

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE WHOLE FOODS MARKET
GROUP, INC. OVERCHARGING
LITIGATION

Civil Action No. 1:15-cv-5838 (PAE)

**Second Amended
Class Action Complaint**

Plaintiff Sean John, by his attorneys, Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and Richman Law Group, as and for his Second Amended Class Action Complaint, alleges, with personal knowledge as to his own actions, and upon information and belief as to those of others, as follows:

Nature of the Case

1. This Action seeks to redress systematic overcharging by Whole Foods Market Group, Inc. (“Whole Foods”) that has caused many New York consumers to overpay for pre-packaged products.

2. Recently, the New York Department of Consumer Affairs announced an ongoing investigation against Whole Foods after finding that the company regularly overstates the weights of pre-packed products. By overstating the weights of these products, Whole Foods is able to deceptively overcharge consumers.

3. Whole Foods engages in a deceptive pricing scheme that targets consumers who are willing to pay Whole Foods, and who do pay Whole Foods, a premium for healthy, organic and natural groceries. Unbeknownst to customers, but known to Whole Foods, the listed prices of these products do not reflect the actual weight of the products. Instead, Whole Foods routinely overstates the weight of these products and on that basis overcharges customers.

4. As used herein, “Products” refers to the pre-packaged food products for which Whole Foods overcharged customers during the class period, to wit, those products thus far identified by Defendant, which may be amended as Plaintiff learns more about the extent of Whole Foods’ misconduct.¹

5. Plaintiff brings this action against Whole Foods alleging damages sustained as a direct and proximate result of Whole Foods’ violations of New York General Business Law § 349 *et seq.* (“N.Y. G.B.L. § 349”), New York General Business Law § 350 *et seq.* (“N.Y. G.B.L. § 350”), and Unjust Enrichment under the common law of New York on behalf of a class of persons who purchased pre-packaged products from Whole Foods’ stores located in New York. This action seeks, *inter alia*, actual damages and refunds, punitive damages, injunctive relief, attorneys’ fees, and the costs of this suit.

Parties

6. Plaintiff Sean John is a citizen of New York and resides in New York, New York. He regularly shops at Whole Foods locations in New York City.

7. Defendant Whole Foods Market Group, Inc. is a Delaware corporation headquartered in Texas. As “America’s Healthiest Grocery Store,” Whole Foods is a self-proclaimed leader in the provision of the “finest and organic foods available” to consumers. Whole Foods boasts on its website that it goes “to extraordinary lengths to satisfy . . . customers.”² It

¹ Exhibit A to Affidavit of Jeffrey Moll to Plaintiff’s Motion to Remand, *Bassolino v. Whole Foods Marketing Group Inc.*, No. 15-cv-06046, ECF No. 41-1 (Oct. 19, 2015).

² WHOLE FOODS MARKET, <http://www.wholefoodsmarket.com/mission-values/core-values/we-satisfy-delight-and-nourish-our-customers> (last visited Nov. 3, 2015).

currently has 422 stores in the United States and United Kingdom. Whole Foods maintains 15 stores within New York.

Jurisdiction and Venue

8. This court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the aggregate claims of the Class (as defined below) exceed the sum or value of \$5,000,000.00, and there is minimal diversity of citizenship between Plaintiff and proposed Class members, and Defendant.

9. This Court has personal jurisdiction over Defendant because it both intentionally avails itself of the rights and privileges of conducting business in New York and it has continuous and systematic contacts with New York State owing to Defendant's retail locations in New York, advertising targeting New York citizens, and sales of the their products in New York.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because substantial acts in furtherance of the alleged improper conduct giving rise to the claims herein, including the dissemination of false information regarding the Products, occurred within this District.

Factual Allegations

11. Whole Foods is an upscale food purveyor that proclaims to seek out "the finest natural and organic goods available, maintain the strictest quality standards in the industry, and [to have] an unshakeable commitment to sustainable agriculture."³

³ WHOLE FOODS MARKET, <http://www.wholefoodsmarket.com/company-info> (last visited Nov. 3, 2015).

