

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA**

Tallahassee Division

OCHEESEEE CREAMERY, LLC,

Civil Case No.

Plaintiff,

vs.

ADAM H. PUTNAM, in his official
capacity as Florida Commissioner of
Agriculture; and
GARY NEWTON, in his official
capacity as Chief of the Florida
Bureau of Dairy Industry,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Ocheesee Creamery, LLC, by and through its undersigned counsel, hereby files this Complaint for Declaratory and Injunctive Relief and sues Florida Commissioner of Agriculture Adam H. Putnam and Florida Bureau of Dairy Industry Chief Gary Newton, in their respective official capacities, as follows:

INTRODUCTION

1. This First Amendment challenge is brought on behalf of a small dairy creamery to vindicate its right to label skim milk in an honest, clear and non-misleading manner. For years, Plaintiff Ocheesee Creamery, LLC (the “Creamery”) sold pasteurized skim milk—which it labeled, clearly and truthfully, as “pasteurized skim milk”—to its customers. The milk contained exactly one ingredient: skim milk. Beginning in 2012, however, the State of Florida ordered the Creamery to either: (1) inject an artificial additive into the skim milk; or (2) re-label the skim milk to comply with Florida’s labeling requirements for “imitation milk product.” Complying

with the imitation milk product labeling requirements would include using the confusing and misleading label “Non-Grade ‘A’ Milk Product, Natural Milk Vitamins Removed” instead of the clear, honest label of “pasteurized skim milk.” The Creamery refuses to inject its skim milk with any additives, and it likewise refuses to confuse and mislead its customers by mislabeling its safe, all-natural, pure skim milk. It brings this federal civil rights lawsuit to vindicate its right to engage in truthful speech about its lawful skim milk.

PARTIES

2. Plaintiff Creamery is a Florida limited liability company owned by Mary Lou Wesselhoeft and her husband Paul Wesselhoeft (the “Wesselhoefts”). The Creamery is located on the Wesselhoeft family’s farm in Calhoun County, Florida.

3. Defendant Adam H. Putnam (“Putnam”) is the Florida Commissioner of Agriculture. Commissioner Putnam has direct authority over Florida Department of Agriculture and Consumer Services (“DACS”) personnel and is charged with the responsibility of enforcing the related laws, regulations and policies of the State of Florida. He is being sued only in his official capacity.

4. Defendant Gary Newton (“Newton”) is the Chief of Florida’s Bureau of Dairy Industry. Florida’s Bureau of Dairy Industry is a subdivision of Florida’s Division of Food Safety, which is in turn a division of DACS. Chief Newton has direct authority over Bureau of Dairy Industry personnel and is charged with the responsibility of enforcing the related laws, regulations and policies of the State of Florida. He is being sued only in his official capacity.

JURISDICTION AND VENUE

5. Plaintiff Creamery brings this civil rights lawsuit pursuant to the First and Fourteenth Amendments to the United States Constitution; the Civil Rights Act of 1871, 42

U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, for violations of the First and Fourteenth Amendments to the United States Constitution.

6. Plaintiff Creamery seeks declaratory and injunctive relief against Florida restrictions on, and compelled speech requirements related to, the labeling of skim milk, as well as related actions taken by DACS. These restrictions and requirements are found in Chapter 502, Florida Statutes, and Florida Administrative Code Chapter 5D-1.

7. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3), (4).

8. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2), as Plaintiff and Defendants are located in this District and a substantial part of the events giving rise to Plaintiff's claims occurred in this District.

STATEMENT OF ALLEGED FACTS

Plaintiff's Skim Milk

9. Plaintiff is a small, family-owned creamery located on the family's farm in Calhoun County. The Creamery has only three employees, including one who is part-time.

10. Due to its small size and the fact that it does not sell across state lines, the Creamery is exempted from any federal labeling regulations relevant to this lawsuit, and for the issues relevant to this lawsuit, the Creamery is only regulated by DACS.

11. It is important to the owners of the Creamery that nothing sold by the Creamery include artificial additives. Even the Creamery's chocolate milk consists only of whole milk, all-natural cocoa and pure cane sugar. Other than the Creamery's chocolate milk, the Creamery's other milk has no ingredients other than pure milk, and the Creamery's cream has no ingredients other than pure cream.

12. This all-natural dairy philosophy is shared by the Creamery's customers, many of whom purchase the Creamery's goods because of the Creamery's strict adherence to its principled stand against artificial additives.

13. The cream sold by the Creamery is obtained by the Creamery by simply skimming cream from pasteurized, all-natural whole milk. The pasteurization process heats the milk, but does not add any additional ingredients to the milk.

14. Skimming cream from milk also results in skim milk being left over, so the Creamery began selling this all-natural, pasteurized skim milk over five years ago.

15. The Creamery's pasteurized skim milk, which it sold until approximately two years ago, was pure skim milk.

16. The Creamery's pasteurized skim milk had only one ingredient: pasteurized skim milk.

17. The Creamery's pasteurized skim milk did not contain any ingredients other than pasteurized skim milk, and no other ingredients were ever added.

