

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

<p>GMO FREE USA d/b/a TOXIN FREE USA, P.O. Box 458, Unionville, CT 06085,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>TARGET CORPORATION, 1000 Nicollet Mall Minneapolis, MN 55403,</p> <p style="text-align: center;">Defendant.</p>	<p><b>Case No.</b> _____</p> <p><b>COMPLAINT</b></p> <p><b><u>DEMAND FOR JURY TRIAL</u></b></p>
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On behalf of itself and the general public, Plaintiff GMO Free USA d/b/a Toxin Free USA (“Toxin Free USA”) brings this action against Defendant Target Corporation (“Target,” or “Defendant”), regarding the deceptive labeling, marketing, and sale of Defendant’s Good & Gather brand “California Raisins” product (the “Product”)<sup>1</sup>. Defendant markets the Product as “all natural” despite the fact that it contains a host of unnatural pesticides, specifically eleven different insecticides and fungicides. Plaintiff Toxin Free USA alleges the following based upon information, belief, and the investigation of counsel:

**INTRODUCTION**

1. Due to concerns about health, sustainability, and the increasing use of synthetically created chemicals in the production of food, consumers are increasingly considering how commercially produced foods are grown, processed, and prepared.

2. About “71% of Americans” are concerned “about pesticides in their food.”<sup>2</sup>

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<sup>1</sup> Discovery may demonstrate that additional products by Defendant are within the scope of this Complaint. Plaintiffs reserve the right to amend this complaint to include additional food items identified through the course of discovery.

<sup>2</sup> Hank Schultz *Survey Reveals Consumers Want to Avoid Pesticides But Are Unsure How Label Certifications Help Them Do That*, The FoodNavigator (Oct. 29, 2013, 10:29 AM) <https://www.foodnavigator->

3. Also, due to the fact that pesticides pose a huge health risk to children,<sup>3</sup> parents in particular are increasingly concerned about how commercially produced foods primarily marketed towards children are grown, processed, and prepared.

4. Recent national surveys have found that a majority of consumers seek out products with a “natural” label, believing that “natural” means that the products are produced without pesticides.<sup>4</sup>

5. Target sells “California Raisins,” which is the Product at issue in this case, prominently labeling the Product as “all natural.” **See Figure 1 below.**



**Figure 1**

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usa.com/Article/2013/10/29/Survey-reveals-consumers-want-to-avoid-pesticides-but-are-unsure-how-label-certifications-help-them-do-that#.

<sup>3</sup> *Understanding the Impact of Pesticides on Children*, UNICEF, 13 (2018), [https://www.unicef.org/csr/files/Understanding\\_the\\_impact\\_of\\_pesticides\\_on\\_children-Jan\\_2018.pdf](https://www.unicef.org/csr/files/Understanding_the_impact_of_pesticides_on_children-Jan_2018.pdf).

<sup>4</sup> See, e.g., Jayson L. Lusk, *Consumer Perceptions of Healthy and Natural Food Labels*, 29 (Jan. 15, 2019), <https://bit.ly/2Hy06ML> (finding that 68.1% more consumers perceive crops “sprayed with synthetic pesticides like glyphosate or chlorpyrifos” to be “unnatural” than “natural”); Consumer Reports National Research Center, *Natural Food Labels Survey* (2015) (finding that 63% of consumers understand a “natural” label to mean that “no toxic pesticides were used”).

6. Target also markets the Good & Gather brand as family-oriented, describing the brand as “our way of helping even the most time-strapped families discover the everyday joy of food.”<sup>5</sup>

7. The California Raisins Product is also geared towards children. For example, one version of the Product’s packaging features a cartoon giraffe. *See Figure 2 below.*



**Figure 2**

8. Further, Target lists the Product on its “Snacks & Lunch Ideas for Kids” webpage.<sup>6</sup>

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<sup>5</sup> *Meet Good & Gather, Target’s Newest (and Most Delicious) Brand Yet*, Target (Aug. 19, 2019), <https://corporate.target.com/article/2019/08/good-gather>.

<sup>6</sup> *Good & Gather: Snacks & Lunch Ideas for Kids*, Target, <https://www.target.com/c/snacks-lunch-ideas-for-kids/good-gather/-/N-xad8eZyfqzkZp0pzm?Nao=0> (last visited Oct. 23, 2020).

