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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

<p>MARTCHELA POPOVA MLADENOV, MLADEN MLADENOV, CHAN M. MAO, on behalf of themselves and those similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>WHOLE FOODS MARKET GROUP, INC.; ABC-CORPS 1-10 (fictitious entities),</p> <p style="text-align: center;">Defendant.</p>	<p>DOCKET NO.: 1:15-cv-00382-JEI-AMD</p> <p style="text-align: center;">FIRST AMENDED CLASS ACTION COMPLAINT</p> <p style="text-align: center;">JURY TRIAL DEMANDED</p>
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Plaintiffs Martchela Popova Mladenov, Mladen Mladenov and Chan M. Mao, by and through their counsel, bring this Class Action Complaint against Whole Foods Market Group, Inc., (hereinafter “Defendant” or “Whole Foods”) on behalf of themselves and all others similarly situated, and allege, upon personal knowledge as to their own actions and their counsel’s investigations, and upon information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This matter was initially filed in the Superior Court of New Jersey, Camden County. Thereafter, Defendant removed the matter to this Court pursuant to the Class Action Fairness Act of 2005, 28 *U.S.C.* §1332.
2. The Court has personal jurisdiction over Defendant because Defendant is authorized to, and conducts, substantial business in the State of New Jersey.
3. Venue in this action properly lies in the District of New Jersey pursuant to 28 *U.S.C.* § 1391.

PARTIES

4. Plaintiff Martchela Popova Mladenov (hereinafter “Ms. Popova-Mladenov”) resides at 14 Sycamore Ct., Lumberton, County of Burlington, State of New Jersey, 08048.
5. Plaintiff Mladen Mladenov (hereinafter “Mr. Mladenov”) resides at 14 Sycamore Ct., Lumberton, County of Burlington, State of New Jersey, 08048.
6. Plaintiff Chan M. Mao (hereinafter “Ms. Mao”) resides at 333 State Street, Cherry Hill, County of Camden, State of New Jersey, 08002.
7. Defendant Whole Foods Market Group, Inc. is a Delaware for profit corporation with a principal place of business located at 550 Bowie Street, Austin, Texas 78703. Defendant is in the business of manufacturing, distributing, advertising, marketing, and selling bread and bakery products to consumers in the State of New Jersey.
8. ABC-CORPS, 1-10, is a fictitious name, the party or parties intended to be one or more corporations, partnerships and/or business entities whose identities are presently unknown but will be determined during the course of pretrial discovery. As these defendants are identified, Plaintiff shall amend the Complaint to include them.

9. Plaintiffs purchased Defendant's bread and bakery products in New Jersey on a regular basis over the past six years. Defendant made representations that its bread and bakery products were made in house and/or freshly baked on a daily basis. These representations were material to Plaintiffs' decision to purchase the products. Plaintiffs were willing to pay for the products because of Defendant's representations that they were "made in house" and/or "fresh" and would not have purchased the products, and/or would not have paid as much for the products, and/or would have purchased alternative products in absence of the representations.

FACTUAL ALLEGATIONS

10. In recent years, consumers have become more willing to pay a premium for food that they perceive to be healthy, organic, non-processed and fresh. As a result, the market for healthy or fresh foods has grown rapidly, yielding billions of dollars in revenue for food manufacturers and distributors.
11. Defendant is in the business of manufacturing, distributing, marketing, advertising and selling of various bread and bakery goods including but not limited to bread, bagels, croissants, cookies, cakes, pies, muffins, and rolls.
12. Defendant maintains twelve (12) Whole Foods Market stores in the State of New Jersey.
13. Defendant's website advertises its high quality standards, stating:

Standards that aren't standard anywhere else. We don't sell just anything. The products we sell must meet our rigorous standards. From basic ingredients to farm animal welfare, seafood sustainability, body care, cleaning products and more, trust us to do the research so you can shop with peace of mind.

14. The same page lists "Our Quality Standards," which states, *inter alia*, "We are committed to foods that are fresh, wholesome and safe to eat."

