

U.S. DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS JUN 18 2014  
FAYETTEVILLE DIVISION

CHRIS R. JOHNSON, Clerk  
By  
Deputy Clerk

Christopher Kinney, individually and on behalf  
of all others similarly situated,

Plaintiff,

-vs-

DOLE PACKAGED FOODS, LLC

Defendant.

**CLASS ACTION COMPLAINT**

Case No. 14-5182 TLB

**JURY TRIAL DEMANDED**

Plaintiff, Christopher Kinney (“Christopher Kinney” or “Plaintiff”) brings this lawsuit against Defendant Dole Packaged Foods, LLC (“Dole” or “Defendant”). In order to remedy the harm arising from Defendant’s illegal conduct, which has resulted in unjust profits, Plaintiff brings this action on behalf of himself and a class of Arkansas residents who purchased any Dole Fruit Products, labeled as "All Natural." These products are referred to herein as “Misbranded Food Products” and/or the “Dole Fruit Products.”<sup>1</sup>

**DEFINITIONS**

1. “Class Period” is June 18, 2009 to the present.
2. Over the last five years, Plaintiff, Christopher Kinney, has purchased Dole Tropical Fruit in Light Syrup & Passion Fruit Juice (15.25 oz. can), Dole Tropical Fruit in 100% Juice (4 oz. cups), Dole Mixed Fruit in 100% Fruit Juice (4 oz. cups), Dole Diced Peaches in 100% Fruit Juice (4 oz. cups) and Dole Mandarin Oranges in 100% Fruit Juice (4 oz. cups) (the “Purchased Products”). Pictures of the Purchased Products are attached at Exhibit “1.”
3. “Substantially Similar Products” are the Dole Fruit Products listed in paragraph 4 below. Each of these listed products: (i) make the same label representations, as described herein,

<sup>1</sup> This case includes all of the “Purchased Products” and the “Substantially Similar Products” as defined herein.

as the Purchased Products; and (ii) violate the same regulations as the Purchased Products, as described herein.

4. Substantially Similar Products are the Dole Fruit Products, sold during the Class Period, listed below:

- Diced Apples in 100% Fruit Juice – 4 oz. plastic cups
- Diced Pears in 100% Fruit Juice – 4 oz. plastic cups
- Pineapple Tidbits in 100% Pineapple Juice – 4 oz. plastic cups
- Red Grapefruit Sunrise in 100% Juice – 4 oz. plastic cups

5. Dole represents that its products are “All Natural,” which they are not because the Dole Fruit Products contain citric acid and ascorbic acid. Using such terms is illegal to describe products which contain unnatural ingredients under Arkansas law.

6. “Misbranded Food Products” and/or “Dole Fruit Products” are the Purchased Products and Substantially Similar Products identified herein. Several of these Misbranded Food Products have had slightly different names over time, but no matter if there was a slight variation in the product name, the actual fruit product remained the same through the Class Period.

7. The issue in this case is the label violations and/or misrepresentations on the label of the Dole Fruit Products. The representations that the Dole Fruit Products are “All Natural” are false and misleading because the Dole Fruit Products contains artificial ingredients and are not “All Natural,” because the Dole Fruit Products contain citric acid and ascorbic acid. The use of the terms “All Natural” is in violation of A.C.A. § 20-56-209; A.C.A. § 20-56-214; and A.C.A. § 20-56-215.

#### **SUMMARY OF THE CASE**

8. Under Arkansas law, a food product that is misbranded cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless. The sale, purchase or possession of

misbranded food is a criminal act in Arkansas and food companies are subject to seizure of misbranded products. This “misbranding” – standing alone without any allegations of deception by Defendant other than the failure to disclose as per its duty, the material fact that the products were illegal, entitles Plaintiff to relief even absent review of or reliance on the labels by Plaintiff and is a strict liability claim.