12. Accordingly, Whole Foods stores within New York are stocked with premium priced groceries. This includes various pre-packed groceries such as meats, dairy products, nuts, berries, vegetables, and seafood.⁴

13. Plaintiff and consumers purchasing these items pay the price labeled on the specific item and do so with the reasonable expectation that the product weight prominently identified on the front of the package is accurate.

14. Whole Foods represents that it has accurately priced these items according to their respective actual weights.

15. However, Whole Foods customers are getting less than what they pay for, because Whole Foods is routinely overcharging its customers by displaying a weight greater than the actual weight for the Products, and by calculating price based on the greater weight.

16. Plaintiff has routinely shopped, and purchased pre-packaged Products, at Whole Foods locations in New York City, including the locations at 250 7th Avenue, New York, New York and 95 East Houston Street, New York, New York.

17. On June 24, 2015, the New York Department of Consumer Affairs (“DCA”) announced its investigation uncovering Whole Foods’ overstating the weight of some pre-packaged products sold in some of the New York City stores.⁵ The DCA is investigating the

⁴ Department of Consumer Affairs, *Department of Consumer Affairs Investigation Uncovers Systemic Overcharging for Pre-packaged Foods at City’s Whole Foods* (July 24, 2015), available at <http://www1.nyc.gov/site/dca/media/pr062415.page> (last visited Nov. 3, 2015).

⁵ *Id.*

grocery store chain for “systematic overcharging for pre-packed foods.”⁶ In fact, DCA tests revealed that of the eighty different pre-packaged products tested, all were labeled erroneously.⁷

18. The DCA also noted that 89% of the tested products did not meet Federal standards set by the Department of Commerce for the maximum amount that an individual package can deviate from the actual weight.⁸

19. The tested products are not an isolated aberration at Whole Foods, but instead comprise of a wide range of goods including meats, dairy, and baked goods,⁹ such as apple raisin strudel, cheese, cheese plates, chicken legs, chicken thighs, chocolate cupcakes, ground beef, pumpkin pie, red leicester, rotisserie chicken halves, split chicken breasts, vanilla cake, vegan cupcakes, and wing buckets.¹⁰

20. During the class period, Plaintiff regularly purchased the pre-packaged Products. During 2014 and 2015, Plaintiff purchased pre-packaged cheese and cupcakes approximately one or two times per month.

21. The DCA found that Whole Foods’ overstating the weights of these pre-packaged products resulted in overcharges to customers who purchased these products.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Exhibit A to Affidavit of Jeffrey Moll to Plaintiff’s Motion to Remand, *Bassolino v. Whole Foods Marketing Group Inc.*, No. 15-cv-06046, Docket no. 41-1 (Oct. 19, 2015).

22. The DCA found that “[t]he overcharges were especially prevalent in packages that had been labeled with exactly the same weight when it would be practically impossible for all of the packages to weigh the same amount.”¹¹

23. Some of the more notable overpriced items are:

- a. A package of coconut shrimp overpriced by \$14.84;
- b. Four packages of berries overpriced by \$8.58;
- c. Eight packages of \$20.00 vegetable platters with an average overcharge of \$2.50;
- d. Eight packages of \$9.99 chicken tenders, with an average overcharge of \$4.13.¹²

24. While the DCA’s investigative efforts have revealed similar pricing issues at various grocery stores around New York City, the mislabeling the DCA discovered at Whole Foods is remarkable. “Our inspectors tell me that this is the worst cases of mislabeling they have seen in their careers,” stated DCA Commissioner Julie Menin.¹³

25. This is not the first instance in which Whole Foods has engaged in deceptive business practices. Since 2010, “Whole Foods stores have received more than 800 violations during 107 separate inspections since 2010, totaling more than \$58,000 in fines.”¹⁴

¹¹ Department of Consumer Affairs, *Department of Consumer Affairs Investigation Uncovers Systemic Overcharging for Pre-packaged Foods at City’s Whole Foods*, available at <http://www1.nyc.gov/site/dca/media/pr062415.page> (last visited Nov. 3, 2015).

