UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

Civil Case No.:

LISA LEO, as an individual, and on behalf of all others similarly situated,	:	**CLASS ACTION COMPLAINT**
Plaintiff,	:	
vs.	:	***Jury Trial Requested***
PEPPERIDGE FARM, INC., a Connecticut corporation,	:	
Defendant.	:	

CLASS ACTION COMPLAINT
FOR EQUITABLE RELIEF AND DAMAGES

Plaintiff, Lisa Leo, by and through her undersigned counsel, hereby files this Class Action Complaint, individually, and on behalf of all others similarly situated—and makes these allegations based on information and belief and/or which are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery—against Defendant, Pepperidge Farm, Inc. ("PEPPERIDGE FARM" or "Defendant"), to challenge Defendant's violations of Florida state law based on its unlawful, deceptive, and fraudulent business practices, whereby Plaintiff seeks certification of this matter as a class action, by submitting this Class Action Complaint and alleging as follows:

I. INTRODUCTION

1. Pepperidge Farm markets, advertises, sells and distributes "Natural" Cheddar Goldfish® Crackers (the "Product") to Florida purchasers in, but not limited to, food chains, mass discounters, mass merchandisers, club stores, convenience stores, drug stores and dollar

store's. In marketing and advertising some Products, Defendant made and continues to make false and misleading claims regarding its representation that the Product is "Natural."

2. Defendant has made false and misleading statements that are likely to deceive reasonable consumers. Defendant has mistakenly or misleadingly represented that the Product is "Natural," when in fact, it is not, because it contains bio-engineered food, more commonly known as Genetically Modified Organisms ("GMOs") in the form of GMO soy and/or soy derivatives.

3. Defendant's "Natural" statement prominently displayed on the Product's packaging and/or labeling is false, misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the Class, because the Product is not "Natural," due to the presence of soybean oil in the Product.

4. GMOs are plants that grow from seeds in which DNA splicing has been used to place genes from another source into a plant. Contrary to Defendant's express or implied representations, the Product uses plants or plant derivatives grown or created from GMOs.

5. Defendant's marketing of the Product as "Natural" is false, because GMOs' genetic makeup has been altered through biotechnology to exhibit characteristics that do not otherwise occur in nature.[1] Genetic engineering is different from natural/conventional plant breeding and poses distinct risks.

6. Accordingly, Plaintiff has brought this class action for injunctive relief, restitution, disgorgement and damages against Defendant for false and misleading advertising in violation the Florida Deceptive and Unfair Trade Practices Act, FLA. STAT. §§ 501.201, et seq.

1. Eng, Monica. "Debate rages over labeling biotech foods; Industry resists listing genetically modified ingredients; consumer worries continue." L.A. Times. June 2, 2011. BUSINESS; Business Desk; Part B; Pg. 4.

("FDUTPA"), and for Breach of Express Warranty and Unjust Enrichment. Plaintiff's state law claims mirror the labeling, packaging, and advertising requirements mandated by federal regulations and laws, as more fully described below.

7. Plaintiff seeks an Order prohibiting PEPPERIDGE FARM from including genetically modified ingredients in its "Natural" Products or, in the alternative, from representing the Products are "Natural" when they are not, because bio-engineered soy is not "Natural."

II. VENUE AND JURISDICTION

8. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5,000,000.00, exclusive of interest and costs.

9. Plaintiff alleges that the total claims of the individual members of the Plaintiff Class in this action are in excess of $5,000,000.00 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). As set forth below, Plaintiff is a citizen of Florida, and PEPPERIDGE FARM can be considered a citizen of Connecticut. Therefore, diversity of citizenship exists under CAFA and diversity jurisdiction, as required by 28 U.S.C. §§ 1332(a)(1), (d)(2)(A). Furthermore, the total number of members of the proposed Plaintiff Class is greater than 100, pursuant to 28 U.S.C. § 1332(d)(5)(B).

10. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(a) because, as set forth below, Defendant conducts business in, and may be found in, this district, and Plaintiff

purchased the subject Product of this action in this judicial district, and resides in this judicial district.

III. PARTIES

11. Plaintiff, Lisa Leo, is an individual more than 18 years old, and is a citizen of Florida, resident of Lake Worth, Palm Beach County. Plaintiff respectfully requests a jury trial on all damage claims. Plaintiff purchased the Product numerous times in Florida, within this judicial district, during the four (4) years prior to filing of this Complaint (the "Class Period"). Plaintiff purchased the Product for personal use during the Class Period.

12. Plaintiff has purchased the Product on an approximate monthly basis during the years 2009 through 2013, from three different stores located within this judicial district: (1) Winn Dixie Supermarket (located on Hypoluxo road and Jog road, during approximately 2009 and early 2010); (2) Publix Supermarket (located on Jog road and Gateway road, during approximately 2010 through 2012); and (3) Target (located on State Road 7 and Lantana road, during approximately 2010 through 2013.)

13. Plaintiff purchased the Product, Cheddar Goldfish® Crackers that claims to be "Natural," although it contains GMOs in the soybean oil ingredient. Plaintiff has purchased different size packages of the Product through the Class Period; however, she regularly purchases the larger 30 oz. (1.87 lbs.) package. A color copy of the Product packaging is depicted below:


PEPPERIDGE FARM
Goldfish
BAKED SNACK CRACKERS
Made with
Whole Grain
FINN
Cheddar
BAKED WITH REAL CHEESE
Natural
NO ARTIFICIAL PRESERVATIVES
0g Trans Fat
NET WT 30 OZ (1.87 LBS) (850g)


MADE WITH SMILES AND WHOLE WHEAT FLOUR, UNBLEACHED ENRICHED WHEAT FLOUR (FLOUR, NIACIN, REDUCED IRON, THIAMINE MONONITRATE [VITAMIN B1], RIBOFLAVIN [VITAMIN B2], FOLIC ACID), CHEDDAR CHEESE (CULTURED MILK, SALT, ENZYMES, ANNATTO), VEGETABLE OILS (CANOLA, SUNFLOWER AND/OR SOYBEAN), SALT, CONTAINS 2 PERCENT OR LESS OF: AUTOLYZED YEAST, YEAST, LEAVENING (BAKING SODA, MONOCALCIUM PHOSPHATE), SPICES AND DEHYDRATED ONIONS.
PEPPERIDGE FARM INCORPORATED
NORWALK, CT 06856
BAKED IN U.S.A.
910148001506
9657-1-1

14. In purchasing the Product, Plaintiff read and relied on the material statement that the Product is "Natural." For example, Plaintiff purchased the Product believing it to be "Natural" because she read and relied on PEPPERIDGE FARM's material statement that the Product is "Natural," prominently displayed three times on the Product's front labeling/packaging. Plaintiff understood Defendant's statement that the Products were "Natural" to mean that the Products contained no GMO ingredients. Whether the Products contained GMO ingredients and/or were "Natural" affected the Plaintiff, and she did not know, or have any reason to know, the Products contained GMO ingredients.

15. If Plaintiff had known the Products were not natural, she would not have purchased the Products, and she would not have paid a premium price for them. Plaintiff had other alternatives that lacked such GMO ingredients. Plaintiff also had cheaper alternatives. Plaintiff has been damaged by her purchase of the Product because the labeling and advertising for the Product was and is false and/or misleading under Florida law; therefore, the Product is worth less than what Plaintiff paid for it and/or Plaintiff did not receive what she reasonably intended to receive when purchasing the Product.

16. Defendant, Pepperidge Farm, Inc. ("PEPPERIDGE FARM") is a Connecticut licensed corporation with its principal place of business located at 595 Westport Ave, Norwalk, Connecticut 06856. Pepperidge Farm lists with the Florida Secretary of State a Registered Agent designated as The CT Corporation System, 1200 S. Pine Island Road, Plantation, FL 33324. Therefore, PEPPERIDGE FARM can be considered a "citizen" of the State of Connecticut for purposes of diversity jurisdiction or diversity of citizenship.

17. PEPPERIDGE FARM is a division of Campbell Soup Company's ("Campbell's") baked snacks division.[2] Based upon information and belief, Campbell's exercises oversight and control over PEPPERIDGE FARM, and has actual and/or constructive knowledge of PEPPERIDGE FARM's ingredients and labeling practices.

18. PEPPERIDGE FARM is the owner, manufacturer and distributor of the Product, and is the company that created and/or authorized the false, misleading and deceptive labeling and advertising for the Product and is the company that promoted, marketed, and sold the Product at issue in this judicial district.

19. The labeling and advertising for the Product relied upon by Plaintiff was prepared and/or approved by PEPPERIDGE FARM and/or Campbell's and its agents, and was disseminated by PEPPERIDGE FARM and its agents through labeling and advertising containing the misrepresentations alleged herein. The labeling and advertising for the Product was designed to encourage consumers to purchase the Product and reasonably misled the reasonable consumer, i.e. Plaintiff and the Class.