9. Contrary to Target’s representations that the Good & Gather California Raisins are “all natural,” the Product contain residues of several synthetic insecticides and fungicides including Ben-Carb-TPM (Sum), Bifenthrin, Boscalid, Chlorantraniliprole, Clothianidin, Cyprodinil, Fluopyram, Flutriafol, Imidacloprid, Methoxyfenozide, Spirotetramat (SP), Tebuconazole, Tetraconazole, Thiamethoxam (Sum), and Thiophanate-methyl.

10. In addition to being unnatural insecticides, Clothianidin, Imidacloprid, and Thiamethoxam are also neonicotinoids.<sup>7</sup>

11. Due to widely-known health and environmental concerns, consumers seek to avoid food products that use neonicotinoids.<sup>8</sup>

12. Further, consumers seek to avoid foods that contain multiple pesticide contaminants.<sup>9</sup>

13. Reasonable consumers encountering Target’s representation that the Product is “all natural” would not expect the raisins to contain residues of *eleven* unnatural insecticides and fungicides.

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<sup>7</sup> See Hillary A. Craddock, *et al.*, *Trends in Neonicotinoid Pesticide Residues in Food and Water in the United States, 1999-2015*, 18 *Envtl. Health: A Global Access Science* (2019) <https://pubmed.ncbi.nlm.nih.gov/31288196/>.

<sup>8</sup> While not the focus of the complaint, recent studies have revealed the toxic effects that neonicotinoids have on humans, animals, and the environment. See Go Ichikawa, *et al.*, *LC-ESI/MS/MS Analysis of Neonicotinoids in Urine of Very Low Birth Weight Infants at Birth*, *PLOS One* (2019) <https://journals.plos.org/plosone/article?id=10.1371%2Fjournal.pone.0219208>. See also Elise Hughes Berheim, *et al.*, *Effects of Neonicotinoid Insecticides on Physiology and Reproductive Characteristics of Captive Female and Fawn White-tailed Deer*, 9 *Scientific Reports* 4534 (2019) <https://www.nature.com/articles/s41598-019-40994-9> (study finding a strong correlation between the presence of neonicotinoids and birth defects in white-tailed deer); *What the Science Shows, Beyond Pesticides*, <https://www.beyondpesticides.org/programs/bee-protective-pollinators-and-pesticides/what-the-science-shows> (collection of studies showing the link between neonicotinoid usage and Colony Collapse Disorder in honey bees) (last visited Oct. 23, 2020).

<sup>9</sup> One reason for consumer concern may be linked with increased public knowledge about “the Cocktail Effect,” which refers to the phenomenon where individual pesticides become more toxic when combined with other pesticides. See Terje Svinge, *et al.*, *The Risk of Chemical Cocktail Effects and How to Deal with the Issue*, *J. of Epidemiology and Community Health* Month (2015) <https://sci-hub.tw/http://dx.doi.org/10.1136/jech-2015-206268> (“a growing body of evidence suggests that many chemicals at low doses can add up to cause adverse effects, effects otherwise not seen if chemicals were present alone or in small numbers”); see also Robin Mesnage, *et al.*, *Multi-omics phenotyping of the gut-liver axis allows health risk predictability from in vivo subchronic toxicity tests of a low-dose pesticide mixture*, [bioRxiv.org](https://www.biorxiv.org/content/10.1101/2020.08.11.347441v1), (“an increasing number of studies suggest that mixtures of pesticides can have toxic effects at regulatory permitted levels”) (forthcoming 2020).

14. In sum, Target is deceiving D.C. consumers into believing that the Products are “all natural” when, in fact, they are not natural.

15. Target’s material misrepresentations and omissions, including a tendency to mislead, violate the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.*

16. Because Target’s labeling and marketing of the Product tends to mislead consumers and is materially deceptive about the true nature, quality, and ingredients of the Product, Plaintiff Toxin Free USA brings this unlawful trade practices case on behalf of itself and the general public, seeking an injunction to stop Target’s deceptive marketing of the Product, and declaratory relief in the form of an order holding Target’s marketing practices to be unlawful.

#### **JURISDICTION AND VENUE**

17. This Court has personal jurisdiction over the parties in this case. Plaintiff, by filing this Complaint, consents to this Court having personal jurisdiction over it.

18. Plaintiff has members and/or staff based in the District of Columbia.

19. This Court has personal jurisdiction over Defendant pursuant to D.C. Code § 13-423. Defendant has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, Target 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 Product in this District.

20. 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

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

22. Toxin Free USA performs its work throughout the United States, including in the District of Columbia.

23. Toxin 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 pressuring companies to remove those ingredients or contaminants.

