

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

VIVIAN LIS LEJBMAN, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

TRANSNATIONAL FOODS, INC.,
a Florida corporation, and CONSERVAS
CERQUEIRA, S.A., a foreign corporation,

Defendants.

CLASS ACTION COMPLAINT

Plaintiff VIVIAN LIS LEJBMAN (“Plaintiff”), individually, and on behalf of all similarly situated persons, by and through the undersigned counsel, hereby files this Class Action Complaint against Defendants TRANSNATIONAL FOODS, INC. (“TFI”), a Florida corporation, and CONSERVAS CERQUEIRA, S.A. (“CERQUEIRA”), a foreign corporation, and in support thereof, respectfully alleges the following:

Nature of Action

1. TFI 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.

2. As part of its suite of products, TFI sells three canned octopus products under the brand name “Pampa”: (1) Octopus in Garlic Sauce, (2) Octopus in Vegetable Oil, and (3) Octopus in Marinara Sauce (collectively the “Octopus Products”).

3. CERQUEIRA 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 TFI. 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 CERQUEIRA shall be referred to as the “CERQUEIRA Cross-Brand Octopus Products”).

4. TFI has labeled and sold its Octopus Products as octopus (or pulpo). Independent DNA testing, however, has determined that TFI’s Octopus Products (supplied by CERQUEIRA) 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 CERQUEIRA Cross-Brand Octopus Products.

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



Jumbo Squid



Octopus

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

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

7. The scientific classification Octopus is as follows:

Kingdom	Animalia
Phylum	Mollusca
Class	Cephalopoda
Order	Octopoda
Family	Octopodidae

Genus	Octopus
Species	Octopus vulgaris

8. 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.

9. 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.

10. 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.

11. Plaintiff is informed and believes that TFI and CERQUEIRA 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, CERQUEIRA was sanctioned by a local government in Spain for this bait and switch, and CERQUEIRA committed to stopping the offending conduct.

Parties

12. At all times material hereto, Plaintiff was and is a resident of San Diego, California, over the age of eighteen and otherwise *sui juris*. While living in California, Plaintiff purchased the Octopus Products and throughout the class period, she relied on the representation that they contained octopus; she would not have purchased the Octopus Products had she known that in actuality, they contained squid.

13. At all times material hereto, TFI was and is a for profit corporation, organized and existing under the laws of the State of Florida, with a principal place of business located at 1110 Brickell Avenue, Suite 808, Miami, Florida 33131.

14. At all times material hereto, CERQUEIRA was and is a foreign for profit corporation, located in Pontevedra, Spain. CERQUEIRA 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.

Jurisdiction and Venue

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, and most members are citizens of states different from the Defendants. This Court also has supplemental jurisdiction

over state law claims pursuant to 28 U.S.C. § 1367.

16. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District as key decision making, importation, and shipping occurred in Florida.

17. 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.

Class Representation Allegations

18. While discovery is ongoing (and, thus, future amendments may be necessary), Plaintiff seeks to represent a proposed class that may be generally defined in two subclasses: (1) all persons in the United States who purchased the CERQUEIRA 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.

19. 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.

20. 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 TFI's and CERQUEIRA's Octopus Products are squid rather than octopus; whether TFI and CERQUEIRA warranted that its Octopus Products were octopus when in fact they were squid; and whether TFI and CERQUEIRA committed statutory and common law fraud by doing so.

21. 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.

22. 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 TFI

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

23. Plaintiff brings this claim individually and on behalf of the proposed Class against TFI.

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

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

26. As a direct and proximate cause of TFI'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 TFI's promises that it contained octopus; and (c) TFI'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 TFI.

COUNT II
Breach of Express Warranty
as to CERQUEIRA

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

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

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

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

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

COUNT III
Breach of the Implied Warranty of Merchantability
as to TFI

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

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

32. TFI, as the designer, manufacturer, marketer, distributor, and/or seller, impliedly warranted that the Octopus Products contained octopus.

33. TFI 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 TFI to be merchantable.

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

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

36. The Octopus Products were defective when it left the exclusive control of TFI.

37. TFI knew that the Octopus Products would be purchased and used without additional testing by Plaintiff and Class members.

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

39. As a direct and proximate cause of TFI'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 TFI's promises that it contained octopus; and (c) TFI'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 TFI.

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

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

40. Plaintiff brings this claim individually and on behalf of the proposed Class against CERQUEIRA.

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

42. CERQUEIRA breached the warranty implied in the contract for the sale of its CERQUEIRA 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 CERQUEIRA 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 CERQUEIRA to be merchantable.

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

44. The CERQUEIRA Cross-Brand Octopus Products were not altered by Plaintiff or Class members.

45. The CERQUEIRA Cross-Brand Octopus Products were defective when it left the exclusive control of TFI.

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

47. The CERQUEIRA 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.

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

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

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

49. Plaintiff brings this claim individually and on behalf of the proposed Class against TFI.

50. TFI 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, TFI 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.

51. Plaintiff and Class members purchased the Octopus Products in reliance upon TFI's implied warranties.

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

53. As a direct and proximate cause of TFI'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 TFI's promises that it contained octopus; and (c) TFI'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 TFI.

COUNT VI
Breach of the Implied Warranty of Fitness for a Particular Purpose
as to CERQUEIRA

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

54. Plaintiff brings this claim individually and on behalf of the proposed Class against TFI.

55. CERQUEIRA marketed, distributed, and/or sold the CERQUEIRA 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 CERQUEIRA Cross-Brand Octopus Products were sold, CERQUEIRA 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.

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

57. The CERQUEIRA Cross-Brand Octopus Products were not altered by Plaintiff or Class members.

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

COUNT VII
Unjust Enrichment
as to TFI

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

59. Plaintiff brings this claim individually and on behalf of the proposed Class against TFI.

60. Plaintiff and Class members conferred benefits on TFI by purchasing the Octopus Products.

61. TFI 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 TFI 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.

62. Because TFI's retention of the non-gratuitous benefits conferred on it by Plaintiff and Class members is unjust and inequitable, TFI 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 TFI.

COUNT VIII
Unjust Enrichment
as to CERQUEIRA

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

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

64. Plaintiff and Class members conferred benefits on TFI by purchasing the CERQUEIRA Cross-Brand Octopus Products.

65. CERQUEIRA has been unjustly enriched in retaining the revenues derived from Plaintiff and Class members' purchases of the CERQUEIRA Cross-Brand Octopus Products. Retention of those moneys under these circumstances is unjust and inequitable because

CERQUEIRA misrepresented that the CERQUEIRA 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.

66. Because CERQUEIRA's retention of the non-gratuitous benefits conferred on it by Plaintiff and Class members is unjust and inequitable, CERQUEIRA 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 CERQUEIRA.

COUNT IX
Negligent Misrepresentation
as to TFI

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

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

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

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

70. At an absolute minimum, TFI negligently misrepresented and/or negligently omitted material facts about the Octopus Products.

71. The negligent misrepresentations and omissions made by TFI, 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.

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

73. The negligent actions of TFI 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 TFI.

COUNT X
Negligent Misrepresentation
as to CERQUEIRA

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

74. Plaintiff brings this claim individually and on behalf of the proposed Class against CERQUEIRA.

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

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

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

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

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

80. The negligent actions of CERQUEIRA 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 CERQUEIRA.

COUNT XI
Fraud
as to TFI

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

81. Plaintiff brings this claim individually and on behalf of the proposed Class against TFI.

82. As discussed above, TFI 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.

83. The misrepresentations and omissions made by TFI, 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.

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

85. 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 TFI.

COUNT XII
Fraud
as to CERQUEIRA

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

86. Plaintiff brings this claim individually and on behalf of the proposed Class against CERQUEIRA.

87. As discussed above, CERQUEIRA provided Plaintiff and Class members with false or misleading material information and failed to disclose material facts about its CERQUEIRA 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.

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

89. TFI'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 CERQUEIRA.

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

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

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

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

92. 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.

93. 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.

94. 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.

95. 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.

96. In this case, TFI 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.

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

98. TFI'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 TFI.

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

Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 22 above as though fully set forth herein.

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

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

101. 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.

102. 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.

103. 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.

104. 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.

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

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

107. CERQUEIRA'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 CERQUEIRA.

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.

Dated this 2nd day of December, 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

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 VIVIAN LIS LEJBMAN **DEFENDANTS** TRANSNATIONAL FOODS, INC., a Florida corporation, and CONSERVAS CERQUEIRA,

(b) County of Residence of First Listed Plaintiff San Diego, CA (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Salpeter Gitkin, LLP, James Gitkin, Esq., 1 E. Broward Blvd., Ste. 1500, Fort Lauderdale, FL 33301, (954) 467-8622 Attorneys (If Known)

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

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

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

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

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input 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"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	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			

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

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

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

JUDGE _____ 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. Section 1332(d)(2)(A) Plaintiff alleges that Defendant sold squid that was labeled as octopus

LENGTH OF TRIAL via 4 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 _____ SIGNATURE OF ATTORNEY OF RECORD _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

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

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

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

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

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

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_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

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

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Server's address

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