

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

Sharon Martin, individually and on)	
Behalf of all others similarly situated in)	
Missouri,)	
)	
Plaintiffs,)	Case No.: 4:20-cv-415
)	
v.)	
)	
Jimmy John’s, 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 Jackson County, Missouri (“State Court”) to the United States District Court for the Western District of Missouri. As grounds for removal, Defendants state as follows:¹

FACTUAL BACKGROUND

1. On January 4, 2020, Plaintiff Sharon Martin filed a putative class-action petition (hereinafter “Petition”) in State Court, Case No. 2016-CV00408, against Defendants. The Petition alleges three counts against Defendants: (1) violation of the Missouri Merchandising Practices Act (“MMPA”), Mo. Rev. Stat. § 407.020; (2) negligent misrepresentation; and (3) unjust enrichment.

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

¹ Pursuant to the United States District Court for the Western District of Missouri Local Rule 3.1, Defendants attach their Civil Cover Sheet hereto as **Exhibit 1**.

for relief.” 28 U.S.C. § 1446(b)(1); *see also* *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 350 (1999) (concluding that a “courtesy copy” of the file-stamped complaint, which was faxed from Plaintiff’s counsel to Defendant, was insufficient to trigger 30-day period for purposes of § 1446); *Dominick v. Midwestern Indem. Co.*, No. 14-5103, 2014 WL 12601512, at *4 (W.D. Mo. Oct. 2, 2014) (concluding that the 30-day period for purposes of § 1446 commences on the “date Defendant was formally served with process,” not on the date of receipt of courtesy copy through email). Here, Plaintiff sent Defendants’ registered agent a copy of the Summons and the Petition by certified mail on May 20, 2020, which Defendants’ registered agent received on May 26, 2020. *See* Mo. Rev. Stat. § 506.150.4 (allowing for service of the Summons and the Petition to be effectuated through first-class mail upon return of a notice of acknowledgement within 30 days after mailing); Mo. R. Civ. P. 54.16 (same). A true and accurate copy of the Summons and the Petition are attached hereto as **Exhibit 2**. Although there is conflicting authority as to whether the date of receipt of the Summons and Petition through the mail, on the one hand, *or* the date of execution of acknowledgement following receipt of the Summons and the Petition through the mail, on the other, triggers the 30-day clock for purposes of § 1446(b)(1), this Notice is filed within 30 days of receipt of the Summons and Petition, and thus, under either interpretation, this Notice of Removal is timely. *Compare* *Bugg v. Wash. Mutual Bank*, No. 06-4196, 2006 WL 8438327, at *1–2 (W.D. Mo. Oct. 24, 2006) (stating that the receipt of the summons and the petition followed by return of the notice of acknowledgement triggers the 30-day clock for § 1446(b)), *with* *Quinlan v. Party City Corp.*, No. 19-CV-163, 2019 WL 1586561, at *2 (E.D. Mo. Apr. 12, 2019) (stating that the receipt of the summons and the petition by mail, without more, triggers the 30-day clock for § 1446(b)).

VENUE

3. Venue is proper in this Court because the Western District of Missouri, Western Division, 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”² 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* *Dammann v. Progressive Direct Ins. Co.*, 856 F.3d 580, 583 (8th Cir. 2017). All of these requirements are satisfied in the present case, and it is, therefore, removable under 28 U.S.C. § 1453(b).

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. Plaintiff alleges in the Petition that she is a Missouri resident. **Exh. 2**, ¶ 5. Plaintiff also alleges that she seeks to represent a class of “persons in Missouri who purchased”

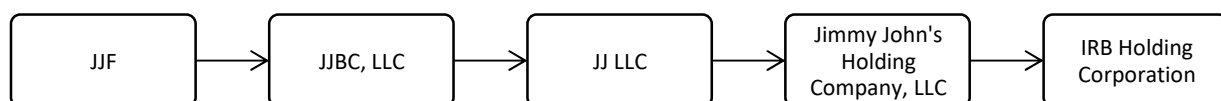
² This action falls within CAFA’s definition of “class action.” 28 U.S.C. § 1332(d)(1)(B) (defining “class action” as “any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action”). In her Petition, Plaintiff alleges she filed this action under Missouri Rule of Civil Procedure 52.08, *see* **Exh. 2**, ¶ 24; and Rule 52.08 is the state analog to Federal Rule of Civil Procedure 23. *See* Mo. R. Civ. P. 52.08 committee notes (“Rule 52.08 is essentially identical to Rule 23, Fed.R.Civ.P.”).

Jimmy John’s Triple Chocolate Chunk Cookies (“Chocolate Chunk”) and/or Jimmy John’s Raisin Oatmeal Cookies (“Raisin Oatmeal”) from Defendants. *See id.* at ¶ 24.

7. Plaintiff alleges in the Petition that Defendants are Delaware limited liability companies with their principal places of business in Illinois. *Id.* at ¶ 6.

8. Both Defendants are limited liability companies. As a general rule, a limited liability company’s citizenship depends on the citizenship of its members. *Jet Midwest Int’l Co. v. Jet Midwest Grp., LLC*, 932 F.3d 1102, 1104 (8th Cir. 2019). Where a member of a limited liability company is itself a limited liability company, facts concerning the underlying member must also “be alleged in accordance with the rules applicable to each such type of entity, through however many layers of ownership there may be” until one reaches only individuals or corporations. *OHM Hotel Grp., LLC v. Dewberry Consultants, LLC*, No. 15-1541, 2015 WL 5920663, at *1 (E.D. Mo. Oct. 9, 2015); *see also Heckemeyer v. NRT Mo., LLC*, No. 12-1532, 2013 WL 2250429, at *1–2 (E.D. Mo. May 22, 2013) (following allegations of members of limited liability company through “layers of membership” until reaching corporation).

9. As set forth in the Affidavit of Jeffrey Vaughan (“Vaughan Affidavit”), JJF is a direct, wholly owned subsidiary of JJBC, LLC. **Exh. 3**, ¶ 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 3**.



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. 3, ¶ 2(e)*), JJF and JJ LLC are also citizens of Delaware and Georgia. *See Jet Midwest Int’l Co.*, 932 F.3d at 1104 (“The citizenship of non-incorporated entities like limited liability companies depends on the citizenship of their 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 Plaintiff, a citizen of Missouri, on the other. *See* 28 U.S.C. § 1332(d)(2)(A); *see also Grawitch v. Charter Commc’ns, Inc.*, 750 F.3d 956, 959 (8th Cir. 2014) (requiring “minimal (as opposed to complete) diversity” for jurisdiction under CAFA, which means “any class member and any defendant are citizens of different states” (emphasis added) (quoting *Westerfeld v. Indep. Processing, LLC*, 621 F.3d 819, 822 (8th Cir. 2010))).

12. Alternatively, CAFA contains a 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.”).

Minimal diversity would be satisfied under this standard as well, as JJF and JJ LLC are both incorporated in Delaware with their principal places of business in Illinois. **Exh. 3**, ¶¶ 2(a), (c); *see also* **Exh. 2**, ¶ 6 (alleging the same).³

NUMBER OF MEMBERS OF PROPOSED CLASS

13. 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).

14. This requirement may be shown on the face of the pleadings. *See Brown v. Mortg. Elec. Registration Sys., Inc.*, 738 F.3d 926, 932 (8th Cir. 2013) (determining the numerosity requirement based on “the face of her Complaint at the time the action was removed”). Here, Plaintiff seeks to represent “[a]ll persons in Missouri who purchased Jimmy’s All Natural Raisin Oatmeal Cookies and/or Jimmy’s All Natural Triple Chocolate Chunk Cookie in the five years preceding the filing of this Petition.” **Exh. 2**, ¶ 24. Plaintiff further asserts that “[u]pon information and belief, the Class consists of thousands of purchasers.” *Id.* at ¶ 26. This allegation is sufficient to satisfy this CAFA requirement.

15. Extrinsic evidence—which would be admissible for this purpose even if Plaintiff 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 **1,982,524** transactions at Jimmy John’s restaurants in Missouri that included the sale of one or

³ Although sibling circuits have addressed the issue, the Eighth Circuit has not addressed whether limited liability companies, like Defendants, are “unincorporated associations” for purposes of 28 U.S.C. § 1332(d)(10). *Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698, 704 (4th Cir. 2010) (determining that a limited liability company is an “unincorporated association” within the meaning of § 1332(d)(10)); *see also O’Shaughnessy v. Cypress Media, LLC*, No. 13-0947, 2014 WL 1791065, at *4 (W.D. Mo. May 6, 2014) (adopting the rule in *Ferrell* that limited liability companies are “unincorporated associations”).

more Chocolate Chunk Cookies and/or Raisin Oatmeal Cookies between November 1, 2016 and January 4, 2020.⁴ **Exh. 3**, ¶ 6. Without question, those **1,982,524** transactions between November 1, 2016 and January 4, 2020 were made by well more than 100 putative class members.

AMOUNT IN CONTROVERSY

16. 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).