24. Consequently, Toxin 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, Toxin Free USA educates consumers, increasing their awareness and knowledge of pesticide use in agricultural production and their effects on health and the environment.

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

26. For example, Toxin Free USA has worked on extensive testing of toddler snacks for pesticide residues, leading to a subsequent public campaign aimed at parents.<sup>10</sup>

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<sup>10</sup> *Gerber Lil Crunchies*, GMOFreeUSA.org, <https://gmofreeusa.org/food-testing/gerber-lil-crunchies/> (last visited Oct. 23, 2020).

27. On July 27, 2020, Toxin Free USA purchased Good & Gather raisins at a Target located at 3100 14th St NW #201, Washington, DC 20010 in order to evaluate their purported qualities. On August 11, 2020, Toxin Free USA purchased an additional package of Good & Gather raisins at a located at 6100 Arlington Blvd, Falls Church, VA 22044 in order to evaluate their purported qualities.<sup>11</sup> Toxin Free USA sent both of these samples to an independent laboratory for testing, as set forth below.

28. At all times mentioned herein, Target Corporation was and is a Minnesota corporation that maintains its principal place of business and headquarters at Target Plaza, 1000 Nicollet Mall, Minneapolis, MN 55403.

29. Target markets and distributes the Product in its own retail outlets and through its website in the District of Columbia and throughout the United States.

30. In the District of Columbia alone, Target operates five separate stores, with locations in the Cleveland Park, Columbia Heights, Ivy City, Shepherd Park, and Tenleytown neighborhoods.<sup>12</sup>

31. Upon information and belief, Target has caused harm to the general public of the District of Columbia.

32. Toxin Free USA is acting on behalf of the general public as a private attorney general pursuant to D.C. Code §§ 28-3905(k)(1)(C)-(D). Plaintiff is a non-profit organization pursuant to D.C. Code § 28-3901(a)(14) and a public-interest organization pursuant to D.C. Code § 28-3901(a)(15).

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<sup>11</sup> While, upon information and belief, the cartoon giraffe packaging of the Product does not seem to currently be sold in the brick-and-mortar stores in the District of Columbia, the Product itself is still sold in Target stores in the District in other packaging. Further, the Product, including in the cartoon giraffe packaging, is available for sale in the District and nationwide through Target.com.

<sup>12</sup> *Find a Store*, Target, <https://www.target.com/store-locator/find-stores/20500> (last visited Oct. 23, 2020).

## **FACTUAL ALLEGATIONS**

### **A. Target Markets the Product as “All Natural.”**

33. In marketing the Product to consumers, Target relies heavily on representations that the Product is “all natural.”

34. The “all natural” label is prominently displayed on the top left part of the package, in between the Good & Gather logo and the Product name.

35. Target goes to great lengths to distinguish its Good & Gather brand from the competition but also from other Target brands. For example, on its “Good & Gather FAQ” page, Target describes its “new” Good & Gather brand as being a “high-quality” alternative to other food brands.<sup>13</sup>

### **B. Representations that the Product is “All Natural” is Material to All Consumers.**

36. Consumers increasingly seek out natural foods. A Consumer Reports survey of 1,004 adult U.S. residents found, for example, that 59% of consumers now check to see if their food is natural when shopping for food.<sup>14</sup> A similar survey conducted by Nielsen revealed that nearly 30% of North American consumers consider whether a food product has all-natural ingredients to be a “very important” attribute in making purchase decisions.<sup>15</sup>

37. Another survey found that the COVID-19 pandemic caused consumers to eat healthier than ever before and that “natural” is the label that consumers find “the most important.”<sup>16</sup>

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<sup>13</sup> *Good & Gather FAQ*, Target, <https://www.target.com/c/good-gather-faq/-/N-k56bs> (last visited Oct. 23, 2020).

<sup>14</sup> *Food Labels Survey*, Consumer Reports, 2 (2014), <http://www.panna.org/sites/default/files/ConsumerReportsFoodLabelingSurveyJune2014.pdf>.

<sup>15</sup> *We Are What We Eat: Healthy Eating Trends Around the World*, The Nielson Company (2015), <https://www.nielsen.com/content/dam/nielsen-global/eu/nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%20-%20January%202015.pdf>.

<sup>16</sup> Megan Poinski, *Coronavirus Changed 85% Of Consumers' Food Habits*, Food Dive (June 10, 2020), <https://www.fooddive.com/news/coronavirus-changed-85-of-consumers-food-habits/579532/>.

