

**IN THE CIRCUIT COURT OF ST. CLAIR COUNTY  
STATE OF ILLINOIS**

ANGELA BARNES and GAYLE )  
GREENWOOD, individually and on )  
behalf of all other similarly-situated )  
current citizens of Illinois, )

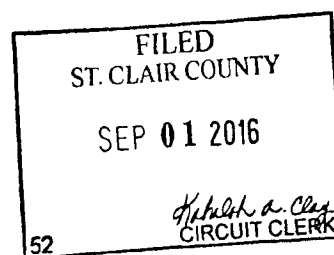
Plaintiffs, )

v. )

FRONTERA FOODS, INC., )

Defendant. )

No. 16L 459



**CLASS ACTION COMPLAINT**

Plaintiffs, Angela Barnes and Gayle Greenwood, individually and on behalf of all other similarly-situated current citizens of Illinois, allege the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

**CASE SUMMARY**

1. This case arises out of Defendant Frontera Foods, Inc.'s ("Defendant") deceptive, unfair, and false merchandising practices regarding its "All Natural" Salsas, including All Natural Nuevo Tex-Mex Salpica Mango Peach Salsa, All Natural Nuevo Tex-Mex Salpica Habanero Lime Salsa, All Natural Nuevo Tex-Mex Salpica Jalapeno Jack Queso, All Natural Frontera Salsa Tomatillo, All Natural Frontera Salsa Chipotle, All Natural Frontera Salsa Mango Key Lime, All Natural Frontera Salsa Guajillo, All Natural Frontera Salsa New Mexico Red Chile, and All Natural Red Tomato Salsa Mexicana (the "Products").

2. On the label of the Products, Defendant prominently represents that the Products are "All Natural," which leads Illinois consumers to believe that the Products only consist of natural ingredients, and/or the Products list Evaporated Cane Juice ("ECJ") as an ingredient.

3. The Products, however, contain Xanthan Gum, Citric Acid, Disodium Phosphate, and/or Sodium Citrate (the “Synthetic Ingredients”), and/or sugar mislabeled as ECJ.

4. The Products labeled “All Natural” but that contain the Synthetic Ingredients are false, deceptive, unfair, and misleading.

5. According to the FTC, “if companies market their products as ‘all natural’ or ‘100% natural,’ consumers have a right to take them at their word.” <https://www.ftc.gov/news-events/blogs/business-blog/2016/04/are-your-all-natural-claims-all-accurate>

6. The FTC recently made clear that “‘all-natural’ or ‘100% natural’ mean just that. If you advertise your product as ‘all-natural’ or ‘100% natural’ and it contains artificial ingredients or chemicals, now is the natural time for a compliance check.” <https://www.ftc.gov/news-events/blogs/business-blog/2016/04/are-your-all-natural-claims-all-accurate>

7. Moreover, some of the Products list Evaporated Cane Juice (“ECJ”) as an ingredient. ECJ, however, is not juice at all—it is sugar in disguise. In May 2016, the FDA made clear that “the term ‘evaporated cane juice’ is false and misleading because it suggests that the sweetener is ‘juice’ or is made from ‘juice’ and does not reveal that its basic nature and characterizing properties are those of sugar.” The FDA continued: “The term ‘evaporated cane juice’ is not the common or usual name of any type of sweetener” and “this ingredient should instead be declared on food labels as ‘sugar.’”

8. By mislabeling sugar as ECJ, Defendant misleads consumers into thinking those Products have less sugar than they actually contain.

9. 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.

**PARTIES**

10. Plaintiff Angela Barnes is a resident of St. Clair County, Illinois. On at least one occasion during the Class Period (as defined below), including in July or August 2016, Plaintiff purchased Defendant's All Natural Nuevo Tex-Mex Salpica Jalapeno Jack Queso and All Natural Nuevo Tex-Mex Salpica Mango Peach Salsa at Fresh Thyme Market for personal, family, or household purposes after reviewing the "All Natural" labels, which deceived her. If Plaintiff had known the Products contained artificial and synthetic ingredients, she would not have purchased them or would have paid less for them. The purchase price of each Product was \$3.99.

11. Plaintiff Gayle Greenwood is a resident of St. Clair County, Illinois. On at least one occasion during the Class Period (as defined below), including in July or August 2016, Plaintiff purchased Defendant's All Natural Red Tomato Salsa Mexicana at Fresh Thyme Market for personal, family, or household purposes after reviewing the "All Natural" label, which deceived her. If Plaintiff had known the Product contained artificial and synthetic ingredients, she would not have purchased it or would have paid less for it. The purchase price of the Product was \$3.99.

12. Defendant Frontera Foods, Inc. is an Illinois corporation with its principal place of business located on North Clark Street in Chicago, Illinois.

