

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. _____-CIV ____/____

DANIEL SAIZ, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

GRACEKENNEDY FOODS (USA) LLC,
d/b/a LA FE, a Delaware limited liability
corporation, and ALFONSO GARCIA LOPEZ,
S.A. d/b/a CONSERVAS PESCAMAR,
a foreign corporation,

Defendants,

_____ /

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453, defendant GraceKennedy Foods (USA) LLC (“GK Foods”) hereby removes this action from the Circuit Court of the Eleventh Circuit in and for Miami-Dade County, Florida to this Court and states as follows:

I. PROCEDURAL HISTORY AND BACKGROUND

1. On November 22, 2016, plaintiff Daniel Saiz (“Saiz”), on behalf of himself and all others similarly situated, commenced this proposed class action against GraceKennedy, d/b/a La Fe—a Delaware limited liability company—and Alfonso Garcia Lopez S.A. d/b/a Conservas Pescamar (“Pescamar”)—a corporation organized under the laws of, and with its principal place of business in, Spain—in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (Case No. 2016-030142-CA-01) (the “Action”). *See* Compl. ¶¶ 4 – 5.

2. On or about December 2, 2016, Saiz served GK Foods with the Summons and Complaint. On December 20, 2016, Saiz extended the time for GK Foods to answer, move, or otherwise respond with respect to the Complaint to and including February 17, 2017.

3. The Complaint alleges (i) that Pescamar supplied two types of La Fe brand canned octopus products—Octopus in Garlic Sauce and Octopus in Olive Oil (the “Octopus Products”)—to La Fe during the proposed class period of November 2011 to the present (the “Proposed Class Period”), and (ii) that Pescamar sells similar Octopus products to other U.S. brands (“Pescamar Cross-Brand Octopus Products”). Compl. ¶¶ 10-11. The Complaint alleges that Octopus Products and the Pescamar Cross-Brand Octopus Products contained squid, a cheaper substitute for octopus, rather than octopus. *Id.* ¶¶ 12 & 19. Plaintiff further alleges that the proposed class may be defined as the following two subclasses: “(1) all persons in the United States who purchased the Pescamar Cross-Brand Octopus Products” during the Proposed Class Period, and “(2) all persons in the United States who purchased the Octopus Products” during the Proposed Class Period. *Id.* ¶ 21. All persons who made such purchases for purpose of resale are excluded from the classes. *Id.*

4. The Complaint asserts claims for breach of express warranty, breach of the implied warranty of merchantability, breach of the implied warranty of fitness for a particular purpose, unjust enrichment, negligent misrepresentation, fraud, and violation of Florida’s Unfair and Deceptive Trade Practices Act. The Complaint requests that Plaintiff, and all others similarly situated, be awarded “damages, costs, interests, reasonable attorneys’ fees and costs” and “for such other and further relief as this Court deems just and proper under the circumstances[.]” Compl. at pp. 8-10, 12-19, 21-22.

5. The Complaint further alleges that the size of the proposed class “could be in excess of one million persons.” *Id.* ¶ 22.

6. Upon information and belief, during the Proposed Class Period, the La Fe brand Octopus Products sold at retail for between approximately \$1.39 and \$1.69 per unit. Declaration of Gavin Jordan dated January 3, 2017 (“Jordan Decl.”)¹ ¶ 4, attached hereto as Exhibit A. Over the course of the 5-year Proposed Class Period, it is reasonable to conclude that members of the proposed class were repeat customers who purchased several units of one or both of the La Fe brand Octopus Products and/or several units of the various Pescamar Cross-Brand Octopus Products.

II. BASES FOR REMOVAL

7. Section 1441 provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

8. Removal is appropriate since this Court has three separate and independent bases of original jurisdiction over this Action pursuant to Section 1332: diversity under 28 U.S.C. § 1332(a) and two separate provisions of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d).

I. Diversity of Citizenship Under Section 1332(a) Is Satisfied

9. This Court has original subject matter jurisdiction over the Action because diversity of citizenship exists pursuant to Section 1332(a)(1)&(3). Section 1332(a) grants district

¹ Where a defendant follows the requirements of 28 U.S.C. § 1446(b)(1) and seeks to remove a case within 30 days of first receiving a summons and complaint, the notice of removal may be supplemented with evidence in the form of affidavits, declarations and other documentation to establish that the amount in controversy requirement has been satisfied. *See Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 755 (11th Cir. 2010).

courts original jurisdiction over civil matters where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between (1) citizens of different states, (2) citizens of a state and citizens of a foreign state, or (3) citizens of different states and in which citizens or subjects of a foreign state are additional parties. 28 U.S.C. § 1332(a)(1) - (3).

10. The Complaint alleges that named plaintiff Saiz is a citizen of Florida, and defendant Pescamar is a citizen of Spain. Compl. ¶¶ 3 & 5. Plaintiff also alleges that defendant GK Foods is organized and existing under the laws of the state of Delaware. While the Complaint alleges that GK Foods has its principal place of business in Florida, *id.* ¶ 4, it maintains its principal place of business in the state of New Jersey. *See* Jordan Decl. ¶ 3. The “principal place of business” of a corporation is the corporation’s “nerve center”—i.e., the place where the corporation’s high level officers direct, control and coordinate its activities on a day-to-day basis. *See Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192-95 (2010) (holding “nerve center” test is the method for determining a corporation’s principal place of business; the nerve center is the “place where a corporation’s officers direct, control, and coordinate the corporation’s activities” and is normally the place which the public considers the corporation’s main place of business). Here, GK Foods’ nerve center is located in New Jersey because its corporate headquarters and principal place of operations is in Moonachie, New Jersey, which is where most of the company’s senior corporate officers, including the CEO and CFO, are based, where it keeps many of the corporate records and files, and from which it directs, controls and coordinates the company’s operations, including the day-to-day financial, accounting, and HR decisions. *See* Jordan Decl. ¶ 3. There is, therefore, complete diversity of citizenship in this Action.

11. Furthermore, the total amount of sales at issue well exceeds the minimum jurisdictional amount of \$75,000, given that (i) the Complaint alleges that the size of the proposed class could be in excess of one million persons, Compl. ¶ 22, and (ii) upon information and belief, the La Fe Octopus Products at issue sold at retail for between approximately \$1.39 and \$1.69 per unit during the Proposed Class Period of November 2011 to the present. *See* Jordan Decl. ¶ 4.

12. Although GK Foods denies any and all liability, if GK Foods were to owe each putative class member the minimum cost of the product purchased, such damages would exceed \$1.39 million dollars.² Accordingly, the amount in controversy in this Action exceeds \$75,000, exclusive of interest and costs. Thus, pursuant to Section 1332(a), this Court has original diversity jurisdiction over this Action.

II. CAFA is Satisfied

13. This Court also has original jurisdiction pursuant to two separate and independent provisions of CAFA, Section 1332(d)(2)(A) and Section 1332(d)(2)(C), because (i) the number of proposed class members is 100 or greater, (ii) the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs, and (iii) minimum diversity of citizenship under CAFA exists because any member of a class of plaintiffs is a citizen of a state different from any defendant (Section 1332(d)(2)(A)) and because any defendant is a citizen or subject of a foreign state (Section 1332(d)(2)(C)). *See* 28 U.S.C. § 1332(d)(2)(A) & (C); 28 U.S.C. § 1332(d)(5)(B).

