

# EXHIBIT 1



## Notice of Service of Process

Transmittal Number: 20827475  
Date Processed: 12/12/2019

**Primary Contact:** Lindsay Kolar  
Gordon Food Service, Inc.  
1300 Gezon Parkway SW  
Wyoming, MI 49509-9300

**Electronic copy provided to:** Aaron Mockridge  
Nina Veneklase  
Dawn Rouse  
Julia Birdwell  
Cindy Chapman  
Amy Mulchay

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**Entity:** Gordon Food Service, Inc.  
Entity ID Number 2338711

**Entity Served:** Gordon Food Service, Inc.

**Title of Action:** Snellgrove's Restaurant, Inc. vs. Gordon Food Service, Inc.

**Document(s) Type:** Summons/Complaint

**Nature of Action:** Class Action

**Court/Agency:** Hillsborough County Circuit Court, FL

**Case/Reference No:** 19-CA-010700

**Jurisdiction Served:** Florida

**Date Served on CSC:** 12/12/2019

**Answer or Appearance Due:** 20 Days

**Originally Served On:** CSC

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

SNELLGROVE'S RESTAURANT, INC.,

Plaintiff,

v.

GORDON FOOD SERVICE, INC.,

Defendant.

CASE NO: 19-CA-10700

DIVISION: R

CLASS REPRESENTATION

SUMMONS

Served on 12/12/19  
at 2:48 PM by CSH  
# 257

THE STATE OF FLORIDA:

To all and singular the sheriffs of said state:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the Complaint in the above-styled cause upon the Defendant:

Gordon Food Service, Inc.  
c/o Corporation Service Company  
1201 Hays Street  
Tallahassee, FL 32301-2525

Defendant is hereby required to serve written defenses to said Complaint on Plaintiff's attorney, whose address is Brooks, LeBoeuf, Foster, Gwartney, Leace & Hobbs, P.A., 909 East Park Avenue, Tallahassee, Florida 32301, within twenty days after service of this Summons upon you, exclusive of the day of service, and to file the original of said written defenses with the clerk of said Court either before service on Plaintiff's attorney or immediately thereafter. If you fail to do so, a default will be entered against you for the relief demanded in the Complaint.

DATED: 10/18/19

PAT FRANK  
Clerk of Court and Comptroller  
601 East Kennedy Blvd., 3<sup>rd</sup> Floor  
Tampa, FL 33602

(Seal)



By [Signature]  
Deputy Clerk

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
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**SNELLGROVE'S RESTAURANT, INC.,**

Plaintiff,

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Defendant

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**CASE NO:** 19-CA-010700

**DIVISION:** R

**CLASS REPRESENTATION**

**CLASS ACTION COMPLAINT**

Plaintiff, Snellgrove's Restaurant, Inc. ("Snellgrove's"), individually and on behalf of all Florida persons or entities who are similarly situated, and files this Class Action Complaint against the Defendant, Gordon Food Service, Inc. ("Gordon").

**NATURE OF THE CASE**

1. Gordon is a food distribution company headquartered in Wyoming, Michigan. Gordon markets, sells, and distributes food products to restaurants, healthcare and educational facilities, lodging establishments and other customers like Snellgrove's. In addition to the amount Gordon charges its customers for the sale and delivery of food products, Gordon charges its customers a fee it calls a "Fuel Surcharge". The term "Fuel Surcharge" has an understood meaning and in using this term, Gordon represents that it charges the Fuel Surcharge to recover the increased fuel costs it incurs in delivering products to its customers. Gordon represents that the Fuel Surcharge varies in accordance with Gordon's increased fuel costs and that the revenue from the Fuel Surcharge is used to offset those increased costs.

2. Gordon's representations, omissions, and practices in charging the Fuel Surcharge are deceptive and unfair. The Fuel Surcharge bears absolutely no relation to Gordon's actual increased fuel costs (or its actual fuel costs) and Gordon does not use the proceeds from the Fuel

Surcharge to offset its increased fuel costs (or its actual fuel costs). The amount of the Fuel Surcharge generally does not change, despite fluctuations in Gordon's fuel costs. Further, Gordon includes any increases in fuel costs it might incur in delivering products in the standard prices it charges customers. Gordon uses the Fuel Surcharge simply to generate extra profit at its customers' expense, all the while deceiving customers into believing that the fee is a legitimate charge directly related to actual increased fuel costs it incurs, which it falsely claims it cannot control.

3. Gordon's conduct constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act.

4. Gordon has been unjustly enriched through its conduct related to the Fuel Surcharges in that it obtained money which, in equity and good conscience, belongs to Snellgrove's and putative class members.

5. Further, this case presents a prototypical situation for class treatment. Gordon's conduct—including all relevant practices, deception, representations, and omissions—is uniform among all customers. The application of the Florida Deceptive and Unfair Trade Practices Act to all similarly situated class members to this shared course of conduct will determine liability for the respective classes as a whole, ensuring that the rights of thousands of small businesses and individuals are vindicated through the efficiency of a single trial.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action and venue is proper in this Court. Gordon does business in Hillsborough County, Florida. Gordon has received and continues to receive substantial revenue and profits from the improper Fuel Surcharges in Hillsborough County, Florida. Snellgrove's principal place of business is in Hillsborough County, Florida. The conduct

giving rise to Snellgrove's claims and to the claims of each putative class member in the proposed Florida class occurred in Florida. Snellgrove's claims arise solely under Florida law and Snellgrove's makes no claims under Federal law.

**PARTIES**

7. Plaintiff Snellgrove's Restaurant, Inc. is a Florida entity with its principal place of business in Plant City, Hillsborough County, Florida. Snellgrove's was invoiced for and paid a "Fuel Surcharge" on multiple occasions.

8. Defendant Gordon Food Service, Inc. is a Michigan entity with its principal place of business in Wyoming, Michigan. Defendant's appointed agent for service of process is Corporation Service Company, 1201 Hays Street, Tallahassee, Florida 32301-2525. Defendant received all of the Fuel Surcharges at issue in this matter and are responsible, either directly or indirectly, for the conduct at issue in this matter.

**CLASS REPRESENTATIVE ALLEGATIONS**

9. Snellgrove's brings this action as a class action under Florida law and proposes the following class:

All entities who reside in Florida who paid Gordon a "Fuel Surcharge" from four years before filing of this action to the date of class notice.

10. Excluded from the proposed class are members of the judiciary, entities currently in bankruptcy, entities whose obligations have been discharged in bankruptcy, and governmental entities.

11. Snellgrove's maintains the right to create additional subclasses or classes, if necessary, and to revise these definitions to maintain cohesive classes which do not require individual inquiry to determine liability.

12. The exact number of class members is unknown to Snellgrove's at this time, but

such information can be ascertained through appropriate discovery, specifically from records maintained by Gordon its agents. Upon information and belief, the number of putative members of the class exceeds 100 entities.

13. There are common questions of law and fact common and of general interest to the class. These common questions of law and fact predominate over any questions affecting only individual members of the class and subclass.

14. Such common questions include, but are not limited to, the following:

- a. Whether the same law applies to all class members' claims.
- b. Whether Snellgrove's and the class members are entitled to class relief as requested herein.
- c. Whether Gordon has been unjustly enriched by charging the Fuel Surcharge.
- d. Whether Gordon is recovering for the same alleged cost twice, i.e. once in the actual rate and then again in the actual charge or fee.
- e. Whether Gordon charges excessive amounts for its Fuel Surcharge.
- f. Whether the Fuel Surcharge is directly related to Gordon's increased cost of fuel or actual cost of fuel.
- g. Whether Gordon uses the Fuel Surcharge to offset its increased fuel costs.
- h. Whether the Fuel Surcharge fluctuates as Gordon's actual fuel costs fluctuate.
- i. Whether Gordon's use of the term "Fuel Surcharge" is deceptive.
- j. Whether Gordon has misrepresented facts about the Fuel Surcharge.
- k. Whether Gordon has omitted material facts about the Fuel Surcharge.
- l. Whether the Fuel Surcharge bears any relation to Gordon's increased costs of fuel or its actual cost of fuel.

- m. Whether Gordon's representations and omissions regarding the Fuel Surcharge constitute a deceptive trade practice.
- n. Whether the term "Fuel Surcharge" is likely to mislead a reasonable person.
- o. Whether amounts of the Fuel Surcharges charged to Gordon customers is "unfair" under FDUTPA.

15. The claims of the named Plaintiff are typical of the claims of the class. Upon information and belief, the total number of members of each putative class exceeds 100 members and is so numerous that separate joinder of each member is impracticable.

16. Snellgrove's will fairly and adequately protect the interests of the members of the class and has no interest antagonistic to those of other class members. Snellgrove's has retained class counsel competent to prosecute class actions and such class counsel is financially able to represent the classes.

17. The class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all members of the class is impracticable. The interests of judicial economy favor adjudicating the claims for the Plaintiff class rather than on an individual basis. The class action mechanism provides the benefit of unitary adjudication, economies of scale and comprehensive supervision by a single court.

18. Common questions of law and fact predominate over any questions affecting only individual members.

**FACTUAL ALLEGATIONS**

19. Snellgrove's, is a restaurant in Plant City, Florida. Gordon is a national food distribution company headquartered in Wyoming, Michigan with over \$12 billion a year in annual revenue. As with all its customers, Gordon marketed, sold, and delivered food products to

Snellgrove's in exchange for a per item cost. But in addition to this amount, Gordon also charged Snellgrove's the Fuel Surcharge that is the subject of this lawsuit.

20. Gordon calls the subject fee a "Fuel Surcharge." Gordon charges this fee purportedly to recover the increased fuel costs it incurs in delivering products to its customers. Gordon represents that the Fuel Surcharge is directly related to its increased cost of fuel, that this fee fluctuates as Gordon's fuel cost fluctuates, and that this fee is used to offset those increased fuel costs. By using the term "Fuel Surcharge"—a term which Gordon has uniformly used on every invoice received by every Class Member charged this fee—Gordon represents that this fee is directly related to its increased fuel costs and that this fee will be used to defray such costs.

21. In actuality, the Fuel Surcharge is unrelated to Gordon's actual or increased fuel costs, and certainly not charged to defray those increased costs. The Fuel Surcharge does not vary or fluctuate in accordance with Gordon's actual increased fuel costs and the method by which Gordon determines the Fuel Surcharge has no relation to its increased fuel costs or any changes in those costs. Gordon has done no legitimate analysis to determine the proper amount of the Fuel Surcharge in connection to its increased fuel costs. Gordon does not apply the money received from the Fuel Surcharge to offset its increased fuel costs; rather, it is recognized as revenue and contributes directly to Gordon's profit. Additionally, the increased fuel costs Gordon purportedly recovers through the Fuel Surcharge are already fully through the prices it charges for sale and delivery of products. These prices include the individual component costs of Gordon's business, including—specifically—the costs of fuel and other overhead.

22. Gordon also has omitted material facts regarding the Fuel Surcharge. For example, Gordon does not disclose that the Fuel Surcharge is not related to Gordon's increased fuel or actual fuel costs, that the Fuel Surcharge is not applied to Gordon's fuel costs, that Gordon's actual cost

of fuel is not a factor in the amount of the Fuel Surcharge and that the Fuel Surcharge is recognized as profit. Gordon does not disclose its actual fuel costs to customers nor does it disclose the methodology, to the extent there is one, used to determine the amount of the Fuel Surcharge. In truth, Gordon devised, implemented, and set the amount of the Fuel Surcharge simply to increase their profits without any intent of recovering the increased fuel costs they incur in servicing customers.

23. Gordon, at some time in the past, did not charge Fuel Surcharge to its customers. Any purported fuel costs or increased fuel costs were recovered in the per item price for the sale and delivery of products, the same as other overhead costs. Gordon, however, figured out that it could substantially increase revenue by charging this deceptive fee. Gordon recovers the same alleged costs twice from its customers.

24. Gordon knows when it enters into an agreement with a customer that the customer will pay substantially more than the agreed upon service rate. Gordon does not adequately disclose this fact to its customers. Gordon never discloses that the amount of Fuel Surcharges charged to customers substantially exceeds its actual increased fuel costs, if any.

25. Gordon has consistently and continually misrepresented the nature and purpose of the Fuel Surcharge. It does so to mislead its customers into believing that this is a legitimate fee which are directly related to increased fuel costs Gordon incurs in providing food supply. This practice was designed by Gordon to deceive its customers, and is likely to deceive those customers acting reasonably under the circumstances. Gordon's misrepresentations, omissions, and deceptive practices did in fact deceive Snellgrove's and Gordon's other customers to their detriment in that each paid a Fuel Surcharge.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF FLORIDA'S DECEPTIVE AND**  
**UNFAIR TRADE PRACTICES ACT**

26. All allegations and paragraphs in this complaint are incorporated by reference.

27. Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, et seq. ("FDUTPA"), prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."

28. The stated purpose of FDUTPA is 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 practices in the conduct of any trade or commerce." Fla. Stat. § 501.202.

29. Snellgrove's and each member of the putative subclass of Florida individuals and entities, as "consumers" under FDUTPA (Fla. Stat. § 501.203(7)), have been harmed by Gordon's unconscionable, deceptive, and unfair acts and practices in the charging of the Fuel Surcharge. Gordon characterizes the Fuel Surcharge as a legitimate charge which is designed to recover the increased fuel costs it incurs in providing waste disposal services to its customers, and which is used to offset such costs. In truth, the Fuel Surcharge does not bear any relation to any increased costs nor any actual costs incurred by Gordon and it is not used to offset any actual or increased costs. Further, Gordon already recovers any fuel costs, including increased fuel costs, it might incur through the per item prices Gordon charges for sale and delivery of products ("double-dipping").

30. Gordon characterizes the Fuel Surcharge as a legitimate charge, but in reality, it is nothing more than a profit enhancer for Gordon and are otherwise improper. Gordon has deceived and misled Snellgrove's and putative class members in that the Fuel Surcharge serves no purpose

other than to increase Gordon's profits and because the fee is excessive and bears no relation to any actual cost incurred by Gordon. Gordon has performed no cost analysis to determine whether the Fuel Surcharge bears any relation to the costs incurred by Gordon. Gordon's misrepresentations, omissions, and deceptive practices as set out in this Class Action Complaint are likely to mislead reasonable customers under the circumstances.

31. Specifically, Gordon's deceptive practices directed toward Snellgrove's and putative class members include:

- a. Gordon's failure to disclose the excessive amount it charges for its Fuel Surcharge;
- b. Gordon's representation that the Fuel Surcharge is directly related to its increased cost of fuel or actual cost of fuel;
- c. Gordon's representation that the Fuel Surcharge is used to offset its increased fuel costs;
- d. Gordon's failure to disclose that the Fuel Surcharge does not fluctuate as Gordon's actual fuel costs fluctuate;
- e. The representation that the Fuel Surcharge is actually a Fuel Surcharge;
- f. The failure to disclose that the Fuel Surcharge has nothing to do with Gordon's actual cost of fuel;
- g. The representation that the Fuel Surcharge is related to Gordon's increased costs of fuel or its actual cost of fuel;
- h. The failure to disclose that Gordon's actual cost of fuel is not a factor in Gordon's Fuel Surcharge calculation;
- i. Gordon's failure to disclose to its customers that it is recovering for the same alleged cost twice, i.e. once in the actual rate and then again in the actual charge;

j. Additional deceptive practices as set out in this Class Action Complaint.

32. Gordon's misrepresentations, omissions, and deceptive practices as set out herein are likely to mislead reasonable consumers under the circumstances.

33. Gordon's actions or inactions directed toward Snellgrove's and putative class members are also unfair. Such actions or inactions include:

- a. Charging Snellgrove's and putative class members for the same alleged costs twice;
- b. Charging excessive amounts for the Fuel Surcharge;
- c. Charging a Fuel Surcharge which bears no relation to Gordon's actual or increased costs;
- d. Charging a Fuel Surcharge which does not include Gordon's actual costs in the calculation of the amount the Fuel Surcharge;
- e. Charging Snellgrove's and putative class members a Fuel Surcharge when Gordon's actual fuel costs decrease.
- f. Charging Snellgrove's and putative class a Fuel Surcharge when the Fuel Surcharges are waived for other customers.

34. As a result of the deceptive and unfair practices described above, Snellgrove's and each putative Florida class member paid the improper Fuel Surcharges to their detriment.

**SECOND CAUSE OF ACTION**  
**UNJUST ENRICHMENT**

35. All allegations and paragraphs in this complaint are incorporated by reference.

36. To the extent necessary, this count is pled in the alternative to the previous counts.

37. Gordon received money from Snellgrove's and each member of the putative class through the charging of Fuel Surcharges that are fraudulent, deceptive, unfair, and unrelated to

Gordon's actual or increased costs. The benefit conferred by Snellgrove's and each member of the putative nationwide class was non-gratuitous and Gordon realized value from this benefit. It would be inequitable for Gordon to retain this benefit.

**PRAYER FOR RELIEF**

38. Snellgrove's, on behalf of itself and each member of the putative class, and to the extent allowed by law, seeks actual and consequential compensatory damages, and restitution from Defendant. Specifically, Snellgrove's challenges the Fuel Surcharge as deceptive and unlawful as these fees are not related to the costs which Gordon claims as justification. Thus, to the extent Gordon can identify any discrete related costs that are not recovered elsewhere, Snellgrove's only seeks the amount of fees paid by members of the putative class above such identifiable costs that are not recovered elsewhere. That is, Snellgrove's seeks the excessive portion of the fees alone. To the extent that it becomes known through discovery that no such identifiable, discrete costs that are not recovered elsewhere exist, Snellgrove's reserves its right to seek the full amount of the fees at that time. But, as of the date of filing this complaint, Snellgrove's seeks only the excessive portion of the fees as determined by comparing the fee revenue to the discrete costs not recovered elsewhere that Gordon identifies as justifying the fees. Further, Snellgrove's on behalf of itself and (to the extent necessary) on behalf of each member of the putative class, does not seek punitive damages, attorney's fees, or prospective injunctive relief.

**Plaintiff requests a trial by jury.**

Dated: October 17, 2019

Respectfully submitted,

By: /s/ Ryan B. Hobbs

Ryan B. Hobbs

Florida Bar No: 0044179

**BROOKS, LEOEUF, FOSTER, GWARTNEY,**

**LEACE & HOBBS, P.A.**  
909 East Park Avenue  
Tallahassee, FL 32301  
Phone: 850-222-2000 / Fax: 850-222-9757  
rhobbs@tallahasseeattorneys.com  
jeanetta@tallahasseeattorneys.com

*Attorneys for Plaintiff*