

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

<p>CLEAN LABEL PROJECT FOUNDATION, 280 E. 1st Ave. #873, Broomfield, CO 80038, and GMO FREE USA, P.O. Box 458, Unionville CT, 06085,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>PANERA, LLC, 3630 S Geyer Rd # 100, St. Louis, MO 63127, PANERA BREAD COMPANY, 3630 S Geyer Rd # 100, St. Louis, MO 63127, and JAB HOLDING COMPANY, S.À.R.L., 4, Rue Jean Monnet, L-2180 Luxembourg, Grand Duchy of Luxembourg,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. <u>2019 CA 001898 B</u></p> <p><u>COMPLAINT</u></p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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COMPLAINT

On behalf of their members and the general public, Plaintiffs Clean Label Project Foundation (“Clean Label Project”) and GMO Free USA (collectively, “Plaintiffs”), by and through their counsel, bring this action against Defendants Panera, LLC, its parent company Panera Bread Company, and its parent company JAB Holding Company, S.A.R.L. (collectively “Panera” or the “Panera Defendants”) regarding the deceptive labeling, marketing, and sale of certain bread products, sandwiches, cookies, and other goods (the “Products,” as further defined below) as “clean” despite the fact that the Products contain synthetic biocide residue and other contaminants. Plaintiffs allege the following based upon information, belief, and the investigation of their counsel:

INTRODUCTION

1. Due to concerns about health, sustainability, and the use of synthetically created

chemicals in the production of food, more and more consumers are considering how their food is farmed, processed, and prepared.

2. As a result, demand has increased for food products that provide assurances about how they are produced and prepared—that is, products that are free from unnatural ingredients, synthetic chemicals, or other remnants of artificial or extensive processing. Consumers, as Panera knows, are willing to pay more for products marketed in this way than they are willing to pay for competing products that do not provide such assurances.

3. In particular, there is a growing desire among consumers to purchase and consume “clean” foods, which consumers understand to be foods free of artificial ingredients, especially pesticides.¹

4. Panera produces sandwiches, baked goods, and other prepared foods that are sold to consumers through Panera’s retail outlets or restaurants and are advertised and promoted as “clean.”

5. In contrast to Panera’s representations, certain food items sold at its retail outlets contain glyphosate, a synthetic biocide suspected (including by consumers) to have detrimental health effects, and may contain synthetic agricultural fungicides and pesticides.

¹ See, e.g., Cargill, Inc., *Transparency and Simplicity: The New Normal in Product Development*, 8 (2017), <https://www.cargill.com/doc/1432106811290/clean-label-white-paper.pdf> (finding in consumer study that more than half of respondents look to “clean” foods in order to avoid pesticides and other artificial chemicals); Nielsen Co., *It’s Clear: Transparency Is Winning in the Retail Market*, 9 (2017), <https://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2017-reports/nielsen-clean-label-report-aug-2017.pdf> (finding in consumer study that “clean” foods are understood as “free from artificial ingredients”); Technomic, Inc., *Consumer & Restaurant Menu Trends: The Clean Label Influence*, 8 (2017), <https://www.globalfoodforums.com/wp-content/uploads/2017/03/L.Freier-A.Harvey-Technomic-2017-Clean-Label.pdf> (finding in consumer study that 61% of consumers associate “clean” food with “no artificial ingredients”).

6. Specifically, the products at issue (the “Products”) are:²

- (a) Whole Grain Bagel;
- (b) Mediterranean Veggie Sandwich;
- (c) Oatmeal Raisin with Berries Cookie;
- (d) Oatmeal with Apple Chips and Pecans; and
- (e) Greek Yogurt with Mixed Berries.

7. In sum, Panera is deceiving consumers into believing that the Products are of a higher quality, free from synthetic chemicals, or free from chemical residues from the production process when they are not.

8. No reasonable consumer who sees Panera’s representations that its food is “clean” would expect the Products to contain traces of an unnatural biocide or agricultural fungicides.

9. By deceiving consumers about the nature, quality, and/or ingredients of the Products, Panera is able to sell a greater volume of the Products, to charge higher prices for the Products, and to take away market share from competing products, thereby increasing its own sales and profits.

10. Panera’s false and misleading representations and omissions violate the District of Columbia Consumer Protection Procedures Act (“DC CPPA”), D.C. Code §§ 28-3901, *et seq.*

11. Because Panera’s labeling and advertising of the Products tend to mislead and are materially deceptive about the true nature, quality, and ingredients of the Products, Plaintiffs bring

² Discovery may demonstrate that additional Panera food items are within the scope of this Complaint. Plaintiff reserves the right to amend this complaint to include additional food items identified through the course of discovery.

this deceptive advertising case on behalf of their members and the general public, and seek relief including an injunction to halt Panera’s false marketing and sale of the Products.