18. The Creamery uses reusable glass bottles to sell all of its types of milk. Customers receive a refund of their deposit when they return the empty glass bottles to be reused by the Creamery.

19. The Creamery's glass bottles all have the same information about the Creamery etched onto them, regardless of the type of milk being sold.

20. The different types of labels corresponding to the different types of milk sold by the Creamery are located on the bottle caps.

21. The Creamery's label for its pasteurized skim milk described its pasteurized skim milk as "PASTEURIZED SKIM MILK."

22. The Creamery's pasteurized skim milk was safe to drink and was sold by the Creamery for years with the knowledge of DACS agents.

23. Like all Florida creameries, the Creamery is routinely inspected by DACS agents.

24. The labels used by the Creamery were not confusing, deceptive or misleading.

25. No customer has ever complained about any label on any item ever sold by the Creamery.

26. No customer has ever indicated that any of the Creamery's labels were confusing, deceptive or misleading.

27. Neither the Creamery nor any of its owners or employees is aware of any instance where any of the Creamery's customers were ever confused, deceived or misled by any of the Creamery's labels.

28. No customer has indicated that they have ever been confused, deceived or misled by the Creamery in any manner at all.

29. Many of the Creamery's customers purchased the Creamery's skim milk specifically because it did not contain any additives.

The Stop Sale Order

30. On October 9, 2012, during a routine inspection by DACS agents of the Creamery, DACS agents informed Creamery owner Mary Lou Wesselhoeft that the Creamery could no longer sell pasteurized skim milk labeled as "pasteurized skim milk" unless the Creamery injected a vitamin A additive into the otherwise all-natural, pasteurized skim milk.

31. The DACS agents admitted that the pasteurized skim milk was perfectly safe to drink but could still only be sold as "pasteurized skim milk" if vitamin A were added.

32. The DACS agents informed the Creamery's owners that the Creamery could continue to sell its pasteurized skim milk without changing its label or taking any other steps if the Creamery would merely inject the vitamin A additive into the otherwise all-natural, pasteurized skim milk.

33. The DACS agents also eventually confirmed to Creamery owner Mary Lou Wesselhoeft that Florida law only allows skim milk to be labeled as skim milk if the skim milk contains the same amount of vitamin A as whole milk.

34. Whole milk includes both water soluble vitamins and fat soluble vitamins.

35. As a fat soluble vitamin, vitamin A is primarily located in the cream of the milk.

36. Skimming cream from milk removes a substantial portion of the vitamin A from the milk. Therefore, in order for skim milk to have the same amount of vitamin A as whole milk, the amount of vitamin A that had been located in the cream must be artificially replaced in the skim milk with an additive.

37. Plaintiff Creamery refused to inject anything into its skim milk.

38. As a result of the Creamery's refusal to inject its skim milk with the vitamin A additive, DACS issued a stop sale order to the Creamery for its skim milk on October 9, 2012, and listed the reason as "NOT ADDING VITAMIN A." A true and correct copy of the stop sale order is attached hereto as Exhibit "A."

Pasteurized Skim Milk is Not "Imitation Milk Product"

39. Plaintiff Creamery's refusal to inject a vitamin A additive into its all-natural, pasteurized skim milk means that the State of Florida considers the Creamery's pasteurized skim milk to be "imitation milk product" pursuant to Florida Statutes § 502.12(10).

40. DACS has informed the Creamery's owners that the Creamery can only resume selling its all-natural, pasteurized skim milk if it meets the labeling requirements for imitation milk products found in Florida Statutes Chapter 502. *See* Letter from Chief Newton (Dec. 11, 2013), a true and correct copy of which is attached hereto as Exhibit "B."

41. As explained in Exhibit B, as well as during numerous other discussions between Creamery owner Mary Lou Wesselhoeft and DACS agents, DACS will only allow the Creamery to resume selling the all-natural, pasteurized skim milk if the Creamery does not label its pasteurized skim milk as "PASTEURIZED SKIM MILK" and instead labels its pasteurized skim milk as "Non-Grade 'A' Milk Product, Natural Milk Vitamins Removed."

42. "Pasteurized skim milk" is the clearest way to describe the Creamery's pasteurized skim milk. It is an accurate description of an item that is lawful to sell, and it is not misleading.

43. No customer has indicated that they were ever confused, deceived or misled by the Creamery labeling its pasteurized skim milk as "pasteurized skim milk."

44. Plaintiff Creamery never attempted to hide the fact that its pasteurized skim milk had less vitamin A than whole milk. To the contrary, some of the Creamery's customers purchased the Creamery's skim milk specifically because no vitamin A was added.

45. "Non-Grade 'A' Milk Product, Natural Milk Vitamins Removed" is a confusing and misleading way to label the Creamery's pasteurized skim milk.