9. The labels on the Dole Fruit Products – aside from being unlawful under Arkansas law – are also misleading, deceptive, unfair and fraudulent. The use of the terms “All Natural” is a deceptive representation that hides from the consumer that the product contains unnatural ingredients. Plaintiff reviewed the label on the Purchased Products and reasonably relied in substantial part on the label, and was thereby deceived, in deciding to purchase these products. Plaintiff did not know the Dole Fruit Products were not All Natural. The very fact that Defendant sold such illegal Dole Fruit Products and did not disclose this fact to consumers is a deceptive act in and of itself. Plaintiff would not have purchased a product that is illegal to own or possess. Had Defendant informed Plaintiff of this fact, Plaintiff would not have purchased the Dole Fruit Products. Plaintiff relied upon Dole’s implied representation that Defendant’s products were legal that arose from Defendant’s material omission of the fact that its products were in fact, actually illegal to sell and/or possess.

10. Plaintiff did not know, and had no reason to know, that Defendant’s products were misbranded under Arkansas law and that the products bore false food labeling claims, despite failing to meet the requirements to make those food labeling claims. Similarly, Plaintiff did not know, and had no reason to know, that Defendant’s products were false and misleading.

11. Arkansas laws require truthful, accurate information on the labels of packaged foods. The law is clear: misbranded food cannot legally be sold, possessed, has no economic value and is legally worthless. Purchasers of misbranded food are entitled to a refund of their purchase price.

12. Arkansas laws regulate the content of labels on packaged food. Under Arkansas law, food is “misbranded” if “its labeling is false or misleading in any particular,” or if it does not contain certain information on its label or its labeling. A.C.A. § 20-56-209.

13. Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, the entire food is misbranded, and no other statement in the labeling cures a misleading statement.

14. Under Arkansas law, a food product that is “misbranded” cannot legally be manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless. Plaintiff and members of the Class who purchased these products paid an unwarranted premium for these products.

15. If Dole is going to make a claim on a food label, the label must meet certain legal requirements that help consumers make informed choices and ensure that they are not misled and that label claims are truthful, accurate, and backed by scientific evidence. These laws recognize that reasonable consumers are likely to choose products claiming to have a health or nutritional benefit over otherwise similar food products that do not claim such benefits.

16. As described more fully below, Defendant has sold products that are misbranded and are worthless because (i) the labels violate Arkansas law and, separately, (ii) Defendant made, and continues to make, false, misleading and deceptive claims on its labels.

17. Under Arkansas law, Defendant’s food labeling practices are both (i) unlawful; and (ii) deceptive and misleading to consumers because their warranties and representations as to the content of the products falsely conceal that the product contains unnatural ingredients.

### **BACKGROUND**

18. Dole Fruit Products, with their distinctive packaging, are available at most major supermarket chains throughout Arkansas.

19. Dole uses the term “All Natural” to make its products appear healthier than competitor’s products that do not claim to be “All Natural.” This illegal label is used to increase sales and to charge a premium by making the product seem healthier than it is in reality.

20. Plaintiff read and relied upon this misleading and deceptive language, “All Natural,” when making his decision to purchase the Dole Fruit Products. If not for this misrepresentation, Plaintiff would not have purchased the Dole Fruit Products. Plaintiff therefore suffered injury as Plaintiff lost money buying Dole’s deceptively labeled food products when Plaintiff could have chosen to purchase alternative products that were truly “All Natural,” or to refrain from buying the products at all. Plaintiff specifically relied on the products’ ingredient labeling when Plaintiff made the decision to purchase the products listed above and attached hereto collectively as Exhibit “1.” These products were mislabeled food products and, as a result, Plaintiff suffered injury.

21. Exemplar labels of the products purchased by Plaintiff are provided in Exhibit “1.” This exhibit is true, correct and accurate photographs of Dole’s “All Natural” package label.

22. At all times during the Class Period, the above listed Dole Fruit Products were represented to be “All Natural.”

23. Dole’s representations that the Dole Fruit Products are “All Natural” are false. The Dole Fruit Products contains artificial ingredients and are therefore, not “All Natural.”

