

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MILTON MILLS, M.D., RASHID GHOLSON,)
HUA-WEI CHERNG, NORMA HUMPHRIES,)
LYNETTE GARNER, DARRELL)
BRANSOME, PAUL MILLER, GLENDA)
COSTNER, SYBIL HAROLD, ELIZABETH)
RUSSELL, for themselves and on behalf of all)
other District of Columbia residents similarly)
situated,)
Plaintiffs,)

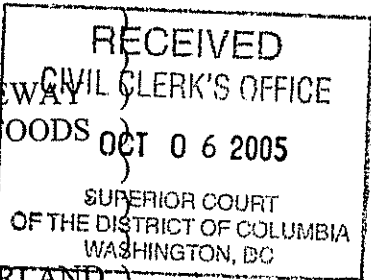
05-0008054

Civil Action No. _____

JURY TRIAL DEMANDED

v.

GIANT OF MARYLAND, LLC, SAFEWAY)
INC., HORIZON ORGANIC, DEAN FOODS)
CO., NESTLE HOLDINGS, INC.,)
FARMLAND DAIRIES, LLC,)
SHENANDOAH'S PRIDE, LLC,)
STONYFIELD FARM, INC., CLOVERLAND)
FARMS DAIRY, INC.,)
Defendants.)



PLAINTIFFS' CLASS ACTION COMPLAINT

Plaintiffs, Milton Mills, Rashid Gholson, Hua-Wei Cherng, Norma Humphries, Lynette Garner, Darrell Bransome, Paul Miller, Glenda Costner, Sybil Harold, Elizabeth Russell, for themselves and on behalf of all other District of Columbia residents similarly situated, by and through their counsel, allege as follows upon information and belief except as to the allegations specific to the named plaintiffs:

NATURE OF THE ACTION

1. The risks inherent in some products, such as chainsaws and rollerblades, are revealed through their very nature, but cows' milk is not one of those products. To the contrary, many consumers consider cows' milk to be a natural and healthy food—parents instruct their children

to drink milk for healthy bones and the dairy industry, government agencies, and many health professionals heavily promote cows' milk as an important part of a balanced diet. For lactose intolerant consumers, however, cows' milk consumption has several unforeseen, painful, and unpleasant results.

2. Lactose intolerance is the inability to digest the milk sugar lactose, causing gastrointestinal symptoms including flatulence, bloating, cramps, and diarrhea in individuals after consuming milk (and milk containing products). Severity of lactose intolerance symptoms varies according to the amount of milk consumed and the presence of other foods. Some lactose-intolerant individuals experience flatulence and bloating, while others may experience extreme stomach cramps and diarrhea.

3. These symptoms result from an absence of the lactase enzymes that break down lactose. Virtually all infants and young children have the lactase enzymes necessary to split lactose into simpler sugars that can be absorbed into the bloodstream. Prior to the mid-1960s, most American health professionals believed that these enzymes were present in nearly all adults as well. Since then it became known that 75% of the world's population, including 90% of Asian Americans, 90% of Native Americans, 60% to 80% of African Americans, 50% to 80% of Latinos, and 6% to 22% of Caucasians are lactose intolerant.

4. In 1988, the *American Journal of Clinical Nutrition* reported, "It rapidly became apparent that this pattern [of lactose intolerance] was the genetic norm, and that lactase activity was sustained only in a majority of adults whose origins were in Northern European or some Mediterranean populations." Scrimshaw NS, Murray EB. *The acceptability of milk and milk products in populations with a high prevalence of lactose intolerance. Am J Clin Nutr*

1988;48:1083-5. In other words, some people tolerate milk sugar as adults only because of an inherited genetic mutation that causes the lactase enzyme to persist.

5. The ability to produce lactase enables infants to absorb the sugars present in their mothers' breast milk. After the age of weaning, it is normal for the human body to stop making lactase because infants no longer consume breast milk. However, a genetic mutation enables some people to produce lactase throughout their lives.

