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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

LEAH DAVIS, On Behalf of Herself and All ) **No:**  
Others Similarly Situated, )  
)  
Plaintiff, )  
) **CLASS ACTION COMPLAINT**  
vs. )  
)  
HAMPTON CREEK, INC., )  
Defendant. )  
) **DEMAND FOR JURY TRIAL**  
)  
)  
\_\_\_\_\_ )

Plaintiff, Leah Davis (“Davis” or “Plaintiff”), by and through her attorneys, brings this action on behalf of herself and all others similarly situated against Defendant, Hampton Creek, Inc. (“Hampton Creek” or “Defendant”), and alleges, on personal knowledge as to all facts related to herself and upon information and belief as to all other matters, as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this action individually and on behalf of a proposed class (“Class”) as more fully defined below, of similarly situated consumers in Florida seeking to redress the pervasive pattern of fraudulent, deceptive, false, and otherwise improper advertising, sales, and marketing practices that Defendant engages in regarding its Just Mayo sandwich spread products (“Just Mayo” or “Product(s)”).

2. Defendant manufactures, markets, and sells Just Mayo, which is a line of sandwich spreads. Despite its name, Just Mayo does not contain mayonnaise and is not mayonnaise at all.

3. At all relevant times, Hampton Creek has made, and continues to make, misrepresentations and/or omissions regarding Just Mayo. Specifically, Hampton Creek, based on the label and other forms of advertising to Plaintiff and others similarly situated, represents that Just Mayo is mayonnaise, when, in actuality, it contains no mayonnaise at all. Hampton Creek knew and purposely misrepresented and failed to disclose this fact to consumers.

4. “Mayo” is defined in the dictionary and in common usage as “mayonnaise.” Under federal regulations, common dictionary definitions and as consumers understand it, “mayonnaise” or “mayo” is a product that contains eggs. There are no eggs in Just Mayo. By calling its sandwich spread Just Mayo, Hampton Creek falsely communicates to consumers, including Plaintiff, that Just Mayo is mayonnaise, when, in fact, it is not. The literally false

product name is highlighted on the label, which also features a giant image of an egg (see below) and in advertising for Just Mayo. Hampton Creek has also explicitly referred to Just Mayo as “mayo” and “mayonnaise” in its advertising. Its website, for example, touted that “Just Mayo is an outrageously delicious mayonnaise” until it was recently changed.



5. Because it is not mayonnaise, Just Mayo does not perform like real mayonnaise when it is heated, as mayonnaise often must be in common consumer uses. Real mayonnaise is commonly used because its blend of ingredients effectively binds together the elements of the sauce and adds flavor and texture in the process. Because Just Mayo is a product lacking the same emulsifying ingredients as real mayonnaise, when it is heated, its oils separate and do not

bind the ingredients together. Consumers and cooks, including Plaintiff, have an expectation that mayonnaise should both taste and perform like mayonnaise. Just Mayo does neither.

6. As a consequence of Hampton Creek's unfair and deceptive practice, Plaintiff and the Class have purchased Just Mayo under the false impression that the Product is mayonnaise. Each consumer has been exposed to the material misrepresentations and/or omissions, which are prominently displayed on the Product packaging, prior to purchasing it. Furthermore, Hampton Creek makes the same material and misleading statements and/or omissions on its website and other advertising materials.

7. Had Plaintiff and the Class been aware that Just Mayo was, in fact, not mayonnaise, they would not have purchased Just Mayo, or would have paid less for the Product.

8. As a result of Defendant's false and misleading statements and failure to disclose, Plaintiff purchased the Product and the Class members purchased thousands of jars of the Product and have suffered – and continue to suffer – injury in fact as a result of Defendant's misrepresentations and/or omissions. Additionally, Defendant acquired money or property from Plaintiff and the Class as a result of its unfair, deceptive, and unlawful conduct as alleged herein.

9. Plaintiff brings this action, on behalf of herself and other similarly situated Florida consumers, to halt the dissemination of this false and misleading advertising, correct the false and misleading perception Defendant has created in the minds of consumers, and to obtain redress for those who have purchased Just Mayo. Plaintiff alleges violations of the Florida Deceptive and Unfair Trade Practice Act and, alternatively, asserts a claim for unjust enrichment.

### **JURISDICTION AND VENUE**

10. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). Upon information and belief, the matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and Plaintiff and certain members of the Class are citizens of states different from that of Defendant.

11. This Court has personal jurisdiction over Defendant because Defendant has conducted and continues to conduct business in the State of Florida, and because Defendant has committed the acts and omissions complained of herein in the State of Florida, which is also the state in which Plaintiff resides and is a citizen.

12. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because Defendant:

- a. is authorized to conduct business in this district and has intentionally availed itself of the laws and markets within this district through the promotion, marketing, distribution, and sale of Just Mayo;
- b. does substantial business in this district;
- c. is subject to personal jurisdiction in this district; and
- d. Plaintiff resides in this district.