FACT ALLEGATIONS

12. Plaintiffs bring this suit for injunctive relief under the DC CPPA against Panera, based on misrepresentations and omissions committed by Panera regarding the Products, which Panera markets as “clean.”

13. Panera’s marketing of the Products is false and deceptive because the Products contain residue of the synthetic biocide glyphosate, and of synthetic fungicides, the presence of which does not comport with consumers’ perceptions of “clean” food.

14. Panera knows that American consumers increasingly and consciously seek out, and will pay more for, “clean” foods.

15. Accordingly, Panera cultivates an image of the Products as a “clean” alternative for consumers who wish to avoid synthetic chemicals and artificial or unsafe additives.

A. The Presence of Glyphosate in the Products Renders Panera’s Advertising False and Deceptive.

16. In all of its retail locations and on its menus, bags, websites, social media, press and news articles, in-store signage, and YouTube videos, Panera represents that the Products are a “clean” alternative to other fast-casual or fast food options for consumers who wish to avoid synthetic chemicals.

17. Throughout its advertising and marketing materials, Panera consistently refers to its food as “Clean,”³ “Food as it should be,”⁴ “Made the right way, not the easy way,”⁵ and “Crafted clean from top to bottom.”⁶

18. Panera also advertises a “Food Promise,” which states: “We believe food should be: Clean, Raised Responsibly, Nutrient Rich, Savored & Enjoyed, Personalized, Transparent,”⁷ and that “We’re all about making food you can feel good about eating.”⁸

19. Panera states that “we can say with 100% certainty (and that’s hard to come by), that 100% of our food menu is clean.”⁹

20. Throughout its marketing, Panera claims “100% of our food is 100% clean,” as in the image reproduced below¹⁰:

³ This representation is used throughout Panera’s advertisements. For example, on its main website (Panera Homepage, www.PaneraBread.com (last accessed Nov. 1, 2018)) and in its YouTube videos, such as Panera Bread, *Panera Delivers – Fresh Salads*, YouTube (Apr. 23, 2018), <https://www.youtube.com/watch?v=31BBMN3M3LU>.

⁴ *Id.*

⁵ See, e.g., Panera Bread, *Made the Right Way, Not the Easy Way*, YouTube (Jan. 19, 2018), https://www.youtube.com/watch?v=5dksENME_pA.

⁶ Panera Bread, *Panera Bread Commercial: Medical Students*, YouTube (Sep. 12, 2016), <https://www.youtube.com/watch?v=8kgahYzbbzI>.

⁷ Panera Bread, Homepage, <https://www.panerabread.com/en-us/home.html> (last visited Nov. 1, 2018) (top menu bar on homepage).

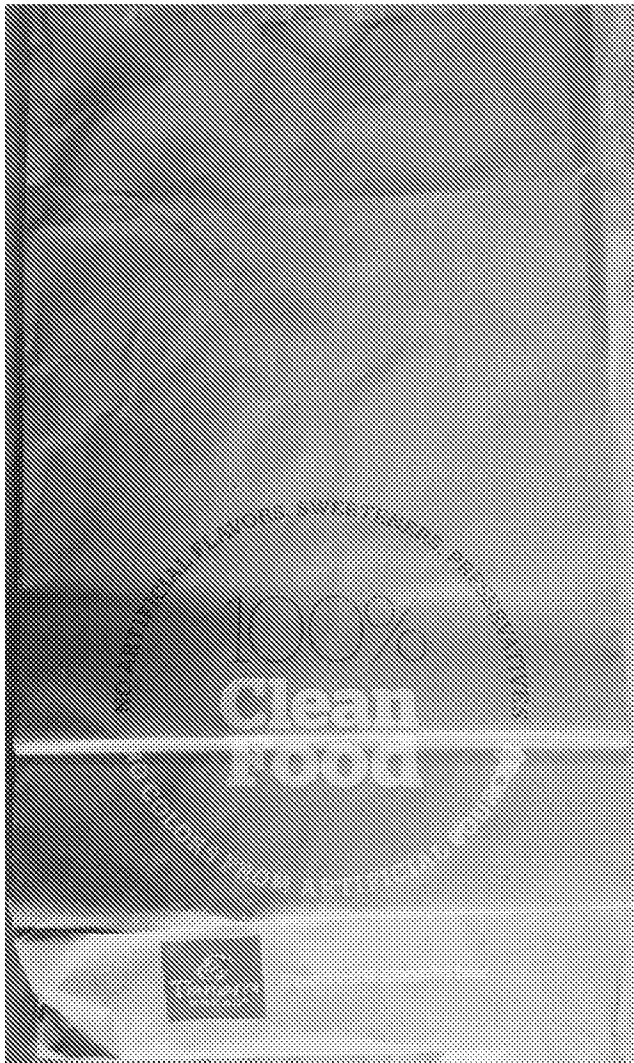
⁸ *Id.*

⁹ See, e.g., Panera Bread, *Clean Ingredients*, <https://www.panerabread.com/en-us/articles/100-percent-of-our-food-is-100-percent-clean.html> (last visited Nov. 1, 2018) (emphasis added).

