

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

PATRICK and CARYN HUDSPETH,)
individually and on behalf of a class)
of all others similarly situated,)

Cause No.

Plaintiffs,)

**CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL**

vs.)

TARGET CORP.)

Defendant.)

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Patrick and Caryn Hudspeth, by counsel, individually and on behalf of all others similarly situated (“Plaintiffs”) tender the following Class Action Complaint and Demand for Jury Trial:

I.

JURISDICTION

1. The United States District Court for the District of Minnesota has diversity jurisdiction over this Class Action lawsuit pursuant to 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005, because, upon information and belief, the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and this lawsuit is a Class Action in which some members of the Plaintiff Class are citizens of states different than Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

2. Target, Corp. (“Target”) is a Minnesota corporation. Its headquarters and principal place of business is located in Minneapolis, Minnesota. Considering that Plaintiffs are residents of Indiana, there is minimal diversity amongst the parties.

II.
VENUE

3. Venue in this judicial district is proper under 28 U.S.C. §1391 because Target is a Minnesota corporation, with its principal place of business in Minnesota.

III.
PARTIES

A. Plaintiffs Patrick and Caryn Hudspeth

4. Plaintiffs Patrick and Caryn Hudspeth, husband and wife and parents of T.H.H. and A.L.H., are residents of Johnson County and citizens of the State of Indiana.

5. Plaintiffs purchased “Archer Farms” organic milk from Target on numerous occasions throughout the class period. “Archer Farms” is Target’s “house” brand.

6. Plaintiffs utilized the organic milk produced and sold by Defendant for their own consumption, and in the formula they prepared for T.H.H. and A.L.H.

7. Plaintiffs decided to purchase “organic” milk, and indeed paid a premium price for that “organic” milk, because they believed that it contained fewer additives and was healthier for their and their children’s consumption than non-organic milk.

B. Defendant Target Corp.

8. Target Corp. is a Minnesota corporation, having its principal place of business within the State of Minnesota. Target sold “organic” milk to Plaintiffs using the brand name “Archer Farms.” The Archer Farms’ “organic” milk was contained in cartons with labels that

specifically represented that the milk was certified organic milk, despite the fact that it was not organic.

9. The Archer Farms' "organic" milk was originally supplied by Aurora Organic Dairy ("Aurora"), which is based in Colorado. As is more particularly described below, the milk Aurora supplied to Target throughout the class period was not organic, despite Target's express representation to the contrary.

10. The labels contained on the Archer Farms' "organic" milk cartons are supposed to assure consumers that the milk complies with the Organic Foods Production Act of 1990 (7 U.S.C. § 6501, *et seq.*) and its implementing regulations (7 C.F.R. Part 205).

11. Plaintiffs and the Class Members they represent pay premium prices for Target's "organic" milk. This premium price is allegedly justified by the increased cost of meeting certain organic certification requirements.

IV. FACTUAL ALLEGATIONS

12. This is a lawsuit charging Target with selling milk or milk products that it represents to be "organic," when, in fact, the milk is not organic. The purportedly "organic" milk was sold throughout the time period of December 5, 2003 through October 15, 2007 ("class period" or "relevant time period").

13. The market for organic milk has boomed in recent years. According to the United States Department of Agriculture ("USDA"), total milk or milk products production in the United States in 2004 was 170 billion pounds. Fluid milk or milk products sales since 1975 have been steady at approximately \$11 billion per year. Currently, organic fluid milk or milk products sales represent about 18% of overall sales. In 2005, total organic dairy sales were approximately \$2 billion. The organic dairy sector is annually growing at an approximate rate of 16%.

14. Consumers rely on manufacturers and sellers of milk or milk products to determine what milk is in fact organic. Even Target's supplier recognizes that "[o]rganic certification is the public's assurance that products have been grown and handled according to strict procedures without persistent toxic chemical inputs."

<http://www.auroraorganic.com/aodweb/site/itemcontent.aspx?icategoryid=6>

A. Organic Milk Standards.

15. In order to sell or label an agricultural product as organically produced, the product must be produced and handled in compliance with the Organic Foods Production Act of 1990 ("OFPA"), *see* 7 U.S.C. 6505(a)(1)(A), and the USDA adopted regulations, *see* 7 C.F.R. Part 205, *et seq.*

16. By marketing, selling, or otherwise representing that its milk was "organic," Target represented that the milk abides by these laws and regulations and that the milk is "organic."

17. However, Target's milk was not organic according to Federal law. In fact, the milk Target sold and held out to be organic was produced in large scale factory farms and otherwise failed to comport with Federal law.