### **PARTIES**

13. Plaintiff is, and at all times relevant to this action has been, a resident of Miami, Dade County, Florida, and, thus, is a citizen of Florida. Prior to purchasing Just Mayo, Plaintiff was exposed to and saw Defendant's claims, and purchased Just Mayo in reliance thereon. Plaintiff suffered injury in fact and lost money as a result of Defendant's false and misleading conduct.

14. Defendant is a corporation organized under the laws of the State of Delaware with its principal place of business at 371 10<sup>th</sup> Street, San Francisco, California 94103. Defendant, thus, is a citizen of Delaware and California. Defendant promotes, markets, distributes, and sells Just Mayo throughout the United States, including to consumers in the State of Florida.

### **SUBSTANTIVE ALLEGATIONS**

15. Under both federal regulations and common dictionary definitions, “mayo” is “mayonnaise,” and “mayonnaise” is a product that must contain eggs. The Food and Drug Administration’s standard of identity defines mayonnaise as “the emulsified semi-solid food prepared from vegetable oil(s),” an “acidifying” ingredient of either vinegar or lemon juice or lime juice, or both, and an “egg yolk-containing” ingredient. 21 C.F.R. § 169.140. This standard exists, as the Congressional Research Service branch of the Library of Congress explains, to “protect the consumer by ensuring that a label accurately reflects what’s inside (for example, that mayonnaise is not an imitation spread.)”

16. Common dictionary definitions of mayonnaise similarly define mayonnaise as “a dressing made chiefly of *egg yolks*, vegetable oils, and vinegar or lemon juice.” Merriam Webster Online Dictionary, available at <http://www.merriam-webster.com/> (emphasis added). “Mayo” is defined as shorthand for mayonnaise, and is certainly understood that way by consumers. The Merriam-Webster Online dictionary defines “mayo” simply as “mayonnaise.” In common usage, “mayo” often is used as a synonym for mayonnaise.

17. The word “just” is also a common dictionary term. When used as a modifier of “mayonnaise,” the word “just” means “exactly,” “precisely,” “only,” or “simply.”

<http://www.merriam-webster.com/>.

18. In light of these dictionary definitions, a product called “Just Mayo” should be exactly, precisely, only and simply mayonnaise. Defendant’s Just Mayo is none of those things.

**FALSE LABELING AND ADVERTISING OF JUST MAYO**

19. Hampton Creek produces a variety of sandwich spreads that it packages and sells under the name Just Mayo. As shown on page 2, above, the Just Mayo packaging prominently features the name Just Mayo with the word “Just” appearing in small cursive writing above the significantly larger word “Mayo” in block letters. The name appears below an image of a large egg on a brown label that is wrapped around a transparent container such that the sandwich spread inside - which is off-white in color, just like real mayonnaise - is visible.

20. Just Mayo, however, is not mayonnaise. It does not contain any egg ingredients. As shown at right, the Just Mayo packaging lists the ingredients as: “Non-GMO Expeller Pressed Canola Oil, Filtered Water, Lemon Juice, White Vinegar, 2% or less of the following: Organic Sugar, Salt, Pea Protein, Spices, Modified Food Starch, Beta-Carotene.”

21. On information and belief, in some versions of the Product, a preservative is added to render the Product shelf-stable.

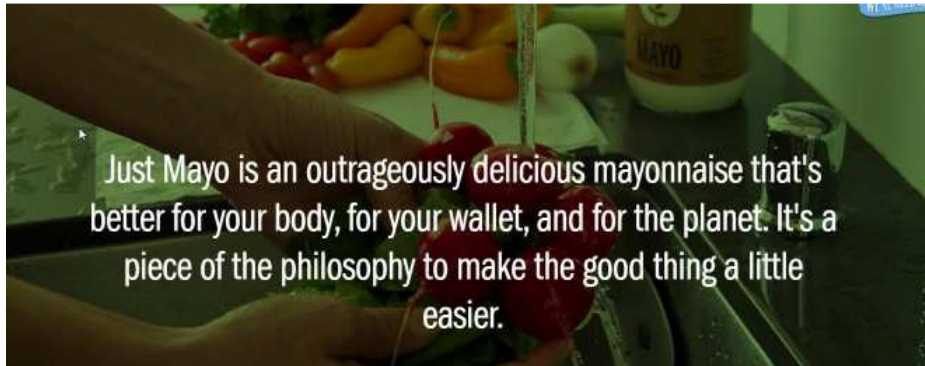
22. Hampton Creek also sells flavored sandwich spreads that include the name Just Mayo with a term describing added flavors, including Just Mayo Chipotle, Just Mayo Garlic, and Just Mayo Sriracha. The labeling for these flavored Just Mayo sandwich spreads is nearly identical to the labeling for the unflavored Just Mayo spread, except the name of the flavor appears below the words “Just Mayo.” As with unflavored Just Mayo, none of the flavored Just Mayo spreads contain any egg ingredients, despite the prominent image of the egg on the label.

23. The name Just Mayo is literally false because it expressly communicates that Just Mayo is mayonnaise, containing the ingredients consumers expect to be found in mayonnaise, when, in fact, it is not.

24. The name “Just Mayo” also communicates a false message to consumers. The name, and other representations, are misleading and would cause a reasonable consumer, including Plaintiff, to believe that the Product is mayonnaise.

25. Compounding the problem, Hampton Creek has explicitly and falsely referred to Just Mayo as “mayo” and “mayonnaise” in its Product advertisements.

26. As shown below, on its website, Hampton Creek has stated: “Just Mayo is an outrageously delicious *mayonnaise* . . .” (emphasis added) (Defendant recently removed the word mayonnaise from its website).



27. As shown below, on its website, Hampton Creek, until recently, stated that Just Mayo is “[c]reamy rich *mayo* for any sandwich, anytime.” (emphasis added).





28. Hampton Creek’s false labeling, and its false claims that Just Mayo is “mayonnaise” or “mayo,” are part of a larger scheme of false advertising.

**PLAINTIFF’S EXPERIENCE WITH JUST MAYO**

29. The labeling and advertising of Just Mayo, and the representations therein, were made by Defendant. Reasonably relying on the label and advertisement of Just Mayo and representations therein, Plaintiff purchased the Product. Plaintiff reasonably expected that the Product was mayonnaise, as conveyed in the label and advertisement.

30. In or about August 2014, Plaintiff was shopping at a Whole Foods in North Miami, Florida, and at the Epicure Market in Sunny Isles Beach, Florida. While shopping, she saw Just Mayo on the store shelf. Plaintiff purchased Just Mayo for approximately \$4.69 on at least two separate occasions under the false impression that she was purchasing mayonnaise which could be used for cooking purposes, as well as a sandwich spread.

31. As a result of her understanding that this was mayonnaise, and in reliance on the label’s statements that the Product was mayonnaise, she purchased and consumed the Just Mayo product.

32. Plaintiff suffered an ascertainable loss in the amount of the purchase price of the Product, as a result of Defendant's conduct described herein, because she purchased a product that, although labeled and advertised as mayonnaise, is not mayonnaise.

**CLASS ACTION ALLEGATIONS**

33. Plaintiff brings this lawsuit on behalf of herself and the proposed Class members pursuant to the Federal Rules of Civil Procedure 23(b)(2) and (3). The proposed Class consists of:

All persons who purchased Just Mayo in the State of Florida (the "Class" or "Florida Class").

34. Excluded from the Class is: (1) Defendant, as well as Defendant's subsidiaries, affiliates, employees, officers, directors, assigns, and successors, and any entity in which Defendant has a controlling interest; (2) the Judge to whom this case is assigned to and any member of the Judge's immediate family; (3) anyone who purchased Just Mayo for the purpose of resale; and (4) anyone asserting claims for personal injury. Plaintiff reserves the right to amend the definition of the Class if discovery and/or further investigation reveals that the Class should be expanded or otherwise modified.

35. **Numerosity:** The members of the Class are so numerous that joinder of all members is impracticable. Plaintiff reasonably estimates that there are thousands of consumers in Florida.

36. **Commonality and Predominance:** Common questions of law and fact exist as to all members of the Class. These common questions predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited, to the following:

- a. whether Defendant's claims regarding Just Mayo are deceptive and misleading;
- b. whether Defendant engaged in false and misleading advertising;
- c. whether Defendant's Product is mayonnaise;
- d. whether Defendant's conduct as alleged herein violates the FDUTPA;
- e. whether Defendant has been unjustly enriched by the conduct alleged herein;
- f. whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and
- g. whether Plaintiff and Class members are entitled to declaratory and injunctive relief.

37. **Typicality:** Plaintiff's claims are typical of the claims of the proposed Class, as all Class members are similarly affected by Defendant's wrongful conduct. Plaintiff, like other members of the Class, purchased Just Mayo after exposure to the same material misrepresentation and/or omissions appearing on the Product packaging, on Hampton Creek's website and other advertising, and received a product that, despite Defendant's consistent misrepresentations, is not mayonnaise. Plaintiff is advancing the same claims and legal theories on behalf of herself and all absent members of the Class.

38. **Adequacy:** Plaintiff's claims are made in a representative capacity on behalf of the other members of the Class. Plaintiff has no interests antagonistic to the interest of the other members of the proposed Class and is subject to no unique defenses.

39. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. The injury suffered by each individual Class

member is relatively small in comparison to the burden and expenses of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class to individually redress the wrongs done to them effectively. Even if the members of the Class could afford such litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents no management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

40. Unless a class is certified, Defendant will improperly retain monies received, as a result of its conduct, from Plaintiff and members of the Class. Unless an injunction is issued, Defendant will continue to commit the violations alleged, and the members of the Class and the general public will continue to be misled.

**COUNT I**  
**Violation Of Florida Deceptive And Unfair Trade Practices Act,**  
**(FLA. STAT. § 501.202(2), *et seq.*) On Behalf Of The Florida Class**

41. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as though set forth fully herein.

42. At all relevant times, Plaintiff and members of the Florida Class were consumers within the meaning of Florida Deceptive and Unfair Trade Practices Act ("FDUTPA").

43. At all relevant times hereto, Hampton Creek engaged in trade and/or commerce within the meaning of the FDUTPA.

44. The Florida Legislature has expressly stated that the FDUTPA "shall be liberally construed to promote" its underlying policies, including "to protect the consuming public and

legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practice in the conduct of any trade or commerce.”

FLA. STAT. § 501.202(2).

45. The FDUTPA prohibits the use of “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” FLA. STAT. § 501.204(1).

46. The FDUTPA further provides that the Florida courts give “due consideration and great weight” to the Federal Trade Commission and federal court interpretations of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C § 45(a)(1). FLA. STAT. § 501.204(2).

47. Defendant’s labeling and advertising constitutes a deceptive act because it is a representation, omission, or practice that is likely to mislead – and has misled – a consumer acting reasonably under the circumstances, and violates FLA. STAT. § 500.04 and 21 U.S.C. § 343. By naming the Product “Just Mayo” and referring to the Product as mayonnaise or mayo in advertising, Defendant misled consumers acting reasonably under the circumstances into believing that the Product is mayonnaise when, in fact, it is not mayonnaise. As a result of this reasonable, but erroneous, belief, thousands of consumers have purchased Just Mayo under the false impression that they were purchasing mayonnaise.

48. Defendant’s labeling and advertising constitutes an unfair practice because it offends established public policy and is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

49. As a direct and proximate result of Defendant’s deceptive acts and unfair practices, Plaintiff and the Class paid for a product other than what they believed they were

purchasing. It was reasonably foreseeable, and intended, that the Product labeling and advertisement would lead a reasonable consumer to believe that the Product was mayonnaise.

50. Plaintiff and the Class suffered actual damages because they paid for mayonnaise, when, in reality, Just Mayo is not mayonnaise.

51. The above-described deceptive acts and unfair practices by Defendant present an ongoing threat to the Class.

52. Plaintiff is informed and believes and thereon alleges that Defendant has systematically perpetrated deceptive acts and unfair practices upon members of the public and has knowingly and intentionally misled – and continues to mislead – Plaintiff and the Class.

53. Pursuant to FLA. STAT. §§ 501.211(1), Plaintiff and the Class seek declaratory judgment and a Court Order enjoining the above-described wrongful acts and practices of Defendant.

54. Additionally, pursuant to FLA. STAT. §§ 501.211(2) and 501.2105, Plaintiff and the Class make claims for damages, attorneys' fees and costs.

**COUNT II**  
**Unjust Enrichment On Behalf Of The Florida Class**

55. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as though set forth fully herein.

56. This claim is asserted in the alternative on behalf of Plaintiff and the Class, to the extent that any contracts do not govern the entirety of the subject matter of the disputes with Defendant.

57. As a direct and proximate result of Defendant's misconduct as set forth above, Defendant has been unjustly enriched. Specifically, by its misconduct described herein, Defendant has accepted a benefit (monies paid by Plaintiff and the Class).

58. It would be inequitable for Defendant to retain the profits, benefits, compensation, consideration and other monies obtained by and from its wrongful conduct in promoting, marketing, distributing, and selling Just Mayo.

59. Plaintiff, on behalf of herself and all others similarly situated, seeks restitution from Defendant and an Order of this Court proportionally disgorging all profits, benefits, compensation, consideration, and other monies obtained by Defendant from its wrongful conduct.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and members of the proposed Class, prays for judgment as follow:

- a. Certification of the Class under Federal Rule of Civil Procedure 23 and appointment of Plaintiff as representative of the Class and her counsel as Class counsel;
- b. Compensatory and other damages identified herein;
- c. Awarding restitution and disgorgement of Defendant's revenues or profits to Plaintiff and the members of the proposed Class as permitted by applicable law;
- d. An Order requiring Defendant to cease and desist from engaging in its wrongful conduct and to engage in a corrective advertising campaign;
- e. Statutory pre-judgment and post-judgment interest on any amounts;
- f. Payment of reasonable attorneys' fees and recoverable litigation expenses as may be allowable under applicable law; and
- g. Such other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: February 4, 2015

Respectfully submitted,

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