

Peter L. Masnik
KALIKMAN AND MASNIK
30 Washington Avenue
Haddonfield, NJ 08033
(856) 428-5222
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CECILLE MARIN, individually and on behalf
of all others similarly situated;

Civil Action No.

Plaintiff,

v.

**CLASS ACTION COMPLAINT
AND DEMAND
FOR JURY TRIAL**

PERDUE FARMS, INCORPORATED, a
Maryland corporation,

Defendant.

Plaintiff Cecille Marin, individually and on behalf of all others similarly situated, complains against defendant Perdue Farms, Incorporated (“Perdue” or “Defendant”), upon personal knowledge as to herself and own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigation made by her attorneys, as follows:

OVERVIEW OF THE ACTION

This is a proposed class action brought by Plaintiff individually on behalf of a proposed Class of consumers of Perdue brand whole chickens (“Perdue whole chicken” or “Perdue chicken”), as defined more fully herein. Perdue processes millions of chickens per year. Perdue sells whole chickens, as well as cut-up chickens and prepared chicken products. Perdue whole chickens are sold with “giblets,” the other products are not. Perdue therefore has an enormous quantity of extra giblet parts to dispose of, because whole chickens are only a part of its business.

Unknown to Plaintiff and Class, however, Perdue has a secret practice of disposing of additional giblet parts by inserting them (*e.g., more than one* heart, liver, gizzard, neck per bird) into Perdue whole chicken sold to retail customers. By improperly inserting these giblet parts into Perdue chicken, Perdue disposes of its extra giblets by essentially having Plaintiff and Class “pay” the disposal costs Perdue itself would incur if it wanted to properly dispose of them. Further, by this improper method, Perdue incorporates the additional giblet parts in the price per-pound of Perdue whole chickens sold to retail customers.

Thus, while Plaintiff was charged \$1.29 per pound for whole chicken, the weight of the chicken – and thus total price charged – included the extra giblet parts. This practice allows Perdue to essentially charge Plaintiff and Class for its costs to dispose of extra giblet parts, totaling millions of dollars in improper charges assessed to consumers. Consequently, Perdue makes retail consumers of its whole chickens pay for the privilege of disposing of Perdue’s processing waste.

Perdue’s acts and omissions constitute: (1) statutory fraud, and (2) unjust enrichment.

JURISDICTION AND VENUE

This Court has pursuant to 28 U.S.C. § 1332(d). This is a class action involving more than 100 class members. At least one member of the Class is a citizen of a State different from defendant, and the amount in controversy, in the aggregate, exceeds the sum of \$5,000,000.00 exclusive of interest and costs.

Venue is proper under 28 U.S.C. § 1391. Defendant conducts substantial business in this District, transacts business in New Jersey and committed illegal acts in, maintains agents or representatives in, and is otherwise found in this District. Defendant regularly and continuously

conducts business in interstate commerce that is carried out in part in this District.

PARTIES

Cecille Marin. Plaintiff Cecille Marin is a citizen of New Jersey residing at 328 Grant Avenue, Cresskill, New Jersey, who purchased a Perdue whole chicken that included additional giblet parts.

Perdue Farms, Incorporated. Defendant Perdue Farms, Inc. is a Maryland corporation with its principal place of business at 31149 Old Ocean City Road, Salisbury, Maryland.

OVERVIEW

This case concerns Perdue's practice of inserting into whole chickens sold at retail additional giblets (*more than one* heart, liver, gizzard, neck per bird) and including the additional giblets weight in the per-pound price of the chicken. Perdue used this method to dispose of some or most of the vast quantity of extra giblets in its inventory, which were of *de minimis* value, or even a disposal cost, to Perdue.

Perdue knew prior to sale that consumers pay more for Perdue whole chicken because of this added giblet weight. Perdue failed to disclose to consumers that its whole chicken included extra giblets, and that the price per-pound included extra giblets. To be sure, consumers do not know that additional giblets are inserted in whole chicken or that they are paying for this low-value additional product at the full price for whole chicken.

11. Retail purchasers of whole chickens reasonably expect one set of giblets per bird. The Perdue whole chickens Plaintiff and Class purchased included additional giblets (more than one heart, liver, gizzard and/or neck per bird), which were wrongfully inserted into Perdue whole chicken sold at retail.