B. The USDA Investigation.

18. On March 7, 2007, the USDA identified the following "violations by Aurora Organic Dairy" of federal law:

a. From 2003 through 2006, for dairy animals at its Platteville, Colorado facility, Aurora failed to provide a total feed ration that included pasture, failed to establish and maintain pasture conditions appropriate for minimizing the occurrence and

spread of diseases and parasites, and failed to establish and maintain access to pasture, in willful violation of 7 C.F.R. §§ 205.237(a), 205.238(a)(3), and 205.239(a)(2);

b. During the spring and early summer of 2006, Aurora entered conventional dairy animals into organic milk or milk products production at its Dublin, Texas facility before those animals completed the required one-year period of continuous organic management, in willful violation of 7 C.F.R. § 205.236(a)(2);

c. From 2003 through 2006, Aurora purchased for its Platteville facility, from Promiseland Livestock in Falcon, Missouri, dairy animals that had been converted from conventional to organic milk or milk products production, and thus had not been under continuous organic management from at least the last third of gestation, in willful violation of 7 C.F.R. § 205.236(a)(2)(iii);

d. From on or about July 10, 2004 through on or about September 28, 2005, Aurora moved organic dairy animals from its certified Platteville facility to Wells Ranch in Gill, Colorado, a non-organic (non-certified) livestock operation for management, and thereafter returned them to the Platteville facility for organic dairy production, in willful violation of 7 C.F.R. § 205.236(b)(1);

e. From February 2005 through March 2006, Aurora moved organic calves from its certified Platteville facility to non-organic (non-certified) livestock operations for management, and eventually returned them to the Platteville facility for organic dairy production, in willful violation of 7 C.F.R. §§ 205.236(a)(2)(iii) and 205.236(b)(1);

f. From 2003 through 2006, Aurora used non-organic agricultural products, such as wheat straw and corn stalks, as bedding for organic dairy animals at its Platteville facility, in willful violation of 7 C.F.R. § 205.239(a)(3);

g. From on or about July 27, 2004 through on or about September 30, 2005, Aurora routinely caused organic dairy animals from Promiseland Livestock, a certified organic dairy, to be delivered to Wells Ranch, a non-organic livestock operation, for livestock management, before having them delivered to Aurora's Platteville facility for organic dairy production, in willful violation of 7 C.F.R. § 205.236(b)(1).

h. From December 5, 2003 through at least September 7, 2007, Aurora sold, labeled and represented its milk or milk products as being organically produced when such milk or milk products were not produced and handled in accordance with the National Organic Program regulations, in willful violation of 7 C.F.R. §§ 205.102, 205.200 and 205.400(a);

i. From on or about October 29, 2003 through on or about March 9, 2006, Aurora failed to notify its certifying agent immediately concerning changes to the operation of its Platteville facility regarding the termination and utilization of off-site facilities, such as Wells Ranch, contracted by Aurora to provide pasture and/or livestock management services, in willful violation of 7 C.F.R. § 205.400(f)(2);

j. Aurora failed to include a summary statement, supported by documentation, in the December 29, 2004 and December 28, 2005 Organic System Plans for its Platteville facility that detailed changes to the previous year's Organic System Plan regarding the termination and utilization of off-site facilities, such as Wells Ranch, contracted by Aurora to provide pasture and/or livestock management services, in willful violation of 7 C.F.R. § 205.406(a)(1)(i);

k. From 2004 through 2006, Aurora failed to maintain adequate records that disclosed all activities and transactions in sufficient detail as to be readily understood and

audited to demonstrate compliance with the OFPA and the National Organic Program regulations concerning pasture arrangements with operations identified by Aurora in its annual Organic System Plan for its Platteville facility, in willful violation of 7 C.F.R. § 205.103(b).

l. In the October 29, 2003 and December 29, 2004 Organic System Plans for its Platteville facility, Aurora failed to include a full description of the practices and procedures to be performed by Wells Ranch, in willful violation of 7 C.F.R. § 205.201(a)(1);

m. In the December 28, 2005 Organic System Plan for its Platteville facility, Aurora failed to include a full description of the practices and procedures to be performed by Matsude Farms, Salazar, Cockroft Dairy Farm, and Ray-Glo Dairy, as at its Woodward facility, in willful violation of 7 C.F.R. § 205.2-1(a)(1); and,

n. In the October 29, 2003, December 29, 2004, and December 28, 2005 Organic System Plans for its Platteville facility, Aurora failed to include a full description of the monitoring practices and procedures to be performed and maintained to verify that its Organic System Plans were effectively implemented with respect to off-site operations contracted by Aurora to provide pasture and/or livestock management services, in will violation of 7 C.F.R. § 205.201(a)(3).

