

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

CASE NO.: \_\_\_\_\_

SALGIOBRIA ENTERPRISES, LLC,

Plaintiff,

v.

CHENEY BROTHERS, INC.

Defendant.

\_\_\_\_\_/

**DEFENDANT’S NOTICE OF REMOVAL**

Defendant Cheney Brothers, Inc. (“Cheney Brothers”)<sup>1</sup> hereby removes this action from the Circuit Court of the Fifteenth Judicial Circuit Court, in and for Palm Beach County, Florida, to the United States District Court for the Southern District of Florida, West Palm Beach Division.

**I. Background**

Plaintiff Salgiobria Enterprises, LLC (“Salgiobria”) operates two restaurants under the names of DiMaggio’s Italian Restaurant and Giovanni’s New York Pizza. (Compl. at ¶ 6). Salgiobria purchased chicken from Cheney Brothers. (*Id.*).

Cheney Brothers is “a food service distributor,” meaning it sells chicken and other packaged foods to restaurants. (*Id.* at ¶¶ 7, 27). In short, Cheney Brothers is the middle-man between restaurants or other businesses that sell cooked food to consumers and the

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<sup>1</sup> Cheney Brothers, Inc. is a d/b/a owned by Cheney Bros., Inc. Cheney Bros., Inc. is a Florida corporation that maintains its principal place of business in Riviera Beach, Palm Beach County, Florida.

manufacturers who slaughter, process, and package the raw chicken. (*See id.* at ¶ 14). Cheney Brothers sells to “food service operators,” e.g. restaurants and hotels, in the Southeastern United States, including Florida, Georgia, South Carolina, and North Carolina. (*Id.* at ¶¶ 7, 21–22, 25).

Salgiobria instituted this action on August 24, 2021, by filing a putative class-action complaint in the Fifteenth Circuit Court, in and for Palm Beach County, Florida. The state court case was styled as *Salgiobria Enterprises, LLC v. Cheney Brothers, Inc.*, and numbered 2021-CA-010078.

Salgiobria alleges it and Cheney Brothers “agreed that Cheney Brothers would sell” chicken to Salgiobria and submit invoices for Salgiobria to pay. (*Id.* at ¶ 33). According to Salgiobria, the chicken “would be priced by an agreed-upon amount” for 20- and 40-pound boxes of chicken, net of packaging. (*Id.*). Four invoices for deliveries to be made on December 5, 2020, January 9, 2021, February 11, 2021, and March 16, 2021, are attached to the Complaint as Exhibits 1–4. (*See also id.* at ¶¶ 36–38, 41).

With respect to the March 16 delivery, Salgiobria alleges that five cases of chicken breasts were delivered, with each case containing four bags of chicken (the Complaint does not allege what brand of chicken, e.g., Purdue, Tyson, etc., was ordered). (*Id.* at ¶ 43). Salgiobria weighed the four bags of chicken from one of the cases. (*Id.*). Each bag weighed 10.05 pounds. (*Id.*). Salgiobria then defrosted the chicken, dumped the liquid content, and re-weighed “a bag.” (*Id.*). The weight decreased to “9.475 pounds.” (*Id.*).

Based on these allegations, Salgiobria seeks to certify a class-action consisting of “[a]ll persons and entities in the United States, and its Territories, that purchased Poultry products from Cheney Brothers and took delivery from September 15, 2017 to present” or,

alternatively, “[a]ll Florida persons and entities that purchased Poultry products from Cheney Brothers and took delivery from September 15, 2017 to present.” (*Id.* at ¶¶ 53–54). Salgiobria asserts that it “reasonably believes that the Class includes **thousands** of Class Members.” (*Id.* at ¶ 56) (emphasis added).

Salgiobria asserts two claims under the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), one for “deception” and one for “unfairness.” (*Id.* at 18–23). Both FDUTPA claims are premised on the allegation that Cheney Brothers delivered and charged for chicken that weighed less than represented. (*Id.* at ¶¶ 69, 79). And both claims seek damages equal to the difference of the amount paid and the value of what was “actually delivered,” attorney’s fees, and costs. (*Id.* at ¶¶ 71, 75, 85, 89). Salgiobria also seeks to enjoin Cheney Brothers “on terms the Court considers reasonable.” (*Id.* at ¶ 75, 89; p. 29, ¶ B).

Salgiobria also asserts claims of breach of contract, breach of warranty, and, in the alternative, unjust enrichment. (*Id.* at 23–28). As with the FDUTPA claims, the breach of contract, breach of warranty, and unjust enrichment claims are all premised on the theory that Cheney Brothers delivered and charged for chicken that weighed less than represented. (*Id.* at 91–92, 99–100, 106–07). In the breach of contract claim, Salgiobria seeks damages equal to the difference of the amount paid and the value of what was delivered, interest on the alleged overpayment, and incidental damages for inspection and analysis of deliveries. (*Id.* at ¶¶ 92, 94–95). The breach of warranty claims seeks damages equal to the difference of the amount paid and the value of what was delivered, and incidental damages for inspection and analysis of deliveries. (*Id.* at ¶ 103). The unjust enrichment claim seeks “the disgorgement and restitution of . . . wrongful profits, revenue and benefits, plus interest . . . .” (*Id.* at ¶ 110).

## II. Jurisdiction Exists

A district court “shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). Furthermore, “[a] class action may be removed to a district court . . ., without regard to whether any defendant is a citizen of the State in which the action is brought . . .” 28 U.S.C. § 1453(b). As summarized by the Supreme Court, “CAFA gives federal courts jurisdiction over certain class actions, defined in § 1332(d)(1), if the class has more than 100 members, the parties are minimally diverse, and the amount in controversy exceeds \$5 million.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 84–85 (2014) (holding that “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold”).

The amount in controversy exceeds \$5,000,000. Between September 15, 2017, and August 31, 2021, Cheney Brothers sold in excess of \$5,000,000 worth of chicken. (Ex. 1, Decl. of M. Sullivan at ¶ 4). Salgiobria alleges that every order was between 3.25 and 5.25 percent underweight. Applying the lower percentage of alleged shorting, that means the amount at issue for chicken would be well over \$5,000,000. (*Id.*). The amount-in-controversy requirement is more than satisfied.

In addition, minimal diversity exists in this case. Cheney Brothers is a Florida corporation with its principal place of business in Florida. Thus, Cheney Brothers is a citizen of Florida. See *Rolling Greens MHP, L.P. v. Comcast SCH Holdings LLC*, 384 F.3d 1020, 1021 n.1 (11th Cir. 2004).

The putative class consists of “thousands” of members of businesses spread across the Southeastern United States, including Georgia and the Carolinas. (Compl. at ¶¶ 7, 25, 56). Given the sheer breadth of Cheney Brothers’ distribution map and the putative class, it is plausible that at least one member of the “thousands” of customers who would fit in the putative class would be a citizen of a state other than Florida. Indeed, during the putative class period Cheney Brothers sold chicken products to, among other customers, a California corporation that has its principal place of business in California. (Ex. 1, Decl. of M. Sullivan at ¶ 5). Because at least one putative class member is a citizen of a state other than Florida, the requirement for minimal diversity is satisfied.

Finally, Salgiobria alleges the putative class consists of “thousands” of members. (*Id.* at ¶ 56). The 100-member requirement is therefore satisfied.

### **III. Pleadings and Process**

As required by § 1446(a), Cheney Brothers attached copies of all state court process, pleadings, and orders served upon Cheney Brothers to this notice. (Ex. 2).

### **IV. Notice Given**

Pursuant to § 1446(d), Cheney Brothers filed with the state court a notice of filing notice of removal on September 23, 2021. In addition, Cheney Brothers served Salgiobria a copy of the notice of filing notice of removal and this notice of removal itself on September 23, 2021.

### **V. Removal Is Timely**

Cheney Brothers received the initial pleading in this matter on August 26, 2021. Removal is therefore timely under § 1446(b)(1) and § 1453(b) as this notice is being filed within 30 days of August 26, 2021.

**VI. Venue**

Venue is proper in the Southern District of Florida, West Palm Beach Division under § 1441(a) because this Court embraces Palm Beach County. (*See* S.D. Fla. Internal Operating Procedures § 2.01.01(d)). Venue is also proper in Palm Beach County under §§ 1391(b)(1) and (c)(2) because Cheney Brothers maintains its principal place of business in Palm Beach County.

Respectfully submitted,

/s/ Kevin P. McCoy

Kevin P. McCoy  
Florida Bar No. 36225  
David R. Wright  
Florida Bar No. 119453  
Carlton Fields, P.A.  
4221 W. Boy Scout Blvd., Ste. 1000  
Tampa, FL 33607  
Tel: (813) 223-7000  
Fax: (813) 229-4133  
kmccoy@carltonfields.com  
dwright@carltonfields.com

*Attorneys for Defendant Cheney Brothers, Inc.*

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

Salgiobria Enterprises, LLC

DEFENDANTS

Cheney Brothers, Inc., a Florida Corporation

(b) County of Residence of First Listed Plaintiff Polk County

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Palm Beach County

(IN U.S. PLAINTIFF CASES ONLY)

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

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

Attorneys (If Known)

D. Michael Campbell PO Box 24358 Lakeland, FL 33802

Kevin P. McCoy P.O. Box 3239 Tampa, FL 33601

(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
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 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 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 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<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input checked="" type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Med. Malpractice<br><b>CIVIL RIGHTS</b><br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability<br><b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><b>Other:</b><br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Mgmt. Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><input type="checkbox"/> 880 Defend Trade Secrets Act of 2016<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)<br><input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA)<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |

V. ORIGIN

(Place an "X" in One Box Only)

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

Breach of contract and of warranty, and unjust enrichment; removed under CAFA, 28 USC 1332(d)(2)(a), 1453(b)

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

VIII. REQUESTED IN COMPLAINT:

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

DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

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

DATE 9/23/2021

SIGNATURE OF ATTORNEY OF RECORD /s/ Kevin P. McCoy

FOR OFFICE USE ONLY : RECEIPT #

AMOUNT

IFP

JUDGE

MAG JUDGE



**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.** Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

**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.





# JOSEPH ABRUZZO

CLERK OF THE CIRCUIT COURT & COMPTROLLER  
PALM BEACH COUNTY

CASE NUMBER: 50-2021-CA-010078-XXXX-MB  
CASE STYLE: SALGIOBRIA ENTERPRISES LLC V CHENEY BROTHERS INC

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Documents with a lock icon are [viewable on request \(VOR\)](#) to protect confidential information. Click on the lock icon to request the document. VOR documents are reviewed and then generally become available online within three business days of request.

A clock icon means a VOR document is 'In Process' and being reviewed. Click on the clock icon to request email notification when the document becomes available online.

Public = VOR = In Process = Page Size: 25

| <a href="#">Docket Number</a> | <a href="#">Effective Date</a> | <a href="#">Description</a>      | <a href="#">Notes</a>   |
|-------------------------------|--------------------------------|----------------------------------|---|
| 2                             | 08/24/2021                     | CIVIL COVER SHEET                |   |
| 3                             | 08/24/2021                     | COMPLAINT                        | CLASS REPRESENTATION CLASS ACTION COMPLAINT F/B PLT   |
| 4                             | 08/24/2021                     | SUMMONS ISSUED                   | dmcampbell@campbelllaw.com AS TO CHENEY BROTHERS INC EFILED   |
| 1                             | 08/26/2021                     | DIVISION ASSIGNMENT              | AF: Circuit Civil Central - AF (Civil)  |
| 5                             | 08/26/2021                     | PAID \$411.00 ON RECEIPT 4154055 | \$411.00 4154055 Fully Paid   |
| 6                             | 08/31/2021                     | SERVICE RETURNED (NUMBERED)      | RETURN OF SERVICE SERVED CHENEY BROTHERS, INC. - 08/26/2021   |
| 7                             | 09/13/2021                     | NOTICE OF APPEARANCE CIVIL       | F/B KEVIN P. MCCOY OF CARLTON FIELDS P.A., AS COUNSEL FOR DFT CHENEY BROTHERS   |
| 8                             | 09/13/2021                     | NOTICE OF APPEARANCE CIVIL       | F/B DAVID R. WRIGHT OF CARLSON FIELDS P.A, AS COUNSEL FOR DFT CHENEY BROTHERS   |
| 9                             | 09/14/2021                     | MOTION FOR EXTENSION OF TIME     | UNOPPOSED F/B DFT   |
| 10                            | 09/15/2021                     | ORDER EXTENDING TIME             | KASTRENAKES; TO RESPOND TO THE COMPLAINT IS GRANTED; DFT CHENEY BROTHERS IS SHALL RESPOND TO THE COMPLAINT BY AND INCLUDING 10/1/2021 DTD 9/14/2021 |

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

CASE NO.: \_\_\_\_\_

SALGIOBRIA ENTERPRISES, LLC,

Plaintiff,

v.