24. If a manufacturer makes a claim on a food label, the label must meet certain legal requirements that help consumers make informed choices and ensure that they are not misled. As described more fully below, Defendant has made, and continues to make, unlawful as well as false and deceptive claims in violation of Arkansas laws that govern the types of representations that can be made on food labels. These laws recognize that reasonable consumers are likely to choose products claiming to be natural or to have a health or nutritional benefit over otherwise similar food products that do not claim such properties or benefits or that disclose certain ingredients. More

importantly, these laws recognize that the failure to disclose the presence of risk-increasing nutrients is deceptive because it conveys to consumers the impression that a food makes only positive contributions to a diet, or does not contain any nutrients at levels that raise the risk of diet-related diseases or health-related conditions.

25. Defendant has made, and continues to make, false and deceptive claims on its Misbranded Food Products by representing that the products contain “All Natural” ingredients, when they do not.

26. Defendant’s violations of law include the illegal advertising, marketing, distribution, delivery and sale of Defendant’s Misbranded Food Products to consumers in Arkansas.

27. Consumers have paid a premium price for the Misbranded Food Products that they have been misled into believing contains “All Natural” ingredients.

28. Plaintiff read the labels on Defendant’s Misbranded Food Products, including the “All Natural” claims.

29. Plaintiff reasonably relied on Defendant’s package labeling, including the “All Natural” claims.

30. After Plaintiff learned that Defendant’s Misbranded Food Products were falsely labeled, he stopped purchasing them.

31. Every Class Member was exposed to the exact same label claim – “All Natural.”

#### **PARTIES**

32. Plaintiff, Christopher Kinney, is a resident of Bentonville, Benton County, Arkansas who purchased the Dole Misbranded Food Products during the five (5) years prior to the filing of this Complaint (the “Class Period”).

33. Dole Packaged Foods, LLC is a California limited liability company doing business in the State of Arkansas with its principal place of business in Westlake Village, California.

34. Defendant is a leading producer of retail food products, including the Dole Fruit Products. Defendant sells its food products to consumers through grocery and other retail stores throughout the State of Arkansas.

### **JURISDICTION AND VENUE**

35. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d) because this is a class action in which: (1) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs; (2) a member of the class of plaintiffs is a citizen of a State different from a defendant; and (3) the number of members of the Class in the aggregate is greater than 100.

36. This Court has personal jurisdiction over Defendant because the wrongdoing alleged herein occurred in Arkansas. Defendant also has sufficient minimum contacts with Arkansas and has otherwise intentionally availed itself of the markets in Arkansas through the promotion, marketing, and sale of products sufficient to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

37. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (3) because a substantial part of the events or omissions giving rise to these claims occurred in this District, a substantial part of the property that is the subject of this action is situated in this District, and Defendant is subject to the Court's personal jurisdiction with respect to this action.

### **FACTUAL ALLEGATIONS**

#### **A. Identical Arkansas Laws Regulate Food Labeling**

38. Food manufacturers are required to comply with state laws and regulations that govern the labeling of food products. First and foremost among these is the A.C.A. § 20-56-201, *et seq.*

39. Arkansas law provides in relevant part that food shall be deemed misbranded "[i]f its

labeling is false or misleading in any particular." Arkansas also discourages the misbranding of food through the availability of remedies pursuant to the state's consumer protection laws. Therefore, any labeling violation of A.C.A. § 20-56-201, *et seq*, is also a violation of Arkansas common law and the Arkansas Deceptive Trade Practices Act.

**B. Defendant's Use of "All Natural" is Unlawful**

40. The term "natural" adds a premium to food products and makes them appear fresher, minimally processed and safer. Seeking to profit from consumers' desire for natural food products and recognizing that the labeling of products as "all natural" or "All Natural" implicitly conveys to consumers that the products carry health benefits important to consumers, Dole has falsely represented its Dole Fruit Products as all natural when that is not true. On the principal display panel of its product labels, Dole claims that such products are "All Natural" despite the fact that they contain unnatural ingredients that preclude the labeling of the very types of products at issue here as being "natural."