19. On August 23, 2007, Aurora entered into a Consent Agreement with the USDA. This Consent Agreement contained a stipulation for probation. The USDA found that Aurora had not been in compliance with the federal organic food regulations, and placed it on a one year probationary period. The Consent Agreement provided that Aurora was required to remove organic dairy animals “currently present at Platteville that transitioned under the ‘80/20’ rule”

from the plant, and instructed that such animals could only be utilized as conventional animals, not certified organic animals. Finally, the Consent Agreement also requires Aurora to address all issues that were raised in the Notice of Proposed Revocation in order for its organic certification not to be revoked.

C. Defendants' Illegal Conduct.

20. Target violated federal and state law (including the applicable regulations) by selling its milk as "organic." By mislabeling the milk, Target misled Plaintiffs and the Class Members into paying a higher price for milk that cannot be sold as "organic."

21. The milk that Target sold was not organic, despite its misrepresentations that the milk was, in fact, organic; Target's supplier, Aurora, failed to comply with the requirements of the OFPA, *see* 7 C.F.R. § 205.102, *et seq.*, in at least the following ways:

a. Aurora represented its milk or milk products as "organic" when, in fact, they were not, in willful violation of 7 C.F.R. § 205.102;

b. Aurora failed to maintain records concerning the production and handling of milk or milk products intended to be sold, labeled, or represented as "organic" in a manner which fully disclosed all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited, in willful violation of 7 C.F.R. § 205.103(b);

c. Aurora failed to provide its dairy cows with access to land used for livestock grazing that it managed to provide feed value as required by 7 C.F.R. § 205.200;

d. Aurora, intending to sell, label or represent milk or milk products as "organic," failed to comply with the applicable provisions of 7 C.F.R. § 205.200;

e. Aurora failed to maintain an accurate organic production or handling system that includes a description of practices and procedures to be performed and maintained, including the frequency with which they will be performed, in willful violation of 7 C.F.R. §205.201(a)(1);

f. Aurora failed to maintain an accurate organic production or handling system that included a description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented, in willful violation of 7 C.F.R. § 205.201(a)(3);

g. Aurora, after an entire, distinct herd had been converted to organic production, failed to maintain all cows under organic management from the last third of gestation, in willful violation of 7 C.F.R. §205.236(a)(2)(iii);

h. Aurora removed its dairy cows from an organic operation and subsequently managed those cows on a non-organic (non-certified) operation before being sold, labeled, or represented as organically produced, in willful violation of 7 C.F.R. § 206.236(b)(1);

i. Aurora failed to provide its dairy cows with a total fee ration composed of agricultural products, including pasture and forage, that are organically produced and, where applicable, organically handled, in willful violation of 7 C.F.R. 205.238(a)(3);

j. Aurora failed to establish and maintain living conditions for its dairy cows which accommodate their health and natural behavior, in willful violation of 7 C.F.R. § 205.239(a);

k. Aurora failed to establish appropriate housing, pasture conditions, and sanitation practices for its dairy cows to minimize the occurrence and spread of diseases and parasites, in willful violation of 7 C.F.R. § 205.238(a)(3);

l. Aurora failed to provide its dairy cows with suitable access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight in willful violation of 7 C.F.R. § 205.239(a)(1);

m. Aurora failed to provide its dairy cows with access to pasture in willful violation of 7 C.F.R. § 205.239(a)(2);

n. Aurora failed to provide its dairy cows with appropriate clean, dry bedding, which complies with the feed requirements of § 205.237, in willful violation of 7 C.F.R. § 205.239(a)(3);

o. Aurora failed to provide shelter designed to allow for its dairy cows' natural maintenance, comfort behaviors, and the opportunity to exercise, as required by 7 C.F.R. § 205.406(a)(4)(i);

p. Aurora failed to comply with the Organic Food Production Act of 1990 and applicable organic production and handling regulations of 7 C.F.R. § 205.400(a);

q. Aurora failed to immediately notify its certifying agent concerning the application of a prohibited substance to its dairy cows, in willful violation of 7 C.F.R. § 205.400(f)(2); and,

r. Aurora failed to submit to its certifying agent an updated organic production or handling system plan that included a summary statement, supported by documentation, detailing deviations from, changes to, modifications to, or other

amendments made to the previous year's organic system plan during the previous year in willful violation of 7 C.F.R. § 205.406(a)(1)(i).