6. While some members of the general public have some knowledge about lactose intolerance, the true scope of the problem has been covered up by the milk industry and government's marketing efforts. The industry's milk marketing campaign, combined with government support of milk, gives the false impression that cows' milk is a necessary part of a healthy diet, both for children and adults. Milk manufacturers, including defendants, are part and parcel of this marketing effort--they pay for it, control the message, and go to great lengths to stifle contrary information, despite being well aware of the misleading messages being conveyed to the American public, including the residents of the District of Columbia.

7. Just as human milk is for human infants, cows' milk is suited to the nutritional needs of calves, who--unlike human infants--have four stomachs and grow from less than 100 pounds at birth to over 1,000 pounds within two or three years. Cows' milk is not appropriately composed for human babies. For humans, cows' milk consumption causes a host of problems that make it anything but a healthy beverage. Lactose intolerance is one of those problems.

8. The named plaintiffs, all of whom are lactose intolerant, bring this case on behalf of themselves and on behalf of all District of Columbia residents who, unaware of their lactose intolerance, have unwittingly been subjected to gastrointestinal pain and discomfort by purchasing and consuming milk sold by defendants. Plaintiffs request damages for the named

plaintiffs only, and, on behalf of the class, a permanent injunction requiring defendants to place warning labels on all packaging of milk sold in the District of Columbia, notifying consumers that the contents may sicken them.

JURISDICTION

9. The Court has subject matter jurisdiction over common law and equitable claims in this matter pursuant to D.C. Code § 11-921. The Court has personal jurisdiction over defendants pursuant to D.C. Code §§ 13-334, 13-423(a)(1), (3)–(4). The allegations herein relate to defendants' purposeful transaction of business in the District of Columbia and their infliction of tortious injury on plaintiffs in the District of Columbia through such transactions. Through their conduct at issue, defendants purposefully availed themselves of the jurisdiction of the District of Columbia.

PARTIES

10. Plaintiff Milton Mills, M.D., is a 47-year-old African-American physician who has been lactose intolerant since 1981. He has purchased milk in Washington, D.C., after which he became exceedingly sick. He suffered for a significant period of time from lactose intolerance before learning that dairy consumption was making him sick and that he was lactose intolerant.

11. Plaintiff Rashid Gholson is a 7-year-old African-American resident of Washington, D.C., who is lactose intolerant. Rashid's parents fed him cows' milk purchased in the District of Columbia for years, during which time he experienced stomach pain and diarrhea. Rashid's parents fed him milk because they believed, as a result of defendants' and other dairy industry advertising, that milk was required as part of a healthy diet for a growing child. In fact, children do not require cows' milk as part of a healthy diet, and a diet free of dairy products is healthier

for children and adults. Rashid's parents did not realize for a period of years that he was lactose intolerant.

12. Plaintiff Hua-Wei Augustin Cherng is a 23-year-old Asian-American resident of Maryland who purchased milk in the District of Columbia. He discovered his lactose intolerance in 2004 after consistently experiencing diarrhea and stomach cramps from consuming milk. He suffered for a significant period of time from lactose intolerance before learning that dairy consumption was making him sick and that he was lactose intolerant.

13. Plaintiff Norma Humphries is a 27-year-old African-American resident of Washington, D.C., who purchased milk in the District of Columbia until 2003, when she began experiencing flatulence and diarrhea after consuming milk. She suffered for a significant period of time from lactose intolerance before learning that dairy consumption was making her sick and that she was lactose intolerant.

14. Plaintiff Lynette Garner is a 45-year-old African-American resident of Washington, D.C., who purchased milk in the District of Columbia until 2003, when she began experiencing gastrointestinal pain and diarrhea after consuming milk. She suffered for a significant period of time from lactose intolerance before learning that dairy consumption was making her sick and that she was lactose intolerant.

15. Plaintiff Darrell Bransome is a 33-year-old African-American resident of Washington, D.C., who purchased milk in the District of Columbia until 2003, when he began experiencing diarrhea after consuming milk. He suffered for a significant period of time from lactose intolerance before learning that dairy consumption was making him sick and that he was lactose intolerant.

