plaintiff did not know soy lecithin was unnatural and could cause health complications. Plaintiff found out about the health complications of soy lecithin after he began to feel ill and researched its ingredients and the way it is produced and processed.

COUNT III NEGLIGENT MISREPRESENTATION

41. Plaintiff repeats and re-alleges each and every allegation above, as if set forth in full herein.

42. Defendant, as the manufacturer of Tate’s Bake Shop, distributes its products to retailers in Miami-Dade County for sale to the public.

43. In marketing, advertising and promoting its cookies as “All Natural” Tate’s Bake Shop attempted to induce Plaintiff to purchase its cookies from retailers.

44. Defendant’s business practices of marketing, advertising and promoting its cookies in a misleading, inaccurate, deceptive manner by misrepresenting its cookies as containing

natural ingredients they do not contain or claiming their products were “All Natural” constitutes evidence that Defendant made material statements that it believed to be true but which were in fact false. Defendant was negligent in making these material statements because it should have known the statements were false. It is clear that Defendant intended or expected that Plaintiff and other consumers would rely on its material statements. Plaintiff did justifiably rely on the Defendant’s false statements and Plaintiff has suffered damages as a result of the Defendant’s false statements.

45. The material statements made by Defendant on its labels were of such importance that Plaintiff would not have acted and would not have purchased Defendant's products but for Defendant's false statements.

46. As a result of Defendant’s practices as described herein, Plaintiff has suffered ascertainable loss of health in that Plaintiff's takes blood pressure medication for hypertension that has become heightened and debilitating causing disorders such as anxiety disorder and chest pain. Plaintiff currently possesses cystic tumors in his kidneys and pancreas that are a result of the genetically modified organisms found in soy lecithin in Defendant's products. Plaintiff did not know soy lecithin was unnatural and could cause health complications. Plaintiff found out about the health complications of soy lecithin after he began to feel ill and researched its ingredients and the way it is produced and processed.

COUNT IV BREACH OF EXPRESS WARRANTY

47. Plaintiff repeats and re-alleges each and every allegation above as if it set forth in full herein.

48. Defendant expressly warranted in its marketing, advertising and promotion of Tate's

Bake Shop cookies that its chocolate chip cookies were All Natural from January to May 2015 in Miami-Dade County.

49. Defendant expressly warranted in its marketing, advertising and promotion of chocolate chip cookies that its cookies were "All Natural" when it was genetically modified and contained soy lecithin.

50. As a direct and proximate result of Defendant's breach of its express warranty, Plaintiff has been damaged in that he did not receive the product as specifically warranted and/or paid a premium for the product because he believed it was "All Natural." Plaintiff suffered damages because

51. As a result of Defendant's practices as described herein, Plaintiff has suffered ascertainable loss of health in that Plaintiff's takes blood pressure medication for hypertension that has become heightened and debilitating causing disorders such as anxiety disorder and chest pain. Plaintiff currently possesses cystic tumors in his kidneys and pancreas that are a result of the genetically modified organisms found in soy lecithin in Defendant's products. Plaintiff did not know soy lecithin was unnatural and could cause health complications. Plaintiff found out about the health complications of soy lecithin after he began to feel ill and researched its ingredients and the way it is produced and processed.

COUNT V
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

52. Plaintiff repeats and re-alleges each and every allegation above, as if set forth in full herein.

53. Defendant impliedly warranted that the chocolate chip cookies it manufactured, sold and

distributed were “All Natural,” and in doing so, that the cookies were merchantable and fit for their intended purpose. Defendant did so with the intent to induce Plaintiff to purchase those products.

54. Defendant breached its implied warranties in that the products were not “All Natural” because they contained soy lecithin as described above.

55. Had Plaintiff known the true facts, he either would not have purchased the products or would not have been willing to pay the premium price Defendant charged for the products.

56. As a result of Defendant’s practices as described herein, Plaintiff has suffered ascertainable loss of health in that Plaintiff’s takes blood pressure medication for hypertension that has become heightened and debilitating causing disorders such as anxiety disorder and chest pain. Plaintiff currently possesses cystic tumors in his kidneys and pancreas that are a result of the genetically modified organisms found in soy lecithin in Defendant’s products. Plaintiff did not know soy lecithin was unnatural and could cause health complications. Plaintiff found out about the health complications of soy lecithin after he began to feel ill and researched its ingredients and the way it is produced and processed.

COUNT VI DECLARATIVE JUDGMENT

57. Plaintiff repeats and re-alleges each and every allegation above, as if set forth in full herein.

58. At present there is a bona fide, actual, present practical need for a declarative judgment because our society should not tolerate abuses of justice in the manner as presented by Defendant claiming its products were all natural.

59. A declaration at this juncture would relate to this present ascertainable state of facts in the present controversy.
60. Plaintiff has a right to seek relief as a result of the actions of the Defendant. The current action is before the court. The relief sought by Plaintiff is not merely that giving of legal advice. The proposed declaration is necessary in order to maintain the status this legal proceeding with the jurisdiction of the court.
61. As a result of Defendant's practices as described herein, Plaintiff has suffered ascertainable loss of health in that Plaintiff's takes blood pressure medication for hypertension that has become heightened and debilitating causing disorders such as anxiety disorder and chest pain. Plaintiff currently possesses cystic tumors in his kidneys and pancreas that are a result of the genetically modified organisms found in soy lecithin in Defendant's products. Plaintiff did not know soy lecithin was unnatural and could cause health complications. Plaintiff found out about the health complications of soy lecithin after he began to feel ill and researched its ingredients and the way it is produced and processed.

PRAYER FOR RELIEF

Plaintiff prays for the following relief:

- (a) A declaration that the use of the phrase "All Natural" in the marketing, advertising and promotion of products containing soy lecithin is misleading, inaccurate, fraudulent, negligent, and deceptive.
- (b) A declaration that Defendant's use of the phrase of "All Natural" in the marketing, advertising and promotion of its beverages violates the Florida Deceptive Trade Practices Act.

- (c) A declaration that Defendant breached both express warranties and implied warranties of merchantability in marketing, advertising and promoting its beverages as “All Natural” and containing real fruit ingredients that it did not contain in its beverages.
- (d) An Order enjoining Defendant from marketing, advertising and promoting its beverages as “All Natural” in the State of Florida so long as they contain soy lecithin and do not contain fruit ingredients that it falsely declares the beverages do contain.
- (e) An Order directing Defendant to pay treble damages based upon the above said violations of the Florida Deceptive Trade Practices Act and other applicable law.
- (f) An Order directing Defendant to pay attorney’s fees and costs associated with this litigation.
- (g) An Order compelling Defendant to pay the Plaintiff \$100,000.00 in for its negligence, fraudulent misrepresentation and all counts set forth in this Complaint.
- (h) An Order awarding the Plaintiff compensatory damages for pain, suffering, and humiliation.
- (i) Any and other further relief as this Court deems just and appropriate under the circumstances.

JURY DEMAND

Plaintiff demands trial by jury on all issues herein stated.

Respectfully Submitted on January 3, 2016,

Joseph Perea
PO Box 961383
Miami, FL 33296
T. 305-934-6215
F. 888-229-4968
perealaw@gmail.com provided pursuant to

Fla. R. Jud Admin. 2.516

/s/ Joseph Perea

Joseph Perea, FBN: 47782