12. Further, consumers reasonably expect that if Perdue knew that its chickens had additional giblets that a company such as Perdue would make a disclosure to consumers; and/or that a company such as Perdue would not include extra giblets or would remove the additional weight of the extra giblets from the per pound price.

13. Plaintiff and the Class have been damaged in an amount to be proven at trial, which may include, for example, the amount of monies Perdue collected for the weight of additional giblets it (wrongfully) caused to be sold in whole chickens at retail cost.

PERDUE'S CONDUCT

14. Prior to Plaintiff's purchase, Perdue was aware that it had a practice of causing extra giblets (more than one heart, liver, gizzard, neck per bird) to be inserted into its whole chickens sold at retail.

15. Perdue processes millions of pounds of chicken products each week. Each chicken that Perdue processes has, of course, one set of giblets. The majority of Perdue products, such as cut-up chicken parts or prepared chicken, are not sold with giblets. Perdue therefore has a permanent, large volume flow of extra giblets of which to dispose.

16. Perdue is able to sell a small portion of its extra giblets at retail. Beyond that, there is a limited wholesale market for this product. When there is a purchaser, the extra giblets are sold at pennies per pound. However that market is not consistent, and, on information and belief, Perdue often has to pay a fee to dispose of the extra giblets. Perdue's extra giblets therefore often have negative value to Perdue. They are a disposal cost of *de minimis* value rather than a profit center.

17. Plaintiff and Class thus unwittingly have been turned into part of Perdue's waste processing operation, and been charged, in the aggregate, a large sum for that unwanted privilege.

18. In 2008, Plaintiff purchased, at approximately \$1.29 per pound, a Perdue whole chicken from an A&P grocery store in Closter, New Jersey. After opening up the package, Plaintiff noticed that the Perdue chicken contained extra giblets stuffed in the body cavity.

CLASS ACTION ALLEGATIONS

A. Definition of the Class

19. Plaintiff brings all claims herein as class claims pursuant to Fed. R. Civ. P. 23. The requirements of Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) are met with respect to the class defined below, of which Plaintiff is a member:

Class A:

The (b)(2) Injunctive Relief Class consists of:

All persons who purchased Perdue whole chicken at retail (the "Class").

Class B (Multi-State Sub-Class):

The (b)(3) Class consists of:

All persons who purchased a Perdue whole chicken at retail, from October 1, 2003 to present (the "Class Period"), in the states of New Jersey, Illinois, California, Florida, Maryland, Michigan, Missouri, New York, North Carolina, Ohio and Washington.

20. The class/s (collectively, "class") may be modified pending discovery. Excluded from the Class(es) are: Defendant, any entities in which it has a controlling interest, any parents, subsidiaries, affiliates, officers, directors, employees and members of such persons immediate families, and the presiding judge(s) in this case and his, her or their immediate family.

B. Numerosity

21. At this time, Plaintiff does not know the exact size of the Class. Nonetheless, due to

the thousands of retail purchasers, Plaintiff reasonably believes that the Class members are so numerous that joinder of all members is impracticable. The number and identities of Class members is administratively feasible and can be determined through appropriate discovery.

C. Commonality

22. There are questions of law or fact common to the class, including at least the following:

- (a) Whether Perdue has a practice of including extra giblets in its whole chickens sold at retail;
- (b) Whether Defendant avoids disposal costs by including extra giblets in its whole chickens sold at retail;
- (c) Whether Defendant boosts the price per pound of its whole chickens by including extra giblets in its whole chickens sold at retail;
- (d) Whether Defendant had actual knowledge of its practice but failed to disclose it to Plaintiff or the Class;
- (e) Whether Defendant has acted or refused to act on grounds generally applicable to the Class;
- (f) Whether Defendant was unjustly enriched by inserting extra giblets in whole chickens sold to retail consumers;
- (g) Whether Defendant's conduct constitutes consumer fraud;
- (h) Whether Plaintiff and other members of the Class have been damaged, and if so, what is the proper measure of such damages?

D. Typicality

23. Plaintiff has the same interests in this matter as all other members of the Class, and his claims are typical of all members of the class.