22. Despite these violations of the OFPA, Target marketed and sold the milk or milk products representing that the milk was organic, when it was not. Target's conduct deceived Plaintiffs and the Class Members into believing that they were purchasing organic milk when they were not.

23. Plaintiffs and the Class Members would not have purchased Target's "organic" milk, and paid the premium for the milk had they known it was non-organic.

V.
CLASS ACTION ALLEGATIONS

24. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs seek certification of a national Consumer Class (with the designation of statewide subclasses if the Court deems necessary and appropriate) defined as follows:

All Consumer residents and/or domiciliaries of the United States who purchased milk from Target, which was supplied by Aurora, during the relevant time period.

Excluded from the proposed Class are (i) any Defendant, any entity in which any Defendant has a controlling interest or which has a controlling interest in any Defendant, and Defendants' legal representatives, predecessors, successors, and assigns; (ii) the judicial offices to whom this case is assigned; and (iii) any member of the immediate families of excluded persons.

Should this court determine that a national Consumer Class would not satisfy the applicable requisites for class certification, Plaintiffs alternatively seek certification of a statewide class, defined as:

All Consumer residents and/or domiciliaries of Minnesota who purchased milk from Target, which was supplied by Aurora, during the relevant time period.

Excluded from the proposed Class are (i) any Defendant, any entity in which any Defendant has a controlling interest or which has a controlling interest in any Defendant, and Defendants' legal representatives, predecessors, successors, and assigns; (ii) the judicial offices to whom this case is assigned; and (iii) any member of the immediate families of excluded persons.

25. Plaintiffs are informed and believe that the Class consists of many thousands of persons throughout the United States, making individual joinder of all Class Members impracticable.

26. Questions of law and fact are common to the Plaintiff Class and predominate over questions affecting only individual member, including, *inter alia*, the following:

- a. Whether the alleged conduct by Defendant violated laws as alleged in this Complaint;
- b. Whether Plaintiffs and the Class Members have a claim for unjust enrichment as alleged herein;
- c. The duration and extent of any such violations or unlawful conduct by Defendants alleged herein;
- d. The amount by which Defendant's illegal, inequitable and unfair trade practices have inflated the prices paid by members of the Class for organic milk, supplied by Aurora, over the amounts they would otherwise have paid for ordinary non-organic milk and milk products;
- e. Whether Defendant's conduct caused injury to Plaintiff and the Class Members; and,
- f. Whether Plaintiffs and the Class Members are entitled to injunctive, declaratory and/or other equitable relief requested herein.

27. Plaintiffs' claims are typical of the claims of the Class Members as described above; the claims arise from the same course of conduct by Target and the relief sought is common.

28. Plaintiffs will fairly and adequately represent and protect the interests of all Class Members. Plaintiffs are represented by counsel competent and experienced in both consumer protection and class action litigation.

29. Class certification is proper under Federal Rule of Civil Procedure 23(b)(1)(A), because the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members and potentially establish incompatible standards of conduct for Defendant.

30. Class certification is proper under Federal Rule of Civil Procedure 23(b)(1)(B) because the prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interest of the other members not parties to these adjudications and/or substantially impair their ability to protect these interests.

31. Class certification is proper under Federal Rule of Civil Procedure 23(b)(3), because common issue of law and fact predominate over any questions affecting only individual members of the Class, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

32. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, because the economic damages suffered by the individual Class Members may be relatively modest, albeit significant, compared to the expense and burden of individual litigation, it would be

impracticable for Class Members to seek redress individually for the wrongful conduct alleged herein. There will be no difficulty in the management of this litigation as a class action.

VI.
FIRST CAUSE OF ACTION

(Target's Violation of the Minnesota Prevention of Consumer Fraud Act,
Minn. Stat. §§ 325F.68, *et seq.*, and Various Similar Acts)

33. Plaintiffs incorporate by reference the preceding paragraphs as if they were fully set forth herein.

34. Target had a statutory duty to refrain from unfair or deceptive acts or practices in the promotion and sale of their "organic" milk.

35. Had Defendant not engaged in the deceptive conduct described above, Plaintiffs and the Class Members would not have purchased the Archer Farms' "organic" milk.

