

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

**CASE NO. \_\_\_\_\_**

**CARMEN PELLITTERI and PATRICIA  
FUSCO COYNE, on Behalf of Themselves and  
All Others Similarly Situated,**

**Plaintiffs,**

**vs.**

**MCCORMICK & COMPANY, INC., and  
PUBLIX SUPER MARKETS, INC.,**

**Defendants.**

**CLASS ACTION**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiffs Carmen Pellitteri and Patricia Fusco Coyne, on behalf themselves and all others similarly situated, by and through undersigned counsel, file this Class Action Complaint against Defendant McCormick & Company, Inc. (“McCormick”), and Publix Super Markets, Inc. (“Publix”) (collectively “Defendants”), and allege as follows:

**NATURE OF THE CASE**

1. This case concerns Defendants’ recent practice of selling partially empty containers of ground and whole black pepper, a practice in the food industry commonly known as nonfunctional slack fill. This practice is materially misleading and violates federal and state law. Thousands of consumers have been harmed by this unfair trade practice.

2. For more than 125 years, McCormick has sold its McCormick-branded spices and seasonings to generations of consumers. In the \$10 billion-per-year global consumer spices and seasonings category, McCormick has an industry-dominating 22% market share—four times the

size of its next largest global competitor.

3. One of McCormick's hallmark products is black pepper. Indeed, McCormick has been the clear market leader in sales of black pepper in the United States for many years.

4. For decades, McCormick has marketed and sold its McCormick<sup>®</sup> Pure Ground Black Pepper in tins instantly recognizable to millions of American consumers. McCormick has also marketed and sold its McCormick<sup>®</sup> Black Peppercorn in bottles that are substantially covered by a non-transparent label and have a non-transparent, built-in grinder. In addition to marketing and selling the pepper products described above, McCormick is the leading supplier of private label spices and seasonings (also known as store brands), including supplying store-branded tins of pure ground black pepper.

5. Recently, the commodity price of black pepper skyrocketed in the global market. Normally, a company facing dramatically increased ingredient costs will either pass those increased costs on to consumers by raising prices or will absorb the higher commodity costs and suffer eroding profit margins (or some combination thereof). However, sometime in or around January or February 2015, McCormick began shipping tens of millions of the pepper products described above with about 25% less black pepper. McCormick deceptively continued selling black pepper in the same-sized containers—which are now substantially underfilled—rather than shrinking the size of the containers to reflect the reduced fill. Competing brands, which *do not* slack fill their pepper containers, but which have similarly *sized* containers, appear side-by-side on store shelves, making it appear to any reasonable consumer that the same amount of product is being sold by McCormick and its competitors when it is not.

6. By underfilling the same-sized containers that have been adopted by competitors and recognized in the consumer marketplace for years, McCormick deceptively misleads

consumers into thinking that they are purchasing the same quantity of black pepper as they had historically purchased. While the containers list the reduced net weight of the product in small print on the bottom of the containers, consumers cannot see that that the containers are substantially underfilled; nor does weight readily indicate volume. McCormick relies upon consumers' familiarity with the containers' sizes and appearance, engrained through decades of marketing, to mislead consumers into thinking that they are receiving the historic quantities of black pepper at the same price point when, in reality, McCormick is filling those containers with approximately 25% less black pepper. By misleading consumers in this manner, McCormick is able to offset the increased cost of the commodity, while preserving its profit margins.

7. At or around the same time McCormick began slack-filling its pepper tins and grinders, Defendant Publix began distributing and selling slack-filled, Publix-branded ground black pepper tins that were the exact same size and which had the exact same amount of reduced fill as those used by McCormick. Publix's store-branded black pepper containers have mirrored McCormick's slack-fill practices exactly: the store brand continues to use the same size containers, but has reduced the fill by 25%.

### **PARTIES**

8. Plaintiff Carmen Pellitteri is a citizen of the state of Florida and resides in Lantana, Florida. In or around February 2015, Plaintiff Carmen Pellitteri purchased, for personal use, a 1.5-ounce tin of McCormick® Pure Ground Black Pepper, from a Walmart store located at 4545 Hypoluxo Rd., Lake Worth, Florida 33463, believing it was substantially filled to capacity. Plaintiff subsequently learned that this product actually filled only 75% of the container's capacity. Had he known that the container was substantially underfilled, Plaintiff would not have purchased this product, or alternatively, Plaintiff would not have paid what he did for the

product.