CHENEY BROTHERS, INC.

Defendant.

\_\_\_\_\_ /

**DECLARATION OF MICHAEL SULLIVAN**

1. My name is Michael Sullivan. I am over the age of majority and the statements in this Declaration are based on my personal knowledge.

2. I am the Chief Financial Officer of Cheney Brothers, Inc. I have held this position since 2006.

3. In my role as Chief Financial Officer, I have access to and knowledge of the sales of chicken products by Cheney Brothers, including total amount and to which customers.

4. After review of Cheney Brothers' records, from September 15, 2017, to August 31, 2021, Cheney Brothers sold well in excess of \$5 million worth of chicken. After reviewing the allegations found at paragraphs 35 through 45, I understand the allegation in the Complaint is that packages of chicken were under the weight stated on the package. Even if you only viewed the amount of the alleged weight shortage alleged in the Complaint, there

would still be more than \$5 million in controversy based on amount of chicken sold during the alleged class period.

5. Moreover, my review of Cheney Brothers' records revealed that, from September 15, 2017, to August 31, 2021, Cheney Brothers sold chicken products to customers outside of the state of Florida. For example and during the relevant time period, Cheney Brothers sold chicken to Customer # 60028791, which company has been identified using its Cheney Brothers' customer ID in order to preserve confidentiality. Upon information and belief, Customer # 60028791 is a California corporation, with its principal place of business located in California.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signature:  Executed: 9/23/21

# **EXHIBIT 2**

Filing # 133290544 E-Filed 08/24/2021 12:37:31 PM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

Salgiobria Enterprises, LLC, a Florida limited liability company, on behalf of itself and those similarly situated,

Plaintiff,

v.

Cheney Brothers, Inc., a Florida corporation

Defendant.

Case No.: \_\_\_\_\_

## CLASS REPRESENTATION

## CLASS ACTION COMPLAINT

## Jury Trial Demanded

Plaintiff, Salgiobria Enterprises, Inc. (“Salgiobria” or “Plaintiff”), brings this Class Action Complaint on behalf of itself and all others similarly situated. Allegations in this Class Action Complaint are based upon Plaintiff’s experiences, counsel’s investigation, and information and belief. Plaintiff hereby alleges the following in support of this Class Action Complaint.

## NATURE OF THE ACTION

1. Plaintiff, a Winter Haven, Florida restaurant company, regularly orders and receives deliveries of raw and frozen food that it cooks and prepares for its customers. Like many restaurants and other businesses, Plaintiff orders food based on bulk net weight as represented by distributors' sales staff and invoices, including Poultry and other packaged foods, from food distributors. The weight of these food deliveries is important to such businesses, not only so restaurants have predictable food for their customers, but also because reliable pricing allows businesses to calculate their budgets and pricing. Plaintiff and the class members make payment on the invoices based upon the number of pounds of the product described times the number of pounds ordered. Plaintiff discovered that its supplier, Defendant, Cheney Brothers, Inc., ("Cheney

Brothers” or “Defendant”), has been shorting deliveries of poultry (the “Poultry”) for Plaintiff and other businesses as compared to what is described by Defendant’s invoices, and the amount of Poultry Plaintiff paid for based upon Defendant’s representations.

2. From at least September 15, 2017 to the present (the “Class Period”) Cheney Brothers delivered smaller quantities of chicken than it promised it would deliver when compared to the descriptions on the invoices. Cheney Brothers’ Poultry weighed materially less than the represented, priced, invoiced, accepted payment for as sold weights, thereby unlawfully increasing their effective prices to Plaintiff and the Class (Cheney Brothers’ “Shorting Practice”).

3. Cheney Brothers’ Poultry, thawed and weighed soon after unloading from delivery trucks, weighs less than the advertised, represented, invoiced, agreed, and sold weight. Cheney Brothers’ weights are shorted in weight, so that orders are as much as 5.25 percent lighter than the paid-for amount.

4. These significant, material representative inaccuracies on the invoices about the Poultry weight resulted in deficient deliveries for Plaintiff and the Class when compared to deliveries that were promised, while unlawfully enriching Cheney Brothers.

5. Therefore, Plaintiff brings this action on behalf of a class of buyers nationally or, in the alternative, located in Florida who purchased Poultry from Cheney Brothers. Plaintiff seeks actual damages, refunds, injunctive relief, attorneys’ fees, and the costs of this litigation.

## **PARTIES**

### **A. Plaintiff**

6. Salgiobria is a Florida corporation with its principal place of business in Winter Haven, Florida. Salgiobria operates two Winter Haven restaurants and does business with the restaurants’ business names: DiMaggio’s Italian Restaurant, and Giovanni’s New York Pizza. During the Class Period, Salgiobria purchased Poultry, from Cheney Brothers at weights and prices



described by Defendant's invoices that materially misrepresented package weights. Salgiobria was, therefore, deceived by Cheney Brothers into paying for more Poultry than Salgiobria received. Salgiobria acted as a consumer in that it bought Poultry from Defendant and paid for the amounts represented on Defendant's invoices. Accordingly, as described further in this Complaint, Salgiobria is a "consumer" for purposes of Fla. Stat. § 501.203(7).

**B. Defendant**

7. Cheney Brothers is a Florida corporation with its principal place of business in Riviera Beach, Palm Beach County, Florida. Cheney Brothers is described as a "leading distributor" in Florida that in recent years has expanded its operations in Georgia, South Carolina, and North Carolina. As a distributor, Cheney Brothers sells Poultry and other packaged foods to restaurants that, in turn, sell to consumers, making Cheney Brothers a distributor rather than a retailer.

**JURISDICTION**

8. Plaintiff's claims give this Court subject matter jurisdiction over the claims under Fla. Stat. §§ 26.012, 86.011. The Court has jurisdiction over this case because this Complaint seeks damages in excess of \$30,000.00, exclusive of interest and attorneys' fees, costs, and expenses.

9. Palm Beach County is a proper venue for this case pursuant to Fla. Stat. §§ 47.011, 47.051. Defendant has its corporate headquarters facility and does business in this County, and the cause of action accrued in this County.

10. Defendant's conduct gives this Court personal jurisdiction over Defendant under Fla. Stat. § 48.193. Defendant personally or through its agents operated, conducted, engaged in, and carries on a business in Florida, operates offices, distribution facilities, a stockyard, and a

seafood operation in Florida, committed tortious acts in Florida, and engaged in significant business activity within Florida.

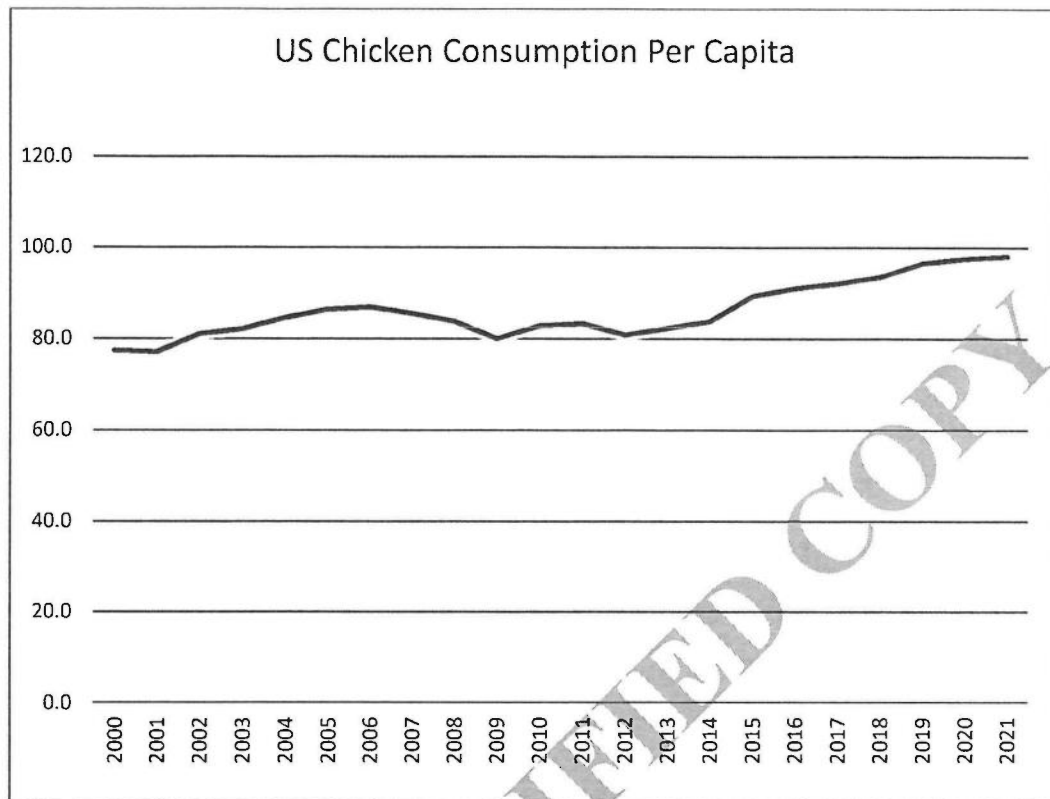
### **FACTUAL ALLEGATIONS**

#### **A. Chicken Is an Important American Food**

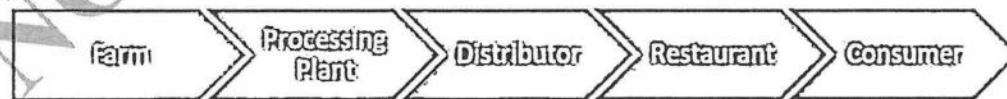
11. American food chicken is descended from the Southeast Asian red jungle fowl first domesticated in India around 2000 B.C. Although over 500 chicken breeds exist, most chickens raised for meat in the United States are descended from a cross between Cornish and White Rock breeds. Food chickens include broiler-fryer chickens, roaster chickens, capons, stewing hens, and Rock Cornish game hens.

12. Fresh poultry refers to raw poultry products that have never been held below 26 degrees Fahrenheit. Poultry held at zero degrees Fahrenheit or below is considered frozen or previously frozen.

13. In 2020, United States consumers spent \$110 billion on chicken. Our average consumption of chicken per capita has increased during this century, from 77.4 pounds in 2000 to an estimated 97.5 pounds in 2020 and a projected 98.0 pounds for 2021.



14. Chicken for food is grown on farms, slaughtered at poultry processing plants, and then sold to distributors, such as Cheney Brothers. Distributors sell the poultry to restaurants, such as Plaintiff's restaurants, and other food servers, such as hotels and hospitals. Restaurants, acting as hosts and retailers, prepare the cooked food sell it to consumers, their retail customers. The process is shown in this diagram of the restaurant poultry value chain.



15. About 25,000 U.S. family farms have production contracts with 30 integrated chicken production companies. In 2018, they produced more than 9 billion broiler chickens, the

most common food chicken. That 2018 production weighed 56.6 billion pounds. The top five broiler production states are Georgia, Arkansas, Alabama, North Carolina, and Mississippi.