36. Defendant's deceptive, unconscionable and/or fraudulent representations and material omissions to consumers and the public, including Plaintiff and the Class Members, constituted unfair and deceptive acts and practices in violation of the state consumer protection statutes listed below:

a. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ala. Code § 8-19-1, *et seq.*;

b. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Alaska Stat. § 45.50.471, *et seq.*;

c. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ariz. Rev. Stat. § 44-1522, *et seq.*;

d. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ark. Code § 4-88-101, *et. seq.*;

e. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Cal. Civ. Code § 1770 *et seq.* and Cal Bus. & Prof. Code § 17200, *et seq.*;

f. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Colo. Rev. Stat. § 6-1-105, *et seq.*;

g. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 2-1 10a, *et seq.*;

h. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of 6 Del. Code §§ 2511, *et seq.* and 2531, *et seq.*;

i. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of D.C. Code § 28-3901, *et seq.*;

j. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Fla. Stat. § 501.201 *et seq.*;

k. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ga. Stat. §§ 10-1-372, *et seq.*, 10-1-392 and 10-1-420.

l. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480-1, *et seq.*;

m. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Idaho Code § 48-601, *et seq.*;

n. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of 815 ILCS §505/1, *et seq.*;

o. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ind. Code Ann. § 24-5-0.5-1, *et seq.*;

p. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Iowa Code § 714.16, *et seq.*;

q. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Kan. Stat. § 50-623, *et seq.*;

r. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ky. Rev. Stat. § 367.170, *et seq.*;

s. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of La. Rev. Stat. § 51:1401, *et seq.*;

t. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of 5 Me. Rev. Stat. § 205A, *et seq.*;

u. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Md. Com. Law Code § 13-101, *et seq.*;

v. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Mass. Gen. L. Ch. 93 A, *et seq.*;

w. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Mich. Comp. Laws Ann. § 445.90 1, *et seq.*;

x. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Minn. Stat. §§ 325D.43, *et seq.*; 325 F.67, *et seq.*; and 325F.68 *et seq.*;

y. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Miss. Code Ann. § 75-24-1, *et seq.*;

z. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Vernon's Ann. Missouri Stat. § 407.010, *et seq.*;

aa. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Mont. Code Ann. § 30-14-101, *et seq.*;

bb. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Neb. Rev. Stat. § 59-1601, *et seq.*;

cc. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Nev. Rev. Stat. Ann. § 598.0903, *et seq.*;

dd. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.H. Rev. Stat. § 358-A:1, *et seq.*;

ee. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.J. Rev. Stat. § 56:8-1, *et seq.*;

ff. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.M. Stat. § 57-12-1, *et seq.*;

gg. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law §§ 349 *et seq.* and 350-e, *et seq.*;

hh. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*;

ii. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.D. Cent. Code §§ 51-12-01, *et seq.*, and 51-15-01, *et seq.*;

jj. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Ohio Rev. Stat. § 1345.01, *et seq.*;

kk. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Okla. Stat. § 15 751, *et seq.*;

ll. Defendant has engaged in unfair competition or unfair or deceptive acts

or practices in violation of Or. Rev. Stat. § 6464.605, *et seq.*;

mm. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of 73 Pa. Stat. § 201-1, *et seq.*;

nn. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of R.I. Gen. Laws. § 6-13.1-1, *et seq.*;

oo. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Laws § 39-5-10, *et seq.*;

pp. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of S.D. Codified Laws § 37-24-1, *et seq.*;

qq. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Tenn. Code § 47-18-101, *et seq.*;

rr. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Tex. Bus. & Com. Code § 17.41, *et seq.*;

ss. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code § 13-11-1, *et seq.*;

tt. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of 9 Vt. § 2451, *et seq.*;

uu. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Va. Code § 59.1-196, *et seq.*;

vv. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Wash. Rev. Code. § 19.86.0 10, *et seq.*;

ww. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of West Virginia Code § 46A-6-101, *et seq.*;

xx. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Wis. Stat. § 100.20, *et seq.*; and,

yy. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Wyo. Stat. § 40-12-101, *et seq.*

37. Plaintiffs and the Class Members relied upon Defendant's misrepresentations and/or omissions (as described herein) in purchasing the "organic" milk.

38. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs and the Class Members have been damaged by, *inter alia*, paying a premium price for "organic" milk, when Plaintiffs and the Class Members received non-organic milk.

39. As a direct and proximate result of Defendant's wrongful conduct, Plaintiffs and the Class are entitled to compensatory damages, treble damages, attorneys' fees and cost of this suit.