46. Plaintiff Creamery refuses to label its pasteurized skim milk as "Non-Grade 'A' Milk Product, Natural Milk Vitamins Removed," as this will confuse the Creamery's customers and mislead them into thinking that the Creamery has started selling a processed, artificial milk product.

47. Plaintiff Creamery also refuses to label its pasteurized skim milk as “Non-Grade ‘A’ Milk Product, Natural Milk Vitamins Removed” because this will mislead the Creamery’s customers into incorrectly thinking that *all* vitamins have been *completely* removed.

48. Along with banning the use of the term “skim milk,” DACS is also prohibiting the Creamery from taking other steps to mitigate the harm caused by the confusing and misleading label that DACS is compelling the Creamery to apply to its skim milk. These include, but are not limited to, prohibiting the Creamery from making “any nutrient or health claims.” *See Ex. B.*

49. Plaintiff Creamery has not sold any skim milk since October 9, 2012, because it refuses to mislead its customers.

50. Plaintiff Creamery continues to sell cream, which means that the Creamery continues to divide a portion of its whole milk into cream and skim milk. However, the skim milk is now discarded instead of being sold.

51. For over two years, the Creamery’s owners have attempted to find a solution that would be acceptable to DACS and would allow the Creamery to sell its pasteurized skim milk in a manner that would neither confuse nor mislead the Creamery’s customers.

52. Plaintiff Creamery’s owners have personally met with numerous DACS officials, including a personal meeting with Commissioner Putnam himself, to attempt to find a solution to this issue.

53. Among other things, Plaintiff Creamery suggested less confusing and more accurate alternatives to the misleading label required by DACS.

54. These meetings and conversations resulted in the December 11, 2013, letter to the Creamery from DACS. *See Ex. B.*

55. In response to the December 11, 2013 letter, the Creamery's owners again proposed, by letter, alternative labels that would more accurately describe their skim milk than the label required by DACS. *See* Letter from Ocheese Creamery (Sept. 29, 2014), a true and correct copy of which is attached hereto as Exhibit "C."

56. These alternative labels included:

PASTEURIZED SKIM MILK
NO VITAMIN A ADDED

PASTEURIZED SKIM MILK
NO LOST VITAMIN A REPLACED

PASTEURIZED SKIM MILK
MOST VITAMIN A REMOVED
BY SKIMMING CREAM FROM MILK

and

NON-GRADE "A" SKIM MILK
SOME MILK VITAMINS REDUCED
BY SKIMMING CREAM FROM
ALL-NATURAL PASTEURIZED MILK

See Ex. C.

57. In that letter, the Creamery's owners also proposed a label that would combine the language required by DACs with additional language that would help offset the misleading and confusing nature of the DACS-compelled label. That proposal read:

THE STATE REQUIRES US TO CALL THIS:
"NON-GRADE 'A' MILK PRODUCT,
NATURAL MILK VITAMINS REMOVED."
IT IS ALL-NATURAL SKIM MILK
WITH SOME VITAMIN A REMOVED
BY SKIMMING CREAM FROM MILK

See id.

58. In an October 23, 2014 response to the Creamery, DACS rejected all of the alternative labels proposed by the Creamery. *See* Letter from Chief Newton (Oct. 23, 2014), a true and correct copy of which is attached hereto as Exhibit “D.”

59. DACS suggested one alternative label of its own—an alternative that still prohibited use of the term “skim milk,” compelled an additional use of the term “milk product” and still suggested that all vitamins were completely removed. *See* Ex. D.

60. This alternative suggested by DACS would still fail to solve the problem and would result in a label that would confuse and mislead the Creamery’s customers. *See* Ex. D.

61. Selling pasteurized skim milk without complying with Florida’s labeling laws could result in fines for the Creamery. *See* Fla. Stat. § 502.231 (2014).

62. Selling pasteurized skim milk without complying with Florida’s labeling laws could result in incarceration for the Creamery’s owners. *Id.*

63. Selling pasteurized skim milk without complying with Florida’s labeling laws could result in the termination of the Creamery’s permits. *Id.*

64. The requirements imposed by DACS and Florida law are unreasonable, unnecessary and not tailored to any legitimate government interest.

65. The requirements imposed by DACS and Florida law are more burdensome than numerous other alternatives, including but not limited to the many alternatives that were suggested to DACS by the Creamery’s owners.

66. The requirements imposed by DACS and Florida law are content-based.

67. The requirements imposed by DACS and Florida law do not address any real problem, but instead create a substantial one.

68. The requirements imposed by DACS and Florida law are not in the public interest.

Injury to Plaintiffs

69. The inability to sell its pasteurized skim milk has caused the Creamery to suffer substantial financial harm.

70. In an attempt to offset some of the financial losses resulting from not being allowed to honestly sell its skim milk, the Creamery has raised the price of its cream. Even this measure, however, has not made up for the financial harm it has suffered.

71. Plaintiff Creamery's customers have been harmed by being charged higher prices for the cream and by no longer having the choice of whether to purchase the Creamery's skim milk.

