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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MICHELLE HU and JOHN DOES 1-100,
on behalf of themselves and others similarly situated,

Plaintiffs,

v.

HERR FOODS INCORPORATED,

Defendant.

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, MICHELLE HU and JOHN DOES 1-100, individually and on behalf of all other persons similarly situated, by their undersigned attorneys, as and for their Complaint against the Defendant, HERR FOODS INCORPORATED, allege the following based upon personal knowledge as to themselves and their own action, and, as to all other matters, respectfully allege, upon information and belief, as follows (Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery):

NATURE OF THE ACTION

1. Plaintiffs, MICHELLE HU and JOHN DOES 1-100, on behalf of themselves and others similarly situated, by and through their undersigned attorneys, bring this class action

against Defendant, HERR FOODS INCORPORATED, for the deceptive practice of marketing its HERR'S® potato chip, cheese curl, tortilla chip, popcorn and onion ring snack products as having "No Preservatives Added" when they contain citric acid, a non-natural, chemically processed ingredient and preservative.

2. This case is about the deceptive manner in which the Defendant marketed their Products (defined below) to the general public during the Class Period.

3. Defendant sold Plaintiffs and Class members, and continues to sell consumers the following products with misleading "No Preservatives Added" language:

a. Herr's® "Baby Back Ribs" Potato Chips
b. Herr's® Baked Cheddar Potato Chips
c. Herr's® Nacho Cheese Tortilla Chips
d. Herr's® Baked Cheese Curls
e. Herr's® Buffalo Cheese Curls
f. Herr's® Honey Cheese Curls
g. Herr's® "Jalapeno Poppers" Cheese Curls
h. Herr's® "Old Bay" Cheese Curls
i. Herr's® Cheese Popcorn
j. Herr's® Hot Cheese Popcorn
k. Herr's® White Cheddar Popcorn
l. Herr's® Onion Rings
m. Any other Herr's® product with misleading "No Preservatives Added" language (collectively, the "Products").

Such Products are detailed under **EXHIBIT A**.

4. Defendant engaged in deceptive labeling practices by failing to disclose that the Products contain citric acid as a preservative and/or by expressly representing on the product labels and website that the Products have "No Preservatives Added." All of the Products contain citric acid, which is commonly used as a preservative in commercial food and drink products. Food products are fertile ground for bacterial and mold growth. Without the addition of preservatives, the Products would turn stale and moldy in a matter of days and would certainly

not keep its fresh taste for months during the Products' shelf life, as Defendant has promised on each and every Product label.

5. By marketing the Products as having "No Preservatives Added", Defendant wrongfully capitalized on and reaped enormous profits from consumers' strong preference for food products made free of added preservatives.

6. Plaintiffs bring this proposed consumer class action on behalf of themselves and all other persons nationwide, who, from the applicable limitations period up to and including the present ("Class Period"), purchased for consumption and not resale any of Defendant's Products.

7. Defendant violated statutes enacted in each of the fifty states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

1) Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.;*
2) Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.;*
3) Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.;*
4) Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.;*
5) California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.,* and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.;*
6) Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.;*
7) Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.;*
8) Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.;*
9) District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.;*
10) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.;*
11) Georgia Fair Business Practices Act, § 10-1-390 *et seq.;*
12) Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statues § 480 1, *et seq.,* and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.;*
13) Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.;*
14) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.;*
15) Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.;*
16) Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.;*
17) Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.;*
18) Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.,* and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.;*
19) Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.;*
20) Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq,,* and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.,*
21) Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.;*
22) Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;

23) Michigan Consumer Protection Act, § § 445.901, *et seq.;*
24) Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.;* and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.;*
25) Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.;*
26) Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.;*
27) Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.;*
28) Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.;*
29) Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.;*
30) New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq. ;*
31) New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 *1, et seq.;*
32) New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 *1, et seq.;*
33) New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.;*
34) North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.;*
35) North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.;*
36) Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.;*
37) Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.;*
38) Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.;*
39) Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.;*
40) Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.;*
41) South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.;*
42) South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 *1, et seq.;*
43) Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.;*
44) Texas Stat. Ann. §§ 17.41, *et seq.*, Texas Deceptive Trade Practices Act, *et seq.;*
45) Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.;*
46) Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.;*
47) Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.;*
48) Washington Consumer Fraud Act, Wash. Rev, Code § 19.86.010, *et seq.;*
49) West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.;*
50) Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.;*
51) Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

8. Defendant marketed its HERR'S® Products in a way that is deceptive to consumers under consumer protection laws of all fifty states and the District of Columbia. Defendant has been unjustly enriched as a result of its conduct. For these reasons, Plaintiffs seek the relief set forth herein.

JURISDICTION AND VENUE

9. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than Defendant, and the amount in controversy exceeds the sum or value of $5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

10. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States.

11. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

12. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C § 1332 because the matter in controversy exceeds the sum or value of $75,000 and is between citizens of different states.

13. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submit to the Court's jurisdiction. This Court has personal jurisdiction over Defendant, pursuant to New York Statute N.Y. CVP. Law § 302, because they conduct substantial business in this District, some of the actions giving rise to the Complaint took place in this District, and some of Plaintiffs' claims arise out of Defendant operating, conducting, engaging in or carrying on a business or business venture in this state or having an office or agency in this state; committing a tortious act in this state; and causing injury to person or property in this state arising out of Defendant's acts and omissions outside this state. Additionally, this court has personal jurisdiction over Defendant because its Products are advertised, marketed, distributed, and sold throughout New York State; Defendant engaged in the wrongdoing alleged in this Complaint throughout the United States, including in New York State; and Defendant has sufficient minimum contacts with New York

and/or otherwise have intentionally availed themselves of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendant is engaged in substantial and not isolated activity within New York State.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to these claims occurred in this District, the Defendant has caused harm to class members residing in this District, and the Defendant is a resident of this District under 28 U.S.C. 1391(c)(2) because they are subject to personal jurisdiction in this district.

PARTIES

Plaintiffs

15. Plaintiff MICHELLE HU is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Kings County. During the Class Period, Plaintiff HU purchased the Herr's® Honey Cheese Curls Product for personal consumption within the State of New York. Specifically, Plaintiff HU purchased the Products located in New York County at the purchase price of $1.09 (or more) for an individual Product. Plaintiff HU purchased the Product at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein. Further, should Plaintiff HU encounter the Products in the future, she could not rely on the truthfulness of the packaging, absent corrective changes to the packaging. However, Plaintiff HU would still be willing to purchase the current formulation of the Products, absent the price premium, so long as Defendant engages in corrective advertising.

16. Plaintiffs JOHN DOES 1-100 are, and at all times relevant hereto have been, citizens of the any of the fifty states and the District of Columbia. During the Class Period, Plaintiffs

JOHN DOES 1-100 purchased the Product for personal consumption or household use within the United States. Plaintiffs purchased the Product at a premium price and were financially injured as a result of Defendant's deceptive conduct as alleged herein.

Defendant

17. Defendant HERR FOODS INCORPORATED is a corporation organized under the laws of Pennsylvania with its headquarters at 20 Herr Dr., Nottingham, PA 19362 and a an address for service of process located at 20 Herr Dr., P.O. Box 300, Nottingham, PA 19362.

18. Defendant develops, markets and sells food products under the "HERR'S®" brand name throughout the United States. The advertising for the Products, relied upon by Plaintiffs, was prepared and/or approved by Defendant and its agents, and was disseminated by Defendant and its agents through advertising containing the misrepresentations alleged herein. The advertising for the Products was designed to encourage consumers to purchase the Products and reasonably misled the reasonable consumer, i.e. Plaintiffs and the Class, into purchasing the Products. Defendant owns, manufactures and distributes the Products, and created and/or authorized the unlawful, fraudulent, unfair, misleading and/or deceptive labeling and advertising for the Products.