**a. The Product is Uniquely Marketed Towards Parents with Young Children.<sup>17</sup>**

38. Target’s Good & Gather brand emphasizes families with children in its marketing of the product. *See* ¶¶ 6-8.<sup>18</sup>

39. Target is a company which heavily relies on consumers with children.<sup>19</sup>

40. Target describes the Good & Gather brand as containing a “kid” product line.<sup>20</sup>

41. The Product also contains a cartoon mascot.

42. Parents purchasing an “all natural” product for their children would not expect the product to contain multiple unnatural insecticides and fungicides.

**C. The Product Contains Residues of Multiple Artificial Pesticides.**

43. Plaintiff initiated two tests conducted by an independent laboratory, using liquid chromatography mass spectrometry. Both test results have revealed that the Product contains residues of multiple synthetic insecticides and fungicides.

44. The results of the first test are below:

<b>Pesticide or Fungicide</b>	<b>Amount</b>
Bifenthrin	0.010 mg/kg
Boscalid	0.024 mg/kg
Chlorantraniliprole	0.020 mg/kg
Cyprodinil	0.020 mg/kg
Fluopyram	0.048 mg/kg
Flutriafol	0.010 mg/kg

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<sup>17</sup> While Plaintiff is alleging that Defendant is misleading *all* consumers, the fact that this Product is marketed towards a vulnerable population (children) should be noted.

<sup>18</sup> *Supra* notes 5 & 6.

<sup>19</sup> Nathaniel Meyersohn *How Target Is Trying To Woo Mom And Dads*, CNN.com (Feb. 21, 2019), <https://www.cnn.com/2019/02/21/business/target-kids-clothes-art-class-cat-and-jack/index.html>.

<sup>20</sup> *Supra* note 13.

Imidacloprid	0.020 mg/kg
Methoxyfenozide	0.038 mg/kg
Spirotetramat (SP)	0.012 mg/kg
Tebuconazole	0.010 mg/kg
Tetraconazole	0.010 mg/kg

45. The results of the second test are below:

Pesticide or Fungicide	Amount
Ben-Carb-TPM (Sum)	0.016 mg/kg
Clothianidin	0.014 mg/kg
Flutriafol	0.076 mg/kg
Imidacloprid	0.030 mg/kg
Spirotetramat (SP)	0.016 mg/kg
Tetraconazole	0.012 mg/kg
Thiamethoxam (Sum)	0.014 mg/kg
Thiophanate-methyl	0.016 mg/kg

46. Ben-Carb-TPM (Sum) is an unnatural fungicide.<sup>21</sup>

47. Bifenthrin is an unnatural insecticide.<sup>22</sup>

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<sup>21</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 25429, Carbendazim*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Carbendazim> (last visited Oct. 23, 2020).

<sup>22</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 5281872, Bifenthrin*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Bifenthrin> (last visited Oct. 23, 2020). *See also Bifenthrin*, Pesticide Action Network, [http://www.pesticideinfo.org/Detail\\_Chemical.jsp?Rec\\_Id=PRI1631](http://www.pesticideinfo.org/Detail_Chemical.jsp?Rec_Id=PRI1631) (last visited Oct. 23, 2020) (stating that Bifenthrin is a possible carcinogen and suspected endocrine disrupter).

48. Boscalid is an unnatural fungicide.<sup>23</sup>
49. Chlorantraniliprole is an unnatural insecticide.<sup>24</sup>
50. Clothianidin is an unnatural neonicotinoid insecticide.<sup>25</sup>
51. Cyprodinil is an unnatural fungicide.<sup>26</sup>
52. Fluopyram is an unnatural fungicide.<sup>27</sup>
53. Flutriafol is an unnatural fungicide.<sup>28</sup>
54. Imidacloprid is an unnatural neonicotinoid insecticide.<sup>29</sup>
55. Methoxyfenozide is an unnatural insecticide.<sup>30</sup>
56. Spirotetramat (SP) is an unnatural proinsecticide.<sup>31</sup>
57. Tebuconazole is an unnatural fungicide.<sup>32</sup>
58. Tetraconazole is an unnatural fungicide.<sup>33</sup>
59. Thiamethoxam (Sum) is an unnatural neonicotinoid insecticide.<sup>34</sup>

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<sup>23</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 213013, Boscalid*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Boscalid> (last visited Oct. 23, 2020).

