

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

HEATHER ERWIN and ASHLEY)
PRICE, individually and on behalf)
Of all other similarly-situated)
Current Illinois citizens,)

Plaintiffs,)

Case No: 3:20-cv-1268

v.)

JIMMY JOHNS LLC and)
JIMMY JOHN’S FRANCHISE, LLC)

Defendants.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, 1453, Defendants Jimmy John’s LLC (“JJ LLC”) and Jimmy John’s Franchise, LLC (“JJF”) (collectively, “Defendants”) hereby remove this action from the Circuit Court of St. Clair County, Illinois (“State Court”) to the United States District Court for the Southern District of Illinois. As grounds for removal, Defendants state as follows:

FACTUAL BACKGROUND

1. On October 1, 2020, Plaintiffs Heather Erwin and Ashley Price filed a putative class-action complaint (hereinafter “Complaint”) in State Court, Case No. 20-L0759, against Defendants. The Complaint alleges three counts against Defendants: (1) violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS 505/1 *et seq.*, (Count I), (2) breach of express warranty (Count II), and (3) unjust enrichment (Count III).

2. A Notice of Removal must be filed “within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim

for relief.” 28 U.S.C. § 1446(b)(1). Here, Plaintiffs served Defendants’ registered agent with a copy of the Summons, the Complaint, Plaintiffs’ Preliminary Motion for Class Certification, Affidavit of Damages Pursuant to Supreme Court Rule 222(b), and Entries of Appearance for Counsel on October 28, 2020. A true and accurate copy of all pleadings, process, and orders served are attached hereto as **Exhibit 1**. This Notice is filed within 30 days of receipt by Defendants of the Summons and the Complaint, so this Notice of Removal is timely.

VENUE

3. Venue is proper in this Court because the Southern District of Illinois is “the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

JURISDICTION

4. The Class Action Fairness Act (“CAFA”) gives federal courts jurisdiction over “class actions”¹ where (1) “any member of a class of plaintiffs is a citizen of a State different from any defendant”; (2) “the number of members of all proposed plaintiff classes in the aggregate is [more] than 100”; and (3) “the matter in controversy exceeds the sum or value of \$5 [million], exclusive of interest and costs.” 28 U.S.C. § 1332(d)(1), (2)(A), (5)(B); *see also Hart v. FedEx Ground Package Sys. Inc.*, 457 F.3d 675, 679 (7th Cir. 2006). All of these requirements are satisfied in the present case, and it is, therefore, removable under 28 U.S.C. § 1453(b).

¹ This action falls within CAFA’s definition of “class action.” 28 U.S.C. § 1332(d)(1)(B) (defining “class action” as “any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action”). In their Complaint, Plaintiffs allege that they filed this action under 735 ILCS 5/2-801, *et seq.*, *see Exh. 1*, Compl. ¶ 28, which is the state analog to Federal Rule of Civil Procedure 23. *See Avery v. St. Farm Mutual Auto. Ins. Co.*, 835 N.E. 2d 801, 819 (Ill. 2005) (stating that section 2-801 of the Code of Civil Procedure “is patterned after Rule 23 of the Federal Rules of Civil Procedure”).

MINIMAL DIVERSITY

5. Under CAFA, this Court has original subject-matter jurisdiction “if any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). That requirement is met here.

6. Plaintiffs allege in the Complaint that Plaintiff Erwin and Plaintiff Price are Illinois citizens. **Exh. 1**, Compl. ¶¶ 8–9; *see also Meyerson v. Harrah’s E. Chi. Casino*, 299 F.3d 616, 617 (7th Cir. 2002) (stating that “residence and citizenship are not synonyms and it is the latter that matters for purposes of the diversity jurisdiction”); *Dakuras v. Edwards*, 312 F.3d 256, 258 (7th Cir. 2002) (stating that an individual is a “citizen” of the state in which she is “domiciled,” which means where she has her home and to which she intends to return when absent from it). Plaintiffs also allege that they seek to represent a class of “current citizens of Illinois who purchased” Jimmy John’s Triple Chocolate Chunk Cookies (“Chocolate Chunk”) and/or Jimmy John’s Raisin Oatmeal Cookies (“Raisin Oatmeal”) from Defendants. *See Exh. 1*, Compl. ¶ 28.

7. Plaintiffs allege in the Complaint that Defendants are Delaware limited liability companies with their principal places of business in Illinois. *Id.* ¶¶ 10–11.

8. Both Defendants are limited liability companies. As a general rule, a limited liability company’s citizenship depends on the citizenship of its members. *See Cosgrove v. Bartolotta*, 150 F.3d 729, 731 (7th Cir. 1998); *see also Carden v. Arkoma Associates*, 494 U.S. 185, 195–96 (1990). The Seventh Circuit has made clear that parties must allege the citizenship of “all the members of a limited liability company through all the layers of ownership until the Court reaches only individual human beings and corporations to adequately allege citizenship of such entities.” *Vocational Consultants, Ltd. v. H & R Block Tax Servs., Inc.*, No. 13-1138, 2013 WL 6008694, at *1 (S.D. Ill. Nov. 13, 2013).

9. As set forth in the Affidavit of Jeffrey Vaughan (“Vaughan Affidavit”), JJF is a direct, wholly owned subsidiary of JJBC, LLC. **Exh. 2**, ¶ 2(a). JJBC, LLC, in turn, is a direct, wholly owned subsidiary of JJ LLC. *Id.* at ¶ 2(b). Next, JJ LLC is a direct, wholly owned subsidiary of Jimmy John’s Holding Company, LLC. *Id.* at ¶ 2(c). And finally, Jimmy John’s Holding Company, LLC is a direct, wholly owned subsidiary of IRB Holding Corporation. *Id.* at ¶ 2(d). A true and accurate copy of the Vaughan Affidavit is attached hereto as **Exhibit 2**.



10. JJF is a Delaware limited liability company with its principal place of business in Illinois. *Id.* at ¶ 2(a). JJBC, LLC is a Delaware limited liability company with its principal place of business in Illinois. *Id.* at ¶ 2(b). JJ LLC is a Delaware limited liability company with its principal place of business in Illinois. *Id.* at ¶ 2(c). Jimmy John’s Holding Company, LLC is a Delaware limited liability company with its principal place of business in Georgia. *Id.* at ¶ 2(d). IRB Holding Corporation is a Delaware corporation with its principal place of business in Georgia. *Id.* at ¶ 2(e); *see also* 28 U.S.C. § 1332(c)(1) (stating a corporation is citizen of “every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business”).

11. Because IRB Holding Corp. is, for diversity purposes, a citizen of Delaware and Georgia (*see Exh. 2*, ¶ 2(e)), JJF and JJ LLC are also citizens of Delaware and Georgia. *See Cosgrove*, 150 F.3d at 731 (concluding that “the citizenship of an LLC for purposes of diversity jurisdiction is the citizenship of its members.”). As a result, there is minimal diversity between either JJF or JJ LLC, both citizens of Delaware and Georgia, on the one hand, and Plaintiffs,

both citizens of Illinois, on the other. *See* 28 U.S.C. § 1332(d)(2)(A); *see also Dancel v. Groupon, Inc.*, 940 F.3d 381, 385 (7th Cir. 2019) (noting that “the hurdle of minimal diversity for the CAFA is lower than the complete diversity required in most cases”).²

NUMBER OF MEMBERS OF PROPOSED CLASS

12. Under CAFA, this Court has original subject-matter jurisdiction if “the number of members of all proposed plaintiff classes in the aggregate is [more] than 100.” 28 U.S.C. § 1332(d)(5).

13. This requirement is met on the face of the pleadings. Here, Plaintiffs seek to represent “[a]ll current citizens of Illinois who purchased Jimmy’s All Natural Triple Chocolate Chunk Cookies and/or Jimmy’s All Natural Raisin Oatmeal Cookies in the five years preceding the filing of the Complaint.” **Exh.1**, Compl. ¶ 28. Plaintiffs further assert that “[u]pon information and belief, the Class consists of hundreds or thousands of purchasers.” *Id.* at ¶ 30. This allegation is sufficient to satisfy this CAFA requirement.

14. Extrinsic evidence—which would be admissible for this purpose even if Plaintiffs had not admitted the 100-person threshold is met—also confirms that Plaintiff’s proposed class would contain more than 100 members. As set forth in the Vaughan Affidavit, there were

² CAFA contains a statutory citizenship rule for “unincorporated associations” when assessing diversity. *See* 28 U.S.C. § 1332(d)(10) (explaining that for purposes of § 1332(d) and § 1453, an “unincorporated association” is deemed to be a citizen of “the State where it has its principal place of business and the State under whose laws it is organized.”). The Seventh Circuit has not addressed whether limited liability companies, like Defendants, are “unincorporated associations” for purposes of 28 U.S.C. § 1332(d)(10). Nevertheless, authority from this District suggests that § 1332(d)(10) does not apply to limited liability companies. *See, e.g., Kremmel v. Fairlife, LLC*, No. 16-583, 2017 WL 4535695, at *1 (S.D. Ill. June 19, 2017) (stating that the defendant limited liability company failed to allege its citizenship for purposes of CAFA when the notice of removal “improperly” relied on § 1332(d)(10) and the notice was otherwise “devoid of any information regarding the citizenship of its members”); *see also Halperin v. Int’l Web Servs., LLC*, 70 F. Supp. 3d 893, 904 (N.D. Ill. 2014) (applying the rule that a limited liability company is a citizen of every state for which any of the limited liability company members is a citizen in CAFA context).

7,056,253 transactions at Jimmy John's restaurants in Illinois that included the sale of one or more Chocolate Chunk Cookies and/or Raisin Oatmeal Cookies between November 1, 2016 and October 1, 2020. **Exh. 2**, ¶ 6. Without question, those 7,056,253 transactions between November 1, 2016 and October 1, 2020 were made by more than 100 putative class members.³

AMOUNT IN CONTROVERSY

15. To establish subject-matter jurisdiction under CAFA, the amount in controversy must exceed \$5 million, less costs and interest, and that threshold is also readily met here. *See* 28 U.S.C. § 1332(d)(2).