17. The removing party bears the burden of establishing this requirement by a preponderance of the evidence. *See Dammann*, 856 F.3d at 583. 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. *Pirozzi v. Massage Envy Franchising, LLC*, 938 F.3d 981, 983 (8th Cir. 2019). Thus, the jurisdictional question is “not whether the damages *are* greater than the requisite amount, but whether a fact finder *might* legally conclude that they are.” *Faltermeier v. FCA USA LLC*, 899 F.3d 617, 621 (8th Cir. 2019) (emphasis added) (quoting *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002)). 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 federal court unless “it is *legally impossible* for the plaintiff to recover that much.” *Pirozzi*, 938 F.3d at 984 (quoting *Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008)); *see also Dammann*, 856 F.3d at 584 (stating

⁴ 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 Petition, on approximately November 1, 2016. As such, this Notice calculates the sales and number of transactions of Chocolate Chunk and Raisin Oatmeal Cookies between November 1, 2016 and January 4, 2020, the date the Petition was filed.

that “legally impossible standard” is not met even if “highly improbable that the [p]laintiffs will recover the amounts [d]efendants have put into controversy” (quoting *Raskas v. Johnson & Johnson*, 719 F.3d 884, 888 (8th Cir. 2013)).

18. The removing party’s burden is “a pleading requirement, not a demand for proof.” *Pirozzi*, 938 F.3d at 984 (quoting *Spivey*, 528 F.3d at 986). In support of that burden, the removing party may introduce its own affidavits, declarations, or other documentation to satisfy the preponderance of the evidence standard. *See Raskas*, 719 F.3d at 888.

19. Additionally, the removing party does not need to “confess liability in order to show that the controversy exceeds the threshold.” *Hartis v. Chi. Title Ins. Co.*, 694 F.3d 935, 945 (8th Cir. 2012) (quoting *Spivey*, 938 F.3d at 986). To be clear, Defendants dispute that Plaintiff (or any putative class member) is entitled to any recovery. But for purposes of the removal analysis, Defendants need only show that “a fact finder *might*” conclude Plaintiff is entitled to damages exceeding \$5 million. *Faltermeier*, 899 F.3d at 621 (quoting *Kopp*, 280 F.3d at 885).

20. **ACTUAL DAMAGES.** Plaintiff is very deliberate in describing and limiting the claimed damages at issue, in an attempt to avoid CAFA jurisdiction. Specifically, Plaintiff alleges that the amount in controversy is “less than \$75,000” for Plaintiff and “less than \$5 [million] in the aggregate.” **Exh. 2**, ¶ 7; *see also id.* at ¶ 8 (stating that the damages, including attorneys’ fees and costs, will not “exceed \$4,999,999” and is less than \$5 million to avoid the “minimum threshold to create federal court jurisdiction”); *id.* at ¶ 54(c) (praying for damages in amount that “will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class”). But Plaintiff’s proposed limitation of the actual damages does not affect removability under CAFA. First, the Supreme Court in *Standard Fire Insurance Company v. Knowles*, 568

U.S. 588 (2013) held that a named plaintiff cannot prevent removal to federal court under CAFA by stipulating, prior to class certification, that the named plaintiff and the class will not seek damages in excess of CAFA’s \$5 million jurisdictional threshold “because a plaintiff who files a proposed class action cannot legally bind members of the proposed class before the class is certified.” 568 U.S. at 593, 596. Similarly, although not directly addressed by the Eighth Circuit, sibling circuits have held that a named plaintiff cannot prevent removal to federal court under CAFA by merely alleging, without stipulating, in the petition that the amount of damages do not exceed \$5 million. *Johnson v. Pushpin Holdings, LLC*, 748 F.3d 769, 772–73 (7th Cir. 2014) (following the holding in *Standard Fire* for non-stipulated allegations in the petition); *see also Boegeman v. Bank Star*, No. 12-1514, 2012 WL 4793739, at *3 (E.D. Mo. Oct. 9, 2012) (finding that the named plaintiff’s non-stipulated allegation in the petition limiting damages to less than \$5 million was insufficient to defeat jurisdiction under CAFA prior to *Standard Fire*). As such, Plaintiff’s allegations that she will not seek more than \$5 million in actual damages does not affect removability under CAFA. *See Exh. 2*, ¶¶ 7–8, 54(c). Instead, removability will turn on the actual damages available, as well as attorneys’ fees and punitive damages.

- a. **Missouri’s Merchandising Practices Act (Count I)**. Plaintiff’s first count of the Petition alleges violations of the MMPA. *See Exh. 2*, ¶¶ 34–39. Compensatory damages on an MMPA claim are measured by the benefit-of-the-bargain rule, “which compares the actual value of the item to the value of the item if it had been as represented at the time of the transaction.” *Plubell v. Merck & Co.*, 289 S.W.3d 707, 715 (Mo. Ct. App. 2009). Here, Plaintiff pleads that the “ascertainable loss” associated with the violations is “the difference between the actual value of the products (containing highly processed and artificial

ingredients) and the value of the products if they had been as represented (containing all natural or minimally processed ingredients).” **Exh. 2**, ¶ 38. Moreover, Plaintiff alleges that the total value of her individual loss is “at most” equal to “the refund of the purchase price she paid for the Cookies.” *Id.* at ¶ 8. In other words, Plaintiff alleges that *but for* the “All-Natural” Labels, Plaintiff, and those similarly situated, would not have purchased the Chocolate Chunk and Raisin Oatmeal Cookies, meaning that the Cookies had no value to the purchasers. 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 **\$4,683,611**, which becomes the total amount of damages pleaded in the Petition for the MMPA claim. *See Exh. 3*, ¶ 7.

- b. **Negligent Misrepresentation (Count II)**. Plaintiff’s second count of the Petition alleges common law negligent misrepresentation. **Exh. 2**, ¶¶ 40–48. Plaintiff alleges she “suffered an economic loss” in paying a “price premium” for the Chocolate Chunk and Raisin Oatmeal Cookies that she would not have paid absent the alleged misrepresentations on the “All-Natural” Labels. *Id.* at ¶ 47. Like the damages alleged in the MMPA claim, she alleges Defendants deprived her of the benefit of the bargain, which equates to “less value than was reflected in the price [] paid for” the Cookies. *Id.* at ¶ 48. She alleges the total value of the loss is “at most” equal to “the refund of the purchase price she paid for the Cookies.” *Id.* at ¶ 8. Thus, like the MMPA claim, this claim would result in **\$4,683,611** in total damages. **Exh. 3**, ¶ 7.

c. **Unjust Enrichment (Count III)**. Plaintiff’s third count of the Petition alleges unjust enrichment. **Exh. 2, ¶¶ 49–53**. Plaintiff alleges that she, and those similarly situated, “conferred a benefit” on Defendants. *Id.* at ¶ 50. She further alleges that Defendants “appreciated the benefit” because without Plaintiff, and those similarly situated, Defendants would have no sales. *Id.* at ¶ 51. Thus, she suggests that Defendants must “disgorge” the proceeds from the sales of the Cookies. *Id.* at ¶ 54(c). That is, this claim would result in **\$4,683,611** in total damages—the total amount of sales of a Chocolate Chunk and Raisin Oatmeal Cookies with “All-Natural” Label between January 4, 2015 and January 4, 2020. **Exh. 3, ¶ 7**.

21. **ATTORNEYS’ FEES**. Plaintiff also seeks recovery of her attorneys’ fees. **Exh. 2, ¶ 54(e)**. Attorneys’ fees are included in the amount in controversy. *See Pirozzi*, 938 F.3d at 984 (considering attorneys’ fee in amount in controversy for CAFA jurisdiction involving MMPA claim). Here, Plaintiff again attempts to preemptively limit the attorneys’ fees and costs that she will seek. **Exh. 2, ¶ 54(e)** (pleading that she will not seek attorneys’ fees and costs that “exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class.”). But as with actual damages, a plaintiff may not stipulate to a limitation on the amount of attorneys’ fees in order to defeat CAFA jurisdiction. *See Faltermeier*, 899 F.3d at 621 (applying the rule in *Standard Fire*, 568 U.S. at 596—that the plaintiff may not stipulate to limiting damages— to attorneys’ fees allegation). As such, Plaintiff’s allegation that she will not seek more than \$5 million in attorneys’ fees does not affect the removability for CAFA. Further, although Defendants dispute that Plaintiff is entitled to recover attorneys’ fees, Plaintiff has asserted at least one cause of action under which attorneys’ fees may be awarded. Mo. Rev. Stat. § 407.025.1 (allowing a

court the discretion to award attorneys' fees to the prevailing party in cases alleging violations of the MMPA). When determining how fees should be accounted for in evaluating CAFA jurisdiction on an MMPA claim, this Court has used a 33% fee for purposes of the calculation. *See Harrington Enters., Inc. v. Safety-Kleen Sys., Inc.*, 42 F. Supp. 3d 1197, 1201 (W.D. Mo. 2013). Using the **\$4,683,611** damage figure above, a fee award of 33% would yield **\$1,545,591** in fees, for a total award of **\$6,229,202**, well in excess of the \$5 million threshold.⁵

22. Based on Plaintiff's allegations in the Petition and information set forth in the Vaughan Affidavit, Plaintiff's 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, there is subject matter jurisdiction in this Court. *See* 28 U.S.C. § 1332(b).

⁵ Plaintiff attempts to disavow the recovery of punitive damages in the Petition to circumvent CAFA; however, it is undisputed that Plaintiff could potentially seek leave to amend the Complaint to incorporate punitive damages, which are otherwise recoverable under the MMPA. **Exh. 2**, ¶ 12; *see* Mo. Rev. Stat. § 407.025.1. While published Eighth Circuit authority does not appear to explicitly address whether a plaintiff may effectively disavow punitive damages solely to avoid CAFA jurisdiction, the Supreme Court's decision in *Standard Fire* informs that the potential measure of punitive damages should be included in the amount in controversy for purposes of CAFA, even where not requested or disavowed in the initial pleading. This is because a disavowal or failure to request punitive damages "does not bind anyone" in the putative class, and thereby, does not reduce the value of the putative-class claim that may be later amended. 568 U.S. at 593; *see also Back Doctors Ltd. v. Metro. Prop. & Casualty Ins. Co.*, 637 F.3d 827 (7th Cir. 2011) (finding punitive damages are properly included in the amount in controversy for purposes of CAFA because although the plaintiff "did not expressly ask for a punitive award and did not include in the complaint allegations of wanton or egregious conduct," the plaintiff "does not cite any decision . . . that such an omission from a complaint makes a punitive award impossible").

In any event, here the removability of this case does not rely, in any measure, upon the Court's inclusion or exclusion of punitive damages in the jurisdictional calculation. To the contrary, proper evaluation of the potential compensatory damages and attorneys' fees at issue sufficiently and independently support the aggregation of potential damages well in excess of the \$5 million jurisdictional threshold.

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 4**, 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 Plaintiff, through her attorneys of record, and to the Circuit Court of Jackson County, Missouri.

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

Respectfully submitted,

/s/ Sara A. Fevurly

Michael S. Hargens MO Bar No. 51077

Sara A. Fevurly MO Bar No. 69076

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sara.fevurly@huschblackwell.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above was served on May 27, 2020, via the Court's electronic filing system and the U.S. Postal Service, on the following counsel of record:

R. John Azimi
136 E. Walnut, Ste. 300
Independence, MO 64050

and

Jeff Lingwall
4968 N. Ice Springs Way
Boise, ID 83713

/s/ Sara A. Fevurly

Attorney for Defendants

EXHIBIT 2



IN THE 16TH JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI

Judge or Division: CORY L. ATKINS	Case Number: 2016-CV00408
Plaintiff/Petitioner: SHARON B. MARTIN	Plaintiff's/Petitioner's Attorney/Address: REZA JOHN AZIMI-ABBASI 1361 W. Walnut STE 300 INDEPENDENCE, MO 64050
Defendant/Respondent: JIMMY JOHN'S LLC	Court Address: 303 W. Kansas INDEPENDENCE, MO 64050
Nature of Suit: CC Other Tort	(Date File Stamp)

Summons for Service by First Class Mail

The State of Missouri to: JIMMY JOHN'S LLC
Alias:

C/O BRIAN SMITH
311 S WACKER DR STE 3000
CHICAGO, IL 60606

COURT SEAL OF



JACKSON COUNTY

You are summoned and, within 30 days after the enclosed acknowledgment is filed, you must file an answer to the enclosed petition with the clerk of this court and also must serve this answer upon Plaintiff's/Petitioner's attorney at the above address. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition.

03-APR-2020
Date Issued

Clerk

Further Information:

Directions to Clerk

The clerk should issue one copy of this summons for each Defendant/Respondent to be served by first class mail. Under Section 506.150.4, RSMo, service by first class mail may be made by Plaintiff/Petitioner or any person authorized to serve process under Section 506.140, RSMo.

SUMMONS/GARNISHMENT SERVICE PACKETS ATTORNEY INFORMATION

Under the Missouri e-filing system now utilized by the 16th Judicial Circuit Court, once a case has been accepted for filing, a clerk prepares the necessary documents for service. The summons/garnishment is sent to the attorney by an e-mail containing a link so that the filer may print and deliver the summons/garnishment, pleadings and any other necessary documents to the person designated to serve the documents.

Pursuant to State statutes, Supreme Court Rules and Local Court Rules, attorneys are required to print, attach and serve specific documents with certain types of Petitions and other filings.

Please refer to the Court's website for instructions on how to assemble the service packets at:

16thcircuit.org → Electronic Filing Information → Required Documents for Service – eFiled cases → Summons/Garnishment Service Packet Information.

Please review this information periodically, as revisions are frequently made. Thank you.

Circuit Court of Jackson County



IN THE 16TH JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI

Judge or Division: CORY L. ATKINS	Case Number: 2016-CV00408
Plaintiff/Petitioner: SHARON B. MARTIN	Plaintiff's/Petitioner's Attorney/Address: REZA JOHN AZIMI-FABRIZI 1361 W. A. MOULTON STE. 300 INDEPENDENCE, MO. 64050
Defendant/Respondent: JIMMY JOHN'S LLC	Court Address: 208 W. Kansas INDEPENDENCE, MO. 64050
Nature of Suit: CC Other Tort	

(Date File Stamp)

Summons for Service by First Class Mail

The State of Missouri to: JIMMY JOHN'S FRANCHISE LLC
Alias:

COURT CLERK
311 S WACKER DR STE 3000
CHICAGO, IL 60606

COURT SEAL OF



JACKSON COUNTY

You are summoned and, within 30 days after the enclosed acknowledgment is filed, you must file an answer to the enclosed petition with the clerk of this court and also must serve this answer upon Plaintiff's/Petitioner's attorney at the above address. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition.

03-APR-2020
Date Issued

[Signature]
Clerk

Further Information:

Directions to Clerk

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Circuit Court of Jackson County

IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

Sharon Martin, individually and on)
behalf of all others similarly situated in)
Missouri,)

Plaintiffs,)

v.)

Jimmy John’s, LLC, and)
Jimmy John’s Franchise, LLC)

Defendants.)

Serve: Jimmy John’s LLC;)
Jimmy John’s Franchise, LLC)
2212 Fox Dr.)
Champaign, IL 61820)

Case No.: _____

Division: _____

JURY TRIAL DEMANDED

PETITION AND JURY DEMAND

1. Plaintiff, Sharon Martin, individually and on behalf of all others similarly situated in Missouri, alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

NATURE OF THE CASE

2. This case arises out of Defendant Jimmy John’s LLC and Defendant Jimmy John’s Franchise, LLC (together Jimmy John’s or “Defendants”) deceptive, unfair, and false merchandising practices regarding its Jimmy’s All Natural Raisin Oatmeal Cookie and Jimmy’s All Natural Triple Chocolate Chunk Cookie (the “Cookies”).

3. The labels on the Cookies state the Cookies are “All Natural*.” Small print on the bottom of the label states “*Minimally processed, no artificial ingredients.” Despite these claims, the cookies contain a long list of highly processed or artificial and non-natural ingredients, including

refined flour, niacin, reduced iron, thiamine mononitrate, riboflavin, folic acid, sugar, milk powder, soy lecithin, and baking soda.

4. Plaintiff brings this case to recover damages for Defendants' false, deceptive, and misleading marketing and advertising in violation of the Missouri Merchandising Practices Act ("MMPA") and Missouri common law.

PARTIES

5. Plaintiff Sharon Martin is a resident of Blue Springs, Missouri. On at least one occasion during the Class Period (defined below), including on December 31, 2018, Plaintiff purchased the Cookies at a Jimmy John's store located in Jackson County, Missouri, for personal, family, or household purposes and for evaluative purposes of this lawsuit. The purchase price was \$1.75 each. Plaintiff's claim is typical of class members in this regard.

6. On information and belief, Jimmy John's LLC and Jimmy John's Franchise, LLC are Delaware limited liability companies headquartered in Champaign, Illinois. Defendants have not designated a registered agent in Missouri. Therefore, Defendants can be served by mail pursuant to Missouri Rules of Civil Procedure 54.16.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court. The amount in controversy, however, is less than \$75,000 per Plaintiff and Class Member individually and less than \$5,000,000 in the aggregate.

8. Plaintiff believes and alleges that the total value of her individual claims is, at most, equal to the refund of the purchase price she paid for the Cookies. Moreover, because the value of Plaintiff's claims is typical of all class members with respect to the value of the claim, the total

damages of Plaintiff and Class Members, inclusive of costs and attorneys' fees, will not exceed \$4,999,999 and is far less than the five million dollar (\$5,000,000) minimum threshold to create federal court jurisdiction. There is therefore no diversity or CAFA jurisdiction for this case.

9. Defendants cannot plausibly allege that they had sufficient sales of the Cookies in Missouri during the Class Period to establish an amount in controversy that exceeds CAFA's jurisdictional threshold.

10. This Court has personal jurisdiction over Defendants pursuant to Missouri Code § 506.500, as Defendants have had more than minimum contact with the State of Missouri and have availed themselves of the privilege of conducting business in this state. In addition, as explained below, Defendants have committed affirmative tortious acts within the State of Missouri that gives rise to civil liability, including distributing the fraudulent Cookies for sale throughout the State of Missouri.

11. Venue is proper in this forum pursuant to Missouri Code § 508.010 because Plaintiff's injury occurred in Jackson County.

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

13. This pleading demands unliquidated damages. Accordingly, it is intended to limit recovery to an amount less than that required for diversity or CAFA jurisdiction in federal court.

ALLEGATIONS OF FACT

14. Defendants produce, market, and sell foodstuffs—including the Cookies—throughout the United States, including Missouri.

15. As part of its packaging, labeling, and sales, Defendants affixed labels to the Cookies that claim the Cookies are all natural, with minimally processed ingredients.