SECOND CAUSE OF ACTION
(Common Law Unjust Enrichment)

40. This Cause of Action is pled in the alternative to all contract-based claims and/or causes of action at law.

41. Defendant has received a benefit from Plaintiffs and the Class Members in the form of the prices Plaintiffs and the Class Members paid for Defendants' "organic" milk or milk products during the relevant time period.

42. Defendant is aware of their receipt of the above-described benefit.

43. Defendant received the above-described benefit to the detriment of Plaintiff and each of the other members of the Class.

44. Defendant continues to retain the above-described benefit to the detriment of Plaintiffs and the Class Members.

45. Under the circumstances, it would be inequitable for Defendant to retain the above described benefit.

46. As a result of Defendant's unjust enrichment, Plaintiffs and the Class Members have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution of Defendant's enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or wrongful conduct alleged above.

THIRD CAUSE OF ACTION
(Breach of Express Warranty)

47. Plaintiffs hereby incorporate paragraphs 1-42 by reference.

48. At all times relevant to this action, Defendant falsely represented that its milk was "organic" when they were not produced in compliance with the applicable organic certification requirements, laws, standards and regulations.

49. By its statements and representations about the "organic" status of its milk, Defendant warranted the production process and condition of the "organic" milk purchased by Plaintiffs and the Class Members.

50. Defendant made these representations and warranty statements to induce Plaintiffs and the Class Members to purchase Defendant's "organic" milk or was a material factor in the decision of Plaintiffs and the Class Members to purchase the milk.

51. Due to the conduct alleged herein, Defendant's "organic" milk failed to conform to each of these warranties.

52. As a result of Defendant's conduct, Plaintiffs and the Class Members have been damaged.

53. Within a reasonable time after Plaintiffs and the Class Members knew or should have known of the failure to conform, Plaintiffs, individually and on behalf of the Class, placed Defendants on notice thereof.

VII.
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf all others similarly situated, respectfully request that this Court enter a judgment against Defendants and in favor of Plaintiffs, and grant the following relief:

A. Determine that this action may be maintained as a class action with respect to a national class or with subclasses corresponding to the several states' laws, or, in the alternative, an Minnesota statewide class, pursuant to the appropriate subsections of Rule 23 of the Federal Rules of Civil Procedure; that the court certify a class action with respect to particular issues if appropriate, and that the Court designate and appoint Plaintiffs and their counsel to serve as Class Representatives and Class Counsel;

B. Declare, adjudge and decree the conduct of the Defendants as alleged herein to be unlawful;

C. Grant Plaintiffs and all Class Members awards of actual, compensatory, punitive and/or exemplary damages in such amount to be determined at trial and as provided by applicable law;

D. Grant Plaintiffs and all Class Members awards of statutory damages, attorney's fees and costs pursuant to the various Consumer Protection Acts of the fifty states;

E. Grant Plaintiffs and the Class Members their costs of suit, including reasonable attorneys' fees, and expenses as provided by law; and,

F. Grant Plaintiffs and the Class Members such other, further, and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

DEMAND FOR TRIAL BY JURY

Plaintiffs, by counsel, request a trial by jury on those causes of actions set forth herein.

Dated: December 4, 2007

Respectfully submitted:

S/GARRETT D. BLANCHFIELD, JR.
REINHARDT WENDORF & BLANCHFIELD
Garrett D. Blanchfield, Jr. (#209855)
E1250 First National Bank Bldg.
332 Minnesota Street
St. Paul, Minnesota 55101
Telephone: (651) 287-2100
Facsimile: (651) 287-2103
Email: g.blanchfield@rwblawfirm.com

PRICE WAICUKAUSKI & RILEY, LLC
William N. Riley (#14941-49)
Jamie R. Kendall (#25124-49A)
Christopher A. Moeller (#25710-49)
Joseph N. Williams (#25874-49)
301 Massachusetts Avenue
Indianapolis, Indiana 46204
Telephone: (317) 633-8787
Facsimile: (317) 633-8797
Email: wriley@price-law.com
jkendall@price-law.com
cmoeller@price-law.com
jwilliams@price-law.com

Laurence D. King
KAPLAN FOX & KILSHEIMER, LLP
350 Sansome Street, Suite 400
San Francisco, California 94104
Telephone: (415) 772-4700
Facsimile: (415) 772-4707
Email: lking@kaplanfox.com

Frederic S. Fox
KAPLAN FOX & KILSHEIMER, LLP
805 Third Avenue
New York, New York 10022
Telephone: (212) 687-1980
Facsimile: (212) 687-7714
Email: ffox@kaplanfox.com

Counsel for Plaintiffs