16. The removing party bears the burden of establishing the amount-in-controversy requirement. *See Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008). Under this standard, the removing party's notice of removal must contain only "a plausible allegation" that the amount in controversy exceeds the jurisdictional amount. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). Thus, the jurisdictional question is "what the plaintiff is claiming (and thus the amount in controversy between the parties)" and is not what "plaintiff is likely to win or be awarded." *Spivey*, 528 F.3d at 986 (quoting *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449 (7th Cir. 2005)); *see also Blomberg v. Serv. Corp. Int'l*, 639 F.3d 761, 763 (7th Cir. 2011) (stating that the removing party does not need to "establish what damages the plaintiff will recover, but only how much is in controversy between the parties."). That is, when the removing party plausibly alleges that the class might recover actual damages, punitive damages, and attorneys' fees aggregating more than \$5 million, the case belongs in

³ The "All-Natural" claims at issue in the case appeared on the packaging for the Chocolate Chunk and Raisin Oatmeal Cookies beginning in the middle of the class period alleged in the Complaint, on approximately November 1, 2016. **Exh. 2**, ¶ 4. As such, this Notice calculates the sales and number of transactions of Chocolate Chunk and Raisin Oatmeal Cookies between November 1, 2016 and October 1, 2020 (i.e., the date the Complaint was filed).

federal court unless “it is *legally impossible* for the plaintiff[s] to recover that much.” *ABM Sec. Servs., Inc. v. Davis*, 646 F.3d 475, 478 (7th Cir. 2011) (quoting *Blomberg*, 639 F.3d at 764).

17. The removing party’s burden is “a pleading requirement, not a demand for proof.” *Spivey*, 528 F.3d at 986 (quoting *Brill*, 427 F.3d at 449). As such, in support of that burden, the removing party may introduce its own affidavits, declarations, or other documentation to satisfy the standard. *See, e.g., Blomberg*, 639 F.3d at 763 (establishing the amount in controversy through pleadings in other related lawsuits, counsel’s affidavit, and other documentary evidence).

18. Additionally, the removing party does not need to “confess liability in order to show that the controversy exceeds the threshold.” *Spivey*, 528 F.3d at 986 (quoting *Brill*, 427 F.3d at 449). To be clear, Defendants dispute that Plaintiffs (or any putative class member) are entitled to any recovery. But for purposes of the removal analysis, Defendants need only show “*plausibly* how the stakes exceed \$5 [million].” *ABM Sec. Servs., Inc.*, 646 F.3d at 478 (quoting *Blomberg*, 639 F.3d at 764).

19. Here, Plaintiffs’ Complaint does not demand a certain dollar amount. Nevertheless, Plaintiffs, according to their Complaint, seek the following relief: (1) compensatory damages or alternatively, disgorgement or restitution; (2) treble damages under the ICFA;⁴ (3) pre and post-judgment interest; (4) attorneys’ fees and costs; (5) punitive damages; and (6) “other and further relief, as may be just and proper.” *See Exh. 1*, Compl., Prayer for

⁴ Although Plaintiffs seek treble damages pursuant to the ICFA, *see* Exh. 2, Prayer for Relief (d), such damages are not available under the ICFA. *See In re Bayer Phillips Colon Health Probiotics Sales Pracs. Litig.*, No. 11-3017, 2014 WL 576153, at *4 n.3 (D.N.J. Nov. 6, 2014) (“Under Illinois law, there is no provision for treble damages; the ICFA is aimed primarily at compensation for actual damages.”). As such, Defendants do not include these requested damages in the amount in controversy.

Relief (c) – (g). Thus, it is clear that the relief sought exceeds the jurisdictional threshold of \$5 million for the amount in controversy.

COMPENSATORY DAMAGES OR ALTERNATIVELY, RESTITUTION.

- a. **ICFA (Count I).** The first count of the Complaint alleges a violation of the ICFA. *See Exh. 1*, Compl. ¶¶ 37–50. Compensatory damages on an ICFA claim brought by an individual consumer are measured by the benefit-of-the-bargain rule. *See Kim v. Carter’s Inc.*, 598 F.3d 362, 365 (7th Cir. 2010) (stating that actual loss may occur if “the seller’s deception deprives the plaintiff of ‘the benefit of her bargain’ by causing her to pay ‘more than the actual value of the property.’” (quoting *Mulligan v. QVC, Inc.*, 888 N.E.2d 1190, 1197 (Ill. Ct. App. 2008))). Here, Plaintiffs plead that the “damages” associated with the violations are “the difference between the actual value of the Cookies and the value of the products if they had been as represented.” *Exh. 1*, Compl. ¶ 50. Plaintiffs contend that “the Cookies as sold” (which allegedly were “highly processed”) were “worth less than the Cookies as represented” (which allegedly were represented as “minimally processed”). *Id.* at ¶ 49. Indeed, Plaintiffs allege that *but for* the “All-Natural” Labels, Plaintiff, and those similarly situated, “would not have purchased the Cookies,” *id.* at ¶ 49, meaning that the Cookies had no value to the purchasers without the challenged labels. *See also id.* at ¶ 22 (“Plaintiffs and Class Members paid a price premium for the Cookies that they would not and should not have paid absent Defendants’ misrepresentations.”). As stated in the Vaughan Affidavit, the total amount of sales of Chocolate Chunk and Raisin Oatmeal Cookies with “All-Natural” Labels during the relevant period is

\$17,379,865, which becomes the total amount of damages pleaded in the Complaint for the ICFA claim. *See* **Exh. 2**, ¶ 7.

- b. **Breach of Express Warranty (Count II)**. The second count of the Complaint alleges a breach of express warranty. **Exh. 1**, Compl. ¶¶ 51–57. Like the damages alleged in the ICFA claim, Plaintiffs allege Defendants deprived them of the benefit of the bargain, which equates to “less value than was reflected in the premium purchase price [the customers] paid for the Cookies.” *Id.* at ¶ 56. Presumably, Plaintiffs potentially could argue that the total value of the loss is the full value of the purchase price paid for the Cookies. Thus, like the ICFA claim, this claim seeks up to \$17,379,865 in total damages. **Exh. 2**, ¶ 7.
- c. **Unjust Enrichment (Count III)**. The third count of the Complaint alleges unjust enrichment. **Exh. 1**, Compl. ¶¶ 58–62. Plaintiffs allege that they, and those similarly situated, “conferred a benefit” on Defendants. *Id.* at ¶ 59. They further allege that Defendants “appreciated the benefit” because without Plaintiffs, and those similarly situated, Defendants would have no sales. *Id.* at ¶ 60. Thus, they suggest that “restitution and/or disgorgement” of such enrichment is proper. *Id.* at ¶ 62. That is, this claim also seeks \$17,379,865 in total damages—the total amount of sales of Chocolate Chunk and Raisin Oatmeal Cookies with “All-Natural” Labels between November 1, 2016 and October 1, 2020. **Exh. 2**, ¶ 7.

PUNITIVE DAMAGES.

20. Plaintiffs seek punitive damages. **Exh. 1**, Compl., Prayer for Relief (g). Punitive damages “factor into the amount-in-controversy calculation.” *Roppo v. Travelers Comm. Ins. Co.*, 869 F.3d 568, 578 (7th Cir. 2017) (citing *Back Doctors Ltd. v. Metro. Prop. & Cas. Ins. Co.*, 637 F.3d 827, 831 (7th Cir. 2011)); *see also LM Ins. Corp. v. Spaulding Enterprises Inc.*, 533

F.3d 542 (7th Cir. 2008) (“If punitive damages are available, subject matter jurisdiction exists unless it is legally certain that the plaintiff will be unable to recover the requisite jurisdictional amount.”). Although Defendants dispute that Plaintiffs are entitled to punitive damages, the ICFA does allow for their recovery. *See* 815 ILCS 505/10a; *Dubey v. Pub. Storage, Inc.*, 918 N.E.2d 265, 279 (Ill. Ct. App. 2009). Under that provision, Illinois courts have imposed punitive damage multipliers of 3:1. *Roppo*, 859 F.3d at 582–83; *see also Robinson v. Avanquest N. Am. Inc.*, No. 14-8015, 2015 WL 196343, at *5 (N.D. Ill. Jan. 13, 2015) (suggesting for calculating amount in controversy for CAFA, the punitive damage multiplier of 6:1 is not “legally impossible”). Together with compensatory damages, that theoretically increases the amount in controversy in this case to well in excess of \$5 million.

ATTORNEYS’ FEES.

21. Plaintiffs also seek recovery of their attorneys’ fees. **Exh. 1**, Compl., Prayer for Relief (f). Attorneys’ fees are included in the amount in controversy when sought as part of an underlying claim. *See El v. AmeriCredit Fin. Servs., Inc.*, 710 F.3d 748, 753 (7th Cir. 2013) (including attorneys’ fee in amount in controversy where “such expenses are sought as part of an underlying claim” as opposed to “a separate post-judgment right to ‘costs’ or ‘fees’ incurred in the litigation”). Although Defendants dispute that Plaintiffs are entitled to recover attorneys’ fees, Plaintiffs asserted at least one cause of action under which attorneys’ fees may be awarded. *See* 815 ILCS 505/10a(c) (providing for the recovery of “reasonable attorneys’ fees and costs to the prevailing party” under the ICFA). When determining how fees should be accounted for in evaluating CAFA jurisdiction on an ICFA claim, this Court has suggested a 30% fee is appropriate for purposes of the calculation. *See Back Doctors Ltd. v. Metlife Auto & Home*, No. 10-444, 2011 WL 13359263, at *2 n.1 (S.D. Ill. Jan. 25, 2011), *vacated*, 637 F.3d 827 (7th

Cir. 2011). Utilizing the damage figure above, a fee award in that amount would yield a total award well in excess of the \$5 million threshold.

22. Based on Plaintiffs' allegations in the Complaint and information set forth in the Vaughan Affidavit, Plaintiffs' proposed class claims place in controversy an amount far exceeding the \$5 million jurisdictional threshold. Moreover, because there are more than 100 members of the putative class, minimal diversity, and an amount in controversy greater than \$5 million, the Court has subject matter jurisdiction. *See* 28 U.S.C. § 1332(b).

COMPLIANCE WITH 28 U.S.C. § 1446

23. Pursuant to 28 U.S.C. § 1446(a), Defendants have attached all process, pleadings, and orders served in State Court. *See Exhibit 1*, attached hereto.

24. Pursuant to 28 U.S.C. § 1446(b)(1), this Notice of Removal is filed within 30 days of service on Defendants of the pleadings setting forth the claims for relief upon which the State Court action is based.

25. Pursuant to 28 U.S.C. § 1446(b)(3), Defendants will promptly provide written notice of the removal of the state court action to Plaintiffs, through their attorneys of record, and to the Circuit Court of St. Clair County, Illinois. *See Exhibit 3*, attached hereto.

WHEREFORE, Defendants respectfully give notice that the action referred to above is removed from the State Court to this Court.