### **JURISDICTION AND VENUE**

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

14. This Court has personal jurisdiction over Defendant because Defendant is an Illinois resident. 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 Mixes for sale throughout the State of Illinois.

15. 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**

16. Defendant manufactures, sells, and distributes Mexican food products, including the Products.

17. Knowing that consumers like Plaintiffs are increasingly interested in purchasing products that do not contain potentially harmful synthetic ingredients and added sugar, Defendant has sought to take advantage of this growing market by labeling certain products as “All Natural” and/or as containing ECJ instead of sugar.

18. By affixing such a label to the packaging of the Products, Defendant is able to entice consumers like Plaintiffs to pay a premium for the Products or pay more for them than they otherwise would have had the truth be known.

19. The labels of the Products are deceptive, false, unfair, and misleading in that Defendant prominently represents that the Products are “All Natural,” and/or Defendant lists ECJ as an ingredient instead of sugar.

20. With respect to the Products that contain the Synthetic Ingredients, they are not “All Natural” because they contain the Synthetic Ingredients.

21. Dipotassium Phosphate is a synthetic phosphorous and potassium supplement. 7 C.F.R. 205.605(b) identifies Dipotassium Phosphate as a synthetic substance.

22. 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.

23. Citric Acid is a synthetically manufactured additive, preservative, and flavoring agent that is manufactured by fermenting a sugar, usually highly processed and/or genetically modified corn syrup, with black mold (*aspergillus niger*), usually also genetically modified, and then treating the fermentation with sulfuric acid. In a warning letter to Hirzel Canning Company, the FDA indicated that the addition of Citric Acid to a product precludes the use of the term “natural” to describe the product. While Citric Acid does exist naturally in citrus fruits, on information and belief, the Citric Acid used in the Products is synthetically manufactured.

24. Sodium Citrate Sodium Citrate is a shortened term for Trisodium Citrate. It is used as an antioxidant in food as well as to improve the effects of other antioxidants. Sodium Citrate can also be used as an acidity regulator and sequestrant. It is often added to highly acidic liquids to help neutralize them and promote gelling. Sodium citrate is manufactured by the

neutralization of citric acid with sodium hydroxide. 7 C.F.R. 205.605(b) identifies Sodium Citrate as a synthetic substance.

25. Consistent with FDA and FTC guidance, Plaintiffs and reasonable consumers, reasonably believe and assume that a product labeled “All Natural” does not contain any added color, artificial flavors, or synthetic substances.

26. Neither Plaintiffs nor any reasonable consumer would expect to find synthetic ingredients in a product labeled “All Natural.”

27. Neither Plaintiffs nor any reasonable consumer would know nor should know that the Synthetic Ingredients are not natural when reviewing the product label.

28. ECJ, moreover, is not juice. It is sugar.

29. By calling added sugar “ECJ,” Defendant misleads Plaintiffs and reasonable consumers into believing that certain of the Products contain less sugar than they actually do.

30. The FDA could not be more clear: “Sweeteners derived from sugar cane should not be listed in the ingredient declarations by names such as ‘evaporated cane juice,’ which suggests that the ingredients are made from or contain fruit or vegetable ‘juice[.] We consider such representations to be false and misleading[.]”

31. Defendant’s All Natural Nuevo Tex-Mex Salpica Mango Peach Salsa contains Citric Acid and Xathan Gum.

32. Defendant’s All Natural Nuevo Tex-Mex Salpica Habanero Lime Salsa contains Citric Acid and is labeled as containing ECJ.

33. Defendant’s All Natural Nuevo Tex-Mex Salpica Jalapeno Jack Queso contains Citric Acid, Xathan Gum, Disodium Phosphate, and Sodium Citrate.

34. Defendant’s All Natural Frontera Salsa Tomatillo is labeled as containing ECJ.

35. Defendant's All Natural Frontera Salsa Chipotle is labeled as containing ECJ.
36. Defendant's All Natural Frontera Salsa Mango Key Lime is labeled as containing ECJ.
37. Defendant's All Natural Frontera Salsa Guajillo is labeled as containing ECJ.
38. Defendant's All Natural Frontera Salsa New Mexico Red Chile is labeled as containing ECJ.
39. Defendant's All Natural Red Tomato Salsa Mexicana contains Xanthan Gum and Citric Acid.
40. As a result of Defendant's deceitful labels, Defendant was able to charge and Plaintiffs and class members paid a premium for the Products.
41. The Products, moreover, were worth less than they were represented to be, and Plaintiffs and Class Members paid extra for them due to the "All Natural" label and/or the ECJ representation.
42. 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, misrepresentation within the meaning of the ICFA.