E. Adequacy

24. Plaintiff is committed to pursuing this action and has retained competent counsel experienced in the prosecution and successful resolution of consumer class actions. Plaintiff will fairly and adequately represent the interests of the Class members and does not have interests adverse to the Class.

F. The Prerequisites of Rule 23(b)(2) are Satisfied

25. The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) exist as Defendant has acted or refused to act on grounds generally applicable to the Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole.

26. The prosecution of separate actions by members of the class would create a risk of establishing incompatible standards of conduct for Defendant. For example, one court might decide that the challenged actions are illegal and enjoin them, while another court might decide that those same actions are not illegal. Individual actions may, as a practical matter, be dispositive of the interest of Class members, who would not be parties to those actions.

27. Defendant's actions are generally applicable to the Class as a whole, and Plaintiff seek, *inter alia*, equitable remedies with respect to the class as a whole.

28. Defendant's systemic policy and practices make declaratory relief with respect to the class as a whole appropriate.

G. The Prerequisites of Rule 23(b)(3) are Satisfied

29. This case satisfies the prerequisites of Fed. R. Civ. P. 23(b)(3). The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of

the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially when compared to the relatively modest amount of monetary, injunctive and equitable relief at issue for each individual Class member. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the class defined above.

CAUSES OF ACTION

COUNT I

(Violation of Substantially Similar Consumer Protection Acts)

30. Plaintiff repeats and realleges the allegations of the prior paragraphs as if fully stated herein.

31. Class is modified, pending discovery, to include individuals and entities from New Jersey, where Plaintiff resides, and from additional states that have enacted substantially similar consumer protection laws, which were enacted and designed to protect consumers against unfair, deceptive and/or fraudulent business practices. *See, e.g.,* N.J. Rev. Stat. § 56:8-1 *et seq.* and 815 ILCS § 505/1 *et seq.*

32. Plaintiff and other Class members, as purchasers of Perdue chicken, are consumers within the meaning of the Consumer Protection Acts given that Defendant's business activities involve trade or commerce, are addressed to the market generally and otherwise implicate consumer protection concerns.

33. Defendant's conduct impacts the public interest.

34. The chickens sold by Defendant are merchandise within the meaning of the Consumer Protection Acts, and Plaintiff (and Class members) are consumers within the meaning of the Acts and thus entitled to the statutory remedies made available in them.

35. Consumers (such as Plaintiff) were entitled to disclosure of all material facts because Perdue chickens contained extra weight, and Perdue was charging consumers to dispose of its giblet waste, which would be a material fact in a consumer's decision-making process. Further, without Perdue's disclosure, consumers would not know that there was extra weight added to the chickens.

36. Once the prospect of extra giblets being added to Purdue chickens became significant, consumers (such as Plaintiff) were entitled to disclosure of that fact because a significant risk of added weight and a significant risk that consumers were being charged to dispose of Perdue's giblet waste would be a material fact in a consumer's decision-making process, and/or without Perdue's disclosure, consumers would not know that there is any risk of added weight or disposal charge.

37. Moreover, because giblets inserted in the whole chickens sold at retail are not detailed on the packaging, consumers had no way to know that more than the naturally occurring proportion of giblets would be included in the weight of the purchase. All of these facts were material to consumers' (such as Plaintiff's) purchase decisions.

38. Specifically, at all times relevant, Perdue continuously and consistently failed to disclose to consumers (such as Plaintiff) that it was disposing of low-to-negative value material by adding extra giblets to its whole chickens sold at retail. Perdue failed to disclose this practice, on the packaging on its whole chickens, or otherwise.

39. Perdue intended that Plaintiff and the Class would rely on the deception by purchasing its chicken, unaware of the material facts described above, thereby paying to assist Plaintiff dispose of low-to-negative value extra giblets. This conduct constitutes consumer fraud within the meaning of the various consumer protection statutes.

40. Perdue has violated the Acts in the sale of chicken by selling said chicken with extra

weight, and failing to disclose and/or concealing this extra weight from Plaintiff and Class.

41. Perdue intended that Plaintiff and the Class would rely on the deception by purchasing Perdue chicken, unaware of the material facts described above. This conduct constitutes actionable conduct within the meaning of the Consumer Protection Acts.