<sup>24</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 11271640, Chlorantraniliprole*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Chlorantraniliprole> (last visited Oct. 23, 2020).

<sup>25</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 86287519, Clothianidin*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Clothianidin> (last visited Oct. 23, 2020).

<sup>26</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 86367, Cyprodinil*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Cyprodinil> (last visited Oct. 23, 2020).

<sup>27</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 11158353, Fluopyram*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Fluopyram> (last visited Oct. 23, 2020).

<sup>28</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 91727, Flutriafol*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Flutriafol> (last visited Oct. 23, 2020).

<sup>29</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 86287518, Imidacloprid*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Imidacloprid> (last visited Oct. 23, 2020).

<sup>30</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 105010, Methoxyfenozide*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Methoxyfenozide> (last visited Oct. 23, 2020).

<sup>31</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 9969573, Spirotetramat*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Spirotetramat> (last visited Oct. 23, 2020).

<sup>32</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 86102, Tebuconazole*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Tebuconazole> (last visited Oct. 23, 2020).

<sup>33</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 80277, Tetraconazole*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Tetraconazole> (last visited Oct. 23, 2020).

<sup>34</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 107646, Thiamethoxam*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Thiamethoxam> (last visited Oct. 23, 2020).

60. Thiophanate-methyl is an unnatural fungicide.<sup>35</sup>

**D. Reasonable Consumers Understand “Natural” Foods to Be Free from Pesticides.**

61. Studies show that consumers are concerned about toxins in their food and thus want to avoid pesticides.<sup>36</sup>

62. Surveys show that reasonable consumers expect “natural” foods to be free from pesticides.

63. A 2014 Consumer Reports survey, for example, found that 66% of Americans believe that a “natural” label on food means that no pesticides were used in the production of that food.<sup>37</sup>

64. Similarly, nearly 40% of respondents in a recent survey conducted by an agricultural economist indicated that they understand “natural” food to mean food that contains no pesticide residues.<sup>38</sup>

65. Reasonable consumers would not expect a Product labeled as “all natural” to contain residues of Ben-Carb-TPM (Sum), Bifenthrin, Boscalid, Chlorantraniliprole, Clothianidin, Cyprodinil, Fluopyram, Flutriafol, Imidacloprid, Methoxyfenozide, Spirotetramat (SP), Tebuconazole, Tetraconazole, Thiamethoxam (Sum), and Thiophanate-methyl.

66. Target misrepresented the nature, quality, and/or ingredients of the Product and/or failed to disclose the unnatural aspects of the Product and/or the presence of residues of artificial pesticides, which was and is false, misleading, and/or likely to deceive reasonable consumers.

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<sup>35</sup> National Center for Biotechnology Information, *PubChem Compound Summary for CID 3032791, Thiophanate-methyl*, PubChem, <https://pubchem.ncbi.nlm.nih.gov/compound/Thiophanate-methyl> (last visited Oct. 23, 2020).

<sup>36</sup> Schultz, *supra* note 2.

<sup>37</sup> Consumer Reports, *supra* note 14, at 8.

<sup>38</sup> Lusk, *supra* note 4, at 21.

**CAUSE OF ACTION**  
**VIOLATION OF THE DISTRICT OF COLUMBIA  
CONSUMER PROTECTION PROCEDURES ACT**

67. Pursuant to D.C. Code §§ 28-3905(k)(1) and 28-3905(k)(2), Toxin Free USA brings this Count against Target, on behalf of itself and the general public of the District of Columbia, for Target's violation of the District of Columbia Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901, *et seq.*

68. Plaintiff incorporates by reference all the allegations in the preceding paragraphs of this Complaint.

69. Target has labeled and advertised the Product as "all natural" and has otherwise presented an image and marketing materials suggesting that the Product is natural, when in fact the Product contains residues of multiple unnatural, artificial pesticides.

70. Target's advertising of the Product misrepresents, tends to mislead, and omits facts regarding the source, characteristics, standard, quality, and grade of the Product.

71. The Product lacks the characteristics, ingredients, benefits, standards, qualities, or grades that Target states and implies in its advertisements.

72. Target's misstatements, innuendo, and omissions are material and have the tendency to mislead.

73. Target knowingly did not sell the Product as advertised.

74. The facts as alleged above demonstrate that Target has violated the CPPA, D.C. Code § 28-3901 *et seq.* Specifically, Target 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.

75. The 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.

76. Though Toxin Free USA need not show proof of deception to succeed on its CPPA claim, consumers were in fact deceived. Target knows and should have known that reasonable consumers would believe that the Product is “all natural.”