Dated: November 25, 2020.

Respectfully submitted,

/s/ Kyle P. Seelbach

Kyle P. Seelbach, Ill. Bar # 6233971

HUSCH BLACKWELL LLP

190 Carondelet Plaza, Ste 600

St. Louis, MO 63105

Telephone: 314.480.1500

Facsimile: 314.480.1505

Kyle.seelbach@huschblackwell.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 25th day of November, 2020, by operation of the Court's electronic filing system to all parties.

/s/ Kyle P. Seelbach

Attorney for Defendants

EXHIBIT 1

Page 2 of 2
Electronically Filed
Kahalal A. Clay
Circuit Clerk
Michelle Foster
20L0759
Cook County
11/25/2020 12:02 PM
1036064



SHERIFF'S OFFICE OF COOK COUNTY
AFFIDAVIT OF SERVICE



CASE NUMBER: 20L0759
DIE DATE: 10/30/2020

RECEIVED DATE: 10/22/2020

MULT. SER.: 2
FILED DATE: 10/1/2020

DOC. TYPE: LAW
DIST: 606 DC

DEFENDANT: JIMMY JOHN FRANCHISE LLC
311 S WACKER DR
CHICAGO, IL 60606
STE 3000

PLAINTIFF: ERWIN, HEATHER
ATTORNEY: DAVID C NELSON
420 N HIGH ST
BELLEVILLE, IL 62220
618-277-4000

ATTACHED FEE AMT:
SERVICE INFORMATION: RA BRIAN A SMITH

I CERTIFY THAT I SERVED THE DEFENDANT/RESPONDENT AS FOLLOWS:

- (1) **PERSONAL SERVICE:** BY LEAVING A COPY OF THE WRIT/ORDER WITH THE DEFENDANT/RESPONDENT PERSONALLY, AND INFORMING DEFENDANT/RESPONDENT OF CONTENTS.
- (2) **SUBSTITUTE SERVICE:** BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT AT THE DEFENDANT'S USUAL PLACE OF ABODE WITH A FAMILY MEMBER OR PERSON RESIDING THERE, 13 YEARS OR OLDER, AND INFORMING THAT PERSON OF THE CONTENTS OF THE SUMMONS. ALSO, A COPY OF THE SUMMONS WAS MAILED TO THE DEFENDANT AT HIS OR HER USUAL PLACE OF ABODE ON
- (3) **UNKNOWN OCCUPANTS:** BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT NAMING "UNKNOWN OCCUPANTS" WITH A PERSON OF THE AGE OF 13 OR UPWARDS OCCUPYING SAID PREMISE.
- X (4) **CORP/CO/BUS/PART:** BY LEAVING THE APPROPRIATE NUMBER OF COPIES OF THE SUMMONS, COMPLAINTS, INTERROGATORIES, JUDGMENTS, CERTIFICATIONS AND NOTICES WITH THE REGISTERED AGENT, AUTHORIZED PERSON OR PARTNER OF THE DEFENDANT CORPORATION _____ COMPANY _____ BUSINESS _____ PARTNERSHIP _____
- (5) **PROPERTY RECOVERED:** NO ONE PRESENT TO RECEIVE ORDER OF COURT. ORDER POSTED IN PLAIN VIEW.
- (6) **S.O.S./D.O.I.:** BY LEAVING THE SUMMONS AND COMPLAINT WITH THE SECRETARY OF THE STATE/DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS, AN AGENT OF SAID DEFENDANT LISTED ABOVE. ANY AGENT OF SAID CORPORATION NOT FOUND IN THE COUNTY OF COOK.
- (7) **CERTIFIED MAIL**
**** COMPLETE THIS SECTION IF WRIT IS A THIRD PARTY CITATION/GARNISHMENT ****
- (8) AND BY MAILING ON THE _____ DAY OF _____ 20____ A COPY OF THE THIRD PARTY GARNISHMENT/CITATION SUMMONS AND NOTICE TO THE JUDGMENT DEBTOR'S LAST KNOWN ADDRESS AS INDICATED IN THE NOTICE WITHIN (2) BUSINESS DAYS OF SERVICE UPON GARNISHEE/THIRD PARTY DEFENDANT.

THE NAMED DEFENDANT WAS NOT SERVED FOR THE GIVEN REASON BELOW:

- (01) NO CONTACT (05) WRONG ADDRESS (09) DECEASED
- (02) MOVED (06) NO SUCH ADDRESS (10) NO REGISTERED AGENT
- (03) EMPTY LOT (07) EMPLOYER REFUSAL (11) OUT OF COOK COUNTY
- (04) NOT LISTED (08) CANCELLED BY PLAINTIFF ATTY (12) OTHER REASON (EXPLAIN)

WRIT SERVED ON: A LANDIS

SEX: Female RACE: White AGE: 33

THIS 28-DAY OF October 2020

TIME: 12:06:00 PM

ATTEMPTED SERVICES

DATE	TIME (AM/PM)	STAR#
	:	
	:	
	:	
	:	

THOMAS J. DART,
SHERIFF, BY: /S/ JONES, CHRISTINE , Star # 10311 , DEPUTY

AM0912R



SHERIFF'S OFFICE OF COOK COUNTY
AFFIDAVIT OF SERVICE



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DEFENDANT: JIMMY JOHN LLC
311 S WACKER DR
CHICAGO, IL 60606
STE 3000

PLAINTIFF: ERWIN, HEATHER
ATTORNEY: DAVID C NELSON
420 N HIGH ST
BELLEVILLE, IL 62220
618-277-4000

ATTACHED FEE AMT:

SERVICE INFORMATION: RA BRIAN A SMITH

I CERTIFY THAT I SERVED THE DEFENDANT/RESPONDENT AS FOLLOWS:

___ **(1) PERSONAL SERVICE:** BY LEAVING A COPY OF THE WRIT/ORDER WITH THE DEFENDANT/RESPONDENT PERSONALLY, AND INFORMING DEFENDANT/RESPONDENT OF CONTENTS.

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___ **(5) PROPERTY RECOVERED:** NO ONE PRESENT TO RECEIVE ORDER OF COURT. ORDER POSTED IN PLAIN VIEW.

___ **(6) S.O.S./D.O.I.:** BY LEAVING THE SUMMONS AND COMPLAINT WITH THE SECRETARY OF THE STATE/DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS, AN AGENT OF SAID DEFENDANT LISTED ABOVE. ANY AGENT OF SAID CORPORATION NOT FOUND IN THE COUNTY OF COOK.

___ **(7) CERTIFIED MAIL**

**** COMPLETE THIS SECTION IF WRIT IS A THIRD PARTY CITATION/GARNISHMENT ****

___ **(8) AND BY MAILING ON THE ___ DAY OF _____ 20___ A COPY OF THE THIRD PARTY GARNISHMENT/CITATION SUMMONS AND NOTICE TO THE JUDGMENT DEBTOR'S LAST KNOWN ADDRESS AS INDICATED IN THE NOTICE WITHIN (2) BUSINESS DAYS OF SERVICE UPON GARNISHEE/THIRD PARTY DEFENDANT.**

THE NAMED DEFENDANT WAS NOT SERVED FOR THE GIVEN REASON BELOW:

- ___ (01) NO CONTACT
- ___ (02) MOVED
- ___ (03) EMPTY LOT
- ___ (04) NOT LISTED
- ___ (05) WRONG ADDRESS
- ___ (06) NO SUCH ADDRESS
- ___ (07) EMPLOYER REFUSAL
- ___ (08) CANCELLED BY PLAINTIFF ATTY
- ___ (09) DECEASED
- ___ (10) NO REGISTERED AGENT
- ___ (11) OUT OF COOK COUNTY
- ___ (12) OTHER REASON (EXPLAIN)

EXPLANATION:

WRIT SERVED ON: A LANDIS

SEX: Female

RACE: White

AGE: 33

THIS 28 DAY OF October 2020

TIME: 12:06:00 PM

ATTEMPTED SERVICES

DATE	TIME (AM/PM)	STAR#
	:	
	:	
	:	
	:	

THOMAS J. DART,

SHERIFF, BY: /S/ JONES, CHRISTINE, Star # 10311, DEPUTY

AM0912R

Kahalal A. Clay
Circuit Clerk
Michelle Foster

20L0759
Cook County
11:57 AM
11035380



SHERIFF'S OFFICE OF COOK COUNTY
AFFIDAVIT OF SERVICE



CASE NUMBER: 20L0759 MULT. SER.: 2 DOC. TYPE: LAW
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DEFENDANT: JIMMY JOHN LLC **PLAINTIFF:** ERWIN, HEATHER
 311 S WACKER DR **ATTORNEY:** DAVID C NELSON
 CHICAGO, IL 60606 420 N HIGH ST
 STE 3000 BELLEVILLE, IL 62220
 618-277-4000

ATTACHED FEE AMT:
 SERVICE INFORMATION: RA BRIAN A SMITH

I CERTIFY THAT I SERVED THE DEFENDANT/RESPONDENT AS FOLLOWS:

- (1) PERSONAL SERVICE:** BY LEAVING A COPY OF THE WRIT/ORDER WITH THE DEFENDANT/RESPONDENT PERSONALLY, AND INFORMING DEFENDANT/RESPONDENT OF CONTENTS.
 - (2) SUBSTITUTE SERVICE:** BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT AT THE DEFENDANT'S USUAL PLACE OF ABODE WITH A FAMILY MEMBER OR PERSON RESIDING THERE, 13 YEARS OR OLDER, AND INFORMING THAT PERSON OF THE CONTENTS OF THE SUMMONS. ALSO, A COPY OF THE SUMMONS WAS MAILED TO THE DEFENDANT AT HIS OR HER USUAL PLACE OF ABODE ON
 - (3) UNKNOWN OCCUPANTS:** BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT NAMING "UNKNOWN OCCUPANTS" WITH A PERSON OF THE AGE OF 13 OR UPWARDS OCCUPYING SAID PREMISE.
 - (4) CORP/CO/BUS/PART:** BY LEAVING THE APPROPRIATE NUMBER OF COPIES OF THE SUMMONS, COMPLAINTS, INTERROGATORIES, JUDGMENTS, CERTIFICATIONS AND NOTICES WITH THE REGISTERED AGENT, AUTHORIZED PERSON OR PARTNER OF THE DEFENDANT CORPORATION _____ COMPANY _____ BUSINESS _____ PARTNERSHIP _____
 - (5) PROPERTY RECOVERED:** NO ONE PRESENT TO RECEIVE ORDER OF COURT. ORDER POSTED IN PLAIN VIEW.
 - (6) S.O.S./D.O.I.:** BY LEAVING THE SUMMONS AND COMPLAINT WITH THE SECRETARY OF THE STATE/DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS, AN AGENT OF SAID DEFENDANT LISTED ABOVE. ANY AGENT OF SAID CORPORATION NOT FOUND IN THE COUNTY OF COOK.
 - (7) CERTIFIED MAIL**
- **** COMPLETE THIS SECTION IF WRIT IS A THIRD PARTY CITATION/GARNISHMENT ******
- (8) AND BY MAILING ON THE _____ DAY OF _____ 20____ A COPY OF THE THIRD PARTY GARNISHMENT/CITATION SUMMONS AND NOTICE TO THE JUDGMENT DEBTOR'S LAST KNOWN ADDRESS AS INDICATED IN THE NOTICE WITHIN (2) BUSINESS DAYS OF SERVICE UPON GARNISHEE/THIRD PARTY DEFENDANT.**