16. The average chicken weighs about six pounds at harvest. Producers attempt to raise chickens of uniform size, which work better for the machinery in the processing plants. At processing plants, the chickens are stunned, slaughtered, eviscerated, cleaned, rinsed, and chilled. They are cut up into different products and shipped to distributors.

17. Distributors like Cheney Brothers market to and contract with restaurants and other food operators, and are subject to contractual obligations and statutory duties not to use deceptive or unlawful sales and marketing practices.

**B. Food Service Distributors and Operators**

18. The National Restaurant Association projected \$899 billion in sales for the restaurant and food service industry in 2020. Half of United States adults have worked in food service in one way or another during their lives, often beginning their work lives in restaurants. The industry includes firms that prepare and serve food, and firms that distribute food, equipment, and services.

19. Cheney Brothers is a large food service distributor. Food service distributors act as intermediaries between food producers and food operators like retailers and restaurants. Distributors purchase, store, sell, and deliver food products, providing access to food to the retailers and grocers.

20. Four kinds of food service distributors are (1) broadline distributors, (2) specialty distributors, (3) redistributors, and (4) cash and carry distributors. Broadline distributors carry thousands of different products for a broad range of food operators. Specialty distributors, such as seafood distributors, focus on certain narrower food categories than broadline distributors. Redistributors buy directly from producers, and break down shipment quantities for smaller, local,



or niche distributors, sometimes breaking shipments down into less-than-truckload quantities. Cash and carry distributors are those that do not deliver merchandise; some cash and carry distributors operate as restaurant suppliers for smaller restaurants and similar food operators.

21. Broadline distributors, such as Cheney Brothers, sell and deliver food to a variety of food service operators, including restaurants, hospitals, hotels, school cafeterias, and other places where people eat food away from home. Food service operators depend on broadline distributors for frequent delivery service, product depth and breadth, and in some cases services like order tracking, menu planning, and nutrition analysis. Broadline distributors tend to use larger distribution centers than other distributors.

22. "Food operators" refers to retail level food sellers, of which the United States has over 1.2 million. They include the over 640,000 restaurants in operation prior to the Covid-19 pandemic, along with 264,125 retail service firms, such as supermarkets and convenience stores.

23. The \$899 billion in projected 2020 restaurant and food service industry sales included \$617.5 billion for commercial eating places like restaurants, and \$3 billion for military restaurant services. Florida had 41,366 eating and drinking locations in 2018, generating an estimated \$50.1 billion in sales.

24. Restaurants tend to be smaller businesses. Nine in ten restaurants have fewer than 50 employees. Seven in ten restaurants are single-unit operations.

**C. Defendant Cheney Brothers' Business and Marketing**

25. Cheney Brothers is a large regional food distributor operating in the Southeastern United States. Joseph Cheney founded the company in West Palm Beach, Florida, in 1925. Although still privately owned, Cheney Brothers has grown to a substantial corporation with over \$2 billion in annual revenue. Cheney Brothers is reported to distribute to thousands of customers

in the Southeast United States, and to export products to distributors in South America and the Caribbean.

26. Cheney Brothers sells food products including Poultry, frozen meats, juices, and canned fruits.

27. A recent article about an interview with Cheney Brothers president, John Reisigl, stated Cheney Brothers mainly provides food for hotels, restaurants, country clubs, and other facilities. Mr. Reisigl stated, “[f]or what we do at Cheney Brothers, we don’t do any retail sales. All of our sales are to restaurants, hotels, country clubs. We’re a food service distributor, as opposed to a retail distributor.”<sup>1</sup>

28. Cheney Brothers has advertised that its technology helps restaurants and other customers. Cheney Brothers’ online brochure claims all its distribution centers had “completely computerized product selection and barcode processing tracking systems for inventory.” The brochure stated its order pickers had “a wearable computer with a headset and microphone-instructed by voice on what items to pick and where to pick them.” It further stated Cheney’s “Cadec Fleet Management system *assures accurate deliveries* on and off the truck.”<sup>2</sup>

29. Cheney Brothers’ brochure also touts its delivery systems, with advanced GPS monitoring and tracking. It claims its “Delivery Tracker” features “bar code scanning, invoice printing, real time billing information, along with electronic signature capture ensures *customer confidence in complete and accurate delivery*.”<sup>3</sup>

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<sup>1</sup> Liz Hardaway, *We’re Still Selling Quite a Bit of Food*, Sun Port Charlotte (April 29, 2020), [https://www.yoursun.com/charlotte/were-still-selling-quite-a-bit-of-food/article\\_c30969e8-8a3d-11ea-a3b0-9f9d4f836af7.html](https://www.yoursun.com/charlotte/were-still-selling-quite-a-bit-of-food/article_c30969e8-8a3d-11ea-a3b0-9f9d4f836af7.html) (accessed March 29, 2021).

<sup>2</sup> *Cheney Brothers – Leading Food Distributor, Serving the Southeast and the World Since 1925*, <http://cbicatalogs.com/pdf/2013%20COMPANY%20BROCHURE.pdf> (accessed March 29, 2021).

<sup>3</sup> *Id.* (emphasis added).

30. In 2016, Cheney Brothers reportedly updated its comprehensive Enterprise Resource Planning software platform to track its business data more efficiently. This software change reduced Cheney's internal database report times from six to seven hours down to two-minute run times.

**D. Cheney Brother's Shorting Practice Deceived and Harmed Plaintiff and Class Members**

31. **Plaintiff's Business and Intended Food Ordering:** Salgiobria shops for Packaged Foods based on weight and corresponding pricing and considers this weight-based pricing a material element in making business decisions, since it assists Salgiobria with forecasting costs over its respective fiscal periods.

32. When Plaintiff or other businesses order Poultry from Cheney Brothers, they do so based on bulk weight. That weight is important to Plaintiff and the Class, not only because a certain weight is necessary for their business operations (namely cooking for their customers), but also because pricing is calculated by that weight. Cheney Brothers' weighted pricing as represented on its invoices, as marketed and in theory, allows its customers to make informed purchasing decisions and forecast costs during their fiscal budgeting periods.

33. **The Parties' Agreement and Cheney Brothers' Representations:** Plaintiff and Cheney Brothers agreed that Cheney Brothers would sell Poultry to Plaintiff, and submit invoices for Plaintiff to pay. They agreed the Poultry would be priced by an agreed-upon amount for standard 40 pound boxed cases of chicken wings, and an agreed-upon amount for standard 20 pound boxed cases of chicken breasts. Plaintiff and Cheney Brothers agreed that Cheney Brothers would fix the price per case. Cheney Brothers was obligated to set this price per 20 or 40 pound case in good faith, using the actual weight of the 20 or 40 pound cases, net of packaging. This price per 20 or 40 pound case and described on the invoices was to be and reflect the true price



under the agreement. Copies of invoices showing the agreement and various shipments are attached as Exhibits 1 to 4 of this Complaint. Exhibits 1 to 4 are incorporated by reference into this Complaint. The quantities of the Poultry deliveries were a material term to Plaintiff so Plaintiff could budget and plan menus and marketing so as to not run short of food for restaurant guests and, further, ensure that it was not being overcharged for the Poultry.

34. Cheney Brothers sent invoices and deliveries of Poultry supposedly conforming to Defendant's description to Plaintiff. Plaintiff accepted the goods and paid the invoiced amount. In this way, the parties' conduct recognized the existence of the agreement. The invoices show Cheney Brothers' sales representative was Robert S. Sheffield.

35. **Plaintiff's Orders Under the Agreement:** Prior to purchasing Cheney Brothers' Poultry, Salgiobria relied upon the false and misleading statements on the invoices that Cheney Brothers and its agents prepared, approved, and disseminated regarding weights and corresponding prices for the orders. For each purchase, Salgiobria understood that it was paying a specific price for a specific, actual and accurately stated net weight amount of Poultry.

36. For example, Exhibit 1 is an invoice from Cheney Brothers to Giovanni's New York Pizza that includes six cases of chicken wings (labeled "Chix Winger"), to be delivered December 5, 2020. The chicken wings were to weigh the standard 20 pounds per case. The price was \$74.90 per case, for a chicken wing subtotal of \$449.70.

37. Similarly, Exhibit 2 is an invoice from Cheney Brothers to DiMaggio's Italian Restaurant, for a shipment to be delivered on January 9, 2021. The invoice includes an order for 800 pounds of cut jumbo chicken wings. The price is \$2.09 per pound. That item's subtotal price is \$1,672.00. ( $\$2.09 \times 800 = \$1,672.00$ ).

38. Exhibit 3 is an invoice to DiMaggio's Italian Restaurant for 30 cases of Cheney Brothers' chicken wings, due February 11, 2021. The price was \$74.95 per unit (that is, per case), for a total of \$2,248.50. As the parties agreed, chicken wings were to weigh 20 pounds per case. The weight to be delivered was 1,200 pounds, specified in the weight column.

39. Similarly, Cheney Brothers and Plaintiff agreed the chicken breasts that Cheney Brothers delivered would weigh a standard 40 pounds per case.

40. **Cheney Brothers' Delivery In Breach Of the Parties' Agreement:** Cheney Brothers' actual deliveries of the Poultry were lighter than the advertised, represented, priced, and sold weight. Cheney Brothers' promised weights were inflated when compared to Defendant's product description on its invoices, so Plaintiffs' orders were as much as 5.25 percent lighter than the weight Cheney Brothers promised, and Salgiobria paid for the amount of Poultry described on the invoices. These significant, material, inaccuracies resulted in different prices for Plaintiff and the Class from the promised prices, while unlawfully enriching Cheney Brothers.

41. Exhibit 4 is a Cheney Brothers invoice documenting an order from Giovanni's New York Pizza to Cheney Brothers for delivery on March 16, 2021. Robert S. Sheffield is Cheney's sales representative. Exhibit 4 is for five cases of chicken breast, each a 40 pound case. The price is \$1.23 per pound. The total weight of the five cases was supposed to be 200 pounds, leading to a \$246.00 charge for that chicken. (5 cases X 20 pounds X \$1.23 = \$246.00).

42. Exhibit 4 also charges for two cases of chicken breast filet, each a 40 pound case. The price is \$1.24 per pound. The total weight of the two cases was supposed to be 80 pounds, leading to a \$99.20 charge for the chicken breast filets. (2 cases X 40 pounds X \$1.24 = \$99.20).

43. Five cases of chicken breasts appeared with this delivery. The cases of chicken breasts contained four bags of chicken breasts per case. Giovanni's weighed the frozen bags from

one case, which, frozen, weighed 10.05 pounds each. Upon defrosting and draining of water, a bag weighed only 9.475 pounds, short 0.525 pounds or 5.25 percent. The shortage means each case would be short 2.1 pounds, and the five chicken breast cases would be short 10.5 pounds of chicken. (0.525 pound X 4 bags X 5 cases = 10.5 pounds).

44. This picture displays the thawed short-changed chicken breast bag on the scale, showing it weighed only 9.475 pounds.



45. **Cheney Brothers Shorting Practice:** As revealed in Plaintiff's above experience, Cheney Brothers' delivered weights were short by several pounds from their advertised and



represented weights, so Plaintiffs' orders were as much as 5.25 percent lighter than the paid-for amount. This material deficiency exceeded what a buyer, acting reasonably, would reasonably anticipate could occur in packing, shipping, or delivery. These significant, material inaccuracies resulted in materially different prices per pound than expected for Plaintiff and the Class, while unlawfully enriching Cheney Brothers.

46. By shorting its promised deliveries during the Class Period from September 15, 2017 to the present, Cheney Brothers, represented, effectively priced, and sold the Poultry at false prices that materially misrepresented package weights. In other words, upon inspection, Cheney Brothers Shorting Practice was that Cheney delivered Poultry that weighed materially less than the represented, priced, and sold weights, thereby unlawfully increasing the prices to Plaintiff and the Class.