9. Plaintiff Patricia Fusco Coyne is citizen of the state of Florida and resides in Boca Raton, Florida. In or about April 2015, Plaintiff Coyne purchased, for personal use, a 3-ounce tin of Publix-branded Pure Ground Black Pepper, from Publix store #324 located at 22973 State Road 7, Boca Raton, Florida 33428, believing it was substantially filled to capacity. Plaintiff subsequently learned that this product actually filled only 75% of container's capacity. Had she known that the container was substantially underfilled, Plaintiff would not have purchased this product, or alternatively, Plaintiff would not have paid what she did for the product.

10. Defendant McCormick is a Maryland corporation, with its principal place of business located in Sparks, Maryland. McCormick describes itself as a global leader in flavor. McCormick manufactures, markets, and distributes spices, seasoning mixes, condiments, and other flavor products to the entire food industry, including retail outlets, food manufacturers, and food services businesses. McCormick manufactures, supplies, markets, and distributes the pepper products at issue herein.

11. Defendant Publix is a Florida corporation, with its principal place of business in Lakeland, Florida. According to Publix, it is the largest employee-owned retail grocery chain in the United States, with 1,106 store locations, including 764 stores in Florida. Publix-branded pepper products are distributed by Publix Super Markets, Inc., Lakeland, FL 33802.

#### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d), because at least one class member is of diverse citizenship from the Defendants, there are more than 100 class members, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

13. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. §1391(a) because Defendants are subject to personal jurisdiction in this District, and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred and continue to occur in this District.

### **FACTUAL ALLEGATIONS**

14. McCormick markets and sells McCormick<sup>®</sup> Pure Ground Black Pepper and McCormick<sup>®</sup> Black Peppercorn Grinder, and supplies store-branded tins of pure ground black pepper.

15. Publix distributes, markets, and sells Publix-branded Pure Ground Black Pepper.

#### ***McCormick<sup>®</sup> Pure Ground Black Pepper***

16. For decades, McCormick has sold its branded McCormick<sup>®</sup> Pure Ground Black Pepper in non-transparent metal tins, which have become the industry standard.

17. Tins of McCormick<sup>®</sup> Pure Ground Black Pepper have been marketed and sold to consumers in the United States in three different package sizes: a small metal tin (the “Small Tin”); a medium metal tin (the “Medium Tin”); and a large metal tin (the “Large Tin”). Prior to early 2015, these tins were substantially filled to capacity.

18. The Small Tin measures approximately 3 1/16” tall, 1 5/16” deep, and 2 5/16” wide. Currently, it holds 1.5 ounces of ground black pepper (left side of Photo A below). Prior to early 2015, however, McCormick substantially filled the Small Tin to capacity with 2 ounces of ground black pepper (right side of Photo A below). Although the amount of ground black pepper in the Small Tin has been reduced by 25% since early 2015, the actual size of the Small Tin has, at all relevant times, remained the same.

Photo A



19. The Medium Tin measures approximately 3 10/16” tall, 1 9/16” deep, and 2 13/16” wide. Currently, it holds 3 ounces of ground black pepper (right side of Photo B below). Prior to early 2015, however, McCormick substantially filled the Medium Tin to capacity with 4 ounces of ground black pepper (left side of Photo B below). Although the amount of ground black pepper in the Medium Tin has been reduced by 25% since early 2015, the actual size of the Medium Tin has, at all relevant times, remained the same.

Photo B



20. The Large Tin measures approximately 4 10/16” tall, 2 4/16” deep, and 3 5/16” wide. Currently, it holds 6 ounces of ground black pepper (right side of Photo C below). Prior to early 2015, however, McCormick substantially filled the Large Tin to capacity with 8 ounces of ground black pepper (left side of Photo C below). Although the amount of ground black pepper in the Large Tin has been reduced by 25% since early 2015, the actual size of the Large Tin has, at all relevant times, remained the same.

Photo C



***McCormick® Black Peppercorn Grinder***

21. For years, McCormick has sold its branded McCormick® Black Peppercorn Grinder in bottles with a non-transparent, built-in grinder and substantially covered by a non-transparent label.

22. Bottles of McCormick® Black Peppercorn Grinder have been marketed and sold to consumers in the United States in two different package sizes: a small bottle with a built-in grinder (the “Small Grinder”) and a large bottle with a built-in grinder (the “Large Grinder”). Prior to early 2015, these bottles were substantially filled to capacity.

