

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

KIMBERLY DIESEL,  
individually, and on behalf of  
all others similarly situated,

Plaintiff,

vs.

MARIANI PACKING COMPANY, INC.,

Defendant.

Civil Action No.: 4:22-cv-01368

**DEFENDANT’S ANSWER TO PLAINTIFF’S PETITION**

COMES NOW Defendant, Mariani Packing Company, Inc. (“Defendant”), by and through the undersigned counsel of record, and for its Answer to Plaintiff’s Petition, states as follows:

1. Defendant admits.
2. Defendant denies the allegations contained in paragraph 2 of Plaintiff’s Petition, and demands strict proof thereof.
3. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 3 of Plaintiff’s Petition, and therefore denies same.
4. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 4 of Plaintiff’s Petition, and therefore denies same.
5. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 5 of Plaintiff’s Petition, and therefore denies same.
6. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 6 of Plaintiff’s Petition, and therefore denies same.

7. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 7 of Plaintiff's Petition, and therefore denies same.

8. Defendant denies the allegations contained in paragraph 8 of Plaintiff's Petition, and demands strict proof thereof.

9. Defendant denies the allegations contained in paragraph 9 of Plaintiff's Petition, and demands strict proof thereof.

10. Defendant denies the allegations contained in paragraph 10 of Plaintiff's Petition, and demands strict proof thereof.

11. Paragraph 11 of Plaintiff's Petition asserts a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies.

12. Paragraph 12 of Plaintiff's Petition asserts a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies.

13. Paragraph 13 of Plaintiff's Petition asserts a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies.

14. Defendant denies the allegations contained in paragraph 14 of Plaintiff's Petition, and demands strict proof thereof.

15. Defendant denies the allegations contained in paragraph 15 of Plaintiff's Petition, and demands strict proof thereof.

16. Defendant denies the allegations contained in paragraph 16 of Plaintiff's Petition, and demands strict proof thereof.

17. Defendant denies the allegations contained in paragraph 17 of Plaintiff's Petition, and demands strict proof thereof.

18. Defendant denies the allegations contained in paragraph 18 of Plaintiff's Petition, and demands strict proof thereof.

19. Defendant denies the allegations contained in paragraph 19 of Plaintiff's Petition, and demands strict proof thereof.

20. Defendant denies the allegations contained in paragraph 20 of Plaintiff's Petition, and demands strict proof thereof.

21. Defendant denies the allegations contained in paragraph 21 of Plaintiff's Petition, and demands strict proof thereof.

22. Defendant denies the allegations contained in paragraph 22 of Plaintiff's Petition, and demands strict proof thereof.

23. Defendant denies the allegations contained in paragraph 23 of Plaintiff's Petition, and demands strict proof thereof.

24. Defendant denies the allegations contained in paragraph 24 of Plaintiff's Petition, and demands strict proof thereof.

25. Defendant denies the allegations contained in paragraph 25 of Plaintiff's Petition, and demands strict proof thereof.

26. Defendant denies the allegations contained in paragraph 26 of Plaintiff's Petition, and demands strict proof thereof.

27. Defendant denies the allegations contained in paragraph 27 of Plaintiff's Petition, and demands strict proof thereof.

28. Defendant denies the allegations contained in paragraph 28 of Plaintiff's Petition, and demands strict proof thereof.

29. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 29 of Plaintiff's Petition, and therefore denies same.

30. Defendant denies the allegations contained in paragraph 30 of Plaintiff's Petition, and demands strict proof thereof.

31. Defendant denies the allegations contained in paragraph 31 of Plaintiff's Petition, and demands strict proof thereof.

32. Defendant denies the allegations contained in paragraph 32 of Plaintiff's Petition, and demands strict proof thereof.

**PARTIES, JURISDICTION & VENUE**

33. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 33 of Plaintiff's Petition, and therefore denies same.

34. Defendant admits.

35. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 35 of Plaintiff's Petition, and therefore denies same.

36. Defendant admits.

37. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 37 of Plaintiff's Petition, and therefore denies same.

38. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 38 of Plaintiff's Petition, and therefore denies same.

39. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 39 of Plaintiff's Petition, and therefore denies same.

40. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 40 of Plaintiff's Petition, and therefore denies same.

41. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 41 of Plaintiff's Petition, and therefore denies same.

42. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 42 of Plaintiff's Petition, and therefore denies same.

43. Defendant denies that its product misrepresents its attributes, features, and/or components. Defendant is without sufficient information to form a belief as to the truth of the remaining matters asserted in paragraph 43 of Plaintiff's Petition, and therefore denies same.

44. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 44 of Plaintiff's Petition, and therefore denies same.

45. Defendant denies the allegations contained in paragraph 45 of Plaintiff's Petition, and demands strict proof thereof.

46. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 46 of Plaintiff's Petition, and therefore denies same.

47. Defendant denies the allegations contained in paragraph 47 of Plaintiff's Petition, and demands strict proof thereof.

#### **CLASS ALLEGATIONS**

48. Defendant denies that class certification under [Fed. R. Civ. P. 23](#) should be granted to either Plaintiff's proposed Missouri Class or Plaintiff's proposed Multi-State Class, and demands strict proof thereof.

49. Defendant denies the allegations contained in paragraph 49 of Plaintiff's Petition, and demands strict proof thereof.

50. Defendant denies the allegations contained in paragraph 50 of Plaintiff's Petition, and demands strict proof thereof.

51. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 51 of Plaintiff's Petition, and therefore denies same.

52. Paragraph 52 of Plaintiff's Petition asserts a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies.

53. Paragraph 53 of Plaintiff's Petition asserts a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies.

54. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 54 of Plaintiff's Petition, and therefore denies same.

55. Defendant denies that injunctive relief should be considered, and demands strict proof thereof.

**MISSOURI MERCHANDISING PRACTICES ACT ("MMPA"),**  
**MO. REV. STAT. § 407.010, ET SEQ.**

56. Defendant incorporates by reference its answers to paragraphs 1-55 of Plaintiff's Petition as if fully set forth herein.

57. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 57 of Plaintiff's Petition, and therefore denies same.

58. Paragraph 58 of Plaintiff's Petition asserts a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies.

59. Defendant denies the allegations contained in paragraph 59 of Plaintiff's Petition, and demands strict proof thereof.

60. Defendant denies the allegations contained in paragraph 60 of Plaintiff's Petition, and demands strict proof thereof.

61. Defendant denies the allegations contained in paragraph 61 of Plaintiff's Petition, and demands strict proof thereof.

62. Defendant denies the allegations contained in paragraph 62 of Plaintiff's Petition, and demands strict proof thereof.

**VIOLATION OF STATE CONSUMER FRAUD ACTS**  
**(CONSUMER FRAUD MULTI-STATE CLASS)**

63. Paragraph 63 of Plaintiff's Petition asserts a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies.

64. Defendant denies the allegations contained in paragraph 64 of Plaintiff's Petition, and demands strict proof thereof.

65. Defendant denies the allegations contained in paragraph 65 of Plaintiff's Petition, and demands strict proof thereof.

**BREACHES OF EXPRESS WARRANTY,**  
**IMPLIED WARRANTY OF MERCHANTABILITY/FITNESS FOR A PARTICULAR PURPOSE AND**  
**MAGNUSON MOSS WARRANTY ACT, 15 U.S.C. §§ 2301, ET SEQ.**

66. Paragraph 66 of Plaintiff's Petition asserts a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies.

67. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 67 of Plaintiff's Petition, and therefore denies same.

68. Defendant denies the allegations contained in paragraph 68 of Plaintiff's Petition, and demands strict proof thereof.

69. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 69 of Plaintiff's Petition, and therefore denies same.

70. Defendant denies the allegations contained in paragraph 70 of Plaintiff's Petition, and demands strict proof thereof.

71. Defendant denies the allegations contained in paragraph 71 of Plaintiff's Petition, and demands strict proof thereof.

72. Paragraph 72 of Plaintiff's Petition asserts a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies.

73. Paragraph 73 of Plaintiff's Petition asserts a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies.

74. Defendant denies the allegations contained in paragraph 74 of Plaintiff's Petition, and demands strict proof thereof.

75. Defendant is without sufficient information to form a belief as to the truth of the matters asserted in paragraph 75 of Plaintiff's Petition, and therefore denies same.

76. Defendant denies the allegations contained in paragraph 76 of Plaintiff's Petition, and demands strict proof thereof.

77. Defendant denies the allegations contained in paragraph 77 of Plaintiff's Petition, and demands strict proof thereof.

78. Defendant denies the allegations contained in paragraph 78 of Plaintiff's Petition, and demands strict proof thereof.

79. Defendant denies the allegations contained in paragraph 79 of Plaintiff's Petition, and demands strict proof thereof.

**NEGLIGENT MISREPRESENTATION**

80. Defendant denies the allegations contained in paragraph 80 of Plaintiff's Petition, and demands strict proof thereof.

81. Paragraph 81 of Plaintiff's Petition asserts a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies.

82. Defendant denies the allegations contained in paragraph 82 of Plaintiff's Petition, and demands strict proof thereof.



83. Defendant denies the allegations contained in paragraph 83 of Plaintiff's Petition, and demands strict proof thereof.

84. Defendant denies the allegations contained in paragraph 84 of Plaintiff's Petition, and demands strict proof thereof.

85. Defendant denies the allegations contained in paragraph 85 of Plaintiff's Petition, and demands strict proof thereof.

**FRAUD**

86. Defendant denies the allegations contained in paragraph 86 of Plaintiff's Petition, and demands strict proof thereof.

87. Defendant denies the allegations contained in paragraph 87 of Plaintiff's Petition, and demands strict proof thereof.

88. Defendant denies the allegations contained in paragraph 88 of Plaintiff's Petition, and demands strict proof thereof.

**JURY DEMAND AND PRAYER FOR RELIEF**

1. Defendant denies Plaintiff's Proposed Classes are proper, and demands strict proof thereof.

2. Defendant denies Plaintiff is entitled to the relief sought in Paragraph 2 of Plaintiff's Petition, and demands strict proof thereof.

3. Defendant denies Plaintiff is entitled to the relief sought in Paragraph 3 of Plaintiff's Petition, and demands strict proof thereof.

4. Defendant denies Plaintiff is entitled to the relief sought in Paragraph 4 of Plaintiff's Petition, and demands strict proof thereof.

5. Defendant denies Plaintiff is entitled to the relief sought in Paragraph 5 of Plaintiff's Petition, and demands strict proof thereof.

**AFFIRMATIVE DEFENSES**

- A. Plaintiff's Petition fails to state a claim upon which relief may be granted.
- B. At all times, Defendant acted in good faith and had reasonable grounds for believing its actions were in compliance with Federal and state law.
- C. Plaintiff and members of the purported class or collective action are not similarly situated and their potential claims reflect variability.
- D. Plaintiff has failed to mitigate their damages.
- E. Any payments made by Plaintiff fall under the voluntary payment doctrine.
- F. Plaintiff is not entitled to recover any monies which would lead to unjust enrichment.
- G. Defendant asserts that no warranty existed, either express or implied, and Plaintiff is therefore not entitled to recover on a breach of warranty theory.
- H. Defendant asserts that any representations made in the marketing of the subject product were mere puffery, and not a promise.
- I. Defendant asserts that the Statute of Frauds prevents Plaintiff from recovery in this action.
- J. Defendant asserts that its actions in manufacturing and marketing the subject product were legally justified.
- K. Plaintiff suffered no actual injury, and is therefore unable to recover in this action.
- L. Plaintiff seeks to recover damages which are speculative in nature.

M. Defendant reserves the right to assert additional affirmative defenses as they arise during the pendency of this action.

WHEREFORE, Defendant, Mariani Packing Company, Inc. respectfully requests that Plaintiff's Petition be hence dismissed, together with costs, and further requests such other and further relief the Court deems just and appropriate under the circumstances.

Respectfully Submitted,

**GORDON REES SCULLY MANSUKHANI, LLP**

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*Attorney for Defendant,  
Mariani Packing Company, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court on January 4, 2023, thereby executing service upon all counsel of record by operation of the Court's electronic filing system.

/s/ James C. Morris