¹² *Id.*

¹³ *Id.*

¹⁴ Justin Wm. Moyer, *Whole Foods Under Investigation for Overcharging in NYC*, WASHINGTON POST (July 24, 2015), available at <http://www.washingtonpost.com/news/morning->

26. Additionally, the cities of Los Angeles, Santa Monica, and San Diego recently brought a civil action against Whole Foods in California for overcharging customers.¹⁵

27. The civil action on behalf of the people of California resulted in an \$800,000 fine.¹⁶

28. Despite prior fines and violations, Whole Foods continues to engage in deceptive practices by overcharging its customers, including Plaintiff in this action.

29. At the time he purchased the Products, Plaintiff was unaware that Whole Foods was overcharging him for the Products.

30. Plaintiff was deceived into believing that Whole Foods was charging him by the actual weight of a given Product.

31. Plaintiff's injuries arise from Whole Foods' providing the incorrect weight of a given Product and charging Plaintiff based upon that incorrect weight.

32. Plaintiff and other overcharged customers have no way of knowing that they were in fact being overcharged for the pre-packed Products.

33. Whole Foods' regular and systematic misrepresentation regarding the weights of its pre-packaged foods is misleading and deceptive to consumers. Whole Foods has caused Plaintiff and the Class to overpay for the various pre-packaged Products. Plaintiff therefore brings this action on behalf of himself and the proposed Class to stop Whole Foods' deceptive business practices, false advertising, and to recover statutory damages and restitution.

[mix/wp/2015/06/25/whole-foods-under-investigation-for-overcharging-in-nyc/](http://www.nytimes.com/2015/06/25/business/whole-foods-under-investigation-for-overcharging-in-nyc/) (last visited Nov. 3, 2015).

¹⁵ A true and correct copy of the Complaint in *People of the State of California v. Whole Foods Market, Inc.*, SC122679 (Cal. Super. June 10, 2014) is attached hereto as Exhibit A.

¹⁶ Stephanie Strom, *Whole Foods Accused of Overcharging in New York City Stores*, N.Y. TIMES (July 24, 2015), available at http://www.nytimes.com/2015/06/25/business/whole-foods-accused-of-overcharging-in-new-york-city-stores.html?_r=1 (last visited Nov. 3, 2015).

Class Action Allegations

34. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action on his own behalf and on behalf of all others similarly situated.

35. Subject to additional information obtained through further investigation and discovery, the following definition of the Class may be expanded or narrowed by amendment:

All persons who purchased at least one of the pre-packaged goods identified in Exhibit A hereto from a Whole Foods store located within the State of New York within the previous six years

36. Excluded from the Class are Defendant; any parent, subsidiary, or affiliate of Defendant; any entity in which Defendant has or had a controlling interest, or that Defendant otherwise controls or has controlled; any officer, director, employee, legal representative, predecessor, successor, or assignee of Defendant; and class counsel.

37. This action is properly maintainable as a class action because:

a. The Class consists of many thousands of persons and is therefore so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

b. There are questions of law or fact common to the Class that predominate over any questions affecting only individual members, including whether:

- i. Defendant violated N.Y. G.B.L. § 349;
- ii. Defendant violated N.Y. G.B.L. § 350;
- iii. Defendant has unjustly enriched itself by deceptively overcharging customers for various pre-packaged goods identified herein;
- iv. Plaintiff and the Class have sustained damages and, if so, the proper measure thereof; and

v. Defendant should be enjoined from continuing to overcharge customers for various pre-packaged goods identified herein;

c. The claims that Plaintiff asserts are typical of the claims of the members of the Class because the Plaintiff's claims are based upon the same legal theories as those of the members of the Class, and because Plaintiff's grievances, like those of the members of the class, all arise out of the same deceptive business practices and course of conduct of Whole Foods. Further, Plaintiff's damages arise out of a pattern of nearly identical and repetitive business practices conducted by Whole Foods;

d. Plaintiff can fairly and adequately protect the interests of the Class, and no conflict of interest exists between Plaintiff and the Class members or with respect to the claims for relief requested;

e. Plaintiff and his chosen attorneys are familiar with the subject matter of this action, have full knowledge of the allegations contained herein, are competent and experienced in class and complex litigation, including class litigation involving consumer protection, and have the resources to ensure that this litigation will not be hampered by lack of financial capacity; and

f. Prosecuting separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendant.

38. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, for at least the following reasons:

a. Absent a class action, Class members as a practical matter will be unable to obtain redress, Defendant's violations of its legal obligations will continue without remedy,

additional consumers and purchasers will be harmed, and Defendant will continue to retain its ill-gotten gains;

b. It would be a substantial hardship for most individual members of the Class if they were forced to prosecute individual actions;

c. When the liability of Defendant has been adjudicated, the Court will be able to determine the claims of all members of the Class;

d. A class action will permit an orderly and expeditious administration of Class claims, foster economies of time, effort, and expense, and ensure uniformity of decisions;

e. The lawsuit presents no difficulties that would impede its management by the Court as a class action; and

f. Defendant has acted on grounds generally applicable to Class members, making class-wide monetary relief appropriate.

39. Defendant's violations N.Y. G.B.L. § 349, N.Y. G.B.L. § 350, and Unjust Enrichment under the common law of New York apply to all members of the Class, and Plaintiff is entitled to have Defendant enjoined from continuing to engaging in the illegal and deceptive conduct complained of herein.

FIRST CAUSE OF ACTION
(Violation of N.Y. General Business Law § 349)

40. Plaintiff incorporates by reference the allegations set forth above.

41. The New York General Business Law § 349 provides, *inter alia*:

Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.

42. Plaintiff and the members of the Class are consumers who purchased pre-packaged goods from Whole Foods locations in New York.

43. Defendant is engaged in consumer-oriented conduct within the intended ambit of GBL § 349 because Defendant widely markets and sells its goods to the consuming public, and such conduct directly affects similarly situated consumers, and has a broad impact on consumers at large.

44. Defendant's representations and false, deceptive, and misleading statements with respect to overcharging for pre-packaged goods, as described above, constitute deceptive acts or practices in the conduct of business, trade, or commerce in violation of the New York General Business Law.

45. Defendant knowingly misrepresented and intentionally misstated the accurate price of pre-packaged goods.

46. Defendant failed to charge accurate rates for a variety of pre-packaged goods. As a result, consumers were overcharged for such items in Whole Foods locations.

47. Defendant's actions have caused direct, foreseeable, and proximate damages to Plaintiff and the Class.

48. As a consequence of Defendant's wrongful actions, Plaintiff and the other members of the Class suffered direct, foreseeable, and ascertainable loss consisting of benefit-of-the-bargain damages (*i.e.*, the difference between the price paid, and the accurate price of the item consistent with its actual weight).

49. By reason of the foregoing, Defendant is liable to Plaintiff and the other members of the Class for their actual damages or fifty dollars (\$50) per violation, whichever is greater, punitive damages, injunctive relief, attorneys' fees, and the costs of this suit.

50. Plaintiff and the members of the Class seek to enjoin Whole Foods' unlawful, deceptive acts and practices, described above.

51. Absent injunctive relief, Defendant will continue to overcharge New York consumers for pre-packaged goods.

52. THEREFORE, Plaintiff prays for relief as set forth below.

**SECOND CAUSE OF ACTION
(Violation of N.Y. General Business Law § 350)**

53. Plaintiff incorporates by reference the allegations set forth above.

54. The New York General Business Law § 350 provides, *inter alia*:

False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.

55. GBL § 350-a defines “false advertising,” in relevant part, as “advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect.”

56. Plaintiff and the members of the Class are consumers who purchased pre-packaged goods from Whole Foods locations in New York.

57. Defendant is engaged in the conduct of business, trade, or commerce within the intended ambit of GBL § 350.

58. Defendant’s representations made by statement, word, design, device, sound, or any combination thereof, and also the extent to which the Defendants’ advertising fails to reveal material facts with respect to overcharging for pre-packaged goods, as described above, constitute false advertising in violation of the New York General Business Law.