THE NAMED DEFENDANT WAS NOT SERVED FOR THE GIVEN REASON BELOW:

- (01) NO CONTACT (05) WRONG ADDRESS (09) DECEASED
- (02) MOVED (06) NO SUCH ADDRESS (10) NO REGISTERED AGENT
- (03) EMPTY LOT (07) EMPLOYER REFUSAL (11) OUT OF COOK COUNTY
- (04) NOT LISTED (08) CANCELLED BY PLAINTIFF ATTY (12) OTHER REASON (EXPLAIN)

EXPLANATION:

WRIT SERVED ON: A LANDIS
 SEX: Female RACE: White AGE: 33
 THIS 28 DAY OF October 2020
 TIME: 12:06:00 PM

ATTEMPTED SERVICES

DATE	TIME (AM/PM)	STAR#
	:	
	:	
	:	

THOMAS J. DART,
 SHERIFF, BY: /S/ JONES, CHRISTINE, Star # 10311, DEPUTY

AM0912R

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST CLAIR COUNTY, ILLINOIS

INITIAL MANDATORY STATUS CONFERENCE SETTING ASSIGNMENT

ERWIN VS JIMMY JOHNS LLC	20-L-0759
--------------------------	-----------

TO: A FILE COPY

FILED
ST. CLAIR COUNTY
NOV 02 2020
William D. Stiehl
CIRCUIT CLERK
22

Date : 12/7/2020

Time : 9:00 AM

Room : 405

The above-styled case is assigned to: HON WILLIAM D STIEHL JR.

Counsel familiar with the case and authorized to act is ordered to appear for an Initial Mandatory Status Conference on the above date, time and courtroom pursuant to Local Rule 6.06, and Supreme Court Rule 218.

At the aforesaid conference the following shall be considered:

1. Service upon all of the parties;
2. Whether the case will be jury or no-jury;
3. The nature, issues, and complexity of the case;
4. Simplification of the issues;
5. Amendments and challenges to the pleadings;
6. Admissions of fact and documents;
7. Limitations of discovery, including but not limited to written discovery, depositions, and opinion witnesses;
8. Third parties;
9. Scheduling of settlement conferences;
10. Necessity of subsequent case management conferences;
11. Trial settings.

Office of Chief Judge

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST CLAIR COUNTY, ILLINOIS

INITIAL MANDATORY STATUS CONFERENCE SETTING ASSIGNMENT

ERWIN VS JIMMY JOHNS LLC	20-L-0759
--------------------------	-----------

TO: JIMMY JOHN S LLC

FILED
ST. CLAIR COUNTY
NOV 02 2020
Michelle A. Clay
CIRCUIT CLERK
22

Date : 12/7/2020

Time : 9:00 AM

Room : 405

The above-styled case is assigned to: HON WILLIAM D STIEHL JR.

Counsel familiar with the case and authorized to act is ordered to appear for an Initial Mandatory Status Conference on the above date, time and courtroom pursuant to Local Rule 6.06, and Supreme Court Rule 218.

At the aforesaid conference the following shall be considered:

1. Service upon all of the parties;
2. Whether the case will be jury or no-jury;
3. The nature, issues, and complexity of the case;
4. Simplification of the issues;
5. Amendments and challenges to the pleadings;
6. Admissions of fact and documents;
7. Limitations of discovery, including but not limited to written discovery, depositions, and opinion witnesses;
8. Third parties;
9. Scheduling of settlement conferences;
10. Necessity of subsequent case management conferences;
11. Trial settings.

Office of Chief Judge

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST CLAIR COUNTY, ILLINOIS

INITIAL MANDATORY STATUS CONFERENCE SETTING ASSIGNMENT

ERWIN VS JIMMY JOHNS LLC	20-L-0759
--------------------------	-----------

FILED
ST. CLAIR COUNTY
NOV 02 2020
Habitat a. Clay
CIRCUIT CLERK
22

TO: JIMMY JOHN S FRANCHISE LLC

Date : 12/7/2020

Time : 9:00 AM

Room : 405

The above-styled case is assigned to: HON WILLIAM D STIEHL JR.

Counsel familiar with the case and authorized to act is ordered to appear for an Initial Mandatory Status Conference on the above date, time and courtroom pursuant to Local Rule 6.06, and Supreme Court Rule 218.

At the aforesaid conference the following shall be considered:

1. Service upon all of the parties;
2. Whether the case will be jury or no-jury;
3. The nature, issues, and complexity of the case;
4. Simplification of the issues;
5. Amendments and challenges to the pleadings;
6. Admissions of fact and documents;
7. Limitations of discovery, including but not limited to written discovery, depositions, and opinion witnesses;
8. Third parties;
9. Scheduling of settlement conferences;
10. Necessity of subsequent case management conferences;
11. Trial settings.

Office of Chief Judge

Kahalah A. Clay

From: Grochocinski, Mary <MGrochocinski@iardc.org>
Sent: Wednesday, October 28, 2020 4:47 PM
To: Andrew Gleeson; Kahalah A. Clay
Subject: 10/28 St. Clair County Rule 707 Submissions

To Whom It May Concern:

We have been served with a Statement pursuant to Supreme Court Rule 707 in the following cases:

Name:	ARDC #: Case#:	Contact Information:	Address:
Reza John Azimi-Tabrizi Firm, LLC Ste. 300 MO 64050	6335221 20-L-0759 1144335	(816) 716-1120 jazimi@kansascitylawyer.co	Azimi Law 136 E. Walnut, Independence,
Brenda G. Hamilton Bingham, P.C. Boulevard, Suite 1000 64108	6335225 19-L-0457	(816) 421-4460 bhamilton@sb-kc.com	Seigfreid 2323 Grand Kansas City, MO
Julie E. Parisi, Jr. Bingham, P.C. Boulevard, Suite 1000 64108	6335226 19-L-0457	(816) 421-4460 jparisi@sb-kc.com	Seigfreid 2323 Grand Kansas City, MO

We have assigned the out-of-state lawyers an ARDC ID number shown above. That number may be used in this case in the same way as the ARDC number of an Illinois lawyer. The limited scope of the permission will be reflected on the lawyer's public record on the Lawyer Search section of the ARDC website.

Under Rule 707, an eligible out-of-state attorney may enter an appearance and provide legal services in the proceeding upon filing the Statement. No motion or approval of a court is required.

We will conduct a review of the Statements and report to you any eligibility issues that we discover. If we do not find any issues, we will not provide any further report to you. Rule 707 does not require that a court take any independent action to review the eligibility of the out-of-state attorney, but the rule provides that a court may terminate the Rule 707 permission upon report of the ARDC or on its own motion.

If you have any questions, please contact me by reply email or at 312-565-2600.

Electronically Filed
Kahalal A. Clay
Circuit Clerk
Elysia Agne
20L0759
St. Clair County
10/22/2020 3:01 PM
10876076

**CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT
COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

HEATHER ERWIN and ASHLEY PRICE,)	
individually and on behalf of all other)	
similarly-situated current Illinois citizens,)	
)	
Plaintiffs,)	
)	
v.)	No. 20-L-0759
)	
JIMMY JOHN'S LLC and)	
JIMMY JOHN'S FRANCHISE LLC,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the following document was emailed on the 22nd day of October, 2020:

- 1. VERIFIED STATEMENT OF OUT-OF-STATE ATTORNEY PURSUANT TO SUPREME COURT RULE 707.**

ARDC
rule707@iardc.org

Matthew H. Armstrong
Armstrong Law Firm LLC
matt@mattarmstronglaw.com

Heather Erwin
heather_rwn@yahoo.com

Ashley Price
asher1991@hotmail.com

and was mailed with postage paid to the following:

Registered Agent Brian A. Smith
Jimmy John's LLC
311 S. Wacker Dr., Suite 3000
Chicago, IL 60606

Registered Agent Brian A. Smith
Jimmy John's Franchise, LLC
311 S. Wacker Dr., Suite 3000
Chicago, IL 60606

/s/ Amy C. Lynch

NELSON & NELSON,
ATTORNEYS AT LAW, P.C.
420 North High Street
Post Office Box Y
Belleville, IL 62222
618-277-4000 telephone
618-277-1136 facsimile

Electronically Filed
Kahalal A. Clay
Circuit Clerk
Elysia Agne
20L0759
St. Clair County
10/22/2020 3:01 PM
10876076

**CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT
COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

HEATHER ERWIN and ASHLEY PRICE,)
individually and on behalf of all other)
similarly-situated current Illinois citizens,)

Plaintiffs,)

v.)

No. 20-L-0759

JIMMY JOHN'S LLC and)
JIMMY JOHN'S FRANCHISE LLC,)

Defendants.)

**VERIFIED STATEMENT OF OUT-OF-STATE ATTORNEY
PURSUANT TO SUPREME COURT RULE 707**

I, R. John Azimi, submit this Verified Statement pursuant to Illinois Supreme Court Rule 707.

1. My full name is Reza John Azimi-Tabrizi, and my date of birth is 11/09/1966. The address of offices from which I practice law and related email address and telephone numbers are as follows:

R. John Azimi
AZIMI LAW FIRM, LLC
136 E. Walnut, Ste. 300
Independence MO 64050
Tel: 816-716-1120
Email: jazimi@kansascitylawyer.co

2. I represent plaintiffs Heather Erwin, Ashley Price, and the putative class of similarly-situated current Illinois residents in the case and court listed in the case caption above.
3. (a) I have not filed any other appearance pursuant to this rule during this calendar year.
(b) I have not received a registration number from the ARDC.

4. (a) I list each jurisdiction of admission, including any state, territory, or commonwealth of the United States, the District of Columbia, or in a foreign country, and my full admission name and license number:

Reza John Azimi-Tabrizi, Missouri Bar Number 48578

Reza John Azimi-Tabrizi, Kansas Bar Number 21484.

- (b) I attach a letter or certificate of good standing for each of the jurisdictions listed in paragraph 4(a) above.

5. I have no office or other presence in Illinois for the practice of law.
6. I submit to the disciplinary authority of the Supreme Court of Illinois.
7. I have undertaken to become familiar and to comply with the rules of the Supreme Court of Illinois, including the Illinois Rules of Professional Conduct and the Supreme Court Rules on Admission and Discipline of Attorneys, and other Illinois law and practices that pertain to this proceeding.
8. The full name, business address and ARDC number of the Illinois attorneys with whom I have associated in the matter are:

David C. Nelson (ARDC 6225722)
NELSON & NELSON, ATTORNEYS AT LAW, P.C.
420 North High Street
Belleville IL 62220
Tel: 618-277-4000
Email: dnelson@nelsonlawpc.com

Matthew H. Armstrong (ARDC 6226591)
ARMSTRONG LAW FIRM LLC
8816 Manchester Rd., No. 109
St. Louis MO 63144
Tel: 314-258-0212
Email: matt@mattarmstronglaw.com

9. I certify that I have served this Statement upon:

- the Administrator of the Attorney Registration and Disciplinary Commission,
- attorneys David C. Nelson, Matthew H. Armstrong,
- plaintiffs Heather Erwin, Ashley Price,
- defendants Jimmy John's LLC and Jimmy John's Franchise LLC,

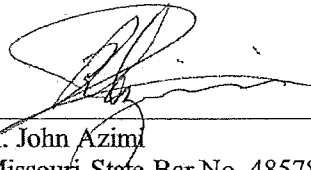
and that these parties are all entitled to service under this rule.

Verification

I verify the accuracy and completeness of each of the above statements.

Dated: October 22, 2020

By: _____


R. John Azimi
Missouri State Bar No. 48578
AZIMI LAW FIRM, LLC
136 E. Walnut, Ste. 300
Independence, MO 64050
Tel: 816-716-1120
Email: jazimi@kansascitylawyer.co
Attorney for Plaintiffs and the Putative Class

The Supreme Court of Missouri



*Certificate of Admission as an
Attorney at Law*

I, Betsy AuBuchon, Clerk of the Supreme Court of Missouri, do hereby certify that the records of this office show that on 4/16/2003,

Reza John Azimi-Tabrizi

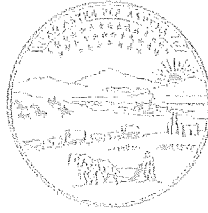
was duly admitted and licensed to practice as an Attorney and Counselor at Law in the Supreme Court of Missouri and all courts of record in this state, and is, on the date indicated below, a member in good standing of this Bar.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the Supreme Court of Missouri at my office in Jefferson City, Missouri, this 6th day of October, 2020.

A handwritten signature in cursive script that reads "Betsy AuBuchon".

Clerk of the Supreme Court of Missouri

The Supreme Court of Kansas



Certificate of Good Standing

I, **Douglas T. Shima**, Clerk of the Supreme Court of the State of Kansas, do hereby certify that the Supreme Court of Kansas is the highest court of law, and the court of last resort within the State of Kansas, and has exclusive jurisdiction over and control of the admission of applicants to the bar of this state.

I do further certify that on November 12, 2004,

Reza John Azimi-Tabrizi

was duly admitted to practice as an attorney and counselor of the Supreme Court and all other courts of the State of Kansas and is, on the date indicated below, a member in good standing of the Kansas Bar.

Witness my hand and the seal of the Supreme Court, hereto affixed at my office in Topeka, Kansas, this 2nd day of October, 2020.

A handwritten signature in cursive script that reads "Douglas T. Shima".

Clerk of the Supreme Court of Kansas

Active Status

ST CLAIR COUNTY
TWENTIETH CIRCUIT COURT, KAHALAH A. CLAY

RECEIPT #: C 000569164
RECEIVED OF: NELSON DAVID C
PART. ID: 1809
BY CLERK: BJ
CHECKS:

DATE: 10-05-2020

TIME: 13:58:42
MEMO:
010643551-0

CASH	CREDIT	CHANGE	OTHER
\$0.00	\$314.00	\$0.00	\$0.00

CASE NUMBER	EVENT	COURT/JUDGE	TAX NO.	AMOUNT
20-L-0759 ERWIN VS JIMMY JOHNS LLC PARTY: NELSON DAVID C	2518	PMT:SCHEDULE 1		\$314.00
TOTAL RECEIPT...				\$314.00

Electronically Filed
Kahalal A. Clay
Circuit Clerk
Morgan Ragsdale
20L0759
St. Clair County
10/1/2020 3:17 PM
10643551

**CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT
COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

HEATHER ERWIN and ASHLEY PRICE,)
individually and on behalf of all other)
similarly-situated current Illinois citizens,)

Plaintiffs,)

v.)

No. 20-L0759

JIMMY JOHN'S LLC and)
JIMMY JOHN'S FRANCHISE, LLC,)

Defendants.)


AFFIDAVIT OF DAMAGES

This affidavit is made pursuant to Supreme Court Rule 222(b). Under the penalties of perjury as provided by Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the money damages sought by Plaintiffs herein do exceed \$50,000.00.

Dated: October 1, 2020

Heather Erwin and Ashley Price, individually, and on behalf of a class of similarly situated current Illinois citizens, Plaintiffs

By:



David C. Nelson (ARDC 6225722)
NELSON & NELSON, ATTORNEYS AT LAW, P.C.
420 North High Street, P.O. Box Y
Belleville, IL 62222
Tel: 618-277-4000
Email: dnelson@nelsonlawpc.com

Matthew H. Armstrong (ARDC 6226591)
ARMSTRONG LAW FIRM LLC
8816 Manchester Rd., No. 109
St. Louis, MO 63144
Tel: 314-258-0212
Email: matt@mattarmstronglaw.com

R. John Azimi (Motion *Pro Hac Vice* to be filed)
Missouri State Bar No. 48578
AZIMI LAW FIRM, LLC
136 E. Walnut, Ste. 300
Independence MO 64050
Tel: 816-716-1120
Email: jazimi@kansascitylawyer.com

Attorneys for Plaintiffs and the Putative Class

Electronically Filed
Kahalal A. Clay
Circuit Clerk
Morgan Ragsdale
20L0759
St. Clair County
10/1/2020 3:17 PM
10643551

**CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT
COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

HEATHER ERWIN and ASHLEY PRICE,)
individually and on behalf of all other)
similarly-situated current Illinois citizens,)

Plaintiffs,)

v.)

No. 20-L-0759

JIMMY JOHN'S LLC and)
JIMMY JOHN'S FRANCHISE, LLC,)

Defendants.)

ENTRY OF APPEARANCE

NOW COMES DAVID C. NELSON and the law firm of NELSON & NELSON,
ATTORNEYS AT LAW, P.C., and hereby enter their appearance as attorneys of record for the
Plaintiffs, Heather Erwin and Ashley Price, in the above entitled proceedings.

Dated: October 1, 2020

Heather Erwin and Ashley Price, individually, and on
behalf of a class of similarly situated current Illinois
citizens, Plaintiffs

By:



David C. Nelson (ARDC 6225722)
NELSON & NELSON, ATTORNEYS AT LAW, P.C.
420 North High Street, P.O. Box Y
Belleville, IL 62222
Tel: 618-277-4000
Email: dnelson@nelsonlawpc.com

Attorneys for Plaintiffs and the Putative Class

Electronically Filed
Kahalal A. Clay
Circuit Clerk
Morgan Ragsdale
20L0759
St. Clair County
10/1/2020 3:17 PM
10643551

**CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT
COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

HEATHER ERWIN and ASHLEY PRICE,)
individually and on behalf of all other)
similarly-situated current Illinois citizens,)

Plaintiffs,)

v.)

No. 20-L-0759

JIMMY JOHN'S LLC and)
JIMMY JOHN'S FRANCHISE, LLC,)


Defendants.)

ENTRY OF APPEARANCE

NOW COMES MATTHEW H. ARMSTRONG and the law firm of ARMSTRONG
LAW FIRM LLC, and hereby enter their appearance as attorneys of record for the Plaintiffs,
Heather Erwin and Ashley Price, in the above entitled proceedings.

Dated: October 1, 2020

Respectfully Submitted,

By: 
Matthew H. Armstrong (ARDC 6226591)
ARMSTRONG LAW FIRM LLC
8816 Manchester Rd., No. 109
St. Louis, MO 63144
Tel: 314-258-0212
Email: matt@mattarmstronglaw.com

Attorneys for Plaintiffs and the Putative Class

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois)
County of St. Clair) S.S.

Case Number 20L0759

Amount Claimed Over \$50,000.00

HEATHER ERWIN and ASHLEY PRICE, individually and on behalf of all other similarly-situated current Illinois citizens,

VS

JIMMY JOHN'S LLC and JIMMY JOHN'S FRANCHISE, LLC,

Plaintiff(s)

Defendant(s)

Classification Prefix L Code 02 Nature of Action Tort Code 2

TO THE SHERIFF: SERVE THIS DEFENDANT AT:

Pltf. Atty. David C. Nelson Code 6225722 NAME JIMMY JOHN'S FRANCHISE, LLC,
Address 420 N. High, P.O. Box Y Registered Agent Brian A. Smith
City Belleville, IL 62222 Phone 618-277-4000
Add. Pltf. Atty. Code ADDRESS 311 S. Wacker Dr., Ste. 3000

SUMMONS COPY

To the above named defendant(s).....:

CITY & STATE Chicago, IL 60606

A. You are hereby summoned and required to appear before this court at
(court location) at M. On 20
to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

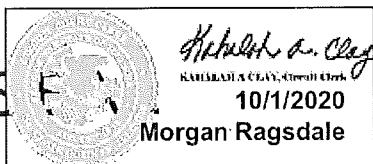
X B. You are summoned and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, in the office of the clerk of this court within 30 days after service of this summons, exclusive of the day of service. If you fail to do so, judgment of decree by default may be taken against you for the relief prayed in the complaint.

TO THE OFFICER:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon of service and fees if any, immediately after service. In the event that paragraph A of this summons is applicable this summons may not be served less than three days before the day of appearance. If service cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date.