47. By failing to deliver the correct weight of the Poultry—and still charging for an inflated weight—Cheney Brothers' Shorting Practice deprived buyers of accurately informed purchasing decisions and forecasting. Cheney Brothers' used Shorting Practices that were deceptive, unfair, and unconscionable, depriving restaurants of their Poultry's promised value.

48. Cheney Brothers' delivering a lower weight of Poultry than promised during the Class Period directly damaged Plaintiffs and Class members by causing them to pay inflated prices for their Poultry.

49. Cheney Brothers' consistent delivery of deficient underweight Poultry was designed to, and did, induce consumers, including Plaintiff and Class Members, into believing that they were receiving more of the Poultry than Defendant actually delivered.

50. Cheney Brothers induced Plaintiff and Class Members to purchase less of the Poultry at a higher effective price. Plaintiff and Class Members relied on Cheney Brothers' false,

deceptive, unfair, and unconscionable marketing, advertising, warranties, and representations to their detriment. Plaintiff and Class Members would not have purchased the Poultry or, at the very least, would have demanded the appropriate price upon purchase had they known Cheney Brothers' scanty quantities were so deceptive, and unfair, in that the Poultry delivered was consistently less than the promised and represented weight.

51. During the Class Period, Plaintiff and Class Members have suffered millions of dollars in collective damages.

52. Upon information and belief, Cheney Brothers continues to employ this deceptive, unfair, and unconscionable Shorting Practice from which it has reaped millions of dollars in unlawful gains.

#### CLASS REPRESENTATION ALLEGATIONS

53. Plaintiff, individually and on behalf of all others similarly situated, brings this lawsuit on behalf of itself and as a class action based on Fla. R. Civ. P. 1.220, on behalf of the following class:

All persons and entities in the United States, and its Territories, that purchased Poultry products from Cheney Brothers and took delivery from September 15, 2017 to present (the "Class").

54. In the alternative, Plaintiff, individually and on behalf of all others similarly situated, brings this lawsuit on behalf of itself and as a class action based on Fla. R. Civ. P. 1.220, on behalf of the following class:

All Florida persons and entities that purchased Poultry products from Cheney Brothers and took delivery in Florida from September 15, 2017 to present (the "Class").

55. Excluded from the Class are Defendant and any entities in which any Defendant or its subsidiaries or affiliates have a controlling interest, and Defendant's officers, agents, and

employees. Also excluded from the Class are the Judges assigned to this action, members of the court's staff, and any member of the Judges' immediate family.

56. **Numerosity:** The members of the Class are so numerous that joinder of all members of the Class would be impracticable. While Plaintiff does not know the exact number of Class Members, Plaintiff reasonably believes that the Class includes thousands of Class Members.

57. **Commonality:** The claims in this action raise questions of law and fact common to the questions of law or fact raised by the claims of each Class Member, and those issues are common as to all Members of the Class.

58. Common questions affecting individual Class Members include:

- a. Cheney Brothers' policies and practices regarding weighing and packing Poultry merchandise for delivery to customers;
- b. Cheney Brothers' policies and practices for representing the Poultry's weight to the Plaintiff and Class members;
- c. Cheney Brothers' policies and practices for representing the Poultry's weight by its sales staff to the Plaintiff and Class members;
- d. Cheney Brothers' policies and practices for representing the Poultry's weight on the invoices given to the Plaintiff and Class members;
- e. Whether Cheney Brothers' acceptance of payment for the invoiced amount estops it from challenging the Poultry's higher price per pound when compared to the amount stated on the invoice paid;
- f. Whether Cheney Brothers' conducted tests of on some or all of the Poultry for weight and water content to determine the accuracy of its invoices;
- f. Cheney Brothers' policies and practices regarding pricing Poultry merchandise and other Packaged Foods;
- g. Cheney Brothers' policies and practices regarding delivering Poultry merchandise to customers;
- h. Whether Cheney Brothers violated the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201;



- i. Whether Cheney Brothers' short-changing Plaintiff and Class Members Poultry deliveries constituted unfair, deceptive, and/or unconscionable conduct;
- j. Whether Cheney Brothers breached its contracts with Plaintiff and Class Members by shortchanging restaurant deliveries for Poultry the restaurants ordered;
- k. Whether Cheney Brothers breached its warranties regarding the Poultry net weight;
- l. Whether Cheney Brothers was unjustly enriched by shortchanging Poultry delivery weight and/or misstating the price paid for the net weight;
- m. Whether Plaintiff and Class Members sustained actual damages; and
- n. Whether Cheney Brothers should be enjoined from continuing to short consumers deliveries of the Poultry weight and/or misstating the Poultry net weight price on its invoices.

59. Similar or identical statutory and common law violations, business practices, and injuries are involved in this case. Individual questions, if any, pale by comparison, in both quantity and quality, to the numerous common questions that predominate this action.

60. **Typicality:** Plaintiff Salgiobria's claims are typical of the claims of the other members of the Class. Plaintiff's claims and injuries arise from substantially uniform misconduct by Defendant. Plaintiff and other Class Members purchased and took delivery of Poultry from Cheney Brothers. Plaintiff advances the same claims and legal theories on behalf of itself and all other Class Members, and there are no defenses that are unique to Plaintiff. Plaintiff's claims and those of other Class Members arise from the same operative facts and are based on the same legal theories.

61. **Adequacy:** Plaintiff Salgiobria will adequately represent and protect the interests of each Class Member. Plaintiff is an adequate representative of the Class. Plaintiff's interests do not conflict with the interests of the other Class Members Plaintiff seeks to represent. Plaintiff has



retained counsel competent and experienced in complex class action litigation, and Class Counsel and Plaintiff will prosecute this action vigorously.

62. **Predominance:** Pursuant to Fla. R. Civ. P. 1.220(b)(3), Plaintiff states that questions of law and fact common to Class Members predominate, in both quantity and quality, over any questions affecting only individual Class Members, including legal and factual issues relating to liability and damages.

63. **Superiority:** A class action is superior to any other available means for the fair and efficient adjudication of this controversy. No unusual difficulties are likely to be encountered in the management of this matter as a class action. The damages, harm, or other financial detriment suffered individually by Plaintiffs and Class Members are relatively small compared to the burden and expense required by litigating their claims on an individual basis against Defendant, making it impracticable for Class Members to individually seek redress for Defendant's wrongful conduct. Even if Class Members could afford individual litigation, it would involve thousands of lawsuits and substantially burden the court system. Individualized litigation would create a potential for inconsistent or contradictory judgments and increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

64. Further, Defendant has acted or refused to act on grounds generally applicable to the Class and, accordingly, final injunctive or corresponding declaratory relief to Class Members as a whole is appropriate.

## CAUSES OF ACTION

### COUNT I

#### DECEPTIVE AND UNFAIR TRADE PRACTICES ACT - DECEPTION

65. Plaintiff realleges the allegations contained in each paragraph above, as if fully set forth herein.

66. The Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.*, ("FDUTPA") protects "the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive or unfair acts or practice in the conduct of any trade or commerce." Fla. Stat. § 501.202(2). FDUTPA is a remedial statute that protects against practices that are immoral, unethical, oppressive, unscrupulous, or that substantially injure consumers, and intends to make consumers whole for losses caused by fraudulent consumer practices.

67. Plaintiff is a "consumer" as defined by Florida Statute § 501.203(7). FDUTPA explicitly and expansively defines a statutory "consumer" to include businesses like Plaintiff:

"Consumer" means an individual; child, by and through its parent or legal guardian; business; firm; association; joint venture; partnership; estate; trust; business trust; syndicate; fiduciary; corporation; any commercial entity, however denominated; or any other group or combination. Fla. Stat. § 501.203(7).

In this case, Plaintiff acted as a consumer because it bought from Defendant, and paid for, Packaged Foods, consisting of Poultry, as described further in this Complaint.

68. Plaintiff's subject transaction for Poultry is "trade or commerce" as defined by Florida Statute § 501.203(8). As defined by FDUTPA, "trade or commerce" includes soliciting, offering, distributing, by sale or otherwise, any good, service, or tangible or intangible property or commodity. *Id.* Defendant offered, sold, and distributed the Poultry, and other Packaged Foods, to Plaintiff and other buyers within the State of Florida, engaging in Florida trade and commerce.

69. Cheney Brothers violated FDUTPA because it delivered Poultry to Plaintiff that weighed less than Cheney Brothers represented, and contrary to how it represented the Poultry would be packaged and priced. Defendant represented it charged weight-based prices but delivered less weight than represented, without adjusting the price. Defendant thereby marketed and sold Packaged Foods at one price and weight but delivered less than sold, effectively increasing the price and engaging in an unlawful and deceptive practice in violation of FDUTPA, Fla. Stat. § 501.204.

70. Defendant's unfair and deceptive practice described in this Complaint deceived Plaintiff, and was likely to deceive members of the public (including Plaintiff and other Class Members) to their detriment, despite the buyers acting reasonably under the circumstances.

71. In committing the acts alleged above, Defendant engaged in unconscionable, deceptive, and unfair acts and practices by charging weight-based prices for the Poultry but delivering less weight than was promised without adjusting the price. Plaintiff and the Class were therefore damaged in the amount of the difference between what they paid for and what Defendant Cheney actually delivered. In committing the acts alleged above, Defendant engaged in unconscionable, deceptive, and unfair acts and practices by delivering less than it led buyers to believe they would receive, effectively charging higher prices but providing lower weights than promised and paid for.

72. Defendant's conduct is unconscionable, deceptive and unfair, since it is likely to, and did, mislead consumers acting reasonably under the circumstances. Plaintiff and Class Members, as consumers, used the carton weights, prices and values Defendant advertised and represented for financial forecasts, thus depriving Plaintiff and Class Members of the actual weights for which they ordered and paid.



73. Defendant's conduct directly and proximately caused harm to Plaintiff and Class Members because they were wrongfully deprived of the proper amount of Poultry for which they paid. The Packaged Foods Plaintiff and Class Members received had less value as delivered than the supposed goods Defendant represented it would provide.

74. Plaintiff reserves the right to allege other violations of FDUTPA as discovery unfolds and as Defendant's conduct remains ongoing.

75. As a direct and proximate result of the unconscionable, unfair, and deceptive acts or practices alleged herein, Defendant has damaged Plaintiff, who has been damaged and is entitled to recover actual damages, to the extent permitted by law, pursuant to Florida Statutes § 501.211, in an amount to be proven at trial. In addition, pursuant to Florida Statutes § 501.211, Plaintiff seeks equitable relief and to enjoin Defendant on terms the Court considers reasonable. Plaintiff also seeks reasonable attorneys' fees and costs, as prescribed by § 501.211(2) Florida Statutes.

**COUNT II**  
**DECEPTIVE AND UNFAIR TRADE PRACTICES ACT - UNFAIRNESS**

76. Plaintiff realleges the allegations contained in paragraphs 1 through 62 above, as if fully set forth herein.

77. Plaintiff is a "consumer" as defined by Florida Statute § 501.203(7). FDUTPA explicitly and expansively defines a statutory "consumer" to include businesses like Plaintiff:

"Consumer" means an individual; child, by and through its parent or legal guardian; business; firm; association; joint venture; partnership; estate; trust; business trust; syndicate; fiduciary; corporation; any commercial entity, however denominated; or any other group or combination. Fla. Stat. § 501.203(7).

In this case, Plaintiff acted as a consumer because it bought from Defendant, and paid for, Packaged Foods, consisting of Poultry, as described further in this Complaint.

78. Plaintiff's subject transaction for Poultry is "trade or commerce" as defined by Florida Statute § 501.203(8). As defined by FDUTPA, "trade or commerce" includes soliciting, offering, distributing, by sale or otherwise, any good, service, or tangible or intangible property or commodity. *Id.* Defendant offered, sold, and distributed the Poultry, and other Packaged Foods, to Plaintiff and other buyers within the State of Florida, engaging in Florida trade and commerce.

79. Cheney Brothers violated FDUTPA through its Shorting Practice, as described in this Complaint. Cheney Brothers Shorting Practice violated FDUTPA because it delivered Poultry to Plaintiff that weighed less than Cheney Brothers represented, and contrary to how it represented the Poultry would be packaged and priced. Defendant used its commercial experience and other commercial advantages in an inequitable manner, representing it charged weight-based prices but delivering less weight than represented, without adjusting the price. Defendant thereby marketed and sold Packaged Foods at one price and weight but delivered less than sold, engaging in an unfair, unethical, and unscrupulous practice in violation of FDUTPA, Fla. Stat. § 501.204.

80. Defendant Cheney's Shorting Practice caused substantial harm to Plaintiff and other Poultry buyers, consisting of increased costs for chicken previously bargained for, short deliveries of chicken previously bargained for, and the loss of certainty of Poultry as Plaintiff and other buyers had budgeted and planned for and thought they had ordered. These concrete costs were substantial due to their ongoing and class-wide basis.

81. Defendant Cheney's Shorting Practice did not produce any countervailing benefits to consumers. The missing Poultry was not accompanied by any consumer's savings, because Defendant charged the full price per pound, and did not provide any increase in service or product quality.

82. Plaintiff and other buyers could not avoid being harmed by Defendant's Shorting Practice. First, the contract created by the invoices described above contained no warning Defendant would deliver less chicken than agreed by the parties. Second, Defendant withheld or failed to generate critical price or performance data, leaving buyers with insufficient information or basis for informed comparison shopping. In combination with that material omission of information, Defendant's conduct in manipulating its deliveries unreasonably created or takes advantage of the hidden nature of the delivery being short, an obstacle to a buyer's free exercise of consumer decision-making.

83. Defendant's Shorting Practice violates public policy because it violates generally recognized business ethics and reasonable product delivery principles. Defendant's violation conferred an unfair cost advantage on Defendant in comparison to the cost of ethical, full-weighted deliveries by any rival distributors that live up to their promises.

84. Defendant's unfair and deceptive practices described in this Complaint were unfair to Plaintiff, other Class Members, and other members of the public, despite the buyers acting reasonably under the circumstances.

85. In committing the acts alleged above, Defendant engaged in unfair acts and practices by charging weight-based prices for the Poultry but delivering less weight than was promised without adjusting the price. Plaintiff and the Class were therefore damaged in the amount of the difference between what they paid for and what Defendant Cheney actually delivered. Defendant's acts and practices were also unfair in delivering less than Defendant led buyers to believe they would receive, because Defendant effectively charged a higher price but provided lower weights than promised and paid for.



86. Defendant's conduct is unfair within FDUTPA's meaning, since it is likely to, and did, take advantage of consumers acting reasonably under the circumstances. Plaintiff and Class Members, as consumers, used the carton weights, prices and values Defendant advertised and represented for financial forecasts, thus depriving Plaintiff and Class Members of the actual weights for which they ordered and paid.

87. Defendant's conduct directly and proximately caused harm to Plaintiff and Class Members because they were wrongfully deprived of the proper amount of Poultry for which they paid. The Packaged Foods Plaintiff and Class Members received had less value as delivered than the supposed goods Defendant represented it would provide.

88. Plaintiff reserves the right to allege other violations of FDUTPA as discovery unfolds and as Defendant's conduct remains ongoing.

89. As a direct and proximate result of the unconscionable and unfair acts or practices alleged herein, Defendant has damaged Plaintiff, who has been damaged and is entitled to recover actual damages, to the extent permitted by law, pursuant to Florida Statutes § 501.211, in an amount to be proven at trial. In addition, pursuant to Florida Statutes § 501.211, Plaintiff seeks equitable relief and to enjoin Defendant on terms the Court considers reasonable. Plaintiff also seeks reasonable attorneys' fees and costs, as prescribed by § 501.211(2) Florida Statutes.

### **COUNT III BREACH OF CONTRACT**

90. Plaintiff realleges the allegations contained in the paragraphs 1 through 62 above, as if fully set forth herein.

91. Plaintiff, like other Class Members, entered into a contract with Cheney Brothers for the purchase of various goods for eventual resale to consumers through Plaintiff's restaurant operation. Specifically, Plaintiff entered into a supply agreement with Defendant that provided



for pricing to be based on a fee per pound. Plaintiff and Cheney Brothers agreed that Cheney Brothers would set the price per actual pound. Cheney Brothers was obligated to set this price per pound in good faith, using the actual weight of the delivery. This price per actual pound was to be the true price under the agreement. The parties agreed the price per pound and number of pounds of poultry would be accurately stated on an invoice for each shipment. Copies of invoices are attached as Exhibits 1 to 4 of this Complaint. As part of these contracts, Plaintiff and the Class Members purchased Packaged Foods including Poultry from Defendant. However, despite having agreed to deliver and charge based on specified weights, Cheney Brothers delivered lower weights while simultaneously charging for the original higher weights. For example, a Cheney Brothers sale promised and charged for 40 pound cases of chicken breasts, each containing four 10 pound bags, but the carton's bag after thawing weighed only 9.475 pounds, indicating 37.5 pounds of chicken for each purportedly 40 pound case. Even after allowing 2 percent for fluids, each case would be short 1.3 pounds, and the five cases ordered on that occasion would be short 6.5 pounds, or \$8.00 worth of chicken. Plaintiff paid Cheney Brothers' inflated prices for the Poultry as charged in Cheney Brothers' invoice.

92. Defendant materially breached its contract with Plaintiff and Class Members when it delivered less Poultry than promised, but charged and collected a sum of money for Poultry as Cheney represented and as the parties had contractually agreed. Plaintiff and Class Members have sustained damages consisting of the difference in price between what was purchased and what should have been delivered. Cheney Brothers' breach of the agreement directly caused said overpayment.

93. Plaintiff received and accepted the Packaged Foods, including the deficient Poultry deliveries. Plaintiff paid Cheney Brothers' inflated invoice for the goods, and Cheney Brothers

accepted Plaintiffs' payment. Plaintiff overpaid because Cheney Brothers' inflated invoice did not reflect the true price under the agreement. Plaintiff notified his Cheney Brothers sales representative, Robert S. Sheffield, on several occasions by telephone and in person, of Cheney Brothers' breach of contract, all of which preceded the filing of this Complaint.

94. By and through the conduct alleged herein, Defendant has received, had use of, and accrued interest on these funds wrongfully obtained from Plaintiff and other Class Members.

95. Defendant directly and proximately caused harm to Plaintiff by delivering less Poultry than the parties had agreed on, and less than Plaintiff paid for because of Defendant's improper Shorting Practices. Accordingly, Plaintiff, like other Class Members, has suffered pecuniary harm as a direct and proximate result of Defendant's conduct. Plaintiff and other Class Members also have and will sustain incidental damages for inspection and analysis of Cheney Brothers' deliveries.

**COUNT IV  
BREACH OF WARRANTY**

96. Plaintiff realleges the allegations contained in the paragraphs 1 through 62 above, as if fully set forth herein.

97. Plaintiff, like other Class Members, entered into a contract with Defendant Cheney Brothers for the purchase of various Packaged Foods for eventual resale to consumers through Plaintiff's restaurant business. Specifically, Plaintiff entered into a supply agreement with Defendant that provided for pricing to be based on a fee per pound. Plaintiff and Cheney Brothers agreed that Cheney Brothers would set the price per actual pound. Cheney Brothers was obligated to set this price per pound in good faith, using the actual weight of the delivery. This price per actual pound was to be the true price under the agreement.

98. Accordingly, the parties completed a sale of goods from Defendant to Plaintiff, and Defendant made sales of goods to other Class Members. Since Cheney Brothers communicated directly to Plaintiff and other Class Members, and Plaintiff, like other Class Members, purchased Packaged Foods directly from Cheney Brothers, the parties were in privity for these transactions.

99. Cheney Brothers' statements, and particularly its invoices, affirmed the purported fact that a particular delivery would include a stated amount of Poultry, with the net weight accurately stated on the invoice. This affirmation of fact constituted an express warranty that Defendant's shipments included Poultry in the amounts stated by the literal net weight ordered and stated on the invoice. Plaintiff relied on and accepted these warranties in the order agreements and invoices, making them part of the basis of Plaintiff's bargain with Cheney Brothers. Accordingly, Cheney Brothers warranted that the delivered Poultry would conform to the weight of the Poultry per carton and in total, as literally agreed to and stated on the invoices.

100. As described herein, despite having agreed to deliver Packaged Foods, including the Poultry, based on accurate actual weights, Cheney Brothers delivered lower net weights than stated in its invoices, while simultaneously claiming and charging for a higher weight than it actually delivered to Plaintiff. Cheney Brothers materially breached its express warranty stated in this Count by delivering less Poultry than it promised and stated it was delivering.

101. Defendant was on notice of this breach since it kept track of its own invoices and Plaintiff's payments in Defendant's billing and accounting systems.

102. Plaintiff received and accepted the Packaged Foods, including the Poultry. Plaintiff paid Cheney Brothers' inflated invoice for the goods, and Cheney Brothers accepted Plaintiff's payment. Plaintiff overpaid because Cheney Brothers' delivery did not reflect the true weight, or the true price under the agreement. Plaintiff notified his Cheney Brothers sales representative,



Robert S. Sheffield, on several occasions by telephone and in person, of Cheney Brothers' breach of contract, all of which preceded the filing of this Complaint.

103. Defendant Cheney Brothers directly and proximately caused harm to Plaintiff Salgiobria by delivering less Poultry than the parties had agreed on, and less than Plaintiff paid for because of Defendant's improper Shorting Practice. Accordingly, Plaintiff, like other Class Members, has suffered pecuniary harm as a direct and proximate result of Defendant's conduct. Plaintiff, like other Class Members, is entitled as damages to the difference between the value of the goods as accepted and the value as they would have had if they had been as warranted. Plaintiff and other Class Members also have and will sustain incidental damages for inspection and analysis of Cheney Brothers' deliveries.

**COUNT V  
UNJUST ENRICHMENT**

104. Plaintiff realleges the allegations contained in the paragraphs 1 through 62 above, as if fully set forth herein.

105. Alternatively to Counts III and IV, Plaintiff pleads this claim for unjust enrichment in case the Court finds Plaintiff had no cognizable contract with Cheney Brothers, or that such a contract is unlawful.

106. Plaintiff entered into a supply agreement with Defendant that Plaintiff understood meant Cheney Brothers would deliver Packaged Foods, including Poultry, based on an actual net weight, and price per pound of Poultry, net weight. Plaintiff and Cheney Brothers agreed that Cheney Brothers would fix the price per actual pound, which Cheney Brothers was obligated to set in good faith, using the actual net weight of the delivery, as literally stated in the invoices. Cheney Brothers' statements, and particularly its invoices, affirmed the purported fact that a

particular delivery would include a stated amount of Poultry, with the net weight accurately stated on the invoice. Plaintiff relied on and accepted the literal weights stated in the invoices.

107. Instead, despite having agreed to charge for the Packaged Foods, including the Poultry, based on accurate weights, Cheney Brothers delivered lower weights than stated in its invoices, while simultaneously claiming and charging for a higher weight than it actually delivered to Plaintiff. Plaintiff paid Cheney Brothers' inflated invoice for the goods, and Cheney Brothers accepted Plaintiff's payment. Plaintiff overpaid because Cheney Brothers' inflated invoice did not reflect the true price under the agreement as represented and as Plaintiff understood the agreement and the invoices. Plaintiff thereby conferred a benefit on Defendant.

