

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, MISSOURI

DANIEL JOHNSON, individually and )  
on behalf of all others similarly situated in )  
Missouri, )

Plaintiff, )

No. \_\_\_\_\_ )

v. )

**JURY DEMAND**

RICHARDSON BRANDS CO., )

Defendant. )

Serve by Mail: )

Richardson Brands Co. )  
Arnold J. D'Angelo CEO )  
101 Erie Blvd )  
Canajoharie NY 13317 )

**PETITION AND JURY DEMAND**

Plaintiff, Daniel Johnson, individually and on behalf of all others similarly situated in Missouri, 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 Richardson Brand Co.'s ("Defendant") deceptive, unfair, and false merchandising practices regarding its All Natural Peppermint Poles (the "Poles").

2. On the label of the Poles, Defendant represents that the Poles are "All Natural." They are not.

3. The Poles contain a number of synthetic chemicals, including but not limited to Red 40 coloring, Yellow 6 coloring, and Blue 2 coloring (the "Synthetic Ingredients").

4. By claiming that the Poles are "All Natural," Defendant leads consumers to

believe that the Poles are only comprised of natural ingredients, when they in fact contain the Synthetic Ingredients.

5. In addition, by claiming the Poles are “All Natural,” the label of the Poles creates the false impression and has the tendency and capacity to mislead consumers (*see* 15 CSR 60-9.020) into believing that the Poles are solely comprised of ingredients that are natural, when in fact the Poles contain numerous synthetic and potentially harmful chemicals that are not natural at all. Moreover, the overall format and appearance of the label of the Poles has the tendency and capacity to mislead consumers (15 C.S.R. 60-9.030) because it creates the false impression that the Poles are only comprised of natural ingredients.

6. Plaintiff brings this case to recover damages for Defendant’s false, deceptive, and misleading marketing and advertising in violation of the MMPA and Missouri common law.

### **THE PARTIES**

7. Plaintiff, Daniel Johnson is a resident of St. Louis County, Missouri. On at least one occasion during the Class Period (as defined below), including in December 2015, Plaintiff purchased the Poles at World Market for personal, family, or household purposes. The purchase price of the Poles was \$8.99. Plaintiff’s claim is typical of all class members in this regard.

8. Defendant Richardson Brands Co. is a New York corporation with its principal place of business at 101 Erie Blvd., Canajoharie NY 13317.

### **JURISDICTION AND VENUE**

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

10. Plaintiff believes and alleges that the total value of his individual claims is, at most, equal to the refund of the purchase price he paid for the Poles.

11. 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 dollar (\$5,000,000) minimum threshold to create federal court jurisdiction.

12. There is therefore no diversity or CAFA jurisdiction for this case.

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

14. This Court has personal jurisdiction over Defendant pursuant to Missouri Code § 506.500, as Defendant has had more than minimum contacts with the State of Missouri 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 Missouri that gives rise to civil liability, including distributing the fraudulent Poles for sale throughout the State of Missouri.

15. Venue is proper in this forum pursuant to Missouri Code § 508.010 because plaintiff's injury occurred in St. Louis County and because Defendant is not a resident of this State.

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

### **FACTUAL ALLEGATIONS**

17. The U.S. market for truly natural personal-care products is growing by double-

digits annually.

18. Seeking to profit from the increasing demand for truly natural products, Defendant sells the Poles with the representation that the Poles are “All Natural.”

19. Defendant, however, sells the Poles with false, misleading, and deceptive merchandising practices.

20. Defendant misrepresents that the Poles are “All Natural”:



21. By claiming that the Poles are “All Natural,” Defendant is able to charge and Plaintiff and class members paid a premium for the supposed “All Natural” product.

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

23. In addition, by claiming the Poles are “All Natural,” the label of the Poles creates the false impression and has the tendency and capacity to mislead consumers (*see* 15 CSR 60-9.020) into believing that the Poles are solely comprised of ingredients that are

natural, when in fact the Poles contain numerous synthetic and potentially harmful chemicals that are not natural at all.

24. Moreover, the overall format and appearance of the label of the Poles has the tendency and capacity to mislead consumers (15 C.S.R. 60-9.030) because it creates the false impression that the Poles are only comprised of natural ingredients:

25. In reality, the Poles contain the Synthetic Ingredients.

26. Red 40 coloring is a synthetic coloring agent derived from petroleum. Red 40 has been known to cause hyperactivity in children. It also contains p-Cresidine, which the U.S. Department of Health and Human Services says is “reasonably anticipated” to be a human carcinogen.

27. Yellow 6 is a synthetic coloring agent derived from petroleum. Yellow 6 has been known to cause hyperactivity in children. It may also be a carcinogen, can cause allergic reactions, and may cause migraines.

28. Blue 2 is a synthetic version of indigo, produced synthetically from petroleum. Blue 2 has been known to cause hyperactivity in children and may be a carcinogen.

29. It is FDA’s position that the use of the term “natural” is only appropriate if the food does not contain added color, artificial flavors, or synthetic substances.

30. Red 40, Yellow 6, and Blue 2 are added colors that are also synthetic substances.

31. Neither Plaintiff nor any reasonable consumer would expect to find Red 40 coloring, Yellow 6 coloring, and Blue 2 in a product labeled “All Natural.”

32. No reasonable consumer would know or should know that Red 40 coloring,

Yellow 6 coloring, and Blue 2 are not natural ingredients.

