

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARILYN PIERCE, On Behalf of Herself and All Others Similarly Situated	§	
	§	
	§	
Plaintiffs,	§	CLASS ACTION COMPLAINT
	§	
v.	§	CASE NO. 3:19-CV-0410-B
	§	
NORTH DALLAS HONEY COMPANY, a Domestic Corporation,	§	
	§	
	§	
Defendant.	§	JURY TRIAL DEMANDED

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs, Marilyn Pierce and Anish Dave (“Plaintiffs” or “Pierce” or “Dave”), by and through their undersigned counsel, on behalf of themselves and all other persons and entities similarly situated, allege against defendant North Dallas Honey Company, d/b/a Nature Nate’s, Inc., (“Nature Nate’s” or “Defendant”) the following facts and claims upon knowledge as to matters relating to themselves and upon information and belief as to all other matters and, by way of this Second Amended Class Action Complaint (“Amended Complaint”), avers as follows:

I.
INTRODUCTION AND SUMMARY OF ACTION

1. This is a proposed Class action brought by Plaintiffs on behalf of themselves and other consumers (“Proposed Class”) who purchased honey products from Nature Nate’s that were labeled “100% Pure, Raw & Unfiltered Honey” (“Raw Honey”). The Proposed Class contains two (2) proposed sub-classes, those being a sub-class of Texas consumers and a sub-class of Florida consumers.

2 Defendant fraudulently and deceptively labels and advertises its Raw Honey as 100% raw and 100% pure, when such honey is neither 100% raw nor 100% pure. Defendant's false and deceptive labeling and advertising violates Texas and Florida state food regulations.

3 Plaintiffs and the Proposed Class relied upon Defendant's misleading and unlawful claims when purchasing Defendant's honey products, and were damaged as a result. They bring this class action on behalf of themselves, all others similarly situated, and the general public, alleging violations of the Texas Deceptive Trade Practices-Consumer Protection Act ("TTPCPA") and the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), as well as other common-law violations.

4 This is not Defendant's first time engaging in deceptive advertising,¹ which further demonstrates the need to deter Defendant's deceptive tactics—otherwise, consumers, like Plaintiffs and the Proposed Class, cannot be assured that Defendant's products are not adulterated or misbranded, nor can they make informed choices among products, which defeats the very purpose of several federal and state laws.²

5 As such, Plaintiffs seek an order, *inter alia*, compelling Defendant to (a) cease marketing its honey products using misleading and unlawful tactics complained of herein, (b) destroy all misleading, deceptive, and unlawful materials, (c) conduct a corrective label and advertising campaign, (d) restore the amounts by which they have been unjustly enriched due to its deceptive tactics, and (e) pay restitution, damages, punitive damages, and attorneys' fees as

¹ Following an audit in 2012, Defendant was ordered by the FDA to "stop advertising its honey in ways that characterized it as a drug, i.e. by making various health claims for its products." Healthwatcher, *A Honey of Translation*, HEALTH WATCHED (Dec. 9, 2013), <https://healthwatched.org/2013/12/09/a-honey-of-a-translation/>.

² See Proper Labeling of Honey and Honey Products: Guidance for Industry, at 3, FDA (Feb. 2018), <https://www.fda.gov/files/food/published/PDF---Guidance-for-Industry--Proper-Labeling-of-Honey-and-Honey-Products.pdf>.

allowed by law.

II. THE PARTIES

6 Plaintiff Marilyn Pierce (“Pierce”) is a natural person and citizen of League City, Texas. Plaintiff does the grocery shopping for her family on a regular basis.

7 Plaintiff Anish Dave (“Dave”) is a natural person and citizen of Weston, Florida. (together, “Plaintiffs.”)

8 Defendant, North Dallas Honey Company, is a Texas Corporation with its principal place of business located at 2910 Nature Nate Farms, McKinney, Texas, and is organized and existing under the laws of the State of Texas. At all relevant times, Nature Nate’s transacted and conducted business in Texas and throughout the United States.