41. Defendant unlawfully labeled some of its food products as being "All Natural," when they actually contain artificial ingredients and flavorings, artificial coloring and chemical preservatives. For example, Defendant's Dole Tropical Fruit in Light Syrup & Passion Fruit Juice (15.25 oz. can), Dole Tropical Fruit in 100% Juice (4 oz. cups), Dole Mixed Fruit in 100% Fruit Juice (4 oz. cups), Dole Diced Peaches in 100% Fruit Juice (4 oz. cups) and Dole Mandarin Oranges in 100% Fruit Juice (4 oz. plastic cups) bought by Plaintiff are represented to be "All Natural," but contain citric acid and ascorbic acid.

42. Plaintiff purchased Dole Fruit Products throughout the Class Period, including Dole Tropical Fruit in Light Syrup & Passion Fruit Juice (15.25 oz. can), Dole Tropical Fruit in 100% Juice (4 oz. cups), Dole Mixed Fruit in 100% Fruit Juice (4 oz. cups), Dole Diced Peaches in 100% Fruit Juice (4 oz. cups) and Dole Mandarin Oranges in 100% Fruit Juice (4 oz. plastic cups), in



reliance on Defendant's false representations that the products were "All Natural." Had Plaintiff known this representation was false, he would not have purchased the products or paid a premium for them.

43. Consumers reasonably expect that products carrying an "All Natural" claim must not contain any artificial flavoring, color ingredients, chemical preservatives, or artificial or synthetic ingredients, and be only minimally processed by a process that does not fundamentally alter the raw Products. A reasonable consumer would understand that "natural" products do not contain synthetic, artificial or excessively processed ingredients.

44. Consumers are thus misled into purchasing Defendant's products with ingredients that are not natural as falsely represented on their labeling. Defendant's products in this respect are misbranded under Arkansas law. Plaintiff did not know, and had no reason to know, that the Purchased Products were misbranded, and bore natural claims despite failing to meet the requirements to make those natural claims. Plaintiff would not have bought these products had they been accurately labeled and disclosed the information required by law. Because of this improper manner in which ingredients were described, Plaintiff purchased Defendant's products and paid premiums for them. Defendant has violated these referenced regulations and thus misled Plaintiff and the Class who were injured as a result and suffered economic loss.

**C. Defendant has Knowingly Violated Arkansas Laws**

45. Defendant has violated A.C.A. § 20-56-209 by, inter alia, failing to reveal material facts on the label of Defendant's Misbrand Food Products.

46. Defendant has violated Arkansas A.C.A. § 20-56-209 because Defendant's Misbranded Food Products are fabricated from two (2) or more ingredients, but fail to utilize the common or usual name of each ingredient on their labeling.

47. Defendant has violated Arkansas A.C.A. § 20-56-209 because words, statements, or

other information required pursuant to Arkansas's food labeling laws to appear on the label or labeling are not prominently placed upon the label or labeling with conspicuousness, as compared with other words, statements, designs, or devices in the labeling and in terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

48. Defendant has violated Arkansas A.C.A. § 20-56-209 because, for all the reasons set forth herein, Defendant's Misbranded Food Products labeling is false and misleading in one or more ways. Among other things, the labeling is false and misleading because it falsely represents that the Dole Fruit Products are "All Natural," when they are not.

49. Defendant has violated Arkansas A.C.A. § 20-56-215 which makes it unlawful to manufacture, sell, deliver, hold, or offer to sell any misbranded food.

50. Defendant has violated Arkansas A.C.A. § 20-56-214 and § 20-56-215 which make it unlawful to falsely or misleadingly advertise food or food.