59. Defendant knowingly misrepresented and intentionally misstated the accurate price of pre-packaged goods.

60. Defendant failed to charge accurate rates for a variety of pre-packaged goods. As a result, consumers were overcharged for such items in Whole Foods locations.

61. Defendant’s actions have caused direct, foreseeable, and proximate damages to

Plaintiff and the Class.

62. As a consequence of Defendant's wrongful actions, Plaintiff and the other members of the Class suffered direct, foreseeable, and ascertainable loss consisting of benefit-of-the-bargain damages (*i.e.*, the difference between the price paid, and the accurate price of the item consistent with its actual weight).

63. By reason of the foregoing, Defendant is liable to Plaintiff and the other members of the Class for their actual damages or five hundred dollars (\$500) per violation, whichever is greater, punitive damages, injunctive relief, attorneys' fees, and the costs of this suit.

64. Plaintiff and the members of the Class seek to enjoin Whole Foods' false advertising, described above.

65. Absent injunctive relief, Defendant will continue to overcharge New York consumers for pre-packaged goods.

66. THEREFORE, Plaintiff prays for relief as set forth below.

**THIRD CAUSE OF ACTION
(Unjust Enrichment)**

67. Plaintiff incorporates by reference the allegations set forth above.

68. Plaintiff and members of the Class conferred benefits on Defendant by purchasing the pre-packaged goods at overstated prices.

69. Defendant has knowledge of such benefits.

70. By engaging in the misconduct described above, Defendant has unjustly enriched itself because it has received a benefit at the expense of and detriment to Plaintiff and the members of the Class that would be inequitable for Defendant to retain because Defendant falsely and materially misrepresented the prices of its pre-packaged goods. Plaintiff and

members of the Class were unjustly deprived of payments because they would not have paid the excessive charges for the pre-packaged goods had the true facts been known

71. Because it would be unjust and inequitable for Defendant to retain the difference between the price charged (and paid), and the accurate price of the pre-packaged goods consistent with the actual weights, Plaintiff and members of the Class are entitled to restitution for Defendant's unjust enrichment.

72. THEREFORE, Plaintiff prays for relief as set forth below.

Prayer for Relief

WHEREFORE, Plaintiff, individually and on behalf of the Class members, respectfully requests that the Court enter judgment against Defendant as follows:

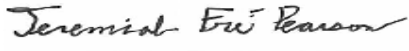
1. Certifying this action as a class action, with a class as defined above;
2. Requiring that Defendant pay for notifying the Class members of the pendency of this suit;
3. Awarding Plaintiff and the Class injunctive relief pursuant to §§ 349 and 350 of the New York General Business Law, without limitation;
4. Monetary damages, including but not limited to any compensatory, incidental, or consequential damages in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law with respect to the common law claims alleged;
5. Restitution of ill-gotten gains;
6. Statutory damages in the maximum amount provided by law;
7. An order awarding Plaintiff and the Class members the reasonable costs and expenses of suit, including their attorneys' fees; and
8. Any further relief that the Court deems appropriate.

Demand for Jury Trial

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: New York, New York
November 21, 2017

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CASE MANAGEMENT CONFERENCE

Judge C. Karl

Date

9/24/17
Dept N
830 AM

Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

WHOLE FOODS MARKET CALIFORNIA,
INC., a California Corporation, and MRS.
GOOCH'S NATURAL FOOD
MARKETS, INC., a California
Corporation,

Defendants.

CASE NO.: **SC122679**

**COMPLAINT FOR INJUNCTION,
CIVIL PENALTIES, AND OTHER
EQUITABLE RELIEF**

ALG 000
HW
GODWIN

1 The PEOPLE OF THE STATE OF CALIFORNIA, by and through its attorneys, MICHAEL
 2 N. FEUER, City Attorney for the City of Los Angeles, by Travis Austin, Deputy City Attorney, JAN
 3 GOLDSMITH, San Diego City Attorney, represented by Kathryn L. Turner, Deputy City Attorney,
 4 MARSHA JONES MOUTRIE, Santa Monica City Attorney, represented by Adam Radinsky,
 5 Deputy City Attorney, acting on information and belief, allege the following upon information and
 6 belief:

7 JURISDICTION AND VENUE

8 1. MICHAEL N. FEUER, City Attorney for the City of Los Angeles, JAN
 9 GOLDSMITH, City Attorney for the City of San Diego, and MARSHA JONES MOUTRIE, City
 10 Attorney for the City of Santa Monica, acting to protect the general public from unlawful business
 11 practices, bring this suit in the public interest in the name of THE PEOPLE OF THE STATE OF
 12 CALIFORNIA. Plaintiff by this action and pursuant to California Business and professions Code
 13 Sections 17200, 17203, 17204, 17206, 17500, 17535, and 17536, seeks to obtain civil penalties for
 14 the defendant's violations of the above statutes.

15 2. Defendants, Whole Foods Market California, a California Corporation and Mrs.
 16 Gooch's Natural Food Markets, Inc., a California Corporation (hereinafter collectively
 17 "Defendants"), at all times mentioned herein, have been engaged in the retail grocery business and
 18 transacted business in the State of California.¹

19 3. Plaintiff and Defendants have entered into an agreement to toll any applicable statutes
 20 of limitation. As a result of this agreement, the period of time from February 20, 2013 through the
 21 date of filing of the Complaint herein, inclusive ("Tolling Period"), will not be included in
 22 computing the time period limited by any statutes of limitation applicable to the causes of action
 23 brought against Defendants based on claims covered by the tolling agreement. These claims include
 24

25
 26 ¹ Whole Foods Market California, Inc. conducts business in Northern California. Mrs.
 27 Gooch's Natural Food Markets, Inc. conducts business in Southern California. Throughout this
 28 Complaint any reference to the entities doing business in the state of California shall be with the
 understanding that Whole Foods Market California, Inc. does not own or operate any retail stores in
 Southern California, and Mrs. Gooch's Natural Food Markets, Inc. does not own or operate any retail
 stores in Northern California.

1 the claims alleged in this action against Defendants.

2 **DEFENDANTS**

3 4. Defendant, Whole Foods Market California, Inc. is a California Corporation,
4 qualified to do business in California, with its corporate headquarters located in Emeryville,
5 California. Defendant Mrs. Gooch's Natural Food Markets, Inc. is a California Corporation,
6 qualified to do business in California, with its corporate headquarters located in Glendale, California.
7 At all relevant times, both Defendants have conducted retail grocery business at various locations in
8 the State of California.

9 5. Whenever a reference is made in this Complaint to any act or transaction of
10 Defendants, such allegation shall be deemed to mean that Defendants, and its principals, officers,
11 directors, employees, agents, or representatives, while actively engaged within the actual or
12 ostensible scope of their employment, did or authorized such representation, acts, or transactions on
13 behalf of Defendants.

14 **NATURE OF BUSINESS INVOLVED**

15 6. Beginning at an exact date unknown to Plaintiff, but four years prior to filing this
16 complaint in addition to the Tolling period set forth in paragraph 3 above, Defendants, were and at
17 all times herein mentioned, have continued to do business at various locations throughout the State
18 of California as a retail grocery business.

19 7. Defendants in the course of their retail business failed to comply with the applicable
20 state laws regulating the advertising, weighing, and pricing of grocery products.

21 **FIRST CAUSE OF ACTION**

22 **(Misleading Statements)**

23 **(Violation of California Business and Professions Code § 17500)**

24 8. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 7
25 inclusive, of this Complaint as though fully set forth herein.

26 9. Beginning at an exact date unknown to Plaintiff, but within three years prior to filing
27 this complaint in addition to the Tolling Period set forth in paragraph 3 above, Defendants made
28 statements, in violation of Business and Professions Code section 17500. These statements included

published printed advertisements and in-store representations, explicit and implicit, where the selling prices of certain items were inaccurate and, as such, were untrue and misleading.

SECOND CAUSE OF ACTION

(Unfair Competition)

(Violation of California Business and Professions Code § 17200)

10. Plaintiff re-alleges and incorporates herein by reference Paragraphs 1 through 9 inclusive of this Complaint as through fully set forth herein.

11. Beginning at an exact date unknown to Plaintiff, but within four years prior to the filing this complaint in addition to the Tolling Period set forth in paragraph 3 above, Defendants, did engage in acts of unfair competition within the meaning of California Business and Professions Code Section 17200 as follows:

a. Defendants made untrue or misleading statements in connection with the sale of items to the public in California, with statements constituting false advertising within the meaning of Business and Professions Code Section 17500.

b. Defendants did sell any item in less quantity than it was represented to be in violation of California Business and Professions Code Section 12024.2.

c. Defendants did mark a short weight or taking a false tare on any container in violation of Business & Professions Code section 12021;

d. Defendants did sell a commodity by gross weight in violation of Business & Professions Code section 12023;

e. Defendants did sell a pre-packaged commodity in less quantity than represented in violation of Business & Professions Code section 12024.3;

f. Defendants did sell meat, fish, or fowl other than by actual net weight in violation of Business & Professions Code section 12024.5;

g. Defendants did fail to have a statement of net quantity on a package in violation of Business & Professions Code section 12607; and

h. Defendants did sell a commodity with a non-conforming container or label in violation of Business & Professions Code section 12611.

PRAYER

WHEREFORE, PLAINTIFF PRAYS for judgment as follows:

1. For a permanent injunction, pursuant to California Business and Professions Code Sections 17203, 17204, 17535, and 17536, enjoining Defendants and its officers, directors, employees, agents, representatives, successors and assigns, and all persons, corporations or other entities acting in concert or participation with or for them with actual or constructive notice of this Judgment from engaging in any of the following practices:

a. Making untrue or misleading statements in connection with the sale of items to the public in California, which statements constitute false advertising within the meaning of California Business and Professions Code Section 17500.

b. Selling any item in less quantity than it was represented to be in violation of California Business and Professions Code Section 12024.2.

c. Marking a short weight or taking a false tare on any container in violation of Business & Professions Code section 12021;

d. Selling a commodity by gross weight in violation of Business & Professions Code section 12023;

e. Selling a pre-packaged commodity in less quantity than represented in violation of Business & Professions Code section 12024.3;

f. Selling meat, fish, or fowl other than by actual net weight in violation of Business & Professions Code section 12024.5;

g. Failing to have a statement of net quantity on a package in violation of Business & Professions Code section 12607;

h. Selling a commodity with a non-conforming container or label in violation of Business & Professions Code section 12611; and

2. That pursuant to California Business and Professions Code Section 17536, Defendants be assessed a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) for each and every violation of the California Business and Professions

1 Code Section 17200 as alleged in the First Cause of Action.

2 3. That pursuant to California Business and Professions Code Section 17536,
3 Defendants be assessed a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED
4 DOLLARS (\$2,500.00) for each and every violation of the California Business and Professions
5 Code Section 17500 as alleged in the First Cause of Action.

6 4. That pursuant to California Business and Professions Code Section 17206,
7 Defendants be assessed a civil penalty in the amount of TWO THOUSAND FIVE HUNDRED
8 DOLLARS (\$2,500.00) for each and every violation of the California Business and Professions
9 Code Section 17200 as alleged in the Second Cause of Action.

10 5. That pursuant to California Business and Professions Code Section 12015.5,
11 Defendants pay the incurred costs of the investigation in this action.

12 6. That Plaintiff recovers reasonable restitution for Defendants' acts of deceptive
13 advertising and unfair competition.

14 7. That Plaintiff recovers its costs of suit.

15 8. That Plaintiff be given such other further relief as the nature of this case may require
16 and this Court deems proper to fully and successfully dissipate the effects of the unlawful and unfair
17 acts complained of in this Complaint.

18
19
20 DATED: 6/10/14

Respectfully submitted,

MICHAEL N. FEUER, City Attorney

21
22 By: Travis Stephen Austin

TRAVIS STEPHEN AUSTIN
Deputy City Attorney

23
24 DATED: 6/10/14


JAN GOLDSMITH, City Attorney

25
26 By: Kathryn L. Turner

KATHRYN L. TURNER
Deputy City Attorney

1 DATED: 6/10/14

MARSHA JONES MOUTRIE, City Attorney

2
3 By: 
4 ADAM RADINSKY
Deputy City Attorney

5 Attorneys for Plaintiff
6 PEOPLE OF THE STATE OF CALIFORNIA
7
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SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: WHOLE FOODS MARKET CALIFORNIA, (AVISO AL DEMANDADO): INC., a California Corporation, and MRS. GOOCH'S NATURAL FOOD MARKETS, INC., a California Corporation

YOU ARE BEING SUED BY PLAINTIFF: PEOPLE OF THE STATE OF (LO ESTÁ DEMANDANDO EL DEMANDANTE): CALIFORNIA

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
JUN 11 2014
CLERK OF COURT
SANTA MONICA

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Los Angeles Superior Court
1725 Main Street
Santa Monica, CA 90401

CASE NUMBER
(Número del Caso):

SC122679

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ADAM RADINSKY - SBN 126208
Deputy City Attorney
1685 Main Street, Room 310
Santa Monica, CA 90401

(310) 458-8336 (310) 395-6727

DATE:

JUN 11 2014

Sherri R. Carter, Clerk

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under:

CCP 416.10 (corporation)

CCP 416.20 (defunct corporation)

CCP 416.40 (association or partnership)

other (specify):

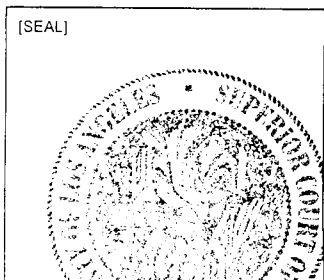
CCP 416.60 (minor)

CCP 416.70 (conservatee)

CCP 416.90 (authorized person)

4. by personal delivery on (date):

(SEAL)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/21/17

IN RE WHOLE FOODS MARKET
GROUP, INC. OVERCHARGING
LITIGATION

Civil Action No. 1:15-cv-5838 (PAE)

**PLAINTIFF SEAN JOHN'S CONSENT MOTION
FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, and in accordance with the Court's Order of October 23, 2017, Plaintiff Sean John, by and through his attorneys, hereby files this Consent Motion for Leave to File a Second Amended Complaint.

Plaintiff is seeking leave to amend the Complaint in this action solely to remove former plaintiff Joseph Bassolino, who, after declining to pursue an appeal, is no longer involved in this litigation. *See John v. Whole Foods Market, Inc.*, No. 16-986, ECF No. 41 (2nd Cir. Apr. 26, 2016). Defendant Whole Foods Market Group, Inc. has consented to this request.

Due to the upcoming Thanksgiving holiday, Defendant has requested that the deadline for it to file a response be set for twenty (20) days after the filing of the Second Amended Complaint. Plaintiff consents to this request.

Dated: White Plains, New York
November 21, 2017

**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**
By: /s/ D. Greg Blankinship
D. Greg Blankinship
Todd S. Garber
445 Hamilton Ave., Suite 605
White Plains, NY 10601
Tel: (914) 298-3281
Fax: (914) 824-1561
gblankinship@FBFGLaw.com

-and-

RICHMAN LAW GROUP

By: /s/ Kim E. Richman
Kim E. Richman
81 Prospect Street
Brooklyn, New York 11201
Telephone: (718) 705-4579
Facsimile: (718) 228-8522
krichman@richmanlawgroup.com

*Attorneys for Plaintiff
and the Putative Class*

Granted . Upon counsels' representations that all parties consent, the Court hereby grants leave to plaintiff to file the proposed second amended complaint. Defendants' response to the second amended complaint is due twenty days after the filing of the complaint.

11/21/17

SO ORDERED:



**HON. PAUL A. ENGELMAYER
UNITED STATES DISTRICT JUDGE**