15. Defendant's prices are generally higher than those of competing grocery stores because the value of Defendant's products derives from its "high quality" and the fact that it is "healthier" than the competitors' food products.
16. In fact, Defendant's "Company Info" states, "America's Healthiest Grocery Store." Moreover, its "Core Values" states, *inter alia*, "We offer value to our customers by providing them with high quality products, extraordinary service and a competitive price."
17. In an effort to capture a segment of the lucrative health food market, Defendant has systematically marketed and advertised the bakery products as "made in house" and/or fresh on its packaging and in-store signs, so that any consumer who purchases the bread and/or bakery products is led to believe Defendant's products are "fresh," "made in house," "safe to eat," "high quality," and "healthier."
18. Specifically, Defendant placed conspicuous in-store signs such as "MADE IN HOUSE BREAD", "MADE IN HOUSE BAGELS AND ROLLS", "FRESHLY BOILED & BAKED PLAIN BAGEL", "MADE IN HOUSE MULTI GRAIN EVERYTHING BAGEL", and "MADE IN HOUSE SNOW CAP CAKES." These signs advertise and suggest that certain products are made in house and/or made with fresh ingredients by Defendant.
19. Defendant' product packaging contains a statement, "WE BAKE DAILY, USING ONLY THE FRESHEST INGREDIENTS, INCLUDING CAGE-FREE EGGS, NATURAL BUTTERS AND THE BEST QUALITY UNBLEACHED, UNBROMATED FLOUR AVAILABLE." This statement along with the signs "made in house" and/or "fresh" suggest that Defendant makes the bread and/or bakery product in house from scratch.

20. In addition to the “made in house” bread and bakery products, Defendant distributes and/or sells prepackaged bread and bakery products. Defendant charges a premium price for the “made in house” bread and bakery products. In comparison, Defendant sells its prepackaged bread and/or bakery products that are not “made in house” at a substantially lower price.
21. Upon information and belief, Defendant’s “made in house” and/or “fresh” advertisement signs are false, deceptive and/or misleading because the bread and bakery products are 1) made, parbaked and/or frozen by Defendant, its subsidiaries, another vendor or manufacturer; and/or 2) delivered frozen, parbaked or premade, and re-baked or re-heated for sale; and/or 3) not made in store.
22. Defendant misleads and deceives consumers, including the named Plaintiffs and the other members of the Class, by portraying a product that was made, prebaked, parbaked and/or frozen as “made in house” and/or “fresh.”
23. Defendant’s conduct harms consumers because it falsely advertises the product as “made in house” and/or “fresh” and made from scratch by Defendant who bakes “daily, using only the freshest ingredients.”
24. Defendant’s misrepresentations induced Plaintiffs and other members of the Class to pay a premium price for the products.
25. Plaintiffs are health conscious individuals who are willing to pay a premium price for bread and bakery products freshly made in store.
26. Plaintiffs would not have purchased the bread and bakery products, would not have paid as much for the products, or would have purchased alternative products in absence of Defendant’s misleading advertisements.

27. As a result of Defendant's misrepresentation, false, misleading and/or deceptive advertising, Plaintiffs and the class have suffered an ascertainable loss of money.
28. Defendant continues to misleadingly and falsely advertise its products as "freshly baked," "made in house," and/or "baked daily" in its stores.
29. Plaintiffs bring claims against Defendant individually and on behalf of a statewide class of all other similarly situated purchasers of the products for violations of the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-1 et seq.* (hereinafter "CFA"); the New Jersey Truth-in-Consumer Contract Warranty and Notice Act, *N.J.S.A. 56:12-14 et seq.* (hereinafter "TCCWNA"); and breach of Defendant's express warranty. Specifically, Plaintiffs allege that Defendant engaged into deceptive, false, misleading, fraudulent and unconscionable commercial practices in the sale, marketing, and/or advertising of bread and bakery products.

CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this class action pursuant to *Fed. R. Civ. P. 23(a)* and/or *23(b)*, on behalf of themselves and the class defined as:

All individuals and entities within the State of New Jersey who purchased bread and/or bakery products advertised and sold as "made in house" and/or "freshly baked" and/or "freshly boiled" and/or "fresh" in a Whole Foods Market store located in New Jersey on or after December 14, 2008.

Excluded from the Class are Defendant, its employees, subsidiaries and affiliates, Defendant's executives, board members, and legal counsel.

31. Plaintiffs also bring this action as a class action pursuant to *Fed. R. Civ. P. 23(a)* and/or *23(b)*, on behalf of a sub-class defined as:

All individuals and entities within New Jersey who purchased bread and/or bakery products advertised and sold as "made in

house” and/or “freshly baked” and/or “freshly boiled” and/or “fresh” in a Whole Foods Market store located in New Jersey, using a credit card, debit card or via Whole Foods Market’s “shop online” program on or after December 14, 2008.

Excluded from the sub-class are Defendant, its employees, subsidiaries and affiliates, Defendant’s executives, board members, and legal counsel.