FACTUAL ALLEGATIONS

19. Defendant manufactures, markets, advertises and sells its extensive "HERR'S®" line of potato chip, pretzel and onion ring snack products across the United States.

20. Defendant markets numerous products under its "HERR'S®" brand such as the Products purchased by Plaintiffs. The Products are available at numerous retail and online outlets such as Duane Reade, CVS, Rite Aid and Amazon.com.

21. In addition to the "No Preservatives Added" claim on the back of each Product, the official Herr's website displays the entirety of its "HERR'S®" potato chip, cheese curl, tortilla chip, popcorn and onion ring snack product lines with brief product descriptions and full lists of ingredients on each product page. The Products' pages again demonstrate that they are meant to have "No Preservatives Added," with Plaintiff HU's product shown as an example below:

Herr's® Honey Cheese Curls

Made from pure corn meal and baked to a puffy perfection. Enjoy the crispy, cheesy, honey-flavored goodness of the Herr's Honey Cheese Curls. Like all of our other quality products, they're made with only the finest ingredients and contain no added preservatives.
ⓊD

BUY NOW

Nutrition Facts

Serving Size 1 oz (28g/about 15 curls)

Amount Per Serving	
Calories 160	Calories from Fat 90
	% Daily Value*
Total Fat 10g	**15%**
Saturated Fat 3g	**15%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 270mg	**11%**
Total Carbohydrate 16g	**5%**
Dietary Fiber 0g	**0%**
Sugars 3g	
Protein 1g	

Vitamin A 0%	• Vitamin C 0%
Calcium 0%	• Iron 0%

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

INGREDIENTS: CORN MEAL, VEGETABLE OIL (ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, PALM), MALTODEXTRIN, SUGAR, WHEY, SALT, CHEDDAR CHEESE (PASTEURIZED MILK, CHEESE CULTURE, SALT, ENZYMES), SUNFLOWER OIL, NONFAT MILK, MONOSODIUM GLUTAMATE, DEXTROSE, FRUCTOSE, SODIUM PHOSPHATE, ONION POWDER, HONEY, ARTIFICIAL COLORS (YELLOW 6, YELLOW 5), BUTTER, NATURAL FLAVOR, CITRIC ACID, LACTIC ACID, TOMATO POWDER, EXTRACTIVES OF PAPRIKA, GARLIC POWDER, HORSERADISH POWDER, AUTOLYZED YEAST EXTRACT, NATURAL AND ARTIFICIAL FLAVOR, AND ANNATTO.
CONTAINS MILK INGREDIENTS.
NO PRESERVATIVES ADDED.

Information listed above is for reference only. Please check actual bag for most current nutritional information.

22. By representing that the Products have "No Preservatives Added," Defendant sought to capitalize on consumers' preference for natural products and the association between such products and a wholesome way of life. Consumers are willing to pay more for natural products

because of this association as well as the perceived higher quality, health and safety benefits associated with products labeled as being free of preservatives.

Although Defendant represented the Products as having "No Preservatives Added," the claims are false because the Products contain the added ingredient citric acid, a well-known preservative.

Defendant's No Preservatives Claims Violate Identical State and Federal Law

23. Defendant's labeling, packaging and marketing practices are deceptive and or misleading because the Products fail to disclose that the added citric acid is used as a preservative and/or that the Products represent on their product labels that they have "No Preservatives Added." All of the Products use citric acid (2-hydroxypropane-1,2,3-tricarboxylic acid), a non-natural, highly chemically processed ingredient regularly used as a preservative (due to its acidic pH level which creates an environment where bacteria cannot thrive) in food products.

24. The FDCA provides that "[a] food shall be deemed misbranded – (a) (1) its labeling is false or misleading in any particular, or … (k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact… ." 21 U.S.C. §§ 343 (a)(1), 343 (k).

25. Defendant's packaging and advertising of the Products also violate various state laws against misbranding which mirror federal law. New York and other state law broadly prohibit the misbranding of food in language identical to that found in regulations promulgated pursuant to the FDCA, 21 U.S.C. §§ 343 *et seq.*:

26. Pursuant to N.Y. Agm. Law § 201, "[f]ood shall be deemed to be misbranded: 1. If its labeling is false or misleading in any particular…11. If it bears or contains any artificial

flavoring, artificial coloring, or permitted chemical preservative, unless it bears labeling stating that fact."

27. The term "chemical preservative" means "any chemical that, when added to food tends to prevent or retard deterioration thereof[.]" 2l C.F.R. § 101.22(a)(5).

28. While citric acid is listed in the fine print on the back of the Product in the list of ingredients (see below), Defendant's deliberately made no mention of the function of the citric acid in violation of state and federal laws.

Nutrition Facts

Serving Size 1 oz (28g/about 15 curls)

Amount Per Serving	
Calories 160	Calories from Fat 90
	% Daily Value*
Total Fat 10g	**15%**
Saturated Fat 3g	**15%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 270mg	**11%**
Total Carbohydrate 16g	**5%**
Dietary Fiber 0g	**0%**
Sugars 3g	
Protein 1g	

Vitamin A 0%	• Vitamin C 0%
Calcium 0%	• Iron 0%

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

INGREDIENTS: CORN MEAL, VEGETABLE OIL (ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, PALM), MALTODEXTRIN, SUGAR, WHEY, SALT, CHEDDAR CHEESE (PASTEURIZED MILK, CHEESE CULTURE, SALT, ENZYMES), SUNFLOWER OIL, NONFAT MILK, MONOSODIUM GLUTAMATE, DEXTROSE, FRUCTOSE, SODIUM PHOSPHATE, ONION POWDER, HONEY, ARTIFICIAL COLORS (YELLOW 6, YELLOW 5), BUTTER, NATURAL FLAVOR, CITRIC ACID, LACTIC ACID, TOMATO POWDER, EXTRACTIVES OF PAPRIKA, GARLIC POWDER, HORSERADISH POWDER, AUTOLYZED YEAST EXTRACT, NATURAL AND ARTIFICIAL FLAVOR, AND ANNATTO. **CONTAINS MILK INGREDIENTS.** NO PRESERVATIVES ADDED.

Information listed above is for reference only. Please check actual bag for most current nutritional information.

29. Above are the nutrition facts of the Honey Cheese Curl Product, which lists the following ingredients, among numerous ingredients, citric acid.

30. While the acidic pH of citric acid would most certainly provide tartness to the Products, such explanation is pretextual because the real function of the citric acid in the Products is as a preservative.

31. The U.S. Food and Drug Administration ("FDA") routinely required that food manufacturers disclose the fact that citric acid is used as a preservative. In a Warning Letter dated October 6, 2010, the FDA warned the manufacturers of the Chiquita brand "Pineapple Bites with Coconut" and "Pineapple Bites" products, that they are in violation of the FDCA and the federal regulations promulgated pursuant to the FDCA:

32. "The 'Pineapple Bites' and 'Pineapple Bites with Coconut' products are further misbranded within the meaning of section 403(k) of the Act [21 U.S.C. 343(k)] in that they contain the chemical preservative ascorbic acid and citric acid but their labels fail to declare these preservatives with a description of their functions. 21 CFR 101.22."

33. *See* **EXHIBIT B**, FDA Warning Letter dated October 6, 2010 (emphasis added).

34. Defendant's misleading labeling practices go even further. Apart from not having disclosed the function of the citric acid, Defendant expressly labeled the Products as having "No Preservatives Added," even though such was patently false.