14. Because CAFA was enacted to facilitate federal courts' adjudication of certain class actions, "no antiremoval presumption attends cases invoking CAFA." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

² Indeed, the jurisdictional amount in controversy under Section 1332(a) would be met even if the putative class members recovered only a small fraction of the actual retail price of the products they purchased during the Putative Class Period.

(i) More Than 100 Proposed Class Members

15. CAFA's requirement that the number of members of all proposed plaintiff classes in the aggregate must exceed 100 is met since, as alleged in the Complaint, "the proposed class could be in excess of one million persons." *See* Compl. ¶ 22; 28 U.S.C. § 1332(d)(5)(B).

(ii) The Amount Plaintiffs Placed in Controversy Exceeds \$5 Million

16. The amount Plaintiffs placed in controversy in this Action also exceeds \$5 million. CAFA requires that, for the district court to exercise jurisdiction, the matter in controversy must "exceed[] the sum or value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(2). In addition, the claims of "the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. § 1332(d)(6). Here, Plaintiffs allege that "[t]his is an action for damages in excess of \$15,000.00 exclusive of attorneys' fees, costs and interest." *See* Compl. ¶ 1. However, where, as here, the jurisdictional amount is not expressly alleged, it nevertheless can be ascertained where it is "facially apparent" or "readily deducible" from the complaint. *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir. 2001); *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1211 (11th Cir. 2007). Furthermore, although a defendant must show that the amount in controversy likely exceeds the jurisdictional amount, it is not required to prove the amount in controversy "beyond all doubt or to banish all uncertainty about it." *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754-55 (11th Cir. 2010).

17. The amount in controversy in this Action exceeds \$5,000,000, exclusive of interest and costs, given that, as set forth in paragraphs 5, 6 and 16, *supra*, (i) the claims of "the individual class members shall be aggregated," (ii) as alleged in the Complaint, the size of the proposed class could be in excess of one million persons, (iii) the retail price per unit of the

Octopus Products at issue is between approximately \$1.39 and \$1.69, and (iv) it is reasonable to conclude that the class includes repeat customers who purchased several units of the Octopus Products during the alleged five-year class period. *See also* Jordan Decl. ¶ 4. Accordingly, although GK Foods denies Plaintiff's allegations and denies that Plaintiff or the class he purports to represent is entitled to the relief sought in the Complaint, based solely on the portion of damages requested by Plaintiff to compensate proposed class members for the purchase price of the units of Octopus Products purchased during the Proposed Class Period, the amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

18. In addition, the foregoing does not include other damages sought by Plaintiff, such as reasonable attorneys' fees, which may be available to the prevailing party under Florida's Unfair and Deceptive Trade Practices Act, two of the claims asserted in the Complaint. *See* Fla. Stat. § 501.2105. Reasonable attorneys' fees that are authorized by statute may also be included in determining the amount in controversy. *See DO Restaurants, Inc. v. Aspen Specialty Ins. Co.*, 984 F. Supp. 2d 1342, 1345 (S.D. Fla. 2013) (finding when statute authorizes recovery of attorneys' fees and plaintiff has so requested those fees, a reasonable amount is included in the amount in controversy for the purposes of determining whether the court has diversity jurisdiction). In Eleventh Circuit cases involving class action settlements with a common fund, the bench mark for an award of attorneys' fees is typically at least 25 percent. *See Poertner v. Gillette Co.*, 618 Fed. Appx. 624, 628 (11th Cir. 2015); *see also Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774-775 (11th Cir. 1991) (stating that district courts view 25% as a "bench mark" percentage fee award "which may be adjusted in accordance with the individual circumstances of each case"). Here, using even a conservative figure—the bench mark 25%—to estimate attorneys' fees that Plaintiff would likely recover as a prevailing party would result in

hundreds of thousands of dollars in attorneys' fees. Such attorneys' fees, combined even only with compensatory damages sought by Plaintiff will more likely than not satisfy the \$5 million jurisdictional requirement.³ Accordingly, the amount in controversy well exceeds \$5,000,000.

19. Indeed, a number of similar class action cases that have used comparable methods of calculating damages have resulted in significant settlement awards to the plaintiffs. *See, e.g. Miller v. Ghirardelli Chocolate Company*, Case No. 3:12-cv-04936, 2015 WL 758094, at *1 (N.D.Cal. Feb. 20, 2015) (order approving class settlement) (case involving allegations that Ghirardelli misled customers into believing its "White Chips" product contained white chocolate and by improperly labeling some products as "all natural;" settled for \$5.25 million where class members were entitled to \$1.50 per purchase of white chips and \$0.75 for "all natural" products, with no cap on amount paid for purchases corroborated by proof of purchase, and a maximum of \$24 without proof of purchase), attached hereto as Exhibit B; *Eggnatz v. Kashi Co.*, No. 12-21678, Final Judgment and Order Supplementing Final Judgment With Stipulation of Settlement, at p.11-12 (S.D. Fla. Feb. 1 and 4, 2016) (Kashi Co. resolved class action claims concerning mislabeling products as "all natural" by agreeing to pay up to \$3.9 million for class members who could receive \$0.55 per package without proof of purchase (up to a maximum of 27 boxes), whereas those with proof of purchase entitled to full reimbursement without limit on number of items), attached hereto as Exhibit C; *In RE: Blue Buffalo Co., Ltd. Marketing and Sales Practices Litigation*, No. 4:14 MD 2562, Motion and Memorandum in Support of Final Approval of Class Settlement, at pp.1, 5-6, and Final Order and Judgment (E.D. Mo. May 12 and June 6, 2016) (Blue Buffalo Co. settled claims concerning labeling promise that pet food products included no chicken, corn, wheat, soy, or artificial flavors, by paying \$32 million into a common

³ In setting forth these calculations, GK Foods does not admit that it is liable to Plaintiff in this or any amount, and, in fact, GK Foods denies liability to Plaintiff in any amount.

fund, from which over 100,000 claimants could collect up to \$100 in eligible purchases or up to \$2,000 with proof of purchase), attached hereto as Exhibit D; *Hendricks v. Starkist Co.*, No. 13-cv-729, Order Granting Final Approval of Settlement, pp.7-9 (N.D. Cal. Sept. 9, 2016) (court noted that \$12 million settlement to resolve claims of underfilling cans of tuna was only a “single-digit percentage of the maximum potential exposure,” however, court accepted proposed settlement of the over 2.5 million claims submitted, reimbursed at a rate of \$1.97 cash per claim or a \$4.43 Starkist voucher per claim), attached hereto as Exhibit E.

