

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX-----X
JOSEPH BASSOLINO individually and on behalf of all
others similarly situated Plaintiffs,**Index No.:**

Plaintiffs,

CLASS ACTION COMPLAINT

v.

WHOLE FOODS MARKET GROUP INC.

Defendant.
-----X

Plaintiff Joseph Bassolino, individually and on behalf of all other similarly situated customers, (collectively "Plaintiffs"), by and through his attorneys, Napoli Law PLLC, and Imbesi Law P.C., brings this Class Action Complaint ("Complaint") against Defendant Whole Foods Market Group Inc., ("Whole Foods"), and upon information and belief alleges:

NATURE OF THE ACTION

1. Plaintiffs bring this action against Defendant seeking damages and other appropriate relief for their claims arising out of Defendant's violations of New York General Business Law § 349 and New York common law for engaging in deceptive acts and practices in connection with Defendant's sale of its products in its grocery stores throughout the State of New York.

JURISDICTION AND VENUE

2. This Court has personal jurisdiction over Defendant Whole Foods Market Group Inc., pursuant to C.P.L.R. §301 because Defendant is a foreign corporation authorized to conduct business in New York State and does conduct business throughout the State of New York.

3. Venue is proper in the Supreme Court of the State of New York, Bronx County, pursuant to C.P.L.R. §503 because Plaintiff is a resident of Bronx County.

PARTIES

4. Plaintiff Joseph Bassolino is a citizen of the State of New York and resides in Bronx County and is an individual that purchased numerous mispriced packaged food at the Whole Foods located at 4 Union Square, New York, NY 10003 within the last three (3) years.

5. Defendant Whole Foods, is a foreign business corporation organized and existing under the laws of the State of Delaware, and registered to conduct business in the State of New York and does operate and conduct business in the County of New York.

CLASS ALLEGATIONS

6. Plaintiff brings this Class action pursuant to CPLR §901 on behalf of himself and all others similarly situated who purchased merchandise from Whole Foods's stores located in the State of New York within the previous three (3) years.

7. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or complaint. Excluded from the Class are Defendants and its affiliates, parents, subsidiaries, employees, officers, agents, and directors; government entities or agencies, its affiliates, employees, officers, agents, and directors in their governmental capacities; any judicial officer presiding over this matter and the members of their immediate families and judicial staff; and class counsel.

8. This action is properly maintainable as a class action. As provided in CPLR §901(a)(1), the proposed Class "is so numerous that joinder of all members, whether otherwise

required or permitted, is impracticable.” As provided in CPLR §901(a)(2), “there are questions of law or fact common to the Class that predominate over any questions affecting only individual members.” Specifically, the common questions of fact and law include whether Defendant:

- a. Violated New York General Business Law § 349;
- b. Routinely overstated the weights of its pre-packaged products – including meats, dairy and baked goods – resulting in customers being overcharged;
- c. Breached its contract with Whole Food customers that purchased pre-packaged products – including meats, dairy and baked goods;
- d. Falsely labeled packages purchased by Plaintiff and similarly situated individuals; and
- e. Unjustly enriched itself by overcharging customers for pre-packaged foods.

9. As provided in CPLR §901(a)(3), the proposed lead Plaintiff’s representative claims are typical of those of the proposed Class because the proposed lead Plaintiff’s claims are based upon the same legal theories as that of the members of the proposed Class. The proposed representative party’s grievances, like the proposed Class’s grievances, all arise out of the same deceptive business practices and course of conduct of Defendant. Further, the Plaintiff’s damages arise out of a pattern of nearly identical and repetitive business practices conducted by the Defendants.

10. As provided by CPLR §901(a)(4), the representative Plaintiff can adequately represent the Class. No conflict of interest exists between the representative and the Class members or with respect to the claims for relief requested.

11. The representative and its chosen attorneys are familiar with the subject matter of the lawsuit and have full knowledge of the allegations contained in this complaint so as to be

able to assist in its prosecution. In addition, the representative's attorneys are competent in the areas of the law relevant to this Complaint and have sufficient experience to vigorously represent the Class.

12. Furthermore, the resources available to said counsel ensure that the litigation will not be hampered by a lack of financial capacity. Plaintiff's attorneys have sufficient financial resources and are willing to finance the costs of this litigation.

13. As provided by CPLR § 901(a)(5), a class action is superior to any other available methods for adjudicating this controversy. The proposed Class action is the surest way (i) to fairly and expeditiously compensate so large a number of injured persons that constitute the Class, (ii) to keep the courts from becoming inundated by hundreds, perhaps thousands of repetitive cases, and (iii) to reduce transaction costs so that the injured Class can obtain the most compensation possible. Accordingly, class treatment presents a superior mechanism for fairly resolving similar issues and claims without repetitious and wasteful litigation relevant to this action.

STATEMENT OF FACTS

14. Whole Foods is a supermarket chain which operates grocery stores throughout the United States and throughout the State of New York.

15. Plaintiff and members of the Class have made numerous purchases of goods at Whole Foods throughout State of New York within the previous three (3) years.

16. In June of 2015, the New York City Department of Consumer Affairs (DCA) investigated Whole Foods and such investigation revealed that Whole Foods systematically overcharged its customers for pre-packaged food by mislabeling the weight of the product.

17. Whole Foods inaccurately labeled its products by listing a weight that was heavier than the actual weight of the product sold and purchased by Plaintiff and the proposed Class.

18. According to such investigation, the amount overcharged to customers ranged from \$.80 to \$14.84 per package sold.

19. Additionally, Whole Foods added tax to non-taxable items.

20. Despite prior fines and violations, Whole Foods continues to engage in deceptive practices by overcharging its customers.

COUNT I

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349

21. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

22. New York General Business Law § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce.

23. In its operation of grocery stores throughout the State of New York, Defendant conducts business and trade within the meaning and intendment of New York General Business Law § 349.

24. Plaintiff and members of the Class are consumers who purchased a variety of these overpriced products from Whole Foods for their personal use.

25. Since 2010, Whole Foods has engaged in deceptive and misleading practices. Whole Food's deceptive acts and practices include, without limitation: (i) overcharging consumers on its groceries sold, and (i) inaccurately weighing pre-packaged products, resulting in consumers paying an unlawfully higher price for such products.

26. By reason of this conduct, Whole Foods has engaged and continues to engage deceptive conduct in violation of the New York General Business Law.

27. Whole Foods's actions are the direct, foreseeable, and proximate cause of the damages that Plaintiff and members of the Class have sustained from having paid unlawfully higher prices for Whole Foods's products than what they should have been charged and paid.

28. As a result of Whole Foods's said violations, Plaintiff and others similarly situated have suffered damages and are entitled to recover those damages as well as reasonable attorney's fees from Whole Foods.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350

29. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

30. New York General Business Law § 350 prohibits false advertising in the conduct of any business, trade, or commerce.

31. Pursuant to said statute, false advertising is defined as "advertising, including labeling, of a commodity...if such advertising is misleading in a material respect."

32. Whole Foods was and is misleading in a material aspect due to false labeling of the weight of its pre-packaged goods, and has therefore directly violated New York General Business Law § 350 causing Plaintiff and others similarly situated damages.

33. As a result of Whole Foods's violations, Plaintiff and others similarly situated have suffered damages due to said violation and are therefore entitled to recover damages and reasonable attorney's fees from Whole Foods.

COUNT III

VIOLATIONS OF NEW YORK EXECUTIVE LAW § 63(12)

34. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

35. Pursuant to New York Executive Law § 63(12), it is illegal for a business, such as Whole Foods, to engage in repeated fraudulent business conduct.

36. Whole Foods has repeatedly engaged in the fraudulent conduct as described herein, and continues to do so, in violation of New York Executive Law § 63(12).

37. As a result of Defendant's violations, Plaintiff and members of the Class seek injunctive relief and compensatory damages.

COUNT IV

UNJUST ENRICHMENT

38. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

39. In its continuous overcharging of Plaintiff and customers similarly situated, Whole Foods has received unwarranted profits to the detriment of Plaintiff and members of the Class and has therefore its profits and enrichments are unjust pursuant to the common law of the State of New York.

40. As a result of its continuous overcharging of payment by Plaintiff and customers similarly situated, Plaintiff and members of the Class seek compensatory damages.

COUNT V

BREACH OF CONTRACT

41. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

42. In its continuous overcharging of customers, Whole Foods breached its contract with its customers by causing said customers to purchase Whole Foods's unlawfully mispriced pre-packaged foods.

43. As a result of Defendant's violations, Plaintiff and members of the Class seek compensatory damages.

JURY DEMAND

Plaintiff demands a trial by jury.

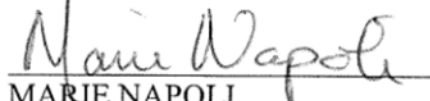
WHEREFORE, Plaintiff, on his own behalf and on behalf of the Class requests relief as follows:

- a. An award of damages in an amount to be determined at trial;
- b. A declaration of the Court that this action is properly maintained as a class action, and, certifying Plaintiff as a representative of the Class pursuant to § CPLR 901;
- c. A cease-and-desist order against Defendant prohibiting Defendant from its continuous unlawful overcharging of its products to customers;
- d. A notice to the Class of this action and relief resulting therefrom;
- e. Costs and disbursements incurred by Plaintiff and the Class in connection with this action, including reasonable attorneys' fees; and
- f. Such other and further relief as the Court deems just and proper.

Dated: New York, New York
June 25, 2015

Respectfully submitted,

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