77. Toxin Free USA has a sufficient nexus to D.C. consumers of the Product to adequately represent their interests.

78. Because Target misrepresents the characteristics, ingredients, and benefits of the Product; misrepresents the standard, quality, and grade of the Product; misrepresents, fails to state, and uses innuendo and ambiguity in ways which tend to mislead reasonable consumers with regard to material facts about the Product; and advertises the Product without the intent to sell the Product

as advertised, Target’s marketing of the Product as “all natural” violates D.C. Code §§ 28-3904(a), (d), (e), (f), (f-1), and (h).

79. Target is a “person” within the meaning of D.C. Code § 28-3901(a)(1), is a “merchant” under § 28-3901(a)(3) and provides “goods” within the meaning of § 28-3901(a)(7).

80. 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.”

81. Toxin Free USA is a nonprofit organization pursuant to D.C. Code § 28-3905(k)(1)(C) that in July of 2020, purchased the Product in order to test or evaluate its qualities.

82. Target’s conduct violates the CPPA regardless of whether “any consumer is in fact misled, deceived or damaged thereby.” D.C. Code § 28-3904. Pursuant to D.C. Code § 28-3905(k)(1)(A), “[a] consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.”

83. Any consumer has the right to bring an action for redress of Target’s unlawful behavior, *see* D.C. Code § 28-3905(k)(1)(A), and the statute does not limit consumer plaintiffs according to whether they purchased the product at issue. Nevertheless, as alleged in this Complaint, the Target Product is marketed and sold in the District, *see supra* ¶ 29, and consumers within the District have purchased this Product under the misrepresentations made by Target. Therefore, a variety of purchasing and non-purchasing consumers could bring an action against Target based on the misrepresentations and omissions listed in this Complaint.

84. 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.”

85. The only limitation on this power of a public interest organization to act on behalf of consumers is that the public interest organization must have “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” D.C. Code § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see supra* ¶¶ 21-26, Plaintiff was founded with the purpose of advocating for and educating consumers, including consumers in the District of Columbia, in the arena of clean and healthy food and ecological systems. In addition, Plaintiff has retained the undersigned competent counsel, with significant experience in litigating under the CPPA, to pursue this action, and Plaintiff has previously represented District consumers in similar actions under the CPPA.

86. Plaintiff is a public interest organization pursuant to D.C. Code § 28-3905(k)(1)(D) and brings this action on behalf of consumers who could bring the action under D.C. Code § 28-3905(k)(1)(A).

87. Via §§ 28-3905(k)(1)(D)(i), the CPPA allows for non-profit organizational standing and public interest 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.

88. Plaintiff is 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).

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Toxin Free USA prays for judgment against Target and requests the following relief:

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

**JURY TRIAL DEMANDED**

Plaintiff Toxin Free USA hereby demands a trial by jury.

DATED: October 23, 2020

**RICHMAN LAW GROUP**



By:

\_\_\_\_\_  
Kim E. Richman  
krichman@richmanlawgroup.com  
1 Bridge Street, Suite 83  
Irvington, New York 10533  
T: (718) 878-4707 | F: (212) 687-8292

*Attorney for Plaintiff*

# Superior Court of the District of Columbia

## CIVIL DIVISION- CIVIL ACTIONS BRANCH INFORMATION SHEET

GMO Free USA d/b/a Toxin Free USA \_\_\_\_\_ Case Number: \_\_\_\_\_

vs

Date: October 23, 2020

Target Corporation

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
Firm Name: Richman Law Group	<input type="checkbox"/> Self (Pro Se)
Telephone No.: (718) 878-4707	<input type="checkbox"/> Other: _____
Six digit Unified Bar No.: 1022978	

TYPE OF CASE:  Non-Jury       6 Person Jury       12 Person Jury  
 Demand: \$ \_\_\_\_\_ 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>		
<b>A. CONTRACTS</b>	<b>COLLECTION CASES</b>	
<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"/> Over \$25,000 Consent Denied <input type="checkbox"/> 34 Insurance/Subrogation <input type="checkbox"/> Under \$25,000 Consent Denied
<b>B. PROPERTY TORTS</b>		
<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)		
<b>C. PERSONAL TORTS</b>		
<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<br>(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,<br>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<br>[Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic                      | <input type="checkbox"/> 19 Enter Administrative Order as<br>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)<br>(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<br>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

October 23, 2020

Date