(iii) **Diversity of Citizenship Under CAFA Exists**

20. The diversity of citizenship requirement for CAFA removal is likewise satisfied under both 28 U.S.C. § 1332(d)(2)(A) and § 1332 (d)(2)(C). While diversity removal normally requires complete diversity between plaintiffs and defendants, for removal of a class action under CAFA, only “minimal diversity” is required—*i.e.*, that at least one member of a class of plaintiffs be diverse from one defendant. *See id.* This requirement is readily satisfied here.

a. **Section 1332(d)(2)(A).** The proposed class of plaintiffs consists of citizens of all U.S. States, including Saiz who is a citizen of Florida. GK Foods is a Delaware corporation with its nerve center and, therefore, its principal place of business, in New Jersey. Jordan Decl. ¶ 3. Pescamar is a foreign citizen. Accordingly, at least one, and in fact many, of the proposed members of the class of plaintiffs are citizens of States different from any defendant. Thus, pursuant to Section 1332(d)(2)(A), this Court has jurisdiction over this Action, given that, as set forth in paragraphs 16-19, *supra*, the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and a member of a class of plaintiffs is a citizen of a State different from any defendant.

b. **Section 1332(d)(2)(C)**. Saiz is a citizen of Florida, Pescamar is a citizen of Spain, and, as set forth in paragraphs 16-19, *supra*, the amount in controversy in this Action exceeds \$5,000,000, exclusive of interest and costs. Thus, this Court also has jurisdiction over this Action pursuant to Section 1332(a)(2)(C), given that the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and a member of a class of plaintiffs is a citizen of a State and any defendant is a citizen or subject of a foreign state.

III. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

21. In compliance with 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served upon GK Foods are attached hereto as composite Exhibit F.

22. In compliance with 28 U.S.C. § 1446(b)(2)(B), GK Foods timely files this Notice of Removal within 30 days after being served with the Summons and Complaint.⁴

23. This Court is a proper venue for this Action pursuant to 28 U.S.C. § 1441(a). The United States District Court for the Southern District of Florida embraces the County of Miami-Dade, in which this Action is now pending. *See* 28 U.S.C. § 89(c).

24. GK Foods files herewith a Civil Cover Sheet and has made payment of the required filing fee. No previous application for the relief sought through this Notice of Removal has been made to this or any other court.

25. Pursuant to 28 U.S.C. § 1446(d), upon the filing of this Notice of Removal, written notice of the filing will be served upon Plaintiffs' attorneys, as provided by law, and copies of this notice will be filed with the Clerk of the Circuit Court, Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

⁴ The 30th day from service of process on GK Foods fell on Sunday January 1, 2017. Pursuant to Federal Rule of Civil Procedure 6(a)(1)(C), when the last day of the time period is "a Saturday, Sunday or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday." Accordingly, since Monday January 2, 2017 was a legal holiday, the time period for GK Foods to remove this Action continued to run until and including Tuesday, January 3, 2017.

26. Upon information and belief, Plaintiff has not yet served Pescamar with the Summons and Complaint. Therefore, pursuant to Section 1446(b)(2)(A), Pescamar's consent to removal of this Action is not necessary.

27. No admission of fact or liability is intended by this Notice of Removal, and GK Foods does not waive its right to object to service of process, the sufficiency of process, jurisdiction over the person, or venue, and it specifically reserves its right to assert any applicable defenses and/or objections.

WHEREFORE, for the foregoing reasons, GK Foods prays that this action proceed in its entirety in this Court as an action properly removed thereto.

Dated: January 3, 2017

Respectfully submitted,

HUGHES HUBBARD & REED LLP

By: /s/Aviva L. Wernick
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Attorneys for Defendant GraceKennedy
Foods (USA) LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 3, 2017, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the Service List below in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing.

/s/Aviva L. Wernick

Aviva L. Wernick

SERVICE LIST***Service by E-Mail***

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Attorneys for Plaintiff

JS 44 (Rev. 07/16) FLSD Revised 07/01/2016

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS DANIEL SAIZ, individually and on behalf of
all others similarly situated,

DEFENDANTS GraceKennedy Foods (USA) LLC d/b/a La Fe and
Alfonso Garcia Lopez, S.A. d/b/a Conservas

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

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

James P. Gitkin, Salpeter Gitkin LLP, One East Broward Blvd. Suite
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Attorneys (If Known)

Aviva L. Wernick, Hughes Hubbard & Reed LLP, 201 S. Biscayne
Blvd. #2500, Miami, FL 33131 (305) 358-1666

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

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff
and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|--|---------------------------------------|---------------------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place
of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place
of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a
Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

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

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

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation Transfer ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Multidistrict Litigation - Direct File ☐ 9 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S) (See instructions): a) Re-filed Case ☐ YES ☒ NO b) Related Cases ☐ YES ☒ NO

JUDGE:

DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(a) and (d). Claims of fraud relating to alleged improper labeling of food product.

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

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

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

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

DATE January 3, 2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT #

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EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. _____ -CIV ____/____

DANIEL SAIZ, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

GRACEKENNEDY FOODS (USA) LLC,
d/b/a LA FE, a Delaware limited liability
corporation, and ALFONSO GARCIA LOPEZ,
S.A. d/b/a CONSERVAS PESCAMAR,
a foreign corporation,

Defendants,

_____ /

DECLARATION OF GAVIN JORDAN

I, GAVIN JORDAN, declare as follows:

1. I am the Chief Financial Officer of GraceKennedy Foods (USA) LLC d/b/a La Fe (“GK Foods”).

2. I submit this declaration in support of the Notice of Removal filed by GK Foods. If called as a fact witness to testify, I am able to competently testify about the matters contained in this declaration.

3. GK Foods’s principal place of operations is located in Moonachie, New Jersey, which is where most of the company’s senior corporate officers, including the CEO and CFO are based, where it keeps many of the corporate records and files, and from which it directs, controls and coordinates the company’s operations, including the day to day financial, accounting, and HR decisions. GK Foods does not have a principal place of business in Florida.

4. Upon information and belief, during the period of November 2011 to the present, the retail price for the following two types of La Fe brand canned Octopus products -- Octopus in Garlic Sauce and canned Octopus in Olive Oil (the "Octopus Products") -- ranged from approximately \$1.39 to \$1.69 per unit.

5. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 3, 2017


Gavin Jordan

EXHIBIT F

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DANIEL SAIZ, individually, and
on behalf of all others similarly situated,

CASE NO.: 2016-030142-CA-01

Plaintiff,

v.

GRACEKENNEDY FOODS (USA) LLC
d/b/a LA FE, a Delaware limited liability
corporation, and ALFONSO GARCIA LOPEZ,
S.A. d/b/a CONSERVAS PESCAMAR,
a foreign corporation,

Defendants.

CLASS ACTION COMPLAINT

Plaintiff DANIEL SAIZ ("Plaintiff"), individually, and on behalf of all similarly situated persons, by and through the undersigned counsel, hereby files this Class Action Complaint against Defendants GRACEKENNEDY FOODS (USA) LLC d/b/a LA FE ("LA FE"), a Delaware limited liability corporation, and ALFONSO GARCIA LOPEZ, S.A. d/b/a CONSERVAS PESCAMAR ("PESCAMAR"), a foreign corporation, and in support thereof, respectfully alleges the following:

General Allegations

1. This is an action for damages in excess of \$15,000.00 exclusive of attorneys' fees, costs and interest.
2. Plaintiff has retained the undersigned law firm to represent him (as well as all those similarly situated) in this action and is required to pay said firm a reasonable fee and costs for its services.
3. At all times material hereto, Plaintiff was and is a resident of Broward County, Florida, over the age of eighteen and otherwise *sui juris*.

4. At all times material hereto, LA FE was and is a for profit limited liability corporation, organized and existing under the laws of the State of Delaware, with a principal place of business located at 9151 NW 97th Terrace, Medley (Miami-Dade County), Florida 33178.

5. At all times material hereto, PESCAMAR was and is a foreign for profit corporation, located in Pontevedra, Spain. PESCAMAR has substantial and not isolated business relationships in the State of Florida and in the United States by virtue of its contractual relationships with various U.S. based entities selling its food products throughout the country; it has engaged in substantial activity within Florida and has, therefore, subjected itself to the jurisdiction of the Courts of this State pursuant to Section 48.193(2), Florida Statutes.

6. Jurisdiction is proper in this Court as there is no diversity jurisdiction in light of the residency of the Plaintiff and the principal place of business of LA FE.

7. Venue is proper in Miami-Dade County, Florida because, at all times material hereto, the Defendants engaged in the alleged offending conduct in Miami-Dade County, Florida, and key business decisions emanated from Miami-Dade County, Florida.

8. All conditions precedent to the commencement of this action have occurred, been satisfied, excused, waived, or discharged.

Factual Background

9. LA FE is a food product brand with an array of grains, condiments, rice, seafood, pastas, olive oils, marinades and such other foods which cater to predominantly Hispanic communities. Its food products are sold at small and large retailers, including supermarkets, pharmacy chains and big box stores, throughout the country, and extensively online.

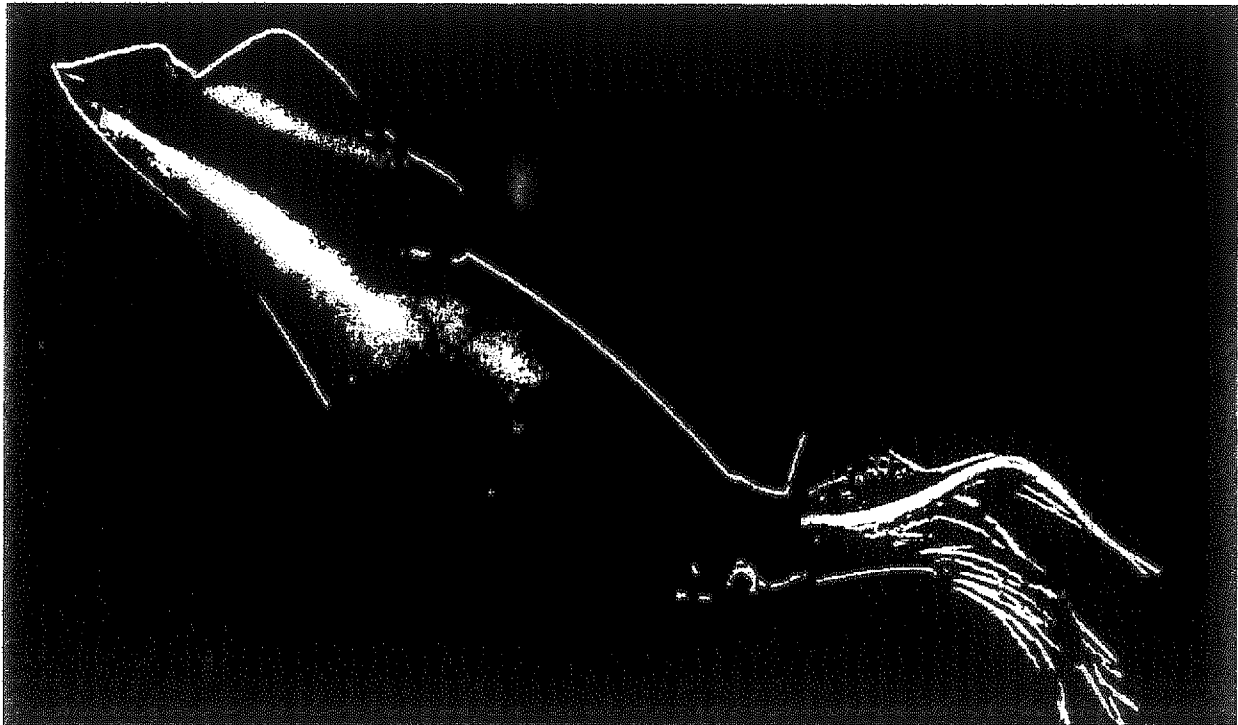
10. As part of its suite of products, LA FE sells two canned octopus products: (1) Octopus in Garlic Sauce, and (2) Octopus in Olive Oil (collectively the "Octopus Products").

11. PESCAMAR is a large seafood supplier and cannery that supplies various seafood products to United States based brands. At all times relevant, and during the relevant class period, it supplied and supplies all of the Octopus Products to LA FE. It also sells similar

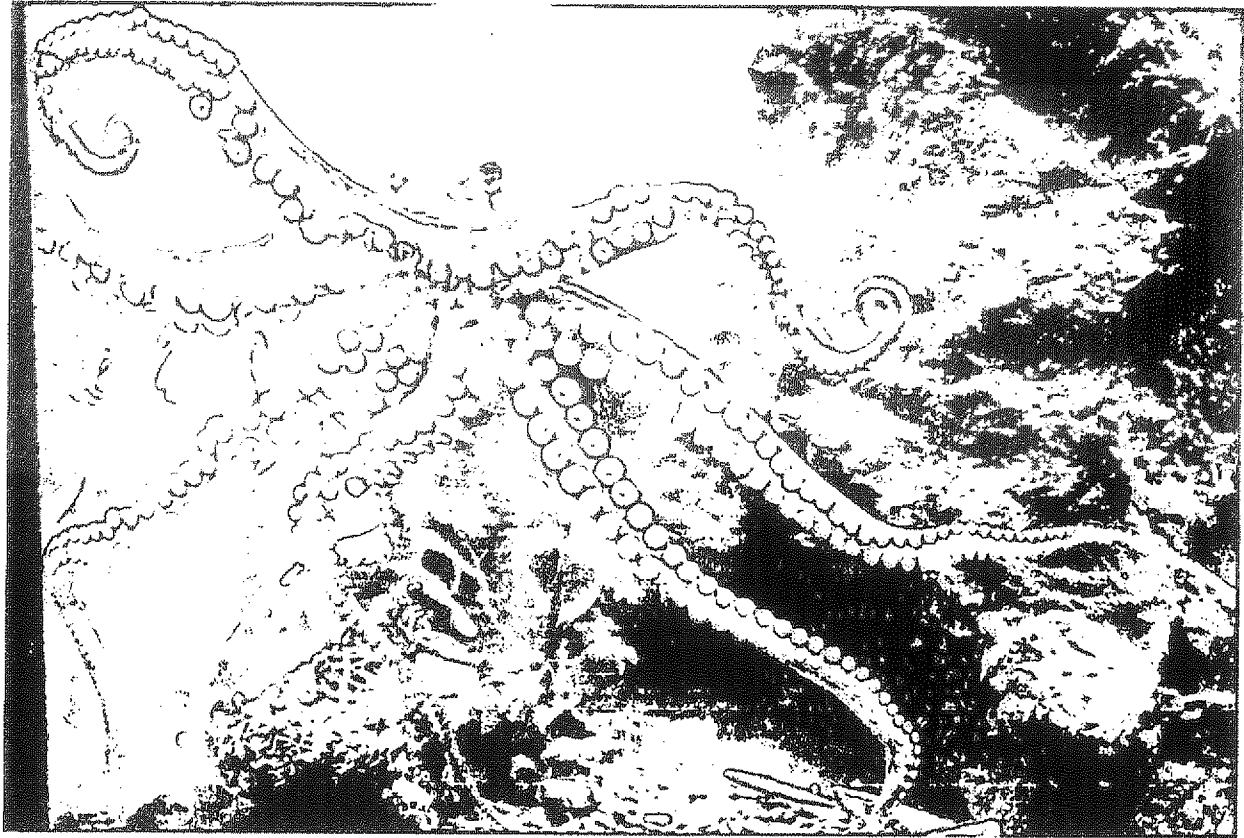
products to other United States brands including but not limited to Roland Foods, Iberia, and Vigo Importing Co., and Conchita Foods, Inc. (all octopus sold in the United States which were and are supplied by PESCAMAR shall be referred to as the "PESCAMAR Cross-Brand Octopus Products").

12. LA FE has labeled and sold its Octopus Products as octopus (or pulpo). Independent DNA testing, however, has determined that LA FE's Octopus Products (supplied by PESCAMAR) are actually jumbo squid and not octopus; squid is significantly cheaper and of a lower quality than octopus. The word "Octopus" or "Pulpo" is prominently displayed on the label of each box in a large font as shown below. Nowhere on the box does it state that the Octopus Products contain squid instead of octopus. Additional testing has revealed that this bait and switch is occurring throughout the PESCAMAR Cross-Brand Octopus Products.

13. Octopus and jumbo squid are both cephalopods, but are otherwise completely different species.



Jumbo Squid



Octopus

14. The scientific classification for jumbo squid is as follows:

Kingdom	Animalia
Phylum	Mollusca
Class	Cephalopoda
Order	Teuthida
Family	Ommastrephidae
Genus	Dosidicus
Species	Dosidicus gigas

15. The scientific classification Octopus is as follows:

Kingdom	Animalia
Phylum	Mollusca

Class	Cephalopoda
Order	Octopoda
Family	Octopodidae
Genus	Octopus
Species	Octopus vulgaris

16. In recent years, the cost of octopus has increased rapidly as octopus populations have dwindled around the world due to over-fishing. In 2005, the European Union imposed new restrictions on octopus fishing because the octopus might be at risk of “dying out ... if controls are not enforced to stop overfishing.” In 2010, the Food and Agriculture Organization of the United Nations reported that octopus populations “remain overexploited.” In 2014, the Monterey Bay Aquarium issued a report on the state of octopus stocks around the world. The report concluded that “octopus stocks are in poor shape.” In July, 2014, SeafoodSource.com reported that octopus supplies had fallen by 45 percent in approximately one year, causing a dramatic increase in the price of octopus.

17. At the same time that octopus populations have been declining, jumbo squid populations have been thriving. In 2010, Scientific American magazine reported that “[a]lthough many of the Pacific Ocean’s big species are floundering, one large creature of the deep seems to be flourishing. The Humboldt squid (*Dosidicus gigas*, also known as jumbo squid, owing to its sizable nature) has been steadily expanding its population and range.” On May 11, 2013, Stanford biologist William Gilly gave a TED talk in which he explained that the jumbo squid is thriving due to its ability to adapt to changing ocean conditions caused by global warming.

18. As a result of these developments, the cost of octopus has risen dramatically compared to the cost of squid. In addition, due to similarities in texture, squid can easily be

substituted for octopus particularly when sold in a sauce like garlic sauce or marinara sauce.

19. Plaintiff is informed and believes that LA FE and PESCAMAR have intentionally replaced the octopus in its Octopus Products with squid as a cheap substitute to save money because they knew an ordinary consumer would have trouble distinguishing the difference. In fact, in 2011, PESCAMAR was sanctioned by a local government in Spain for this bait and switch, and PESCAMAR committed to stopping the offending conduct.

Class Representation Allegations

20. This action is brought pursuant to Rule 1.220 of the Florida Rules of Civil Procedure because, *inter alia*:

(a) the members of the proposed class are so numerous that separate joinder of each member is impractical;

(b) The claims set forth herein are maintainable on behalf of the proposed class;

(c) The questions of law or fact are common to the claims of Plaintiff and the claims of each member of the proposed class;

(d) The particular facts and circumstances that show the claims advanced herein by Plaintiff are typical of the claims of each member of the proposed class; and,

(e) Plaintiff can fairly and adequately protect and represent the interests of each member of the proposed class.

21. While discovery is ongoing (and, thus, future amendments may be necessary), the proposed class may be generally defined in two subclasses: (1) all persons in the United States who purchased the PESCAMAR Cross-Brand Octopus Products from November of 2011 to the present; and, (2) all persons in the United States who purchased the Octopus Products from November of 2011 to the present. Excluded from the classes are persons who made such purchases for purpose of resale.

22. While discovery is ongoing (and, thus, future amendments may be necessary), the

approximate size of the proposed class could be in excess of one million persons.

23. This action is proper under Fla. R. Civ. P. 1.220(b)(1)(B) because the nature of the harm committed by the Defendants and the damages suffered by Plaintiff and the proposed class are universally common, *i.e.*, Plaintiff as well as each member of the proposed class did not receive the benefit of his/her/their rights and entitlements with the Defendants; and, therefore, adjudications concerning individual members of the proposed class would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications.

24. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to: whether LA FE's and PESCAMAR's Octopus Products are squid rather than octopus; whether LA FE and PESCAMAR warranted that its Octopus Products were octopus when in fact they were squid; and whether LA FE and PESCAMAR committed statutory and common law fraud by doing so.

25. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff purchased the products in reliance on the representations and warranties described above and suffered a loss as a result of that purchase.

26. Plaintiff is an adequate representative of the Class and Subclass because his interests do not conflict with the interests of the Class members he seeks to represent, he has retained competent counsel experienced in prosecuting class actions, and he intends to prosecute this action strenuously. The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

COUNT I
Breach of Express Warranty
as to LA FE

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

27. Plaintiff brings this claim individually and on behalf of the proposed Class against LA FE.

28. LA FE, as the designer, manufacturer, marketer, distributor, and/or seller, expressly warranted that its Octopus Products contained octopus.

29. In fact, the Octopus Products contain squid instead of octopus and LA FE's express warranties that the Octopus Products contained octopus are therefore false.

30. As a direct and proximate cause of LA FE's breach of express warranty, Plaintiff and Class members have been injured and harmed because: (a) they would not have purchased the Octopus Products on the same terms if they had known the true facts that the Octopus Products contained squid instead of octopus; (b) they paid a price premium for the Octopus Products due to LA FE's promises that it contained octopus; and (c) LA FE's Octopus Products did not have the characteristics, ingredients, uses or benefits, as promised.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant LA FE.

COUNT II
Breach of Express Warranty
as to PESCAMAR

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

31. Plaintiff brings this claim individually and on behalf of the proposed Class against PESCAMAR.

32. PESCAMAR, as the designer, manufacturer, marketer, distributor, and/or seller, expressly warranted that its PESCAMAR Cross-Brand Octopus Products contained octopus.

33. In fact, the PESCAMAR Cross-Brand Octopus Products contain squid instead of octopus and PESCAMAR's express warranties that the PESCAMAR Cross-Brand Octopus Products contained octopus are therefore false.

34. As a direct and proximate cause of PESCAMAR's breach of express warranty, Plaintiff and Class members have been injured and harmed because: (a) they would not have purchased the PESCAMAR Cross-Brand Octopus Products on the same terms if they had known the true facts that the PESCAMAR Cross-Brand Octopus Products contained squid instead of octopus; (b) they paid a price premium for the PESCAMAR Cross-Brand Octopus Products due to LA FE's promises that it contained octopus; and (c) the PESCAMAR Cross-Brand Octopus Products did not have the characteristics, ingredients, uses or benefits, as promised.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant PESCAMAR.

COUNT III
Breach of the Implied Warranty of Merchantability
as to LA FE

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

35. Plaintiff brings this claim individually and on behalf of the proposed Class against LA FE.

36. LA FE, as the designer, manufacturer, marketer, distributor, and/or seller, impliedly warranted that the Octopus Products contained octopus.

37. LA FE breached the warranty implied in the contract for the sale of its Octopus Products because it could not pass without objection in the trade under the contract description,

the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose because the Octopus Products contained squid instead of octopus. As a result, Plaintiff and Class members did not receive the goods as impliedly warranted by LA FE to be merchantable.

38. Plaintiff and Class members purchased the Octopus Products in reliance upon LA FE's skill and judgment and the implied warranties of fitness for the purpose.

39. The Octopus Products were not altered by Plaintiff or Class members.

40. The Octopus Products were defective when it left the exclusive control of LA FE.

41. LA FE knew that the Octopus Products would be purchased and used without additional testing by Plaintiff and Class members.

42. The Octopus Products were defectively designed and unfit for their intended purpose, and Plaintiff and Class members did not receive the goods as warranted.

43. As a direct and proximate cause of LA FE's breach of the implied warranty, Plaintiff and Class members have been injured and harmed because: (a) they would not have purchased the Octopus Products on the same terms if they had known the true facts that the Octopus Products contained squid instead of octopus; (b) they paid a price premium for the Octopus Products due to LA FE's promises that it contained octopus; and (c) LA FE's Octopus Products did not have the characteristics, ingredients, uses or benefits, as promised.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant LA FE.

COUNT IV
Breach of the Implied Warranty of Merchantability
as to PESCAMAR

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

44. Plaintiff brings this claim individually and on behalf of the proposed Class against PESCAMAR.

45. PESCAMAR, as the designer, manufacturer, marketer, distributor, and/or seller, impliedly warranted that the PESCAMAR Cross-Brand Octopus Products contained octopus.

46. PESCAMAR breached the warranty implied in the contract for the sale of its PESCAMAR Cross-Brand Octopus Products because it could not pass without objection in the trade under the contract description, the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose because the PESCAMAR Cross-Brand Octopus Products contained squid instead of octopus. As a result, Plaintiff and Class members did not receive the goods as impliedly warranted by PESCAMAR to be merchantable.

47. Plaintiff and Class members purchased the PESCAMAR Cross-Brand Octopus Products in reliance upon PESCAMAR's skill and judgment and the implied warranties of fitness for the purpose.

48. The PESCAMAR Cross-Brand Octopus Products were not altered by Plaintiff or Class members.

49. The PESCAMAR Cross-Brand Octopus Products were defective when it left the exclusive control of LA FE.

50. PESCAMAR knew that the PESCAMAR Cross-Brand Octopus Products would be purchased and used without additional testing by Plaintiff and Class members.

51. The PESCAMAR Cross-Brand Octopus Products were defectively designed and unfit for their intended purpose, and Plaintiff and Class members did not receive the goods as warranted.

52. As a direct and proximate cause of PESCAMAR's breach of the implied warranty, Plaintiff and Class members have been injured and harmed because: (a) they would not have purchased the PESCAMAR Cross-Brand Octopus Products on the same terms if they had known the true facts that the PESCAMAR Cross-Brand Octopus Products contained squid

instead of octopus; (b) they paid a price premium for the PESCAMAR Cross-Brand Octopus Products due to PESCAMAR's promises that it contained octopus; and (c) the PESCAMAR Cross-Brand Octopus Products did not have the characteristics, ingredients, uses or benefits, as promised.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant PESCAMAR.

COUNT V
Breach of the Implied Warranty of Fitness for a Particular Purpose
as to LA FE

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

53. Plaintiff brings this claim individually and on behalf of the proposed Class against LA FE.

54. LA FE marketed, distributed, and/or sold the Octopus Products with implied warranties that they were fit for their intended purposes in that they contained octopus. At the time that the Octopus Products were sold, LA FE knew or had reason to know that Plaintiff and Class members were relying on its skill and judgment to select or furnish a product that was suitable for sale.

55. Plaintiff and Class members purchased the Octopus Products in reliance upon LA FE's implied warranties.

56. The Octopus Products were not altered by Plaintiff or Class members.

57. As a direct and proximate cause of LA FE's breach of the implied warranty, Plaintiff and Class members have been injured and harmed because: (a) they would not have purchased the Octopus Products on the same terms if they had known the true facts that the Octopus Products contained squid instead of octopus; (b) they paid a price premium for the

Octopus Products due to LA FE's promises that it contained octopus; and (c) LA FE's Octopus Products did not have the characteristics, ingredients, uses or benefits, as promised.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant LA FE.

COUNT VI

**Breach of the Implied Warranty of Fitness for a Particular Purpose
as to PESCAMAR**

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

58. Plaintiff brings this claim individually and on behalf of the proposed Class against LA FE.

59. PESCAMAR marketed, distributed, and/or sold the PESCAMAR Cross-Brand Octopus Products with implied warranties that they were fit for their intended purposes in that they contained octopus. At the time that the PESCAMAR Cross-Brand Octopus Products were sold, PESCAMAR knew or had reason to know that Plaintiff and Class members were relying on its skill and judgment to select or furnish a product that was suitable for sale.

60. Plaintiff and Class members purchased the PESCAMAR Cross-Brand Octopus Products in reliance upon PESCAMAR's implied warranties.

61. The PESCAMAR Cross-Brand Octopus Products were not altered by Plaintiff or Class members.

62. As a direct and proximate cause of PESCAMAR's breach of the implied warranty, Plaintiff and Class members have been injured and harmed because: (a) they would not have purchased the PESCAMAR Cross-Brand Octopus Products on the same terms if they had known the true facts that the PESCAMAR Cross-Brand Octopus Products contained squid instead of octopus; (b) they paid a price premium for the PESCAMAR Cross-Brand Octopus

Products due to PESCAMAR's promises that it contained octopus; and (c) the PESCAMAR Cross-Brand Octopus Products did not have the characteristics, ingredients, uses or benefits, as promised.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant PESCAMAR.

COUNT VII
Unjust Enrichment
as to LA FE

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

63. Plaintiff brings this claim individually and on behalf of the proposed Class against LA FE.

64. Plaintiff and Class members conferred benefits on LA FE by purchasing the Octopus Products.

65. LA FE has been unjustly enriched in retaining the revenues derived from Plaintiff and Class members' purchases of the Octopus Products. Retention of those moneys under these circumstances is unjust and inequitable because LA FE misrepresented that the Octopus Products contained octopus when in fact they contained squid. These misrepresentations caused injuries to Plaintiff and Class members because they would not have purchased the Octopus Products if the true facts were known.

66. Because LA FE's retention of the non-gratuitous benefits conferred on it by Plaintiff and Class members is unjust and inequitable, LA FE must pay restitution to Plaintiff and Class members for its unjust enrichment, as ordered by the Court.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those

similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant LA FE.

COUNT VIII
Unjust Enrichment
as to PESCAMAR

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

67. Plaintiff brings this claim individually and on behalf of the proposed Class against PESCAMAR.

68. Plaintiff and Class members conferred benefits on LA FE by purchasing the PESCAMAR Cross-Brand Octopus Products.

69. PESCAMAR has been unjustly enriched in retaining the revenues derived from Plaintiff and Class members' purchases of the PESCAMAR Cross-Brand Octopus Products. Retention of those moneys under these circumstances is unjust and inequitable because PESCAMAR misrepresented that the PESCAMAR Cross-Brand Octopus Products contained octopus when in fact they contained squid. These misrepresentations caused injuries to Plaintiff and Class members because they would not have purchased the Octopus Products if the true facts were known.

70. Because PESCAMAR's retention of the non-gratuitous benefits conferred on it by Plaintiff and Class members is unjust and inequitable, PESCAMAR must pay restitution to Plaintiff and Class members for its unjust enrichment, as ordered by the Court.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant PESCAMAR.

COUNT IX
Negligent Misrepresentation
as to LA FE

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

71. Plaintiff brings this claim individually and on behalf of the proposed Class against LA FE.

72. As discussed above, LA FE misrepresented that the Octopus Products contained octopus when in fact they contained squid. LA FE had a duty to disclose this information.

73. At the time LA FE made these representations, LA FE knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

74. At an absolute minimum, LA FE negligently misrepresented and/or negligently omitted material facts about the Octopus Products.

75. The negligent misrepresentations and omissions made by LA FE, upon which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class members to purchase the Octopus Products.

76. Plaintiff and Class members would not have purchased the Octopus Products if the true facts had been known.

77. The negligent actions of LA FE caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant LA FE.

COUNT X
Negligent Misrepresentation
as to PESCAMAR

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

78. Plaintiff brings this claim individually and on behalf of the proposed Class against PESCAMAR.

79. As discussed above, PESCAMAR misrepresented that the PESCAMAR Cross-Brand Octopus Products contained octopus when in fact they contained squid. PESCAMAR had a duty to disclose this information.

80. At the time PESCAMAR made these representations, PESCAMAR knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

81. At an absolute minimum, PESCAMAR negligently misrepresented and/or negligently omitted material facts about the PESCAMAR Cross-Brand Octopus Products.

82. The negligent misrepresentations and omissions made by PESCAMAR, upon which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class members to purchase the PESCAMAR Cross-Brand Octopus Products.

83. Plaintiff and Class members would not have purchased the PESCAMAR Cross-Brand Octopus Products if the true facts had been known.

84. The negligent actions of PESCAMAR caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant PESCAMAR.

COUNT XI
Fraud
as to LA FE

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

85. Plaintiff brings this claim individually and on behalf of the proposed Class against LA FE.

86. As discussed above, LA FE provided Plaintiff and Class members with false or misleading material information and failed to disclose material facts about its Octopus Products, including but not limited to the fact that it contained squid when the product was represented to contain octopus. These misrepresentations and omissions were made with knowledge of their falsehood.

87. The misrepresentations and omissions made by LA FE, upon which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class members to purchase the Octopus Products.

88. LA FE's fraudulent actions caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

89. WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant LA FE.

COUNT XII
Fraud
as to PESCAMAR

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

90. Plaintiff brings this claim individually and on behalf of the proposed Class against PESCAMAR.

COUNT XI
Fraud
as to LA FE

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

85. Plaintiff brings this claim individually and on behalf of the proposed Class against LA FE.

86. As discussed above, LA FE provided Plaintiff and Class members with false or misleading material information and failed to disclose material facts about its Octopus Products, including but not limited to the fact that it contained squid when the product was represented to contain octopus. These misrepresentations and omissions were made with knowledge of their falsehood.

87. The misrepresentations and omissions made by LA FE, upon which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class members to purchase the Octopus Products.

88. LA FE's fraudulent actions caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

89. WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant LA FE.

COUNT XII
Fraud
as to PESCAMAR

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

90. Plaintiff brings this claim individually and on behalf of the proposed Class against PESCAMAR.

91. As discussed above, PESCAMAR provided Plaintiff and Class members with false or misleading material information and failed to disclose material facts about its PESCAMAR Cross-Brand Octopus Products, including but not limited to the fact that it contained squid when the product was represented to contain octopus. These misrepresentations and omissions were made with knowledge of their falsehood.

92. The misrepresentations and omissions made by PESCAMAR, upon which Plaintiff and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiff and Class members to purchase the PESCAMAR Cross-Brand Octopus Products.

93. LA FE's fraudulent actions caused damage to Plaintiff and Class members, who are entitled to damages and other legal and equitable relief as a result.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant PESCAMAR.

COUNT XIII
Violation of Florida's Unfair and Deceptive Trade Practices Act
as to LA FE

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

94. This is an action based on LA FE's intentional and unfair deception of consumers in Florida and throughout the United States.

95. By its unfair and deceptive conduct (as more fully alleged hereinabove), LA FE has unreasonably grossed profited by deceiving the public and pawning of an inferior squid product as octopus.

96. Florida's Unfair and Deceptive Trade Practices Act ("FDUTPA") was passed by

the Florida Legislature in 1973 for the purpose of modernizing law governing consumer protection, unfair methods of competition, and unconscionable, deceptive and unfair trade practices, and to protect the consuming public and legitimate businesses from those who engage in unfair methods of competition.

97. FDUTPA ensures that Florida consumer protection is consistent with the established policies of Federal consumer protection laws. To that end, in addition to generally prohibiting “unfair methods of competition” and “unconscionable, unfair or deceptive acts,” FDUTPA specifically gives “great weight” to the interpretations of the Federal Trade Commission Act by Federal Courts and the Federal Trade Commission.

98. Labels on products for consumption must be strictly accurate, reflecting exactly the nature and quantities of a product in each labeled container. This goes beyond prohibitions against false advertising, and labeling is required to have a higher degree of truth and accuracy any advertisement.

99. Federal law strictly prohibits any inconsistency between the label on a product and the actual contents of the product. Any such inconsistency is an unfair trade per se, and a violation of 15 U.S.C. § 45, the Federal Trade Commission Act.

100. In this case, LA FE marketed, and sold to the general public the Octopus Products, the labels of which clearly stated that the product contained within was octopus – to the contrary, it was squid.

101. This is an unfair trade practice per se, in violation of Federal consumer protection laws, and FDUTPA.

102. LA FE’s unfair and deceptive trade practices are the direct cause of damage to the Plaintiff, and to all persons similarly situated.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant LA FE.

COUNT XIV
Violation of Florida's Unfair and Deceptive Trade Practices Act
as to PESCAMAR

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 26 above as though fully set forth herein.

103. This is an action based on PESCAMAR's intentional and unfair deception of consumers in Florida and throughout the United States.

104. By its unfair and deceptive conduct (as more fully alleged hereinabove), PESCAMAR has unreasonably grossed profited by deceiving the public and pawning of an inferior squid product as octopus.

105. Florida's Unfair and Deceptive Trade Practices Act ("FDUTPA") was passed by the Florida Legislature in 1973 for the purpose of modernizing law governing consumer protection, unfair methods of competition, and unconscionable, deceptive and unfair trade practices, and to protect the consuming public and legitimate businesses from those who engage in unfair methods of competition.

106. FDUTPA ensures that Florida consumer protection is consistent with the established policies of Federal consumer protection laws. To that end, in addition to generally prohibiting "unfair methods of competition" and "unconscionable, unfair or deceptive acts," FUDTPA specifically gives "great weight" to the interpretations of the Federal Trade

Commission Act by Federal Courts and the Federal Trade Commission.

107. Labels on products for consumption must be strictly accurate, reflecting exactly the nature and quantities of a product in each labeled container. This goes beyond prohibitions against false advertising, and labeling is required to have a higher degree of truth and accuracy any advertisement.

108. Federal law strictly prohibits any inconsistency between the label on a product and the actual contents of the product. Any such inconsistency is an unfair trade per se, and a violation of 15 U.S.C. § 45, the Federal Trade Commission Act.

109. In this case, PESCAMAR marketed, and sold to the general public the PESCAMAR Cross-Brand Octopus Products, the labels of which clearly stated that the product contained within was octopus – to the contrary, it was squid.

110. This is an unfair trade practice per se, in violation of Federal consumer protection laws, and FDUTPA.

111. PESCAMAR's unfair and deceptive trade practices are the direct cause of damage to the Plaintiff, and to all persons similarly situated.

WHEREFORE, Plaintiff, and all those similarly situated, respectfully request that this Court: (a) certify a class of all similarly situated persons; (b) award Plaintiff, and all those similarly situated, damages, costs, interest, reasonable attorneys' fees and costs; and (c) for such other and further relief as this Court deems just and proper under the circumstances as to Defendant PESCAMAR.

Demand for Jury Trial

Plaintiff, individually, and on behalf of all those similarly situated, hereby demands a jury trial on all issues triable by jury.

DESIGNATION OF PRIMARY AND SECONDARY E-MAIL ADDRESSES

Pursuant to Rule 2.515 of the Florida Rules of Judicial Administration, the undersigned attorneys hereby designate the following as their primary and secondary e-mail addresses:

James P. Gitkin, Esq.	Primary E-mail:	<u>jim@salpetergitkin.com</u>
	Secondary E-mail:	<u>amy@salpetergitkin.com</u> <u>tina@salpetergitkin.com</u>

Dated this 22nd day of November, 2016.

Respectfully submitted,

SALPETER GITKIN, LLP
Attorneys for Plaintiff
One East Broward Boulevard
Suite 1500
Fort Lauderdale, FL 33301
Telephone: (954) 467-8622
Facsimile: (954) 467-8623

By: */s/ James P. Gitkin*
James P. Gitkin, Esq.
Fla. Bar No. 570001

~and~

BURSOR & FISHER, P.A.
L. Timothy Fisher (*pro hac pending*)
(State Bar No. 191626)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com

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RETURN OF SERVICE

State of FLORIDA

County of MIAMI-DADE

Circuit Court

Case Number: 2016-30142-CA-01

Plaintiff:
DANIEL SAIZ

vs

Defendant:
GRACEKENNEDY FOODS (USA) LLC D/B/A LA FE, ET.AL.,


For:
James Gitkin
SALPETER GITKIN, LLP
One East Broward Blvd.
Suite 1500
Fort Lauderdale, FL 33301

Received by OJF SERVICES, INC. on the 30th day of November, 2016 at 11:49 am to be served on
GRACEKENNEDY FOODS (USA) LLC C/O CT CORPORATION SYSTEM, ITS REGISTERED AGENT, 1200
SOUTH PINE ISLAND ROAD, PLANTATION, FL 33324.

I, ANDREW KARP, do hereby affirm that on the 2nd day of December, 2016 at 1:35 pm, I:

CORPORATE - REGISTERED AGENT: served by delivering a true copy of the **SUMMONS AND COMPLAINT** with the date and hour of service endorsed thereon by me, to: **DONNA MOCH EMPLOYEE AT CT CORPORATION SYSTEM** as Registered Agent At the address of: **1200 SOUTH PINE ISLAND ROAD, PLANTATION, FL 33324** for **GRACEKENNEDY FOODS (USA) LLC C/O CT CORPORATION SYSTEM, ITS REGISTERED AGENT**, and informed said person of the contents therein, in compliance with state statutes.

I CERTIFY THAT I AM OVER THE AGE OF 18, HAVE NO INTEREST IN THE ABOVE ACTION, AND THAT I AM A SPECIAL PROCESS SERVER APPOINTED BY THE SHERIFF, IN GOOD STANDING, IN THE JUDICIAL CIRCUIT IN WHICH PROCESS WAS SERVED. "UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING (DOCUMENT) AND THAT THE FACTS STATED IN IT ARE TRUE, 92.525.



ANDREW KARP
SPS #260

OJF SERVICES, INC.
13727 S.W. 152nd Street
P.M.B. 354
Miami, FL 33177
(786) 293-5750
Our Job Serial Number: OJF-2016016924

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2016-30142-CA-01

DANIEL SAIZ, individually, and on
behalf of all others similarly situated,

Plaintiffs,

vs.

GRACEKENNEDY FOODS (USA) LLC
d/b/a LA FE, a Delaware limited liability
corporation, and ALFONSO GARCIA LOPEZ,
S.A. d/b/a CONSERVAS PESCAMAR,
a foreign corporation,

Defendants.

SUMMONS
(20 DAY RESPONSE)

Down MOC H
12/2/16
1350
AK260

THE STATE OF FLORIDA:

To All and Singular the Sheriffs of said State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the Complaint in this action on
Defendant:

By Serving:

GRACEKENNEDY FOODS (USA) LLC
CT Corporation System, Registered Agent
1200 South Pine Island Road
Plantation, FL 33324

Each defendant is required to serve written defenses to the Complaint on James P. Gitkin, Esquire, Plaintiff's
attorney, whose address is:

SALPETER GITKIN, LLP
One E. Broward Boulevard
Suite 1500 - Wells Fargo Tower
Fort Lauderdale, FL 33301
(954) 467-8622

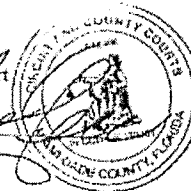
within twenty (20) days after service of this summons on that defendant, exclusive of the day of service, and to file the
original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter.
If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or
petition.

DEC 01 2016

WITNESS my hand and seal of said Court

HARVEY RIJVIN
As Clerk of said Court

By: Deputy Clerk



AMERICAN DISABILITIES ACT OF 1990

If you qualify under the Americans with Disabilities Act (ADA) and need assistance, please visit the Eleventh Judicial Circuit of Florida or
you may contact the ADA Coordinator at: E-mail: ADA@ud11.flcourts.org, Voice Mail #: 305-349-7175; TDD #: 305-349-7174; Fax #: 305-349-7355. If you are hearing or voice impaired, please call 711 or 1-800-955-8771 for the Florida Relay Service.

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