

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

JULIE GEORGE, individually and )  
on behalf of all other similarly-situated )  
current citizens of Missouri, )  
 )  
Plaintiff, )

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

v. )

**JURY DEMAND**

THINK.EAT.LIVE.FOODS, LLC, )  
 )  
Defendant. )

Serve by Mail: )

THINK.EAT.LIVE. FOODS, LLC )  
Daniel Tegel RAGT )  
2481 Tuscany Ridge Rd. )  
Wildwood MO 63038 )

**CLASS ACTION PETITION AND JURY DEMAND**

Plaintiff, Julie George, 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 Think.Eat.Love. Foods, LLC’s (“TELF” or “Defendant”) deceptive, unfair, and false merchandising practices regarding its “Natural” Muffin Mix and SunPower Bar Mix (the “Mixes”).

2. On the label of the Mixes, Defendant prominently represents that the Mixes are “Natural” and “Real Food.”

3. The Mixes, however, contain Sodium Acid Pyrophosphate (the “Synthetic Ingredient”), which is an artificial, synthetic substance.

4. Because the Mixes contain the Synthetic Ingredient, the representations that the Mixes are “Natural” and “Real Food” are false, deceptive, and misleading.

5. The “Natural” and “Real Food” representations on the Mixes also creates the false impression and has the tendency and capacity to mislead consumers (*see* 15 CSR 60-9.020) into believing that the Mixes does not contain any artificial, synthetic ingredient, when in fact the Mixes contain the Synthetic Ingredient. Moreover, the overall format and appearance of the label of the Mixes has the tendency and capacity to mislead consumers (15 C.S.R. 60-9.030) because it creates the false impression that the Mixes do not contain any artificial, synthetic ingredient.

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

### **PARTIES**

7. Plaintiff, Julie George, is a Missouri citizen and a resident of the City of St. Louis, Missouri. On at least one occasion during the Class Period (as defined below), including in November or December 2016, Plaintiff purchased packages of Defendant’s “Natural” Muffin Mix and SunPower Bar Mix at Schnucks for personal, family, or household purposes after reviewing the label, which deceived her. If Plaintiff had known the Mixes contained the Synthetic Ingredient, she would not have purchased it or would have paid less for it. The purchase price of each Mix was \$7.99.

8. Defendant Think.Eat.Love. Foods, LLC is a Missouri corporation with its principal place of business at in Wildwood, Missouri.

### **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 claim is, at most, equal to the refund of the purchase price she paid for the Mixes, or \$7.99 each.

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 dollars (\$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 Mixes 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 is a citizen of the State of Missouri.

15. Venue is proper in this forum pursuant to Missouri Code § 508.010 because Plaintiff is a resident of the City of St. Louis and his injury occurred in the City of St. Louis and because Defendant is a citizen of this State.

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

### **ALLEGATIONS OF FACT**

17. Defendant manufactures, sells, and distributes baking Mixes, including the Mixes.

18. Knowing that consumers like Plaintiff are increasingly interested in purchasing healthy food Mixes that do not contain potentially harmful artificial and synthetic ingredient, Defendant has sought to take advantage of this growing market by labeling certain Mixes as being “Natural” and “Real Food.” By affixing such a label to the packaging of the Mixes, Defendant can entice consumers like Plaintiff to pay a premium for the Mixes.

19. The label of the Mixes is deceptive, false, and misleading in that Defendant prominently represents that the Mixes are “Natural” and “Real Food.”

20. The Mixes, however, in fact contain an artificial and synthetic ingredient, the Synthetic Ingredient.

21. Defendant’s “Natural” Muffin Mix and SunPower Bar Mix both contain Sodium Acid Pyrophosphate.

22. Sodium Acid Pyrophosphate is an inorganic compound that is used in processing plants to remove hair from hogs and feathers from chickens, as a dispersant in oil well drilling mud, and as a leavening agent. It is manufactured by treating sodium hydroxide with phosphoric acid. 7 C.F.R. 205.605(b) identifies Sodium Acid Pyrophosphate as a synthetic substance.

23. Supporting Plaintiff’s case is a recent warning letter sent to Middle East Bakery LLC on September 18, 2014. In that letter, the FDA warned Middle East Bakery that its liveGfree Blueberry Pancakes were misbranded because “it bears the claim ‘ALL NATURAL’ but contains sodium acid pyrophosphate, which is a synthetic substance. FDA considers use of the term ‘natural’ on a food label to be truthful and non-misleading when ‘nothing artificial or synthetic...has been included in, or has been added to, a food that would not normally be expected to be in the food.’ 58 FR 2302, 2407, January 6, 1993.”

24. Neither Plaintiff nor any reasonable consumer would expect to find an artificial, synthetic ingredient in the Mixes labeled as containing “Natural” and “Real Food.”

25. Neither Plaintiff nor any reasonable consumer would know nor should know that Sodium Acid Pyrophosphate is an artificial, synthetic ingredient.

26. Because of Defendant’s deceitful label, Defendant charged and Plaintiff paid a premium for the Mixes.

27. The Mixes, moreover, were worth less than it was represented to be, and Plaintiff and Class Members paid extra for it due to the “Natural” and “Real Food” label.

28. 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**

29. Pursuant to Missouri Rule of Civil Procedure 52.08 and § 407.025.2 of the MMPA, 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 Missouri citizens who purchased Think.Eat.Live. “Natural” Muffin Mix and/or SunPower Bar Mix for personal, household, or family purposes in the five years preceding the filing of this Petition up to the present date (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 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 “Natural” and “Real Food” claims on the Mixes’ label are false, misleading, and deceptive;
- b. Whether Defendant violated the MMPA by selling the Mixes with false, misleading, and deceptive representations;
- c. Whether Defendant’s acts constitute deceptive and fraudulent business acts and practices or deceptive, untrue, and misleading advertising;
- d. Whether Defendant was unjustly enriched; and
- e. 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 have 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. Therefore, class treatment is a superior method for adjudication of the issues in this case.

## **CLAIMS FOR RELIEF**

### **Count I**

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

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

39. 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 § 407.020, RSMo.

40. Defendant's conduct 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 because Defendant misrepresents that the Mixes are “Natural” and/or “Real Food” when they in fact contain the Synthetic Ingredient.

41. The “Natural” and “Real Food” label on the Mixes also creates the false impression and has the tendency and capacity to mislead consumers (*see* 15 CSR 60-9.020) into believing that the Mixes do not contain any artificial, synthetic ingredient, when in fact they contain the Synthetic Ingredient.

42. Moreover, the overall format and appearance of the label of the Mixes has the tendency and capacity to mislead consumers (15 C.S.R. 60-9.030) because it creates the false impression that the Mixes do not contain any artificial, synthetic ingredient.

43. The Mixes were therefore worth less than the Mixes as represented, and Plaintiff and Class Members paid extra or a premium for them.

44. Neither Plaintiff nor any reasonable consumer would expect synthetic and artificial ingredient to be in Mixes labeled as being “Natural” and “Real Food.”

45. Neither Plaintiff nor any reasonable consumer would know nor should know that Sodium Acid Pyrophosphate is an artificial, synthetic ingredient.

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

47. Defendant’s unlawful practices have caused similar injury to Plaintiff and numerous other persons. § 407.025.2.

## **Count II**

### **Unjust Enrichment**

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

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

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

51. 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 Mixes.

52. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at Plaintiff 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 of its ill-gotten gains;

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

Dated: May 26, 2017

Julie George, Individually, and on Behalf of a Class of Similarly Situated Individuals, Plaintiff

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