20. Defendant also knew or should have known that the Products contain, and continue to contain, ingredients that have grown from seeds that were genetically modified in laboratories (in other words, that the ingredients are GMOs). Defendant affirmatively misrepresented, and continues to misrepresent, the uses and benefits of the Products to convince the public to purchase and use the Products, resulting in millions of dollars in profits to Defendant and significant detriment to the consuming public.

21. Plaintiff alleges that, at all relevant times, PEPPERIDGE FARM and its subsidiaries, affiliates, and other related entities, as well as their respective employees, were the

2. See Campbell's Website, http:www.cambellsoupcompany.com/our_brands.asp (last visited June 11, 2013).

agents, servants and employees of PEPPERIDGE FARM, and at all relevant times, each acted within the purpose and scope of that agency and employment. Plaintiff further alleges on information and belief that at all times relevant herein, the distributors and retailers who delivered and sold the Product, as well as their respective employees, also were Pepperidge Farm's agents, servants and employees, and at all times herein, each was acting within the purpose and scope of that agency and employment.

22. Additionally, Plaintiff alleges that, in committing the wrongful acts alleged herein, PEPPERIDGE FARM, in concert with its subsidiaries, affiliates, and/or other related entities and their respective employees, planned, participated in and furthered a common scheme to induce members of the public to purchase the Product by means of false, misleading, deceptive and fraudulent representations, and that PEPPERIDGE FARM participated in the making of such representations in that it disseminated those misrepresentations and/or caused them to be disseminated.

23. Whenever reference in this Complaint is made to any act by PEPPERIDGE FARM or its subsidiaries, affiliates, distributors, retailers and other related entities, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of PEPPERIDGE FARM committed, knew of, performed, authorized, ratified and/or directed that act or transaction on behalf of PEPPERIDGE FARM while actively engaged in the scope of their duties.

IV. FACTUAL ALLEGATIONS

Plaintiff's State Law Claims are Consistent with Federal Regulations

24. Defendant has uniformly represented and continues to represent that the Products are "Natural," prominently displaying this language in large letters on the front of the Products'

packaging, and in other advertising such as print and online advertisements stating the Products are Natural. Contrary to Defendant's representations, however, the Products are not Natural, because they contain bio-engineered soy (GMO soy), which is not natural.

25. Food manufacturers must comply with federal and state laws and regulations governing labeling food products. Among these are the Federal Food, Drug and Cosmetic Act (FDCA) and its labeling regulations, including those set forth in 21 C.F.R. part 101.

26. Florida and federal law have placed similar requirements on food companies that are designed to ensure that the claims companies are making about their products to consumers are truthful and accurate.

27. Plaintiff is explicitly alleging only violations of Florida state law that is identical and/or mirrors the labeling, packaging, and advertising requirements mandated by federal regulations and laws, including but not limited to, the Federal Food, Drug, and Cosmetic Act (FD&C Act), the Federal Food and Drug Association (F.D.A.), the Federal Trade Commission (F.T.C.), and the Nutrition Labeling and Education Act (N.L.E.A.).

28. Defendant's Product label is misleading and deceptive pursuant to Florida's Food Safety Act, FLA. STAT. §§ 500.01, *et seq.*—identical in all material aspects hereto—to the Food and Drug Administration's ("FDA") Federal Food Drug and Cosmetic Act ("FFDCA"), 21 U.S.C. §§ 343, 343-1. Plaintiffs claim does not seek to contest or enforce anything in Florida's Food Safety Act that is beyond the FFDCA or FDA regulation requirements.

29. For example, the Florida Food Safety Act, Fla. Stat. § 500.01, states:

> Purpose of chapter.—This chapter is intended to:
>
> (1) Safeguard the public health and promote the public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit, flowing from intrastate commerce in food;

> (2) Provide legislation which shall be uniform, as provided in this chapter, and administered so far as practicable in conformity with the provisions of, and regulations issued under the authority of, the Federal Food, Drug, and Cosmetic Act; the Agriculture Marketing Act of 1946; and likewise uniform with the Federal Trade Commission Act, to the extent that it expressly prohibits the false advertisement of food; and
>
> (3) Promote thereby uniformity of such state and federal laws and their administration and enforcement throughout the United States and in the several states.
>
> Fla. Stat. § 500.02(1)–(3).

30. In addition, in Florida, "A food is deemed to be misbranded: If its labeling is false or misleading in any particular." Fla. Stat. § 500.11(1)(a).

31. Likewise, the F.D.A. regulation on misbranded foods states, "A food shall be deemed to be misbranded—False or misleading label [i]f its labeling is false or misleading in any particular." 21 U.S.C. § 343.

32. Furthermore, this Court recently entered an Order Denying Defendant's (Campbell's) Motion to Dismiss, in *Mark Krzykwa v. Cambell Soup Co.*, Case No. 12-62058-CIV-DIMITROULEAS (S.D. Fla., May 28, 2013), Doc. No. 37, attached hereto and incorporated herein as **Exhibit A.** This Court has already concluded that "Plaintiff's state consumer protection law claims are not preempted by federal regulations." Id. at p. 6 (citing Jones v. ConAgra Foods, Inc., 2012 WL 6569393, *6 (N.D. Cal. Dec. 17, 2012). Additionally, this Court has already ruled that the primary jurisdiction doctrine does not apply "because the FDA has repeatedly declined to adopt formal rule-making that would define the word 'natural.'" Id. at p. 8. Last, this Court has stated that "Plaintiff's claims are not preempted. Accordingly, Defendant's argument that Plaintiff's claims fall under FDUPTA's safe harbor provision correspondingly fails." Id. at p. 9.

PEPPERIDGE FARM'S Advertising Is False, Deceptive, And Misleading Because GMOs Are Not Natural

33. PEPPERIDGE FARM manufactures, distributes, markets, advertises, and sells the Product, which claims to be "Natural," when in fact, it is not, because it contains GMOs in the form of soy and/or soy derivatives within its ingredients; specifically, soybean oil.

34. The Products contain soy ingredients. Since the seeds from which the soy ingredients have been genetically modified to add or include additional genes and/or DNA, the soy ingredients and the Products themselves are, therefore, not "Natural."

35. Defendant's "Natural" statement prominently displayed on the Product's packaging and/or labeling is false, misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the Class, because the Product is not "Natural," due to the presence of GMOs.

36. During the Class Period, Defendant has claimed, and continues to claim, in its advertising and marketing of the Products that the Products are "Natural." Each Product's label states, in three different locations, in large bold lettering in the bottom left-hand corner of the Products' packaging, that it is "Natural."

37. GMOs are plants that grow from seeds in which DNA splicing has been used to place genes from another source into a plant. Contrary to Defendant's express or implied representations, the Product uses plants or plant derivatives grown or created from GMOs.

38. Genetically modified organisms ("GMOs") are plants that grow from seeds that have been modified in a laboratory through the genetic modification process. The experimental technology of genetic modification merges DNA from different species, creating unstable

combinations of plant, animal, bacterial and viral genes that cannot occur in nature or in traditional crossbreeding.[3]

39. Thus, genetic modification differs completely from natural breeding because natural breeding can only take place between closely related forms of life, and genetic modification is a laboratory-based technique

40. The Product is not "Natural." Genetically modified soy products contain genes and/or DNA that would not normally be in them, and are thus not natural, thereby causing the Product to fail to be "Natural."

41. The term "genetic modification" is recognized in "common usage and in national and international laws to refer to the use of recombinant DNA transfer techniques to transfer genetic material between organisms in a way that would not take place naturally, bringing about alterations in genetic makeup and properties." [4]

42. Moreover, Plaintiff, and all other similarly situated reasonable consumers, believed that when Defendant used the word "Natural," that Defendant meant natural to mean to the ordinary dictionary definition of the term. The ordinary dictionary definitions of the word "natural" include: "being in accordance with or determined by nature," "having or constituting a classification based on features existing in nature," "having a specified character by nature," "occurring in conformity with the ordinary course of nature," "growing without human care,"

3. See Non-GMO Project, GMO FACTS: Frequently Asked Questions, http://www.nongmoproject.org/learn-more/ (last visited June 11, 2013)

4. Michael Antoniou, Claire Robinson, & John Fagan, Earth Open Source, *GMO Myths & Truths: An Evidence-Based Examination of the Claims Made for the Safety and Efficacy of Genetically Modified Crops* 10 (June 2012) ("GMO Myths & Truths"), (*available at* http://earthopensource.org/files/pdfs/GMO_Myths_and_Truths/GMO_Myths_and_Truths_1.3b.pdf.

"not cultivated," "existing in or produced by nature; not artificial," and "relating to or being natural food.[5]

43. Defendant manufactures, markets, advertises, distributes and sells the Product in stores located throughout the United States and in this judicial district claiming to be "Natural;" specifically, on the front labeling or packaging for the Product.

44. As a result, through a variety of advertising, including but not limited to the packaging and labeling of the Product, PEPPERIDGE FARM has made false and misleading material statements and representations regarding the Product that have been relied upon by Plaintiff and members of the Class.

45. Simply put, the Product contains GMOs and is thus not "Natural." Therefore, Defendant's advertising and labeling statement that the Product is "Natural" is deceptive and likely to mislead reasonable consumers, such as Plaintiff and members of the Class.

46. Plaintiff, like members of the Class, purchased the Product relying on the material misrepresentation that it was "Natural" at the time of purchase.

47. All Consumers who purchased the Products were exposed to the same "Natural" claim. Unfortunately for consumers, they were charged a premium for these alleged "Natural" products. Defendant's advertising and labeling was misleading and likely to deceive the average customer during the Class Period

48. Defendant's "Natural" representations convey a series of express and implied claims which Defendant knows are material to the reasonable consumer and which Defendant intends for consumers to rely upon when purchasing its products. The advertising and marketing

5. *See* Merriam-Webster Online, *http://www.merriam-webster.com/dictionary/natural* (last visited June 11, 2013).

for the Pepperidge Farm's Goldfish "Natural" Crackers creates the uniform, false and misleading impression that the Products are comprised of only Natural ingredients. Defendant then charged a premium for crackers that were not natural, and that contain the same genetically modified ingredients contained in its other crackers varieties. There is nothing natural about genetically modified food.

49. Thus, Defendant's "Natural" statement prominently displayed on the Products' packaging is false, misleading and likely to deceive reasonable consumers, such as Plaintiff and members of the Class, because the Products are not natural due to the presence of GMO soy. The misbranded Products are not natural because a genetically modified soy product contains genes and/or DNA that would not normally be in it.

50. Consumers such as Plaintiff expect that products labeled "Natural" will be just that. To be natural, a food should contain no artificial or synthetic ingredients, and both it and its ingredients should have no more processing that something which could be made in a household kitchen.

51. Plaintiff based her purchase upon Pepperidge Farm's material statement that the Product was "Natural," which she read on the front labeling of the Product, and relied upon prior to making her purchase.

52. Reasonable consumers understand the term "natural" on a food label to mean that none of the product's ingredients are synthetic, artificial or modified in a laboratory.

53. Reasonable consumers must and do rely on food companies such as PEPPERIDGE FARM to honestly report the nature of a food's ingredients, and food companies such as PEPPERIDGE FARM intend and know that consumers rely upon food labeling statements in making his purchasing decisions. Such reliance by consumers is also eminently

reasonable, since food companies are prohibited from making false or misleading statements on their products under federal and Florida law

54. Plaintiff would not have purchased the Product if she had known that the Defendant's Product is not "Natural" because it contains GMOs. At the point of sale, Plaintiff did not know, and had no reason to know, that the Products were misbranded and not natural

55. Plaintiff and members of the Class have been economically damaged by their purchase of the Product because it is not "Natural."

56. Plaintiff has been damaged by her purchase of the Products because the labeling and advertising for the Products was and is false and/or misleading under Florida law; therefore, the Products are worth less than what Plaintiff paid for them and/or Plaintiff did not receive what she reasonably intended to receive.

57. At a minimum, Plaintiff contends that Defendant should cease labeling the Product "Natural."

58. Plaintiff therefore brings this class action to secure, among other things, equitable relief and damages for the Class against PEPPERIDGE FARM for false and misleading advertising in violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. §§501.201 et. seq., along with unjust enrichment.

V. CLASS ACTION ALLEGATIONS

59. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

60. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this class action and seeks certification of the claims and certain issues in this action on behalf of a Class defined as:

All Florida persons who have purchased Pepperidge Farm Cheddar Goldfish crackers that contain genetically modified soy, during the period extending from June 2009, through and to the filing date of this Complaint.

61. Plaintiff reserves the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified. Excluded from the Class are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

62. This action is maintainable as a class action under Rule 23(a) and (b)(1), (b)(2), and/or (b)(3).

63. Defendant's practices and omissions were applied uniformly to all members of the Class, including any subclass, arising out of the Florida statutory and common law claims alleged herein, so that the questions of law and fact are common to all members of the Class and any subclass.

64. All members of the Class and any subclass were and are similarly affected by the deceptive labeling of the Product, and the relief sought herein is for the benefit of Plaintiff and members of the Class and any subclass.

65. Based on the annual sales of the Product, which is estimated to be in the millions, and the popularity of the Product, it is apparent that the number of consumers in both the Class and any subclass is so large as to make joinder impractical, if not impossible.

66. Questions of law and fact common to the Plaintiff Class and any subclass exist that predominate over questions affecting only individual members, including, inter alia:

a. Whether Defendant's practices and representations related to the marketing, labeling and sales of the Product were unfair, deceptive and/or unlawful in any respect, thereby violating Florida Deceptive and Unfair Trade Practices Act, *inter alia*, sections 501.201 to 501.213, *Florida Statutes*;

b. Whether Defendant was unjustly enriched as a result of its practices and representations related to the marketing, labeling and sales of the Products in Florida;

c. Whether Defendant's advertising created an express warranty;

d. Whether Defendant breached an express warranty by putting genetically modified ingredients in the Product, when it claimed to be "Natural;"

e. Whether the Products are "Natural;"

f. Whether the ingredients contained in the Products are "Natural;"

g. Whether the claim "Natural" on the Products' labels and advertising is material to a reasonable consumer;

h. Whether a reasonable consumer is likely to be deceived by a claim that a product is "Natural" when the Product contains or is made from genetically modified ingredients; and

i. Whether Defendant's conduct as set forth above injured consumers and if so, the extent of the injury.

67. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Plaintiff Class and any subclass, as the claims arise from the same course of conduct by Defendant, and the relief sought within the Class and any subclass is common to the members of each.

68. Plaintiff will fairly and adequately represent and protect the interests of the members of the Plaintiff Class and any subclass.

69. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation.

70. Certification of this class action is appropriate under Federal Rule of Civil Procedure 23 because the questions of law or fact common to the respective members of the Class and any subclass predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for a fair and efficient decree of the claims.

71. Absent a class action, it would be highly unlikely that the representative Plaintiff or any other members of the Class or any subclass would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery.

72. Certification is also appropriate because Defendant acted, or refused to act, on grounds generally applicable to both the Class and any subclass, thereby making appropriate the relief sought on behalf of the Class and any subclass as respective wholes. Further, given the large number of consumers of the Product, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

73. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that individual actions would engender.

74. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

VI. FIRST CAUSE OF ACTION: VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, FLA. STAT. § 501.201, ET SEQ.

75. Plaintiff re-alleges and incorporates by reference verbatim the allegations set forth in paragraphs one (1) through seventy-four (74) of this Complaint.

76. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 201.213, *Florida Statutes*.

77. FDUTPA is, "a consumer protection law intended to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the course of any trade or commerce." *Tuckish v. Pompano Motor Co.*, 337 F. Supp. 2d 1313, 1319 (S.D. Fla. 2004); FLA. STAT. § 501.202. In the interests of consumer protection, FDUTPA should be "liberally construed." *Samuels v. King Motor Co.*, 782 So. 2d 489, 499 (Fla. 4th DCA 2001).

78. The sale of the Product at issue in this cause was a "consumer transaction" within the scope of the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 201.213, *Florida Statutes*.

79. Plaintiff is a "consumer" as defined by Section 501.203, *Florida Statutes*. Defendant's Product is a "good," within the meaning of the Act. Defendant is engaged in trade or commerce within the meaning of the Act.

80. Section 501.204(1), *Florida Statutes* declares as unlawful "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."

81. Section 501.204(2), *Florida Statutes* states that "due consideration be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Trade Commission Act." Defendant's unfair and deceptive practices are likely to mislead – and have misled – the consumer acting reasonably under the circumstances and, therefore, violate Section 500.04, Florida Statutes and 21 U.S.C. Section 343.

82. Defendant has violated the Act by engaging in the unfair and deceptive practices described above, which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers. Specifically, Defendant has represented that the Product is "Natural," when in fact; it is not, because it contains bioengineered soy, also known as genetically modified soy. Defendant's advertising and labeling of the Product misleads reasonable consumers to believe that the Product is natural, when it is not.

83. Defendant violated Florida's Deceptive and Unfair Trade Practices Act by engaging in unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of its business. "Deception occurs if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment." *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003).

84. The material misrepresentations and omissions alleged herein constitute deceptive and unfair trade practices, in that they were intended to and did deceive Plaintiff and the general public, into believing that the Product was "Natural." Reasonable consumers do not

expect "natural" products to contain genetically modified ingredients. The above discussed advertising and labeling of the Product is likely to, and does, mislead reasonable consumers.

85. Unlike common law fraud, subjective evidence of reliance on the part of each putative Class member is not required under FDUPTA. *See Davis v. Powertel, Inc.*, 776 So. 2d 971, 974 (Fla. 1st DCA 2000); *Nelson v. Mead Johnson Nutrition Co.*, 270 F.R.D. 689, 692 (S.D. Fla. 2010); *State, Office of Atty. Gen., Dept. of Legal Affairs v. Wyndham Int'l, Inc.,* 869 So. 2d 592, 598 (Fla. 1st DCA 2004); *Latman v. Costa Cruise Lines, N.V.*, 758 So. 2d 699, 703 (Fla. 3d DCA 2000). Thus, "the question is not whether the plaintiff actually relied on the alleged deceptive trade practice, but whether the practice was likely to deceive a consumer acting reasonably in the same circumstance." *Davis*, 776 So. 2d at 974; *Urquhart v. Manatee Mem'l Hosp.,* No. 8:06-cv-1418, 2007 WL 781738, at *4 (M.D. Fla. Mar. 13, 2007). Nevertheless, Plaintiff and Class Members relied on Defendant's statements and advertising, believing that the Product is 100% Natural and/or organic, when, in fact, as set forth in detail above, it is not.

86. Plaintiff and Class Members have been aggrieved by Defendant's unfair and deceptive practices in that they purchased and consumed Defendant's Product.

87. As a result of Defendant's deceptive and unfair acts, Plaintiff and Class members have been damaged in the amount of the difference between the premium price paid for the Product and the price they would have paid had they known that the Product was not 100% Natural. Plaintiff and Class members are entitled to damages in an amount to be proven at trial, but not less than the difference between the premium price paid for the Product and the price they would have paid had they known that the Product is not "Natural," or a return of 100% of the purchase price. The price Plaintiff and Class members would have paid is no more than the

market value of the Product, had Plaintiff and Class members known that the Product contains GMOs.

88. Defendant is aware that the claims that it makes about the Product is false and misleading.

89. The misrepresentation by Defendant is material and constitutes an unlawful business practice.

90. The damages suffered by the Plaintiff and the Class were directly and proximately caused by the deceptive, misleading and unfair practices of Defendant, as described above.

91. Pursuant to Section 501.211(1), *Florida Statutes*, Plaintiff and the Class also seek a declaratory judgment and court order enjoining the above described wrongful acts and practices of the Defendant and for restitution and disgorgement.

92. Additionally, pursuant to sections 501.211(2) and 501.2105, *Florida Statutes*, Plaintiff and the Class make claims for damages, pre-judgment interest, attorney's fees and costs.

93. The amount of which interest is to be calculated is a sum certain and capable of calculation, and Plaintiff and Florida purchasers of the Product are entitled to interest in an amount according to proof.

VII. SECOND CAUSE OF ACTION:
BREACH OF EXPRESS WARRANTY

94. Plaintiff re-alleges and incorporates by reference verbatim the allegations set forth in paragraphs one (1) through seventy-four (74) of this Complaint.

95. Plaintiff and the Class seek to impose requirements under Florida's Food Safety Act, FLA. STAT. §§ 500.01, *et seq*.—through this action for Breach of Express Warranty—that are identical to those imposed by the FFDCA, 21 U.S.C. §§ 343, 343-1.

96. Plaintiff is informed and believes and thereon alleges that Defendant made express warranties, including, but not limited to that the Product is "Natural," despite the fact that it is not, because it contains GMOs.

97. As set forth above, Defendant, through its labeling and advertising provided Plaintiff and other members of the Class with written express warranties indicating that the Product is Natural, when in fact, it is not because it contains GMOs. The Product was also provided with implied warranties that it was merchantable and would pass without objection in the trade or industry. However, as detailed above, the Product breached Defendant's express warranties and is not merchantable because the Product is not "Natural."

98. As the Product is a "foodstuff," direct contractual privity is not required to assert such claims against Defendant.

99. Plaintiff alternatively asserts that there privity between Plaintiff and Defendant as Defendant's marketing and labeling of the Product is directly targeted at consumers, and the Product's label does not change from the time it leaves the Defendant's hands until it reaches the ultimate consumer.

100. The Product is marketed to, and intended to be purchased and consumed by the ultimate consumer, and the Product is intended for human consumption, is in a sealed package prepared by the manufacturer, and has a label with representations to the ultimate consumer.

101. Plaintiff and Class members have suffered actual damages in that they have paid more for the Product than it is worth; specifically, they paid a price premium over other similar products. Plaintiff and members of the Class relied on Defendant's statements, marketing messages, and labeling concerning the Product. Plaintiff and members of the Class trusted Defendant because it holds itself out as reputable businesses in the community.

102. The defects in the labeling of the Products constitute breaches of all applicable express and implied warranties as alleged in this complaint, based on all laws that support the breach of implied and express warranty claims by Plaintiff and other members of the Class regarding the defects in the Products.

103. The failure of the Products to perform as expressly warranted by Defendant has caused Plaintiff economic damages as herein described.

104. On or about May 30, 2013, Plaintiff gave timely notice to Defendant of this breach on behalf of herself and all members of the Class. Plaintiff could not return the Products to Defendant for repair as the defect is irreparable. A copy of said notice letter is attached herein and incorporated herein as **Exhibit B.**

105. Defendant has not responded to Plaintiff's notice letter or otherwise offered to remedy the breach.

106. Plaintiff seeks all available remedies and damages for Defendant's breach of express warranty.

107. By virtue of the breach of the above warranties, Plaintiff and other members of the Class have been damaged in an amount to be determined at trial in that, among other things,

they purchased and overpaid for the Product that did not conform to what was promised as promoted, marketed, advertised, packaged and labeled by Defendants, and were deprived of the benefit of their bargain.

VIII. THIRD CAUSE OF ACTION: BREACH OF EXPRESS WARRANTY

108. Plaintiff re-alleges and incorporates by reference verbatim the allegations set forth in paragraphs one (1) through seventy-four (74) of this Complaint.

109. Plaintiff and Class members directly conferred a benefit on Defendant by purchasing the Product at a premium price. Defendant's marketing and labeling of the Product was directed to Plaintiff and the Class.

110. Defendant has misleading claimed its Product to be "Natural," when in fact; it is not, because it contains GMO soy.

111. Defendant is aware that the claims that it makes about the Product is false and misleading.

112. Defendant's marketing and labeling of the Product is directly targeted at consumers, and the Product's label does not change from the time it leaves the Defendant's hands until it reaches the ultimate consumer.

113. The Product is marketed to, and intended to be purchased and consumed by the ultimate consumer, and the Product is intended for human consumption, is in a sealed package prepared by the manufacturer, and has a label with representations to the ultimate consumer.

114. Defendant received the money paid by Plaintiff and Class members and thus knew of the benefit conferred upon them.

115. Defendant accepted and retained the benefit in the amount of the profits it earned from sales to Plaintiff and Class members.

116. Defendant has profited from its unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiff and Class members, under circumstances in which it would be unjust for Defendant to be permitted to retain the benefit.

117. As a result of consuming the Product, Plaintiff ingested genetically modified organisms, which is inherently not "Natural."

118. The Products labeling is insufficient, as it misleads the consumer in to believing that the statements are true, when in fact, they are not. Defendant misleads consumers in to believing that the Product is "Natural," when in fact, it is not, because it contains GMOs.

119. Under the circumstances, it would be inequitable for Defendant to retain the benefit of the premium price paid for the Product, when the Product does not deliver the edible goods as advertised. Plaintiff and the Class Members did not receive the benefit of their bargain, because, in purchasing the Product, they did not get what they paid for.

120. Plaintiff and Class members (in the alternative to the other claims pleaded herein) do not have an adequate remedy at law against Defendant.

121. Plaintiff and Class members are entitled to restitution of the excess amount paid for the Product, over and above what they would have paid had they known that the Product contained GMOs. Accordingly, the Product was rendered valueless such that Plaintiff and the Class are entitled to restitution in an amount not less than the purchase price of the Products.

122. Plaintiff and Class Member are also entitled to disgorgement of the profits Defendant derived from the sale of the Products.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated, prays for relief pursuant to each cause of action set forth in this Complaint as follows:

1. For an order certifying that the action may be maintained as a class action, certifying Plaintiff as representative of the Class, and designating her counsel as counsel for the Class;

2. For an award of equitable relief as follows:

(a) Enjoining Defendant from making any claims for the Products found to violate the FDUTPA as set forth above;

(b) Requiring Defendant to make full restitution of all monies wrongfully obtained as a result of the conduct described in this Complaint; and

(c) Requiring Defendant to disgorge all ill-gotten gains flowing from the conduct described in this Complaint.

3. For actual damages to be determined at trial;

4. For reasonable attorney's fees;

5. For an award of costs

6. For any other relief the Court might deem just, appropriate, or proper;

7. For pre- and post-judgment interest on any amounts awarded; and

8. Providing such further relief as maybe just and proper.

X. JURY DEMAND

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

DATED: June 11, 2013

Respectfully Submitted,

By: /s/ Joshua H. Eggnatz
Joshua H. Eggnatz, Esq.
Fla. Bar. No.: 0067926
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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-62058-CIV-DIMITROULEAS

MARK KRZYKWA, as an individual, and on behalf of all others similarly situated,

Plaintiff,

vs.

CAMPBELL SOUP CO. a New Jersey corporation,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE is before the Court upon Defendant Campbell Soup Co.'s ("Defendant" or "Campbell")'s Motion to Dismiss Second Amended Complaint [DE 29]. The Court has carefully considered the Motion, Plaintiff Mark Krzykwa ("Plaintiff" or "Krzykwa")'s Response [DE 32], Defendant's Reply [DE 34], arguments by counsel at the May 10, 2013 hearing, and is otherwise fully advised in the premises.

I. BACKGROUND

This action relates to the "all natural" labeling of food products containing genetically modified ingredients, here, vegetable soups containing genetically modified corn. Plaintiff alleges that this Court has jurisdiction over the subject matter presented by this Second Amended Class Action Complaint because it is a class action arising under the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original

jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5,000,000.00, exclusive of interest and costs. ¶¶ 8, 9.

According to the factual allegations of the Second Amended Complaint, Defendants have represented that its 100% Natural Soups line of soups are "All Natural," when in fact, they are not, because they contain genetically modified corn, which is a bio-engineered food, most commonly known as a genetically modified organism ("GMOs"). [DE 27] at ¶ 1. Plaintiff alleges that although Defendants market the products as "All Natural," these claims are false because the soups contain GMOs, plants whose genetic makeup has been altered through biotechnology to exhibit characteristics that would not otherwise occur in nature. Plaintiff alleges that genetic engineering is different from natural/conventional plant breeding and poses distinct risks. ¶ 4. Specifically, the genetic engineering and associated tissue culture processes are highly mutagenic, leading to unpredictable changes in the DNA and proteins of the resulting GMO that can lead to unexpected toxic or allergenic effects. ¶ 5. Plaintiff alleges that recent studies suggest that GMOs may in fact be harmful to a consumer's health. ¶ 33.

In the Second Amended Complaint, Plaintiff alleges that he purchased Campbell's 100% Natural Light Southwestern-Style Vegetable Soup, 100% Natural Tomato Garden Soup, and 100% Natural Vegetable Medley Soup, all containing GMO corn, from a Publix supermarket in Fort Lauderdale, Florida, during September of 2012. ¶ 38. Plaintiff claims that he relied upon the advertising containing the misrepresentations and omissions which he complains of, which was prepared and approved by Defendant and its agents and disseminated through its labeling of the products. Plaintiff believed the representation on the label that this soup was "100% Natural" and

thus the soup did not contain, nor was it made with, any genetically modified ingredients. ¶ 41. If Plaintiff had known the soup cans he purchased contained GMOs and thus was not "100% Natural," he states that would not have purchased them. ¶ 41. Plaintiff also alleges that he paid a premium price for the "100% Natural" products, as they cost approximately twice as much as other, similar Campbell's soup flavors that are not labeled as "all natural" or "100% natural." ¶ 45.

Plaintiff filed this case as a class action for injunctive relief, restitution, disgorgement, and damages against Campbell. The Class which Plaintiff seeks to represent is:

> All Florida persons who have purchased, for personal use, 100% Natural Light Southwestern-Style Vegetable Soup, 100% Natural Tomato Garden Soup, and/or 100% Natural Vegetable Medley Soup flavors containing corn, since September 2009.

¶ 52.

Count I of the Second Amended Complaint is for false and misleading advertising in violation the Florida Deceptive and Unfair Trade Practices Act, FLA. STAT. §§ 501.201, et seq. ("FDUTPA"). Count II is for unjust enrichment. Plaintiff specifically alleges that his state law claims mirror the labeling, packaging, and advertising requirements mandated by federal regulations and laws. See ¶ 6 and p. 12 n. 9. Plaintiff seeks an order prohibiting Campbell from including genetically modified corn in its "100% Natural Soup" products or, in the alternative, from representing the Products are "100% Natural" when they are not, because bio-engineered corn is not 100% Natural. ¶ 7.

II. DISCUSSION

A. Standard of Review

A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is

a motion attacking the legal sufficiency of a complaint. When considering a Rule 12(b)(6) motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from theses allegations in the light most favorable to the plaintiff. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Under the Federal Rules of Civil Procedure Rule 12(b)(6), a motion to dismiss will be awarded if the plaintiff fails to state a claim in which relief can be granted. According to Rule 8(a)(2) of the Federal Rules of Civil Procedure, a claimant must only state "a short and plain statement of the claim showing that the pleader is entitled to relief." The Supreme Court in Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007), set forth a pleading standard in which the plaintiff must plead "enough facts to state a claim to relief that is ***plausible*** on its face." (emphasis added). In order to survive a 12(b)(6) motion, the plaintiff must plead with enough information to show that his claim may entitle him to relief. "A court considering a motion to dismiss may begin by identifying allegations that, because they are mere conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the complaint's framework they must be supported by factual allegations." Iqbal, 556 U.S. at 664.

B. Defendant's Motion to Dismiss

Defendant moves to dismiss Plaintiff's Second Amended Complaint [DE 27] on several grounds. First, Defendant argues that the claims are preempted. Second, Defendant argues that the case should be dismissed under the primary jurisdiction doctrine. Third, Defendant argues that, because of preemption and compliance with federal law, Plaintiff's FDUPTA allegations fall under the safe harbor provision of Fla. Stat. § 501.212(1). Finally, Defendant argues that Plaintiff's unjust enrichment claim fails for that reason and also because he has an adequate remedy at law. The Court shall address each of these arguments in turn.

I. Preemption

Defendant argues that Plaintiff's claims are preempted because the Department of Agriculture ("USDA") preapproved Campbell's "100% natural" statement on two cans of soup from the Campbell's 100% Natural Soups line that also have a 100% natural" label and contain the same GMO corn ingredients. Thus, it argues that the preemptive effect of the USDA mark of inspection necessarily extends to these products. In support, Defendant cites Meaunrit v. ConAgra Foods Inc., No. C 09-02220 CRB, 2010 WL 2867393, at *5, *7 (N.D. Cal. July 20, 2010) (dismissing plaintiff's state law claims alleging that ConAgra's frozen chicken pot pies were mislabeled because the claims were preempted by the FMIA and PPIA) ("[b]ecause the [USDA] pre-approval process includes a determination of whether the labeling is false and misleading, and the gravamen of Plaintiff's attack on the label concerns whether [the heating instructions] are accurate, the plaintiff's state causes of action are preempted by federal law."). Defendant also relies on Hairston v. S. Beach Beverage Co., No. CV 12–1429–JFW, 2012 WL 1893818, at *6 (C.D. Cal. May 18, 2012). There, the plaintiff challenged the "all natural" label on Lifewater beverages as misleading because the products allegedly contained synthetic vitamins, and the common vitamin names concealed this fact. The court granted the defendant's motion to dismiss, holding that FDA regulations governing the naming of vitamins preempted the claim.

Defendant argues that even though the FDA rather than the USDA regulates the vegetable (not containing chicken or beef) soups at issue under the Second Amended Complaint, the FDA and USDA have developed similar policies that govern the labeling of food products with "natural" claims, and both have determined there is nothing material about bioengineered foods

that differs from other foods. Defendant claims that the facts presented in this case create an issue of first impression, as the USDA approved labels of Campbell soups containing poultry meat that have the same GMO corn and are in the same "line of soup products" as the vegetable soups at issue in this case.

In response, Plaintiff argues that Defendant's preemption argument fails since the soups at issue are not regulated nor preempted by the USDA, FMIA, or PPIA because they do not contain any poultry. Plaintiff contends that Defendant's argument that USDA approval of chicken soups that Defendant admits are no longer claimed in this lawsuit, amounts to FDA approval of the 100% Natural label on soup containing genetically modified corn, is completely amiss.

Upon consideration, the Court is not impressed by this "first impression" scenario. There is nothing special about being in the same product line from a preemption perspective. From a purely logical standpoint (as advocated by counsel at the hearing), if the Court adopted Campbell's position, the Court finds that there would be no authentic reason to not also necessarily take the position that because the USDA approved two Campbell poultry meat soups not at issue in this case that no claims can be made in any case against any defendant that it is misleading to using label a food product containing GMO corn as "100% Natural."[1]

Here, Plaintiff's state consumer protection law claims are not preempted by federal regulations. See, e.g., Jones v ConAgra Foods, Inc., 2012 WL 6569393, *6 (N.D. Cal. Dec. 17,

[1] Additionally, it does not necessarily flow that the USDA's approval of the label in the chicken soups in is binding on every other federal agency that comes in contact with genetically modified corn. We do not even know whether, when reviewing the label for whether it was "misleading," the USDA even knew that the soup contained GMO corn, particularly as there is nothing on the soup label to so indicate.