#### **CLASS ALLEGATIONS**

43. Pursuant to 735 ILCS 5/2-801 et. seq., Plaintiffs bring this action on their own behalf and on behalf of a proposed class of all other similarly situated current citizens of Illinois ("Class Members" of the "Class") consisting of:

All current citizens of Illinois who purchased Frontera All Natural Nuevo Tex-Mex Salpica Mango Peach Salsa, All Natural Nuevo Tex-Mex Salpica Habanero Lime Salsa, All Natural Nuevo Tex-Mex Salpica Jalapeno Jack Queso, All Natural Frontera Salsa Tomatillo, All Natural Frontera

Salsa Chipotle, All Natural Frontera Salsa Mango Key Lime, All Natural Frontera Salsa Guajillo, All Natural Frontera Salsa New Mexico Red Chile, and/or All Natural Red Tomato Salsa Mexicana for personal, household, or family purposes in the five years preceding the filing of this Petition (the "Class Period").

44. 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.

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

46. 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 "All Natural" claim on certain of the Products' labels is false, misleading, unfair, and deceptive;
- b. whether the representation that certain of the Products contain ECJ instead of sugar is false, misleading, unfair, and deceptive;
- c. whether Defendant violated the ICFA by selling the Products with false, misleading, and deceptive representations;
- d. whether Defendant's acts constitute deceptive and fraudulent business acts and practices or deceptive, untrue, and misleading advertising;
- e. whether Defendant was unjustly enriched; and



- f. the proper measure of damages sustained by Plaintiffs and Class Members.

47. The claims of the Plaintiffs 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 Plaintiffs and Defendant's conduct affecting Class Members, and Plaintiffs have no interests adverse to the interests other Class Members.

48. Plaintiffs 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.

49. 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.

50. Because Plaintiffs seek 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.

51. 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.

52. Defendant has acted on grounds that apply generally to the Classes, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

##### **Violation of the ICFA**

53. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if fully set forth herein.

54. 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

55. Defendant's conduct in representing (1) that certain of the Products are "All Natural" when they in fact contain the Synthetic Ingredients, and (2) that certain of the Products contain ECJ when they in fact contain added sugar 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.

56. Defendant intended that Plaintiffs and the Class Members would rely on its "ALL NATURAL" and ECJ representations. Defendant is aware that consumers like Plaintiff and Class Members are becoming increasingly interested in purchasing natural, healthy products that do not contain artificial, synthetic ingredients or added sugar. Defendant intended to prey on this interest.

57. The "ALL NATURAL" and ECJ misrepresentations are material because they concern the type of information upon which a reasonable consumer would be expected to rely in making a decision whether to purchase.

58. Because Defendant is in the business of selling food and drink products, Defendant committed the unfair and deceptive acts in the conduct of its trade and commerce.

59. Defendant's practice of representing (1) that certain of the Products are "All Natural" when they in fact contain the Synthetic Ingredients, and (2) that certain of the Products contain ECJ when they in fact contain added sugar is also unfair because it offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are increasingly interested in purchasing and consuming healthy, truly natural products without synthetic substances and/or added sugar. Falsely selling products as "ALL NATURAL" and as containing ECJ offends the public's expectation to be told the truth about the products they are buying.

60. Defendant's conduct also 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 synthetic ingredients is substantially injurious.

61. Neither Plaintiffs nor any reasonable consumer would expect to find artificial, synthetic, ingredients in a Product labeled "ALL NATURAL."

62. Neither Plaintiffs nor any reasonable consumer when reviewing the ingredient lists of the Products would know nor should know that the Synthetic Ingredients are not natural or that ECJ is actually sugar in disguise.

63. Because certain of the Products are not "ALL NATURAL" as they are represented to be and others contain added, disguised sugar, 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 or would have paid less for them.

64. Plaintiffs and Class Members were deceived by the "ALL NATURAL" and ECJ labeling 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.

65. Plaintiffs also seek to enjoin Defendant's ongoing deceptive practices relating to its claims on the Products' labels and advertising.

## COUNT II

### **Unjust Enrichment**

66. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if fully set forth herein.

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

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

69. 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 Products.

70. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at Plaintiffs 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, Plaintiffs, individually and on behalf of all similarly situated persons, prays the Court:

- a. grant certification of this case as a class action;
- b. appoint Plaintiffs as Class Representative and Plaintiffs' counsel as Class Counsel;
- c. award compensatory damages to Plaintiffs and the proposed Class, or, alternatively, require Defendant to disgorge or pay restitution of its ill-gotten gains;
- d. for an award of declaratory and equitable relief declaring Defendant's conduct to be in violation of ICFA and enjoining Defendant from

continuing to engage in deceptive, unfair, and false marketing of the Product;

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

Dated September 1, 2016

Angela Barnes and Gayle Greenwood, Individually, and on  
Behalf of a Class of Similarly Situated Individuals,  
Plaintiffs

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