16. Plaintiff Paula Miller is a 43-year-old Caucasian-American of Portuguese and Chinese descent who resides in Washington, D.C. She experienced gastrointestinal pain and diarrhea from consuming milk purchased in the District of Columbia until July 2003, when she became aware of her lactose intolerance. She suffered for a significant period of time from lactose intolerance before learning that dairy products were making her sick and that she was lactose intolerant.

17. Plaintiff Glenda G. Costner is a 54-year-old African-American resident of Washington, D.C., who discovered her lactose intolerance in the past year after experiencing bloating, flatulence, and diarrhea from consuming milk. She suffered for a significant period of time from lactose intolerance before learning that dairy products were making her sick and that she was lactose intolerant.

18. Plaintiff Sibyl Harold is a 34-year-old African-American resident of Washington, D.C., who purchased milk in the District of Columbia until 2003, when she began experiencing diarrhea after consuming milk. She suffered for a significant period of time from lactose intolerance before learning that dairy consumption was making her sick and that she was lactose intolerant.

19. Plaintiff Elizabeth Russell is a Caucasian-American of partial Native-American descent who resides in Washington, D.C. In 2005, she began experiencing severe stomach pain after consuming milk. Her pain was so severe that she took time off from work to seek medical help. She has spent more than \$150 in medical costs for gastrointestinal tests, including a colonoscopy, in an attempt to identify the cause of her pain and discomfort. She suffered for a significant period of time from lactose intolerance before learning that dairy consumption was making her sick and that she was lactose intolerant.

20. Defendant Giant of Maryland, LLC, doing business as Giant Food Store, is a Maryland corporation with its principal place of business at 6300 Sheriff Rd., Landover, MD 20785. Giant regularly conducts business through several retail grocery stores located in the District of Columbia that it owns and operates. Upon information and belief, it sells millions of dollars worth of its milk brands, Giant and Nature's Promise, at grocery stores in Washington, D.C.

21. Defendant Safeway Inc. is a Delaware corporation with principal executive offices at 5918 Stoneridge Mall Road, Pleasanton, California. Safeway is one of the largest food and drug retailers in North America and has seven store locations in the District of Columbia. Upon information and belief, it sells millions of dollars worth of its milk brands, Lucerne and Safeway Select Organic, in Washington, D.C.

22. Defendant Horizon Organic is a Delaware holding corporation with business offices at 6311 Horizon Lane, Suite 201, Longmont, CO 80308-7597. Upon information and belief, it sells millions of dollars worth of its milk product line, Horizon Organic, at grocery stores in Washington, D.C.

23. Defendant Dean Foods Co. is a Delaware corporation with business offices at 2515 McKinney Ave., Suite 1200, Dallas, TX 75201. Upon information and belief, it sells millions of dollars worth of Hershey's milk at grocery stores in Washington, D.C.

24. Defendant Nestle Holdings, Inc., is a Delaware corporation headquartered at 800 N. Brand Blvd., Glendale, CA 91203. Upon information and belief, it sells millions of dollars worth of Nestle Nesquik milk at grocery stores in Washington, D.C.

25. Defendant Farmland Dairies, LLC, is a New Jersey corporation headquartered at 520 Main Avenue, Wallington, NJ 07057. Upon information and belief, it sells millions of dollars worth of its Farmland Dairies and Parmalat milk at grocery stores in Washington, D.C.

26. Defendant Shenandoah's Pride, LLC, is a Delaware corporation headquartered at 1013 Centre Road, Wilmington, DE 19805. Upon information and belief, it sells millions of dollars worth of milk at grocery stores in Washington, D.C.

27. Defendant Stonyfield Farm, Inc, is a Delaware corporation with business offices at 10 Burton Drive, Londonderry, NH 03053. Upon information and belief, it sells millions of dollars worth of its Organic milk at grocery stores in Washington, D.C.