2012) (declining to apply preemption to "100% natural" claims).

II. Primary Jurisdiction

Defendant argues that the case should be dismissed under the primary jurisdiction doctrine, which applies where a plaintiff's claims implicate a federal agency's expertise for a regulated product. United States v. W. Pac. R.R. Co., 352 U.S. 59, 64 (1956) (primary jurisdiction doctrine applies "whenever enforcement of [a] claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body"). It claims that the FDA has said no "special labeling" is required when bioengineered ingredients are used in foods. Defendant cites Pom Wonderful LLC v. Coca-Cola Co., 679 F.3d 1170, 1176 (9th Cir. 2012). In that case, the Ninth Circuit rejected a plaintiff's attempt to sue over the name of a juice product, stating that "[w]here FDA has not concluded that particular conduct violates the FDCA, we have even held that a Lanham Act claim may not be pursued if the claim would require litigating whether that conduct violates the FDCA[2]." See also All One God Faith, Inc. v. Hain Celestial Grp., Inc., No. C 09-3517 SI, 2012 U.S. Dist. LEXIS 111553, at *33 (N.D. Cal. Aug. 8, 2012) (dismissing a claim challenging "organic" statements, finding plaintiff's allegations "would inevitably require the Court to interpret and apply federal organic standards, potentially create a conflict with those standards, and would intrude upon and undermine the USDA's authority to determine how organic products should be produced, handled, processed and labeled.").

Plaintiff contends that the fact that the FDA does not require disclosure of bioengineered ingredients does not necessarily close the door on whether a particular labeling or advertising

[2] the Food, Drug & Cosmetic Act ("FDCA")

may mislead and deceive consumers in violation of consumer protection laws. Moreover, Defendant's arguments that the claims should be dismissed under the primary jurisdiction doctrine is also misplaced because the FDA has repeatedly declined to adopt formal rule-making that would define the word "natural." The Court agrees. Courts have declined to dismiss false advertising claims premised on food companies' "natural" claims because the FDA simply does not regulate those claims. See, e.g., Jones v ConAgra Foods, Inc., 2012 WL 6569393, *6 (N.D. Cal. Dec. 17, 2012) (declining to apply primary jurisdiction doctrine to "100% natural" claims); Janney v. General Mills, Inc., Case No.: C 12-3919-PJH, *10 (N.D. Ca. May 10, 2013) (declining to dismiss under primary jurisdiction doctrine) ("Nevertheless, in repeatedly declining to promulgate regulations governing the use of "natural" as it applies to food products, the FDA has signaled a relative lack of interest in devoting its limited resources to what it evidently considers a minor issue, or in establishing some "uniformity in administration" with regard to the use of "natural" in food labels."). See also [DE 32-1] (Letter from Michael M. Landa, Acting Director, Center for Food Safety and Applied Nutrition to Judge Jerome B. Simandle dated September 16, 2010).

III. Safe Harbor Provision of Fla. Stat. § 501.212(1)

Defendant argues that, because of preemption and compliance with federal law, Plaintiff's FDUPTA allegations fall under the safe harbor provision of Fla. Stat. § 501.212(1). This statute states as follows:

> 501.212. Application
> This part does not apply to:
> (1) An act or practice required or specifically permitted by federal or state law.

Fla. Stat. § 501.212(1). As set forth above, Plaintiff's claims are not preempted. Accordingly,

Defendant's argument that Plaintiff's clams fall under FDUPTA's safe harbor provision correspondingly fails.

IV. Unjust Enrichment

Defendant argues that the unjust enrichment claim fails on the ground set forth in Section III, supra, and also because he has an adequate remedy at law. Upon review, the Court finds that Plaintiff has pleaded his unjust enrichment claim in the alternative to his FDUTPA claim.

Further, regarding sufficient pleading of this cause of action, "[a] claim for unjust enrichment has three elements: (1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained that benefit; and (3) the circumstances are such that it would be inequitable for the defendants to retain it without paying the value thereof." Virgilio v. Ryland Group, Inc., 680 F.3d 1329 (11th Cir. Fla. 2012) (citing Fla. Power Corp. v. City of Winter Park, 887 So. 2d 1237, 1241 n. 4 (Fla. 2004)). Here, each of the elements have been adequately pled: (1) Plaintiff conferred a benefit on the defendant by paying the purchase price, see [DE 27] at ¶ 88); (2) Campbell accepted and retained that benefit, ¶ 89; and (3) it would be inequitable for Campbell to retain the purchase price, ¶¶ 90–91.

III. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's Motion to Dismiss Second Amended Complaint [DE 29] is hereby **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 24th day of May, 2013.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Counsel of Record

THE EGGNATZ LAW FIRM, P.A.

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Phone: (954) 634-4355
Facisimile: (954) 634-4342

May 30, 2013

Via Certified mail/rrr: 7011 1570 0000 7036 7610
Attn: Patrick Callaghan
Pepperidge Farm, Inc.
595 Westport Ave.
Norwalk, CT 06851

RE: Notice of Violation of Florida Deceptive and Unfair Trade Practices Act (FDUTPA), and Breach of Express Warranty for the false, misleading, and deceptive labeling of Goldfish Crackers (the "Product").

Dear Mr. Callaghan:

Pursuant to the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), *Florida Statutes* §§ 501.201, *et seq*, I hereby notify you, Pepperidge Farm, Inc., and/or its subsidiaries or affiliates (collectively, "Pepperidge Farm") that you have violated FDUTPA's provisions and breached various express warranties. Specifically, those set forth in FDUTPA section 501.204 of the *Florida Statutes*, by manufacturing, marketing, promoting, labeling, advertising, and selling the Product, using false, deceptive, and fraudulent practices to promote the Product, thereby engaging in misleadingly and/or intentional deceptive trade practices in violation of Florida law.

Pepperidge Farm sells, and has sold, through various retailers throughout the State of Florida and the United States, the Product, that makes claims on its labels and advertising that it is "Natural." The term "Natural" is pervasive and prominent on the packaging and advertising of the Product. Pepperidge Farm has represented that the Product is "Natural," when in fact; it is not, because it contains genetically modified soy ingredients. Reasonable consumers, such as the Plaintiff in this action and the class of Florida consumers she seeks to represent, do not expect "natural" foods to contain genetically modified ingredients that do not occur naturally in nature.

Simply put, your Product is not "natural," because it contains GMOs. GMOs are the product of DNA splicing, modified through biotechnology, and are therefore not natural. Despite the Product's "Natural" representation, the Product provides no warning or disclaimer that the Product contains GMOs. Pepperidge Farm reinforces the image of the Product to be 100% "Natural" on its website and other advertising.

My office represents consumer, Lisa Leo ("Plaintiff"), who resides in the State of Florida, and who purchased the Product in reliance upon the deceptive, unfair, and misleading representations made by Pepperidge Farm. This consumer suffered an economic loss through purchasing this misbranded, mislabeled product. Pepperidge Farm's conduct in marketing, promoting, labeling, advertising and selling the Product, while knowing of the issues discussed above violates FDUTPA section 501.204, because Pepperidge Farm has used deceptive and misleading practices, as it has represented and continues to represent the Product is "Natural," when it is not. Furthermore, Pepperidge Farm has violated *Florida Statute* § 500.11(1)(a), regarding misbranded foods, by way of its deceptive mislabeling of the Product. Lastly, Pepperidge Farm has violated express warranties related to the Product because it is not "Natural," as the label expressly states. Pepperidge Farm has been unjust enriched by its labeling practices.

Therefore, demand is hereby made, that Pepperidge Farm agrees to immediately do and complete the following:

Agree to provide notice in the advertising, labeling, packaging, marketing, promotion selling, and labeling of the Product correcting the misstatements and misrepresentations about the Product.

Provide for a six-month, nationwide advertising campaign that fully discloses to consumers, among other things, the above misstatements. The campaign shall be subject to our review and approval, as counsel for the putative Class.

Pursuant to § 501.207, *Florida Statutes,* and based on the foregoing, we hereby demand that Pepperidge Farm reimburse all amounts paid by any and all individuals who purchased the Product during the past four (4) years. Pepperidge Farm shall offer the Plaintiff Class restitution in an amount equal to the purchase price of all units sold. The restitutionary component of this case would be in addition to Pepperidge Farm providing for payment of all costs (including costs of notice and administration of the fund) and reasonable attorney's fees. Thus, demand is also made for Pepperidge Farm to disclose its sales figures at this time.