16. In fact, the Cookies contain numerous highly processed and/or artificial ingredients.

INGREDIENTS: UNBLEACHED WHEAT FLOUR (ENRICHED WITH NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, AND FOLIC ACID), BUTTER, BROWN SUGAR, SUGAR, MILK CHOCOLATE CHIPS (SUGAR, UNSWEETENED CHOCOLATE, WHOLE MILK POWDER, COCOA BUTTER, SOY LECITHIN [EMULSIFIER], VANILLA), BITTERSWEET CHOCOLATE CHIPS (UNSWEETENED CHOCOLATE, SUGAR, COCOA BUTTER, MILK FAT, SOY LECITHIN [EMULSIFIER], AND VANILLA), WHITE CHIPS (SUGAR, PALM KERNEL OIL, WHOLE MILK POWDER, NONFAT DRY MILK, PALM OIL, SOY LECITHIN [EMULSIFIER], AND VANILLA), WHOLE EGG, MOLASSES, SALT, BAKING SODA, NATURAL FLAVOR, WATER. PROCESSED IN A FACILITY WITH WHEAT, EGGS, DAIRY, SOY, NUTS AND PEANUTS.

MANUFACTURED FOR JIMMY JOHN'S • CHAMPAIGN, IL 61820 • PART NUMBER 270271017

05101914
INGREDIENTS: OATS, SUGAR, UNBLEACHED WHEAT FLOUR (ENRICHED WITH NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, AND FOLIC ACID), BUTTER, RAISINS, WHOLE EGGS, MOLASSES, SALT, VANILLA EXTRACT, SPICES, SOY LECITHIN (EMULSIFIER), AND BAKING SODA. PROCESSED IN A FACILITY WITH WHEAT, EGGS, DAIRY, SOY, NUTS AND PEANUTS.

17. These include:

- 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

- 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 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.

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

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>.

- 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

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

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.

18. 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

19. Defendants then placed the Cookies with the misleading labels into the stream of commerce, where they were purchased by Plaintiff and Class Members.

20. Defendants’ purpose in using the misleading labels was to increase its profits by promising consumers healthy, minimally processed ingredients while delivering cheaper, less healthy, highly processed ingredients. Reasonable consumers expecting the promised natural, minimally processed ingredients thus paid a price premium for the Cookies due to Defendants’ misrepresentations.

21. Others making “minimally processed” claims about related products are clear to exclude the very ingredients Defendants claim are “minimally processed.” For example, the Lunchables depicted below similarly state “natural” on their label, and similarly caveat this with “minimally

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).

processed” *but* note “except for crackers and treat.”⁷ The crackers and treat contain many of the same ingredients Defendants claim are “minimally processed.”



Ingredients

Vanilla Creme Sandwich Cookie (Unbleached Enriched Flour [Wheat Flour, Niacin, Reduced Iron, Thiamine Mononitrate {Vitamin B1}, Riboflavin {Vitamin B2}, Folic Acid], Sugar, Soybean Oil, Palm Oil, High Fructose Corn Syrup, Cornstarch, Salt, Leavening [Sodium Bicarbonate, Monocalcium Phosphate], Natural and Artificial Flavor, Soy Lecithin [Emulsifier], Beta Carotene [for Color]). Hickory Smoked Uncured Ham - Chopped and Formed, Contains 17% Seasoning Solution, No Added Nitrates or Nitrites Except Those Naturally Occuring in Sea Salt, and Cultured Celery Juice (Ham, Water, Cultured Dextrose, Contains Less than 2% of Sea Salt, Honey, Vinegar, Cultured Celery Juice, Cherry Powder). White Cheddar Cheese (Pasteurized Cultured Milk, Salt, Enzymes). Crackers (Enriched Flour [Wheat Flour, Niacin, Reduced Iron, Thiamine Mononitrate, Riboflavin, Folic Acid], Palm Oil, Sugar, Salt, Baking Soda, Whey [from Milk], Soy Lecithin, Natural Flavor).

22. Defendants’ misrepresentations violate the MMPA’s prohibition of the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material

⁷ <https://www.citymarket.com/p/lunchables-natural-uncured-ham-cheddar-cheese/0004470009938> (visited Jan. 4, 2020). *See also* <https://www.hy-vee.com/grocery/PD46342414/Hormel-Natural-Choice-Turkey-Cheddar-Cheese-and-Crackers> (visited Jan. 4, 2020) (making similar “natural” and “minimally processed” label claims while excluding crackers).

fact in connection with the sale or advertisement of any merchandise in trade or commerce. § 407.020, RSMo.

23. While FDA regulations govern some relevant label aspects, FDA labeling regulations do not address the totality of the misleading label claims, and thus do not preempt Missouri law prohibiting deceptive advertising.

CLASS ALLEGATIONS

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

All persons in Missouri who purchased Jimmy’s All Natural Raisin Oatmeal Cookie and/or Jimmy’s All Natural Triple Chocolate Chunk Cookie in the five years preceding the filing of this Petition (the “Class Period”).

25. 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.

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

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

- a. Whether the Cookies' labels are false, misleading, and deceptive;
- b. Whether Defendants violated the MMPA by selling the Cookies with false, misleading, and deceptive representations;
- c. Whether Defendants' acts constitute deceptive and fraudulent business acts and practices or deceptive, untrue, and misleading advertising; and
- d. The proper measure of damages sustained by Plaintiff and Class Members.

28. The claims of the Plaintiff are typical of the claims of Class Members, in that they share the above-referenced facts and legal claims or questions with Class Members and there is a sufficient relationship between the damage to Plaintiff and Defendants' conduct affecting Class.

29. Members and Plaintiff have no interests adverse to the interests of other Class Members.

30. Plaintiff will fairly and adequately protect the interests of Class Members and has retained competent and experienced counsel.

31. 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 enjoys its ill-gotten gains;
- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendants

committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;

d. When the liability of Defendants have been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and

e. This action presents no difficulty that would impede its management by the court as a class action, which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendants.

32. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual member of the Class, which would establish incompatible standards of conduct for Defendants.

33. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

First Claim for Relief

Violation of Missouri's Merchandising Practices Act

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

35. Missouri's Merchandising Practices Act (the "MMPA") prohibits the "act, use or employment by any person of any deception, fraud, false pretense, false promise,

misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce.” § 407.020, RSMo.

36. The MMPA further provides for a civil action to recover damages in § 407.025.1, RSMo, as follows:

Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party attorney’s fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary or proper.

37. Defendants’ conduct constitutes the act, use, or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices, and/or the concealment, suppression, or omission of any material facts in connection with the sale or advertisement of any merchandise in trade or commerce in that the label of the Cookies leads consumers to believe that the Cookies contains only natural, minimally processed ingredients, which they do not. The products were therefore worth less than the products as represented.

38. Plaintiff and Class Members purchased the Cookies for personal, family, or household purposes and thereby suffered an ascertainable loss as a result of Defendants’ unlawful conduct as alleged herein, including the difference between the actual value of the products (containing highly processed and artificial ingredients) and the value of the products if they had been as represented (containing all natural or minimally processed ingredients).

39. Defendants’ unlawful practices have caused similar injury to Plaintiff and numerous other persons. § 407.025.2.

Second Claim for Relief
Negligent Misrepresentation

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

41. Defendants have negligently represented that the Products contain minimally processed and natural ingredients. In fact, the Products contain a long list of highly processed, non-natural, and artificial ingredients.

42. Such representation was made by Defendants with the intent that Plaintiff and Class Members rely on such representation in purchasing the Product.

43. As a result, Defendants have failed to take ordinary care and misrepresented a material fact to the public, including Plaintiff and Class Members, about the Product.

44. Defendants knew or should have known that these omissions and affirmative statements would materially affect consumers' decisions to purchase the Products.

45. Reasonable consumers relied on Defendants' representations set forth herein, and, in reliance thereon, purchased the Product.

46. The reliance is reasonable and justified in that Defendants appeared to be, and represented itself to be, reputable businesses.

47. Plaintiff and Class Members suffered an economic loss by paying a price premium for the Product than they would not have paid absent Defendants' misrepresentations.

48. As a direct and proximate result of these misrepresentations, Plaintiff and Class Members were induced to purchase and consume the Products, and have suffered damages to be determined at trial, in that, among other things, they have been deprived of the benefit of their bargain in that they bought Products that were not what they were represented to be, and they

have spent money on Products that had less value than was reflected in the price they paid for the Products.

Third Claim for Relief
Unjust Enrichment

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

50. Plaintiff and the Class Members conferred a benefit on Defendants in that they purchased the Cookies that were manufactured, distributed, and sold by the Defendants.

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

52. Defendants' acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendants' fraudulent and misleading representations about the Cookies.

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

PRAYER FOR RELIEF

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

- a. Grant certification of this case as a class action;
- b. Appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. Award compensatory damages to Plaintiff and the proposed Class in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class, or,

alternatively, require Defendants to disgorge or pay restitution in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;

d. Award pre- and post-judgment interest in an amount which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;

e. Award reasonable and necessary attorneys' fees and costs to Class counsel, which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class; and

f. For all such other and further relief as may be just and proper.

Dated this 4th day of January 2020.