51. Defendant has a duty to disclose the true nature of the contents of Defendant's Misbranded Food Products and failed to abide by that duty.

52. Significantly, the food labeling laws of Arkansas, Defendant's violations of the food labeling laws of Arkansas (including all of the aforementioned provisions) are strict liability crimes for which no showing of intent to deceive or defraud is required.

53. Under the food labeling laws of Arkansas, it is a strict liability crime to, inter alia, manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.

54. By manufacturing and selling misbranded products, Defendant has committed a predicate unlawful act, regardless of any misrepresentation or reliance thereon.

55. Because Defendant's Misbranded Food Products are misbranded and illegal they have a value of zero. Plaintiff and other consumers were injured when paying money for a worthless product.

**D. Plaintiff Purchased Defendant's Misbranded Food Product**

56. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy diet.

57. Plaintiff read and reasonably relied on the labels on Defendant's Purchased Products before purchasing them as described herein. Plaintiff relied on Defendant's labeling as described herein and based and justified the decision to purchase Defendant's products, in substantial part, on the label.

58. At point of sale, Plaintiff did not know, and had no reason to know, that the Purchased Products were unlawful and misbranded as set forth herein, and would not have bought the products had Plaintiff known the truth about them, *i.e.*, that the products were illegal to purchase and possess.

59. After Plaintiff learned that Defendant's Purchased Products were falsely labeled, Plaintiff stopped purchasing them.

60. As a result of Defendant's unlawful misrepresentations, Plaintiff and thousands of others in Arkansas purchased the Purchased Products.

61. Defendant's labeling as alleged herein is false and misleading and was designed to increase sales of the product at issue. Defendant's misrepresentations are part of its systematic labeling practice and a reasonable person would attach importance to Defendant's misrepresentations in determining whether to purchase the products at issue.

62. A reasonable person would also attach importance to whether Defendant's products are "misbranded," *i.e.*, legally salable, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the products at issue. Plaintiff would not have purchased Defendant's products had Plaintiff known they were not capable of being legally sold or held.

63. Plaintiff's purchases of the Purchased Products damaged Plaintiff because misbranded products cannot be legally sold, possessed, have no economic value, and are legally worthless.

***Plaintiff Christopher Kinney***

64. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy diet. During the class period, Plaintiff read the labels on Defendant's Misbranded Food Products before purchasing the Products. Based on those representations, Plaintiff purchased the Dole Fruit Products at grocery stores and third-party retailers in and around Fayetteville, Arkansas. At point of sale, Plaintiff did not know, and had no reason to know, that Defendant's claims on its label were unlawful and unauthorized as set forth herein. Had Plaintiff known Defendant's products that Plaintiff purchased were not "All Natural," Plaintiff would not have purchased the products. As a result, Plaintiff suffered injury-in-fact and lost money.

65. Plaintiff seeks to avoid and/or minimize unnatural ingredients in the food products that Plaintiff purchases. At the time Plaintiff read the label of the Dole, Plaintiff attempted to determine whether the Dole Fruit Products contained unnatural ingredients by reading the ingredient list. When Plaintiff read the ingredient list of the Dole Fruit Products to determine if unnatural ingredients had been added, none were listed, thus Plaintiff was led to believe that the Dole Fruit Products that Plaintiff purchased did not contain unnatural ingredients.

66. Plaintiff was deceived because the Dole Fruit Products were not "All Natural."

67. Defendant's labeling, advertising and marketing as alleged herein are false and misleading and were designed to increase sales of the products at issue. Defendant's misrepresentations and material omissions are part of an extensive labeling, advertising and marketing campaign, and a reasonable person would attach importance to Defendant's misrepresentations and material omissions in determining whether to purchase the products at issue.

68. A reasonable person would also attach importance to whether Defendant's products were legal for sale, and capable of legal possession, and to Defendant's representations about these issues in determining whether to purchase the product at issue. Plaintiff would not have purchased Defendant's Misbranded Food Products had Plaintiff known they were not capable of being legally sold or held.