23. The Small Grinder measures approximately 4 12/16” tall and 4 8/16” wide. Currently, it holds 1 ounce of black peppercorn. Prior to early 2015, however, McCormick

substantially filled the Small Grinder to capacity with 1.24 ounces of black peppercorn. Although the amount of black peppercorn in the Small Grinder has been reduced by approximately 19% since early 2015, the actual size of the Small Grinder has, at all relevant times, remained the same.

24. Photo D below shows the original bottle holding 1.24 ounces (on the right) and the current bottle now holding 1 ounce (on the left), but with the non-transparent labels removed in order to show the contents of the bottles.

Photo D



25. Photo E below shows the current bottle now holding 1 ounce, but with the non-transparent label that conceals to consumers whether the bottle is filled to capacity.

Photo E



26. The Large Grinder measures approximately 5 8/16" tall and 1 13/16" wide. Currently, it holds 2.5 ounces of black peppercorn (Photo F below). Prior to early 2015, McCormick substantially filled the Large Grinder to capacity with 3.1 ounces of black peppercorn. Although the amount of black peppercorn in the Larger Grinder has been reduced by approximately 19% since early 2015, the actual size of the Large Grinder has, at all relevant times, remained the same.

Photo F



***Great Value and Other Store-Branded Ground Black Pepper***

27. McCormick produces about half of store-branded spices sold annually, and store brands account for a significant share (about 36%) of spices like pepper. McCormick supplies store-branded tins of pure ground black pepper, including the Great Value brand sold in Walmart Stores. These store-branded tins of pure ground black pepper are non-transparent and are similarly sized and shaped as McCormick® Pure Ground Black Pepper.

28. As with its branded McCormick® Pure Ground Black Pepper, prior to early 2015, McCormick substantially filled to capacity the store-branded tins of pure ground black pepper that it supplied.

29. However, since early 2015, McCormick reduced the amount of ground black pepper contained in the McCormick-supplied, store-branded tins, even though the actual size of the store-branded tins has, at all relevant times, remained the same.

30. Specifically, on or around the same time McCormick began underfilling McCormick-branded pepper tins, Great Value-branded pepper tins also began to be underfilled in the *identical* manner as the McCormick-branded pepper tins: e.g., Medium Tins are now filled with only 3 ounces of pepper; traditional Large Tins are now filled with only 6 ounces. Consumers are not reasonably able to visualize volume based on a statement of weight. The Great Value brand pepper fill practices thus kept in lock-step, at the same exact time, with McCormick's pepper fill practices.

31. Photo G below shows a Medium Tin of Great Value Pure Ground Black Pepper with a shelf label that had yet to be updated to reflect the new reduced fill. Indeed, the shelf label in the photo references the 4 ounces contained in the traditional tin. The 3-ounce tin is being sold for the same price as the 4-ounce tin, even though it contains 25% less black pepper.

Photo G



32. Similarly, Photo H below shows a Large Tin of Great Value Pure Ground Black Pepper with a shelf label that had yet to be updated to reflect the new reduced fill. Indeed, the shelf label in the photo still references the 8 ounces contained in the traditional tin. The 6-ounce tin is being sold for the same price as the 8-ounce tin, even though it contains 25% less black pepper.

Photo H



***Publix-Branded Pure Ground Black Pepper***

33. Similar to McCormick's practices with regard to McCormick® Pure Ground Black Pepper, prior to early 2015, Publix sold Publix-branded tins of pure ground black pepper, substantially filled to capacity, that it distributed to Publix stores.

34. However, since early 2015, Publix distributed and sold units that contained reduced amounts of ground black pepper, even though the actual size of the store-branded tins has, at all relevant times, remained the same.

35. Specifically, on or around the same time McCormick began underfilling McCormick-branded pepper tins, Publix began selling Publix-branded pepper tins underfilled in the *identical* manner as the McCormick-branded pepper tins: *e.g.*, traditional 2-ounce tins are now filled with only 1.5 ounces of pepper; 4-ounce tins are now filled with only 3 ounces of pepper; and traditional 8-ounce tins are now filled with only 6 ounces. The Publix-brand pepper fill practices thus kept in lock-step, at the same exact time, with McCormick's pepper fill practices.

36. Photo I below shows a 1.5-ounce tin of Publix Pure Ground Black Pepper. The 1.5-ounce tin is being sold for the same price as the 2-ounce tin sold for just before it was substituted, even though it contains 25% less black pepper.