Sharon Martin, Individually, and on Behalf of a
Class of Similarly Situated Individuals, Plaintiff

Submitted By:

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ATTORNEY FOR PLAINTIFF AND PUTATIVE CLASS

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EXHIBIT 4

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2016-CV00408 - SHARON K MARTIN V JIMMY JOHN'S LLC ET AL (E-CASE)

Case Header

Parties & Attorneys

Docket Entries

Charges, Judgments & Sentences

Service Information

Filings Due

Scheduled Hearings & Trials

Civil Judgments

Garnishments/ Execution

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Scheduled For: 07/21/2020; 8:30 AM ; CORY LEE ATKINS; Jackson - Independence

 Hearing Continued/Rescheduled

Hearing Continued From: 04/21/2020; 8:30 AM Case Management Conference

 Motion Granted/SustainedAssociated Entries: 04/13/2020 - [Motion for Continuance](#) 04/13/2020 [Proposed Order Filed](#)

Proposed Order Granting Petitioners Motion to Reschedule CMC; Electronic Filing Certificate of Service.

Filed By: REZA JOHN AZIMI-TABRIZI

On Behalf Of: SHARON K MARTIN

 [Motion for Continuance](#)

Motion to Reschedule CMC; Electronic Filing Certificate of Service.

Filed By: REZA JOHN AZIMI-TABRIZI

Associated Entries: 04/20/2020 - Motion Granted/Sustained

04/03/2020 [Summons Issued- 1st Class Mail](#)

Document ID: 20-SFCM-39, for JIMMY JOHNS FRANCHISE LLC.

 [Summons Issued- 1st Class Mail](#)

Document ID: 20-SFCM-38, for JIMMY JOHN'S LLC.

04/01/2020 [Order Granting Ext of Time](#) Motion Granted/SustainedAssociated Entries: 02/19/2020 - [Motion for Extension of Time](#) 03/30/2020 [Alias Summons Requested](#)

Request for Alias Summons; Electronic Filing Certificate of Service.

Filed By: REZA JOHN AZIMI-TABRIZI

On Behalf Of: SHARON K MARTIN

02/19/2020 [Proposed Order Filed](#)

Proposed Order for Extension of Time; Electronic Filing Certificate of Service.

Case 4:20-cv-00415-RK Document 1-4 Filed 05/27/20 Page 2 of 40

Filed By: REZA JOHN AZIMI-TABRIZI

On Behalf Of: SHARON K MARTIN

[Motion for Extension of Time](#)

Motion for Extension of Service; Electronic Filing Certificate of Service.

Filed By: REZA JOHN AZIMI-TABRIZI

Associated Entries: 04/01/2020 - Motion Granted/Sustained

01/07/2020 [Summons Issued- 1st Class Mail](#)

Document ID: 20-SFCM-1, for JIMMY JOHN'S.

[Case Mgmt Conf Scheduled](#)

Associated Entries: 04/20/2020 - Hearing Continued/Rescheduled

Scheduled For: 04/21/2020; 8:30 AM ; CORY LEE ATKINS; Jackson - Independence

01/04/2020 [Filing Info Sheet eFiling](#)

Filed By: REZA JOHN AZIMI-TABRIZI

[Note to Clerk eFiling](#)

Filed By: REZA JOHN AZIMI-TABRIZI

[Class Action Filed](#)

Conf Civil Info Sheet.

Filed By: REZA JOHN AZIMI-TABRIZI

On Behalf Of: SHARON K MARTIN

[Entry of Appearance Filed](#)

EOA - Azimi and Lingwall.

Filed By: REZA JOHN AZIMI-TABRIZI

[Pet Filed in Circuit Ct](#)

Petition.

Filed By: REZA JOHN AZIMI-TABRIZI

[Judge Assigned](#)

IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

Sharon Martin, individually and on)
behalf of all others similarly situated in)
Missouri,)

Plaintiffs,)

v.)

Jimmy John’s, LLC, and)
Jimmy John’s Franchise, LLC)

Defendants.)

Serve: Jimmy John’s LLC;)
Jimmy John’s Franchise, LLC)
2212 Fox Dr.)
Champaign, IL 61820)

Case No.: _____

Division: _____

JURY TRIAL DEMANDED

PETITION AND JURY DEMAND

1. Plaintiff, Sharon Martin, individually and on behalf of all others similarly situated in Missouri, alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

NATURE OF THE CASE

2. This case arises out of Defendant Jimmy John’s LLC and Defendant Jimmy John’s Franchise, LLC (together Jimmy John’s or “Defendants”) deceptive, unfair, and false merchandising practices regarding its Jimmy’s All Natural Raisin Oatmeal Cookie and Jimmy’s All Natural Triple Chocolate Chunk Cookie (the “Cookies”).

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15. As part of its packaging, labeling, and sales, Defendants affixed labels to the Cookies that claim the Cookies are all natural, with minimally processed ingredients.



16. In fact, the Cookies contain numerous highly processed and/or artificial ingredients.

INGREDIENTS: UNBLEACHED WHEAT FLOUR (ENRICHED WITH NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, AND FOLIC ACID), BUTTER, BROWN SUGAR, SUGAR, MILK CHOCOLATE CHIPS (SUGAR, UNSWEETENED CHOCOLATE, WHOLE MILK POWDER, COCOA BUTTER, SOY LECITHIN [EMULSIFIER], VANILLA), BITTERSWEET CHOCOLATE CHIPS (UNSWEETENED CHOCOLATE, SUGAR, COCOA BUTTER, MILK FAT, SOY LECITHIN [EMULSIFIER], AND VANILLA), WHITE CHIPS (SUGAR, PALM KERNEL OIL, WHOLE MILK POWDER, NONFAT DRY MILK, PALM OIL, SOY LECITHIN [EMULSIFIER], AND VANILLA), WHOLE EGG, MOLASSES, SALT, BAKING SODA, NATURAL FLAVOR, WATER. PROCESSED IN A FACILITY WITH WHEAT, EGGS, DAIRY, SOY, NUTS AND PEANUTS.

MANUFACTURED FOR JIMMY JOHN'S • CHAMPAIGN, IL 61820 • PART NUMBER 270271017

05101914
INGREDIENTS: OATS, SUGAR, UNBLEACHED WHEAT FLOUR (ENRICHED WITH NIACIN, REDUCED IRON, THIAMINE MONONITRATE, RIBOFLAVIN, AND FOLIC ACID), BUTTER, RAISINS, WHOLE EGGS, MOLASSES, SALT, VANILLA EXTRACT, SPICES, SOY LECITHIN (EMULSIFIER), AND BAKING SODA. PROCESSED IN A FACILITY WITH WHEAT, EGGS, DAIRY, SOY, NUTS AND PEANUTS.

17. These include:

- 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

- 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 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.

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

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>.

- 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

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

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.

18. 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

19. Defendants then placed the Cookies with the misleading labels into the stream of commerce, where they were purchased by Plaintiff and Class Members.

20. Defendants’ purpose in using the misleading labels was to increase its profits by promising consumers healthy, minimally processed ingredients while delivering cheaper, less healthy, highly processed ingredients. Reasonable consumers expecting the promised natural, minimally processed ingredients thus paid a price premium for the Cookies due to Defendants’ misrepresentations.

21. Others making “minimally processed” claims about related products are clear to exclude the very ingredients Defendants claim are “minimally processed.” For example, the Lunchables depicted below similarly state “natural” on their label, and similarly caveat this with “minimally

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).

processed” *but* note “except for crackers and treat.”⁷ The crackers and treat contain many of the same ingredients Defendants claim are “minimally processed.”



Ingredients

Vanilla Creme Sandwich Cookie (Unbleached Enriched Flour [Wheat Flour, Niacin, Reduced Iron, Thiamine Mononitrate {Vitamin B1}, Riboflavin {Vitamin B2}, Folic Acid], Sugar, Soybean Oil, Palm Oil, High Fructose Corn Syrup, Cornstarch, Salt, Leavening [Sodium Bicarbonate, Monocalcium Phosphate], Natural and Artificial Flavor, Soy Lecithin [Emulsifier], Beta Carotene [for Color]). Hickory Smoked Uncured Ham - Chopped and Formed, Contains 17% Seasoning Solution, No Added Nitrates or Nitrites Except Those Naturally Occuring in Sea Salt, and Cultured Celery Juice (Ham, Water, Cultured Dextrose, Contains Less than 2% of Sea Salt, Honey, Vinegar, Cultured Celery Juice, Cherry Powder). White Cheddar Cheese (Pasteurized Cultured Milk, Salt, Enzymes). Crackers (Enriched Flour [Wheat Flour, Niacin, Reduced Iron, Thiamine Mononitrate, Riboflavin, Folic Acid], Palm Oil, Sugar, Salt, Baking Soda, Whey [from Milk], Soy Lecithin, Natural Flavor).

22. Defendants’ misrepresentations violate the MMPA’s prohibition of the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material

⁷ <https://www.citymarket.com/p/lunchables-natural-uncured-ham-cheddar-cheese/0004470009938> (visited Jan. 4, 2020). *See also* <https://www.hy-vee.com/grocery/PD46342414/Hormel-Natural-Choice-Turkey-Cheddar-Cheese-and-Crackers> (visited Jan. 4, 2020) (making similar “natural” and “minimally processed” label claims while excluding crackers).

fact in connection with the sale or advertisement of any merchandise in trade or commerce. § 407.020, RSMo.