### **CLASS ACTION ALLEGATIONS**

69. Plaintiff brings this action as a class action pursuant to the Arkansas Rule of Procedure 23 on behalf of the following class:

All persons who purchased (1) Dole Tropical Fruit in Light Syrup & Passion Fruit Juice (15.25 oz. can); (2) Dole Tropical Fruit in 100% Juice (4 oz. cups); (3) Dole Mixed Fruit in 100% Fruit Juice (4 oz. cups); (4) Dole Diced Peaches in 100% Fruit Juice (4 oz. cups); (5) Dole Mandarin Oranges in 100% Fruit Juice (4 oz. cups); (6) Dole Diced Apples in 100% Fruit Juice (4 oz. cups); (7) Dole Diced Pears in 100% Fruit Juice (4 oz. cups); (8) Dole Pineapple Tidbits in 100% Pineapple Juice (4 oz. cups); and/or (9) Dole Red Grapefruit Sunrise in 100% Juice (4 oz. cups), in Arkansas, since June 18, 2009 (the "Class").

70. The following persons are expressly excluded from each Class: (1) Defendant and its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its staff.

71. This action can be maintained as a class action because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

72. Numerosity: Based upon Defendant's publicly available sales data with respect to the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that joinder of all Class members is impracticable.

73. Common Questions Predominate: This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include:

a. Whether Defendant engaged in unlawful, unfair or deceptive business practices by

- failing to properly package and label its food products it sold to consumers;
- b. Whether the food product at issue was misbranded as a matter of law;
  - c. Whether Defendant made unlawful and misleading ingredient representations and warranties with respect to its food products sold to consumers;
  - d. Whether Defendant violated the Arkansas Food, Drug and Cosmetic Act (A.C.A. § 20-56-201, *et. seq.*);
  - e. Whether Defendant violated the Arkansas Deceptive Trade Practices Act (A.C.A. § 4-88-101, *et. seq.*);
  - f. Whether Defendant breached its implied warranty of merchantability;
  - g. Whether Defendant breached its express warranties;
  - h. Whether Defendant was negligent in its labeling and advertising of the Dole Fruit Product;
  - i. Whether Defendant unlawfully sold the misbranded product in violation of the labeling laws of Arkansas;
  - j. Whether Defendant's unlawful, unfair and deceptive practices harmed Plaintiff and the Class;
  - k. Whether Plaintiff and the Class have been damaged by the unlawful actions of the Defendant and the amount of damages to the Class; and
  - l. Whether Defendant were unjustly enriched by their deceptive practices.

74. Typicality: Plaintiff's claims are typical of the claims of the members of each Class because Plaintiff bought Defendant's Misbranded Food Products during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and each Class sustained similar injuries arising out of Defendant's conduct in violation of Arkansas law. The injuries of each member of each Class were caused directly by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members of each class and represents a common thread of misconduct resulting in injury to all members of each Class. Plaintiff' claims arise from the same practices and course of conduct that give rise to the claims of each member of the Class and are based on the same legal theories.

75. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiff has retained competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the members of the class and will diligently discharge those duties by seeking the maximum possible recovery for the Class.

76. Superiority: There is no plain, speedy or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of each Class member's rights and the disposition of their interests through actions to which they were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

77. Predominance: The prerequisites to maintaining a class action pursuant to ARK. R. CIV. P. 23 are met as questions of law or fact common to each class member predominate over any questions affecting only individual members, and a class action is superior to other available

methods for fairly and efficiently adjudicating the controversy.

78. Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION (Violation of A.C.A. § 4-88-101 et seq.)**

79. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

80. Defendant's conduct constitutes unlawful deceptive and unconscionable trade practices. Defendant's conduct was consumer-oriented and this conduct had broad impact on consumers at large. Defendant engaged in false, misleading and unlawful advertising, marketing and labeling of Defendant's Misbranded Food Products. Defendant's manufacturing, distribution and sale of Defendant's Misbranded Food Products were similarly unlawful.

81. Defendant unlawfully sold Defendant's Misbranded Food Products in Arkansas during the Class Period.

82. As fully alleged above, by advertising, marketing, distributing and selling mislabeled and misbranded Defendant's Misbranded FOOD PRODUCTS TO Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas, Defendant engaged in, and continue to engage in, unlawful deceptive and unconscionable trade practices.

83. Defendant's misleading marketing, advertising, packaging and labeling of Defendant's Misbranded Food Products were likely to deceive reasonable consumers.

84. Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were deceived.

85. Defendant has engaged in unlawful deceptive and unconscionable trade practices.

86. Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were injured by Defendant's unlawful deceptive and unconscionable



trade practices.

87. Defendant's fraud and deception caused Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas to purchase Defendant's Misbranded Food Products that they would otherwise not have purchased had Plaintiff known the true nature of these products.

88. Plaintiff and other members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were injured as a result of Defendant's unlawful deceptive and unconscionable trade practices.

89. In violation of the labeling laws of the state of Arkansas and A.C.A. §§ 4-88-107 and 4-88-108, Defendant sold to Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas, a product that was not capable of being sold legally, and which has no economic value. Defendant's violation of A.C.A. §§ 4-88-107 and 4-88-108 remains ongoing.

90. As a direct and proximate cause of Defendant violation of A.C.A. §§ 4-88-107 and 4-88-108, Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas were injured when they paid for this illegal and worthless products. Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas have been damaged in an amount to be determined at trial.

91. As a result of Defendant's unlawful deceptive and unconscionable trade practices, Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas, pursuant to A.C.A. § 4-88-113 and A.C.A. §§ 4-88-107 and 4-88-108, are entitled to damages and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to Plaintiff and the members of the Class who purchased Defendant's Misbranded Food Products in Arkansas any money paid for Defendant's Misbranded Food Products.

**SECOND CAUSE OF ACTION**  
**(Unjust Enrichment)**

92. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

93. As a result of Defendant's unlawful and deceptive actions described above, Defendant was enriched at the expense of Plaintiff and the Class through the payment of the purchase price for the Misbranded Food Products.

94. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that they received from the Plaintiff and the Class, in light of the fact that the Misbranded Food Products purchased by Plaintiff and the Class was an illegal product and was not what Defendant represented it to be. Thus, it would be unjust and inequitable for Defendant to retain the benefit without restitution to the Plaintiff and the Class for the monies paid to Defendant for the Misbranded Food Products.

**THIRD CAUSE OF ACTION**  
**(Breach of Implied Warranty of Merchantability)**

95. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

96. Implied in the purchase of the Misbranded Food Products by Plaintiff and the Class is the warranty that the purchased products are legal and can be lawfully sold and possessed.

97. Defendant knowingly and intentionally misbranded their Misbranded Food Products.

98. Defendant knew those Misbranded Food Products were illegal.

99. When Defendant sold these products it impliedly warranted that the products were legal and could be lawfully possessed and/or sold and therefore, merchantable.

100. Plaintiff would not have knowingly purchased a product that was illegal to own or possess.

101. No reasonable consumer would knowingly purchase a product that is illegal to own or possess.

102. The purchased Misbranded Food Products were unfit for the ordinary purpose for which Plaintiff and the Class purchased them.

103. In fact, this Misbranded Food Products were illegal, misbranded, and economically worthless.

104. As a result, Plaintiff and the Class were injured through their purchase of an unsuitable, useless, illegal and unsellable Products.

105. By reason of the foregoing, Plaintiff and the Class were damaged in the amount they paid for Misbranded Food Products.

106. Notice of the Breach of Warranty has been provided to Defendant prior to the filing of this breach of warranty claim.

**FOURTH CAUSE OF ACTION**  
**(Breach of Express Warranty)**

107. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

108. Dole falsely represented that the Dole Fruit Products were “All Natural” when, in fact, the products contained artificial ingredients. The “All Natural” representation and warranty was false. The Dole Fruit Products were not “All Natural.”

109. Defendant’s representations of fact and/or promises on the labels relating to their Misbranded Food Products created express written warranties that the product would conform to Defendant’s representation of fact and/or promises.

110. The Defendant’s descriptions of their Misbranded Food Products became part of the bases of the bargains, creating express written warranties that the product purchased by Plaintiff and the other Class Members would conform to Defendant’s descriptions and specifications. The Misbranded Food Products purchased by Plaintiff did not so conform.

111. Defendant provided warranties that its Misbranded Food Products were labeled in compliance with state law and were not misbranded under state law. Defendant breached these

express written warranties.

112. As a result of the foregoing, Plaintiff and the other Class Members have suffered damages, in that the value of the product they purchased was less than warranted by Defendant.

113. Defendant engaged in a scheme of offering the Misbranded Food Products for sale to Plaintiff and members of the Class by way of, inter alia, false and misleading product packaging and labeling.

114. In furtherance of its plan and scheme, Defendant prepared and distributed within Arkansas via product packaging and labeling, statements that misleadingly and deceptively represented that the Misbranded Food Products were "All Natural."

115. Plaintiff and the Class were the intended targets of such representations and warranties.

116. Plaintiff and the Class reasonably relied on Defendant's representations and warranties.

117. Plaintiff asserts this cause of action for violations of Arkansas law pertaining to express warranties. Plaintiff and the Class were injured as a result of Defendant's breach of their express warranties about the Misbranded Food Products. Plaintiff and the Class are entitled to damages arising from the breach of warranty.

118. Notice of the Breach of Warranty has been provided to Defendant prior to the filing of this breach of warranty claim.

**FIFTH CAUSE OF ACTION**  
**(Negligence)**

119. Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

120. In making representations of fact to Plaintiff and the other Class members about their Misbranded Food Product, Defendant failed to lawfully label or advertise their Misbranded Food Products and violated their duties to disclose the material facts alleged above. Among the direct and

proximate causes of said failure to disclose were the negligence and carelessness of Defendant.

121. Plaintiff and the other Class members, as a direct and proximate cause of Defendant's breaches of their duties, reasonably relied upon such representations to their detriment. By reason thereof, Plaintiff and the other Class members have suffered damages.

122. As described above, Defendant's actions violated a number of express statutory provisions designed to protect Plaintiff and the Class. Defendant's illegal actions constitute negligence per se. Moreover, the statutory food labeling and misbranding provisions violated by Defendant are strict liability provisions.

123. As alleged above, Plaintiff and the Class were injured by Defendant's unlawful actions and are entitled to recover an amount to be determined at trial due to the injuries and loss they suffered as a result of Defendant's negligence.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of his claims.

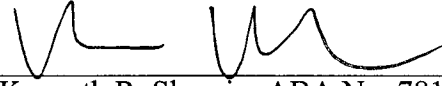
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated persons, prays for judgment against Defendant as follows:

- A. For an order certifying this case as a class action and appointing Plaintiff and Plaintiff's counsel to represent the Class;
- B. For an order awarding, as appropriate, damages, restitution, or disgorgement to Plaintiff and the Class including all monetary relief to which Plaintiff and the Class are entitled; and
- C. For an order awarding pre-judgment and post-judgment interest.

Dated: June 18, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Shemin', written over a horizontal line.

Kenneth R. Shemin, ABA No. 78138  
**SHEMIN LAW FIRM, PLLC**  
3333 Pinnacle Hills Parkway, Suite 603  
Rogers, AR 72758  
Telephone: (479) 845-3305  
Facsimile: (479) 845-2198

*Attorney for Plaintiff*

# ClassAction.org

This complaint is part of ClassAction.org's searchable [class action lawsuit database](#)

---