35. Because the Products similarly contain citric acid and Defendant similarly "fail[ed] to declare [such] preservative with a description of [its] functions," see *id.*, and because the Products are expressly labeled as having "No Preservatives Added," the Products are misbranded food under the FDCA and state laws which incorporate by reference federal food labeling regulations. 21 U.S.C. §§ 343(a)(1), 343(k); N.Y. Agm. Law § 201; California Health and Safety Code §§ 110660, 110740.

The Federal Food, Drug, and Cosmetic Act

36. The Federal Food, Drug, and Cosmetic Act (hereinafter, "FDCA"), 21 U.S.C. §§ 301 *et. seq*., governs the sale of foods, drugs, and cosmetics in the United States. The classification of a product as a food, drug, or cosmetic affects the regulations by which the product must abide. In general, a product is characterized according to its intended use, which may be established, among other ways, by: (a) claims stated on the product's labeling, in advertising, on the Internet, or in other promotional materials; (b) consumer perception established through the product's reputation, for example by asking why the consumer is buying it and what the consumer expects it to do; or (c) the inclusion of ingredients well-known to have therapeutic use, such as fluoride in toothpaste.

37. 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 and its labeling regulations, including those set forth in 21 C.F.R. part 101.

38. Under the FDCA, the term "false" has its usual meaning of "untruthful," while the term "misleading" is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, although still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. "Misleading" is judged in reference to "the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze." *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled. New York law similarly does not require proof of actual reliance. *See Pelman ex rel. Pelman v. McDonald's Corp.*, 396 F. Supp. 2d 439, 445 (S.D.N.Y. 2005).

39. New York 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.

40. Defendant's labeling and advertising of the Products violate various state laws against misbranding. New York State law broadly prohibits the misbranding of food in language identical to that found in regulations promulgated pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.*:

> *Pursuant to N.Y. State Education Law § 6815, "[f]ood shall be deemed to be misbranded: 1. If its labeling is false or misleading in any particular…"*

41. Defendant's Products were misbranded under New York law because they misled Plaintiff and Class members about the nature of the Products.

42. Although Defendant marketed the Products as having "No Preservatives Added," they failed to also disclose material information about the Products. This non-disclosure, while at the same time branding the Products as having "No Preservatives Added" was deceptive and likely to mislead a reasonable consumer.

43. A representation that a product has "No Preservatives Added" is material to a reasonable consumer when deciding to purchase a product.

44. Plaintiffs did, and a reasonable consumer would, attach importance to whether Defendant's Products are "misbranded," i.e., not legally salable, or capable of legal possession.

45. Plaintiffs did not know, and had no reason to know, that the Products contained preservatives contrary to the "No Preservatives Added" claim.

46. Defendant's Products labeling and misleading website was a material factor in Plaintiffs' and Class members' decisions to purchase the Products. Relying on Defendant's Product labeling and misleading website, Plaintiffs and Class members believed that they were

getting Products that had "No Preservatives Added." Had Plaintiffs known Defendant's Products were highly processed, they would not have purchased them.

47. Defendant's Product labeling as alleged herein is deceptive and misleading and was designed to increase sales of the Products. Defendant's misrepresentations are part of its systematic Product packaging practice.

48. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.

49. Defendant's false and deceptive labeling is misleading and in violation of FDA and consumer protection laws of each of the fifty states and the District of Columbia, and the Products at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States. Plaintiffs and Class members would not have bought the Products had they known they were misbranded and illegal to sell or possess.

50. As a result of Defendant's misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Products.

51. Plaintiffs and the Class (defined below) have been damaged by Defendant's deceptive and unfair conduct in that they purchased Products with false and deceptive labeling and paid premium prices they otherwise would not have paid over other comparable products that did not claim to have "No Preservatives Added."

CLASS ACTION ALLEGATIONS

The National Class

52. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

> All persons or entities in the United States who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The New York Class

53. Plaintiff HU seeks to represent a class consisting of the following subclass (the "New York Class"):

> All New York residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The proposed Classes exclude current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

54. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

55. This action is proper for class treatment under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are thousands of Class members. Thus, the Class is so numerous that individual joinder of all Class members is impracticable.

56. Questions of law and fact arise from Defendant's conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

a. whether labeling "No Preservatives Added" on Products containing citric acid was false and misleading;

b. whether Defendant engaged in a marketing practice intended to deceive consumers by labeling "No Preservatives Added" on Products containing citric acid;

c. whether Defendant deprived Plaintiffs and the Class of the benefit of the bargain because the Products purchased were different than what Defendant warranted;

d. whether Defendant deprived Plaintiffs and the Class of the benefit of the bargain because the Products they purchased had less value than what was represented by Defendant;

e. whether Defendant caused Plaintiffs and the Class to purchase a substance that was other than what was represented by Defendant;

f. whether Defendant has been unjustly enriched at the expense of Plaintiffs and other Class members by its misconduct;

g. whether Defendant must disgorge any and all profits they have made as a result of its misconduct; and

h. whether Defendant should be barred from marketing the Products as having "No Preservatives Added."

57. Plaintiffs' claims are typical of those of the Class members because Plaintiffs and the other Class members sustained damages arising out of the same wrongful conduct, as detailed

herein. Plaintiffs purchased Defendant's Products and sustained similar injuries arising out of Defendant's conduct in violation of New York State law. Defendant's unlawful, unfair and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of the Class were caused directly by Defendant's wrongful misconduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

58. Plaintiffs will fairly and adequately represent and pursue the interests of the Class and have retained competent counsel experienced in prosecuting nationwide class actions. Plaintiffs understand the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

59. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this

forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

60. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

61. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

62. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

63. Defendant's conduct is generally applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

64. Plaintiff HU realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

65. Plaintiff HU brings this claim on behalf of herself and the other members of the Class for an injunction for violations of New York's Deceptive Acts or Practices Law, Gen. Bus. Law § 349 ("NY GBL").

66. NY GBL § 349 provides that "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . unlawful."

67. Under the § 349, it is not necessary to prove justifiable reliance. ("To the extent that the Appellate Division order imposed a reliance requirement on General Business Law [§] 349 … claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim." *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

68. Any person who has been injured by reason of any violation of the NY GBL may bring an action in their own name to enjoin such unlawful act or practice, an action to recover their actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the Defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

69. The practices employed by Defendant, whereby Defendant advertised, promoted, and marketed that its Products contain "No Preservatives" were unfair, deceptive, and misleading and are in violation of the NY GBL § 349.

70. The foregoing deceptive acts and practices were directed at customers.

71. Defendant should be enjoined from marketing its products as containing "No Preservatives" as described above pursuant to NY GBL § 349.

72. Plaintiff HU, on behalf of herself and all others similarly situated, respectfully demands a judgment enjoining Defendant's conduct, awarding costs of this proceeding and attorneys' fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349
(DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

73. Plaintiff HU realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

74. Plaintiff HU brings this claim individually and on behalf of the other members of the Class for violations of NY GBL § 349.

75. Defendant's business act and practices and/or omissions alleged herein constitute deceptive acts or practices under NY GBL § 349, which were enacted to protect the consuming public from those who engage in unconscionable, deceptive or unfair acts or practices in the conduct of any business, trade or commerce.

76. The practices of Defendant described throughout this Complaint, were specifically directed to consumers and violate the NY GBL § 349 for, inter alia, one or more of the following reasons:

a. Defendant engaged in deceptive, unfair and unconscionable commercial practices in failing to reveal material facts and information about the Products, which did, or tended to, mislead Plaintiff and the Class about facts that could not reasonably be known by them;

b. Defendant knowingly and falsely represented and advertised that the Products contain "No Preservatives" with an intent to cause Plaintiff and members of the Class to believe that they do not contain added preservatives;

c. Defendant failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;

d. Defendant caused Plaintiff and the Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations and/or remedies by and through its conduct;

e. Defendant failed to reveal material facts to Plaintiff and the Class with the intent that Plaintiff and the Class members rely upon the omission;

f. Defendant made material representations and statements of fact to Plaintiff and the Class that resulted in Plaintiff and the Class reasonably believing the represented or suggested state of affairs to be other than what they actually were; and

g. Defendant intended that Plaintiff and the members of the Class rely on its misrepresentations and omissions, so that Plaintiff and Class members would purchase the Products.

77. The practices employed by Defendant, whereby Defendant advertised, promoted, and marketed that its Products have "No Preservatives Added" were unfair, deceptive, and misleading and are in violation of NY GBL § 349.

78. Under all of the circumstances, Defendant's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

79. Defendant's actions impact the public interest because Plaintiff and members of the Class were injured in exactly the same way as thousands of others purchasing the Products as a result of and pursuant to Defendant's generalized course of deception.

80. By committing the acts alleged in this Complaint, Defendant has misled Plaintiff and the Class into purchasing the Products, in part or in whole, due to an erroneous belief that the Products have "No Preservatives Added". This is a deceptive business practice that violates NY GBL § 349.

81. Defendant's "No Preservatives Added" claim misled Plaintiff and is likely in the future to mislead reasonable consumers. Had Plaintiff and members of the Class known of the true facts about the Products, they would not have purchased the Products and/or paid substantially less for similar products.

82. The foregoing deceptive acts, omissions and practices were directed at consumers.

83. The foregoing deceptive acts, omissions and practices set forth in connection with Defendant's violations of NY GBL § 349 proximately caused Plaintiff and other members of the Class to suffer actual damages in the form of, *inter alia*, monies spent to purchase the Products. Plaintiff and other members of the Class are entitled to recover such damages, together with

equitable and declaratory relief, appropriate damages, including punitive damages, attorneys' fees and costs.

COUNT III

NEGLIGENT MISREPRESENTATION
(All States)

84. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

85. Defendant, directly or through its agents and employees, made false representations, concealments, and nondisclosures to Plaintiffs and members of the Class.

86. In making the representations of fact to Plaintiffs and members of the Class described herein, Defendant has failed to fulfill its duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendant's negligence and carelessness.

87. Defendant, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendant made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class.

88. Plaintiffs and members of the Class relied upon these false representations and nondisclosures by Defendant when purchasing the Products, which reliance was justified and reasonably foreseeable.

89. As a result of Defendant's wrongful conduct, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for the Products, and any interest that would have

been accrued on those monies, all in an amount to be determined according to proof at time of trial.

COUNT IV

BREACH OF EXPRESS WARRANTIES
(All States)

90. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

91. Defendant provided Plaintiffs and other members of the Class with written express warranties, including, but not limited to, warranties that the Products contain natural or all-natural ingredients and no preservatives. The preservatives claims made by Defendant are an affirmation of fact that became part of the basis of the bargain and created an express warranty that the good would conform to the stated promise. Plaintiffs placed importance on Defendant's natural claims.

92. Defendant breached the terms of this contract, including the express warranties, with Plaintiffs and the Class by not providing Products with the natures and quality as promised.

93. As a proximate result of Defendant's breach of warranties, Plaintiffs and Class members have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for products that did not conform to what Defendant promised in its promotion, marketing, advertising, packaging and labeling, and they were deprived of the benefit of their bargain and spent money on products that did not have any value or had less value than warranted or products that they would not have purchased and used had they known the true facts about them.

COUNT V

UNJUST ENRICHMENT
(All States)

94. Plaintiffs reallege and incorporate herein by reference the allegations contained in all preceding paragraphs, and further allege as follows:

95. Defendant received certain monies as a result of its uniform deceptive marketing of the Products that are excessive and unreasonable.

96. Plaintiffs and the Class conferred a benefit on Defendant through purchasing the Products, and Defendant has knowledge of this benefit and has voluntarily accepted and retained the benefits conferred on them.

97. Defendant will be unjustly enriched if it is allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Defendant and for which Defendant has been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated, seek judgment against Defendant, as follows:

a. An Order that this action be maintained as a class action and appointing Plaintiffs as representatives of the Nationwide Class and/or their respective state Class;

b. An Order appointing the undersigned attorney as class counsel in this action;

c. Restitution and disgorgement of all amounts obtained by Defendant as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;

d. All recoverable compensatory and other damages sustained by Plaintiffs and the Class;

e. Actual and/or statutory damages for injuries suffered by Plaintiffs and the Class and in the maximum amount permitted by applicable law;

f. An order (i) requiring Defendant to immediately cease its wrongful conduct as set forth in this Complaint; (ii) enjoining Defendant from continuing to misrepresent and conceal material information and conduct business via the unlawful, unfair and deceptive business acts and practices complained of herein; (iii) ordering Defendant to engage in a corrective advertising campaign; and (iv) requiring Defendant to reimburse Plaintiffs and all members of the Class the amounts paid for the Products;

g. Statutory pre-judgment and post-judgment interest on any amounts;

h. Payment of reasonable attorneys' fees and costs; and

i. Such other relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs, on behalf of themselves and all others similarly situated, demand a trial by jury on all questions of fact raised by the Complaint.

Dated: June 20, 2016

Respectfully submitted,

LEE LITIGATION GROUP, PLLC
C.K. Lee (CL 4086)
Anne Seelig (AS 3976)
30 East 39th Street, Second Floor
New York, NY 10016
Tel.: 212-465-1188
Fax: 212-465-1181
Attorneys for Plaintiffs and the Class

By: /s/ C.K. Lee
C.K. Lee, Esq.

EXHIBIT A

TABLE OF CONTENTS

Herr's® "Baby Back Ribs" Potato Chips

Herr's® Baby Back Ribs Potato Chips

Take a bite of this unique flavor sensation – Herr's Baby Back Ribs Potato Chips. Herr's takes the finest potatoes, cooks them in pure vegetable oil to a golden crispy crunch. We then top them with the authentic flavor of your favorite Baby Back Ribs. It's hard to find such a great taste outside of a steakhouse. We hope you enjoy all our uniquely flavored potato chips. In fact, your satisfaction is guaranteed.
Ⓤ

BUY NOW

Nutrition Facts

Serving Size 1 oz (28g/about 13 chips)

Amount Per Serving	
Calories 140	Calories from Fat 70
	% Daily Value*
Total Fat 8g	**12%**
Saturated Fat 2g	**10%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 340mg	**14%**
Total Carbohydrate 17g	**6%**
Dietary Fiber 1g	**4%**
Sugars 2g	
Protein 2g	

Vitamin A 0%	• Vitamin C 10%
Calcium 0%	• Iron 0%

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

INGREDIENTS: CHOICE POTATOES COOKED IN VEGETABLE OIL (CONTAINS ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, SOYBEAN, SUNFLOWER), SUGAR, SALT, DEXTROSE, ONION POWDER, MOLASSES, TOMATO POWDER, SODIUM DIACETATE, MALTODEXTRIN (FROM CORN), SPICE, SUNFLOWER OIL, TORULA YEAST, CITRIC ACID, DISODIUM INOSINATE AND DISODIUM GUANYLATE, GARLIC POWDER, PAPRIKA EXTRACT, NATURAL FLAVOR, AND SMOKE FLAVORING.

NO PRESERVATIVES ADDED

Information listed above is for reference only. Please check actual bag for most current nutritional information.

Herr's® Baked Cheddar Potato Chips

Herr's® Aged Cheddar Ripple Baked Crisps

Goodness Gets Better - Thanks To Aged Cheddar.

In Herr's® Aged Cheddar Baked Ripple Crisps, the satisfying texture of a classic ripple cut potato chip meets the wholesome goodness of an oven-baked crisp. Top it off with the flavor of premium aged cheddar. And what could be better? Our baked ripple crisps are nothing but good with 0g saturated fat, 0g trans fat and 0mg cholesterol.
ⓊD

BUY NOW

Nutrition Facts

Serving Size 1 oz (28g/about 13 crisps)

Amount Per Serving	
Calories 110	Calories from Fat 20
	% Daily Value*
Total Fat 2.5g	**4%**
Saturated Fat 0g	**0%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 280mg	**12%**
Total Carbohydrate 22g	**7%**
Dietary Fiber 1g	**4%**
Sugars 2g	
Protein 2g	

Vitamin A 0%	• Vitamin C 0%
Calcium 6%	• Iron 2%

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

INGREDIENTS: DRIED POTATOES, POTATO STARCH, CORN OIL, SUGAR, WHEY, SALT, CHEDDAR CHEESE (MILK, CHEESE CULTURES, SALT, ENZYMES), MALTODEXTRIN, LEAVENING (BAKING POWDER [SODIUM BICARBONATE, SODIUM ALUMINUM SULFATE, CALCIUM CARBONATE, CORN STARCH, MONOCALCIUM PHOSPHATE], MONOCALCIUM PHOSPHATE), BUTTERMILK, SOY LECITHIN, DEXTROSE, CANOLA OIL, WHEY PROTEIN CONCENTRATE, NONFAT DRY MILK, COLORS (EXTRACTIVES OF PAPRIKA AND ANNATTO), NATURAL FLAVOR, CITRIC ACID, AND LACTIC ACID.

CONTAINS SOY AND MILK INGREDIENTS.

NO PRESERVATIVES ADDED.

Information listed above is for reference only. Please check actual bag for most current nutritional information.

Herr's® Nacho Cheese Tortilla Chips

Herr's® Nacho Cheese Tortilla Chips

Herr's Nacho Cheese Tortilla Chips capture all the tastes you love in Mexican food. After the chips are cooked in pure vegetable oil, they're flavored with zesty cheddar cheese and our special blend of herbs and spices. The result is a unique and delicious chip that we guarantee will be fresh, crisp and tasty.
ⓊD

BUY NOW

Nutrition Facts

Serving Size 1 oz (28g/about 15 chips)

Amount Per Serving	
Calories 130	Calories from Fat 50
	% Daily Value*
Total Fat 6g	**9%**
Saturated Fat 2g	**10%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 260mg	**11%**
Total Carbohydrate 19g	**6%**
Dietary Fiber 1g	**4%**
Sugars 1g	
Protein 2g	

Vitamin A 2%	• Vitamin C 0%
Calcium 4%	• Iron 2%

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

INGREDIENTS: YELLOW CORN, VEGETABLE OIL (ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, PALM, SUNFLOWER), CHEDDAR CHEESE (MILK, CHEESE CULTURES, SALT, ENZYMES), SALT, WHEY, BUTTERMILK SOLIDS, MONOSODIUM GLUTAMATE, TOMATO POWDER, SUGAR, CITRIC ACID, GARLIC POWDER, ONION POWDER, SWEET CREAM, EXTRACTIVES OF PAPRIKA, SPICE, DISODIUM PHOSPHATE, LACTIC ACID, DISODIUM INOSINATE & DISODIUM GUANYLATE, YELLOW 6, AND EXTRACTIVES OF ANNATTO. **CONTAINS MILK INGREDIENTS.**
NO PRESERVATIVES ADDED.

Information listed above is for reference only. Please check actual bag for most current nutritional information.

Herr's® Baked Cheese Curls

Herr's® Baked Cheese Curls

Made from pure corn meal and baked to a puffy perfection. Enjoy the crispy, cheesy goodness of the Herr's Baked Cheese Curls. Like all of our other quality products, they're made with only the finest ingredients and contain no added preservatives.
ⓊD

BUY NOW

Nutrition Facts

Serving Size 1 oz (28.4g/about 15 curls)
Servings Per Container: 1

Amount Per Serving	
Calories 160	Calories from Fat 100
	% Daily Value*
Total Fat 11g	**17%**
Saturated Fat 3.5g	**18%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 280mg	**12%**
Total Carbohydrate 15g	**5%**
Dietary Fiber 0g	**0%**
Sugars 1g	
Protein 1g	

Vitamin A 0%	• Vitamin C 0%
Calcium 0%	• Iron 0%

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

INGREDIENTS: CORN MEAL, VEGETABLE OIL (ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, PALM), MALTODEXTRIN, WHEY, SALT, CHEDDAR CHEESE (PASTEURIZED MILK, CHEESE CULTURE, SALT, ENZYMES), SUNFLOWER OIL, NONFAT MILK, MONOSODIUM GLUTAMATE, SODIUM PHOSPHATE, ARTIFICIAL COLORS (YELLOW 6, YELLOW 5), BUTTER, NATURAL FLAVOR, CITRIC ACID, LACTIC ACID, AND ANNATTO.

CONTAINS MILK INGREDIENTS.

NO PRESERVATIVES ADDED.

Information listed above is for reference only. Please check actual bag for most current nutritional information.

Herr's® Buffalo Cheese Curls

Herr's® Buffalo Blue Cheese Curls

Change Is Good.

Everyone knows cheese curls are cheddar. But at Herr's, we're breaking the rules to bring you a new snack sensation: Buffalo Blue Cheese Curls. We combined classic hot wing sauce with tangy blue cheese to create the perfect balance of spicy goodness. You're going to love this change.

Like all our Herr's snacks, Buffalo Blue Cheese Curls are made from the choicest ingredients available and delivered fresh for your snacking pleasure.
Ⓤ D

BUY NOW

Nutrition Facts

Serving Size 1 oz (28g/about 15 curls)
Servings Per Container: About 2.5

Amount Per Serving	
Calories 160	Calories from Fat 90
	% Daily Value*
Total Fat 10g	15%
Saturated Fat 3g	15%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 340mg	14%
Total Carbohydrate 15g	5%
Dietary Fiber 0g	0%
Sugars 1g	
Protein 1g	

Vitamin A 0%	• Vitamin C 0%
Calcium 0%	• Iron 0%

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

INGREDIENTS: CORN MEAL, VEGETABLE OIL (ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, PALM), MALTODEXTRIN, WHEY, SALT, MONOSODIUM GLUTAMATE, SUNFLOWER OIL, CHEDDAR CHEESE (PASTEURIZED MILK, CHEESE CULTURE, SALT, ENZYMES), NONFAT MILK, RICE FLOUR, DRIED CAYENNE PEPPER SAUCE, SODIUM PHOSPHATE, COCONUT OIL, ARTIFICIAL COLORS (YELLOW 6, YELLOW 5), CITRIC ACID, LACTIC ACID, ONION POWDER, GARLIC POWDER, MODIFIED CORN STARCH, BUTTER, NATURAL FLAVOR, NATURAL AND ARTIFICIAL FLAVORS, SPICE, VINEGAR, SODIUM CASEINATE, MALIC ACID, DISODIUM INOSINATE & DISODIUM GUANYLATE, AUTOLYZED YEAST EXTRACT, AND ANNATTO.

CONTAINS MILK INGREDIENTS.

NO PRESERVATIVES ADDED.

Information listed above is for reference only. Please check actual bag for most current nutritional information.

Herr's® Honey Cheese Curls

Herr's® Honey Cheese Curls

Made from pure corn meal and baked to a puffy perfection. Enjoy the crispy, cheesy, honey-flavored goodness of the Herr's Honey Cheese Curls. Like all of our other quality products, they're made with only the finest ingredients and contain no added preservatives.
ⓊD

BUY NOW

Nutrition Facts

Serving Size 1 oz (28g/about 15 curls)

Amount Per Serving	
Calories 160	Calories from Fat 90
	% Daily Value*
Total Fat 10g	**15%**
Saturated Fat 3g	**15%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 270mg	**11%**
Total Carbohydrate 16g	**5%**
Dietary Fiber 0g	**0%**
Sugars 3g	
Protein 1g	

Vitamin A 0%	• Vitamin C 0%
Calcium 0%	• Iron 0%

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

INGREDIENTS: CORN MEAL, VEGETABLE OIL (ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, PALM), MALTODEXTRIN, SUGAR, WHEY, SALT, CHEDDAR CHEESE (PASTEURIZED MILK, CHEESE CULTURE, SALT, ENZYMES), SUNFLOWER OIL, NONFAT MILK, MONOSODIUM GLUTAMATE, DEXTROSE, FRUCTOSE, SODIUM PHOSPHATE, ONION POWDER, HONEY, ARTIFICIAL COLORS (YELLOW 6, YELLOW 5), BUTTER, NATURAL FLAVOR, CITRIC ACID, LACTIC ACID, TOMATO POWDER, EXTRACTIVES OF PAPRIKA, GARLIC POWDER, HORSERADISH POWDER, AUTOLYZED YEAST EXTRACT, NATURAL AND ARTIFICIAL FLAVOR, AND ANNATTO.
CONTAINS MILK INGREDIENTS.
NO PRESERVATIVES ADDED.

Information listed above is for reference only. Please check actual bag for most current nutritional information.

Herr's® "Jalapeno Poppers" Cheese Curls

Herr's® Jalapeno Poppers Cheese Curls

Bite into one of our delicious Jalapeno Poppers Cheese Curls and it might return the favor. Because behind that big, cheddar cheesy flavor is a zesty little pinch of jalapeno pepper that packs a little zing. Don't say we didn't warn you.
ⓊD

BUY NOW

Nutrition Facts

Serving Size 1 oz (28g/about 15 curls)

Amount Per Serving	
Calories 160	Calories from Fat 90
	% Daily Value*
Total Fat 10g	**15%**
Saturated Fat 3g	**15%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 350mg	**15%**
Total Carbohydrate 15g	**5%**
Dietary Fiber 0g	**0%**
Sugars 1g	
Protein 1g	

Vitamin A 0%	• Vitamin C 4%
Calcium 0%	• Iron 0%

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

INGREDIENTS: CORN MEAL, VEGETABLE OIL (ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, PALM), MALTODEXTRIN, WHEY, SALT, MONOSODIUM GLUTAMATE, CHEDDAR CHEESE (PASTEURIZED MILK, CHEESE CULTURE, SALT, ENZYMES), SUNFLOWER OIL, NONFAT MILK, SUGAR, DEXTROSE, SPICES, SODIUM PHOSPHATE, ONION POWDER, GARLIC POWDER, ARTIFICIAL COLORS (YELLOW 6, YELLOW 5), GREEN BELL PEPPER POWDER, TORULA YEAST, MODIFIED TAPIOCA STARCH, SODIUM DIACETATE, CITRIC ACID, BUTTER, NATURAL FLAVOR, LACTIC ACID, CHIPOTLE PEPPER, DRIED PARSLEY, PARTIALLY HYDROGENATED SOYBEAN OIL, MODIFIED CORN STARCH, DISODIUM INOSINATE AND DISODIUM GUANYLATE, SPICE EXTRACTS, PAPRIKA EXTRACT, NATURAL AND ARTIFICIAL FLAVORS, AND ANNATTO.
CONTAINS MILK INGREDIENTS.
NO PRESERVATIVES ADDED

Information listed above is for reference only. Please check actual bag for most current nutritional information.

Herr's® "Old Bay" Cheese Curls

Herr's® Old Bay Cheese Curls

The Older, The Better

Cheese Curls With Genuine Old Bay®
Ever since crabbers on the Chesapeake discovered the distinctive blend of spices known as Old Bay®, folks have been sprinkling it onto foods of all kinds. Only Herrs® brings authentic Old Bay® seasoning to snack foods. Here we combine savory Old Bay® with real cheese flavor in a cheese curl that's sure to be a classic for generations to come. You have my word on it.

Ed Herr
President
ⓊD

BUY NOW

Nutrition Facts

Serving Size 1 oz (28g/about 15 curls)

Amount Per Serving	
Calories 160	Calories from Fat 90
	% Daily Value*
Total Fat 10g	15%
Saturated Fat 3g	15%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 480mg	20%
Total Carbohydrate 15g	5%
Dietary Fiber 0g	0%
Sugars 1g	
Protein 1g	

Vitamin A 2%	• Vitamin C 0%
Calcium 0%	• Iron 2%

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

INGREDIENTS: CORN MEAL, VEGETABLE OIL (ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, PALM), MALTODEXTRIN, WHEY, SALT, MONOSODIUM GLUTAMATE, CHEDDAR CHEESE (PASTEURIZED MILK, CHEESE CULTURE, SALT, ENZYMES), SUNFLOWER OIL, NONFAT MILK, SPICES, PAPRIKA, SODIUM DIACETATE, ARTIFICIAL COLORS (YELLOW 6, YELLOW 5), NATURAL FLAVOR, DEXTROSE, BUTTER, CITRIC ACID, LACTIC ACID, AND RED PEPPER.

CONTAINS MILK INGREDIENTS.

NO PRESERVATIVES ADDED.

Information listed above is for reference only. Please check actual bag for most current nutritional information.

Herr's® Cheese Popcorn

Herr's® Cheese Popcorn

Our kernels are hot-air popped and then flavored with pure vegetable oils. And to be sure that you only get fresh, great tasting popcorn, we sift out any unpopped kernels. Also, we don't add preservatives because they're not needed. Choose any of our fresh Herr's Popcorn varieties!

ⓊD

BUY NOW

Nutrition Facts

Serving Size 1 oz (28g/about 2 cups)
Servings Per Container: 1

Amount Per Serving	
Calories 150	Calories from Fat 70
	% Daily Value*
Total Fat 8g	12%
Saturated Fat 2.5g	12%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 310mg	13%
Total Carbohydrate 16g	5%
Dietary Fiber 2g	8%
Sugars 1g	
Protein 2g	

Vitamin A 2% •	Vitamin C 0%
Calcium 0% •	Iron 2%

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

INGREDIENTS: SELECT POPCORN, VEGETABLE OIL (ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, PALM), WHEY, SALT, WHEAT FLOUR, CORN STARCH, SHORTENING POWDER (PARTIALLY HYDROGENATED SOYBEAN OIL, CORN SYRUP SOLIDS, SODIUM CASEINATE, MONO AND DIGLYCERIDES), BUTTERMILK SOLIDS, NATURAL AND ARTIFICIAL FLAVORS, MONOSODIUM GLUTAMATE, ARTIFICIAL COLORS (YELLOW 5 LAKE, YELLOW 6 LAKE), CITRIC ACID, DISODIUM PHOSPHATE, LACTIC ACID, AND DISODIUM INOSINATE AND DISODIUM GUANYLATE.

CONTAINS MILK INGREDIENTS.

NO PRESERVATIVES ADDED.

Information listed above is for reference only. Please check actual bag for most current nutritional information.

Herr's® Hot Cheese Popcorn

Herr's® Hot Cheese Popcorn

Our kernels are hot-air popped and then flavored with pure vegetable oils. And to be sure that you only get fresh, great tasting popcorn, we sift out any unpopped kernels. Also, we don't add preservatives because they're not needed. Choose any of our fresh Herr's Popcorn varieties!