23. While FDA regulations govern some relevant label aspects, FDA labeling regulations do not address the totality of the misleading label claims, and thus do not preempt Missouri law prohibiting deceptive advertising.

CLASS ALLEGATIONS

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

All persons in Missouri who purchased Jimmy’s All Natural Raisin Oatmeal Cookie and/or Jimmy’s All Natural Triple Chocolate Chunk Cookie in the five years preceding the filing of this Petition (the “Class Period”).

25. 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.

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

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

- a. Whether the Cookies' labels are false, misleading, and deceptive;
- b. Whether Defendants violated the MMPA by selling the Cookies with false, misleading, and deceptive representations;
- c. Whether Defendants' acts constitute deceptive and fraudulent business acts and practices or deceptive, untrue, and misleading advertising; and
- d. The proper measure of damages sustained by Plaintiff and Class Members.

28. The claims of the Plaintiff are typical of the claims of Class Members, in that they share the above-referenced facts and legal claims or questions with Class Members and there is a sufficient relationship between the damage to Plaintiff and Defendants' conduct affecting Class.

29. Members and Plaintiff have no interests adverse to the interests of other Class Members.

30. Plaintiff will fairly and adequately protect the interests of Class Members and has retained competent and experienced counsel.

31. 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 enjoys its ill-gotten gains;
- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendants

committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;

d. When the liability of Defendants have been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and

e. This action presents no difficulty that would impede its management by the court as a class action, which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendants.

32. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual member of the Class, which would establish incompatible standards of conduct for Defendants.

33. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

First Claim for Relief

Violation of Missouri's Merchandising Practices Act

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

35. Missouri's Merchandising Practices Act (the "MMPA") prohibits the "act, use or employment by any person of any deception, fraud, false pretense, false promise,

misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce.” § 407.020, RSMo.

36. The MMPA further provides for a civil action to recover damages in § 407.025.1, RSMo, as follows:

Any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 407.020, may bring a private civil action in either the circuit court of the county in which the seller or lessor resides or in which the transaction complained of took place, to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party attorney’s fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary or proper.

37. Defendants’ conduct constitutes the act, use, or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices, and/or the concealment, suppression, or omission of any material facts in connection with the sale or advertisement of any merchandise in trade or commerce in that the label of the Cookies leads consumers to believe that the Cookies contains only natural, minimally processed ingredients, which they do not. The products were therefore worth less than the products as represented.

38. Plaintiff and Class Members purchased the Cookies for personal, family, or household purposes and thereby suffered an ascertainable loss as a result of Defendants’ unlawful conduct as alleged herein, including the difference between the actual value of the products (containing highly processed and artificial ingredients) and the value of the products if they had been as represented (containing all natural or minimally processed ingredients).

39. Defendants’ unlawful practices have caused similar injury to Plaintiff and numerous other persons. § 407.025.2.

Second Claim for Relief
Negligent Misrepresentation

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

41. Defendants have negligently represented that the Products contain minimally processed and natural ingredients. In fact, the Products contain a long list of highly processed, non-natural, and artificial ingredients.

42. Such representation was made by Defendants with the intent that Plaintiff and Class Members rely on such representation in purchasing the Product.

43. As a result, Defendants have failed to take ordinary care and misrepresented a material fact to the public, including Plaintiff and Class Members, about the Product.

44. Defendants knew or should have known that these omissions and affirmative statements would materially affect consumers' decisions to purchase the Products.

45. Reasonable consumers relied on Defendants' representations set forth herein, and, in reliance thereon, purchased the Product.

46. The reliance is reasonable and justified in that Defendants appeared to be, and represented itself to be, reputable businesses.

47. Plaintiff and Class Members suffered an economic loss by paying a price premium for the Product than they would not have paid absent Defendants' misrepresentations.

48. As a direct and proximate result of these misrepresentations, Plaintiff and Class Members were induced to purchase and consume the Products, and have suffered damages to be determined at trial, in that, among other things, they have been deprived of the benefit of their bargain in that they bought Products that were not what they were represented to be, and they

have spent money on Products that had less value than was reflected in the price they paid for the Products.

Third Claim for Relief
Unjust Enrichment

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

50. Plaintiff and the Class Members conferred a benefit on Defendants in that they purchased the Cookies that were manufactured, distributed, and sold by the Defendants.

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

52. Defendants' acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendants' fraudulent and misleading representations about the Cookies.

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

PRAYER FOR RELIEF

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

- a. Grant certification of this case as a class action;
- b. Appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. Award compensatory damages to Plaintiff and the proposed Class in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class, or,

alternatively, require Defendants to disgorge or pay restitution in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;

d. Award pre- and post-judgment interest in an amount which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;

e. Award reasonable and necessary attorneys' fees and costs to Class counsel, which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class; and

f. For all such other and further relief as may be just and proper.

Dated this 4th day of January 2020.

Sharon Martin, Individually, and on Behalf of a
Class of Similarly Situated Individuals, Plaintiff

Submitted By:

/s/ R. John Azimi
R. John Azimi MO #48578
136 E. Walnut, Ste. 300
Independence, MO 64050
816-716-1120
jazimi@kansascitylawyer.co
ATTORNEY FOR PLAINTIFF AND PUTATIVE CLASS

/s/ Jeff Lingwall
Jeff Lingwall MO #66043
4968 N. Ice Springs Way
Boise, ID 83713
203-654-9253
jeff@lingwallconsulting.com
ATTORNEY FOR PLAINTIFF AND PUTATIVE CLASS

CIVIL FILING INFORMATION SHEET

at Kansas City at Independence

file stamp here

CASE #: _____

PARTY PLAINTIFF/PETITIONER		
Last Name: MARTIN		
First Name: SHARON	Middle Initial: K	
Social Security Number: 500-66-1463		
Address: 937 SW Robin Cir.		
City: BLUE SPRINGS	State: MO	Zip: 64015

LEAD ATTORNEY OR RECORD-PLAINTIFF/PRO SE		
Last Name: AZIMI		
First Name: REZA	Middle Initial: J	
Address: 136 E. WALNUT, STE. 300		
City: INDEPENDENCE	State: MO	Zip: 64050
Phone #: 816.716.1120	Fax #: 816.222.0757	
MO Bar Number: 48578	E-Mail: jazimi@kansascitylawyer.co	

PARTY DEFENDANT/RESPONDENT		
Last Name: Jimmy John's, LLC and Jimmy John's Franchise, LLC		
First Name:	Middle Initial:	
Social Security Number:		
Address: 2212 Fox Dr.		
City: Champaign	State: IL	Zip: 61820
Service Instruction for each defendant listed:		
<input type="checkbox"/> Jackson County <input type="checkbox"/> Private Process <input checked="" type="checkbox"/> Out of County--Provide info below		
Sheriff Name/Address:		
Service will be done by counsel for plaintiff by mail pursuant to MO Rules of Civ Pro 54.16.		

LEAD ATTORNEY OR RECORD-DEFENDANT <i>if known!</i>		
Last Name:		
First Name:	Middle Initial:	
Address:		
City:	State:	Zip:
MO Bar Number:	E-Mail:	

CIRCUIT CIVIL CASE INFORMATION

Case Type Description:	OTHER TORT (PRODUCT LABELING)
Case Type Code:	TI
<i>Court Rule 3.1.4-Case Type Code--See Civil Case Codes on Reverse and under the forms section of the Court's website at www.16thcircuit.org</i>	

Case Track:
<input type="checkbox"/> Expedited: (Out of state witness, injunction, TRO, extraordinary remedy, replevins, etc.)
<input checked="" type="checkbox"/> Standard
<input type="checkbox"/> Complex: (Asbestos, tobacco, or other cases that will likely take more than 2 weeks to try)

OTHER IMPORTANT INFORMATION

- Review Division-Specific Information on the Court's website to understand the requirements in processing your case--www.16thcircuit.org
- **Court Rule 4.2** requires that this form must be **complete** and include a **filing deposit** or your petition will not be accepted for filing
- **Court Rule 3.5 Designated Lead Attorney** requires that each party is responsible for keeping the designated lead attorney information current
- **Court Rule 21.9 Attorney Change of Address/Facsimile** requires each attorney to keep their address, etc. up dated with the Court Administrator's office.

Date: 01/04/2020 Attorney/Pro Se Signature: /s/ R. John Azimi

Form 4

CONFIDENTIAL DOCUMENT

DO NOT KEEP IN COURT FILE

Electronically Filed - Jackson - Independence - January 04, 2020 - 07:38 PM

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

SHARON K MARTIN,

PLAINTIFF(S),

CASE NO. 2016-CV00408

VS.

DIVISION 17

JIMMY JOHN'S,

DEFENDANT(S).

**NOTICE OF CASE MANAGEMENT CONFERENCE FOR CIVIL CASE
AND ORDER FOR MEDIATION**

NOTICE IS HEREBY GIVEN that a Case Management Conference will be held with the Honorable **CORY LEE ATKINS** on **21-APR-2020** in **DIVISION 17** at **08:30 AM**. All Applications for Continuance of a Case Management Conference should be filed on or before Wednesday of the week prior to the case management setting. Applications for Continuance of a Case Management Conference shall comply with Supreme Court Rule and 16th Cir. R. 34.1. Continuance of a Case Management Conference will only be granted for good cause shown because it is the desire of the Court to meet with counsel and parties in all cases within the first 4 months that a case has been on file. All counsel and parties are directed to check Case.NET on the 16th Judicial Circuit web site at www.16thcircuit.org after filing an application for continuance to determine whether or not it has been granted.

A lead attorney of record must be designated for each party as required by Local Rule 3.5.1. A separate pleading designating the lead attorney of record shall be filed by each party as described in Local Rule 3.5.2. The parties are advised that if they do not file a separate pleading designating lead counsel, even in situations where there is only one attorney representing the party, JIS will not be updated by civil records department, and copies of orders will be sent to the address currently shown in JIS. Civil Records does not update attorney information from answers or other pleadings. The Designation of Lead Attorney pleading shall contain the name of lead counsel, firm name, mailing address, phone number, FAX number and E-mail address of the attorney who is lead counsel.

At the Case Management Conference, counsel should be prepared to address at least the following:

- a. A trial setting;
- b. Expert Witness Disclosure Cutoff Date;
- c. A schedule for the orderly preparation of the case for trial;
- d. Any issues which require input or action by the Court;
- e. The status of settlement negotiations.

MEDIATION

The parties are ordered to participate in mediation pursuant to Supreme Court Rule 17. Mediation shall be completed within 10 months after the date the case is filed for complex cases, and 6 months after the date the case is filed for other circuit cases, unless otherwise ordered by the Court. Each party shall personally appear at the mediation and participate in the process. In the event a party does not have the authority to enter into a settlement, then a representative of the entity that does have actual authority to enter into a settlement on behalf of the party shall also personally attend the mediations with the party.

The parties shall confer and select a mutually agreeable person to act as mediator in this case. If the parties are unable to agree on a mediator the court will appoint a mediator at the Case Management Conference.

Each party shall pay their respective pro-rata cost of the mediation directly to the mediator.

POLICIES/PROCEDURES

Please refer to the Court's web page www.16thcircuit.org for division policies and procedural information listed by each judge.

/S/ CORY LEE ATKINS

CORY LEE ATKINS, Circuit Judge

Certificate of Service

This is to certify that a copy of the foregoing was electronic noticed, faxed, emailed and/or mailed or hand delivered to the plaintiff with the delivery of the file-stamped copy of the petition. It is further certified that a copy of the foregoing will be served with the summons on each defendant named in this action.

Attorney for Plaintiff(s):

JEFF WILLIAM LINGWALL, 386 PROSPECT ST APT C1, NEW HAVEN, CT 06511

REZA JOHN AZIMI-TABRIZI, 136 E WALNUT, STE 300, INDEPENDENCE, MO 64050

Defendant(s):

JIMMY JOHN'S

Dated: 07-JAN-2020

MARY A. MARQUEZ
Court Administrator



IN THE 16TH JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI

Judge or Division: CORY LEE ATKINS	Case Number: 2016-CV00408
Plaintiff/Petitioner: SHARON K MARTIN	Plaintiff's/Petitioner's Attorney/Address: REZA JOHN AZIMI-ABRIZI 136 E WALNUT STE 300 INDEPENDENCE, MO 64050
Defendant/Respondent: JIMMY JOHN'S	Court Address: 308 W Kansas INDEPENDENCE, MO 64050
Nature of Suit: CC Other Tort	

(Date/File Stamp)

Summons for Service by First Class Mail

The State of Missouri to: JIMMY JOHN'S
Alias:

JIMMYS JOHNS FRANCHISE LLC
2212 FOX DR.
CHAMPAIGN, IL 61820

COURT SEAL OF



JACKSON COUNTY

You are summoned and, within 30 days after the enclosed acknowledgment is filed, you must file an answer to the enclosed petition with the clerk of this court and also must serve this answer upon Plaintiff's/Petitioner's attorney at the above address. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition.

07-JAN-2020
Date Issued

[Signature]
Clerk

Further Information:

Directions to Clerk

The clerk should issue one copy of this summons for each Defendant/Respondent to be served by first class mail. Under Section 506.150.4, RSMo, service by first class mail may be made by Plaintiff/Petitioner or any person authorized to serve process under Section 506.140, RSMo.

SUMMONS/GARNISHMENT SERVICE PACKETS ATTORNEY INFORMATION

Under the Missouri e-filing system now utilized by the 16th Judicial Circuit Court, once a case has been accepted for filing, a clerk prepares the necessary documents for service. The summons/garnishment is sent to the attorney by an e-mail containing a link so that the filer may print and deliver the summons/garnishment, pleadings and any other necessary documents to the person designated to serve the documents.

Pursuant to State statutes, Supreme Court Rules and Local Court Rules, attorneys are required to print, attach and serve specific documents with certain types of Petitions and other filings.

Please refer to the Court's website for instructions on how to assemble the service packets at:

16thcircuit.org → Electronic Filing Information → Required Documents for Service – eFiled cases → Summons/Garnishment Service Packet Information.

Please review this information periodically, as revisions are frequently made. Thank you.

Circuit Court of Jackson County

**IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI**

Sharon Martin, individually and on)
behalf of all others similarly situated in)
Missouri,)

Plaintiffs,)

v.)

Case No. 2016-CV00408

Jimmy John’s, LLC, and)
Jimmy John’s Franchise, LLC)

Defendants.)

Serve: Jimmy John’s LLC;)
Jimmy John’s Franchise, LLC)
2212 Fox Dr.)
Champaign, IL 61820)

MOTION FOR EXTENSION OF TIME FOR SERVICE

Plaintiff Sharon Martin respectfully requests an extension of 90 days to effect service upon Jimmy John’s LLC and Jimmy John’s Franchise LLC (“Defendants”) under Rule 54.21. In support of this request, Plaintiff notes as follows:

1. On January 21, summons were issued to serve via First Class Mail under Rule 54.16.
2. Upon information and belief, summons were issued to Defendants’ correct address.
3. Summons were mailed promptly following their issuance via Certified Mail.
4. Delivery was refused by addressee on January 27, 2020, and the summons was returned to Counsel for Plaintiff sometime after February 11, 2020.
5. Defendants have not acknowledged service by mail as of the date of this filing.

For the foregoing reasons, Plaintiff respectfully requests the Court grant an extension in which to effectuate service.

Dated this 19th day of February 2020.

Sharon Martin, Individually, and on Behalf of a
Class of Similarly Situated Individuals, Plaintiff

Submitted By:

/s/ R. John Azimi

R. John Azimi MO #48578
136 E. Walnut, Ste. 300
Independence, MO 64050
816-716-1120
jazimi@kansascitylawyer.co
ATTORNEY FOR PLAINTIFF AND PUTATIVE CLASS

/s/ Jeff Lingwall

Jeff Lingwall MO #66043
4968 N. Ice Springs Way
Boise, ID 83713
203-654-9253
jeff@lingwallconsulting.com
ATTORNEY FOR PLAINTIFF AND PUTATIVE CLASS

**IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI**

Sharon Martin, individually and on)
behalf of all others similarly situated in)
Missouri,)
)
Plaintiffs,)
v.)
)
Jimmy John's, LLC, and)
Jimmy John's Franchise, LLC)
)
Defendants.)
)

Case No. 2016-CV00408

**ORDER GRANTING PLAINTIFF'S MOTION FOR EXTENSION
OF TIME FOR SERVICE**

This matter has come before the Court on Plaintiff's Motion for Extension of Time for Service. The Court being duly advised in the premises, **ORDERS ADJUDGES AND DECREES** that Plaintiff's Motion is hereby **GRANTED**.

Accordingly, the Court hereby grants an extension of time for Plaintiff to effectuate service until, and including, _____, 2020.

IT IS SO ORDERED.

Entered this _____ day of February, 2020

Dated this 19th day of February 2020.

THE HONORABLE CORY LEE ATKINS
CIRCUIT COURT JUDGE

**IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI**

Sharon Martin, individually and on)
behalf of all others similarly situated in)
Missouri,)

Plaintiffs,)

v.)

Case No. 2016-CV00408

Jimmy John’s, LLC, and)
Jimmy John’s Franchise, LLC)

Defendants.)

Serve: Jimmy John’s LLC;)
Jimmy John’s Franchise, LLC)
C/O Brian A. Smith)
311 S. Wacker Dr., Ste 3000)
Chicago, IL 60606)

REQUEST FOR ALIAS SUMMONS

Plaintiff Sharon Martin, by and through counsel, R. John Azimi and Jeff Lingwall, respectfully requests that an alias summons be issued by the circuit clerk because delivery of the first summons was refused by addressee. Plaintiff requests an alias summons be issued at a different address for the following defendants at the following address:

(1) Jimmy John’s LLC / Jimmy John’s Franchise LLC

C/O Brian A. Smith

311 S. Wacker Dr., Ste 3000

Chicago, IL 60606

Dated this 30 day of March 2020.

Sharon Martin, Individually, and on Behalf of a
Class of Similarly Situated Individuals, Plaintiff

Submitted By:

/s/ R. John Azimi

R. John Azimi MO #48578
136 E. Walnut, Ste. 300
Independence, MO 64050
816-716-1120
jazimi@kansascitylawyer.co
ATTORNEY FOR PLAINTIFF AND PUTATIVE CLASS

/s/ Jeff Lingwall

Jeff Lingwall MO #66043
4968 N. Ice Springs Way
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203-654-9253
jeff@lingwallconsulting.com
ATTORNEY FOR PLAINTIFF AND PUTATIVE CLASS

FILED
By Judicial Administrative Assistant
Division 17
APR - 1 2020
Circuit Court of Jackson Co., MO
By _____

IN THE CIRCUIT COURT OF JACKSON COUNTY
STATE OF MISSOURI

Sharon Martin, individually and on)
behalf of all others similarly situated in)
Missouri,)
)
Plaintiffs,)
v.)
)
Jimmy John's, LLC, and)
Jimmy John's Franchise, LLC)
)
Defendants.)
)

Case No. 2016-CV00408

**ORDER GRANTING PLAINTIFF'S MOTION FOR EXTENSION
OF TIME FOR SERVICE**

This matter has come before the Court on Plaintiff's Motion for Extension of Time for Service. The Court being duly advised in the premises, **ORDERS ADJUDGES AND DECREES** that Plaintiff's Motion is hereby **GRANTED**.

Accordingly, the Court hereby grants an extension of time for Plaintiff to effectuate service until, and including, July 1, 2020.

IT IS SO ORDERED.

Entered this 1st day of April 2020



THE HONORABLE CORY LEE ATKINS
CIRCUIT COURT JUDGE



IN THE 16TH JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI

Judge or Division: CORY L. ATKINS	Case Number: 2016-CV00408
Plaintiff/Petitioner: SHARON B. MARTIN	Plaintiff's/Petitioner's Attorney/Address: REZA JOHN AZIMI-ABRIZI 1361 W. Walnut STE 300 INDEPENDENCE, MO 64050
Defendant/Respondent: JIMMY JOHN'S LLC	Court Address: 303 W. Kansas INDEPENDENCE, MO 64050
Nature of Suit: CC Other Tort	(Date File Stamp)

Summons for Service by First Class Mail

The State of Missouri to: JIMMY JOHN'S LLC
Alias:

GO BRIAN SMITH
311 S WACKER DR STE 3000
CHICAGO, IL 60606



You are summoned and, within 30 days after the enclosed acknowledgment is filed, you must file an answer to the enclosed petition with the clerk of this court and also must serve this answer upon Plaintiff's/Petitioner's attorney at the above address. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition.

03-APR-2020
Date Issued

[Signature]
Clerk

Further Information:

Directions to Clerk

The clerk should issue one copy of this summons for each Defendant/Respondent to be served by first class mail. Under Section 506.150.4, RSMo, service by first class mail may be made by Plaintiff/Petitioner or any person authorized to serve process under Section 506.140, RSMo.

SUMMONS/GARNISHMENT SERVICE PACKETS ATTORNEY INFORMATION

Under the Missouri e-filing system now utilized by the 16th Judicial Circuit Court, once a case has been accepted for filing, a clerk prepares the necessary documents for service. The summons/garnishment is sent to the attorney by an e-mail containing a link so that the filer may print and deliver the summons/garnishment, pleadings and any other necessary documents to the person designated to serve the documents.

Pursuant to State statutes, Supreme Court Rules and Local Court Rules, attorneys are required to print, attach and serve specific documents with certain types of Petitions and other filings.

Please refer to the Court's website for instructions on how to assemble the service packets at:

16thcircuit.org → Electronic Filing Information → Required Documents for Service – eFiled cases → Summons/Garnishment Service Packet Information.

Please review this information periodically, as revisions are frequently made. Thank you.

Circuit Court of Jackson County



IN THE 16TH JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI

Judge or Division: CORY L. ATKINS	Case Number: 2016-CV00408
Plaintiff/Petitioner: SHARON B. MARTIN	Plaintiff's/Petitioner's Attorney/Address: REZA JOHN AZIMI-FABRIZI 1361 W. AUSTIN STE 300 INDEPENDENCE, MO 64050
Defendant/Respondent: JIMMY JOHNS LLC	Court Address: 205 W. Kansas INDEPENDENCE, MO 64050
Nature of Suit: CC Other Tort	

(Date File Stamp)

Summons for Service by First Class Mail

The State of Missouri to: JIMMY JOHNS FRANCHISE LLC
Alias:

COURTIAN A SMITH
311 S WACKER DR STE 3000
CHICAGO, IL 60606

COURT SEAL OF



JACKSON COUNTY

You are summoned and, within 30 days after the enclosed acknowledgment is filed, you must file an answer to the enclosed petition with the clerk of this court and also must serve this answer upon Plaintiff's/Petitioner's attorney at the above address. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition.

03-APR-2020
Date Issued

[Signature]
Clerk

Further Information:

Directions to Clerk

The clerk should issue one copy of this summons for each Defendant/Respondent to be served by first class mail. Under Section 506.150.4, RSMo, service by first class mail may be made by Plaintiff/Petitioner or any person authorized to serve process under Section 506.140, RSMo.

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Please review this information periodically, as revisions are frequently made. Thank you.

Circuit Court of Jackson County

**IN THE CIRCUIT COURT FOR JACKSON COUNTY
STATE OF MISSOURI**

Sharon Martin, individually and on)
behalf of all others similarly situated in)
Missouri,)

Plaintiffs,)

v.)

Case No.: 2016-CV00408

Jimmy John’s, LLC, and)
Jimmy John’s Franchise, LLC)

Division: 17

Defendants.)

Serve: Jimmy John’s LLC;)
Jimmy John’s Franchise, LLC)
C/O Brian Smith)
311 S Wacker Dr., Ste. 3000)
Chicago, IL 60606)

MOTION TO RESCHEDULE CASE MANAGEMENT CONFERENCE

Plaintiff, Sharon Martin, respectfully requests the Case Management Conference scheduled for April 21, 2020, at 8:30 a.m. be rescheduled. In support of this request, Plaintiff notes as follows:

1. On April 1, the Court granted Plaintiff’s motion for extension of time for service until July 1, 2020;
2. On April 3, alias summons were issued for Defendants:
3. Counsel for Plaintiff is actively engaged in effecting service on Defendants: and
4. Rescheduling the Case Management Conference will allow Defendants time to accept service and respond to the Petition.

For the foregoing reasons, Plaintiff respectfully requests the Court reschedule the Case Management Conference to a date at the Court’s convenience after July 1, 2020.

Dated this 13th day of April 2020.

Sharon Martin, Individually, and on Behalf of a
Class of Similarly Situated Individuals, Plaintiff

Submitted By:

/s/ R. John Azimi

R. John Azimi MO #48578
136 E. Walnut, Ste. 300
Independence, MO 64050
816-716-1120
jazimi@kansascitylawyer.co
ATTORNEY FOR PLAINTIFF AND PUTATIVE CLASS

/s/ Jeff Lingwall

Jeff Lingwall MO #66043
4968 N. Ice Springs Way
Boise, ID 83713
203-654-9253
jeff@lingwallconsulting.com
ATTORNEY FOR PLAINTIFF AND PUTATIVE CLASS

**IN THE CIRCUIT COURT FOR JACKSON COUNTY
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Case No.: 2016-CV00408

Jimmy John's, LLC, and)
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Division: 17

Defendants.)

Serve: Jimmy John's LLC;)
Jimmy John's Franchise, LLC)
C/O Brian Smith)
311 S Wacker Dr., Ste. 3000)
Chicago, IL 60606)

**ORDER GRANTING PLAINTIFF'S MOTION TO RESCHEDULE
CASE MANAGEMENT CONFERENCE**

This matter has come before the Court on Plaintiff's Motion to Reschedule Case Management Conference. The Court being duly advised in the premises, **ORDERS, ADJUEGES, AND DECREES** that Plaintiff's Motion is hereby **GRANTED**. Accordingly, the Case Management Conference Scheduled for April 21, 2020, has been rescheduled to _____, 2020.

IT IS SO ORDERED.

Entered this _____ day of April, 2020.

THE HONORABLE CORY LEE ATKINS
CIRCUIT COURT JUDGE

FILED
By Judicial Administrative Assistant
Division 17

APR 20 2020
Circuit Court of Jackson Co., MO
By _____

IN THE CIRCUIT COURT FOR JACKSON COUNTY
STATE OF MISSOURI

Sharon Martin, individually and on)
behalf of all others similarly situated in)
Missouri,)
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Plaintiffs,)
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Jimmy John's, LLC, and)
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Serve: Jimmy John's LLC;)
Jimmy John's Franchise, LLC)
C/O Brian Smith)
311 S Wacker Dr., Ste. 3000)
Chicago, IL 60606)

Case No.: 2016-CV00408

Division: 17

ORDER GRANTING PLAINTIFF'S MOTION TO RESCHEDULE
CASE MANAGEMENT CONFERENCE

This matter has come before the Court on Plaintiff's Motion to Reschedule Case Management Conference. The Court being duly advised in the premises, **ORDERS, ADJUEGES, AND DECREES** that Plaintiff's Motion is hereby **GRANTED**. Accordingly, the Case Management Conference Scheduled for April 21, 2020, has been rescheduled to July 21, 2020.

IT IS SO ORDERED.

Entered this 28th day of April, 2020.



THE HONORABLE CORY LEE ATKINS
CIRCUIT COURT JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Jimmy John's 'All Natural' Cookies Contain Highly Processed Ingredients, Lawsuit Claims](#)