WITNESS, 20



Clerk of Court

BY DEPUTY:

DATE OF SERVICE: 20

(To be inserted by officer on copy left with defendant or other person)

I certify that I served this summons on defendants as follows:

(a) - (Individual defendants - personal):

By leaving a copy of the summons and a copy of the complaint with each individual defendant personally as follows:

Name of defendant	Date of service
_____	_____
_____	_____
_____	_____
_____	_____

(b) - (Individual defendants - abode):

By leaving a copy of the summons and a copy of the complaint at the usual place of abode of each individual defendant with a person of his family, of the age of 13 years or upwards, informing that person of the contents of the summons, and also by sending a copy of the summons and of the complaint in a sealed envelope with postage fully prepaid, addressed to each individual defendant at his usual place of abode, as follows:

Name of defendant	Person with whom left	Date of service	Date of mailing
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(c) - Corporation defendants):

By leaving a copy of the summons and a copy of the complaint with the registered agent office, or agent of each defendant corporation as follows:

Defendant corporation	Registered agent, officer or agent	Date of service
_____	_____	_____
_____	_____	_____
_____	_____	_____

(d) - (Other service):

SHERIFF'S FEES	
Service and return	\$ _____
Miles	\$ _____
Total	\$ _____
Sheriff of _____ County	

_____, Sheriff of _____ County

_____, Deputy

CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT

State of Illinois)
County of St. Clair) S.S.

Case Number 20L0759

Amount Claimed Over \$50,000.00

HEATHER ERWIN and ASHLEY PRICE, individually and on behalf of all other similarly-situated current Illinois citizens,

VS

JIMMY JOHN'S LLC and JIMMY JOHN'S FRANCHISE, LLC,

Plaintiff(s)

Defendant(s)

Classification Prefix L Code 02 Nature of Action Tort Code 2

TO THE SHERIFF: SERVE THIS DEFENDANT AT:

Pltf. Atty. David C. Nelson Code 6225722 NAME JIMMY JOHN'S LLC, Registered Agent
Address 420 N. High, P.O. Box Y Brian A. Smith
City Belleville, IL 62222 Phone 618-277-4000
Add. Pltf. Atty. Code ADDRESS 311 S. Wacker Dr., Ste. 3000

SUMMONS COPY

To the above named defendant(s).....

CITY & STATE Chicago, IL 60606

A. You are hereby summoned and required to appear before this court at (court location) at M. On 20 to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be taken against you for the relief asked in the complaint.

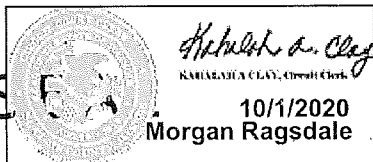
B. You are summoned and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, in the office of the clerk of this court within 30 days after service of this summons, exclusive of the day of service. If you fail to do so, judgment of decree by default may be taken against you for the relief prayed in the complaint.

TO THE OFFICER:

This summons must be returned by the officer or other person to whom it was given for service, with indorsement thereon of service and fees if any, immediately after service. In the event that paragraph A of this summons is applicable this summons may not be served less than three days before the day of appearance. If service cannot be made, this summons shall be returned so indorsed.

This summons may not be served later than 30 days after its date.

WITNESS, 20



Clerk of Court

BY DEPUTY:

DATE OF SERVICE: 20

(To be inserted by officer on copy left with defendant or other person)



I certify that I served this summons on defendants as follows:

(a) - (Individual defendants - personal):

By leaving a copy of the summons and a copy of the complaint with each individual defendant personally as follows:

Name of defendant	Date of service
_____	_____
_____	_____
_____	_____
_____	_____

(b) - (Individual defendants - abode):

By leaving a copy of the summons and a copy of the complaint at the usual place of abode of each individual defendant with a person of his family, of the age of 13 years or upwards, informing that person of the contents of the summons, and also by sending a copy of the summons and of the complaint in a sealed envelope with postage fully prepaid, addressed to each individual defendant at his usual place of abode, as follows:

Name of defendant	Person with whom left	Date of service	Date of mailing
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(c) - Corporation defendants):

By leaving a copy of the summons and a copy of the complaint with the registered agent office, or agent of each defendant corporation as follows:

Defendant corporation	Registered agent, officer or agent	Date of service
_____	_____	_____
_____	_____	_____
_____	_____	_____

(d) - (Other service):

SHERIFF'S FEES	
Service and return	\$ _____
Miles	\$ _____
Total	\$ _____
Sheriff of _____ County	

_____, Sheriff of _____ County

_____, Deputy

Electronically Filed
Kahalal A. Clay
Circuit Clerk
Morgan Ragsdale
20L0759
St. Clair County
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**CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT
COUNTY OF ST. CLAIR, STATE OF ILLINOIS**

HEATHER ERWIN and ASHLEY PRICE,)
individually and on behalf of all other)
similarly-situated current Illinois citizens,)

Plaintiffs,)

v.)

No. 20-L0759

JIMMY JOHN’S LLC and)
JIMMY JOHN’S FRANCHISE, LLC,)

Defendants.)

PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION

COME NOW Plaintiffs, Heather Erwin and Ashley Price, individually and on behalf of all other similarly-situated current citizens of Illinois, by and through counsel, and move for certification of a class defined as follows:

All current citizens of Illinois who purchased Jimmy’s All Natural Triple Chocolate Chunk Cookies and/or Jimmy’s All Natural Raisin Oatmeal Cookies in the five years preceding the filing of the Complaint in this case (the “Class Period”).

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 Defendants have 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.

Section 2–801 of the Illinois Code of Civil Procedure, which is patterned after Rule 23 of the Federal Rules of Civil Procedure, sets forth the prerequisites needed to maintain a class

action. *Uesco Indus., Inc. v. Poolman of Wisconsin, Inc.*, 993 N.E.2d 97, 108 (Ill. App. Ct. 2013) citing 735 ILCS 5/2–801 (West 2008). “Given the relationship between these two provisions, federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois.” *Id.* Under section 2–801, a class may be certified only if the following four requirements are established: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; (3) the representative parties will fairly and adequately protect the interests of the class; and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy.” *Id.*

“To determine whether the proposed class should be certified, the court accepts the allegations of the complaint as true.” *Clark v. TAP Pharmaceutical Products, Inc.*, 343 Ill.App.3d 538, 544–45, 278 Ill.Dec. 276, 798 N.E.2d 123 (2003). “The trial court has broad discretion to determine whether a proposed class satisfies the requirements for class certification and should err in favor of maintaining class [certifications].” *Id.*

1. The Class Is So Numerous that Joinder of All Members is Impracticable.

The class satisfies the numerosity requirement because there are at least hundreds of people and likely thousands in the class. *See Cruz v. Unilock Chicago*, 383 Ill. App. 3d 752, 767–68, 892 N.E.2d 78, 94 (2008) (finding 80 or 90 class members supports a finding of numerosity.). Where there are a number of potential claimants, and the individual amount claimed by each is small, making redress on an individual level difficult, if not impossible, Illinois courts have been particularly receptive to proceeding on a class action basis. *Phillips v. Ford Motor Co.*, No. 99-L-1041, 2003 WL 23353492, at *2 (Ill. Cir. Ct. Sept. 15, 2003).

2. *There Are Questions of Fact and Law Common to the Class and Common Questions Predominate Over Any Questions Affecting Only Individual Members.*

In order to satisfy the second requirement of section 2–801, namely that a common question of fact or law predominates over other questions affecting only individual class members, it must be shown that successful adjudication of the purported class representatives individual claims will establish a right of recovery in other class members. *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 54–55, 880 N.E.2d 653, 657 (2007). As long as there are questions of fact or law common to the class and these predominate over questions affecting only individual members of such class, the statutory requisite is met. *Id. citing Slimack v. Country Life Insurance Co.*, 227 Ill.App.3d 287, 292, 169 Ill.Dec. 190, 591 N.E.2d 70 (1992). Determining whether issues common to the class predominate over individual issues requires the court to identify the substantive issues that will control the outcome, assess which issues will predominate, and then determine whether these issues are common to the class. *Id.* Such an inquiry requires the court to look beyond the pleadings to understand the claims, defenses, relevant facts, and applicable substantive law. *Id.* Once the basic determination has been made that a predominating common question of fact or law exists, the fact that there may be individual questions will not defeat the predominating common question.” *Id.* The requirement of individual proofs should not be a bar to a class action. *Id.*

Certification require[s] only that there be either a predominating common issue of law or fact, not both. *Martin v. Heinold Commodities, Inc.*, 117 Ill.2d 67, 81, 109 Ill.Dec. 772, 510 N.E.2d 840 (1994). “A class action can properly be prosecuted where a defendant is alleged to have acted wrongfully in the same basic manner as to the entire class.” *Phillips v. Ford Motor Co.*, No. 99-L-1041, 2003 WL 23353492, at *2 (Ill. Cir. Ct. Sept. 15, 2003). A common

question may be shown when class members are aggrieved by the same or similar conduct. *Id.*

The common and predominate issue in this case is that Defendants made the same false, misleading, and unfair representation to each and every class member when they sold their products as “All Natural*” when they are not. Indeed, the claims of every class member will rise or fall on the resolution of that question. See *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 757 (7th Cir. 2014).

3. *The Class Representative Will Fairly and Adequately Protect the Interests of the Class.*

The purpose of the adequate representation requirement is to ensure that all class members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim. *Walczak v. Onyx Acceptance Corp.*, 365 Ill.App.3d 664, 678, 302 Ill.Dec. 920, 850 N.E.2d 357 (2006). The test to determine the adequacy of representation is whether the interests of those who are parties are the same as those who are not joined. The interests of the Plaintiffs are the same as the class members because each was harmed in the same way, and each has the same interest in recovering for Defendants’ false, deceptive, and unfair labeling.

4. *A Class Action Is the Appropriate Method For the Fair and Efficient Adjudication of the Controversy.*

The fourth requirement for class certification is that the class action is an appropriate method for fairly and efficiently adjudicating the controversy. *Ramirez v. Midway Moving & Storage, Inc.*, 378 Ill. App. 3d 51, 56, 880 N.E.2d 653, 658 (2007). In deciding whether the fourth requirement is met, a court considers whether a class action can best secure economies of time, effort, and expense or accomplish the other ends of equity and justice that class actions seek to obtain. *Id.* Where the first three requirements for class certification have been satisfied,

the fourth requirement may be considered fulfilled as well.