32. Plaintiffs reserve the right to amend or modify the Class definition with greater specificity or division into subclasses after they have had an opportunity to conduct discovery.

33. Defendant has engaged into deceptive, false, misleading, fraudulent and/or unconscionable commercial practices in the sale and marketing of the products by using the following misrepresentations of fact, advertisement and/or signs: “MADE IN HOUSE BREAD”, “MADE IN HOUSE BAGELS AND ROLLS”, “FRESHLY BOILED & BAKED PLAIN BAGEL”, “MADE IN HOUSE MULTI GRAIN EVERYTHING BAGEL” and “MADE IN HOUSE SNOW CAP CAKES.”

34. Furthermore, all claims in this matter arise from the identical, false, written affirmative statements on packaging used for the bread and bakery products, which suggest in uniform language that the products are made by Defendant:

THE WHOLE TRUTH AND NOTHIN’ BUT... WE BAKE DAILY, USING ONLY THE FRESHEST INGREDIENTS, INCLUDING CAGE-FREE EGGS, NATURAL BUTTERS AND THE BEST QUALITY UNBLEACHED, UNBROMATED FLOUR AVAILABLE.

35. Numerosity. Under *Fed. R. Civ. P.* 23(a)(1), the class and sub-class for whose benefit this action is brought are so numerous that joinder of all members is impracticable. While the precise number of class members has not been determined at this time, Plaintiffs believe

that the proposed class is composed of over 10,000 consumers and the proposed sub-class is composed of at least 5000 consumers.

36. Commonality. Under *Fed. R. Civ. P.* 23(a)(2), there are common questions of law and fact affecting the rights of the class and subclass members, including, *inter alia*, the following:

- a. Whether Defendant sold certain bread and bakery products falsely advertising them as “made in house” and baked daily “using only the freshest ingredients, including cage-free eggs, natural butters and the best quality unbromated flour available,” when Defendant actually did not make these products in store and/or did not make these products at all.
- b. Whether Defendant sold certain bread and bakery products that were not made in store while Defendant falsely advertised these products as “made in house.”
- c. Whether Defendant advertised and sold bread and bakery products as “made in house” and/or “fresh” when they were made elsewhere and subjected to freezing.
- d. Whether Defendant’s act in placing signs in its store such as “MADE IN HOUSE BREAD”, “MADE IN HOUSE BAGELS AND ROLLS”, “FRESHLY BOILED & BAKED PLAIN BAGEL”, “MADE IN HOUSE MULTI GRAIN EVERYTHING BAGEL”, and “MADE IN HOUSE SNOW CAP CAKES” is a false, misleading or deceptive affirmative representation of fact in violation of *N.J.S.A.* §56:8-2, the New Jersey Consumer Fraud Act;
- e. Whether Defendant’s act in placing the words “THE WHOLE TRUTH, NOTHIN’ BUT... WE BAKE DAILY, USING ONLY THE FRESHEST INGREDIENTS, INCLUDING CAGE-FREE EGGS, NATURAL BUTTERS AND THE BEST QUALITY UNBLEACHED, UNBROMATED FLOUR AVAILABLE” on its packaging is a false, misleading or deceptive affirmative representation of fact in violation of *N.J.S.A.* §56:8-2, the New Jersey Consumer Fraud Act;
- f. Whether Defendant’s act in placing signs in its store such as “MADE IN HOUSE BREAD”, “MADE IN HOUSE BAGELS AND ROLLS”, “FRESHLY BOILED & BAKED PLAIN BAGEL”, “MADE IN HOUSE MULTI GRAIN EVERYTHING BAGEL”, “MADE IN HOUSE SNOW CAP CAKES” is a false, misleading or deceptive affirmative representation of fact in violation of *N.J.S.A.* §56:12-14, the New Jersey Truth in-Consumer Contract Warranty and Notice Act;
- g. Whether Defendant’s act in placing the words “THE WHOLE TRUTH, NOTHIN’ BUT... WE BAKE DAILY, USING ONLY THE FRESHEST INGREDIENTS, INCLUDING CAGE-FREE EGGS, NATURAL BUTTERS AND THE BEST QUALITY UNBLEACHED, UNBROMATED FLOUR AVAILABLE” on its packaging is a false, misleading or deceptive affirmative representation of fact in

violation of *N.J.S.A.* §56:12-14, the New Jersey Truth in-Consumer Contract Warranty and Notice Act;

- h. Whether Defendant's act in placing signs in its stores such as "MADE IN HOUSE BREAD", "MADE IN HOUSE BAGELS AND ROLLS", "FRESHLY BOILED & BAKED PLAIN BAGEL", "MADE IN HOUSE MULTI GRAIN EVERYTHING BAGEL", "MADE IN HOUSE SNOW CAP CAKES" violated New Jersey law regarding express warranty;
 - i. Whether Defendant's act in placing the words "THE WHOLE TRUTH, NOTHIN' BUT... WE BAKE DAILY, USING ONLY THE FRESHEST INGREDIENTS, INCLUDING CAGE-FREE EGGS, NATURAL BUTTERS AND THE BEST QUALITY UNBLEACHED, UNBROMATED FLOUR AVAILABLE" on its packaging violated New Jersey law regarding express warranty;
 - j. Whether Plaintiffs and the class are entitled to an order for declaratory and injunctive relief directing Defendant to participate in a court-supervised program of refund and/or removing in store signs such as "MADE IN HOUSE BREAD", "MADE IN HOUSE BAGELS AND ROLLS", "FRESHLY BOILED & BAKED PLAIN BAGEL", "MADE IN HOUSE MULTI GRAIN EVERYTHING BAGEL", "MADE IN HOUSE SNOW CAP CAKES" and/or changing the words on its packaging;
 - k. Whether Plaintiffs and the class are entitled to an order for declaratory and injunctive relief directing Defendant to participate in a court-supervised program of refund and/or removing Defendant's product packaging such as "THE WHOLE TRUTH, NOTHIN' BUT... WE BAKE DAILY, USING ONLY THE FRESHEST INGREDIENTS, INCLUDING CAGE-FREE EGGS, NATURAL BUTTERS AND THE BEST QUALITY UNBLEACHED, UNBROMATED FLOUR AVAILABLE" and/or changing the words on its packaging; and
 - l. Whether the members of the Class have sustained damages and, if so, the proper measure of such damages.
37. Typicality. Under *Fed. R. Civ. P.* 23(a)(3), Plaintiffs' claims are typical of the claims of the class. Plaintiffs and all class members were exposed to uniform practices and sustained an ascertainable loss arising out of and caused by Defendant's unlawful conduct.
38. Adequacy of Representation. Under *Fed. R. Civ. P.* 23(a)(4), Plaintiffs will fairly and adequately represent and protect the interests of the members of the class, having retained qualified and competent legal counsel to represent themselves and the class and sub-class.

39. Injunctive and Declaratory Relief. Under *Fed. R. Civ. P.* 23(b)(2), Defendant's misrepresentations are uniform as to all members of the class. Defendant has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or declaratory relief is appropriate with respect to the class as a whole.
40. Superiority of Class Action. Under *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 since joinder of all the members of the class is impracticable. Furthermore, the adjudication of this controversy through a class action will avoid the possibility of inconsistent and potentially conflicting adjudication of the asserted claims. There will be no difficulty in the management of this action as a class action.

FIRST COUNT

THE NEW JERSEY CONSUMER FRAUD ACT

N.J.S.A. §56:8-1 et seq.

41. Plaintiffs incorporate all preceding paragraphs of this Complaint as though fully pled herein.
42. Plaintiffs are "persons" as defined by *N.J.S.A. §56:8-1(d)*.
43. Defendant is a "person" as defined by *N.J.S.A. §56:8-1(d)*.
44. Defendant's bakery products are "merchandise" as defined by *N.J.S.A. §56:8-1(c)*.
45. The New Jersey Consumer Fraud Act (hereinafter "CFA"), therefore, applies to Defendant's conduct, including but not limited to Defendant's advertisement, marketing, and/or sales of its bread and/or bakery products in the State of New Jersey.
46. The CFA provides that:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment,

suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared an unlawful practice.

[*N.J.S.A. §56:8-1 et seq.*]

47. Specifically, the CFA provides:

It shall be an unlawful practice for any person to misrepresent on any menu or other posted information, including advertisements, the identity of any food or food products to any of the patrons or customers of eating establishments including but not limited to restaurants, hotels, cafes, lunch counters or other places where food is regularly prepared and sold for consumption on or off the premises.

[*N.J.S.A. §56:8-2.9.*]

48. Acts constituting misrepresentation of identity of food are:

- a. Its description is false or misleading in any particular way;
- b. Its description omits information which by its omission renders the description false or misleading in any particular;
- c. It is served, sold, or distributed under the name of another food or food product;
- d. It purports to be or is represented as a food or food product for which a definition of identity and standard of quality has been established by custom and usage unless it conforms to such definition and standard.

[*N.J.S.A. §56:8-2.10.*]

49. By the acts alleged herein, Defendant has violated the CFA.

50. Specifically, the posted signs or descriptions of Defendant's products suggest that they were made in store. The posted signs and/or product description misrepresent the origin of the bread. The posted signs and/or product description mislead consumers and lead them to believe that Defendant's products were made in store when in fact many of Defendant's products are made elsewhere, delivered frozen or subjected to any form of

thermal processing or any other form of preservation, and reheated or re-baked immediately before sale.

51. Plaintiffs and other similarly situated consumers purchased Defendant's products without knowing that some of these products were in fact made, processed and/or frozen by another vendor.
52. Plaintiffs would not have purchased the bread and bakery products from Defendant had they known that the products were not "made in store" as Defendant falsely advertised.
53. Plaintiffs have suffered an ascertainable loss arising from Defendant's violation of the CFA. Plaintiffs' ascertainable loss is equal to the amount of money they spent on the bread and bakery products that they would not have purchased had the accurate information been properly disclosed to them.
54. All members of the Class suffered the same type of ascertainable loss as Plaintiffs.
55. Plaintiffs and all those similarly situated are entitled to a refund of all money spent on the purchase of the bread and bakery products falsely advertised as "made in house" pursuant to *N.J.S.A. §56:8-2.11*.

SECOND COUNT

BREACH OF EXPRESS WARRANTY

56. Plaintiffs incorporate all preceding paragraphs as though fully set forth at length herein.
57. By operation of New Jersey law, Defendant entered into a contract with each Plaintiff and class member when the member purchased Defendant's bread and/or bakery product.
58. By operation of New Jersey law, the terms of this contract included an express warranty incorporating the identical affirmation, promise and description by Defendant regarding its products.

59. Specifically, Defendant's express warranty posted on its store signs and packaging affirms that the bread and bakery products were made in store and/or fresh.
60. The relevant terms and language of the express warranty between Defendant and each member of the class are identical.
61. Because Defendant does not make the bread and/or bakery products in question in house, the "made in house" affirmation is false and misleading.
62. Additionally, because 21 CFR 101.95(a) precludes the use of the term "fresh" for frozen products, Defendant's "fresh" affirmation is false and misleading.
63. Defendant's false affirmation of fact constitutes breach of the express warranty.
64. Defendant has breached the terms of this express warranty in an identical manner for each class member because the bread and/or bakery products did not and could not conform to the affirmation, promise and description on the packaging or the in-store signs.
65. As a direct and proximate result of this breach of express warranty by Defendant, each member of the class has suffered economic loss.

THIRD COUNT

INJUNCTIVE AND DECLARATORY RELIEF UNDER THE NEW JERSEY DECLARATORY JUDGMENTS ACT

N.J.S.A. §2A:16-51 et seq.

66. Plaintiffs incorporate all preceding paragraphs as though fully set forth at length herein.
67. Plaintiffs and the class need, and are entitled to, a declaration that certain signs and/or advertisements falsely describing that the bread and bakery products as "made in house" and/or "fresh" are inaccurate.

68. Each Plaintiff and class member has a significant interest in this matter. Specifically, each Plaintiff and class member has an interest in knowing the bread and bakery products' origin.

69. A justifiable controversy was presented in this case, rendering declaratory judgment appropriate.

70. In addition, because the unlawful uniform conduct of Defendant continues, and it is ongoing, the class also needs, and is entitled to, an order enjoining Defendant from selling any pre-baked, frozen bakery products or bakery products not made in a Whole Foods store, with any labeling, signs, descriptions, or packaging suggesting that the products are either made in store or fresh.

71. Defendant shall be enjoined from its unlawful practices which include but are not limited to: a) inducing consumers to purchase bread and bakery products based on false and/or misleading advertisement; b) inducing consumers to purchase bread and bakery products by misrepresenting material facts; c) misleading consumers to pay a premium price for certain products by posting or proffering misleading and/or false advertising signs or descriptions; and d) profiting from its unlawful actions.

FOURTH COUNT

**THE NEW JERSEY TRUTH-IN-CONSUMER
CONTRACT WARRANTY AND NOTICE ACT
*N.J.S.A. §56:12-14 et seq.***

72. Plaintiffs incorporate all preceding paragraphs of this Complaint as though fully pled herein.

73. Plaintiffs are “individuals” within the meaning of the TCCWNA.

74. Defendant is a “seller” within the meaning of the TCCWNA.

75. Defendant's bread and/or bakery products are "property" within the meaning of the TCCWNA.
76. Defendant's in-store signs and advertisements are "signs" within the meaning of the TCCWNA.
77. Defendant's statements on its product packaging constitute "notice" within the meaning of TCCWNA.
78. Defendant entered into a contract with each Plaintiff and class member when they purchased Defendant's products in New Jersey.
79. The New Jersey Truth-in-Consumer Contract Warranty and Notice Act, *N.J.S.A.* §56:12-14 *et seq.* (hereinafter "TCCWNA") provides that:

No seller, lessor, creditor, lender or bailee shall in the course of his business offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty, notice or sign after the effective date of this act which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed. Consumer means any individual who buys, leases, borrows, or bails any money, property or service which is primarily for personal, family or household purposes.

[*N.J.S.A.* §56:12-15.]

80. Defendant's violations of the CFA further violate Plaintiffs' rights under the TCCWNA.
81. Specifically, Defendant's notices and/or signs falsely advertising its products as made in house violate Plaintiffs' established legal rights under the CFA.
82. Plaintiffs and other similarly situated consumers purchased Defendant's products because of Defendant's representation on the following conspicuously displayed signs such as "MADE IN HOUSE BREAD", "MADE IN HOUSE BAGELS AND ROLLS",

“FRESHLY BOILED & BAKED PLAIN BAGEL”, “MADE IN HOUSE MULTI GRAIN EVERYTHING BAGEL” and “MADE IN HOUSE SNOW CAP CAKES”.

83. Moreover, Plaintiffs and other similarly situated consumers purchased Defendant’s products because of Defendant’s advertisements and/or notices on its product packaging stating as follows: “THE WHOLE TRUTH, NOTHIN’ BUT... WE BAKE DAILY, USING ONLY THE FRESHEST INGREDIENTS, INCLUDING CAGE-FREE EGGS, NATURAL BUTTERS AND THE BEST QUALITY UNBLEACHED, UNBROMATED FLOUR AVAILABLE.”

84. Hence, the offer extended by Defendant’s misleading notices and/or signs constitutes the affirmative act that triggers the TCCWNA.

85. In addition, Defendant’s signs suggesting that its products are “fresh” violate Plaintiff’s established legal right under the Code of Federal Regulation (“CFR”).

86. According to the Code of Federal Regulation,

The term “fresh,” when used on the label or in labeling of a food in a manner that suggests or implies that the food is unprocessed, means that the food is in its raw state and has not been frozen or subjected to any form of thermal processing or any other form of preservation[.]

[21 CFR 101.95(a).]

87. A food that is refrigerated is not precluded from use of the term “fresh” under 21 CFR 101.95(c)(2).

88. Because Defendant’s products were subjected to a form of preservation, including but not limited to freezing, parbaking, and/or other thermal processing, Defendant’s use of the word “fresh” violates the 21 CFR 101.95(a).

89. As a result, Plaintiffs have suffered damages arising from Defendant's violation of the TCCWNA and the CFR. Plaintiffs' damages are equal to the amount of money they spent for the bread and bakery products.

90. Furthermore, each class member is entitled to a \$100 statutory penalty under the TCCWNA, *N.J.S.A.* §56:12-17.

91. All members of the Class also suffered the same type of damages as Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this court:

- a. Certify the proposed class as a class action pursuant to *Fed. R. Civ. P.* 23(c);
- b. Enter an order for injunctive and declaratory relief as described herein;
- c. Enter judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;
- d. The remedies provided for under any state statutes pled in this Complaint, including but not limited to treble damages pursuant to *N.J.S.A.* §56:8-19, recovery of ascertainable losses for loss of money and/or property pursuant to *N.J.S.A.* §56:8-19, a refund of all moneys acquired by means of any practice declared unlawful as permitted by *N.J.S.A.* §56:8-2.11 and §56:8-2.12, all statutory/equitable remedies afforded by *N.J.S.A.* §56:8-1 et seq.;
- e. Award Plaintiffs reasonable attorneys' fees and costs pursuant to *N.J.S.A.* §56:8-19 and *N.J.S.A.* §56:12-17;
- f. Award each class member a \$100 statutory penalty under *N.J.S.A.* §56:12-17;
- g. Grant such other and further legal and equitable relief as the court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all issues so triable.

Dated: March 6, 2015

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