28. Defendant Cloverland Farms Dairy, Inc., is a Maryland corporation with business offices at 2200 Monroe Street, Baltimore, MD, 21217. Upon information and belief, it sells millions of dollars worth of milk at grocery stores in Washington, D.C.

CLASS ACTION ALLEGATIONS

29. Plaintiffs bring this suit as a class action under Rule 23(b)(2) on behalf of all those lactose intolerant persons who, unaware of their condition, have purchased milk in Washington, D.C., and suffered the consequences of its consumption. A Rule 23(b)(2) action is appropriate because defendants' failure to put warning labels on their products has affected every member of the class and the only relief sought on behalf of the unnamed class members is injunctive.

30. The class clearly satisfies the Rule 23(a)(1) numerosity requirement because, based on census data on the racial composition of the District of Columbia and scientific data on the prevalence of lactose intolerance among different racial groups, it is likely that a majority of the residents of the District of Columbia are lactose intolerant. Thus, the class numbers in the hundreds of thousands. Given the lack of awareness and understanding of the condition among the general public, it is likely that, without proper warning, a large number of these lactose intolerant residents have suffered, and will continue to suffer, from the diarrhea, bloating, flatulence, and cramps that arise from consuming milk.

31. The commonality requirement of Rule 23(a)(2) is met because there is a common question of law as to the defendants' negligent failure to warn, and as to the defectiveness of a product that is sold without a warning label and that can sicken a significant portion of the population of the District of Columbia. Because all milk at issue contains lactose, and because no damages are sought for the unnamed class members, it is irrelevant that different plaintiffs have consumed milk sold by different defendants at different times.

32. The typicality requirement imposed by Rule 23(a)(3) is met because plaintiffs have alleged a course of conduct by defendants that has given rise to plaintiffs' claims, all of which are based on the same legal theories. There are no claims that other class members could assert that plaintiffs cannot assert and there are no defenses that can be asserted against plaintiffs that could not be asserted against other class members.

33. The adequacy requirement imposed by Rule 23(a)(4) is met because the representative parties' attorneys are well-qualified and have considerable experience in bringing class actions and because the class representatives have no claims that are antagonistic to those of other members of the class. Plaintiffs share interests in common with the class and the source of plaintiffs' injuries is the same as that of the entire class.

FACTUAL ALLEGATIONS

A. Lactose Intolerance is the Global Norm

34. The young of all mammalian species, including humans, have lactase enzymes that allow them to digest lactose sugar in the milk produced by their mothers. Lactase enzymes convert lactose into the simpler sugars of glucose and galactose, which then can be absorbed into the bloodstream. Mogelonsky M. *Milk doesn't always do a body good*. American Demographics 1995;17:47-48; Pray W, Pray J. *Lactose intolerance: how to cope*. U.S. Pharm. 2004;6:21-26.

35. All mammals, save certain relatively small populations of humans, lose the ability to digest lactose as they pass the age of weaning. In human beings, lactase activity decreases between the ages of two and three and may cease entirely between the ages of five and ten, although for many people the decline occurs in adulthood. Pray, *supra*.

36. Aside from humans, no mammalian species drinks milk beyond infancy or drinks the milk of another species. If a normal adult mammal continues to consume milk during adulthood, the results can be physically unpleasant. Because the small intestine may not produce enough lactase to cope with the amount of lactose ingested, lactose will reach the large intestine in an undigested state. There, bacteria ferment the lactose, resulting in flatulence, bloating, abdominal pain, or diarrhea. Generally it takes only eight to twelve ounces of milk to produce such symptoms. National Digestive Diseases Information Clearinghouse, NIH, Lactose Intolerance (2003), <http://digestive.niddk.nih.gov/ddiseases/pubs/lactoseintolerance/> (Mar. 2003) [hereinafter NDDIC]; Swagerty D, Walling A, Klein R. *Lactose Intolerance*. *Am Fam Physician* 2002;65:1845-50.

37. This inability to digest lactose is known as lactose intolerance. Approximately 75% of the world's population is lactose intolerant. Hertzler SR, Huynh BCL, Savaiano DA. *How much lactose is low lactose?* *J Am Dietetic Asso* 1996;96:243-6.

38. In contrast, people who are "lactase persistent" inherit a genetic mutation that allows their small intestine to continue to make lactase enzymes well into adulthood. Pray, *supra*. Although only about 25% of the world's population has this mutation, lactase persistence is more common in the United States because a significant portion of the population is of northern European descent, the group among which the mutation is most common. Hertzler S, Huynh B, and

Savaiano D, *How Much Lactose is Low Lactose?* J Am Diet Assoc. 1996 Mar; 96(3):243-6;
Pray, *supra*.

39. Because the incidence of the mutation varies according to ancestry, data on lactose intolerance are often broken down by race or ethnicity. It is estimated that up to 90% of Asian Americans, 90% of Native Americans, 60% to 80% of African Americans, 50% to 80% of Latinos, and 6% to 22% of Caucasian Americans are lactose intolerant. Cuatrecasas P, Lockwood DH, Caldwell JR. *Lactase deficiency in the adult: a common occurrence*. Lancet 1965;1:14-8; Huang SS, Bayless TM. *Milk and lactose intolerance in healthy Orientals*. Science 1968;160:83-4; NDDIC, *supra*; Newcomer AD, Gordon H, Thomas PJ, McGill DG. *Family studies of lactase deficiency in the American Indian*. Gastroenterology 1977;73:985-8; Swagerty, *supra*; Woteki CE, Weser E, Young EA. *Lactose malabsorption in Mexican-American adults*. Am J Clin Nutr 1977;30:470-5.

40. As reported in the 2000 census, 60% of the residents of the District of Columbia are African American, 31% are Caucasian American, and 3% are Asian American. The remaining population consists of people who listed themselves as “other” or of multiple races. According to Census Bureau procedures, ethnicity (i.e., Hispanic or nonHispanic) is described separately from race); 8% reported that they were Hispanic. U.S. Census Bureau, District of Columbia QuickFacts (2005), <http://quickfacts.census.gov/qfd/states/11000.html> (last revised Feb. 1, 2005).

41. Estimating conservatively based on this census data and the incidence of lactose intolerance according to race, a majority of the population of the District of Columbia is likely lactose intolerant.

B. The Public is Generally Unaware of Lactose Intolerance

42. Perhaps because Caucasians historically have been the largest racial group in the United States, awareness of lactose intolerance has developed slowly, even among health professionals. Pray, *supra*. The dairy industry itself acknowledges that the condition is not understood: “What Americans—minorities and nonminorities—don’t know is that lactose intolerance is not an ‘all-or-nothing’ condition. It’s a matter of degree.” National Dairy Council, Lactose Intolerance & Minorities: The Real Story 3, <http://nationaldairyCouncil.org/nationaldairyCouncil/nutrition/lactose/lactoseIntolerance.pdf> (last visited Aug. 10, 2005).

43. Because the symptoms of lactose intolerance appear in varying degrees, milk consumers may fail to realize they are lactose intolerant and erroneously attribute their bloating, flatulence, cramps, diarrhea, and physical discomfort to other sources. For example, symptoms vary according to the amount of lactose consumed and the kind of milk products consumed. NDDIC, *supra*. In addition, an individual’s reaction to milk may depend on whether the milk is consumed alone or with other foods that help slow the speed at which the lactose is digested. American Dietetic Association, *When Milk Doesn’t Agree With You Anymore* (2004), http://www.eatright.org/Public/NutritionInformation/index_18817.cfm (last visited Aug. 10, 2005).