33. As a result of Defendant's deceitful label, Defendant was able to charge and Plaintiff paid a premium for the Poles.

34. The Poles, moreover, was worth less than they were represented to be, and Plaintiff and Class Members paid extra for them due to the misleading labeling.

35. Defendant's misrepresentations violate the MMPA's prohibition of the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce. § 407.020, RSMo.

#### **CLASS ALLEGATIONS**

36. Pursuant to Missouri Rule of Civil Procedure 52.08 and § 407.025.2 of the MMPA, Plaintiff brings this action on his own behalf and on behalf of a proposed class of all other similarly situated persons ("Class Members" of the "Class") consisting of:

All persons in Missouri who purchased Richardson Brands'  
All Natural Peppermint Poles in the five years preceding  
the filing of the Petition in this case (the "Class Period"):

37. 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.

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

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

- a. Whether the representation that the Poles are “All Natural” is false, misleading and deceptive;
- b. Whether the label of the Poles creates the false impression and has the tendency and capacity to mislead consumers (*see* 15 CSR 60-9.020) into believing that the Poles are solely comprised of ingredients that are natural;
- c. Whether the overall format and appearance of the label of the Poles has the tendency and capacity to mislead consumers (15 C.S.R. 60-9.030);
- d. Whether Defendant violated the MMPA by selling the Poles with false, misleading, and deceptive representations and advertisements;
- e. Whether Defendant’s acts constitute deceptive and fraudulent business acts and practices or deceptive, untrue, and misleading merchandising practices;
- f. Whether Defendant has been unjustly enriched; and
- g. The proper measure of damages sustained by Plaintiff and Class Members.

40. 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.

41. Plaintiff will fairly and adequately protect the interests of Class Members and

have retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

42. 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 Defendants' 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.



43. 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.

44. 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. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

### **CLAIMS FOR RELIEF**

#### **First Claim for Relief**

##### **Violation of Missouri's Merchandising Practices Act**

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

46. Missouri's Merchandising Practices Act (the "MMPA") prohibits the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce. Mo. Rev. Stat § 407.020.43.

47. Defendant's conduct as described herein constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts in connection with the sale or

advertisement of any merchandise in trade or commerce in that Defendant misrepresents that the Poles are “All Natural,” when they in fact are not because they contain the Synthetic Ingredients.

48. In addition, by claiming the Poles are “All Natural,” the label of the Poles creates the false impression and has the tendency and capacity to mislead consumers (*see* 15 CSR 60-9.020) into believing that the Poles are solely comprised of ingredients that are natural, when in fact the Poles contain numerous synthetic and potentially harmful chemicals that are not natural at all. Moreover, the overall format and appearance of the label of the Poles has the tendency and capacity to mislead consumers (15 C.S.R. 60-9.030) because it creates the false impression that the Poles are only comprised of natural ingredients.

49. Neither Plaintiff nor any reasonable consumer would expect to find Red 40 coloring, Yellow 6 coloring, and Blue 2 coloring in a product labeled “All Natural.”

50. No reasonable consumer would know or should know that Red 40 coloring, Yellow 6 coloring, and Blue 2 coloring are not natural ingredients.

51. As a result of Defendant’s deceitful label, Defendant was able to charge and Plaintiff paid a premium for the Poles.

52. The Poles, moreover, was worth less than they were represented to be, and Plaintiff and Class Members paid extra for them due to the misleading labeling.

53. Plaintiff and Class Members purchased the Poles for personal, family, or household purposes and thereby suffered an ascertainable loss as a result of Defendant’s unlawful conduct as alleged herein, including the difference between the actual value of the Poles and the value of the Poles if they had been as represented.

54. Defendant’s unlawful practices have caused similar injury to Plaintiff and

numerous other persons. § 407.025.2.

### **Second Claim for Relief**

#### **Unjust Enrichment**

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

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

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

58. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent and misleading representations about the Poles.

59. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at the Plaintiff's and Class Members' expense and in violation of Missouri law, and therefore restitution and/or disgorgement of such economic enrichment is required.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all similarly situated persons, prays the Court:

- a. grant certification of this case as a class action;
- b. appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. award compensatory damages to Plaintiff and the proposed Class or, alternatively, require Defendant to disgorge or pay restitution;

- d. award pre- and post-judgment interest;
- e. award reasonable and necessary attorneys' fees and costs to Class counsel; and
- g. for all such other and further relief as may be just and proper.

Dated: February 5, 2016

DANIEL JOHNSON, Individually, and on Behalf of a  
Class of Similarly Situated Individuals, Plaintiff

By: /s/ Matthew H. Armstrong  
Matthew H. Armstrong (MoBar 42803)  
ARMSTRONG LAW FIRM LLC  
8816 Manchester Rd., No. 109  
St. Louis MO 63144  
Tel: 314-258-0212  
Email: [matt@mattarmstronglaw.com](mailto:matt@mattarmstronglaw.com)

Stuart L. Cochran (*pro hac vice application forthcoming*)  
Texas State Bar No. 24027936  
COCHRAN LAW PLLC  
12720 Hillcrest Rd., Ste. 1045  
Dallas, TX 75230  
(214) 300-1765  
[scochran@scochranlaw.com](mailto:scochran@scochranlaw.com)

Attorneys for Plaintiff and the Putative Class