Because the first three requirements of class certification have been met here, so, too, has the appropriateness requirement. Moreover, this class action can best secure economies of time, effort, and expense or accomplish the other ends of equity and justice that class actions seek to obtain, because no individual class member would have the resources to pursue his or her claims absent the class mechanism, considering the amount in controversy for each claimant. *See Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 757 (7th Cir. 2014); *see also Phillips v. Ford Motor Co.*, No. 99-L-1041, 2003 WL 23353492, at *9 (Ill. Cir. Ct. Sept. 15, 2003) (“The evidence presented to the Court supports the conclusion that, not only is a class action an appropriate method for the fair adjudication of the disputes between Ford and the Classes, but also that it may be the only means by which these disputes may be efficiently resolved.”).

Plaintiffs expressly reserve the right to amend this motion as this case progresses.

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order (1) certifying the class as defined above; (2) appointing Plaintiffs Heather Erwin and Ashley Price as Class Representatives; (3) appointing David C. Nelson, Matthew H. Armstrong, and R. John Azimi as Co-Class Counsel, (4) and for such further relief as the Court determines fair and just.

Dated: October 1, 2020

Heather Erwin and Ashley Price, individually, and on behalf of a class of similarly situated current Illinois citizens, Plaintiffs

By:



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JIMMY JOHN’S FRANCHISE, LLC,)

Defendants.)

CLASS ACTION COMPLAINT

Plaintiffs, Heather Erwin and Ashley Price, 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 Jimmy John’s LLC and Jimmy John’s Franchise, LLC’s (collectively, “Defendants”) deceptive, unfair, and false practices regarding its Jimmy’s All Natural Triple Chocolate Chunk Cookie and Jimmy’s All Natural Raisin Oatmeal Cookie (the “Cookies”).

2. On the label of the Cookies, Defendants intentionally, deceptively, falsely, and unfairly represent that the Cookies are “All Natural*.” Small print on the bottom of the label states “*Minimally processed, no artificial ingredients” which deceives consumers into believing that the Cookies do not contain highly processed, artificial, and/or non-natural ingredients.

3. The Cookies, however, contain refined flour, niacin, reduced iron, thiamine mononitrate, riboflavin, folic acid, sugar, milk powder, soy lecithin, and baking soda, all of which are highly processed, artificial, and/or non-natural ingredients (the “Manufactured Ingredients”).

4. Plaintiffs and reasonable consumers reasonably believe, define, and assume that Cookies labeled “All Natural,” “minimally processed,” and “no artificial ingredients” do not contain highly processed, artificial, and/or non-natural ingredients.

5. Because the Cookies contain the Manufactured Ingredients, the representations that the Cookies are “All Natural,” are “minimally processed,” and contain “no artificial ingredients” are unfair, false, deceptive, and misleading.

6. By claiming that the Cookies are “All Natural,” “minimally processed,” and contain “no artificial ingredients,” Defendants deceive consumers into believing that the Cookies do not contain highly processed, artificial, and/or non-natural ingredients, when they in fact contain the Manufactured Ingredients.

7. Plaintiffs bring this case against Defendants jointly and severally to recover damages for Defendants’ 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

8. Plaintiff Heather Erwin is an Illinois citizen residing in St. Clair County, Illinois. On many occasions during the Class Period (as defined below), Plaintiff purchased the Defendants’ Cookies as part of her regular lunch at Jimmy John’s in Belleville, Illinois, for personal purposes after reviewing the “All Natural*” and “*Minimally processed, no artificial

ingredients” representations on the Cookies’ labels, which deceived her. Plaintiff purchased the Cookies because of the representations mentioned above. If Plaintiff had known the Cookies in fact contained highly processed, artificial, and/or non-natural ingredients, she would not have purchased them or would have paid less for them. The purchase price of the Cookies was \$1.75 per cookie.

9. Plaintiff Ashley Price is an Illinois citizen residing in St. Clair County, Illinois. On at least three occasions during the Class Period (as defined below), Plaintiff purchased the Defendants’ Cookies at Jimmy John’s in Belleville and Collinsville, Illinois, for personal purposes after reviewing the “All Natural*” and “*Minimally processed, no artificial ingredients” representations on the Cookies’ labels, which deceived her. If Plaintiff had known the Cookies in fact contained highly processed, artificial, and/or non-natural ingredients, she would not have purchased them or would have paid less for them. The purchase price of the Cookies was \$1.75 per cookie.

10. Defendant Jimmy John’s LLC is a Delaware limited liability company with its headquarters and principal place of business in Champaign, Illinois.

11. Defendant Jimmy John’s Franchise, LLC is a Delaware limited liability company with its headquarters and principal place of business in Champaign, Illinois.

JURISDICTION AND VENUE

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

13. This Court has personal jurisdiction over Defendants because Defendants are Illinois residents. In addition, as explained below, Defendants have jointly and severally

committed affirmative tortious acts within the State of Illinois that give rise to civil liability, including distributing the fraudulent Cookies for sale throughout the State of Illinois.

14. Venue is proper in this forum pursuant to 735 ILCS 5/2-101 because the transactions out of which the causes of action arose occurred in this county.

FACTUAL ALLEGATIONS

15. Defendants produce, market, and sell foodstuffs—including the Cookies—throughout the State of Illinois.

16. As part of its packaging, labeling, and sales, Defendants affixed labels to the Cookies that claim the Cookies are “All Natural[,]” “minimally processed,” and contain “no artificial ingredients.”

17. By affixing such labels to the packaging of the Cookies, Defendant can entice consumers like Plaintiffs to pay a premium for supposedly “All Natural” Cookies.

18. The labels of the Cookies are deceptive, unfair, false, and misleading in that Defendants prominently represent that the Cookies are “All Natural,” when they are not, are “minimally processed,” when they are not, and contain “no artificial ingredients,” when they do.

19. The Cookies are not free of highly processed, artificial, and/or non-natural ingredients because they contain the Manufactured Ingredients, specifically:

- a. **Wheat flour.** Enriched wheat flour is a highly processed material made by processing grain to a superfine level and removing the outer portion of the seed. This removes nutrients, some of which are then artificially reintroduced (see niacin, reduced iron, thiamine mononitrate, riboflavin, and folic acid below).¹

¹ See, e.g., 21 C.F.R. § 137.165 (regulating enriched flour).

- b. **Niacin.** Niacin is a white, crystalline acid that as a food additive is artificially derived through chemical processes at large industrial facilities.² It is added to enriched flour due to the number of nutrients stripped from wheat during the industrial milling process.
- c. **Reduced iron.** Reduced iron is a metallic powder artificially derived through chemical processes, which “reduce” oxidized iron by a reaction with chemical compounds. Then, like niacin, it is added to enriched flour due to nutrient stripping during the intensive milling process.
- d. **Thiamine mononitrate.** Thiamine mononitrate is artificially “prepared from thiamine hydrochloride by dissolving the hydrochloride salt in alkaline solution followed by precipitation of the nitrate half-salt with a stoichiometric amount of nitric acid.” 21 CFR § 184.1878. The results of this artificial chemical process are then introduced into refined flour as an additive.
- e. **Riboflavin.** Riboflavin is a vitamin artificially produced at industrial levels by fermenting the fungus *Ashbya gossypii* in a chemical compound comprised of, e.g., glucose and corn steep liquor.³
- f. **Folic acid.** Folic acid is a man-made, artificial version of folate, a vitamin occurring in green vegetables and citrus.⁴ It is synthetic, derived at the industrial scale through chemical processes for use as a food additive.

² E.g., Lonza, Niacin and Niacinamide: A Commitment to Quality (2015), <http://www.ethorn.com/ssw/files/Lonza.pdf>.

³ E.g., Fred W. Tanner and Virgil F. Pfeifer, *Production of Riboflavin by Fermentation*, USDA, <https://naldc.nal.usda.gov/download/IND43894159/PDF>.

⁴ E.g., <https://medlineplus.gov/ency/article/002408.htm>; <https://www.healthline.com/nutrition/folic-acid-vs-folate#section3>.

- g. **Sugar.** Sugar is a highly processed food. Sugar is refined through a multi-step process, first by removing liquor from sugar crystals, mixing raw sugar with syrup, processing the result through a centrifuge, and then decolorizing. One popular decolorizing technique pumps sugary liquid through granular activated carbon, another uses ion exchange resin (a polymer). After decolorization, water is boiled off to allow sugar crystals to grow. This is a highly refined, multi-step process far removed from the food's natural state.
- h. **Brown sugar.** Brown sugar is typically highly processed sugar mixed with molasses, itself a highly processed substance left from the sugar refining process.
- i. **Milk powder and dry milk.** Milk powder and dry milk are highly processed ingredients. They are made by taking pasteurized milk, evaporating it, and then spraying the concentrate into heat which solidifies the milk particles. (Milk powder contains more protein than dry milk, but the processing steps are similar.) These highly refined foods undergo extensive processing.
- j. **Soy lecithin.** Soy lecithin is a highly refined food additive. It is made by ... “degumming crude soy oil, [by adding] steam ... in a batch or continuous process. The emulsion is then agitated ... as the phosphatides hydrate and agglomerate, forming a heavy oil-insoluble sludge, which is separated from the oil by use of a centrifuge. The sludge coming from the degumming centrifuge ... may then be bleached once or twice, typically with hydrogen peroxide, to reduce its color from

brown or beige to light yellow. Fluidizing additives such as soy oil, fatty acids, or calcium chloride can then be added Finally the product is film or batch dried.”⁵

k. **Baking soda.** Baking soda is typically artificially made by dissolving soda ash in water, which is then treated with carbon dioxide. Baking soda, or sodium bicarbonate, then precipitates from the solution.

20. In sum, the Cookies contain a long list of ingredients reasonable consumers would consider non-natural, artificial, and/or highly processed, in contradiction of the claims on the front of the labels.⁶

21. Defendants then intentionally and willfully placed the Cookies with the misleading labels into the stream of commerce with the intent to induce consumers to purchase the cookies because of Defendants’ false representations. Just as Defendants intended, Defendants’ false and deceptive representations caused Plaintiffs and Class Members to purchase the Cookies.

22. Defendants’ actions directly and proximately caused damages including economic harm to the Plaintiffs and Class Members in the following way: Defendants used the misleading labels that they knew to be false and deceptive in order to increase their profits by promising reasonable consumers healthy, minimally processed ingredients while delivering cheaper, less healthy, highly processed ingredients. Reasonable consumers, including Plaintiffs and Class Members, expecting the promised natural, minimally processed ingredients, thereby lost the benefit of the bargain because they did not receive what they were promised on the label i.e. what

⁵ <http://www.soyinfocenter.com/HSS/lecithin1.php>.