Photo I



37. Similarly, Photo J below shows a 3-ounce tin of Publix Pure Ground Black Pepper. The 3-ounce tin is being sold for the same price that the 4-ounce tin sold for just before it was substituted, even though it contains 25% less black pepper.

Photo J



38. Photo K below shows a 6-ounce tin of Publix Pure Ground Black Pepper. The 6-ounce tin is being sold for the same price as the 8-ounce tin sold for just before it was substituted, even though it contains 25% less black pepper.

Photo K



***McCormick's and Publix's Deceptive Slack-Filling***

39. McCormick® Pure Ground Black Pepper, McCormick® Black Peppercorn Grinder, McCormick-supplied store-branded pure ground black pepper (including the Great Value brand), and Publix-branded Pure Ground Black Pepper, which were marketed, distributed, and sold in substantially underfilled containers since early 2015, as described above, are hereinafter collectively referred to as the “Reduced Products.”

40. As a consequence of McCormick's and Publix's actions, consumers are being misled into believing that they are buying a larger volume of black pepper than is actually contained in the Reduced Products.

41. The price of the Reduced Products, notwithstanding the significant reduction in the amount of black pepper contained therein, has remained approximately the same. Consumers are paying approximately the same amount for the same-sized containers, but unknowingly receiving substantially less black pepper.

42. McCormick's and Publix's misleading practices are known in the industry as nonfunctional slack-fill.

43. Section 403(d) of the Federal Food, Drug, and Cosmetic Act ("FDCA") prohibits nonfunctional slack-fill. The prohibition against slack-fill is set forth in 21 C.F.R. §100.100, which provides:

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Unavoidable product settling during shipping and handling;
- (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;
- (5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or
- (6) Inability to increase level of fill or to further reduce the size of the package

(e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

44. Similarly, the Florida Food Safety Act, Florida Statutes, section 500.01, *et seq.*, prohibits slack-filling, providing: “A food is deemed to be misbranded ... [i]f its container is so made, formed, or filled as to be misleading.” Fla. Stat. §500.11(1)(d).

45. McCormick and Publix lack any lawful justification for selling the Reduced Products with slack fill. The fact that McCormick and Publix were able to ship and sell greater amounts of pepper in the same containers for decades demonstrates beyond all doubt that their new slack-filling practices cannot qualify for any exception.

46. As a result of McCormick’s and Publix’s misleading and deceptive sale of the same-sized containers, with unlawful, nonfunctional slack-fill, Plaintiffs and consumers have purchased Reduced Products manufactured, sold, distributed or supplied by McCormick and Publix, which are deceptively and unlawfully slack-filled. As a result, Plaintiffs and those similarly situated have been damaged.

### **CLASS ALLEGATIONS**

47. Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure. The proposed Classes consist of:

All persons who, as end-purchasers and not for resale, purchased McCormick® Pure Ground Black Pepper, McCormick® Black Peppercorn Grinder, McCormick-supplied store-branded tins of pure ground black pepper (including the Great Value brand), or Publix-branded Pure Ground Black Pepper since January 1, 2015 (the “National Class”).

All persons in the State of Florida who, as end-purchasers and not for resale, purchased McCormick® Pure Ground Black Pepper, McCormick® Black Peppercorn Grinder, or McCormick-supplied store-branded tins of pure ground

black pepper (including the Great Value brand) since January 1, 2015 (the “Florida State Subclass”).

The National Class and the Florida State Subclass are collectively referred to as the “Classes.”

48. Plaintiffs reserve the right to modify or amend the definition of the proposed Classes.

49. Excluded from the proposed Classes are governmental entities, Defendants, officers, directors, and employees of Defendants, and the Judge assigned to this action and his or her staff.

50. *Numerosity – Fed. R. Civ. P. 23(a)(1)*. The members of the Classes are so numerous that joinder of all members is impracticable. The Classes consist of thousands, if not hundreds of thousands of members, the exact number of which is within the knowledge of and can be ascertained by resort to Defendants’ records.

51. *Commonality and Predominance – Fed. R. Civ. P. 23(a)(2)*. There is a well-established community of interest in the questions of law and fact affecting the parties to be represented in this action. All members of the Classes were affected by McCormick’s and Publix’s deceptive packaging and marketing and unlawful slack-fill of the Reduced Products.

