

SHEPHERD, FINKELMAN, MILLER
& SHAH, LLP
Nathan C. Zipperian (Fl. Bar No. 61525)
1640 Town Center Circle
Suite 216
Weston, FL 33326
Telephone: 954/515-0123
Facsimile: 866/515-0124
Email: nzipperian@sfmslaw.com

[Additional counsel listed on signature page]

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

AMY STEINBERG, On Behalf Of Herself
and All Others Similarly Situated,

Plaintiff,

vs.

ATEECO, INC.,

Defendant.

) **No: 0:15-cv-60912-WJZ**

)

)

)

)

)

)

)

)

)

)

)

)

)

**AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiff, Amy Steinberg (“Steinberg” or “Plaintiff”), by and through her attorneys, brings this action on behalf of herself and all others similarly situated against Defendant, Ateeco, Inc. (“Ateeco” or “Defendant”), and alleges, on personal knowledge as to all facts related to herself and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action individually and on behalf of a proposed class (“Class”) as more fully defined below, of similarly situated consumers in Florida seeking to redress the pervasive pattern of fraudulent, deceptive, false, and otherwise improper advertising, sales, and marketing practices that Defendant engages in regarding its Mrs. T’s Pierogies products (“Pierogies” or “Product(s)”).

2. Defendant manufactures, markets, and sells various types of Pierogies, including full-size, mini-size, and family pack pierogies. *See* <http://www.pierogies.com/retail/products/products.aspx>. According to Defendant, the full-size Pierogies are available in 11 flavors: Four Cheese Medley, American Cheese, Classic Cheddar, Savory Onion, Broccoli & Aged Cheddar, Spicy Jalapeno & Sharp Cheddar, Sour Cream & Chive, Feta & Spinach, Traditional Sauerkraut, Loaded Baked Potato, and Savory Five Cheese Blend. The mini-size Pierogies are available in four flavors: Mini Four Cheese Medley, Mini Classic Cheddar, Mini Savory Onion, and Mini Cheddar Seasoned with Bacon, and the family pack Pierogies are available in three flavors: Black & Gold 2 lb, Classic Cheddar 2 lb/Class Cheddar 4 lb, and Savory Onion 2 lb.

3. At all relevant times, Ateeco has made, and continues to make, misrepresentations and/or omissions regarding its Pierogies. Specifically, Ateeco misrepresents the nutritional information on the labels of the Products by: (1) using serving sizes that are not in accordance

with the serving sizes mandated by law for pierogies and, as a result, understating the actual amount of calories, fat, and sodium contained in the Products; and (2) concealing or failing to provide a disclosure statement, which is mandated by law, regarding the high sodium content of its Products.

4. Ateeco recognized that, based on a shift in consumer preference toward healthier food products, there is a financial benefit to be derived in selling healthier products, meaning products with less calories and lower levels of undesirable nutrients like fat and sodium. Accordingly, Ateeco purposely misrepresented and failed to disclose the true nutritional facts to consumers as part of a marketing strategy. As a result of these misrepresentations and/or omissions regarding the Products, Ateeco has deceived consumers, including Plaintiff and members of the Class, into believing that the Pierogies were substantially healthier than they actually are.

5. Had Plaintiff and the Class been aware of the true nutritional information of the Pierogies, they would not have purchased Pierogies.

6. As a result of Defendant's false and misleading statements and failure to disclose, Plaintiff and the Class bought tens of thousands of bags of the Products and have suffered – and continue to suffer – injury in fact as a result of Defendant's misrepresentations and/or omissions. Additionally, Defendant acquired money or property from Plaintiff and the Class as a result of its unfair, deceptive, and unlawful conduct as alleged herein.

7. Plaintiff brings this action, on behalf of herself and other similarly situated Florida consumers, to halt the dissemination of this false and misleading advertising, correct the false and misleading perception it has created in the minds of consumers, and to obtain redress

for those who have purchased Pierogies. Plaintiff alleges violations of the Florida Deceptive and Unfair Trade Practice Act (“FDUTPA”) and, alternatively, asserts a claim for unjust enrichment.