44. Pregnancy is one circumstance in which lactose intolerance may go unrecognized. Diarrhea is common during pregnancy, but it is also a symptom of lactose intolerance. Women often increase their milk consumption during pregnancy because they mistakenly believe, based on the dairy industry’s marketing efforts, that it is a healthy practice. If these women have not

consumed large quantities of milk in the past, however, they may mistakenly attribute their diarrhea to pregnancy and not to its real cause, the consumption of milk. The Dr. Spock Company, Diarrhea During Pregnancy (2004), <http://www.drspock.com/faq/0,1511,1515,00.html> (Jan. 29, 2001).

45. Even in adults who have been able to comfortably consume milk for much of their lives, the ability to produce lactase, and therefore to digest lactose, may decrease with age. American Dietetic Association, *supra*. As a result, older adults may never realize that cows' milk, which they have consumed without problem for many years, is the source of their pain and suffering.

46. Certain antibiotics interfere with the small intestine's ability to produce lactase enzymes. Nemours Foundation, Lactose Intolerance (2005), http://kidshealth.org/teen/food_fitness/nutrition/lactose_intolerance.html (June 2004). People who consume milk while taking antibiotics therefore may incorrectly attribute their gastrointestinal discomfort to drugs instead of to milk.

47. Additionally, individuals, especially children, who have had infectious diarrhea (diarrhea caused by a bacteria or virus) may become unable to digest lactose for a few days or weeks afterward. National Library of Medicine, NIH, Lactose Intolerance (2005), <http://www.nlm.nih.gov/medlineplus/ency/article/000276.htm> (last updated Nov. 10, 2004); Nemours Foundation, *supra*.

48. Not only is the public largely uninformed about lactose intolerance, it is also largely misinformed about the necessity of including milk in a healthy diet. A substantial portion of the District's population may have reduced access to good health care and information about lactose intolerance and proper nutrition. According to the 2000 census, 22.2% of the District of Columbia population over age 25 did not have a high school diploma, 7.8% of the population

over age 25 had less than a ninth grade education, and 20.2% of population lived below the poverty level. *See* U.S. Census Bureau, Quick Tables, http://factfinder.census.gov/servlet/QTTTable?_bm=n&_lang=en&qr_name=DEC_2000_SF3_U_DP2&ds_name=DEC_2000_SF3_U&geo_id=04000US11 (last visited Aug. 10, 2005); U.S. Census Bureau, Quick Tables, http://factfinder.census.gov/servlet/QTTTable?_bm=n&_lang=en&qr_name=DEC_2000_SF3_U_DP3&ds_name=DEC_2000_SF3_U&geo_id=04000US11 (last visited Aug. 10, 2005).

Therefore, many consumers may not realize that they can obtain all of the nutrients found in milk by consuming nutrient-dense plant-based foods that do not lead to the unpleasant and painful bloating, flatulence, diarrhea, and cramps that come with consuming milk.

49. Consumers rightfully assume that a product available in their local grocery stores and promoted as part of a healthy diet by both government and industry will not make them sick. Rather than being truthful about the health problems and risks of consuming milk, however, the milk industry falsely claims that everybody needs milk. The National Dairy Council states that lactose intolerance is “far less prevalent than commonly believed” and that even those who are lactose intolerant can consume two cups of milk per day. National Dairy Council, *supra*, at 5. It further claims that so-called “lactose maldigesters” can consume enough dairy products per day to get 1500 mg of calcium, the amount of calcium in five cups of milk. *Id.* As the industry tells it, “[i]ndividuals diagnosed as lactose intolerant can meet current recommendations for calcium from dairy foods.” *Id.*

50. In addition to its attempts to convince the public that lactose intolerance is no reason to stop consuming milk, the milk industry falsely maintains that people who are lactose intolerant need to consume milk in order to maintain good health. *Id.* at 6–7. It even suggests that

consuming dairy products can help control several “calcium deficiency-related diseases,” such as “overweight and obesity.” *Id.* at 6.

51. Bombarded by the milk-promoting messages of the federal government and by the dairy industry advertising campaigns designed to fool them into purchasing milk for its purported health benefits, consumers undoubtedly have little understanding of lactose intolerance. Thus, the need for warning labels is clear.