⁶ Jimmy John’s own website also makes this distinction. See <https://www.jimmyjohns.com/about-us/our-food/> (visited Jan. 4, 2020) (identifying meat, but not cookies, as “natural” and “minimally processed”, while noting the caramel coloring on the meat as *not* minimally processed). Like many of the ingredients in the cookies, caramel coloring is typically made by highly refining carbohydrates. See, e.g., <https://labdoor.com/article/caramel-color-an-overview> (visited Jan. 4, 2020).

they paid for. More, Plaintiffs and Class Members paid a price premium for the Cookies that they would not and should not have paid absent Defendants' misrepresentations.

23. Plaintiffs and reasonable consumers reasonably believe and assume that Cookies labeled "All Natural," "minimally processed," and "no artificial ingredients" do not contain any highly processed, artificial, and/or non-natural ingredients.

24. Neither Plaintiffs nor any reasonable consumer would expect highly processed, artificial, and/or non-natural ingredients to be in Cookies labeled "All Natural," "minimally processed," and "no artificial ingredients."

25. Neither Plaintiffs nor any reasonable consumer when reviewing the Cookies' labels would know or should know that the Cookies contained the Manufactured Ingredients.

26. As a result of Defendants' deceitful labels, Defendants were able to charge, and Plaintiffs and Class Members paid, a premium for the Cookies supposedly free of the Manufactured Ingredients. Because the Cookies are not in fact free of highly processed, artificial, and/or non-natural ingredients, the Cookies were worth less than they were represented to be, and Plaintiffs and Class Members paid extra for them.

27. Defendants' misrepresentations constitute unfair and deceptive acts and practices, in that Defendants used and employed deception, fraud, false pretense, false promise, and misrepresentation as those words are construed under the ICFA.

CLASS ALLEGATIONS

28. 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 persons ("Class Members" of the "Class") consisting of:

All current citizens of Illinois who purchased Jimmy's All Natural Triple Chocolate Chunk Cookies and/or Jimmy's All Natural Raisin Oatmeal Cookies in the five years preceding the filing of the Complaint (the "Class Period").

29. 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 Defendants have 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.

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

31. There are numerous and substantial questions of law or fact common to all 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 representations that the Cookies are "All Natural[,]" "minimally processed," and contain "no artificial ingredients" are unfair, false, misleading, and deceptive;
- b. whether Defendants intended that Plaintiffs and the Class Members would rely on their "all natural[,]" "minimally processed," and "no artificial ingredients" representations;
- c. whether Defendants violated the ICFA by selling the Cookies with false, misleading, and deceptive representations;
- d. whether Defendants breached express warranties;

- e. whether Defendants' acts constitute deceptive, unfair, and fraudulent business acts and practices or deceptive, untrue, and misleading merchandising practices;
- f. whether Defendants have been unjustly enriched; and
- g. the proper measure of damages sustained by Plaintiffs and Class Members.

32. 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 Defendants' conduct affecting Class Members, and Plaintiffs have no interests adverse to the interests other Class Members.

33. Plaintiffs will fairly and adequately protect the interests of Class Members and has retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

34. 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 Defendants profit from and enjoy their 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 Defendants committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;

- d. when the joint and several liability of Defendants 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 Plaintiffs and members of the Class can seek redress for the harm caused to them by Defendants.

35. 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 Defendants.

36. 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. Thus, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

Count I – Violation of the ICFA

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

38. 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 ILCS 505/2.

39. Defendants’ conduct in advertising and selling the Cookies as being “All Natural[,]” “minimally processed,” and having “no artificial ingredients” when they in fact contain the Manufactured Ingredients constitutes the act, use and employment of deception, fraud, false pretenses, false promises, misrepresentation, and unfair practices in the conduct of Defendants’ trade or commerce. All of Defendants’ conduct was intentional, willful and with intent to economically harm the Plaintiffs and the Class.

40. Defendants intended that Plaintiffs and the Class Members would rely on their “All Natural,” “minimally processed,” and “no artificial ingredients” representations. Defendants are aware that consumers like Plaintiffs and Class Members are becoming more and more interested in purchasing products that do not contain potentially harmful highly processed, artificial, and/or non-natural ingredients. Defendants intended to prey on this interest.

41. The “All Natural,” “minimally processed,” and “no artificial ingredients” misrepresentations are material because they concerns the type of information upon which a reasonable consumer would be expected to rely in deciding whether to purchase the Cookies.

42. Because Defendants are in the business of selling the Cookies, Defendants committed the unfair and deceptive acts in the conduct of its trade and commerce.

43. Defendants’ practice of advertising and selling the Cookies as being “All Natural,” “minimally processed,” and having “no artificial ingredients” when they in fact contain the Manufactured Ingredients is also unfair. The practice offends public policy and is immoral, unethical, and unscrupulous because Illinois consumers are increasingly interested in purchasing

and using products without highly processed, artificial, and/or non-natural ingredients. Selling the Cookies as being “All Natural” when they are not, as being “minimally processed” when they are not, and as containing “no artificial ingredients” when they do, offends the public’s expectation to be told the truth about the products they are buying.

44. Defendants’ conduct directly and proximately caused substantial injury to Plaintiffs, the Class and reasonable consumers. Defendants knowingly and willfully misled consumers into purchasing Cookies that are not what they are represented to be, and not what the consumers paid for. Moreover, Defendants knowingly and willfully charged a premium for the Cookies as if the Cookies were the superior and more expensive product that Defendants represented them to be. Finally, Defendants exposed consumers to unwanted, highly processed and artificial and non-natural ingredients.

45. Neither Plaintiffs nor any reasonable consumer would expect to find the Manufactured Ingredients in Cookies labeled “All Natural,” “minimally processed,” or “no artificial ingredients.”

46. Neither Plaintiffs nor any reasonable consumer when reviewing the Cookies’ labels would know nor should know that Manufactured Ingredients are highly processed, artificial, and/or non-natural ingredients.

47. Defendants knowingly, willfully, and intentionally labeled and marketed their Cookies as being “All Natural[,]” “minimally processed,” and having “no artificial ingredients,” despite knowing they contained the Manufactured Ingredients.

48. Knowingly and intentionally including the Manufactured Ingredients in its Cookies labeled and marketed as being “All Natural[,]” “minimally processed,” and having “no

artificial ingredients” demonstrates a conscious disregard for Plaintiffs’ and Class Members’ welfare.

49. Because the Cookies are not “All Natural” as they are represented to be, are highly processed rather than “minimally processed” as claimed, and do contain the Manufactured Ingredients in spite of the “no artificial ingredients” representation, the Cookies as sold were worth less than the Cookies as represented, and Plaintiffs and Class Members paid a premium for them. Had the whole truth been known, Plaintiffs and Class Members would not have purchased the Cookies.

50. Plaintiffs and Class Members were deceived by the “All Natural,” “minimally processed,” and/or “no artificial ingredients” claims on the Cookies and suffered economic damages as a proximate result of Defendants’ joint and several unlawful conduct as alleged herein, including the difference between the actual value of the Cookies and the value of the Cookies if they had been as represented.

Count II – Breach of Express Warranty, in the Alternative

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

52. Defendants made the affirmations of fact and the promise to Plaintiffs and the Class Members that the Cookies are “All Natural,” “minimally processed,” and contain “no artificial ingredients,” guaranteeing to Plaintiff and the Class Members that the Cookies were in conformance with those representations.

53. These affirmations of fact and promise became part of the basis of the bargain in which Plaintiffs and Class Members purchased Defendants' Cookies, and Plaintiffs and Class Members relied on the affirmations when making their purchasing decisions.

54. Defendants breached their express warranty that the Cookies were "All Natural," "minimally processed," and contained "no artificial ingredients" by providing Plaintiffs and Class Members with Cookies that contained the Manufactured Ingredients.

55. Defendants knew that the particular Cookies Plaintiffs bought in fact contained the Manufactured Ingredients when they manufactured and distributed the Cookies. Therefore, Plaintiffs were not required to give Defendants pre-suit notice of the nonconforming goods because Defendants knew that every single Cookie manufactured contained the Manufactured Ingredients, as demonstrated by its packaging, labels, and website. Further, Defendants' fraudulent practices and breach such as putting Manufactured Ingredients in the Cookies and labeling them as being "All Natural," "minimally processed," and containing "no artificial ingredients" constitute an incurable defect in that Plaintiffs have already consumed the Cookies and in that, until very recently, Defendants refused to sell their Cookies with accurate labeling.

56. As a result of Defendants' joint and several breach of warranty, Defendants have directly and proximately injured and caused damages to Plaintiffs and the Class Members by depriving them of the benefit of their bargain in that they bought Cookies that were not what they were represented to be; Plaintiffs and the class have spent money on Cookies that had less value than was reflected in the premium purchase price they paid for the Cookies.

57. Because Defendants made the affirmations of fact and promise directly on their own labels and packaging, privity is not required to bring this claim.

Count III – Unjust Enrichment, in the Alternative

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

59. By purchasing the Cookies, Plaintiffs and the Class Members conferred a benefit on Defendants in the form of the purchase price of the fraudulent Cookies.

60. Defendants appreciated the benefit because, were consumers not to purchase the Cookies, Defendants would have no sales and make no money.

61. Defendants' acceptance and retention of the benefit is inequitable and unjust and violates the fundamental principles of justice, equity, and good conscience because the benefit was obtained by Defendants' fraudulent and misleading representations about the Cookies.

62. Equity cannot in good conscience permit Defendants 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

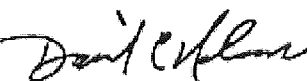
WHEREFORE, Plaintiffs, individually and on behalf of all similarly situated persons, prays the Court:

- a. grant certification of this case as a class action;
- b. appoint Plaintiffs as Class Representatives and Plaintiffs' counsel as Class Counsel;
- c. award compensatory damages to Plaintiffs and the proposed Class, or, alternatively, require Defendants to disgorge or pay restitution of their ill-gotten gains;
- d. award treble damages under Count I;
- e. award pre- and post-judgment interest;

- f. award reasonable and necessary attorneys' fees and costs;
- g. award punitive damages; and
- h. for all such other and further relief, as may be just and proper.

Dated: October 1, 2020

Heather Erwin and Ashley Price, individually, and on behalf of a class of similarly situated current Illinois citizens, Plaintiffs

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ClassAction.org

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