42. Defendant's conduct constitutes unlawful, unfair and/or deceptive business practices within the meaning of the Acts.

43. The above-described unlawful, unfair and deceptive business practices by Defendant continue to present a threat to members of the consuming public.

Defendant's conduct as alleged herein violates the substantially similar unfair and deceptive acts and practices laws of other states.

44. Defendant's conduct has proximately caused damage to Plaintiff and Class members in an amount to be proven at trial.

WHEREFORE, Plaintiff, individually and on behalf of the Class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a) and (b)(3), and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and his counsel as Class counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Awarding Plaintiff and Class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Granting such further relief as the Court deems just.

COUNT II

Brought on Behalf of Class A
(Unjust Enrichment)

45. Plaintiff repeats and realleges the allegations of the prior paragraphs, as if fully stated herein.

46. Perdue whole chickens sold at retail contain extra giblets which increase the weight of the chicken, which in turn affects the price paid.

47. Plaintiff and the Class have conferred benefits on Defendant by purchasing Perdue chicken.

48. Defendant has knowingly and willingly accepted these benefits from Plaintiff and the Class.

49. Under the circumstances, it is inequitable for Defendant to retain these benefits at the expense of Plaintiff and the Class.

50. Defendant has been unjustly enriched at the expense of and detriment of Plaintiff and the Class by wrongfully collecting money to which Defendant, in equity, is not entitled.

51. Plaintiff and the Class are entitled to recover from Defendants all amounts wrongfully collected and improperly retained by Defendant, plus interest thereon.

52. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and the Class have suffered injury and are entitled to reimbursement, restitution and disgorgement from Defendant of the benefits conferred by Plaintiff and the Class.

53. Plaintiff and the Class have no adequate remedy at law.

54. Plaintiff seeks to obtain a pecuniary benefit for the Class in the form of all reimbursement, restitution and disgorgement from Defendants. Plaintiff's counsel are entitled to recover their reasonable attorneys' fees and expenses as a result of the conference of a pecuniary

benefit on behalf of the Class, and will seek an award of such fees and expenses at the appropriate time.

WHEREFORE, Plaintiff, individually and on behalf of the Class of persons described herein, pray for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a) and (b)(3), and certifying the Class defined herein;
- B. Designating Plaintiff as representative of the Class and his counsel as Class counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Awarding Plaintiff and Class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Imposing a constructive trust on amounts wrongfully collected from Plaintiff and the Class members pending resolution of their claims herein;
- F. Granting such further relief as the Court deems just.

COUNT III

(Declaratory Relief Pursuant To 28 U.S.C. § 2201)

55. Plaintiff repeats and realleges the allegations of the prior paragraphs, as if fully stated herein.

56. There is an actual controversy between Perdue and the Class concerning whether any amount other than a natural proportion of giblets are to be packaged in a whole chicken.

57. Pursuant to 28 U.S.C. § 2201 this Court may “declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

58. Perdue has wrongfully included extra giblets in the whole chickens purchased by Plaintiff and the Class, passing on the cost of disposal of the extra giblets to the Plaintiff and the Class.

59. Accordingly, Plaintiff seeks a declaration that the only the proportional amount of giblets are to be packaged in a whole chicken.

WHEREFORE, Plaintiff, individually and on behalf of the Class of persons described herein, prays for an Order as follows:

- A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a) and (b)(2), and certifying the Declaratory Relief Class defined herein;
- B. Designating Plaintiff as representative of the Class and his counsel as Class counsel;
- C. Entering judgment in favor of Plaintiff and the Class and against Defendant;
- D. Awarding Plaintiff and Class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- E. Compelling Defendant to establish a program to inspect processed whole chickens to eliminate the packaging of extra giblets;
- F. Granting such further relief as the Court deems just

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: December 17, 2008

Respectfully submitted,

KALIKMAN AND MASNIK
Attorneys for the Plaintiff

By:/s/ Peter L. Masnik
Peter L. Masnik

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

I am not aware of any related pending cases.

I certify that the foregoing statement made by me is true. I am aware that if this statement is wilfully false, I am subject to punishment.

/s/ Peter L. Masnik
Peter L. Masnik