PLAINTIFFS’ CAUSES OF ACTION

COUNT I

(Negligent Failure to Warn Causing Personal Injury)

52. Plaintiffs hereby incorporate by reference all the preceding paragraphs as if fully set forth herein.

53. This is an action for damages less than \$100,000.00, exclusive of interest, costs, and attorneys’ fees. Damages are sought only with respect to the named plaintiffs, excluding Dr. Mills. No damages are sought for the unnamed class members, who seek only injunctive relief.

54. Each of the defendants sold milk in the District of Columbia in packaging that lacked warning labels.

55. Defendants knew, or should have known, that a substantial portion of the residents of the District of Columbia are likely lactose intolerant.

56. Plaintiffs, unaware of their lactose intolerance, purchased and consumed milk sold in the District of Columbia.

57. Each plaintiff was injured as a result of this milk consumption.

58. These injuries were foreseeable given the prevalence of lactose intolerance.

59. By not warning of the risk of injury for lactose intolerant individuals, defendants failed to exercise reasonable care under the circumstances.

WHEREFORE, plaintiffs demand judgment against defendants for damages totaling less than \$100,000, plus interest (including prejudgment interest), costs and attorneys' fees, and for injunctive relief, and for any and all such other relief as the Court deems just and proper.

COUNT II

(Product Liability Claim for Personal Injury)

60. Plaintiffs hereby incorporate by reference all the preceding paragraphs as if fully set forth herein.

61. This is an action for damages less than \$100,000, exclusive of interest, costs, and attorney's fees, and for injunctive relief. Damages are sought only with respect to the named plaintiffs, excluding Dr. Mills. No damages are sought for unnamed class members, who seek only injunctive relief.

62. Each of the defendants sold milk in the District of Columbia in packaging that lacked warning labels.

63. Defendants knew, or should have known, that a substantial portion of the residents of the District of Columbia are likely lactose intolerant.

64. All milk and milk products at issue were sold by defendants in the course of their business.

65. Defendants, as manufacturers, suppliers, and or retailers have a duty to warn the public of potential injuries that may arise from using their products.

66. The products are defective and unreasonably dangerous, because consumption of the products puts a substantial population of persons purchasing the products at increased risk of gastrointestinal pain, diarrhea, bloating, and cramps.

67. Plaintiffs used the products in a reasonable manner and as defendants intended they be used.

68. Plaintiffs suffered injury from the reasonable and foreseeable use of the products of defendants.

69. Plaintiffs request that defendants be enjoined from marketing their products in the District of Columbia until they include warning labels to alert consumers about the possible risks of lactose intolerance. That injunction should require warnings such as the following on all milk sold in the District of Columbia:

**WARNING – IF YOU EXPERIENCE DIARRHEA OR STOMACH
CRAMPS AFTER CONSUMING MILK, YOU MAY BE LACTOSE INTOLERANT.
CHECK WITH YOUR PHYSICIAN.**

**WARNING – LACTOSE INTOLERANT INDIVIDUALS MAY EXPERIENCE
BLOATING, DIARRHEA, OR OTHER GASTROINTESTINAL DISCOMFORT FROM
CONSUMING MILK. CHECK WITH YOUR PHYSICIAN.**

WHEREFORE, plaintiffs demand judgment against defendants for damages less than \$100,000, plus interest (including prejudgment interest), costs and attorneys' fees; a permanent injunction preventing defendants from selling milk in the District of Columbia unless each such product has warnings deemed adequate by the Court to advise consumers of the risks of consuming milk; and for such other and further relief as the Court deems just and proper.

Dated: October 3, 2005

JURY DEMAND

Plaintiffs hereby demand a trial by jury of this matter.

Respectfully submitted,

Ben D. Muro by JRM

Bernard J. DiMuro, Esq. (D.C. Bar #393020)

Jonathan R. Mook, Esq. (D.C. Bar #929406)

John M. Tran, *to be admitted pro hac vice*

Hillary J. Collyer, *admission pending*

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