ⓊD

BUY NOW

Nutrition Facts

Serving Size 1 oz (28g/about 2 cups)

Amount Per Serving	
Calories 140	Calories from Fat 70
	% Daily Value*
Total Fat 7g	**11%**
Saturated Fat 2.5g	**12%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 460mg	**19%**
Total Carbohydrate 17g	**6%**
Dietary Fiber 2g	**8%**
Sugars 2g	
Protein 2g	

Vitamin A 2%	• Vitamin C 0%
Calcium 0%	• Iron 2%

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

INGREDIENTS: SELECT POPCORN, VEGETABLE OIL (ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, PALM), WHEY, SALT, SUGAR, CORN FLOUR, WHEAT FLOUR, TORULA YEAST, CORN STARCH, SHORTENING POWDER (PARTIALLY HYDROGENATED SOYBEAN OIL, CORN SYRUP SOLIDS, SODIUM CASEINATE, MONO & DIGLYCERIDES), BUTTERMILK SOLIDS, MONOSODIUM GLUTAMATE, NATURAL & ARTIFICIAL FLAVORS, PAPRIKA, ARTIFICIAL COLORS (YELLOW 6 LAKE, YELLOW 5 LAKE, RED 40 LAKE), SPICES, CITRIC ACID, DISODIUM PHOSPHATE, LACTIC ACID, DISODIUM INOSINATE & DISODIUM GUANYLATE, ONION, GARLIC, NATURAL FLAVOR, AND EXTRACTIVES OF PAPRIKA. **CONTAINS WHEAT AND MILK INGREDIENTS.** NO PRESERVATIVES ADDED.

Information listed above is for reference only. Please check actual bag for most current nutritional information.

Herr's® White Cheddar Popcorn

Herr's® White Cheddar Popcorn

Meanwhile, back at the ranch, we've been stirring up an exciting flavor. Sharp white cheddar cheese and a hint of creamy buttermilk combine to make this one-of-a-kind, gotta-have-more snack. The natural goodness of select popcorn, our special blend of domestic and imported cheeses, and real seasonings make it worthy of a Herr's brands.

BUY NOW

Our kernels are hot-air popped to keep them light and fluffy. Then we sift out any unpopped kernels. (We don't think you'll miss them.) And we don't add any preservatives. With a snack that disappears this fast who needs' em? Grab a handful – and then another. We guarantee you'll love it.
ⓊD

Nutrition Facts

Serving Size 1 oz (28g/about 2 cups)

Amount Per Serving	
Calories 160	Calories from Fat 90
	% Daily Value*
Total Fat 10g	**15%**
Saturated Fat 3.5g	**18%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 270mg	**11%**
Total Carbohydrate 14g	**5%**
Dietary Fiber 2g	**8%**
Sugars 1g	
Protein 3g	
Vitamin A 0% •	Vitamin C 0%
Calcium 2% •	Iron 4%

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

INGREDIENTS: SELECT POPCORN, VEGETABLE OIL (ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, PALM), CHEDDAR CHEESE (MILK, CHEESE CULTURE, SALT, ENZYMES), WHEY, MALTODEXTRIN, SALT, PARTIALLY HYDROGENATED SOYBEAN AND COTTONSEED OIL, CORN SYRUP SOLIDS, MONOSODIUM GLUTAMATE, NATURAL AND ARTIFICIAL FLAVOR, DISODIUM PHOSPHATE, SODIUM CASEINATE, LACTIC ACID, CITRIC ACID, ACETIC ACID, SODIUM CITRATE, DIPOTASSIUM PHOSPHATE, DISODIUM GUANYLATE, AND DISODIUM INOSINATE. **CONTAINS MILK INGREDIENTS.**
NO PRESERVATIVES ADDED.

Information listed above is for reference only. Please check actual bag for most current nutritional information.

Herr's® Onion Rings

Herr's® Original Onion Rings

When life presents you with a chance to grab the ring, you have to go for it. Especially when the ring in question is one of Herr's delicous Onion Rings.

Seasoned with natural onion powder and a special mix of savory spices, Herr's Onion Rings are a crunchy snack with a robust taste you just can't stop reaching for.

And like everything else we make, Herr's Onion Rings are made from the choicest ingredients available and delivered fresh for your snacking pleasure. I know you'll enjoy eating them as much as we enjoy making them.
ⓊD

BUY NOW

Nutrition Facts

Serving Size 1 Bag (17.7g)
Servings Per Container: 1

Amount Per Serving	
Calories 90	Calories from Fat 45
	% Daily Value*
Total Fat 5g	8%
Saturated Fat 1.5g	8%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 150mg	6%
Total Carbohydrate 11g	4%
Dietary Fiber 0g	0%
Sugars 0g	
Protein 1g	

Vitamin A 0%	• Vitamin C 0%
Calcium 0%	• Iron 0%

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

INGREDIENTS: CORN MEAL, VEGETABLE OIL (ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, PALM, SUNFLOWER), MALTODEXTRIN, SALT, ONION POWDER, MONOSODIUM GLUTAMATE, DEXTROSE, CARAMEL COLOR, CALCIUM STEARATE, SUNFLOWER LECITHIN, CITRIC ACID, YEAST EXTRACT, NATURAL FLAVOR, AND TURMERIC EXTRACT.

NO PRESERVATIVES ADDED.

Information listed above is for reference only. Please check actual bag for most current nutritional information.

EXHIBIT B

Inspections, Compliance, Enforcement, and Criminal Investigations

Fresh Express Incorporated 10/6/10

Department of Health and Human Services

Public Health Service
Food and Drug Administration
San Francisco District
1431 Harbor Bay Parkway
Alameda. CA 94502-7070
Telephone: 510/337-6700

WARNING LETTER

Via UPS

October 6, 2010

Fernando Aguirre, President and CEO
Chiquita Brands International, Inc. and Fresh Express, Incorporated
250 East Fifth Street
Cincinnati, OR 45202

Dear Mr. Aguirre:

Starting on May 21, 2010 and ending on June 10, 2010, the Food and Drug Administration (FDA) inspected your food manufacturing facility located at 900 E. Blanco Road, Salinas, California. During this inspection, FDA investigators collected labels for your products and reviewed their labeling at http://www.chiquita.com[1]. Based on our review, we have concluded that your Chiquita brand "Pineapple Bites with Coconut" and "Pineapple Bites" products are misbranded in violation of the Federal Food, Drug, and Cosmetic Act (the Act) and the applicable regulations in Title 21, Code of Federal Regulations, Part 101 (21 CFR 101). You can find the Act and FDA regulations through links at FDA's Internet home page at http://www.fda.gov[2].

Specifically, your "Pineapple Bites with Coconut" product is misbranded within the meaning of Section 403(a) of the Act [21 U.S.C. § 343(a)] in that its statement of identity, "Pineapple Bites with Coconut", is false and misleading. The ingredient statement for this product states that it is made with coconut; however, our investigation determined that this product is made with a coconut flavor spray. The characterizing flavor of your Pineapple with Coconut product must be identified in accordance with 21 CFR 101.22(i)(1)(iii) (for example. "coconut flavor").

Your "Pineapple Bites" and "Pineapple Bites with Coconut" products are misbranded within the meaning of Section 403(r)(1)(A) of the Act [21 U.S.C. § 343(r)(1)(A)] because their labeling bears nutrient content claims but the products do not meet the requirements for the claims.
Specifically, their labeling includes the claim "Plus ... Antioxidants." However, this claim does not include the names of the nutrients that are the subject of the claim or, alternatively, link the term "antioxidants" by a symbol (e.g., an asterisk) that refers to the same symbol that appears elsewhere on the same panel of the product label, followed by the name or names of the nutrients with recognized antioxidant activity. 21 CFR 101.54(g)(4). Your use of this antioxidant claim therefore misbrands your products under section 403(r)(2)(A)(i) of the Act [21 U.S.C. § 343(r)(2)(A)(i)].

Your "Pineapple Bites" and "Pineapple Bites with Coconut" products also bear the claim "Plus Phytonutrients." "Phytonutrients" are not nutrients for which a recommended daily intake (RDI) or daily recommended value (DRV) has been established. Therefore, nutrient content claims regarding "phytonutrients" are not authorized and further misbrand your products under section 403(r)(2)(A)(i) of the Act [21 U.S.C. § 343(r)(2)(A)(i)]. To the extent phytonutrients are intended to be the basis for an antioxidant nutrient content claim, that use would violate FDA regulations for the same reason and because phytonutrients are not recognized as having antioxidant activity. 21 CFR 101.54(g)(1) and (2).

Both your "Pineapple Bites" and "Pineapple Bites with Coconut" products also bear the statement "Only 40 Calories." This statement implies that the products are "low calorie" foods. A "low calorie" claim may be made if a food with a reference amount customarily consumed (RACC) greater than 30 grams (g) or greater than 2 tablespoons does not provide more than 40 calories per RACC. 21 CFR 101.60(b)(2)(i)(A). The RACC established for pineapple is 140 g. See 21 CFR 101.12(b) (Table 2, Fruits and Fruit Juices, All other fruits fresh, canned, or frozen).
The nutrition information for both products states that there are 40 calories per 1 piece (80 g) of product; this equals about 70 calories per RACC. Therefore, under 21 CFR 101.13(i)(2), the products are required t carry a disclaimer adjacent to the claim, e.g., "Only 40 calories per serving, not a low calorie food". Because your products fail to bear the required disclaimer, they are misbranded within the meaning of section 403(r)(1)(A) of the Act.

The "Pineapple Bites" and "Pineapple Bites with Coconut" products are further misbranded within the meaning of section 403(k) of the Act [21 U.S.C. 343(k)] in that they contain the chemical preservatives ascorbic acid and citric acid but their labels fail to declare these preservatives with a description of their functions. 21 CFR 101.22. Further, the ingredients ascorbic acid and citric acid must be declared by their common or usual names. 21 CFR 101.4(a).

This letter is not intended to be an all-inclusive review of your firm's products and processes. It is your responsibility to ensure that your firm and your products comply with the Act and FDA, regulations. You should take prompt action to correct the violations. Failure to promptly correct these violations may resul in regulatory action without further notice. For instance, we may take further action to seize your product or enjoin your firm from operating.

We also note that, FDA (through its contractor) obtained two samples of Fresh Express Hearts of Romaine the testing of which yielded human pathogens. One sample was found to contain *Salmonella Anatum*; another sample was found to contain *E. coli 0157:H7*. We acknowledge that you issued letters to your customers in an effort to recall affected products. However, FDA recommends that you review your firm's criteria for receipt of raw product, your procedures for ensuring that wash, flume and processing water dc not contaminate your products and any other conditions and practices that may relate to the cause of the contamination.

We further acknowledge your June 25, 2010 response to the Good Manufacturing Practices violations cited in the FDA Form 483 regarding this inspection. In your response, you committed to:

- Retrain employees to replace or sanitize their gloves after contacting unsanitized surfaces;
- Include the dryer hoist controls and the equipment control panels that involve direct employee contact in your daily wash and sanitation procedures;
- Create a new storage system for aprons, gloves, and sleeve guards for times during manufacturing when they are not in use; and
- Modify your cutting surface inspection and replacement program so that cutting surfaces will be changed after every **(b)(4)** of use.

However, you did not provide documentation to demonstrate that these corrections have been made. You also did not address the observation that your technician improperly read the free chlorine indicator tests in the flume water. Please provide this information and documentation in your response to this Warning Letter.

In addition to the labeling issues identified above, we note that the available labeling space is at least 6" in height; therefore, the size of the nutrition information declared on these packages is not appropriate and does not meet the formatting requirements under 21 CFR 101.9(d), including hairline and footnote requirements. We note that since some of the nutrients are at insignificant levels, a shortened version of the Nutrition Facts panel may be used, e.g., the statement "Not a significant source of dietary fiber", at the bottom of the table of nutrient values as allowed under 21 CFR 101.9(c).

Please notify this office in writing within fifteen (15) working days from the date you receive this letter of

the specific steps you have taken to correct the noted violations, including an explanation of how you plan to prevent these violations, or similar violations, from occurring again. Please include documentation of the corrective actions you have taken. If your planned corrections will occur over time, please include a timetable for implementation of those corrections. If corrective action cannot be completed within 15 working days, state the reason for the delay and the time within which the corrections will be completed.

Your response should be sent to:

Darlene B. Almogela
Director of Compliance
United States Food and Drug Administration
1431 Harbor Bay Parkway
Alameda, CA 94502

If you have any questions about the content of this letter please contact Sergio Chavez, Compliance Officer, at 510-337-6886.

/s/

Barbara Cassens
District Director

Page Last Updated: 10/08/2010
Note: If you need help accessing information in different file formats, see Instructions for Downloading Viewers and Players.

Links on this page:

1. http://www.chiquita.com/
2. http://www.fda.gov

JS 44 (Rev. 11/15)

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.)*

I. (a) PLAINTIFFS
MICHELLE HU and JOHN DOES 1-100

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
C.K. Lee, Esq., Lee Litigation Group, PLLC
30 East 39th Street, Second Floor, New York, NY 10016
Tel.: (212) 465-1188

DEFENDANTS
HERR FOODS INCORPORATED

County of Residence of First Listed Defendant Chester
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

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	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	LABOR	☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 340 Marine	☒ 370 Other Fraud	☐ 710 Fair Labor Standards Act	☐ 840 Trademark	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 720 Labor/Management Relations	SOCIAL SECURITY	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 740 Railway Labor Act	☐ 861 HIA (1395ff)	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 751 Family and Medical Leave Act	☐ 862 Black Lung (923)	☐ 480 Consumer Credit
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 790 Other Labor Litigation	☐ 863 DIWC/DIWW (405(g))	☐ 490 Cable/Sat TV
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 791 Employee Retirement Income Security Act	☐ 864 SSID Title XVI	☐ 850 Securities/Commodities/ Exchange
☐ 196 Franchise				☐ 865 RSI (405(g))	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	FEDERAL TAX SUITS	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 440 Other Civil Rights	Habeas Corpus:	☐ 462 Naturalization Application	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 893 Environmental Matters
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee	☐ 465 Other Immigration Actions	☐ 871 IRS—Third Party 26 USC 7609	☐ 895 Freedom of Information Act
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence			☐ 896 Arbitration
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General			☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty			☐ 950 Constitutionality of State Statutes
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	Other:			
	☐ 448 Education	☐ 540 Mandamus & Other			
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

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

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. 1332(d) - New York General Business Law Section 349
Brief description of cause:
Deceptive and Unfair Trade Practices

VII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:
JUDGE _____ DOCKET NUMBER _____

DATE
6-20-16

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of $150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, C.K. Lee, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☒ monetary damages sought are in excess of $150,000, exclusive of interest and costs,

☒ the complaint seeks injunctive relief,

☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: No

2.) If you answered "no" above:
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No

b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature:

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

MICHELLE HU and JOHN DOES 1-100

Plaintiff(s)

v.

HERR FOODS INCORPORATED

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* HERR FOODS INCORPORATED
20 Herr Drive, P.O. Box 300
Nottingham, PA 19362

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: C.K. Lee, Esq., Lee Litigation Group, PLLC
30 East 39th Street, Second Floor
New York, NY 10016

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.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk