

LEE LITIGATION GROUP, PLLC

C.K. Lee (CL 4086)

Anne Seelig (AS 3976)

148 West 24th Street, Eighth Floor

New York, NY 10011

Tel.: 212-465-1188

Fax: 212-465-1181

Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SOLANGE TRONCOSO,

on behalf of herself and others similarly situated,

Plaintiff,

v.

TGI FRIDAY'S, INC.,
INVENTURE FOODS, INC., and
UTZ QUALITY FOODS, LLC.

Defendants.

Case No.: 19-cv-02735-KPF

**FIRST AMENDED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff SOLANGE TRONCOSO ("Plaintiff TRONCOSO," or "Plaintiff"), individually and on behalf of all other persons similarly situated, by and through her undersigned attorneys, pursuant to this Class Action Complaint against the Defendants, TGI FRIDAY'S, INC. ("Defendant TGIF," or "TGIF"), INVENTURE FOODS, INC. ("Defendant INVENTURE," or "INVENTURE"), and UTZ QUALITY FOODS, LLC ("Defendant UTZ," or "UTZ"), (collectively, "Defendants") alleges the following:

NATURE OF THE ACTION

1. This is a consumer protection action seeking redress for, and a stop to, Defendants' false and misleading business practices with respect to the marketing and sale of "TGI Fridays

Potato Skins” products.

2. These products include the following:

- a. “TGI Fridays Potato Skins Snacks—Bacon Ranch Flavor”;
- b. “TGI Fridays Potato Skins Snacks—Cheddar & Bacon Flavor”;
- c. “TGI Fridays Potato Skins Snacks—Sour Cream & Onion Flavor”; and
- d. Any other flavor variety of the “TGI Fridays” brand name product with labeling and packaging falsely representing that the package’s contents are comprised of “Potato Skins” (collectively, the “Products”; individually, a “Product”). *See Exhibit A at 1–6.*

3. The front of the Products’ packaging displays a picture of what appears to be potato skins. *See Exhibit A at 1, 3, 5.*

4. The image of the Product in these photos, placed just below large font stating “Potato Skins,” leads reasonable consumers to believe that the Products are comprised of skins peeled from potatoes. *See id.*

5. However, the Products are not made from the skin peelings of potatoes. Nor do they contain potato skins as even one ingredient among others.

6. The only potato-based ingredients in the Products are potato flakes and potato starch, not potato skins nor any ingredient mentioning “potato skins.” *See Exhibit A at 7–9.*

7. Despite being marketed and sold by Defendants as “Potato Skins,” the Products as delivered to consumers amount to little more than a mashup of potato flakes, potato starch, dead corn, and caramel food coloring—entirely devoid of potato skins as an ingredient.

8. Conscious of consumers' interest in potato skins, and the TGIF brand of potato skins in particular, Defendants have developed, manufactured, and marketed the Products so as to deceive consumers into believing that they are purchasing authentic potato skins.

9. Potato skins are one of TGIF's staple products. TGIF represents that it originally designed and popularized potato skins.¹

10. Defendants exploit TGIF's brand name as it relates to potato skins by misleading consumers into believing that the Products deliver the taste of genuine potato skins, as popularized by TGIF through its restaurants' potato skins appetizers.

11. For example, TGIF's Amazon.com seller's webpage describes the Products to consumers with the following: "Our *Famous* Potato Skins *Baked into a Tasty Snack Chip*," and "You Just Can't Go Wrong with *Our #1 Seller*." See **Exhibit B** (emphases added).² See also **Exhibit C** (similar Amazon webpage³ making nearly identical "Number 1 seller" claim).⁴

12. Consumers are willing to pay a price premium for the Products because the TGIF brand name, combined with the Product name of "Potato Skins," communicates to consumers that the Products are derived from genuine potato skins sold in TGIF's restaurants. However, the Products and TGIF's restaurant appetizer are in fact similar only in name.

13. Plaintiff TRONCOSO viewed Defendants' misleading labeling and packaging for the Sour Cream & Onion variety of the Product and was reasonably misled into believing that the

¹ See *Who Really Invented Potato Skins?*, *infra* note 17 and accompanying text.

² Available at <https://www.amazon.com/TGI-Fridays-Potato-Chips-Variety/dp/B07DMP6B5S>.

³ Whereas the Amazon webpage in **Exhibit B** is hosted by "TGI FRIDAYS," **Exhibit C** is hosted by "The Inventure Group." The Inventure Group refers to Defendant Inventure Foods, Inc. See *The Inventure Group Announces Name Change to Inventure Foods, Inc.*, PR NEWswire (May 20, 2010), <https://www.prnewswire.com/news-releases/the-inventure-group-announces-name-change-to-inventure-foods-94491259.html> ("The Inventure Group, Inc. (Nasdaq: SNAK), a leading specialty snack food marketer and manufacturer, is pleased to announce it has received shareholder approval to change the corporate name to Inventure Foods, Inc.").

⁴ Available at <https://www.amazon.com/Fridays-Cheddar-Bacon-Potato-Ounce/dp/B01JKWG9KS>.

Product consisted of genuine potato skins. However, Plaintiff later discovered that the Product did not even contain potato skins as an ingredient.

14. Defendants therefore delivered a Product with significantly less value than what they warranted, thereby depriving Plaintiff of the benefit of her bargain.

15. Upon information and belief, Defendants continue to sell the misbranded Products.

16. Plaintiff brings this proposed consumer class action on behalf of herself and all other persons (the “Class”) who, from the applicable limitations period up to and including the present (the “Class Period”), purchased the Products for personal consumption and not for resale.

17. Plaintiff and the Class viewed Defendants’ misleading labeling, advertising, and packaging for the Products, and reasonably relied in substantial part on the representations that the Products consisted of potato skins. Plaintiff and the Class were thereby deceived into purchasing products that were inferior to the ones they had bargained for when they actually received a mashup of potato flakes, potato starch, dead corn, and caramel food coloring.

18. Defendants violate statutes enacted in each of the fifty states and the District of Columbia which are designed to protect consumers against unfair, deceptive, fraudulent, unconscionable trade and business practices, and false advertising. These statutes include the following:

- a. Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.*;
- b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.*;
- c. Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
- d. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- e. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- f. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
- g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- h. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- i. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;

- j. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- k. Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
- l. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
- m. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- n. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
- o. Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
- p. Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
- q. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
- r. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;
- s. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.*;
- t. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
- u. Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- v. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- w. Michigan Consumer Protection Act, § § 445.901, *et seq.*;
- x. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- y. Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;
- z. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- aa. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.*;
- bb. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- cc. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- dd. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.* ;
- ee. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et seq.*;
- ff. New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 1, *et seq.*;
- gg. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.*;
- hh. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;
- ii. North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
- jj. Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
- kk. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- ll. Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;

- mm.* Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.*;
- nn.* Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- oo.* South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;
- pp.* South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;
- qq.* Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
- rr.* Texas Stat. Ann. §§ 17.41, *et seq.*, Texas Deceptive Trade Practices Act, *et seq.*;
- ss.* Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
- tt.* Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
- uu.* Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.*;
- vv.* Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;
- ww.* West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
- xx.* Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.*;
- yy.* Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

JURISDICTION AND VENUE

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

20. Alternatively, this Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and Plaintiff is a citizen of a different state from each of the Defendants.

21. Furthermore, this Court has personal jurisdiction over Defendants because their Products are advertised, marketed, distributed, and sold throughout New York State. Defendants engage in the wrongdoing alleged in this Complaint throughout the United States, including New York State. Defendants are authorized to do business in New York State, and Defendants have sufficient minimum contacts with New York and/or otherwise have intentionally availed themselves of the markets in New York State, rendering the exercise of jurisdiction by the Court

permissible under traditional notions of fair play and substantial justice. Moreover, Defendants engage in substantial and not isolated activity within New York State.

22. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) and (b), because a substantial part of the events giving rise to Plaintiff's claims occurred in this District, and Defendants are subject to personal jurisdiction in this District.

PARTIES

Plaintiff

23. Plaintiff TRONCOSO is, and at all times relevant to this action has been, a citizen of New York, residing in Bronx County. On June 30, 2018, Plaintiff TRONCOSO purchased a bag of TGI Friday's Sour Cream & Onion Potato Skins chips for \$1.99 at the BP gas station convenience store located at 824 Allerton Avenue, Bronx, New York 10467.

24. Plaintiff TRONCOSO purchased the Product reasonably relying on Defendants' label representation that the Product, which was named "Potato Skins," in fact consisted of potato skins. Plaintiff was aware of TGIF's famous restaurant potato skins appetizer and assumed that the Product was derived from them. Had Plaintiff known that the Product did not consist of the skin peelings of potatoes—or indeed, that the Product did not even contain potato skins as an ingredient—she would not have considered them "Potato Skins" and would not have purchased the Product, or would have paid significantly less for it. Plaintiff therefore suffered injury in fact and lost money as a result of Defendants' misleading, fraudulent, and deceptive practices, as described herein. After Plaintiff learned that the Product did not contain potato skins, she ceased purchasing and consuming the Product. Should Plaintiff encounter the Product in the future, she could not rely on the truthfulness of Defendants' representations regarding the Products, absent corrective changes to the Products' labeling and packaging.

Defendants

25. Defendant TGIF is a corporation organized under the laws of New York with its headquarters at 19111 North Dallas Parkway, Suite 165, Dallas, Texas 75287. TGIF's agent and address for service of process is at Corporation Service Company, 80 State Street, Albany, New York 12207.

26. The Products are marketed under Defendant TGI FRIDAY'S, INC.'s trademarked brand name, "TGI Fridays." *See Exhibit A at 1–6*. Defendant TGIF has control over the marketing of the Products and receives revenues from licensing its brand for the sale of the Products.

27. Defendant INVENTURE is a corporation organized under the laws of Delaware with its headquarters at 5415 East High Street, Suite 350, Phoenix, Arizona 85054. INVENTURE's agent and address for service of process is at 9 East Loockerman Street, Suite 311, Dover, Delaware 19901.

28. Defendant INVENTURE manufactures and distributes the Products. *See Exhibit A at 2, 4, 6*. (stating "Distributed By Inventure Foods, Inc" under the "Nutrition Facts" section for each of the Products).⁵

29. Defendant INVENTURE operates as a wholly-owned subsidiary of Defendant UTZ.⁶

30. Defendant UTZ is a corporation organized under the laws of Delaware with its headquarters at 900 High Street, Hanover, Pennsylvania 17331. UTZ's agent and address for service of process is at 9 East Loockerman Street Suite 311, Dover, Delaware 19901.

⁵ *See also Utz Quality Foods, LLC Successfully Completes Cash Tender Offer for Shares of Inventure Foods, Inc.*, BUSINESS WIRE (Dec. 14, 2017) ("Inventure Foods manufacturers and sells salted snacks under the brands Boulder Canyon®, TGI Fridays™"), <https://www.businesswire.com/news/home/20171214005961/en/Utz-Quality-Foods-LLC-Successfully-Completes-Cash>.

⁶ *See id.* ("Inventure Foods will operate as a wholly-owned subsidiary of Utz, with manufacturing facilities in Goodyear, Arizona and Bluffton, Indiana.").

31. Defendant UTZ manufactures and distributes the Products through its subsidiary, Defendant INVENTURE. In fact, even the website address, <https://www.inventurefoods.com>, redirects to Defendants UTZ's website, <https://www.utzsnacks.com>. Furthermore, the Products are marketed and available for sale through UTZ's website.⁷

32. Defendants collectively manufacture, advertise, market, distribute, and sell the Products. The Products are available in retail stores and online, and are sold extensively to consumers residing in each of the fifty states and the District of Columbia.

33. The labeling, packaging, and advertising for the Products, relied upon by Plaintiff and the Class, were approved by Defendants and their agents, and were disseminated by Defendants and their agents through advertising containing the misrepresentations alleged herein. The Products' deceptive labeling, packaging, and advertising were designed by Defendants to encourage reasonable consumers, including Plaintiff and the Class, to purchase the Products.

FACTUAL ALLEGATIONS

Defendants' Products Are Misleadingly Represented as "Potato Skins"

34. The Products' front label packaging prominently states "Potato Skins." Just below this text is a picture of what appears to be potato skins. *See Exhibit A at 1, 3, 5.*

35. Consumers would reasonably infer from this labeling and packaging that the Products are a snack consisting of skins peeled from potatoes.

36. However, the Products do not consist of potato skins. Nor are the Products to any degree comprised of potato skins as an ingredient. Instead, Defendants manufacture the Products with potato starch and potato flakes as their only potato-based ingredients. *See Exhibit A at 7–9.*

⁷ See, e.g., *TGI Fridays Potato Skins, Cheddar & Bacon*, UTZ, <https://www.utzsnacks.com/products/tgi-friday-potato-skins-cheddar-bacon>.

37. The most telling evidence of Defendants' deceptive manufacturing practices is presented in a video on the *Cooking Channel's* website⁸ featuring Adam Johnson ("Johnson," or "Mr. Johnson"), Plant Director for Defendant INVENTURE, discussing the manufacturing process for the Products. Below are key excerpts from the video, the minute mark at which they appear, and the speaker (either the narrator or Johnson):

0:22 Narrator: Potato skins have been around for decades. But it wasn't until [TGI] Friday's put them on the menu in 1974 that they turned into a restaurant staple. They eventually became so popular, that Friday's teamed up with Indiana's Inventure Foods to create a more convenient, crunchier spin on this appetizer classic.

0:40 Narrator: You'd think that making potato skin chips would start with potatoes—but not in this case. The first ingredient is actually corn.

0:49 Johnson: We get whole dead corn, and we process the corn internally.

0:53 Narrator: Yes, he said dead corn.

* * *

1:58 Narrator: To make the potato skin chip to look more like a potato skin, they actually create two separate batches of dough (emphasis added).

2:06 Johnson: We have a light dough that will be the inside of the potato, as well as a dark dough, which will be the skin of the potato. For the dark dough, we use similar ingredients as our light dough, but we do add caramel coloring, to give the skin a potato look (emphases added).

2:18 Narrator: Now, all they have to do, is bring them together, and that happens in a big machine, called a sheeter.

2:24 Johnson: Once the dough is delivered to the sheeter, it comes together at the gauge ruler, where the light and dark dough meet, to become one dough.

2:33 Narrator: The married dough is now pushed out as a flat sheet, before entering three sets of rollers that will make it nearly as thin as a piece of paper.

2:40 Narrator: The dough is now run through one final set of finishing rollers to create the proper thickness. Now here's where things really start coming together, where flat sheets of two-tone dough are transformed into potato skins. To do this, a roller of potato chip-

⁸ *Potato Skins Chips: Inventure's Potato Skin Chips are made from—what else? Corn, of course*, COOKING CHANNEL (Mar. 23, 2015), <https://www.cookingchanneltv.com/videos/potato-skins-chips-0235064>.

shaped cutters is used. But **all potato chips are not identical**. So, **to make these little chips even more authentic**, this unique cutter comes in three different sizes (emphases added).

3:11 Narrator: Now that everything is shaped up, our rows of perfect chips roll on towards the fryer.

38. The foregoing description of the Products' manufacturing process involving Defendants TGIF and INVENTURE illustrates that potato skins are not only absent from the manufacturing of the Products, but also that the Defendants TGIF and INVENTURE affirmatively manipulate dead corn and dough through sophisticated machinery in order to replicate the appearance of genuine potato skins.

39. The Products therefore neither consist of potato skins, nor contain potato skins as even one ingredient among others.

40. The only potato-based ingredients found in the Products are potato starch and potato flakes, which do not include potato skins, as shown by the potato starch and potato flake manufacturing processes described below.

Potato Starch Processing

41. The *Encyclopedia of Food Sciences and Nutrition* confirms that potato starch does not contain potato skins:

Potato starch is mainly produced in Europe. Starch is typically isolated from cull potatoes, surplus potatoes, and waste streams from potato processing . . . Culled or surplus potatoes are washed with water in a flume, to remove dirt and foreign matter . . . They are then disintegrated by a saw blade resp or hammer mill, **and the mashed product is screened to remove skins and fiber**.⁹

42. Similarly, the Research Triangle Institute ("RTI") prepared a report for the Environmental Protection Agency ("EPA") that discusses potato starch manufacturing. The RTI

⁹ W.S. Ratnayake, D.S. Jackson, *Starch: Sources and Processing*, *ENCYCLOPEDIA OF FOOD SCIENCES AND NUTRITION* (2d ed. 2003), *available at* <https://www.sciencedirect.com/topics/pharmacology-toxicology-and-pharmaceutical-science/potato-starch/pdf> (emphasis added).

report notes that after fresh potatoes are cleaned, they pass through a grinder which “disintegrates the potato cells and frees the starch. The crushed potatoes proceed through a screen or rotary sieve, *which separates the fiber and potato skin.*”¹⁰ See also **Exhibit D** (page 2-9 of the RTI report providing a visual of this manufacturing process, which clearly indicates that potato “Fiber & Skins” are removed from potato starch).

Potato Flakes Processing

43. The *Encyclopedia of Food Sciences and Nutrition* confirms that the manufacturing process for potato flakes also involves removing a potato’s skin:

Potato flakes are dehydrated mashed potatoes made by drum drying a thin layer of cooked and mashed potatoes, and breaking the sheet of dehydrated solids into a suitable size for packaging. . . . flakes are taken as a food ingredient for potato snacks (e.g. potato chips made from a dough with uniform size and curvature, and for dehydrated French fries). . . .

Processing: Raw potatoes should be washed to remove adhering soil Peeling may be done by any process¹¹

44. Consistent with the above, the textbook, *Waste Treatment in the Process Industries*, notes that “[p]otato flakes are a form of dehydrated mashed potatoes that have dried on a steam-heated roll After prewashing, *the potatoes are lye or steam peeled.*”¹² This textbook also provides a diagram of the “Typical potato flake plant” which visually demonstrates that potatoes are peeled well before they are converted into flakes. See **Exhibit E**.

¹⁰ STARCH MANUFACTURING: A PROFILE – FINAL REPORT, RESEARCH TRIANGLE INSTITUTE 2-8 (1994), *available at* https://www3.epa.gov/ttnecas1/regdata/IPs/Starch%20Manufacturing_IP.pdf (emphasis added). The potato starch manufacturing described in this paragraph largely echoes a similar report drafted by the EPA. See SOURCE CATEGORY SURVEY: STARCH MANUFACTURING INDUSTRY, EPA 4-28 (1980) (“Clean potatoes are sent to a grinder/crusher which disintegrates the cell structure liberating the water soluble starch. *Fiber and potato skin are separated by screening, or through a rotary sieve. . . . The fiber and skins are dried and sold as bulk animal feed.*”), *available at* <https://nepis.epa.gov/Exe/ZyPDF.cgi/91010JYF.PDF?Dockey=91010JYF.PDF> (emphasis added). See also *id.* at 4-29 for a diagram similar to the one included as **Exhibit D**.

¹¹ M.G. Lindhauer, N.U. Haase, B. Putz, *Potatoes and Related Crops: Processing Potato Tubers*, *ENCYCLOPEDIA OF FOOD SCIENCES AND NUTRITION* (2nd ed., 2003), *available at* <https://www.sciencedirect.com/topics/agricultural-and-biological-sciences/potato-flakes/pdf> (emphasis added).

¹² Lawrence K. Wang, Yun-Tse Hung, Howard H. Lo et al., *Waste Treatment in the Process Industries: 6 Potato Wastewater Treatment* 197 (1st ed. 2005) (emphasis added).

45. Similarly, *PotatoPro.com*—a website that touts itself as “The #1 Information Source for the global Potato Industry”—observes that the manufacturing process for potato flakes involves the removal of a potato’s skin: “The process starts with the separation of stones, sand and other undesirable inclusions from the potatoes. The potatoes *then enter a steam peeler to loosen and separate the skins*. The *peeled* potatoes are washed and pass over an inspection table to assure finished product quality”¹³

46. The above authorities illustrate that the potato starch and potato flake manufacturing processes involve the removal of a potato’s skin in creating those final products.

47. Therefore, the potato starch and potato flakes in the Products do not contain potato skins.

48. This conclusion is further confirmed by the fact that nowhere in the *Cooking Channel*’s video does Mr. Johnson state on behalf of Defendant INVENTURE that they use potato skins as an ingredient when manufacturing the Products in collaboration with Defendant TGIF. In fact, the video only demonstrates that Defendants engage in deceptive manufacturing process so as to simulate the appearance of, without actually including, authentic potato skins in the Products.

49. Defendants thus misleadingly market, advertise, label, or otherwise represent the Products to consumers as “Potato Skins.”

Defendants’ Misleading Representations and Deceptive Omissions Would Deceive, Would be Relied Upon by, and Are Material to a Reasonable Consumer

50. Consumers reasonably expect that a product with front packaging stating “Potato Skins”—placed just above a photo of what appears to be potato skins—would in fact consist of potato skins.

¹³ *Flavorite Technologies, Potato Flakes—It’s a Mash-Up*, POTATOPRO (Apr. 1, 2017), <https://www.potatopro.com/news/2017/flavorite-technologies-potato-flakes-its-mash> (emphasis added).

51. Since consumers are not acquainted with Defendants TGIF and INVENTURE's manufacturing processes for the Products, they have no reason to know that these processes involve adding caramel food coloring and applying chip-cutting shapes to caramel-colored dough to replicate the appearance of authentic potato skins.

52. Plaintiff TRONCOSO and the Class are reasonable consumers who expected that the Products, marketed and sold as "Potato Skins" consisted of potato skins, or at least contained potato skins as *an* ingredient, particularly when sold under the TGIF brand name. Instead, Defendants merely provided potato starch and potato flakes as the only potato-based ingredients in the Products. *See Exhibit A at 7–9.*

53. That a reasonable consumer would be deceived by the representations on the Products' packaging and labeling is confirmed by Defendants' own statements. As demonstrated in the *Cooking Channel* video, Mr. Johnson describes how Defendants add caramel food coloring and apply a chip-cutter to caramel-colored dough to simulate the appearance of genuine potato skins. By engaging in these deceptive business practices, Defendants impliedly acknowledge that a reasonable consumer would be led to believe that he or she is receiving authentic potato skins in a Product manufactured by Defendants. As the narrator from the video stated, "[y]ou'd think that making potato skin chips would start with potatoes—but not in this case. The first ingredient is actually corn."¹⁴ In fact, the Products as delivered amount to little more than caramel-colored dough largely consisting of potato flakes, potato starch, and dead corn.

54. Defendants further exploit consumers' interest in potato skins, and their brand of potato skins in particular, by making the blatantly false statement on TGIF's Amazon webpage that the Products contain "*Real Potato Skins.*" *See Exhibit B* (emphasis added). *See also Exhibit*

¹⁴ *See Potato Skins Chips: Inventure's Potato Skin Chips are made from—what else? Corn, of course, supra* note 8, at 0:40.

C (similar Amazon webpage containing the same falsehood that “TGI Fridays Cheddar and Bacon Potato Skins feature tasty potatoes and *real potato skins*”) (emphasis added).

55. The above misrepresentations by Defendants confirm that Defendants *themselves* agree that a reasonable consumer would be misled to believe that the Products, as represented by Defendants, consist of real potato skins.

56. There is nothing ambiguous about Defendants’ representations that the Products consist of genuine potato skins. Yet even to the extent that Defendants may assert that the reasonable consumer would examine the ingredients statement of a Product to resolve any ambiguities regarding its contents, such a claim would be unavailing. Reasonable consumers are not ordinarily acquainted with the minutiae of the potato starch and potato flake manufacturing processes. They do not know that these processes involve the removal of a potato’s skin. Hence, while a consumer may readily observe on the Products’ ingredient statements that they contain potato flakes and potato starch, the same consumer would have no reason to suspect that the potato flakes and potato starch found in the Products are not the flakes and starch of potato skins.

57. Plaintiff TRONCOSO and the Class reasonably relied upon Defendants’ misleading representations and deceptive omissions regarding the Products. Plaintiff and the Class observed the Products’ labeling and packaging prominently stating “Potato Skins” under the TGIF brand name, complete with a picture of what appears to be potato skins. In reliance on Defendants’ material misrepresentations and deceptive omissions regarding the Products, Plaintiff and the Class were deceived into purchasing what they reasonably believed to be genuine potato skins; yet the Products as delivered included potato starch and potato flakes as their only potato-based ingredients.

58. The nutritional qualities of potato skins are well-documented.¹⁵ Consumers are therefore willing to pay a price premium for potato skins.

59. Additionally, the prospect of purchasing and enjoying the taste of genuine potato skins from Defendant TGIF is appealing to consumers because of TGIF's role in popularizing potato skins. *Eater.com*, a "national food-blog network,"¹⁶ relates the following:

TGI Fridays, meanwhile, claims to have come up with the potato skin in 1974. "As legend has it, one of our cooks was making our mashed potatoes in the back of the house, and decided to drop the potato skin in the fryer. When it came out, he threw our proprietary fry seasoning on it, added cheddar and smoked bacon, and the rest is, as they say, history," says Matt Durbin, the chain's vice president of concept development.¹⁷

60. As noted above, Defendants trade on this long-standing history and reputation when marketing the Products on TGIF's Amazon webpage with the following: "Our *Famous* Potato Skins," and "You Just Can't Go Wrong with *Our #1 Seller*." See **Exhibit B** (emphases added). See also **Exhibit C**.

61. Plaintiff TRONCOSO and the Class are consumers who decided to purchase the Products, labeled as "Potato Skins" under the TGIF brand name, on the reasonable expectation

¹⁵ See, e.g., *The Benefits of Eating Potato Skins*, SFGATE (Nov. 27, 2018), <https://healthyeating.sfgate.com/benefits-eating-potato-skins-4077.html> (noting that "the benefits of eating potato skins [include] increased potassium intake," providing "a source of iron, another essential mineral," and "providing a source of niacin, also called vitamin B-3"); see also *The Incredibly Nutritious Potato Skin*, ONEGREENPLANET, <https://www.onegreenplanet.org/vegan-food/the-incredibly-nutritious-potato-skin/> ("Minerals are the bulk of the skins potency. Potatoes are incredibly rich in iron, an essential mineral that transports oxygen through the body. The skin of a whole baked potato provides 88 percent of the total amount of iron."); *What are the nutritional benefits of potato skins?*, SHARECARE, <https://www.sharecare.com/health/health-value-of-foods/what-nutritional-benefits-potato-skins> ("When compared ounce for ounce, potato skin has more nutrients than the rest of the potato. Potato skin contains B vitamins, vitamin C, iron, calcium, potassium and other nutrients. Potato skin also provides lots of fiber, about 2 grams per ounce.") (quoting ACADEMY OF NUTRITION AND DIETETICS); *Peel Appeal: The Nutritional Benefits of Fruits and Veggie Skins*, PARADE (Nov. 4, 2016), <https://parade.com/520746/staceycolino/peel-appeal-the-nutritional-benefits-of-fruit-and-veggie-skins/#potato-slideshow> ("Much of the potassium, fiber, vitamin C and B vitamins contained in potatoes reside in the skin. In fact, gram for gram. There's more fiber and potassium in the potato skin than in the flesh . . .").

¹⁶ *Food Site Eater "Vox-ifies"*, POLITICO (Apr. 16, 2014), <https://www.politico.com/media/story/2014/04/food-site-eater-vox-ifies-002058>.

¹⁷ *Who Really Invented Potato Skins?*, EATER (Feb. 7, 2017), <https://www.eater.com/2017/2/2/14439788/potato-skins-history>. See also *Potato Skins Chips: Inventure's Potato Skin Chips are made from—what else? Corn, of course*, *supra* note 8, at 0:22 ("Potato skins have been around for decades. But it wasn't until [TGI] Friday's put them on the menu in 1974 that they turned into a restaurant staple. They eventually became so popular, that Friday's teamed up with Indiana's Inventure Foods to create a more convenient, crunchier spin on this appetizer classic.").

that the Products would deliver the taste of genuine potato skins, as popularized by TGIF through its restaurants' potato skins appetizers. Yet the Products they actually received did not even include potato skins as an ingredient. Therefore, the Products as delivered simultaneously failed to convey the nutrition profile of a potato skin as well as the taste of a genuine TGIF potato skins product.

Plaintiff and the Class were Injured by Defendants' Misleading Representations

62. As a result of Defendants' deceptive conduct as alleged herein, Plaintiff TRONCOSO was injured when she paid money for the "Potato Skins" which did not deliver the qualities it promised—namely, potato skins.

63. Plaintiff paid the advertised price for the Product on the assumption that she was purchasing a snack food consisting of authentic potato skins with a genuine potato skins taste—that is, a product that was actually derived from TGIF's famous potato skins appetizer. The *Cooking Channel* video itself described the Products as "a more convenient, crunchier spin on this appetizer classic,"¹⁸ and this is precisely what the reasonable consumer would expect the Products to consist of. Instead, Defendants deliver something of decidedly lower value in the form of the Products, which are comprised of potato starch, potato flakes, dead corn, and caramel food coloring, but not potato skins.

64. Plaintiff would not have been willing to pay this sum had she known that the Product was in fact comprised of potato starch, potato flakes, dead corn, and caramel food coloring, but not potato skins.

¹⁸ *Potato Skins Chips: Inventure's Potato Skin Chips are made from—what else? Corn, of course, supra* note 8, at 0:22.

65. Defendant therefore delivered a Product with significantly less value than it warranted, thereby depriving Plaintiff of the benefit of her bargain, and injuring her in an amount up to the purchase price, to be determined by expert testimony at trial.

Defendants Intended to Mislead Consumers

66. Defendants, at all relevant times to this action, were aware of consumer interest and expectations regarding genuine potato skins.

67. However, the Products as sold to Plaintiff and the Class were in fact a mashup of potato starch, potato flakes, dead corn, and caramel food coloring.

68. That Defendants intended to deceive consumers with their manufacturing, marketing, and sale of the Products is proven by the fact that Defendants knew that the Products did not consist of, and did not even include as a singular ingredient, potato skins. This is demonstrated by the *Cooking Channel* video, which details the Defendants' manufacturing processes for the Products. Far from stating that the ingredients for the Products are primarily composed of potato skins, Mr. Johnson instead relates that the Products are manufactured with dead corn, caramel food coloring, and specialized chip-cutting machinery to replicate the appearance of an authentic potato skin. In addition, Defendants are sophisticated, large-scale potato chip manufacturers. Therefore, they are aware of the fact that the manufacturing processes for potato starch and potato flakes involve the removal of a potato's skin.

69. In addition, Defendants affirmatively sought to, and continue to, deceive consumers by representing on Amazon.com that the Products are indeed their "Famous Potato Skins" which have been "Baked into a Tasty Snack Chip." See **Exhibit B**. Furthermore, despite not consisting of potato skins, or even containing potato skins as a single ingredient among others, Defendants represent to consumers that the Products consist of "Real Potato Skins." See **Exhibits B–C**. The

fact that Defendants make these false representations on multiple webpages signals that Defendants are actively seeking to mislead consumers into believing that the Products consist of genuine potato skins.

70. Defendants have therefore made intentional and material misrepresentations to consumers, including Plaintiff and the Class, regarding the Products in order to deceive them into believing that they purchased genuine potato skins.

CLASS ACTION ALLEGATIONS

71. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Class:

All persons or entities in the United States who made retail purchases of Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate (“the Nationwide Class”).¹⁹

In the alternative, Plaintiff seeks to represent a Class consisting of:

All persons or entities who made retail purchases of the Products in New York during the applicable limitations period, and/or such subclasses as the Court may deem appropriate (“the New York Class”).

72. The proposed Classes exclude current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants’ legal representatives, heirs, successors, assigns, any entity in which it has or has had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

¹⁹ See *Fitzhenry-Russell v. Dr. Pepper Snapple Grp.*, No. 17-cv-00564 NC, 2017 U.S. Dist. LEXIS 155654, at *15 (N.D. Cal. Sep. 22, 2017) (“Yet the Supreme Court did not extend its reasoning to bar the nonresident plaintiffs’ claims here, and *Bristol-Myers* is meaningfully distinguishable based on that case concerning a mass tort action, in which each plaintiff was a named plaintiff.”); *In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, No. 09-2047, 2017 U.S. Dist. LEXIS 197612, at *52-53 (E.D. La. Nov. 28, 2017) (“[I]t is clear and beyond dispute that Congress has constitutional authority to shape federal court’s jurisdiction beyond state lines to encompass nonresident parties” and interpreting *Bristol-Meyers* as barring nationwide class actions where jurisdiction over defendant is specific “would require plaintiffs to file fifty separate class actions in fifty or more separate district courts across the United States—in clear violation of congressional efforts at efficiency in the federal courts.”); *Horton v. USAA Cas. Ins. Co.*, 266 F.R.D. 360, 364 (D. Ariz. 2009) (“Objectors argue that this Court lacks jurisdiction to certify a nationwide class. This argument is frivolous. A federal court applying Rule 23 of the Federal Rules of Civil Procedure may certify a nationwide class if the requirements for certification are satisfied.”).

73. Plaintiff reserves the right to revise the Class definition based on facts learned in the course of litigating this matter.

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

75. Common questions of law and fact arise from Defendants' conduct described herein. Such questions are common to all Class members and predominate over any questions affecting individual Class members. These include:

- i. Whether Defendants labeled, packaged, marketed, advertised and/or sold the Products to Plaintiff and Class members, using false, misleading and/or deceptive packaging and labeling;
- ii. Whether Defendants' actions constitute violations of the consumer protection laws of New York, and the other states;
- iii. Whether Defendants omitted and/or misrepresented material facts in connection with the labeling, ingredients, marketing, advertising and/or sale of Products;
- iv. Whether Defendants' labeling, packaging, marketing, advertising and/or selling of the Products constituted unfair, unlawful or fraudulent practices;
- v. Whether, and to what extent, injunctive relief should be imposed on Defendants to prevent such conduct in the future;
- vi. Whether the members of the Class have sustained damages as a result of Defendants' wrongful conduct;
- vii. The appropriate measure of damages and/or other relief; and
- viii. Whether Defendants should be enjoined from continuing their unlawful practices.

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

77. Plaintiff will fairly and adequately represent and pursue the interests of the Class. Plaintiff understands the nature of her claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class members. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class members.

78. Plaintiff has retained highly competent and experienced class action attorneys to represent her interests and those of the Class members. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action. Plaintiff and counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for them.

79. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual Class member are too small to make it economically feasible for an individual Class member to prosecute a separate

action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

80. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendants have acted or refuses to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive or equitable relief with respect to the Classes as a whole.

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

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

83. Defendants' conduct is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

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

(brought on behalf of the Nationwide Class, in conjunction with the substantively similar consumer protection laws of other states and the District of Columbia to the extent New York consumer protection laws are inapplicable to out-of-state Class members, or, in the alternative, on behalf of the New York Class)

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

85. Plaintiff brings these claims on behalf of herself and the other members of the Class for an injunction for violations of New York’s Deceptive Acts or Practices Law (“NY GBL § 349”).

86. Alternatively, should the Court not certify Plaintiff’s proposed Nationwide Class, Plaintiff brings this claim individually and on behalf of the members of the New York Class for an injunction for violations of New York’s Deceptive Acts or Practices Law (“NY GBL § 349”).

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

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

89. Any person who has been injured by reason of any violation of the NY GBL § 349 may bring an action in their own name to enjoin such unlawful act or practice, an action to recover

their actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the Defendants willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

90. The practices employed by Defendants, whereby it advertises, promotes, and markets its Products as “Potato Skins” is unfair, deceptive, misleading, and in violation of the NY GBL § 349.

91. The foregoing deceptive acts and practices were directed at consumers.

92. Defendants should be enjoined from labeling, packaging, advertising, and marketing the Products as “Potato Skins” pursuant to NY GBL § 349.

93. Plaintiff, on behalf of herself and all others similarly situated, respectfully demands a judgment enjoining Defendant’s conduct, awarding costs of this proceeding and attorneys’ fees, as provided by NY GBL § 349, and such other relief as this Court deems just and proper.

COUNT II

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

(brought on behalf of the Nationwide Class, in conjunction with the substantively similar consumer protection laws of other states and the District of Columbia to the extent New York consumer protection laws are inapplicable to out-of-state Class members, or, in the alternative, on behalf of the New York Class)

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

95. Plaintiff brings these claims on behalf of herself and other members of the Nationwide Class for Defendants’ violations of NY GBL § 349.

96. Alternatively, should the Court not certify Plaintiff's proposed Nationwide Class, Plaintiff brings this claim individually and on behalf of the other members of the New York Class for Defendants' violations of NY GBL § 349.

97. Defendants' business acts, practices, and/or omissions as alleged herein constitute deceptive acts or practices under NY GBL § 349, which were enacted to protect consumers from those who engage in unconscionable, deceptive, and unfair acts or practices in the conduct of any business, trade, or commerce.

98. Defendants' practices described throughout this Complaint were specifically directed at consumers and violate the NY GBL § 349 since Defendants misrepresent and misleadingly advertise that the Products are "Potato Skins" with an intent to cause Plaintiff and the Class to believe that the Products are comprised of potato skins.

99. Under the circumstances, Defendants' conduct in employing these unfair and deceptive trade practices is malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

100. Defendants' actions impact the public interest because Plaintiff was injured in exactly the same way as millions of others purchasing the Products as a result of and Defendants' deceptive business practices.

101. The foregoing deceptive acts and practices proximately caused Plaintiff and the Class to suffer actual damages in the form of, *inter alia*, monies spent to purchase the Products. Plaintiff and the Class are entitled to recover compensatory damages, statutory damages, punitive damages, attorneys' fees and costs, and any other relief the Court deems appropriate. Damages can be calculated through expert testimony at trial.

COUNT III

**DAMAGES FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350
(FALSE ADVERTISING LAW)**

(brought on behalf of the Nationwide Class, in conjunction with the substantively similar consumer protection laws of other states and the District of Columbia to the extent New York consumer protection laws are inapplicable to out-of-state Class members, or, in the alternative, on behalf of the New York Class)

102. Plaintiff realleges and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

103. Plaintiff brings this claim individually, as well as on behalf of members of the Nationwide Class, for violations of NY GBL § 350.

104. Alternatively, should the Court not certify Plaintiff's proposed Nationwide Class, Plaintiff brings this claim individually and on behalf of the members of the New York Class for violations of NY GBL § 350.

105. Defendants have been and/or are engaged in the "conduct of . . . business, trade or commerce" within the meaning of N.Y. Gen. Bus. Law § 350.

106. New York Gen. Bus. Law § 350 makes unlawful "[f]alse advertising in the conduct of any business, trade or commerce." False advertising includes "advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect," taking into account the extent to which the advertising fails to reveal facts material in light of . . . representations [made] with respect to the commodity" N.Y. Gen. Bus. Law § 350-a(1).

107. Defendants caused to be disseminated throughout New York and the United States, through advertising, marketing and other publications, statements that were untrue and/or misleading.

108. Defendants' affirmative misrepresentations regarding the Products are material and substantially uniform in content, presentation, and impact upon consumers at large.

109. Consumers purchasing the Products were, and continue to be, exposed to Defendants' material misrepresentations.

110. Defendants have violated N.Y. Gen. Bus. Law § 350 because its labeling of the Products as "Potato Skins" is material and likely to deceive a reasonable consumer.

111. Plaintiff and the Class have suffered an injury, including the loss of money or property, as a result of Defendants' false and misleading advertising.

112. Pursuant to N.Y. Gen. Bus. Law § 350-e, Plaintiff and the Class seek monetary damages (including actual damages and minimum, punitive, or treble and/or statutory damages pursuant to GBL § 350-a(1)), injunctive relief, restitution and disgorgement of all monies obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs.

COUNT IV

COMMON LAW FRAUD

(brought on behalf of the Nationwide Class, in conjunction with the substantively similar common law of other states and the District of Columbia to the extent New York common law is inapplicable to out-of-state Class members, or, in the alternative, on behalf of the New York Class)

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

114. Defendants intentionally make materially false and misleading representations regarding the nature of the Products.

115. Plaintiff and the Class reasonably relied on Defendants' false and misleading representations. They did not know, and had no reason to know, that the Products do not contain potato skins. They would not have purchased the Products had they known the truth.

116. Defendants knew the truth regarding the Products' composition of ingredients, and intended to cause Plaintiff and the Class to rely on Defendants misrepresentations regarding the Products.

117. Plaintiff and the Class have been injured as a result of Defendants' fraudulent conduct.

118. Defendants are liable to Plaintiff and Class members for damages sustained as a result of Defendants' fraud.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendants, as follows:

- a. An Order that this action be maintained as a class action, appointing Plaintiff as representative of the Nationwide Class or, in the alternative, the New York Class;
- b. An Order appointing the undersigned attorney as Class Counsel in this action;
- c. Restitution and disgorgement of all amounts obtained by Defendants as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;
- d. All recoverable compensatory and other damages sustained by Plaintiff and the Class;
- e. Actual and/or statutory damages for injuries suffered by Plaintiff and the Class in the maximum amount permitted by applicable law;
- f. An order (i) requiring Defendants to immediately cease their wrongful conduct as set

forth in this Complaint; (ii) ordering Defendants to engage in a corrective advertising campaign; and (iii) requiring Defendants to reimburse Plaintiff and all Class members, up to the amounts paid for the Products;

- g. Statutory pre-judgment and post-judgment interest on any amounts;
- h. Payment of reasonable attorneys' fees and costs; and
- i. Such other relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

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

Dated: July 11, 2019

Respectfully submitted,

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

LEE LITIGATION GROUP, PLLC

C.K. Lee (CL4086)

Anne Seelig (AS3976)

148 West 24th Street, Eighth Floor

New York, NY 10011

Tel.: 212-465-1188

Fax: 212-465-1181

Attorneys for Plaintiff and the Class