JURISDICTION AND VENUE

8. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and Plaintiff and certain members of the Class are citizens of states different from that of Defendant.

9. This Court has personal jurisdiction over Defendant because Defendant has conducted and continues to conduct business in the State of Florida, and because Defendant has committed the acts and omissions complained of herein in the State of Florida, which is also the state in which Plaintiff resides and is a citizen.

10. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because Defendant:
- a. is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district through the promotion, marketing, distribution, and sale of Pierogies here;
 - b. does substantial business in this district;
 - c. is subject to personal jurisdiction in this district; and
 - d. Plaintiff resides in this district.

PARTIES

11. Plaintiff is, and at all times relevant to this action has been a resident of Fort Lauderdale, Florida, and, thus, is a citizen of Florida. Prior to purchasing Pierogies, Plaintiff was exposed to and saw the nutritional information on the packaging label of Ateeco’s Pierogies, and purchased Pierogies in reliance thereon. Plaintiff suffered injury in fact and lost money as a result of Defendant’s false and misleading conduct.

12. Defendant is a corporation which was incorporated under the laws of the Commonwealth of Pennsylvania and which has its principal place of business at 600 East Centre Street, Shenandoah, Pennsylvania 17976. Therefore, Defendant is a citizen of Pennsylvania. Defendant promotes, markets, distributes, and sells Pierogies throughout the United States, including to consumers in the State of Florida.

SUBSTANTIVE ALLEGATIONS

A. Nutrition Facts Labels Must be Truthful and Accurate

13. In recent years, there has been an obvious shift in consumer eating habits throughout the nation – they have “taken a more healthful turn.”¹ Consumers are consciously consuming fewer calories and cutting back on undesirable nutrients like fat and sodium. Consequently, the nutrition facts labels of packaged foods are becoming increasingly important and used by more and more consumers.

14. A survey done by the Food and Drug Administration (“FDA”) in 2002 and 2008 indicated that “the percentage of respondents reporting that they ‘often’ read a food label the first time they purchase a food product rose” and “two-thirds reported using the label to see how high or low the food was in components such as calories, sodium, vitamins, or fat.”²

15. Recognizing that consumers heavily rely on these nutrition facts labels to make informed food choices and maintain healthy dietary practices, the law mandates that the labels on packaged food must be truthful and accurate.

¹ Melinda Beck and Amy Schatz, *Americans' Eating Habits Take a Healthier Turn, Study Finds*, THE WALL STREET JOURNAL, <http://www.wsj.com/articles/SB10001424052702304149404579323092916490748>.

² *Proposed Changes to the Nutrition Facts Label*, U.S. FOOD AND DRUG ADMINISTRATION, http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/labelingnutrition/ucm385663.htm#serving_size.

B. Ateco's Pierogies Are Mislabeled

16. Defendant realized healthier food products drive sales, especially in light of the shift toward healthier eating habits of consumers. Thus, to deceive consumers to believe that Pierogies are substantially healthier than they actually are, Ateco ignored and continues to ignore the food labeling laws by: (1) using improper serving sizes; and (2) concealing or failing to provide a disclosure statement regarding the high sodium content of its Products.

i. Ateco Uses Improper Serving Sizes

17. To ensure uniformity and to protect consumers from misleading labels, the FDA regulates, *inter alia*, the serving size that can be used on food labels. Specifically, this regulation prohibits food manufacturers from understating the serving size of their products with the purpose to mislead consumers into erroneously believing that the products have fewer calories and lower levels of undesirable nutrients, such as fat and sodium, than they actually do.

18. The law provides that the “serving size declared on a product label shall be determined from the ‘Reference Amounts Customarily Consumed Per Eating Occasion * * * *’ (reference amounts) [(“RACC”)] that appear in § 101.12(b).” 21 C.F.R. § 101.9(b)(2). More specifically, “the serving size shall be the number of whole units that most closely approximates” the RACC. 21 C.F.R. § 101.9(b)(2)(i)(A).

19. According to 21 C.F.R. § 101.12(b), the RACC for pierogies is 140 grams.

20. However, recognizing the emerging health conscious consumers and the economic benefit in selling products that have less calories and lower levels of fat and sodium – in other words, healthier products – Ateco made a strategic choice *not* to use the correct serving

size mandated by law, but rather *understated* the serving size in order to understate the calories, fat, and sodium contents of its Pierogies.

21. For example, the nutritional facts on the package of its full-size Pierogies, as shown below, specify a serving size of three Pierogies (114g), when the legally mandated serving size is four Pierogies (152g). Ateco also understated the calories, fat, and sodium contents of the Pierogies to the same degree that it understated the serving size of its Pierogies. If Ateco had used the correct serving size mandated by the FDA, the calories, fat, and sodium would actually be *1.3 times the amount* than indicated on the Product label.

FOUR CHEESE MEDLEY



PRODUCT DESCRIPTION

Cheddar, Parmesan, Romano & Swiss Cheeses and Creamy Whipped Potatoes, Folded in a Pasta Shell

ALSO AVAILABLE IN:

[Mini Four Cheese Medley](#)

Nutrition Facts

Serving Size 3 Pierogies (114g)
Servings Per Container 4

Amount Per Serving		
Calories	220	Calories from Fat 60
		% Daily Value*
Total Fat	7g	10%
Saturated Fat	1.5g	7%
Trans Fat	0g	
Cholesterol	5mg	2%
Sodium	540mg	23%
Total Carbohydrate	34g	11%
Dietary Fiber	1g	5%
Sugars	2g	
Protein	6g	
Vitamin A 0%		Vitamin C 10%
Calcium 4%		Iron 8%

*Percent Daily Values are based on a diet of 2,000 calories. Your daily values may be higher or lower depending on your calorie needs:

	Calories	2,000	2,500
Total Fat	Less Than	65g	80g
Saturated Fat	Less Than	20g	25g
Cholesterol	Less Than	300mg	300 mg
Sodium	Less Than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

22. The nutritional facts on the package of its mini-size Pierogies, as shown below, specifies a serving size of seven Pierogies (91g), when the legally mandated serving size is 11 Pierogies (143g). Ateco also understated the calories, fat, and sodium contents of the Pierogies to the same degree that it understated the serving size of the Pierogies. If Ateco had used the correct serving size mandated by the FDA, the calories, fat, and sodium would actually be *1.6 times the amount* than indicated on the Product label.

MINI FOUR CHEESE MEDLEY



PRODUCT DESCRIPTION

Cheddar, Parmesan, Romano & Swiss Cheeses and Creamy Whipped Potatoes, Folded in a MINI Pasta Shell

ALSO AVAILABLE IN FULL-SIZE:

[Four Cheese Medley](#)

Nutrition Facts	
Serving Size 7 Pierogies (91g)	
Servings Per Container 4	
Amount Per Serving	
Calories 170	Calories from Fat 40
	% Daily Value*
Total Fat 5g	7%
Saturated Fat 1g	5%
Trans Fat 0g	
Cholesterol 5mg	2%
Sodium 410mg	17%
Total Carbohydrate 27g	9%
Dietary Fiber 1g	4%
Sugars 1g	
Protein 5g	
Vitamin A 0%	Vitamin C 8%
Calcium 4%	Iron 8%
*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.	
	Calories 2,000 2,500
Total Fat	Less Than 65g 60g
Saturated Fat	Less Than 20g 25g
Cholesterol	Less Than 300mg 300mg
Sodium	Less Than 2,400mg 2,400mg
Total Carbohydrate	300g 375g
Dietary Fiber	25g 30g
Calories per gram:	
Fat 9 • Carbohydrate 4 • Protein 4	

23. The nutritional facts on the package of its family pack Pierogies, as shown below, specifies a serving size of three Pierogies (114g), when the legally mandated serving size is four Pierogies (152g). Ateco also understated the calories, fat, and sodium contents of the Pierogies to the same degree that it understated the serving size of its Pierogies. If Ateco had used the correct serving size mandated by the FDA, the calories, fat, and sodium would actually be **1.3**

Therefore, we are taking this opportunity to remind the food industry about the rules for determining an appropriate serving size.

Manufacturers must use the information provided in Title 21 of the Code of Federal Regulations (CFR) sections 101.9(b) and 101.12 to determine a specific serving size for their products.

• • •

FDA encourages the food industry to review their nutrition information and assure that the serving size declared is appropriate for the commodity in question. FDA also encourages manufacturers to refer to our guidance documents at www.cfsan.fda.gov for additional information on serving sizes. FDA intends to make accurate serving size declarations one of our priorities and we will advise manufacturers when we encounter apparent errors in declared serving sizes.³

26. On October 28, 2009, the FDA sent a warning letter, which was published on its website, to Ateco's peer food manufacturer, Almi, Inc., asserting that Almi's Farmer Cheese, Pierogi with Potatoes and Home Style Dough product label was mislabeled because the serving size was not based on the 140 grams RACC. The FDA expressly stated that the "Nutrition Facts panel must be based on the number of pieces closest to the RACC."⁴

27. Despite the federal mandate, the FDA's guidance letter, and warning letter to Ateco's peer food manufacturer, Ateco purposely chose to use and continues to use improper serving sizes on its Products' labels, misleading consumers into erroneously believing that Pierogies have less calories and lower levels of fat and sodium than they do. In other words, Ateco is engaging in the very practice that the FDA sought to eliminate.

³ *Sample Letter to Food Manufacturers about Accurate Serving Size Declaration on Food Products*, U.S. FOOD AND DRUG ADMINISTRATION, <http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CFSAN/CFSANFOIAElectronicReadingRoom/ucm329756.htm>.

⁴ *Warning Letter to Almi, Inc.*, U.S. FOOD AND DRUG ADMINISTRATION, <http://www.fda.gov/iceci/enforcementactions/warningletters/2009/ucm191800.htm>

ii. Ateco Fails to Provide the Required Disclosure Statement Regarding the Pierogies' High Sodium Content

28. The FDA recognizes that certain nutrients may increase the risk of diet-related health problems. Thus, if a food contains a nutrient that exceeds certain prescribed levels, the FDA requires food manufacturers to provide a disclosure statement identifying that nutrient on the product's labels in the following format: "See nutrition information for [nutrient] content." 21 C.F.R. § 101.13(h)(1).

29. A disclosure statement is required when a food "contains more than . . . 480 mg of sodium per [RACC], per labeled serving." *Id.*

30. The sodium content of Ateco's full-size Pierogies for the different flavors is as follows:

Ateco's full-size Pierogies		
Flavor	Sodium Content as Indicated on Label	Sodium Content Using Correct Serving Size (x 1.3)
Four Cheese Medley	540 mg	702 mg
American Cheese	550 mg	715 mg
Classic Cheddar	510 mg	663 mg
Savory Onion	390 mg	507 mg
Broccoli & Aged Cheddar	530 mg	689 mg
Spicy Jalapeno & Sharp Cheddar	460 mg	598 mg
Sour Cream & Chive	480 mg	624 mg
Feta & Spinach	480 mg	624 mg
Traditional Sauerkraut	670 mg	871 mg
Loaded Baked Potato	480 mg	624 mg
Savory Five Cheese Blend	420 mg	546 mg

31. As indicated in the chart above, for all of the flavors, the actual sodium content in the full-size Pierogies exceeds 480 mg. However, Ateco fails to include the statement to "See nutrition information for sodium content," as required by law.

32. The sodium content of Ateeco's mini-size Pierogies for the different flavors is as follows:

Ateeco's mini-size Pierogies		
Flavor	Sodium Content as Indicated on Label	Sodium Content Using Correct Serving Size (x 1.6)
Mini Four Cheese Medley	410 mg	656 mg
Mini Classic Cheddar	390 mg	624 mg
Mini Savory Onion	330 mg	528 mg
Mini Cheddar Seasoned with Bacon	470 mg	752 mg

33. As indicated in the chart above, for all of the flavors, the actual sodium content in the mini-size Pierogies exceeds 480 mg. However, Ateeco fails to include the statement to "See nutrition information for sodium content," as required by law.

34. The sodium content of Ateeco's family pack Pierogies for the different flavors is as follows:

Ateeco's family pack Pierogies		
Flavor	Sodium Content as Indicated on Label	Sodium Content Using Correct Serving Size (x 1.3)
Black and Gold 2lb	460 mg	598 mg
Classic Cheddar 2lb/ Classic Cheddar 4lb	510 mg	663 mg
Savory Onion 2lb	390 mg	507 mg

35. As indicated in the chart above, for all of the flavors, the actual sodium content in the family pack Pierogies exceeds 480 mg. However, Ateeco fails to include the statement to "See nutrition information for sodium content," as required by law.

36. The sodium content in all of Ateeco's Pierogies is exceedingly high. Yet Ateeco fails to caution consumers of the high level of sodium by providing a disclosure statement, as required by law. Moreover, not only does Ateeco fail to include a disclosure statement, Ateeco

tries to conceal the *true* levels of sodium by using improper serving sizes on the labels of its Products.

C. The Products' Improper Labeling Misled and Continues to Mislead Consumers

37. Ateeco decided that their success and profitability were dependent on its ability to satisfy the emerging consumer demand for healthier eating options – food products that have less calories and lower levels of fat and sodium. Therefore, Ateeco strategically decided to use improper serving sizes and further failed to provide a disclosure statement regarding the high sodium content of its Pierogies to make its Products appear healthier than they, in fact, are.

38. Through its uniform deceptive and misleading advertising and marketing scheme, Ateeco has led and continues to lead consumers to erroneously believe that Pierogies are substantially healthier than they actually are.

39. As a result of this misleading and deceptive scheme, consumers, including Plaintiff, have purchased the Products believing that they are substantially healthier than they actually are.

40. The consumers' confusion is reasonable given: (1) the nature of Ateeco's representations on its label; (2) the fact that food labels are regulated by the FDA; and (3) most companies comply with the food labeling laws.

41. Accordingly, Ateeco's representations regarding the Pierogies are false and misleading. Ateeco knew or should have known, and should have: (1) used the proper serving sizes; and (2) included a disclosure statement regarding the Pierogies' high sodium content. Ateeco knew or should have known that its representations concerning the Products were likely to deceive consumers into believing that the Products were substantially healthier, when, in fact,

the Products were and are not because they contain more calories and higher levels of fat and sodium than indicated on the Products' labels.

42. As a result of Ateeco's representations and/or omissions, Plaintiff and the Class did not receive the Products they paid for. Had Plaintiff and the Class been aware that the Products had more calories and higher levels of fat and sodium than represented, they would not have purchased the Products. Moreover, for all of the reasons stated above, Plaintiff and the Class suffered ascertainable loss, injury in fact and have lost money or property as a result of Ateeco's actions and/or omissions.

PLAINTIFF'S EXPERIENCE WITH THE PIEROGIES

43. Plaintiff cares about the nutritional content of the food she consumes and seeks to maintain a healthy diet.

44. Reasonably relying on the labels of the Products and representations therein, Plaintiff purchased the Products. Plaintiff reasonably expected that the Products were, in fact, substantially healthier, as they contained less calories and lower levels of fat and sodium.

45. In or about January or February 2014, Plaintiff was shopping at Winn Dixie (941 W State Road 84 Fort Lauderdale, FL 33315), in Florida. While shopping, she saw Pierogies on the store shelf. Plaintiff then read the nutrition facts label on the Product and saw that it was low in calories and had low levels of fat and sodium. Based on viewing the label, Plaintiff understood that Pierogies were substantially healthier.

46. As a result of her understanding, and in reliance on the label's statement, she purchased and consumed the Products regularly through late summer 2014. Plaintiff purchased Pierogies on multiple occasions at various retail stores, including Winn Dixie, typically buying multiple bags at a time for approximately \$2.99 per box, plus tax.

47. Trusting Ateeco's statements, Plaintiff purchased Pierogies over other similar products because the labels indicated that they were substantially healthier.

48. Plaintiff suffered an ascertainable loss in the amount of the purchase price of the Products, as a result of Ateeco's conduct described herein.

CLASS ACTION ALLEGATIONS

49. Plaintiff brings this lawsuit on behalf of herself and the proposed Class members pursuant to the Federal Rules of Civil Procedure 23(b)(2) and (3). The proposed Class consists of:

All persons who purchased Pierogies in the State of Florida (the "Class").

50. Excluded from the Class is: (1) Defendant, as well as Defendant's subsidiaries, affiliates, employees, officers, directors, assigns, and successors, and any entity in which Defendant has a controlling interest; (2) the Judge to whom this case is assigned to and any member of the Judge's immediate family; (3) anyone who purchased Pierogies for the purpose of resale; and (4) anyone asserting claims for personal injury. Plaintiff reserves the right to amend the definition of the Class if discovery and/or further investigation reveals that the Class should be expanded or otherwise modified.

51. **Numerosity:** The members of the Class are so numerous that joinder of all members is impracticable. Plaintiff reasonably estimates that there are thousands of consumers of the Prodcut in Florida.

52. **Commonality and Predominance:** Common questions of law and fact exist as to all members of the Class. These common questions predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited, to the following:

- a. whether Defendant's labeling regarding Pierogies' nutritional information are deceptive and misleading;
- b. whether Defendant engages in unlawful and misleading business practice by failing to properly package and label its Pierogies sold to consumers;
- c. whether Defendant uses improper serving size on the labels of its Products;
- d. whether Defendant's conducts as alleged herein violates the FDUTPA;
- e. whether Defendant has been unjustly enriched by the conduct alleged herein;
- f. whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and
- g. whether Plaintiff and Class members are entitled to declaratory and injunctive relief.

53. **Typicality:** Plaintiff's claims are typical of the claims of the proposed Class, as all Class members are similarly affected by Defendant's wrongful conduct. Plaintiff, like other members of the Class, purchased Pierogies after exposure to the same material misrepresentations and/or omissions appearing on the Product packaging, on Ateco's website, and other advertising. Plaintiff is advancing the same claims and legal theories on behalf of herself and all absent members of the Class.

54. **Adequacy:** Plaintiff's claims are made in a representative capacity on behalf of the other members of the Class. Plaintiff has no interests antagonistic to the interest of the other members of the proposed Class and is subject to no unique defenses.

55. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. The injury suffered by each individual Class member is relatively small in comparison to the burden and expenses of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class to individually redress the wrongs done to them effectively. Even if the members of the Class could afford such litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents no management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

56. Unless a class is certified, Defendant will improperly retain monies received, as a result of its conduct, from Plaintiff and members of the Class. Unless an injunction is issued, Defendant will continue to commit the violations alleged, and the members of the Class and the general public will continue to be misled.

COUNT I
Violation Of Florida Deceptive And Unfair Trade Practices Act,
(FLA. STAT. § 501.202(2), *et seq.*)

57. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as though set forth fully therein.

58. At all relevant times, Plaintiff and members of the Florida Class were consumers within the meaning FDUTPA.

59. At all relevant times hereto, Ateco engaged in trade and/or commerce within the meaning of the FDUTPA.

60. The Florida Legislature has expressly stated that FDUTPA “shall be liberally construed to promote” its underlying policies, including “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 practice in the conduct of any trade or commerce.” FLA. STAT. § 501.202(2).

61. FDUTPA prohibits the use of “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” FLA. STAT. § 501.204(1)

62. FDUTPA further provides that the Florida courts give “due consideration and weight” to the Federal Trade Commission and federal court interpretations of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C § 45(a)(1). FLA. STAT. § 501.204(2).

63. Defendant’s labeling and advertising constitutes a deceptive act because it is a representation, omission, or practice that is likely to mislead – and has misled – a consumer acting reasonably under the circumstances, and violate FLA. STAT. § 500.04 and 21 U.S.C. §343. By using an improper serving size and failing to provide a disclosure statement regarding the sodium content of its Pierogies, Defendant mislead consumers acting reasonably under the circumstances into believing that the Products are substantially healthier than they actually are. As a result of this reasonable, but erroneous, belief, tens of thousands of consumers have purchased, and continue to purchase, Defendant’s Products.

64. Defendant’s labeling and advertising constitutes an unfair practice because it offends established public policy and is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

65. As a direct and proximate result of Defendant's deceptive acts and unfair practices, Plaintiff and the Class purchased Pierogies. It was reasonably foreseeable, and intended, that the Products' labeling would lead a reasonable consumer to believe that the Products were substantially healthier, and that such a consumer would purchase the Products over similar products, based on that belief.

66. Plaintiff and the Class suffered actual damages because they purchased Pierogies over other similar products erroneously believing that these Products were substantially healthier than they actually are.

67. The above-described deceptive acts and unfair practices by Defendant present an ongoing threat to the Class.

68. Plaintiff is informed and believes and thereon alleges that Defendant has systematically perpetrated deceptive acts and unfair practices upon members of the public and has knowingly and intentionally misled – and continues to mislead – Plaintiff and the Class.

69. Pursuant to FLA. STAT. §§ 501.211(1), Plaintiff and the Class seek declaratory judgment and a Court Order enjoining the above-described wrongful acts and practices of Defendant.

70. Additionally, pursuant to FLA. STAT. §§ 501.211(2) and 501.2105, Plaintiff and the Class make claims for damages, attorneys' fees and costs.

COUNT II
Unjust Enrichment

71. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as though set forth fully therein.

72. This claim is asserted in the alternative on behalf of Plaintiff and the Class, to the extent that any contracts do not govern the entirety of the subject matter of the disputes with Defendant.

73. As a direct and proximate result of Defendant's misconduct as set forth above, Defendant has been unjustly enriched. Specifically, by its misconduct described herein, Defendant has accepted a benefit (monies paid by Plaintiff and the Class).

74. It would be inequitable for Defendant to retain the profits, benefits, compensation, consideration and other monies obtained by and from its wrongful conduct in promoting, marketing, distributing, and selling Pierogies.

75. Plaintiff, on behalf of herself and all others similarly situated, seeks restitution from Defendant and an Order of this Court proportionally disgorging all profits, benefits, compensation, consideration, and other monies obtained by Defendant from its wrongful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and members of the proposed Class, prays for judgment as follow:

- a. Certification of the Class under Federal Rule of Civil Procedure 23 and appointment of Plaintiff as representative of the Class and her counsel as Class counsel;
- b. Compensatory and other damages identified herein;
- c. Awarding restitution and disgorgement of Defendant's revenues or profits to Plaintiff and the members of the proposed Class as permitted by applicable law;

- d. An Order requiring Defendant to cease and desist from engaging in its wrongful conduct and to engage in a corrective advertising campaign;
- e. Statutory pre-judgment and post-judgment interest on any amounts;
- f. Payment of reasonable attorneys' fees and recoverable litigation expenses as may be allowable under applicable law; and
- g. Such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: May 4, 2015

Respectfully submitted,

SHEPHERD, FINKELMAN, MILLER &
SHAH, LLP

s/ Nathan C. Zipperian

Nathan C. Zipperian (Fl. Bar No. 61525)

1640 Town Center Circle

Suite 216

Weston, FL 33326

Telephone: 954/515-0123

Facsimile: 866/300-7367

Email: nzipperian@sfmslaw.com

Scott R. Shepherd (Fl. Bar No. 69655)

James C. Shah

SHEPHERD, FINKELMAN, MILLER &
SHAH, LLP

35 E. State Street

Media, PA 19063

Telephone: 610/891-9880

Facsimile: 866/300-7367

Email: sshepherd@sfmslaw.com

jshah@sfmslaw.com

Attorneys for Plaintiff