¹⁰ See, e.g., Panera Bread, *Food Promise: Clean*, <https://www.panerabread.com/en-us/our-beliefs/our-food-policy/clean-ingredients.html> (last visited Nov. 1, 2018).



21. This marketing is ubiquitous throughout their physical locations as well, on bags, signs, and labels throughout the stores and restaurants:





We believe in raising, serving and eating food that is good and good for you.

Food should be clean. No artificial colors, preservatives, sweeteners, flavors or anything else you wouldn't want to serve your family.

Food should be honest, which is why we are transparent and always let you know exactly what's in your food.

Most of all, food should taste great and be made the way you like it, with this or without that.

Since we started, we've been on a journey to make food, as a whole, better. And you can be sure we will never stop.

If you'd like to join us, have a seat and enjoy.

 **Food as it should be.**

22. Panera also uses a number of other representations to portray an image of “clean,” chemical-free food, such as the earthy green and brown color schemes throughout its stores, webpages, and on its logo.

23. Panera’s representations are intended to, and do, portray to consumers that, at the very least, the ingredients in the Products do not contain residue of any non-food items such as synthetic chemicals used during the ingredients’ growing, harvest, or processing.

24. The term “clean” is becoming more popular in the food industry as consumers demand food without chemicals, and more transparency about how their food is made.¹¹ Clean food implies that the food is “free of artificial preservatives, coloring, irradiation, synthetic pesticides, fungicides, ripening agents, fumigants, drug residues and growth hormones.”¹²

25. Contrary to the representations made by Panera, quantitative testing has revealed that the Products contain residues of pesticides, fungicides, and glyphosate, a synthetic biocide.

26. Tests conducted by an independent laboratory using liquid chromatography mass spectrometry (LCMC) revealed the presence of glyphosate. The glyphosate levels found in the Products are shown in the chart below:

Panera Food Product or Ingredient	Glyphosate Detected (mg/kg)
Whole Grain Bagel	0.522-0.677
Mediterranean Veggie Sandwich	0.192
Oatmeal Raisin with Berries Cookie	0.075-0.677

¹¹ See, e.g., Ed White, *Consumer Demand Increasing for “Clean” Food*, The Western Producer (Mar. 29, 2018), <https://www.producer.com/2018/03/consumer-demand-increasing-clean-food/>; Cargill, *supra* note 1, at 4 (“The market for products viewed as ‘clean label’ has seen a substantial rise in recent years[.]”); Nielsen, *supra* note 1, at 9 (identifying levels of growth in market for “clean” foods).

¹² Susan Weissman, *What Is Clean Food*, Huffington Post (Dec. 6, 2017), https://www.huffpost.com/entry/what-is-clean-food_b_446035.

27. Tests conducted by an independent laboratory using gas chromatography/liquid chromatography mass spectrometry also revealed the pesticide and fungicide levels in the Products shown in the chart below:

Panera Food Product or Ingredient	Residues Detected (mg/kg)
Whole Grain Bagel	Piperonyl butoxide: 0.020 mg/kg
Mediterranean Veggie Sandwich	Dimethomorph: 0.015 mg/kg
Oatmeal Raisin with Berries Cookie	Captan (Sum*): 0.151 mg/kg Tetrahydrophthalimide: 0.076 mg/kg Flutriafol: 0.012 mg/kg
Oatmeal with Apple Chips and Pecans	Fludioxonil: 0.010 mg/kg Thiabendazole: 0.040 mg/kg
Greek Yogurt with Mixed Berries	Boscalid: 0.040 mg/kg Captan (Sum*): 0.054 mg/kg Tetrahydrophthalimide: 0.027 mg/kg Cyprodinil: 0.014 mg/kg Fludioxonil: 0.020 mg/kg Pyraclostrobin: 0.012 mg/kg

* Sum of Captan and Tetrahydrophthalimide detected

28. Glyphosate was invented by the agrochemical and agricultural biotechnology corporation Monsanto, which began marketing the herbicide in 1974 under the trade name Roundup.¹³

29. Glyphosate is derived from the amino acid glycine.

30. To create glyphosate, one of the hydrogen atoms in glycine is artificially replaced with a phosphonomethyl group.

31. Glyphosate is an artificial chemical.

¹³ See Shannon Van Hoesen, *Study: Monsanto's Glyphosate Most Heavily Used Weed-Killer in History*, Environmental Working Group (Feb. 2, 2016), <https://www.ewg.org/release/study-monsanto-s-glyphosate-most-heavily-used-weed-killer-history>.