III. JURISDICTION AND VENUE

9 This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d)(2) (diversity jurisdiction) and the Class Action Fairness Act, in that (i) there is minimal diversity (Plaintiffs seek to represent a class of Florida and Texas consumers, many of whom are not citizens of Texas, including named Plaintiff Dave, a citizen of Florida, and Defendant is domiciled and incorporated in Texas), (ii) the amount in controversy exceeds \$5,000,000.00 (Five Million Dollars) exclusive of interests and costs, and (iii) there are 100 or more members of the proposed Plaintiff class.

10 Venue lies in this District pursuant to 28 U.S.C. § 1391 because the Defendant resides in this Judicial District, and a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this Judicial District. In addition, Nature Nate’s does business and/or transacts business in this Judicial District, and therefore, is subject to personal jurisdiction in this Judicial District and resides here for venue purposes.

IV. FACTS

A. Defendant's Manufacturing, Marketing, Labeling, and Sale of Raw Honey.

11. Nature Nate's purchases honey from a variety of sources.³ These sources ship the honey to Nature Nate's in large drums, and then Nature Nate's blends the honey before distribution.⁴ In order to process and package its honey, Nature Nate's heats it, so, according to Nature Nate's, "it's easier to deal with and pour into bottles."⁵ Once processed and packaged, Nature Nate's prepares and creates a label for each bottle that reads: "100% Pure: Raw & Unfiltered Honey,"⁶ which is depicted below:



³ According to Nathan Sheets, CEO and Chief Steward of Nature Nate's, Nature Nate's purchases it honey from "150 beekeepers across the United States." *To the Bottle: A Hive Bottle Series from Nature Nate's Co.*, YouTube (Sep. 13, 2019), https://www.youtube.com/watch?v=42ezOwk4mI4&feature=emb_logo.

⁴ *Id.*

⁵ Raw & Unfiltered: What We Do (and What we Don't), NATURE NATE'S, <https://www.naturenates.com/raw-unfiltered/> (last visited May 4, 2020).

⁶ *Id.*

12. The Raw Honey is available in several sizes including 12, 16, and 32-oz bottles, and, according to Nature Nate's website, is sold nationally at major retailers such as Target, Kroger, Randall's Food Market, Walmart, and Tom Thumb.⁷ Nature Nate's products are also available online at Amazon.com.

13. Nature Nate has manufactured, labeled, marketed, distributed, and sold various Raw Honey products on a nationwide basis for several years.⁸

B. The Raw Honey is not 100% Raw.

14. Raw honey is best described as honey that exists in the beehive. It is made by extracting honey from the honeycombs of the hive and then straining it either by pouring it over a mesh or nylon cloth, or by using a jacketed tank fitted with a stirrer. Once strained, the honey is then heated at an acceptable industry standard to avoid losing its "raw" status before it is bottled, distributed and sold. When raw honey is overheated—that is, heated to more than 105 degrees—the enzymes in the honey that are prized by consumers who purchase raw honey become denatured. That is to say, they begin to break down and are lost.

15. Evidence demonstrating that overheated honey loses its attributes of raw honey has long been understood in the honey industry, food labs, and by organic chemists. The scientific community and the honey industry employs a simple test to determine when honey has been overheated and the enzymes destroyed: reviewing the 5-hydroxymethylfurfural (HMF) value. The international standard promulgated by Codex Alimentarius for honey has set the maximum limit of HMF in table honey at 40 mg/kg to ensure that the product has not undergone extensive heating. The Codex Alimentarius is recognized by the World Trade Organization

⁷ Where to Buy, NATURE NATE'S, <https://www.naturenates.com/store-finder/> (last visited May 4, 2020).

⁸ Our Story, NATURE NATE'S, <https://www.naturenates.com/our-story/> (last visited May 5, 2020); *see also supra* note 1.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.