108. Cheney Brothers knowingly and voluntarily accepted and retained Plaintiff's overpayment, and has kept track of Plaintiff's payments in its billing system. Cheney Brothers has retained the resulting benefits of payments, being profits and use of those funds, with full knowledge and awareness that, as a result of Cheney Brothers misstatements, Plaintiff did not receive the full amount of product that Cheney Brothers represented and that Plaintiff, like other Class Members, reasonably expected.

109. Defendant has been unjustly enriched by its unfair and deceptive retention and withholding of benefits from Plaintiff and the Class, at the expense of Plaintiff and the Class. Under the circumstances, it would be inequitable for Cheney Brothers to retain the benefit without paying for it.

110. Plaintiff and the Class seek the disgorgement and restitution of Defendant's wrongful profits, revenue and benefits, plus interest, to the extent and in the amount deemed appropriate by the Court. Plaintiff requests such other relief as the Court deems just and proper to remedy Defendant's unjust enrichment.



### REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of Class Members proposed in this Complaint, respectfully requests the Court enter judgment in Plaintiff's and other Class Members' favor and against Defendant as follows:

- A. For an Order certifying the proposed Class, and appointing Plaintiff and Plaintiff's Counsel to represent the Class;
- B. For an Order permanently enjoining Defendant from its improper conduct and practices as alleged herein;
- C. For a judgment awarding Plaintiff and Class Members damages, including, without limitation, the sums overpaid for the deficient deliveries of Packaged Foods, with interest, as a result of Defendant's breach of contract, unfair, deceptive, and unconscionable business practices and conduct;
- D. For an award of costs of suit and attorneys' fees, costs, and expenses, as allowable by law, including Fla. Stat. § 501.211(2); and
- E. For such other and further relief as this Court may deem just and proper.

### JURY TRIAL DEMAND

Plaintiff hereby demands trial by jury of all claims in this Class Action Complaint so triable.

Dated: August 24, 2021

**CAMPBELL LAW**

By: /s/ D. Michael Campbell  
D. Michael Campbell (FL Bar No. 650188)  
PO Box 24358  
Lakeland, FL 33802-4358  
Telephone: 863-227-4315  
[dmcampbell@campbelllaw.com](mailto:dmcampbell@campbelllaw.com)

**LOCKRIDGE GRINDAL NAUEN P.L.L.P.**

Robert K. Shelquist, (MN Bar No. 21310X) (*pro hac vice to be filed*)

Rebecca A. Peterson, (MN Bar No.392663) (*pro hac vice to be filed*)

Craig S. Davis (MN Bar No. 14892) (*pro hac vice to be filed*)

100 Washington Ave. S., Suite 2200

Minneapolis, MN 55401

Telephone: 612-339-6900

[rkshelquist@locklaw.com](mailto:rkshelquist@locklaw.com)

[rapeterson@locklaw.com](mailto:rapeterson@locklaw.com)

[csdavis@locklaw.com](mailto:csdavis@locklaw.com)

**MILLER SHAH LLP**

James Shah (*pro hac vice to be filed*)

1845 Walnut Street, Suite 806

Philadelphia, PA 19103

Telephone: (866) 540-5505

[jcshah@millershah.com](mailto:jcshah@millershah.com)

**MILLER SHAH LLP**

Nathan C. Zipperian (FL Bar No. 61525)

1625 N. Commerce Parkway, Suite 320

Ft. Lauderdale, FL 33326

Telephone: (866) 540-5505

[nczipperian@millershah.com](mailto:nczipperian@millershah.com)

**Attorneys for Plaintiff**

# EXHIBIT 1

NOT A CERTIFIED COPY



# Cheney and Brothers

[illegible][illegible]

## EXHIBIT 2

NOT A CERTIFIED COPY

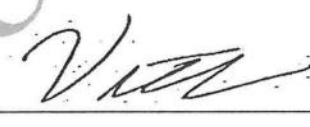


# Cheney Brothers

One Cheney Way, Punta Gorda, FL 33982, Phone: (561) 845-4700

Customer # XXXXXXXXXX  
 DI MAGGIOS ITALIAN RESTAURANT  
 6980 CYPRESS GARDENS BLVD  
 WINTER HAVEN, FL 33884-3525  
 8632939200

Invoice # 06-920440859  
 Route # 6014  
 Stop # 11  
 Delivery Date: 01/09/2021  
 Delivery Time: 11:35 AM  
 Driver: XXXXXXXXXX  
 Date Due: 01/14/2021  
 Page Count: 1 of 2

| Terms      |       | Tax ID  |          | Sales Representative |                    |        | P.O. #  |
|------------|-------|---|----------|----------------------|--------------------|--------|---------|
| 1 WK DUE T |       | <span style="background-color: black; color: black;">XXXXXXXXXX</span>                                      |          | ROBERT S SHEFFIELD   |                    |        |         |
| Ln         | Cs/PK | Item  | Brand    | PK-Size              | Description        | Price  | Amount  |
| 20         | 4     | 10011801  | STAR     | 001/25               | PIZZA BOX 28" RED  | 54.95  | 219.80  |
|            | 1     | *- 10011801   | STAR     | 001/25               | PIZZA BOX 28" RED  |        | *-OUT-* |
|            |       | 5 CS SHORTED BY 1 CS  |          |                      |                    |        |         |
| **         | 4     | SUB TOTAL FOR: 01-DRY GOODS   |          |                      |                    |        | 219.80  |
| 40         | 2     | 172012  | FRONTE   | 006/3                | CHEESE RICOTTA WH0 | 28.89  | 57.78   |
| 50         | 1     | 432410  | CBI      | 001/25               | EGGPLANT FANCY 25  | 22.79  | 22.79   |
| **         | 3     | SUB TOTAL FOR: 02-COOLER  |          |                      |                    |        | 80.57   |
| 10         | 20    | 231061  | AMICK    | 004/10               | CHIX WING CUT JUMB |        |         |
|            |       |   |          |                      | TOT WT: 800.00     | 2.09   | 1672.00 |
| 30         | 1     | 10009961  | HATFIELD | 002/11               | HAM BUFFET STYLE 9 |        |         |
|            |       |   |          |                      | TOT WT: 16.42      | 2.19   | 35.96   |
| **         | 21    | SUB TOTAL FOR: 03-FREEZER   |          |                      |                    |        | 1707.96 |
|            |       | 01-DRY GOODS  |          | 219.80               | 03-FREEZER         |        | 1707.96 |
|            |       | 02-COOLER   |          | 80.57                |                    |        |         |
| Total      |       | Received By:  |          |                      |                    | Tax Rt | N/A     |
| 28         | 0     | <br>Printed Name: Victor |          |                      |                    | Tax    |         |
|            |       |   |          |                      |                    | Total  | 2008.33 |
|            |       |   |          |                      |                    | Due    | 2008.33 |
|            |       |   |          |                      |                    | OnAcct | 2008.33 |

# Cheney Brothers

One Cheney Way , Punta Gorda, FL 33982, Phone= (561) 845-4700

Customer # XXXXXXXXXX  
 DI MAGGIOS ITALIAN RESTAURANT  
 6980 CYPRESS GARDENS BLVD  
 WINTER HAVEN, FL 33884-3525  
 8632939200

Invoice # 06-920440859  
 Route # 6014  
 Stop # 11  
 Delivery Date: 01/09/2021  
 Delivery Time: 11:35 AM  
 Driver: XXXXXXXXXX  
 Date Due: 01/14/2021  
 Page Count: 2 of 2

|            |        |                      |                    |         |             |       |        |
|------------|--------|----------------------|--------------------|---------|-------------|-------|--------|
| Terms      | Tax ID | Sales Representative |                    | P.O. #  |             |       |        |
| 1 WK DUE T |        |                      | ROBERT S SHEFFIELD |         |             |       |        |
| Ln         | Cs/PK  | Item                 | Brand              | PK-Size | Description | Price | Amount |

\*\*\*\*\* THANK YOU FOR YOUR BUSINESS! \*\*\*\*\*

BY SIGNING THIS INVOICE BUYER ACKNOWLEDGES THAT THE ABOVE MERCHANDISE HAS BEEN RECEIVED, IN GOOD CONDITION, UNLESS OTHERWISE NOTED ON THE "DELIVERY COPY".

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

Buyer agrees to pay all of seller's costs of collection of amounts due hereunder and enforcement of seller's PACA trust rights, including reasonable attorneys' fees in all such proceedings. Interest will accrue on any past-due balance at the rate of 1 1/2 % per month (18% per year) or the maximum rate of interest allowable by law. Seller reserves the right to retake possession of products until amounts due are paid in full. Prices reflected on this invoice may be subject to promotional allowances, volume discounts, corporate rebates or other programs.

Please contact your Salesperson, 06981 ROBERT S SHEFFIELD, if you have any questions.

NOT A

## EXHIBIT 3

NOT A CERTIFIED COPY



## EXHIBIT 4

NOT A CERTIFIED COPY



6:49



Done 2021\_03649301\_06-9...



# Cheney Brothers

One Cheney Way, Punta Gorda, FL 33982, Phone: (561) 845-4700

Customer # [REDACTED]  
 GIOVANNIS NEW YORK PIZZA  
 6959 CYPRESS GARDEN BLVD  
 WINTER HAVEN, FL 33864-3572  
 8633249100

Invoice # 06-920783697  
 Route # 2021  
 Stop # 14  
 Delivery Date: 03/16/2021  
 Delivery Time: 12:26 PM  
 Driver: [REDACTED]  
 Date Due: 03/25/2021  
 Page Count: 1 of 2

| Terms      | Tax ID | Sales Representative | P.O. # |
|------------|--------|----------------------|--------|
| 1 WK DUE T |        | ROBERT S SHEFFIELD   |        |

| Ln    | Cs/PK | Item                      | Brand    | PK-Size | Description        | Price | Amount |        |
|-------|-------|---------------------------|----------|---------|--------------------|-------|--------|--------|
| 40    | 1     | 436215                    | CBI      | 030/1   | LETTUCE ICEBERG WR | 27.96 | 27.96  |        |
| 50    | 1     | 438040                    | CBI      | 012/10  | SPINACH CALIFORNI  | 26.59 | 26.59  |        |
| 60    | 1     | 466035                    | CBI      | 001/25  | TOMATOES ROMA GRAD | 19.89 | 19.89  |        |
| **    | 3     | SUB TOTAL FOR: 02-COOLER  |          |         |                    |       |        | 74.44  |
| 10    | 5     | 10059700                  | CHIX CHO | 004/10  | CHIX BREAST RANDOM |       |        |        |
|       |       |                           |          |         | 40.00 40.00 40.00  |       |        |        |
|       |       |                           |          |         | 40.00 40.00        |       |        |        |
|       |       |                           |          |         | TOT WT: 200.00     | 1.23  | 246.00 |        |
| 20    | 2     | 10106411                  | AGRO     | 004/10  | CHIX BREAST FILET  |       |        |        |
|       |       |                           |          |         | 40.00 40.00        |       |        |        |
|       |       |                           |          |         | TOT WT: 80.00      | 1.24  | 99.20  |        |
| 30    | 1     | 204110                    | IBP      | 006/10  | BEEF GROUND FROZEN |       |        |        |
|       |       |                           |          |         | TOT WT: 61.10      | 1.74  | 106.31 |        |
| 70    | 2     | 312060                    | V D FRAN | 042/5.7 | ROLL MILANO SUB 12 | 37.64 | 75.28  |        |
| **    | 10    | SUB TOTAL FOR: 03-FREEZER |          |         |                    |       |        | 526.79 |
|       |       | 02-COOLER                 |          | 74.44   | 03-FREEZER         |       | 526.79 |        |
|       |       |                           |          |         |                    |       |        |        |
| Total |       | Received By:              |          |         |                    |       | Tax Rt | N/A    |
| 13    | 0     |                           |          |         |                    |       | Tax    |        |
|       |       |                           |          |         |                    |       | Total  | 601.23 |
|       |       |                           |          |         |                    |       | Due    | 601.23 |
|       |       | Printed Name: Kelly       |          |         |                    |       | OnAcct | 601.23 |

**JOSEPH ABRUZZO**CLERK OF THE CIRCUIT COURT & COMPTROLLER  
PALM BEACH COUNTY, FLORIDA**RECEIPT**

4154055

Printed On:  
08/26/2021 08:40  
Page 1 of 1

|  |  |                           |                      |
|--|--|---------------------------|----------------------|
| <b>Receipt Number: 4154055 - Date 08/26/2021 Time 8:39AM</b>                               |  |                           |                      |
| <b>Received of:</b>  | D. Michael Campbell, Esq., Campbell Law<br>PO Box 24358<br>Lakeland, FL 33802-4358 |                           |                      |
| <b>Cashier Name:</b>   | ADMIN  | <b>Balance Owed:</b>      | 411.00               |
| <b>Cashier Location:</b>   | E-Filing   | <b>Total Amount Paid:</b> | 411.00               |
| <b>Receipt ID:</b>   | 10491649   | <b>Remaining Balance:</b> | 0.00                 |
| <b>Division:</b>   | AF: Circuit Civil Central - AF(Civil)  |                           |                      |
| <b>Case# 50-2021-CA-010078-XXXX-MB -- PLAINTIFF/PETITIONER: SALGIOBRIA ENTERPRISES LLC</b> |  |                           |                      |
| <b>Item</b>  | <b>Balance</b>   | <b>Paid</b>               | <b>Bal Remaining</b> |
| Fees   | 411.00   | 411.00                    | 0.00                 |
| <b>Case Total</b>  | <b>411.00</b>  | <b>411.00</b>             | <b>0.00</b>          |
| <b>Payments</b>  |  |                           |                      |
| <b>Type</b>  | <b>Ref#</b>  | <b>Amount</b>             |                      |
| EFiling_ACH  | 32168234   | 411.00                    |                      |
| <b>Total Received</b>  |  | <b>411.00</b>             |                      |
| <b>Total Paid</b>  |  | <b>411.00</b>             |                      |

How was your service today? Please visit [www.mypalmbeachclerk.com/survey](http://www.mypalmbeachclerk.com/survey) or send your feedback to [clerkweb@mypalmbeachclerk.com](mailto:clerkweb@mypalmbeachclerk.com).

For office locations and information about Clerk & Comptroller services:  
Visit [www.mypalmbeachclerk.com](http://www.mypalmbeachclerk.com) or call (561) 355-2996.

Filing # 133290544 E-Filed 08/24/2021 12:37:31 PM

**FORM 1.997. CIVIL COVER SHEET**

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner with the Clerk of Court for the purpose of reporting uniform data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

**I. CASE STYLE**

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA

Salgiobria Enterprises LLC  
Plaintiff

Case # \_\_\_\_\_  
Judge \_\_\_\_\_

vs.  
Cheney Brothers Inc  
Defendant

**II. AMOUNT OF CLAIM**

Please indicate the estimated amount of the claim, rounded to the nearest dollar. The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose.

- ☐ \$8,000 or less
- ☐ \$8,001 - \$30,000
- ☐ \$30,001- \$50,000
- ☐ \$50,001- \$75,000
- ☐ \$75,001 - \$100,000
- ☒ over \$100,000.00

**III. TYPE OF CASE**

(If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x on both the main category and subcategory lines.

## CIRCUIT CIVIL

- ☐ Condominium
- ☐ Contracts and indebtedness
- ☐ Eminent domain
- ☐ Auto negligence
- ☒ Negligence—other
  - ☐ Business governance
  - ☐ Business torts
  - ☐ Environmental/Toxic tort
  - ☐ Third party indemnification
  - ☐ Construction defect
  - ☒ Mass tort
  - ☐ Negligent security
  - ☐ Nursing home negligence
  - ☐ Premises liability—commercial
  - ☐ Premises liability—residential
- ☐ Products liability
- ☐ Real Property/Mortgage foreclosure
  - ☐ Commercial foreclosure
  - ☐ Homestead residential foreclosure
  - ☐ Non-homestead residential foreclosure
  - ☐ Other real property actions
- ☐ Professional malpractice
  - ☐ Malpractice—business
  - ☐ Malpractice—medical
  - ☐ Malpractice—other professional
- ☐ Other
  - ☐ Antitrust/Trade regulation
  - ☐ Business transactions
  - ☐ Constitutional challenge—statute or ordinance
  - ☐ Constitutional challenge—proposed amendment
  - ☐ Corporate trusts
  - ☐ Discrimination—employment or other
  - ☐ Insurance claims
  - ☐ Intellectual property
  - ☐ Libel/Slander
  - ☐ Shareholder derivative action
  - ☐ Securities litigation
  - ☐ Trade secrets
  - ☐ Trust litigation

## COUNTY CIVIL

- ☐ Small Claims up to \$8,000
- ☐ Civil
- ☐ Real property/Mortgage foreclosure



- ☐ Replevins
- ☐ Evictions
  - ☐ Residential Evictions
  - ☐ Non-residential Evictions
- ☐ Other civil (non-monetary)

#### COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes ☒ No ☐

**IV. REMEDIES SOUGHT (check all that apply):**

- ☒ Monetary;
- ☒ Nonmonetary declaratory or injunctive relief;
- ☐ Punitive

**V. NUMBER OF CAUSES OF ACTION: [ ]**

(Specify)

5

**VI. IS THIS CASE A CLASS ACTION LAWSUIT?**

- ☒ yes
- ☐ no

**VII. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?**

- ☒ no
- ☐ yes If "yes," list all related cases by name, case number, and court.

**VIII. IS JURY TRIAL DEMANDED IN COMPLAINT?**

- ☒ yes
- ☐ no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature: s/ D. Michael Campbell  
Attorney or party

Fla. Bar # 650188  
(Bar # if attorney)

D. Michael Campbell  
(type or print name)

08/24/2021  
Date



Filing # 133290544 E-Filed 08/24/2021 12:37:31 PM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

Salgiobria Enterprises, LLC, a Florida  
limited liability company, on behalf of itself  
and those similarly situated,

Case No.:

Plaintiff,

v.

Cheney Brothers, Inc., a Florida corporation

Defendant.

SUMMONS

THE STATE OF FLORIDA:

To all and singular the Sheriffs of the State:

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

**CHENEY BROTHERS, INC.**  
c/o Rachele R. McBride, Registered Agent  
One Cheney Way  
Riviera Beach, FL 33404

The Defendant is hereby required to serve written defenses to said  
Complaint on D. Michael Campbell, Esquire, of Campbell Law, Post Office Box  
24358, Lakeland, Florida 33802-3458, within twenty (20) days after service of this  
Summons and the Complaint on Defendant, exclusive of the day of service, and to  
file the original of said written defenses with the clerk of this court either before  
service on Plaintiffs attorney or immediately thereafter. If Defendant fails to do  
so, a default will be entered against that Defendant for the relief demanded in the  
Complaint.

**PLAINTIFF'S ATTORNEY**  
**D. MICHAEL CAMPBELL, Esq.**  
Florida Bar No. 0650188  
CAMPBELL LAW  
PO Box 24358  
Lakeland, FL 33802-3458  
(863) 227-4315

DATED ON Aug 26 2021, 2021.



Joseph Abruzzo  
As Clerk of the Court

By: Janis Sustache

As Deputy Clerk

Janis Sustache

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: STANDING ORDER FOR  
CASE MANAGEMENT FOR SUBMISSION  
OF AGREED CASE MANAGEMENT PLAN FOR  
CASES FILED ON OR AFTER APRIL 30, 2021

---

**STANDING ORDER FOR CASE MANAGEMENT AND SUBMISSION OF AGREED  
CASE MANAGEMENT PLAN IN CIVIL CASES  
IN THE FIFTEENTH JUDICIAL CIRCUIT FILED ON OR AFTER APRIL 30, 2021  
(DCMSO)**

Pursuant to Florida Rule of Civil Procedure 1.200(a), Florida Rule of General Practice and Judicial Administration 2.545, and Administrative Order 3.107 entered by the Chief Judge of this Circuit, the parties are informed of the following information and procedures applicable to civil lawsuits filed in the Circuit Court on or after April 30, 2021:

1. **SERVICE OF THIS ORDER.** The Plaintiff is directed to serve a copy of this Order with each Summons issued in this case. One copy of this Order is to be filed with the Clerk of the Circuit Court with proof of service.

2. **CIVIL CASE MANAGEMENT SYSTEM.** The Supreme Court of Florida has established guidelines for the prompt processing and resolution of civil cases. This Court has adopted a case management system to help meet those guidelines. In contested cases, the parties are required to participate in the case management system. The case management system requires early consultation and cooperation among the parties for the preparation and submission of an Agreed Case Management Plan and early involvement by the Court. The Agreed Case Management Plan requires the parties to identify a case track, confer in good faith and attempt to narrow the matters in controversy, identify the issues that require direct involvement by the Court, and establish a schedule for addressing those issues<sup>1</sup>. The Agreed Case Management Plan may be accessed at the Court's website at: <https://15thcircuit.com/civil-differentiated-forms-and-orders>.

Unless all of the Defendants have been served and have been defaulted or dropped, an Agreed Case Management Plan must be submitted to the assigned divisional queue via the Court's online scheduling system (OLS) as an attachment, in PDF format, to a proposed Order Accepting Agreed Case Management Plan on or before 130 days from the date of filing of the initial complaint. If the parties are unable to agree on an Agreed Case Management Plan by the applicable deadline, a

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<sup>1</sup> Case Track options include Expedited, Streamlined, General, or Complex. Case Tracks have been established in order to comply with the case disposition standards set forth in Florida Rule of General Practice and Judicial Administration 2.250(a)(1)(B).

case management conference will be scheduled by the Court or the Court will review and issue an Order Implementing Case Management Plan without agreement of the Parties. No matters that arise as a result of this standing order, including lack of agreement, will be set on the Court's Uniform Motion Calendar and will, instead, be settled by the Court either at the case management conference or via an Order Implementing Case Management Plan without agreement of the parties. If a case management conference is scheduled, attendance by trial counsel and those parties who are not represented by counsel is mandatory.

If all Defendants are served and defaulted or dropped, the Plaintiff will file the appropriate documentation to pursue a Default Final Judgment within 130 days of the filing of the complaint and Final Judgment is to be entered or set for hearing within 150 days of the filing of the complaint.

3. MEDIATION/ALTERNATIVE DISPUTE RESOLUTION (ADR). ADR provides parties with an out-of-court alternative to settling disagreements. Mediation is a type of ADR wherein an independent third party attempts to arrange a settlement at a conference between the parties. The Court requires the parties to participate in Mediation prior to trial unless the parties agree to another form of ADR.

**DONE AND ORDERED** in Chambers at West Palm Beach, Palm Beach County, Florida, on this 26 day of April, 2021.



*[Signature]*  
15th JUDICIAL CIRCUIT  
ADMINISTRATIVE OFFICE OF THE COURT

Administrative Circuit Judge



\*\*\*\* CASE NUMBER: 502021CA010078XXXXMB Div: AF \*\*\*\*

Filing # 133290544 E-Filed 08/24/2021 12:37:31 PM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT

IN AND FOR PALM BEACH COUNTY, FLORIDA

Salgiobria Enterprises, LLC, a Florida  
limited liability company, on behalf of itself  
and those similarly situated,

Plaintiff,

v.

Cheney Brothers, Inc., a Florida corporation

Defendant.

Case No.: 50-2021-CA-010078-XXXX-MB AF

SUMMONS

THE STATE OF FLORIDA:  
To all and singular the Sheriffs of the State:

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

CHENEY BROTHERS, INC.  
c/o Rachele R. McBride, Registered Agent  
One Cheney Way  
Riviera Beach, FL 33404

The Defendant is hereby required to serve written defenses to said  
Complaint on D. Michael Campbell, Esquire, of Campbell Law, Post Office Box  
24358, Lakeland, Florida 33802-3458, within twenty (20) days after service of this  
Summons and the Complaint on Defendant, exclusive of the day of service, and to  
file the original of said written defenses with the clerk of this court either before  
service on Plaintiffs attorney or immediately thereafter. If Defendant fails to do  
so, a default will be entered against that Defendant for the relief demanded in the  
Complaint.

PLAINTIFF'S ATTORNEY  
D. MICHAEL CAMPBELL, Esq.

Florida Bar No. 0650188

Received 8/26/21 @ 5PM

CAMPBELL LAW

Served 8/27/21

PO Box 24358

Time 11:11 AM

Lakeland, FL 33802-3458

(863) 227-4315

BY handing to Robert C. Sheres, Esq. Deputy  
General Counsel

CPS #127

Joseph P. Marshall

1

DATED ON Aug 26 2021, 2021.



Joseph Abruzzo  
As Clerk of the Court

By: *Janis Sustache*  
As Deputy Clerk  
Janis Sustache

RETURN OF SERVICE

SALGIOBRIA ENTERPRISES, LLC, a  
FL limited liability company,  
on behalf of itself and those  
similarly situated,  
Plaintiff(s),

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT OF FLORIDA, IN  
AND FOR PALM BEACH COUNTY

502021CA010078XXXXMBAF  
Case Number

vs.

Summons, Administrative Order 3.107,  
Civil Cover Sheet and Class Action  
Complaint with Exhibits 1-4  
Document(s) served

CHENEY BROTHERS, INC., a  
Florida corporation  
Defendant(s)

D. MICHAEL CAMPBELL  
Attorney for Plaintiff

I, JOSEPH P. MARSHALL, received these documents on AUG. 26, 2021 at 5:00  
P.M. and served a true copy on the 27TH day of AUG., 2021, at 11:11 AM, by  
delivering same to the within named: CHENEY BROTHERS, INC. c/o RACHELE R.  
McBRIDE, as Registered Agent

CORPORATE SERVICE: by handing same to ROBERT C. SHERES, ESQUIRE as Deputy  
General Counsel authorized by R/A to accept service pursuant to F.S. 48.091  
with the date and hour of service endorsed thereon by me and informed  
said person of the contents therein, in compliance with state statutes  
at ONE CHENEY WAY, RIVIERA BEACH, PALM BEACH COUNTY, FL, 33404-7000.

**DESCRIPTION: WHITE MALE, 5'11" TALL, 175 LBS, 40-45 YEARS OLD, BLACK HAIR**

**COMMENTS: SERVER ARRIVED AT CHENEY BROTHERS, ASKED FOR MS. McBRIDE AND WAS  
ADVISED SHE WAS NOT AVAILABLE. SERVER ASKED FOR ALL OTHER LISTED OFFICERS  
AND DIRECTORS AND NONE WERE AVAILABLE. ATTORNEY SHERES CAME TO RECEPTION,  
IDENTIFIED HIMSELF AND STATED HE WAS AUTHORIZED BY THE REGISTERED AGENT TO  
ACCEPT SERVICE IN HER ABSENCE. SERVER IDENTIFIED HIMSELF, EXPLAINED  
PLEADINGS, ANSWERED ALL QUESTIONS AND LEFT PLEADINGS WITH ATTORNEY SHERES,  
IN THE ABSENCE OF ANY OTHER CORPORATE OFFICER OR DIRECTOR.**

I acknowledge that I am a Certified Process Server in good standing in the  
15<sup>TH</sup> Judicial Circuit, have no interest in the above action and that I am  
over the age of 18. Under penalty of perjury, I declare that I have read  
the foregoing and that the facts stated in it are true. No notary required  
pursuant to F.S. 92.525(2).

BY: 

JOSEPH P. MARSHALL, CPS#127  
PBC, 15TH JUDICIAL CIRCUIT  
DENNIS RICHMAN'S SERVICES  
4 NESHAMINY INTERPLEX DRIVE  
SUITE 108  
TREVOSSE, PA 19053  
JOB NO. 191191

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION

SALGIOBRIA ENTERPRISES, LLC,

Plaintiff,

v.

Case No.: 2021-CA-010078

CHENEY BROTHERS, INC.,

Defendant.

NOTICE OF APPEARANCE

David R. Wright of Carlton Fields, P.A. enter his appearance as counsel for Defendant Cheney Brothers, Inc. Undersigned counsel respectfully requests that copies of all future notices, pleadings, papers, and orders served or filed in this action be served upon him at the email addresses designated below:

David R. Wright

dwright@carltonfields.com (primary)  
lfuller@carltonfields.com (secondary)  
kdelvalle@carltonfields.com (secondary)

Respectfully submitted,

/s/ David R. Wright

Kevin P. McCoy  
Florida Bar No. 36225  
David R. Wright  
Florida Bar No. 119453  
Carlton Fields, P.A.  
4221 W. Boy Scout Blvd., Ste. 1000  
Tampa, FL 33607  
Tel: (813) 223-7000  
Fax: (813) 229-4133  
kmccoy@carltonfields.com  
dwright@carltonfields.com



*Attorneys for Defendant Cheney  
Brothers, Inc.*

**CERTIFICATE OF SERVICE**

I CERTIFY that on September 13, 2021. I filed the foregoing with the Clerk via the Clerk's E-Portal Filing System, which will send a true and correct copy to all counsel of record.

/s/ David R. Wright



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION

SALGIOBRIA ENTERPRISES, LLC,

Plaintiff,

v.

Case No.: 2021-CA-010078

CHENEY BROTHERS, INC.,

Defendant.

NOTICE OF APPEARANCE

Kevin P. McCoy of Carlton Fields, P.A. enter his appearance as counsel for Defendant Cheney Brothers, Inc. Undersigned counsel respectfully requests that copies of all future notices, pleadings, papers, and orders served or filed in this action be served upon him at the email addresses designated below:

Kevin P. McCoy

kmccoy@carltonfields.com (primary)  
lfuller@carltonfields.com (secondary)  
kdelvalle@carltonfields.com (secondary)

Respectfully submitted,

/s/ Kevin P. McCoy

Kevin P. McCoy  
Florida Bar No. 36225  
David R. Wright  
Florida Bar No. 119453  
Carlton Fields, P.A.  
4221 W. Boy Scout Blvd., Ste. 1000  
Tampa, FL 33607  
Tel: (813) 223-7000  
Fax: (813) 229-4133  
kmccoy@carltonfields.com  
dwright@carltonfields.com

*Attorneys for Defendant Cheney  
Brothers, Inc.*

**CERTIFICATE OF SERVICE**

I CERTIFY that on September 13, 2021. I filed the foregoing with the Clerk via the Clerk's E-Portal Filing System, which will send a true and correct copy to all counsel of record.

/s/ Kevin P. McCoy

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION

SALGIOBRIA ENTERPRISES, LLC,

Plaintiff,

v.

Case No.: 2021-CA-010078

CHENEY BROTHERS, INC.,

Defendant.

UNOPPOSED MOTION FOR EXTENSION OF TIME

Defendant Cheney Brothers, Inc. hereby moves for an extension of time to respond to the Complaint filed by Salgiobria Enterprises, LLC, and states as follows:

1. Salgiobria filed its Complaint on August 24, 2021.
2. Cheney Brothers was served process on August 26, 2021, making its response due September 15, 2021.
3. Cheney Brothers has retained undersigned counsel in connection with this litigation.
4. Undersigned counsel is diligently reviewing the Complaint, but is in need of a brief extension of time to and including October 1, 2021. This brief extension is needed in light of undersigned counsel's need to evaluate the Complaint and in light of conflicting deadlines and other professional obligations.
5. The requested extension of time is not made for the purpose delay.
6. Undersigned counsel has conferred with counsel for Salgiobria and is authorized to represent that this request is unopposed.

WHEREFORE, Cheney Brothers respectfully requests that the Court enter an order granting this motion and extending the time for Cheney Brothers to respond to the Complaint from September 15, 2021, to October 1, 2021.

Respectfully submitted,

/s/ Kevin P. McCoy

Kevin P. McCoy

Florida Bar No. 36225

David R. Wright

Florida Bar No. 119453

Carlton Fields, P.A.

4221 W. Boy Scout Blvd., Ste. 1000

Tampa, FL 33607

Tel: (813) 223-7000

Fax: (813) 229-4133

kmccoy@carltonfields.com

dwright@carltonfields.com

*Attorneys for Defendant Cheney  
Brothers, Inc.*

**CERTIFICATE OF SERVICE**

I CERTIFY that on September 14, 2021. I filed the foregoing with the Clerk via the Clerk's E-Portal Filing System, which will send a true and correct copy to all counsel of record.

/s/ Kevin P. McCoy

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION DIV: "AF"  
CASE NO.: 2021CA010078AXX

SALGIOBRIA ENTERPRISES, LLC,

Plaintiff,

vs.

CHENEY BROTHERS, INC.,


Defendant.

**AGREED ORDER GRANTING DEFENDANT'S  
UNOPPOSED MOTION FOR EXTENSION OF TIME**

THIS CAUSE is before the Court upon Defendant Cheney Brothers, Inc.'s Motion for Extension of Time to respond to the Complaint. The Court, having reviewed the Motion, having been advised that there is no opposition to the relief sought herein, and after being otherwise duly advised in the premises, it is hereby

**ORDERED and ADJUDGED** that Defendant Cheney Brothers, Inc.'s Unopposed Motion for Extension of Time is **GRANTED**. Defendant Cheney Brothers, Inc. shall respond to the Complaint by, and including, October 1, 2021.

**DONE and ORDERED** in Chambers, at West Palm Beach, Palm Beach County, Florida, this 14 day of September, 2021.

  
502021CA010078XXXXMB 09/14/2021  
John S. Kastrenakes - Circuit Judge

502021CA010078XXXXMB 09/14/2021  
John S. Kastrenakes  
Circuit Judge

COPIES:  
Counsel of Record



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CIVIL DIVISION

SALGIOBRIA ENTERPRISES, LLC,

Plaintiff,

v.

Case No.: 2021-CA-010078

CHENEY BROTHERS, INC.,

Defendant.

\_\_\_\_\_ /

**NOTICE OF FILING NOTICE OF REMOVAL OF CIVIL ACTION**

TO: Clerk of the Circuit Court of Palm Beach County, Florida:

You are hereby notified that Defendant Cheney Brothers, Inc. has on the 23rd of September, 2021, filed in the United States District Court for the Southern District of Florida a Notice of Removal to Federal Court of the above-entitled cause, a copy of which is attached hereto and made a part of the Notice to Clerk, for your information and guidance. This Notice serves to effect full removal of this case pursuant to 28 U.S.C. § 1446(d), thereby precluding this state court from proceeding further in this case, unless and until this case is remanded hereto by the United States District Court.

Respectfully submitted,

/s/ Kevin P. McCoy

Kevin P. McCoy  
Florida Bar No. 36225  
David R. Wright  
Florida Bar No. 119453  
Carlton Fields, P.A.  
4221 W. Boy Scout Blvd., Ste. 1000  
Tampa, FL 33607  
Tel: (813) 223-7000

Fax: (813) 229-4133  
kmccoy@carltonfields.com  
dwright@carltonfields.com

*Attorneys for Defendant Cheney Brothers,  
Inc.*

**CERTIFICATE OF SERVICE**

**I CERTIFY** that on September 23, 2021. I filed the foregoing with the Clerk via the Clerk's E-Portal Filing System, which will send a true and correct copy to all counsel of record.

/s/ Kevin P. McCoy

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Cheney Brothers' Poultry Deliveries Weigh Less than Customers Ordered, Paid For](#)

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