32. Products with detectible glyphosate residue are not “clean.”¹⁴
33. Over the past several years, consumers have become increasingly conscious of the detrimental effects that glyphosate may have on human health.
34. Piperonyl butoxide is a synthetic insecticide that is toxic and suspected of causing anorexia, carcinogenesis, convulsions, and dermal irritation, as well as hepatic and renal damage.
35. Dimethomorph is a synthetic fungicide or antifungal agent and is classified as toxic to aquatic life with long lasting effects.
36. Captan is a fungicide that is produced through a Reaction of perchloromethyl mercaptan with tetrahydrophthalimide in the presence of sodium hydroxide. Captan is classified as very toxic to aquatic life, being toxic if inhaled, and a skin and eye irritant, and is suspected of causing cancer.
37. Tetrahydrophthalimide (THPI) is acutely toxic if swallowed and is a chemical intermediate arising from the metabolism of Captan.
38. Flutriafol is a synthetic pesticide that is acutely toxic if swallowed.
39. Fludioxonil is a synthetic fungicidal seed treatment that is classified as acutely toxic to aquatic life.
40. Thiabendazole is a broad spectrum antihelmintic agent also used as a fungicide or preservative. It is a synthetic chemical that can be used treat parasites in humans and livestock and is categorized as very toxic to aquatic life with long-lasting effects.
41. Boscalid is a synthetic fungicide that is toxic to aquatic life and has long-lasting effects.

¹⁴ See, e.g., Cargill, *supra* note 1, at 8 (finding in consumer study that more than half of respondents look to “clean” foods in order to avoid pesticides and other artificial chemicals).

42. Cyprodinil is a synthetic broad-spectrum fungicide that is moderately toxic to birds as well as to most aquatic organisms and earthworms.

43. Pyraclostrobin is a synthetic fungicide that is toxic if inhaled and very toxic to aquatic life, with long-lasting effects.

44. Products with detectible pesticide or fungicide residues are not “clean.”¹⁵

45. Reasonable consumers do not expect artificial chemicals with suspected health concerns to be found in a product marketed as “clean”; as such Panera misrepresents the Products when it calls them “clean.”

46. Nowhere on Panera’s website, or in its retail outlets, or in its biannual Responsibility Report¹⁶ does Panera clarify that synthetic agrochemicals, a pesticide, or an artificial biocide are present in the Products despite the “clean” marketing claims. Given the affirmative representations of “clean” products, these are material omissions in the marketing of the Products.

B. Panera Has Extensive Knowledge of Its Entire Supply Chain and Knows Its Products Are Contaminated With Residues.

47. Panera publishes a biannual “Responsibility Report” in order to “to share [its] commitments and provide transparency on [its] responsibility journey.”¹⁷

48. This report discusses a wide array of topics about the company, the food, and the

¹⁵ See, e.g., Cargill, *supra* note 1, at 8 (finding in consumer study that over half of respondents look to “clean” foods in order to avoid pesticides and other artificial chemicals); Susan Weissman, *What is Clean Food*, Huffington Post (Dec. 6, 2017), https://www.huffpost.com/entry/what-is-clean-food_b_446035.

¹⁶ Panera Bread, *2014 Responsibility Report*, (Feb. 22, 2015), https://www.panerabread.com/panerabread/documents/press/2015/Panerabread_CSR_2014.pdf (“Responsibility Report”).

¹⁷ Panera Bread, *Food Promise: Transparent*, <https://www.panerabread.com/en-us/our-beliefs/our-food-policy/transparent-menu.html> (last visited Nov. 2, 2018).

packaging used in the stores. The report also details the extensive knowledge that Panera has of, and its close relationships with, each of its suppliers, including knowledge of their farming and food preparation processes.

49. The Responsibility Report makes clear that Panera is aware of the way its food is grown and processed, and has knowledge of the methods that its farmers and sources use in raising their animals and crops. Panera states, “It’s important to understand our entire food system—how food is raised and grown, how it is produced and manufactured, and how it is prepared.”¹⁸

50. The Responsibility Report details the great care and attention Panera pays to its entire supply chain and food growing/preparing process, stating:

Our commitment to food quality and safety begins before food even reaches the bakery-cafes. Each step of the supply chain—from the source through shipping, manufacturing and distribution, all the way to the bakery-cafes where the final food preparation is done—is carefully monitored by members of our quality assurance team to help ensure that quality and safety are maintained.¹⁹

51. Panera’s Responsibility Report emphasizes transparency so that patrons can make informed decisions about what they consume. Panera states, “We work with suppliers, farmers and fishermen to provide traceability to the source, and are actively involved in ensuring quality, taste and freshness.”²⁰

52. Additionally, in the Responsibility Report, Ron Shaich, the founder and CEO of

¹⁸ Responsibility Report, *supra* note 17, at 4.

¹⁹ *Id.* at 21. Panera reiterates this point in its updated Responsibility Report for 2015-2016, stating, “We want to know where our ingredients come from and have a long history of working with and monitoring our suppliers to ensure there is ‘back-to-source’ transparency. Our supplier relationships were critical to helping us achieve our clean commitment—and they are a significant part of how we continue to ensure all elements of our Food Policy are maintained.” Panera Bread, *2015-2016 Responsibility Report* (2017), 14, <https://www.panerabread.com/panerabread/documents/press/2017/panera-bread-csr-2015-2016.pdf>.

²⁰ Responsibility Report, *supra* note 17, at 33.

Panera, explicitly states that Panera is making “conscious choices about the food [they] serve.”²¹

53. Nowhere in this transparency report is it mentioned that an artificial biocide is used on the food and appears at measurable levels on the food consumed by Panera’s patrons, or that the Products may be contaminated with fungicides or pesticides.

C. Panera Has Deceived Consumers and Is Aware That Its Representations Were False.

54. Panera holds itself out to the public as a trusted expert in the production of “clean” food.

55. Panera knows what representations it makes regarding the Products.

56. Panera maintains “one-on-one” relationships²² with each of its suppliers and is “actively involved” in their sourcing and each stage of the supply chain,²³ and thus knows how the Products are produced, including that glyphosate enters the Products sometime during the production process, and that fungicides and pesticides may do so also.

57. The source of the glyphosate, pesticides, and fungicides in the Products are known to Panera and its suppliers.

58. Consumers frequently rely on manufacturers, their reputation, and the information provided on manufacturers’ websites in making purchase decisions, especially in purchasing food.

59. Reasonable consumers lack the information and scientific knowledge necessary to ascertain the true source, quality, and nature of ingredients in the Products.

60. Reasonable consumers must, and do, rely on Panera to honestly report what the Products contain and how they are made.

²¹ *Id.* at 20.

²² *Id.* at 28.

²³ *Id.* at 33.

61. Reasonable consumers are misled and deceived by Panera's "clean" representations into believing that they are purchasing products that are "clean," and free from non-food and artificial chemical residues, including from glyphosate.

62. Reliance is not an element of Plaintiffs' claim under the DC CPPA; nevertheless, Panera made the false, misleading, and deceptive representations and omissions knowing that consumers would rely upon these representations and omissions in purchasing the Products.

63. In making the false, misleading, and deceptive representations and omissions at issue, Panera knew and intended for consumers to purchase the Products when consumers might otherwise purchase competing products.

64. In making the false, misleading, and deceptive representations and omissions at issue, Panera also knew and intended that consumers would pay more for products that were represented as "clean," furthering Panera's private interest of increasing sales of its products and decreasing the sales of foods that truly fit consumers' understanding of "clean" foods and/or glyphosate-, pesticide-, and fungicide-free products that are truthfully marketed by its competitors.

65. Upon information and belief, Panera has profited enormously, including from consumers in the District of Columbia, from its falsely marketed products and its carefully orchestrated image.

66. Panera's conduct in representing the Products as being "clean" deceived and/or is likely to deceive the public.

67. Consumers cannot discover the true nature of the Products from reading the label or visiting Panera's website marketing the Products. The Product labels, retail outlets, and Panera's website and Responsibility Report do not state anywhere that the Products may contain artificial biocide, pesticides, or fungicides despite the "clean" marketing claims.

68. Discovery of the true nature of the ingredients requires knowledge of chemistry and access to laboratory testing that is not available to the average reasonable consumer.

69. The production process Panera uses for the Products, including what would account for the presence of glyphosate or other contaminants, is known to Panera and its suppliers but has not been disclosed to Plaintiffs or to consumers in the District of Columbia.

70. To this day, Panera continues to conceal and suppress the true nature, identity, source, and method of production of the Products.

71. Panera's concealment tolls applicable statute of limitations.

72. Upon information and belief, Panera has failed to remedy the problems with the Products and their marketing, thus causing future harm to consumers, as well as real, immediate, and continuing harm.

73. Panera has failed to provide adequate relief to members of the District of Columbia consuming public as of the date of filing this Complaint.

74. Plaintiffs contend that the Products were sold pursuant to deceptive, unfair, and unlawful trade practices because the sale of the Products offends public policy and is immoral, unethical, oppressive, unscrupulous, and caused substantial economic injuries to consumers.

75. Plaintiffs seek declaratory relief in the form of an order declaring Panera's conduct to be unlawful, as well as injunctive relief putting an end to Panera's deceptive and unfair business practices, including clear and full disclosure of that contaminants may be present in the "clean" Products, corrective advertising, and/or a reformulation of the Products to render the current representations true.

JURISDICTION AND VENUE

76. This Court has personal jurisdiction over the parties in this case. Plaintiffs, by filing

this Complaint, consent to this Court having personal jurisdiction over them.

77. Plaintiffs have members and/or staff based in the District of Columbia.

78. This Court has personal jurisdiction over Defendants pursuant to D.C. Code § 13-423. Defendants have sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over them because, *inter alia*, Panera is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, or otherwise purposefully avails itself of the laws of this District through its marketing and sales of the Products in this District.