52. Common questions of law and fact include, but are not limited to:

- Whether Defendants’ conduct, which resulted in the Reduced Products in the same-sized containers but with substantially less black pepper constitutes unlawful, nonfunctional slack-filling;
- Whether Defendants’ packaging of the Reduced Products was unfair, deceptive, or unlawful;
- Whether the appearance of Defendants’ packaging represented that the Reduced Products were of a particular standard, quality, or quantity when they were not;
- Whether Defendants’ actions constitute violations of food labeling laws of the

State of Florida;

- Whether Defendants' actions constitute violations of the consumer protection laws of the State of Florida;
- Whether nonfunctional slack fill is misleading as a matter of law;
- Whether the members of the Classes have sustained damages as a result of Defendants' wrongful conduct;
- The appropriate measure of damages and other relief; and
- Whether, as a result of Defendants' misconduct, the Classes are entitled to equitable and injunctive relief.

53. If certified as a class action, resolving these issues for Plaintiffs or any other members of the Classes will drive the resolution of the claims of all members of the Classes.

54. ***Certification of the Class Pursuant to Fed. R. Civ. P. 23(b)(3)***. Questions of law and fact common to the Classes predominate over questions that may affect only individual members of the Classes. The overarching issue boils down to this—was Defendants' packaging of the Reduced Products materially misleading? The common issues predominate over any individualized issues.

55. ***Typicality – Fed. R. Civ. P. 23(a)(3)***. Plaintiffs' claims are typical of the claims of the members of the Classes. Plaintiffs have the same interests as all members of the Classes in that the nature and character of the challenged conduct is the same. Plaintiffs and all members of the Classes challenge Defendants' conduct and share the same type of injury under the same legal theories. The resolution of the Plaintiffs' claim will simultaneously resolve the claims of the members of the Class.

56. ***Adequacy of Representation – Fed. R. Civ. P. 23(a)(4)***. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have retained competent counsel experienced in consumer class litigation. Plaintiffs are members of

the Classes and do not have interests antagonistic to or in conflict with members of the Classes. Neither Plaintiffs nor Plaintiffs' counsel have any interests that might cause them not to vigorously pursue this claim for the Classes. Plaintiffs' claims are the same as those of the claims of the Classes, which all arise from the same operative facts and are based on the same legal theories.

57. *Declaratory and Injunctive Relief – Fed. R. Civ. P. 23(b)(2)*. Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members of the Classes.

58. *Superiority – Fed. R. Civ. P. 23(b)(3)*. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because the membership of the Classes is so numerous and sufficiently geographically widespread that joinder of all members is impracticable. In addition, the prosecution of separate actions by individual members of the Classes would create a risk of incompatible standards of conduct for Defendants and inconsistent or varying adjudications for all parties. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons a method for obtaining redress on claims that could not be practicably pursued individually, substantially outweighs any potential difficulties in management of this class action.

59. Any difficulty in the management of this case as a class action would be far outweighed by the management of thousands of individual actions.

**COUNT I**  
**Violations of the Florida Deceptive and Unfair Trade Practices Act**  
**Florida Statutes §501.201, *et seq.*,**  
**Against Defendant McCormick**  
(On behalf of the Florida State Subclass)

60. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 59 above as if fully set forth here.

61. This action is brought in part pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201 *et seq.* (“FDUTPA” or “Act”). The stated purpose of the Act is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. §501.202(2).

62. Plaintiffs, and all others similarly situated, at all relevant times, were consumers as defined by Fla. Stat. §501.203(7).

63. McCormick, at all relevant times, solicited, advertised, offered, provided and distributed goods in the State of Florida, and thereby was engaged in trade or commerce as defined by Fla. Stat. §501.203(8).

64. Fla. Stat. §501.204(1) declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

65. By underfilling its Reduced Products’ opaque containers, McCormick deceived and misled Plaintiffs and members of the Florida State Subclass into believing they would receive more pepper than they did. A reasonable consumer would have been misled by McCormick’s nonfunctional slack fill, and would have relied upon the implication that the containers’ size was proportional to the amount of product inside, as they had been for decades

in the industry. McCormick therefore obtained an unfair economic advantage and obtained Plaintiffs' and the members of the Florida State Subclass' business unfairly.

66. The Florida Food Safety Act, which “is intended to ... [s]afeguard the public from injury ... by merchandising *deceit*,” is a law that expressly regulates unfair trade practices and unfair competition. Fla. Stat. §500.02(1). Similarly, the container misbranding provision of the FFSA specifically prohibits “misleading” fill practices. *Id.* at §500.11(1)(d). Deceptive and misleading practices in the context of consumer transactions have unanimously been held to be the hallmarks of unfair trade practices and unfair competition. Thus, a violation of section 500.11(1)(d) constitutes a violation of the FDUTPA’s prohibition of “unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.” Fla. Stat. §501.203(3)(c).

67. Nonfunctional slack fill is misleading as a matter of law.

68. FFSA’s provision on slack fill parallels the slack fill provisions of the FDCA:

**FFSA language:** A food is deemed to be misbranded ... [i]f its container is so made, formed, or filled as to be misleading.  
Fla. Stat. §500.11(1)(d).

**FDCA language:** A food shall be deemed to be misbranded ... [i]f its container is so made, formed, or filled as to be misleading.  
21 U.S.C. §343(d).

69. FFSA is intended to be “administered so far as practicable in conformity with the provisions of, and regulations issued under the authority of, the [FDCA]”, Fla. Stat. §500.02(2), and is intended to “[p]romote thereby uniformity of such state and federal laws and their administration and enforcement throughout the United States and in the several states,” *id.* at §500.02(3).

70. The federal Food and Drug Administration’s regulations, adopted pursuant to section 403(d) of the FDCA, prohibit nonfunctional slack fill. Specifically, 21 C.F.R. §100.100,

provides:

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents *shall be considered to be filled as to be misleading* if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Unavoidable product settling during shipping and handling;
- (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;
- (5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or
- (6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

(Emphasis added.)

71. Given that McCormick's identical pepper containers were filled to capacity for decades, none of the functional slack fill provisions can apply to McCormick's current practices.

72. In addition, McCormick has violated the Act because its slack-fill practice offends established public policy and is immoral, unethical, unscrupulous and substantially injurious to consumers. Laws codified through the legislative process constitute the public policy of the

State of Florida. Therefore, in addition to the reasons stated above, a violation of the FFSA constitutes a violation of the FDUTPA, including its provision prohibiting non-functional slack fill.

73. The unfair and unlawful trade practices set forth have and continue to injure Plaintiff, the members of the Florida State Subclass, and the general public and cause the loss of money. The damages suffered by Plaintiff and the members of the Florida State Subclass were directly and proximately caused by the reduced-fill practices of McCormick.

74. Pursuant to Florida Statutes, section 501.211(1), Plaintiff and the members of the Florida State Subclass seek a declaratory judgment and court order enjoining the above-described wrongful acts and practices of McCormick and for restitution and disgorgement.

75. Additionally, pursuant to Florida Statutes, sections 501.211(2) and 501.2105, Plaintiffs and the members of the Florida State Subclass make claims for damages, attorneys' fees and costs.

**COUNT II**  
**Violations of the Florida Deceptive and Unfair Trade Practices Act**  
**Florida Statutes §501.201, *et seq.*,**  
**Against Defendant Publix**  
(On behalf of the National Class)

76. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 59 above as if fully set forth here.

77. This action is brought in part pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201 *et seq.* The stated purpose of the Act is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. §501.202(2).

78. Plaintiffs, and all others similarly situated, at all relevant times, were consumers as defined by Fla. Stat. §501.203(7).

79. Publix, at all relevant times, solicited, advertised, offered, provided and distributed goods in the State of Florida, and thereby was engaged in trade or commerce as defined by Fla. Stat. §501.203(8).

80. Fla. Stat. §501.204(1) declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

81. By selling its Reduced Products’ in in the opaque containers shown in Photos I, J, and K, Publix deceived and misled Plaintiffs and members of the National Class into believing they would receive more pepper than they did. A reasonable consumer would have been misled by Publix’s nonfunctional slack fill, and would have relied upon the implication that the containers’ size was proportional to the amount of product inside, as they had been for decades in the industry. Publix, therefore, obtained an unfair economic advantage and obtained Plaintiffs’ and the members of the National Class’s business unfairly.

82. The Florida Food Safety Act, which “is intended to ... [s]afeguard the public from injury ... by merchandising *deceit*,” is a law that expressly regulates unfair trade practices and unfair competition. Fla. Stat. §500.02(1). Similarly, the container misbranding provision of the FFSA specifically prohibits “misleading” fill practices. *Id.* at §500.11(1)(d). Deceptive and misleading practices in the context of consumer transactions have unanimously been held to be the hallmarks of unfair trade practices and unfair competition. Thus, a violation of section 500.11(1)(d) constitutes a violation of the FDUTPA’s prohibition of “unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.” Fla. Stat. §501.203(3)(c).

83. Nonfunctional slack fill is misleading as a matter of law.

84. FFSA's provision on slack fill parallels the slack fill provisions of the federal

Food, Drug, and Cosmetic Act:

**FFSA language:** A food is deemed to be misbranded ... [i]f its container is so made, formed, or filled as to be misleading.  
Fla. Stat. §500.11(1)(d).

**FDCA language:** A food shall be deemed to be misbranded ... [i]f its container is so made, formed, or filled as to be misleading.  
21 U.S.C. §343(d).

85. FFSA is intended to be "administered so far as practicable in conformity with the provisions of, and regulations issued under the authority of, the [FDCA]", Fla. Stat. §500.02(2), and is intended to "[p]romote thereby uniformity of such state and federal laws and their administration and enforcement throughout the United States and in the several states," *id.* at §500.02(3).

86. The federal Food and Drug Administration's regulations, adopted pursuant to section 403(d) of the FDCA, prohibit nonfunctional slack fill. Specifically, 21 C.F.R. §100.100, provides:

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents *shall be considered to be filled as to be misleading* if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

(1) Protection of the contents of the package;

(2) The requirements of the machines used for enclosing the contents in such package;

(3) Unavoidable product settling during shipping and handling;

(4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or

(6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

(Emphasis added.)

87. Given that Publix's identical pepper containers were filled to capacity prior to its distribution and sale of its current containers, which now contain slack fill, none of the functional slack fill provisions can apply to Publix's current Reduced Products.

88. In addition, Publix has violated the FDUTPA because its slack-fill practice offends established public policy and is substantially injurious to consumers. Laws codified through the legislative process constitute the public policy of the State. Therefore, in addition to the reasons stated above, a violation of the FFSA constitutes a violation of the FDUTPA, including its provision prohibiting non-functional slack fill.

89. The unfair and unlawful trade practices set forth have and continue to injure Plaintiffs, the members of the National Class, and the general public and cause the loss of money. The damages suffered by Plaintiffs and the National Class were directly and proximately caused by the reduced-fill practices of Publix.

90. Pursuant to Florida Statutes, section 501.211(1), Plaintiffs and the National Class seek a declaratory judgment and court order enjoining the above-described wrongful acts and

practices of Publix and for restitution and disgorgement.

91. Additionally, pursuant to Florida Statutes, sections 501.211(2) and 501.2105, Plaintiffs and the National Class make claims for damages, attorneys' fees and costs.

**COUNT III**  
**Unjust Enrichment**  
**Against Defendants McCormick and Publix**  
(On behalf of the National Class)

92. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 59 above as if fully set forth here.

93. Plaintiffs and the members of the National Class conferred upon McCormick and Publix non-gratuitous payments for the Reduced Products. Defendants appreciated, accepted, or retained the non-gratuitous benefits conferred by Plaintiffs and the members of the National Class, with full knowledge and awareness that, as a result of Defendants' sale of nonfunctional-slack-fill products, Plaintiffs and the members of the National Class were not receiving properly filled containers of pepper, as described above, with the quantities of pepper that had been represented by Defendants and reasonable consumers would have expected.

94. Defendants profited from its unlawful, unfair, misleading, and deceptive practices at the expense of Plaintiffs and the members of the National Class, under circumstances in which it would be unjust for Defendants to be permitted to retain the benefit. Under common law principles of unjust enrichment, Defendants should not be permitted to retain the benefits of this unjust enrichment.

95. Because Defendants' retention of the non-gratuitous benefits conferred by Plaintiffs and the members of the National Class is unjust and inequitable, Plaintiffs and the members of the National Class are entitled to, and hereby seek disgorgement and restitution of Defendants' wrongful profits, revenue, and benefits in a manner established by the Court.

96. Plaintiffs and the members of the National Class do not have an adequate remedy at law against Defendants.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs and the members of the Classes demand judgment against Defendants McCormick and Publix as follows:

- A. Certifying the Classes as requested herein;
- B. Awarding Plaintiffs and the members of the proposed Classes damages;
- C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiffs and the members of the Classes;
- D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendant pay restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful;
- E. Ordering Defendants to engage in a corrective advertising campaign;
- F. Awarding attorneys' fees and costs;
- G. Awarding applicable pre-judgment or post-judgment interest; and
- H. Awarding such other and further relief as the Court may deem necessary or appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all issues so triable.

Dated: November 3, 2015

By: /s/ Stuart A. Davidson  
Stuart A. Davidson (FL Bar #84824)  
Mark Dearman (FL Bar #982407)  
Jason H. Alperstein (FL Bar #64205)  
**ROBBINS GELLER RUDMAN  
& DOWD LLP**

120 E Palmetto Park Road  
Boca Raton, FL 33432  
Telephone: (561) 750-3000  
sdavidson@rgrdlaw.com  
mdearman@rgrdlaw.com  
jalperstein@rgrdlaw.com

**ZIMMERMAN REED LLP**

Charles S. Zimmerman (MN Bar No. 120054)  
David M. Cialkowski (MN Bar No. 306526)  
June P. Hoidal (MN Bar No. 33330X)  
1100 IDS Center, 80 S 8th St.  
Minneapolis, MN 55402  
Telephone: (612) 341-0400  
charles.zimmerman@zimmreed.com  
david.cialkowski@zimmreed.com  
june.hoidal@zimmreed.com

**REINHARDT WENDORF  
& BLANCHFIELD**

Garrett D. Blanchfield  
E-1250 First National Bank Building  
332 Minnesota Street  
St. Paul, MN 55101  
Telephone: (651) 287-2100  
g.blanchfield@rwblawfirm.com

**FREED KANNER LONDON & MILLEN LLC**

Douglas A. Millen  
2201 Waukegan Road, Suite 130  
Bannockburn, IL 60015 USA  
Telephone: (224) 632-4505  
Fax: 224-632-4521  
dmillen@fkmlaw.com

**KARON, LLC**

Daniel R. Karon  
700 W. St. Clair Ave., Suite 200  
Cleveland, OH 44113  
Telephone: (216) 622-1851  
Fax: 216-241-8175  
dkaron@karonllc.com

*Attorneys for Plaintiffs and the Putative Classes*

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 Carmen Pelliteri and Patricia Fusco Coyney, on Behalf of Themselves and All Others Similarly Situated DEFENDANTS McCormick & Company, Inc., and Publix Super Markets, Inc.

(b) County of Residence of First Listed Plaintiff Palm Beach (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Robbins Geller Rudman & Dowd LLP, 120 E. Palmetto Park Road, Suite 500, Boca Raton, FL 33432. Tel. 561/750-3000 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

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

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

Grid for Basis of Jurisdiction and Citizenship of Principal Parties with checkboxes for U.S. Government Plaintiff/Defendant, Federal Question, Diversity, Citizen of This/Another State, Foreign Country, PTF/DEF 1-6, and Incorporated/Principal Place of Business.

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

Large grid for Nature of Suit with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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 7 Appeal to District Judge from Magistrate Judgment 8 Remanded from Appellate Court

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

JUDGE DOCKET NUMBER 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):

VII. CAUSE OF ACTION 28 U.S.C. §1332(d), class action complaint for violations of consumer protection statutes. LENGTH OF TRIAL via 10 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 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE 11/03/2015 SIGNATURE OF ATTORNEY OF RECORD s/Stuart A. Davidson

FOR OFFICE USE ONLY

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

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

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

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

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

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

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

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

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

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

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

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

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

Brief Description: Unauthorized reception of cable service

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

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

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

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

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

CARMEN PELLITTERI and PATRICIA FUSCO
COYNE, on Behalf of Themselves and All Others
Similarly Situated,

Plaintiff(s)

v.

Civil Action No.

MCCORMICK & COMPANY, INC., and
PUBLIX SUPER MARKETS, INC.,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

MCCORMICK & COMPANY, INC.,
Registered Agent:
Corporation Service Company
1201 Hays Street
Tallahassee, FL 32301-2525

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Stuart A. Davidson
ROBBINS GELLER RUDMAN & DOWD LLP
120 E. Palmetto Park Road, Suite 500
Boca Raton, FL 33432

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

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

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

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

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

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

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify):* \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

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

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

CARMEN PELLITTERI and PATRICIA FUSCO
COYNE, on Behalf of Themselves and All Others
Similarly Situated,

Plaintiff(s)

v.

Civil Action No.

MCCORMICK & COMPANY, INC., and
PUBLIX SUPER MARKETS, INC.,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

PUBLIX SUPER MARKETS, INC.
Registered Agent:
John A. Attaway, Jr.
3300 Publix Corporate Pkwy.
Lakeland, FL 33811-3311

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Stuart A. Davidson
ROBBINS GELLER RUDMAN & DOWD LLP
120 E. Palmetto Park Road, Suite 500
Boca Raton, FL 33432

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

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

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

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

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

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

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

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

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: