

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION**

Jaymee Fleming, individually and on behalf of
all others similarly situated,

Plaintiff,

- against -

Del Monte Foods, Inc.,

Defendant

3:21-cv-01462

Class Action Complaint

Jury Trial Demanded

Plaintiff alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Del Monte Foods, Inc. (“defendant”) manufactures, labels, markets, and sells Farmhouse Cut Green Beans described as “Fresh Cut,” “With Natural Sea Salt,” and containing “No Preservatives” (“Product”).

2. Consumers are increasingly seeking foods without preservatives for various reasons.

3. Preservatives are defined as something that preserves or have the power of preserving, specifically, an additive used to protect against decay, discoloration, or spoilage.

4. Preservatives are used to maintain the quality of food beyond their role in killing microorganisms that can contribute to foodborne illness.

5. Preservatives are grouped into two general classes – natural preservatives, consisting of sugar, salt, vinegar, and spices, and artificial preservatives such as benzoate of soda, salicylic acid, and sulfur dioxide.

6. In response to an unregulated environment where dangerous substances were being added to the nation’s food supply, the Pure Food and Drug Act of 1906 defined “chemical preservatives” as any chemical that, when added to food, tends to prevent or retard deterioration

thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices.

7. When the Food Drug and Cosmetic Act was enacted, it contained the same requirement. 21 C.F.R. § 101.22(a)(5).

8. Federal and identical state regulations require that all foods contain a prominent statement sufficient to tell purchasers if it contains a chemical preservative. 21 C.F.R. § 101.22(c).

9. Canned green beans are required to be processed by heat, in an appropriate manner before or after being sealed in a container, as to prevent spoilage. 21 C.F.R. § 155.120(a).

10. Salt is an optional ingredient to canned green beans.

11. Salt can be added for taste, but also functions as a preservative.

12. Though canning kills biological organisms, it is not a silver bullet.

13. Some organisms are merely weakened through the canning process, while some may survive, albeit in small enough numbers such that they will not be an issue if the food is consumed within a reasonable amount of time.

14. Salt ensures that fewer bacteria survive, and those that do, stay dormant.

15. Salt prevents the deterioration of the green beans over time beyond its impact on any chemical processes

16. Chemical processes exist which are unrelated to foodborne illness which can cause a food's quality to decrease over time.

17. Salt prevents and slows discoloration of food.

18. Salt causes food to maintain its texture for longer than it otherwise would.

19. In canned foods, salt adds flavor, but maintains the natural flavor of the food.

20. Salt has a preservative function even in a largely sterile environment.

21. The statement that the Product has "No Preservatives" is false, due to the presence

of salt.

22. While the relevant regulations for chemical preservatives do not require any ingredient in the Product to be identified as a preservative nor the front label to disclose any chemical preservative (it does not have any), they do not authorize the claim of “No Preservatives.”

23. The Product contains other representations which are misleading.

24. Reasonable consumers must and do rely on a company to honestly identify and describe the components, attributes, and features of a product, relative to itself and other comparable products or alternatives.

25. By labeling the Product in this manner, Defendant gained an advantage against other companies, and against consumers seeking to purchase a product that did not contain preservative ingredients.

26. The value of the Product that plaintiff purchased was materially less than its value as represented by defendant.

27. Defendant sold more of the Product and at higher prices than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

28. Had Plaintiff and proposed class members known the truth, they would not have bought the Product or would have paid less for it.

29. The Product is sold for a price premium compared to other similar products, no less than approximately \$2.79 for 14.5 oz (411g), a higher price than it would otherwise be sold for, absent the misleading representations and omissions.

Jurisdiction and Venue

30. Jurisdiction is proper pursuant to Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C. § 1332(d)(2).

31. The aggregate amount in controversy exceeds \$5 million, including any statutory damages, exclusive of interest and costs.

32. Plaintiff Jaymee Fleming is a citizen of Illinois.

33. Defendant Del Monte Foods, Inc., is a Delaware corporation with a principal place of business in Walnut Creek, Contra Costa County, California.

34. Plaintiff and defendant are citizens of different states.

35. Defendant transacts business within this District through sale of the Product within this District, at convenience stores, grocery stores, drug stores, big box stores, membership stores, and online, sold directly to residents of this District.

36. Venue is in this District because plaintiff resides in this district and the actions giving rise to the claims occurred within this district.

37. Venue is in the Benton Division Courthouse in this District because a substantial part of the events or omissions giving rise to the claim occurred in Perry County, i.e., Plaintiff's purchase of the Product and her awareness of the issues described here.

Parties

38. Plaintiff Jaymee Fleming is a citizen of Pinckneyville, Perry County, Illinois.

39. Plaintiff tries to avoid food with any kinds of added preservatives.

40. Defendant Del Monte Foods, Inc., is a Delaware corporation with a principal place of business in Walnut Creek, California, Contra Costa County.

41. Del Monte is the country's largest producers of vegetables.

42. As one of the oldest sellers of canned goods, consumers know the Del Monte Shield means trust and quality.

43. Plaintiff purchased the Product on one or more occasions within the statutes of

limitations for each cause of action alleged, from stores including Walmart, 215 Grant Way Du Quoin, IL 62832, between October and November 2021, among other times.

44. Plaintiff bought the Product because she expected it did not contain preservative ingredients because that is what the representations said and implied.

45. Plaintiff seeks to avoid preservatives of all kinds.

46. Plaintiff relied on the words and images on the Product, identified here.

47. Plaintiff bought the Product at or exceeding the above-referenced price.

48. Plaintiff would not have purchased the Product if she knew the representations were false and misleading or would have paid less for them.

49. Plaintiff chose between Defendant's Product and similar products represented similarly, but which did not misrepresent their attributes and/or lower-priced products which did not make the statements and claims made by Defendant.

50. The Product was worth less than what Plaintiff paid and she would not have paid as much absent Defendant's false and misleading statements and omissions.

51. Plaintiff intends to, seeks to, and will purchase the Product again when she can do so with the assurance that Product's representations are consistent with their composition.

52. Plaintiff is unable to rely on the labeling of not only this Product, but other items purporting to not contain preservatives, because she is unsure of whether their representations are truthful.

53. Plaintiff wants to purchase foods, including green beans, without preservatives because she likes this food and she dislikes preservatives.

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