79. This Court has subject matter jurisdiction over this action pursuant to D.C. Code §§ 28-3905(k)(1)(B), (k)(1)(C), and (k)(2).

PARTIES

80. GMO Free USA is a 501(c)(3) non-profit organization whose mission is to harness independent science and agroecology concepts to advocate for clean and healthy food and ecological systems. It educates consumers about the potential hazards of synthetic pesticides, biocides, and genetically engineered organisms.

81. GMO Free USA performs its work throughout the United States, including in the District of Columbia. GMO Free USA volunteer staff reside in or near the District of Columbia.

82. GMO Free USA was formed in 2012 with the intent of organizing national boycotts of food companies that use genetically modified ingredients and related synthetic herbicides and pesticides in their products, and encouraging companies to remove those ingredients.

83. GMO Free USA firmly believes in food transparency. The organization diligently works to promote food and ecological systems that are clean, accessible, and free of

contamination. To that end, GMO Free USA educates consumers, increasing their awareness and knowledge of artificial chemicals used in agricultural production and their effect on health and the environment.

84. Additionally, GMO Free USA's website, publications, public education, research, network building, and mobilization activities provide an important service to consumers and community activists every month.

85. GMO Free USA purchased samples of each of the Products between February 8 and 9, 2019, from Panera retail outlets located at 106 Irving Street and 1350 Connecticut Avenue NW in Washington, D.C., in order to evaluate the marketing of the Products as "clean."

86. Clean Label Project is a 501(c)(3) non-profit organization whose mission is to educate the public so they can make informed choices on cleaner options every time they shop. It Uses state-of-the-art laboratory testing to identify the best and worst labeled products and publishes its findings using a 5-star rating system.

87. Clean Label Project was formed in 2016 with the goal of reduce contamination across all consumer products.

88. Clean Label Project has an interest in food label truth and transparency and consumers' right to know what is in the products they purchase. To that end, Clean Label Project educates consumers by presenting unbiased science in a straightforward and useful way to the public, allowing consumers' to make data-based decisions.

89. Clean Label Project purchased samples of each of the Products on March 12, 2019, from a Panera retail outlet located at 2001 L Street NW in Washington, D.C., in order to evaluate the marketing of the Products as "clean."

90. At all times mentioned herein, Panera, LLC was and is a limited liability company

formed under the laws of England and maintains a domestic headquarters in New York City. Panera Bread Company was and is a company formed under the laws of the state of Delaware which maintains its headquarters in St. Louis, Missouri. Defendant JAB Holding Company was and is a corporation headquartered in Germany. Defendants were and are, at all relevant times, engaged in commercial transactions throughout the District of Columbia.

91. The Panera Defendants manufacture and/or cause the manufacture of the Products and market and distribute the Products in retail outlets in the District of Columbia and throughout the United States.

92. Upon information and belief, the Panera Defendants have caused harm to the general public of the District of Columbia.

93. Plaintiffs are acting on behalf of their members and for the benefit of the general public as private attorneys general pursuant to D.C. Code § 28-3905(k)(1). Plaintiffs are non-profit organizations pursuant to D.C. Code § 28-3901(a)(14) and public-interest organizations pursuant to D.C. Code § 28-3901(a)(15).

CAUSE OF ACTION

VIOLATION OF THE DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT

94. Pursuant to D.C. Code §§ 28-3905(k)(1) and 28-3905(k)(2), Plaintiffs bring this Count against the Panera Defendants on behalf of themselves, their members, and the general public of the District of Columbia, for Panera's violation of DC CPPA, D.C. Code § 28-3901, *et seq.*

95. Plaintiffs incorporate by reference all the allegations in the preceding paragraphs of this Complaint.

96. Panera has labeled and advertised the Products as “clean” food and has otherwise presented an image and marketing materials suggesting that the Products do not contain residues of any non-food items, including artificial chemicals used during the ingredients’ growing, harvest, or processing, when in fact the Products may contain synthetic fungicides and pesticides and an unnatural chemical biocide.

97. Panera’s advertising of the Products misrepresents, tends to mislead, and omits facts regarding the source, characteristics, standard, quality, and grade of the Products.

98. The Products lack the characteristics, ingredients, benefits, standards, qualities, or grades that Panera states and implies in their advertisements.

99. These misstatements, innuendo, and omissions are material and have the tendency to mislead.

100. Panera knowingly did not sell the Products as advertised.

101. The facts as alleged above demonstrate that Panera has violated the DC CPPA, D.C. Code § 28-3901 *et seq.* Specifically, Panera has violated D.C. Code § 28-3904, which makes it an unlawful trade practice to:

- (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . .
- (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
- (e) misrepresent as to a material fact which has a tendency to mislead; . . .
- (f) fail to state a material fact if such failure tends to mislead;
- (f-1) [u]se innuendo or ambiguity as to a material fact, which has a tendency to

mislead; . . . [or]

- (h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

102. The DC CPPA makes such conduct an unlawful trade practice “whether or not any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904.

103. Plaintiffs need not show proof of deception to succeed on their DC CPPA claim; nevertheless, consumers were in fact deceived. Panera knows and should have known that reasonable consumers would believe that the Products are “clean” food, as advertised.

104. Plaintiffs have a sufficient nexus to consumers of the Products to adequately represent those interests.

105. Because Panera misrepresents the characteristics, ingredients, and benefits of the Products; misrepresents the standard, quality, and grade of the Products; misrepresents, fails to state, and uses innuendo and ambiguity in ways which tend to mislead reasonable consumers with regard to material facts about the Products; and advertises the Products without the intent to sell the Products as advertised, Panera’s marketing of the Products as “clean” food violates D.C. Code §§ 28-3904(a), (d), (e), (f), (f-1), and (h).

106. The Panera Defendants are each a “person” within the meaning of D.C. Code § 28-3901(a)(1), a merchant under § 28-3901(a)(3), and provide “goods” within the meaning of § 28-3901(a)(7).

107. Pursuant to D.C. Code § 28-3905(k)(1)(C), “[a] nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or

received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.”

108. Pursuant to D.C. Code § 28-3905(k)(1)(D)(i), “a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.”

109. Via §§ 28-3905(k)(1)(C), the DC CPPA allows for non-profit organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of constitutional standing under Article III.

110. Plaintiffs are each a “person” within the meaning of D.C. Code § 28-3901(a)(1), a “non-profit organization” within the meaning of D.C. Code § 28-3901(a)(14), and a “public interest organization” within the meaning of D.C. Code § 28-3901(a)(15).

111. Plaintiffs bring this Count against Panera for Panera’s violation of the DC CPPA, D.C. Code § 28-3901 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Panera and request the following relief:

- A. a declaration that Panera’s conduct is in violation of the DC CPPA;
- B. an order enjoining Panera’s conduct found to be in violation of the DC CPPA, as well as corrective advertising;
- C. an order granting Plaintiffs costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law; and

D. such further relief, including equitable relief, as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

DATED: March 22, 2019

Kim E. Richman
Richman Law Group
81 Prospect Street
Brooklyn, NY 11201
Telephone: (212) 687-8291
Facsimile: (212) 687-8292
krichman@richmanlawgroup.com

Robert F. Kennedy
Children's Health Defense
1227 North Peachtree Parkway
Suite 202
Peachtree City, GA 30269

Attorneys for Plaintiffs

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH

CLEAN LABEL PROJECT
FOUNDATION and
GMO FREE USA

INFORMATION SHEET

Case Number: 2019 CA 001898 B

vs
PANERA, LLC, PANERA BREAD
COMPANY, and JAB HOLDING COMPANY

Date: March 22, 2019

One of the defendants is being sued
in their official capacity.

Name: <i>(Please Print)</i> Kim E. Richman	Relationship to Lawsuit <input checked="" type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Self (Pro Se) <input type="checkbox"/> Other: _____
Firm Name: Richman Law Group	
Telephone No.: (718) 878-4707	Six digit Unified Bar No.: 1022978

TYPE OF CASE: Non-Jury 6 Person Jury 12 Person Jury
 Demand: \$ N/A Other: _____

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: _____ Judge: _____ Calendar #: _____

Case No.: _____ Judge: _____ Calendar#: _____

NATURE OF SUIT: <i>(Check One Box Only)</i>		
A. CONTRACTS	COLLECTION CASES	
<input type="checkbox"/> 01 Breach of Contract <input type="checkbox"/> 02 Breach of Warranty <input type="checkbox"/> 06 Negotiable Instrument <input type="checkbox"/> 07 Personal Property <input type="checkbox"/> 13 Employment Discrimination <input type="checkbox"/> 15 Special Education Fees	<input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent <input type="checkbox"/> 27 Insurance/Subrogation <input type="checkbox"/> 07 Insurance/Subrogation <input type="checkbox"/> 28 Motion to Confirm Arbitration Award (Collection Cases Only)	<input type="checkbox"/> 16 Under \$25,000 Consent Denied <input type="checkbox"/> 18 OVER \$25,000 Consent Denied <input type="checkbox"/> 26 Insurance/Subrogation <input type="checkbox"/> 34 Insurance/Subrogation <input type="checkbox"/> 26 Insurance/Subrogation <input type="checkbox"/> Over \$25,000 Pltf. Grants Consent <input type="checkbox"/> Over \$25,000 Consent Denied <input type="checkbox"/> Under \$25,000 Pltf. Grants Consent <input type="checkbox"/> Under \$25,000 Consent Denied
B. PROPERTY TORTS		
<input type="checkbox"/> 01 Automobile <input type="checkbox"/> 03 Destruction of Private Property <input type="checkbox"/> 05 Trespass <input type="checkbox"/> 02 Conversion <input type="checkbox"/> 04 Property Damage <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a)		
C. PERSONAL TORTS		
<input type="checkbox"/> 01 Abuse of Process <input type="checkbox"/> 10 Invasion of Privacy <input type="checkbox"/> 17 Personal Injury- (Not Automobile, Not Malpractice) <input type="checkbox"/> 02 Alienation of Affection <input type="checkbox"/> 11 Libel and Slander <input type="checkbox"/> 18 Wrongful Death (Not Malpractice) <input type="checkbox"/> 03 Assault and Battery <input type="checkbox"/> 12 Malicious Interference <input type="checkbox"/> 19 Wrongful Eviction <input type="checkbox"/> 04 Automobile- Personal Injury <input type="checkbox"/> 13 Malicious Prosecution <input type="checkbox"/> 20 Friendly Suit <input checked="" type="checkbox"/> 05 Deceit (Misrepresentation) <input type="checkbox"/> 14 Malpractice Legal <input type="checkbox"/> 21 Asbestos <input type="checkbox"/> 06 False Accusation <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) <input type="checkbox"/> 22 Toxic/Mass Torts <input type="checkbox"/> 07 False Arrest <input type="checkbox"/> 16 Negligence- (Not Automobile, Not Malpractice) <input type="checkbox"/> 23 Tobacco <input type="checkbox"/> 08 Fraud <input type="checkbox"/> 24 Lead Paint		

SEE REVERSE SIDE AND CHECK HERE IF USED

Information Sheet, Continued

C. OTHERS

- | | |
|---|---|
| <input type="checkbox"/> 01 Accounting | <input type="checkbox"/> 17 Merit Personnel Act (OEA) |
| <input type="checkbox"/> 02 Att. Before Judgment | (D.C. Code Title 1, Chapter 6) |
| <input type="checkbox"/> 05 Ejectment | <input type="checkbox"/> 18 Product Liability |
| <input type="checkbox"/> 09 Special Writ/Warrants
(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,
Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication | <input type="checkbox"/> 29 Merit Personnel Act (OHR) |
| <input type="checkbox"/> 11 Writ of Replevin | <input type="checkbox"/> 31 Housing Code Regulations |
| <input type="checkbox"/> 12 Enforce Mechanics Lien | <input type="checkbox"/> 32 Qui Tam |
| <input type="checkbox"/> 16 Declaratory Judgment | <input type="checkbox"/> 33 Whistleblower |

II.

- | | | |
|--|---|--|
| <input type="checkbox"/> 03 Change of Name | <input type="checkbox"/> 15 Libel of Information | <input type="checkbox"/> 21 Petition for Subpoena
[Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic | <input type="checkbox"/> 19 Enter Administrative Order as
Judgment [D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien |
| <input type="checkbox"/> 08 Foreign Judgment/International | 2-1802.03 (h) or 32-151 9 (a)] | <input type="checkbox"/> 23 Rule 27(a)(1)
(Perpetuate Testimony) |
| <input type="checkbox"/> 13 Correction of Birth Certificate | <input type="checkbox"/> 20 Master Meter (D.C. Code § | <input type="checkbox"/> 24 Petition for Structured Settlement |
| <input type="checkbox"/> 14 Correction of Marriage
Certificate | 42-3301, et seq.) | <input type="checkbox"/> 25 Petition for Liquidation |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle) | | |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) | | |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other) | | |

D. REAL PROPERTY

- | | |
|--|--|
| <input type="checkbox"/> 09 Real Property-Real Estate | <input type="checkbox"/> 08 Quiet Title |
| <input type="checkbox"/> 12 Specific Performance | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain) | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) | |



Attorney's Signature

March 22, 2019

Date



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION
Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001
Telephone: (202) 879-1133 • Website: www.dccourts.gov

CLEAN LABEL PROJECT FOUNDATION et al

Vs.

C.A. No. 2019 CA 001898 B

PANERA, LLC et al

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure (“Super. Ct. Civ. R.”) 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge’s name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the summons, the complaint, and this Initial Order and Addendum. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in Super. Ct. Civ. R. 4(m).

(3) Within 21 days of service as described above, except as otherwise noted in Super. Ct. Civ. R. 12, each defendant must respond to the complaint by filing an answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in Super. Ct. Civ. R. 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an initial scheduling and settlement conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than seven business days before the scheduling conference date.

No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge’s Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court’s website <http://www.dccourts.gov/>.

Chief Judge Robert E. Morin

Case Assigned to: Judge YVONNE WILLIAMS

Date: March 25, 2019

Initial Conference: 9:30 am, Friday, June 21, 2019

Location: Courtroom 518

500 Indiana Avenue N.W.

WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at <https://www.dccourts.gov/pa/>. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. D.C. Code § 16-2825 Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 2900, 410 E Street, N.W. Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Actions Branch. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Robert E. Morin