72. Plaintiff Creamery is suffering ongoing and irreparable harm each day it is not allowed to sell its pasteurized skim milk using an honest, accurate and non-misleading label.

73. Despite the financial harm caused by DACS and Florida law, the Creamery does not seek financial damages and is suing for the right to sell its pasteurized skim milk again without being forced to mislead its customers.

74. But for the restrictions imposed by DACS and Florida law, the Creamery would have continued to sell its all-natural, pasteurized skim milk with an honest, accurate, non-misleading label.

75. If the Creamery were allowed to sell its all-natural, pasteurized skim milk using an honest, accurate, non-misleading label, it would do so.

CAUSES OF ACTION

Claim I: Censorship of the Words “Skim Milk”

76. Plaintiff Creamery reasserts and realleges paragraphs one through seventy-five as if fully set forth herein.

77. The First Amendment to the United States Constitution provides, in relevant part, that “Congress shall make no law . . . abridging the freedom of speech.”

78. The First Amendment is incorporated against the State of Florida through the Fourteenth Amendment to the United States Constitution.

79. Labeling pasteurized skim milk as “pasteurized skim milk” is non-misleading speech about a lawful activity.

80. By banning the honest, accurate and non-misleading description of skim milk as “skim milk” unless additives are injected into the skim milk, Florida law and DACS have abridged the freedom of speech of the Creamery and of anyone else who would otherwise sell perfectly safe, pasteurized skim milk without additives and with an honest, accurate, non-misleading label.

81. These restrictions on skim milk labeling harm the Creamery by preventing it from engaging in truthful speech about its lawful goods.

82. These restrictions on skim milk labeling also harm consumers by denying them access to truthful information about lawful goods in the marketplace.

83. The Creamery’s skim milk meets the commonly-used definition of skim milk understood by the Creamery’s customers and society in general. The ban on calling skim milk “skim milk” keeps consumers in the dark about what is actually being offered by the seller.

84. Florida's restrictions on skim milk labeling are content-based regulations of speech; the restrictions only prohibit speech about skim milk without additives, and only by sellers of skim milk without additives.

85. Florida's restrictions on skim milk labeling and the enforcement by DACS effect a suppression of truthful speech about the sale of a lawful item.

86. Florida's restrictions on skim milk labeling and the enforcement by DACS are not reasonably related to preventing or correcting any misleading or deceptive speech.

87. Florida's interest in preventing skim milk from being labeled as "skim milk" is not legitimate, substantial or compelling.

88. Florida's restrictions on skim milk labeling and the enforcement by DACS are not appropriately tailored to any government interest.

89. Florida's restrictions on skim milk labeling and the enforcement by DACS do not directly or materially advance any legitimate government interest.

90. Florida's restrictions on skim milk labeling and enforcement by DACS are overly extensive and unduly burdensome.

91. On their face and as-applied, the label requirements and enforcement discussed above violate the Creamery's right to free speech guaranteed by the First Amendment to the United States Constitution.

92. Unless Defendants are enjoined from enforcing the label requirements discussed above, the Creamery will continue to suffer irreparable harm.

Claim II: The Confusing and Misleading Compelled Label

93. Plaintiff Creamery reasserts and realleges paragraphs one through seventy-five as if fully set forth herein.

94. The First Amendment to the United States Constitution provides, in relevant part, that "Congress shall make no law . . . abridging the freedom of speech."

95. Freedom of speech includes freedom from coerced speech.

96. The First Amendment is incorporated against the State of Florida through the Fourteenth Amendment to the United States Constitution.

97. By ordering the Creamery to label its all-natural, pasteurized skim milk as "Non-Grade 'A' Milk Product, Natural Milk Vitamins Removed," Florida law and DACS have abridged the freedom of speech of the Creamery and of anyone else who would otherwise sell perfectly safe, pasteurized skim milk without additives and who would prefer not to confuse or mislead their own customers.

98. This compelled label requirement and enforcement by DACS harm the Creamery by requiring the Creamery to confuse and mislead its own customers in order to continue to sell an otherwise lawful item.

99. The compelled label requirement and enforcement by DACS also harm consumers by preventing them from having the option of continuing to purchase a legal item with an honest, accurate and non-misleading label. Neither the Creamery's customers nor society in general would understand the term "Non-Grade 'A' Milk Product, Natural Milk Vitamins Removed" to mean pasteurized skim milk.

100. If the Creamery were to follow the directions of Florida law and DACS, the result would be to create confusion and misunderstanding where previously there was none.

101. There is no reason to believe that any customer has ever been confused, deceived or misled by the Creamery or its labels.

102. The label required by DACS is not limited to purely factual and uncontroversial information.

103. The compelled label requirement and enforcement by DACS are content-based regulations of speech; they force sellers of skim milk to engage in confusing and misleading speech about their skim milk.

104. The compelled label requirement and enforcement by DACS coerce misleading speech about the sale of a lawful item.

105. The compelled label requirement and enforcement by DACS are not reasonably related to preventing or correcting any misleading or deceptive speech.

106. Florida's interest in forcing pure, safe, lawful, skim milk to be labelled as "Non-Grade 'A' Milk Product, Natural Milk Vitamins Removed" is not legitimate, substantial or compelling.

107. Florida's compelled label requirement and enforcement by DACS are not appropriately tailored to any government interest.

108. Florida's compelled label requirement and enforcement by DACS do not directly or materially advance any legitimate government interest.

109. Florida's restrictions on skim milk labeling and enforcement by DACS are overly extensive and unduly burdensome.

110. On their face and as-applied, the compelled label requirements and enforcement by DACS violate the Creamery's right to free speech guaranteed by the First Amendment to the United States Constitution.

111. Unless Defendants are enjoined from compelling the label discussed above, the Creamery will continue to suffer irreparable harm.

Claim III: Censorship of Additional Truthful and Verifiable Information

112. Plaintiff Creamery reasserts and realleges paragraphs one through seventy-five as if fully set forth herein.

113. The First Amendment to the United States Constitution provides, in relevant part, that “Congress shall make no law . . . abridging the freedom of speech.

114. The First Amendment is incorporated against the State of Florida through the Fourteenth Amendment to the United States Constitution.

115. Even if, *arguendo*, the Creamery must label its skim milk as “Non-Grade ‘A’ Milk Product, Natural Vitamins Removed” instead of as “pasteurized skim milk,” then the Creamery should still be allowed to provide additional truthful and verifiable information to mitigate the harm caused by the coerced speech.

116. Florida’s restrictions on skim milk labeling and enforcement by DACS prevent the Creamery from providing additional truthful and verifiable information that could help mitigate the confusing and misleading nature of the label mandated by DACS.

117. The additional truthful and verifiable information banned by DACS includes, but is not limited to “any nutrient or health claims.” *See* Ex. B.

118. The additional truthful and verifiable information banned by DACS also includes the additional language included in the following proposal by the Creamery, which was rejected by DACS:

THE STATE REQUIRES US TO CALL THIS:
“NON-GRADE ‘A’ MILK PRODUCT,
NATURAL MILK VITAMINS REMOVED.”
IT IS ALL-NATURAL SKIM MILK
WITH SOME VITAMIN A REMOVED
BY SKIMMING CREAM FROM MILK

See Ex. C.

119. By forbidding the Creamery from providing additional truthful and verifiable information, Florida law and DACS have abridged the freedom of speech of the Creamery.

120. These restrictions harm the Creamery by preventing it from engaging in truthful and verifiable speech about its lawful goods and by preventing it from helping to mitigate the harm caused by the DACS-mandated label.

121. These restrictions also harm consumers by denying them access to truthful and verifiable information about lawful goods in the marketplace. The restrictions keep consumers in the dark about what is actually being offered by the seller.

122. These restrictions are content-based regulations of speech; the restrictions and enforcement from DACS only took place because the Creamery intended to engage in truthful speech about skim milk without additives.

123. These restrictions effect a suppression of truthful speech about the sale of a lawful item.

124. These restrictions and the enforcement by DACS are not appropriately tailored to any sufficiently important government interest.

125. These restrictions and the enforcement by DACS are not reasonably related to preventing or correcting any misleading or deceptive speech.

126. Florida's interests in these restrictions and the enforcement by DACS are not legitimate, substantial or compelling.

127. These restrictions and the enforcement by DACS are not appropriately tailored to any legitimate government interest.

128. These restrictions and the enforcement by DACS do not directly or materially advance any legitimate government interest.

129. These restrictions and the enforcement by DACS are overly extensive and unduly burdensome.

130. On their face and as-applied, these restrictions and the enforcement by DACS violate the Creamery's right to free speech guaranteed by the First Amendment to the United States Constitution.

131. Unless Defendants are enjoined from enforcing these restrictions, the Creamery will continue to suffer irreparable harm.

REQUEST FOR RELIEF

Therefore, Plaintiff respectfully requests the following relief:

A. A declaratory judgment by the Court that, facially and as applied to Plaintiff, the restrictions and enforcement preventing Plaintiff from labeling its pasteurized skim milk as "pasteurized skim milk" violate the First Amendment to the United States Constitution;

B. A temporary injunction prohibiting Defendants or their agents from preventing Plaintiff from labeling its pasteurized skim milk as "pasteurized skim milk;"

C. A permanent injunction prohibiting Defendants or their agents from preventing Plaintiff from labeling its pasteurized skim milk as "pasteurized skim milk;"

D. A declaratory judgment by the Court that, facially and as applied to Plaintiff, the requirement that Plaintiff label its pasteurized skim milk as "Non-Grade 'A' Milk Product, Natural Milk Vitamins Removed" violates the First Amendment to the United States Constitution;

E. A temporary injunction prohibiting Defendants or their agents from requiring Plaintiff to label its pasteurized skim milk as "Non-Grade 'A' Milk Product, Natural Milk Vitamins Removed;"

F. A permanent injunction prohibiting Defendants or their agents from requiring Plaintiff to label its pasteurized skim milk as “Non-Grade ‘A’ Milk Product, Natural Milk Vitamins Removed;”

G. A declaratory judgment by the Court that, facially and as applied to Plaintiff, the restrictions and enforcement preventing Plaintiff from providing additional truthful and verifiable information on its label violate the First Amendment to the United States Constitution;

H. A temporary injunction prohibiting Defendants or their agents from preventing Plaintiff from providing additional truthful and verifiable information on its label;

I. A permanent injunction prohibiting Defendants or their agents from preventing Plaintiff from providing additional truthful and verifiable information on its label;

J. An award of attorneys’ fees, costs and expenses in this action; and

K. Any other legal or equitable relief to which Plaintiff may show itself to be justly entitled.

DATED: November 20, 2014.

Respectfully submitted,

By: /s/ Justin Pearson
Justin Pearson (FL Bar No. 597791)
INSTITUTE FOR JUSTICE
999 Brickell Avenue, Suite 720
Miami, FL 33131
Tel: (305) 721-1600
Fax: (305) 721-1601
Email: jpearson@ij.org

EXHIBIT A

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF



ADAM H. PUTNAM
COMMISSIONER

Department of Agriculture and Consumer Services

Bureau of Dairy Industry

3125 Conner Blvd., MS-C27 · Tallahassee, FL 32399-1650 · Phone: (850) 245-5410

500.172, 502.231(4), 503.031(4), F.S. & 5D-1.001, F.A.C.

HOLD ORDER STOP SALE ORDER STOP USE ORDER

Location of Action: O CHEESE CREAMERY		Manufacturer of Product / Permit #: (Include IMS # if applicable) 8813	
Location Address: GRAND RIDGE, FL		Manufacturer Address:	
Description of Equipment (Stop Use Only):		Specialist: ZIRKELBACH	Date: 10/9/12

Complete the following information for the issuance of a Hold Order or Stop Sale Order

PRODUCT	BRAND NAME	CODE DATE OR OTHER IDENTIFICATION	CONTAINER SIZE	UNITS or TOTAL GALLONS or POUNDS
QT SKIM	Ocheese	10/16/12	QT	14
SKIM	Ocheese	10/16/12	1/2 GAL	20

Inspector: Please state the reason(s) for this Order:
NOT ADDING VITAMIN A

SEE REVERSE SIDE OF THIS FORM FOR INFORMATION PERTAINING TO THIS ACTION AND YOUR LEGAL RIGHTS.

Signature of DACS Representative <i>Fred Zirkelbach</i>	Signature of Management Official Acknowledging Receipt of a Copy of this Document <i>Billy Tyler</i>
Please Print Name and Title FRED ZIRKELBACH SANITATION & SAFETY SPEC.	Please Print Name and Title Billy Tyler

HEARING WAIVER

I hereby waive a notice and a hearing, as provided in Chapter 120, Florida Statutes, as to why the product or equipment identified should not be subject to a Hold Order, Stop Sale Order, or Stop Use Order and hereby consent to the Department's action.

Printed Name of Management Representative:	Title:	Corporate or Trade Name:
Signature:	Resident Address:	Date:

RELEASE

THE PRODUCT OR EQUIPMENT DESCRIBED ABOVE IS TO BE RELEASED FOR:

RELEASE FOR SALE OR USE NOT FOR HUMAN CONSUMPTION

USE IN UNGRADED PRODUCT ONLY DISCARDED OR RETURNED TO MANUFACTURER

Signature of DACS Representative <i>Fred Zirkelbach</i>	Date: 10/9/12
Please Print Name and Title FRED ZIRKELBACH	

EXHIBIT B

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

DIVISION OF FOOD SAFETY
BUREAU OF DAIRY INDUSTRY
(850) 245-5410
(850) 922-9444 FAX



THE CONNER BUILDING
3125 CONNER BOULEVARD
TALLAHASSEE, FLORIDA 32399-1690

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER ADAM H. PUTNAM

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 11, 2013

Mr. and Mrs. Paul Wesselhoeft
Ochoossee Creamery, LLC
28367 NE SR 69
Grand Ridge, FL 32442

Dear Mr. and Mrs. Wesselhoeft:

Thank you for contacting the Department of Agriculture and Consumer Services regarding the possibility of obtaining an Imitation Milk and Milk Products Processor permit from the Department pursuant to Section 502.165, Florida Statutes. During a recent discussion with department staff, you acknowledged that during the processing of your skim milk product your company removes the natural vitamins with the milk fat and does not replace them to the levels required by the PMO. Your skim "milk" product is therefore nutritionally inferior to the federal standard of identity for "milk" making it less than Grade "A." Florida law provides that only Grade "A" pasteurized milk and milk products shall be sold at retail within the state.

You have indicated that you were requesting the Imitation Milk and Milk Products Processor permit to offer for sale this less than Grade "A" skim milk product as "MooShine" within the state. The department has determined that Florida law would allow your company to offer this product for retail sale within the state if the following conditions are met:

- Comply with the display and health standard requirements of s. 502.165, Florida Statutes
- The product label must include:
 - The phrase "Non-Grade "A" Milk Product, Natural Milk Vitamins Removed" in at least ½ the font size as the product title.
 - An ingredient statement that includes "skim milk" and any other ingredients if they are used (i.e. flavoring such as chocolate and/or sugar).
 - Container size by volume
 - The name and place of business of manufacturer, packer, or distributor must appear on the information panel or principal display panel.
- The product labeling shall not:
 - Make any nutrient or health claims
 - Include the term "Grade A."



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Mr. and Mrs. Paul Wesselhoeft
December 11, 2013
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If you wish to move forward with your request for an Imitation Milk and Milk Products Processor permit, please submit an application and a proposed label for your "MooShine" product to the department for review. The department will review the application and proposed label and if it meets the requirements outlined above, the department will issue a permit to your firm at which time you may commence bottling your product for retail sale.

Our goal is to insure high quality, healthy dairy products in Florida. We know that you share this goal. Please contact your Dairy Specialist or our office if we can provide you with additional assistance.

Sincerely,



Gary Newton, Chief
Bureau of Dairy Industry

GN/cdl

Enclosure



ADAM H. PUTNAM
COMMISSIONER

Florida Department of Agriculture and Consumer Services
Division of Food Safety
Bureau of Dairy Industry

**APPLICATION FOR PERMIT
AS A MANUFACTURER OF MILK,
MILK PRODUCTS, CHEESE OR CONTAINERS**

Sections 502.053 and 502.185, Florida Statutes

Submit application to:

Florida Department of Agriculture and
Consumer Services
Bureau of Dairy Industry
3125 Conner Boulevard, Mail Stop C-27
Tallahassee, Florida 32399-1850
Dairy.Plants@FreshFromFlorida.com

(850) 245-8410 - Phone
(850) 922-9444 - FAX

Note: All documents and attachments submitted with this request are subject to public review pursuant to Chapter 119, F.S.

Pursuant to the requirements of Chapter 502, Florida Statutes, and Chapter 5D-1, Florida Administrative Code, I hereby make application for a state permit as:

BUSINESS INFORMATION - CHECK TYPE OF BUSINESS

- | | | | | | |
|---|--------------------------|------------------------------------|--------------------------|---------------------------------------|--------------------------|
| Milk Plant Processor | <input type="checkbox"/> | Manager/Milk & Milk Products Plant | <input type="checkbox"/> | Single Service Container Manufacturer | <input type="checkbox"/> |
| Washing Station | <input type="checkbox"/> | Receiving Station | <input type="checkbox"/> | Cheese Manufacturer | <input type="checkbox"/> |
| Out of State Processor
Of Milk and Milk Products** | <input type="checkbox"/> | Transfer Station | <input type="checkbox"/> | Imitation Milk Plant Processor | <input type="checkbox"/> |

**Separate permit is required for each processing plant providing items for shipment into the State of Florida.

Legal Name of Company or Individual:	
Trade Name or DBA:	
.	.
.	.
Type of Company (Sole Proprietorship, Corp., Partnership, etc):	
Street Address of Facility:	
City, County, State, Zip:	
IMS Identification Number or Plant Number if Applicable:	
Federal Employer Identification:	
Telephone Number/FAX Number:	
Web Site/E-Mail:	
Name of Contact Person: (Will receive Departmental Notices)	
Title of Contact Person:	
Mailing Address:	
City, County, State, Zip:	
Telephone Number/FAX Number:	
Email:	

I hereby agree that all milk, milk products, ice cream, frozen desserts, imitation milk, imitation milk products and/or containers that I offer for sale, sell or barter, will be handled, processed and/or transported strictly in accordance with all provisions of Chapter 502, Florida Statutes, and Chapter 5D-1, Florida Administrative Code..

Company Representative Signature

Print Name

Title

Date

EXHIBIT C

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

September 29, 2014

Mr. Gary Newton
Florida Department of Agriculture and Consumer Services
Bureau of Dairy Industry
3125 Conner Boulevard, Mail Stop C-27
Tallahassee, Florida 32399-1650

Dear Mr. Newton:

As you know, we are the owners of Ocheesee Creamery, and we want to be able to start selling our pasteurized skim milk again. We were allowed to sell our skim milk for 3 years with no complaints, only compliments, on the quality of our skim milk. Your Department, The Bureau of Dairy Industry, has told us that in order to start selling it again we need to either inject it with Vitamin A, or label it like we are selling imitation milk. Our pasteurized skim milk is not imitation milk, and we will not inject anything into our skim milk, so we are submitting the label application you described in your December 11, 2013 letter.

We can agree with many of the requirements in your letter. We will list the ingredient of our pasteurized skim milk as skim milk (skim milk is the only ingredient in our pasteurized skim milk). We will also list the container size by volume and our name and place of business just like all of the other milk we sell at our creamery.

The problem is that you will not let us label our pasteurized skim milk as pasteurized skim milk and are forcing us to label it as Non-Grade "A" Milk Product, Natural Milk Vitamins Removed. The language you are requiring is confusing and wrong, so we have prepared some better alternatives:

Alternative #1

PASTEURIZED SKIM MILK
NO VITAMIN A ADDED

Alternative #2

PASTEURIZED SKIM MILK
NO LOST VITAMIN A REPLACED

Alternative #3

PASTEURIZED SKIM MILK
MOST VITAMIN A REMOVED
BY SKIMMING CREAM FROM MILK

Alternative #4

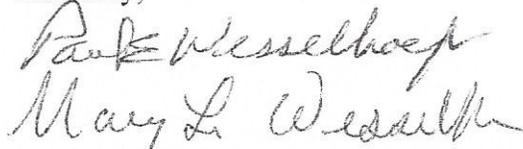
NON-GRADE "A" SKIM MILK
SOME MILK VITAMINS REDUCED
BY SKIMMING CREAM FROM
ALL-NATURAL PASTEURIZED MILK

Alternative #5

THE STATE REQUIRES US TO CALL THIS:
"NON-GRADE 'A' MILK PRODUCT,
NATURAL MILK VITAMINS REMOVED."
IT IS ALL-NATURAL SKIM MILK
WITH SOME VITAMIN A REMOVED
BY SKIMMING CREAM FROM MILK

Please let us know whether any of these alternatives are acceptable. Thank you for your consideration.

Sincerely,

Handwritten signatures of Paul and Mary Lou Wesselhoeft. The signature for Paul is written above the signature for Mary Lou.

Paul and Mary Lou Wesselhoeft
Ocheese Creamery, LLC

EXHIBIT D

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

DIVISION OF FOOD SAFETY
BUREAU OF DAIRY INDUSTRY
(850) 245-5410
(850) 922-9444 FAX



THE CONNER BUILDING
3125 CONNER BOULEVARD
TALLAHASSEE, FLORIDA 32399-1650

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER ADAM H. PUTNAM

October 23, 2014

Paul and Mary Lou Wesselhoeft
Ocheese Creamery, LLC
28367 NE St. Rd. 69
Grand Ridge, FL 32442

Dear Mr. and Mrs. Wesselhoeft:

Thank you for your letter dated September 29, 2014, transmitting your Imitation Milk Plant Processor permit application. The purpose of this letter is to respond the questions included in your letter with the goal of finalizing the details necessary for the department to issue your permit.

As explained in the department's December 2013 letter, your skim "milk" product does not meet the federal standard of identity for "milk" because the natural vitamins are removed with the milk fat and are not replaced. Therefore, your skim "milk" product is not Grade "A" and Florida law provides that only Grade "A" pasteurized milk and milk products shall be sold at retail within the state.

The department's letter outlined the requirements for the issuance of a permit to authorize you to offer for sale non-Grade "A" skim milk product under the product name "MooShine." One of these requirements was that the wording "Non-Grade "A" Milk Product, Natural Milk Vitamins Removed" must be included in the product labeling.

In your September 29, 2014, letter you proposed several alternatives to the specific language the department provided. The department has reviewed your proposed alternatives and has concluded that your proposed Alternative #5 with a few modifications is acceptable. Therefore, the department proposes that the following language be included on the label:

"The State requires us to call this: "Non-Grade "A" Milk Product, Natural Milk Vitamins Removed." All natural milk product with vitamins removed by separating cream from milk."

The department believes that this language is the best compromise because it is a true statement that allows you to tell your customers that the product is an all natural milk product. The department realizes that statement may exceed the space available in your traditional labeling methods. Therefore, the department considers the "The State requires us to call this:" portion of the statement to be optional and that portion may be removed if you choose to do so. Further, as was explained in the department's

original letter the statement must be printed in at least ½ the font size as the product title on your labeling.

If you wish to move forward with your request for an Imitation Milk and Milk Products Processor permit, please submit a proposed label for your “MooShine” product to the department for review. Also, please include a description for how the labeling will be displayed such as whether you will be using a collar tag or a sticker on the bottle. Finally, the department is aware that your company uses different color bottle caps to distinguish your products. Please include a description of the color of the bottle cap that you intend to use for this product and whether the name “MooShine” will be printed on it.

The department will review the proposed label and if it meets the requirements discussed above and in the original letter, the department will issue a permit to your firm at which time you may commence bottling your product for retail sale.

Our goal is to insure high quality, healthy dairy products in Florida. We know that you share this goal. Please contact your Dairy Specialist or our office if we can provide you with additional assistance.

Sincerely,

A handwritten signature in cursive script that reads "Gary Newton".

Gary Newton, Chief
Bureau of Dairy Industry

GN/cdl