If the above is not agreed to, it is our intent to file suit in the very near future, to protect the legal rights of Plaintiffs, and a putative class of Florida purchasers of the Product. If we cannot amicably resolve this matter, a Complaint will be filed naming Pepperidge Farm and its affiliates as Defendants, seeking actual damages and injunctive relief pursuant to the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes §§ 501.201, *et seq.*, as well as based on other statutory and common law grounds, on behalf of all consumers residing in the State of Florida. For your courtesy, and so that you may properly evaluate this claim, I have enclosed a

recent Order out of the Southern District of Florida, the same venue that this action will be filed against Pepperidge Farm, denying Campbell Soup Company's motion to dismiss a Complaint that seeks relief under the same theory of liability that Plaintiff will be pursuing in this action against Pepperidge Farm.

I hope to hear from you by June 9, 2013, so we can try to resolve this matter and avoid expensive, protracted litigation. If I do not hear from you by then, I will be filing a Class Action Complaint in the United States District Court, Southern District Florida. Please contact the undersigned regarding this notice and demand.

Very truly yours,

Joshua H. Eggnatz, Esq.
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Weston, FL 33326
Tel: (954) 634-4355
Fax: (954) 634-4342
JEggnatz@EggnatzLaw.com
Attorney for Plaintiff & the Proposed Class

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-62058-CIV-DIMITROULEAS

MARK KRZYKWA, as an individual, and on behalf of all others similarly situated,

Plaintiff,

vs.

CAMPBELL SOUP CO. a New Jersey corporation,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE is before the Court upon Defendant Campbell Soup Co.'s ("Defendant" or "Campbell")'s Motion to Dismiss Second Amended Complaint [DE 29]. The Court has carefully considered the Motion, Plaintiff Mark Krzykwa ("Plaintiff" or "Krzykwa")'s Response [DE 32], Defendant's Reply [DE 34], arguments by counsel at the May 10, 2013 hearing, and is otherwise fully advised in the premises.

I. BACKGROUND

This action relates to the "all natural" labeling of food products containing genetically modified ingredients, here, vegetable soups containing genetically modified corn. Plaintiff alleges that this Court has jurisdiction over the subject matter presented by this Second Amended Class Action Complaint because it is a class action arising under the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original

jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5,000,000.00, exclusive of interest and costs. ¶¶ 8, 9.

According to the factual allegations of the Second Amended Complaint, Defendants have represented that its 100% Natural Soups line of soups are "All Natural," when in fact, they are not, because they contain genetically modified corn, which is a bio-engineered food, most commonly known as a genetically modified organism ("GMOs"). [DE 27] at ¶ 1. Plaintiff alleges that although Defendants market the products as "All Natural," these claims are false because the soups contain GMOs, plants whose genetic makeup has been altered through biotechnology to exhibit characteristics that would not otherwise occur in nature. Plaintiff alleges that genetic engineering is different from natural/conventional plant breeding and poses distinct risks. ¶ 4. Specifically, the genetic engineering and associated tissue culture processes are highly mutagenic, leading to unpredictable changes in the DNA and proteins of the resulting GMO that can lead to unexpected toxic or allergenic effects. ¶ 5. Plaintiff alleges that recent studies suggest that GMOs may in fact be harmful to a consumer's health. ¶ 33.

In the Second Amended Complaint, Plaintiff alleges that he purchased Campbell's 100% Natural Light Southwestern-Style Vegetable Soup, 100% Natural Tomato Garden Soup, and 100% Natural Vegetable Medley Soup, all containing GMO corn, from a Publix supermarket in Fort Lauderdale, Florida, during September of 2012. ¶ 38. Plaintiff claims that he relied upon the advertising containing the misrepresentations and omissions which he complains of, which was prepared and approved by Defendant and its agents and disseminated through its labeling of the products. Plaintiff believed the representation on the label that this soup was "100% Natural" and

thus the soup did not contain, nor was it made with, any genetically modified ingredients. ¶ 41. If Plaintiff had known the soup cans he purchased contained GMOs and thus was not "100% Natural," he states that would not have purchased them. ¶ 41. Plaintiff also alleges that he paid a premium price for the "100% Natural" products, as they cost approximately twice as much as other, similar Campbell's soup flavors that are not labeled as "all natural" or "100% natural." ¶ 45.

Plaintiff filed this case as a class action for injunctive relief, restitution, disgorgement, and damages against Campbell. The Class which Plaintiff seeks to represent is:

> All Florida persons who have purchased, for personal use, 100% Natural Light Southwestern-Style Vegetable Soup, 100% Natural Tomato Garden Soup, and/or 100% Natural Vegetable Medley Soup flavors containing corn, since September 2009.

¶ 52.

Count I of the Second Amended Complaint is for false and misleading advertising in violation the Florida Deceptive and Unfair Trade Practices Act, FLA. STAT. §§ 501.201, et seq. ("FDUTPA"). Count II is for unjust enrichment. Plaintiff specifically alleges that his state law claims mirror the labeling, packaging, and advertising requirements mandated by federal regulations and laws. See ¶ 6 and p. 12 n. 9. Plaintiff seeks an order prohibiting Campbell from including genetically modified corn in its "100% Natural Soup" products or, in the alternative, from representing the Products are "100% Natural" when they are not, because bio-engineered corn is not 100% Natural. ¶ 7.

II. DISCUSSION

A. Standard of Review

A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is

a motion attacking the legal sufficiency of a complaint. When considering a Rule 12(b)(6) motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from theses allegations in the light most favorable to the plaintiff. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Under the Federal Rules of Civil Procedure Rule 12(b)(6), a motion to dismiss will be awarded if the plaintiff fails to state a claim in which relief can be granted. According to Rule 8(a)(2) of the Federal Rules of Civil Procedure, a claimant must only state "a short and plain statement of the claim showing that the pleader is entitled to relief." The Supreme Court in Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007), set forth a pleading standard in which the plaintiff must plead "enough facts to state a claim to relief that is ***plausible*** on its face." (emphasis added). In order to survive a 12(b)(6) motion, the plaintiff must plead with enough information to show that his claim may entitle him to relief. "A court considering a motion to dismiss may begin by identifying allegations that, because they are mere conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the complaint's framework they must be supported by factual allegations." Iqbal, 556 U.S. at 664.

B. Defendant's Motion to Dismiss

Defendant moves to dismiss Plaintiff's Second Amended Complaint [DE 27] on several grounds. First, Defendant argues that the claims are preempted. Second, Defendant argues that the case should be dismissed under the primary jurisdiction doctrine. Third, Defendant argues that, because of preemption and compliance with federal law, Plaintiff's FDUPTA allegations fall under the safe harbor provision of Fla. Stat. § 501.212(1). Finally, Defendant argues that Plaintiff's unjust enrichment claim fails for that reason and also because he has an adequate remedy at law. The Court shall address each of these arguments in turn.

I. Preemption

Defendant argues that Plaintiff's claims are preempted because the Department of Agriculture ("USDA") preapproved Campbell's "100% natural" statement on two cans of soup from the Campbell's 100% Natural Soups line that also have a 100% natural" label and contain the same GMO corn ingredients. Thus, it argues that the preemptive effect of the USDA mark of inspection necessarily extends to these products. In support, Defendant cites Meaunrit v. ConAgra Foods Inc., No. C 09-02220 CRB, 2010 WL 2867393, at *5, *7 (N.D. Cal. July 20, 2010) (dismissing plaintiff's state law claims alleging that ConAgra's frozen chicken pot pies were mislabeled because the claims were preempted by the FMIA and PPIA) ("[b]ecause the [USDA] pre-approval process includes a determination of whether the labeling is false and misleading, and the gravamen of Plaintiff's attack on the label concerns whether [the heating instructions] are accurate, the plaintiff's state causes of action are preempted by federal law."). Defendant also relies on Hairston v. S. Beach Beverage Co., No. CV 12–1429–JFW, 2012 WL 1893818, at *6 (C.D. Cal. May 18, 2012). There, the plaintiff challenged the "all natural" label on Lifewater beverages as misleading because the products allegedly contained synthetic vitamins, and the common vitamin names concealed this fact. The court granted the defendant's motion to dismiss, holding that FDA regulations governing the naming of vitamins preempted the claim.

Defendant argues that even though the FDA rather than the USDA regulates the vegetable (not containing chicken or beef) soups at issue under the Second Amended Complaint, the FDA and USDA have developed similar policies that govern the labeling of food products with "natural" claims, and both have determined there is nothing material about bioengineered foods

that differs from other foods. Defendant claims that the facts presented in this case create an issue of first impression, as the USDA approved labels of Campbell soups containing poultry meat that have the same GMO corn and are in the same "line of soup products" as the vegetable soups at issue in this case.

In response, Plaintiff argues that Defendant's preemption argument fails since the soups at issue are not regulated nor preempted by the USDA, FMIA, or PPIA because they do not contain any poultry. Plaintiff contends that Defendant's argument that USDA approval of chicken soups that Defendant admits are no longer claimed in this lawsuit, amounts to FDA approval of the 100% Natural label on soup containing genetically modified corn, is completely amiss.

Upon consideration, the Court is not impressed by this "first impression" scenario. There is nothing special about being in the same product line from a preemption perspective. From a purely logical standpoint (as advocated by counsel at the hearing), if the Court adopted Campbell's position, the Court finds that there would be no authentic reason to not also necessarily take the position that because the USDA approved two Campbell poultry meat soups not at issue in this case that no claims can be made in any case against any defendant that it is misleading to using label a food product containing GMO corn as "100% Natural."[1]

Here, Plaintiff's state consumer protection law claims are not preempted by federal regulations. See, e.g., Jones v ConAgra Foods, Inc., 2012 WL 6569393, *6 (N.D. Cal. Dec. 17,

[1] Additionally, it does not necessarily flow that the USDA's approval of the label in the chicken soups in is binding on every other federal agency that comes in contact with genetically modified corn. We do not even know whether, when reviewing the label for whether it was "misleading," the USDA even knew that the soup contained GMO corn, particularly as there is nothing on the soup label to so indicate.

2012) (declining to apply preemption to "100% natural" claims).

II. Primary Jurisdiction

Defendant argues that the case should be dismissed under the primary jurisdiction doctrine, which applies where a plaintiff's claims implicate a federal agency's expertise for a regulated product. United States v. W. Pac. R.R. Co., 352 U.S. 59, 64 (1956) (primary jurisdiction doctrine applies "whenever enforcement of [a] claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body"). It claims that the FDA has said no "special labeling" is required when bioengineered ingredients are used in foods. Defendant cites Pom Wonderful LLC v. Coca-Cola Co., 679 F.3d 1170, 1176 (9th Cir. 2012). In that case, the Ninth Circuit rejected a plaintiff's attempt to sue over the name of a juice product, stating that "[w]here FDA has not concluded that particular conduct violates the FDCA, we have even held that a Lanham Act claim may not be pursued if the claim would require litigating whether that conduct violates the FDCA[2]." See also All One God Faith, Inc. v. Hain Celestial Grp., Inc., No. C 09-3517 SI, 2012 U.S. Dist. LEXIS 111553, at *33 (N.D. Cal. Aug. 8, 2012) (dismissing a claim challenging "organic" statements, finding plaintiff's allegations "would inevitably require the Court to interpret and apply federal organic standards, potentially create a conflict with those standards, and would intrude upon and undermine the USDA's authority to determine how organic products should be produced, handled, processed and labeled.").

Plaintiff contends that the fact that the FDA does not require disclosure of bioengineered ingredients does not necessarily close the door on whether a particular labeling or advertising

[2] the Food, Drug & Cosmetic Act ("FDCA")

may mislead and deceive consumers in violation of consumer protection laws. Moreover, Defendant's arguments that the claims should be dismissed under the primary jurisdiction doctrine is also misplaced because the FDA has repeatedly declined to adopt formal rule-making that would define the word "natural." The Court agrees. Courts have declined to dismiss false advertising claims premised on food companies' "natural" claims because the FDA simply does not regulate those claims. See, e.g., Jones v ConAgra Foods, Inc., 2012 WL 6569393, *6 (N.D. Cal. Dec. 17, 2012) (declining to apply primary jurisdiction doctrine to "100% natural" claims); Janney v. General Mills, Inc., Case No.: C 12-3919-PJH, *10 (N.D. Ca. May 10, 2013) (declining to dismiss under primary jurisdiction doctrine) ("Nevertheless, in repeatedly declining to promulgate regulations governing the use of "natural" as it applies to food products, the FDA has signaled a relative lack of interest in devoting its limited resources to what it evidently considers a minor issue, or in establishing some "uniformity in administration" with regard to the use of "natural" in food labels."). See also [DE 32-1] (Letter from Michael M. Landa, Acting Director, Center for Food Safety and Applied Nutrition to Judge Jerome B. Simandle dated September 16, 2010).

III. Safe Harbor Provision of Fla. Stat. § 501.212(1)

Defendant argues that, because of preemption and compliance with federal law, Plaintiff's FDUPTA allegations fall under the safe harbor provision of Fla. Stat. § 501.212(1). This statute states as follows:

> 501.212. Application
> This part does not apply to:
> (1) An act or practice required or specifically permitted by federal or state law.

Fla. Stat. § 501.212(1). As set forth above, Plaintiff's claims are not preempted. Accordingly,

Defendant's argument that Plaintiff's clams fall under FDUPTA's safe harbor provision correspondingly fails.

IV. Unjust Enrichment

Defendant argues that the unjust enrichment claim fails on the ground set forth in Section III, supra, and also because he has an adequate remedy at law. Upon review, the Court finds that Plaintiff has pleaded his unjust enrichment claim in the alternative to his FDUTPA claim.

Further, regarding sufficient pleading of this cause of action, "[a] claim for unjust enrichment has three elements: (1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained that benefit; and (3) the circumstances are such that it would be inequitable for the defendants to retain it without paying the value thereof." Virgilio v. Ryland Group, Inc., 680 F.3d 1329 (11th Cir. Fla. 2012) (citing Fla. Power Corp. v. City of Winter Park, 887 So. 2d 1237, 1241 n. 4 (Fla. 2004)). Here, each of the elements have been adequately pled: (1) Plaintiff conferred a benefit on the defendant by paying the purchase price, see [DE 27] at ¶ 88); (2) Campbell accepted and retained that benefit, ¶ 89; and (3) it would be inequitable for Campbell to retain the purchase price, ¶¶ 90–91.

III. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's Motion to Dismiss Second Amended Complaint [DE 29] is hereby **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 24th day of May, 2013.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Counsel of Record

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)* **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

LISA LEO, as an individual, and on behalf of others similarly situated

(b) County of Residence of First Listed Plaintiff Palm Beach County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
The Eggnatz Law Firm, P.A.
1920 N. Commerce Parkway, Ste. 1, Weston, FL 33326, (954)634-4355

DEFENDANTS

PEPPERIDGE FARM, INC., a Connecticut Corporation

County of Residence of First Listed Defendant Fairfield County, CT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

(d) Check County Where Action Arose: ☐ MIAMI- DADE ☐ MONROE ☐ BROWARD ☑ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government Plaintiff
☐ 3 Federal Question *(U.S. Government Not a Party)*
☐ 2 U.S. Government Defendant
☑ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff) and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☑ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☑ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☒ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury - Med. Malpractice

PERSONAL INJURY
☐ 365 Personal Injury - Product Liability
☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☐ 440 Other Civil Rights
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/ Accommodations
☐ 445 Amer. w/Disabilities - Employment
☐ 446 Amer. w/Disabilities - Other
☐ 448 Education

PRISONER PETITIONS
Habeas Corpus:
☐ 463 Alien Detainee
☐ 510 Motions to Vacate Sentence
Other:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition
☐ 560 Civil Detainee – Conditions of Confinement

FORFEITURE/PENALTY
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 740 Railway Labor Act
☐ 751 Family and Medical Leave Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
☐ 462 Naturalization Application
☐ 465 Other Immigration Actions

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
☐ 375 False Claims Act
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 850 Securities/Commodities/ Exchange
☐ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 893 Environmental Matters
☐ 895 Freedom of Information Act
☐ 896 Arbitration
☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed **(See VI below)** ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district *(specify)* ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case ☐YES ☐ NO b) Related Cases ☑YES ☐ NO

JUDGE DIMITROULEAS DOCKET NUMBER 12-62058-CIV

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. 1332 (d)(2): Claims for Violations of Florida's Deceptive & Unfair Trade Practices Act, et al.
LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $ 5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE: June 11, 2013

SIGNATURE OF ATTORNEY OF RECORD: /s/ Joshua H. Eggnatz

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ IFP _____ JUDGE _____ MAG JUDGE _____

Save As... Print Reset

JS 44 Reverse (Rev. 12/12)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**.
Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

LISA LEO, an individual, and on behalf of all others similarly situation

Plaintiff(s)

v.

PEPPERIDGE FARM, INC. a Connecticut Corporation

Defendant(s)

Civil Action No. 0:13-cv-61290

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* PEPPERIDGE FARM, INC.
c/o CT CORPORATION SYSTEM
1200 S. PINE ISLAND ROAD
PLANTATION, FL 33324

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Joshua H. Eggnatz, esq
THE EGGNATZ LAW FIRM, P.A.
1920 N. Commerce Parkway
Suite 1
Weston, FL 33326

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 0:13-cv-61290

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____ , a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset