

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION**

MICHAEL DALY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WHOLE FOODS MARKET GROUP, INC.

Defendant.

Case No. 2023CH02149

**CLASS ACTION
COMPLAINT**

JURY DEMANDED

Now comes the Plaintiff, MICHAEL DALY (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, and for his Class Action Complaint against the Defendant WHOLE FOODS MARKET GROUP, INC., (“Defendant”), Plaintiff alleges and states as follows:

PRELIMINARY STATEMENT

1. This is an action for damages, injunctive relief, and any other available legal or equitable remedies, for violations of Illinois Consumer Fraud and Deceptive Businesses Practices Act (“ILCFA”), 815 ILCS 505/1 *et seq.*, common law fraud, and unjust enrichment, resulting from the illegal actions of Defendants, in intentionally short-weighting their tilapia fillet products. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

PARTIES

2. Plaintiff is an individual who was at all relevant times residing in Lemont, Illinois.

3. Defendant is a Delaware Corporation, whose principal place of business is located in Austin, Texas.

4. At all times relevant hereto, Defendant was engaged in the marketing, manufacturing, and sale of frozen fish filets.

FACTS COMMON TO ALL COUNTS

5. Defendant manufactures, advertises, markets, sells, and distributes frozen fish filets throughout the United States.

6. During the Class Period Defendant sold short-weighted bags of frozen tilapia filets (the “Products”).

7. On January 6, 2023, Plaintiff purchased a Product from a Whole Foods located at 15260 S La Grange Rd., Orland Park, IL 60462.

8. The United States Department of Commerce sets standards for checking the net content of packaged goods. These standards are articulated in the National Institute of Standards and Technology Handbook. 133, 2016 Edition.

9. Testing packages at retail outlets evaluates the soundness of the manufacturing, distributing, and retailing processes of the widest variety of goods at a single location. Natl. Inst. Stand. Technol. Handb. 133, 2016 Ed. 214 Pages (Nov. 2015).

10. The limit of the “reasonable minus variation” for an under filled package is called a “Maximum Allowable Variation” (MAV). An MAV is a deviation from the labeled weight, measure, or count of an individual package beyond which the deficiency is considered an unreasonable minus error. Each sampling plan limits the number of negative package errors

permitted to be greater than the MAV. Natl. Inst. Stand. Technol. Handb. 133, 2016 Ed. 214 Pages (Nov. 2015).

11. Fish filet products are glazed with a thin layer of ice to protect the freshness of the fish meat.

12. Fraudulently short-weighted fish filets are sometimes overglazed in order to sell the fish at a weight higher than the amount of fish actually delivered.

13. The Products were sold in units of 907 grams per bag.

14. The MAV for fish products sold in units of 907 grams is 31.7 grams.

15. Plaintiff's counsel conducted an investigation following the guidelines articulated in the National Institute of Standards and Technology Handbook.

16. Based on Plaintiff's counsel's investigation it was determined that approximately 80% of the Products tested were short weighted due to fraudulent over-glazing. See Exhibit A1-A3, Ice Glaze Package Reports detailing the results of Plaintiff's counsel's investigation.

17. Plaintiff's counsel has additionally secured six bags of unopened, untested Products for purposes of independent testing during litigation.

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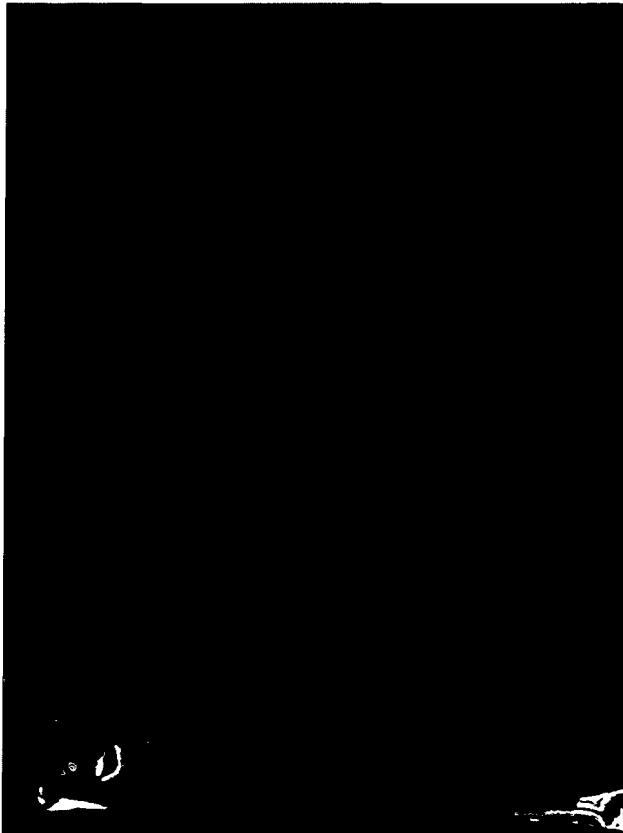
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18. The following are examples of the Products' fraudulent labeling:



19. Persons, like Plaintiff herein, have an interest in purchasing products that do not contain false and misleading claims with regards to the weight of the Products.

20. Plaintiff, like any reasonable consumer, understands that products sold by weight should actually be the correct weight for the price paid.

21. By making false and misleading claims about the Products, Defendant overcharged Plaintiff and the class members.

22. Therefore, Plaintiff has been deprived of his legally protected interest to obtain true and accurate information about his consumer products as required by law.

23. As a result of Defendant's fraudulent labeling, Plaintiff and the Class have been misled into purchasing Products that did not provide them with the benefit of the bargain they paid money for, namely that the Products would be 907 grams per bag.

24. As a result of Defendant's fraudulent labeling, Plaintiff and the Class were overcharged.

25. Plaintiff was unaware that the Product was short-weighted when he Purchased it.

26. Defendant, and not Plaintiff, the Class, or Sub-Class, knew or should have known that labeling, marketing, and selling the Products overglazed was false, deceptive, and misleading, and that Plaintiff, the Class, and Sub-Class members would not be able to tell the Products they purchased were short-weighted.

27. On information and belief, Defendant through its employees knew or should have known that the Products were overglazed.

28. As a result of Defendant's acts and omissions outlined above, Plaintiff has suffered concrete and particularized injuries and harm, which include, but are not limited to, the following:

- a. Lost money;
- b. Wasting Plaintiff's time; and
- c. Stress, aggravation, frustration, loss of trust, loss of serenity, and loss of confidence in product labeling.

CLASS ALLEGATIONS

29. Plaintiff brings this action on behalf of himself and all others similarly situated, as a member of the proposed class (the "Class"), defined as follows:

All persons within the United States who purchased the Products within five years prior to the filing of the Complaint through the date of class certification.

30. Plaintiff also brings this action on behalf of himself and all others similarly situated, as a member of the proposed sub-class (the "Sub-Class"), defined as follows

All persons within the State of Illinois who purchased the Products within five years prior to the filing of the Complaint through the date of class certification.

31. The Class and the Sub-Class satisfy all of the requirements of the Illinois Code of Civil Procedure for maintaining a class action, specifically:

- a. Upon information and belief, the Class and the Sub-Class are so numerous that joinder of all members is impracticable. On information and belief there are hundreds, if not thousands of individuals in the United States and the State of Illinois who purchased the products within the applicable statute of limitations period.
- b. There are questions of fact and/or law which are common to the Class and the Sub-Class, and which predominate over questions affecting any individual Class or Sub-Class members. These common questions of fact and law include, but are not limited to:
 - i. Whether Defendant disseminated false and misleading information by short-weighting the Products;
 - ii. Whether the Class and Sub-Class members were informed that the Products were short-weighted;
 - iii. Whether the Products were short-weighted;
 - iv. Whether Defendant's conduct was unfair and deceptive;
 - v. Whether Defendant unjustly enriched itself as a result of the unlawful conduct alleged above;
 - vii. Whether there should be a tolling of the statute of limitations; and

- viii. Whether the Class and Sub-Class members are entitled to restitution, actual damages, punitive damages, and attorneys' fees and costs.
- c. Plaintiff's claims are typical of the Class and the Sub-Class, which all arise from the same operative set of facts and are based on the same legal theories
- d. Plaintiff has no interests adverse or antagonistic to the interests of the other members of the Class and the Sub-Class.
- e. Plaintiff will fairly and adequately protect the interests of the Class and the Sub-Class and Plaintiff has retained experienced and competent attorneys to represent the Class and the Sub-Class.
- f. This class action is a fair and efficient adjudication of the controversy alleged herein. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.
- g. This class action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. This class action will also permit the adjudication of relatively small claims by many Class and Sub-Class members who would not otherwise be able to afford to seek legal redress for the wrongs complained of herein. Absent a class action, Class and Sub-Class members will continue to suffer losses of legally protected rights, as well as monetary damages. If Defendant's conduct is allowed proceed to without remedy, Defendant will continue to benefit financially from such conduct.

h. Defendant has acted on grounds generally applicable to the entire Class and Sub-Class, thereby making it appropriate for the Court to order final monetary, injunctive, and declaratory relief with respect to the Class and the Sub-Class as a whole.

32. Defendant, its employees and agents are excluded from the Class and Sub-Class. Plaintiff does not know the number of members in the Class and Sub-Class, but believes the members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

33. The size and definition of the Class and Sub-Class can be identified by Defendant's own records.

COUNT I
VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/1, et seq.

34. Plaintiff incorporates all of the allegations and statements made in Paragraphs 1 through 33 above as if fully reiterated herein.

35. Plaintiff is a "person" as defined in 815 ILCS 505/1(c), as he is a natural person.

36. Defendant is a "person" as defined in 815 ILCS 505/1(c), as it is a company and a business entity and/or association.

37. 815 ILCS 505/2 states:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

38. Through its representation that the Products were 907 grams, Defendant made false promises, misrepresentations, concealments, suppressions, and omissions of material facts, with the intent that Plaintiff rely upon said false promises, misrepresentations, concealments, suppressions, and omissions of material facts.

39. 815 ILCS 505/10a states:

(a) Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper...

(c) [T]he Court may grant injunctive relief where appropriate and may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party.

40. In taking the actions and omissions set forth above, and making the false promises, misrepresentations, concealments, suppressions, and omissions of material facts set forth above, Defendant violated the Illinois Consumer Fraud and Deceptive Business Practices Act, including, but not limited to, 815 ILCS 505/2.

41. Defendant failed to comply with the requirements of the ILCFA, including, but not limited to, 815 ILCS 505/2 as to the Class and Sub-Class members with respect to the above-alleged transactions

42. By reason thereof, Plaintiff is entitled to a judgment against Defendant, declaring that Defendant's conduct violated 815 ILCS 505/2, enjoining Defendant from engaging in similar conduct in the future, and awarding actual damages, punitive damages, injunctive relief, costs, and attorneys' fees.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment against Defendant as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- c. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendant in an amount to be determined at trial;
- e. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- f. Judgment against Defendant for Plaintiff's attorneys' fees, court costs, and other litigation costs; and
- g. Any other relief deemed just and proper by this Court.

COUNT II
COMMON LAW FRAUD

43. Plaintiff incorporates all of the allegations and statements made in Paragraphs 1 through 33 above as if fully reiterated herein.

44. Through its false statements that the Products were 907 grams, Defendant made false statements of material fact.

45. At the time Defendant made its statements to Plaintiff that the Products were 907 grams, it knew, or reasonably should have known, that the statements described above were false.

46. At the time Defendant made the statements to Plaintiff, Defendant intended to induce Plaintiff to purchase the Products for a specific price by weight.

47. Plaintiff relied upon the truth of the statements described above and purchased the Product for a price by weight, only to find that the Product he purchased was short-weighted.

48. As a result of their reasonable reliance upon Defendant's false statements of material fact as set forth above, Plaintiff and other members of the Class and Sub-Class have suffered concrete and particularized injuries, harm, and damages which include, but are not limited to, the loss of money spent on products that were not the quantity promised, and stress, aggravation, frustration, inconvenience, emotional distress, mental anguish, and similar categories of damages.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment against Defendant as follows:

- a. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- b. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- c. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- d. Judgment against Defendant in an amount to be determined at trial;
- e. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- f. Judgment against Defendant for Plaintiff's attorneys' fees, court costs, and other litigation costs; and
- g. Any other relief deemed just and proper by this Court.

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COUNT III
UNJUST ENRICHMENT

49. Plaintiff incorporates all of the allegations and statements made in Paragraphs 1 through 33 above as if fully reiterated herein.

50. Plaintiff conferred monetary benefits to Defendant by purchasing the Products.

51. Defendant has been unjustly enriched by retaining the revenues derived from Plaintiff's purchase of the Products based on the false statements that the Products were 907 grams.

52. Defendant's retention of the revenue it received from Plaintiff, and the Class and Sub-Class members, is unjust and inequitable because Defendant's false statements caused injuries to Plaintiff, and the Class and Sub-Class members, as they would not have purchased the Products, or would not have paid the same price, if they knew the Products weighed less than advertised.

53. Defendant's unjust retention of the benefits conferred on it by Plaintiff, and the Class and Sub-Class members, entitles Plaintiff, and the Class and Sub-Class members, to restitution of the money they paid to Defendant for the Products.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment against Defendant as follows:

- h. An order certifying the Class and the Sub-Class and appointing Plaintiff as Representative of the Class and the Sub-Class;
- i. An order certifying the undersigned counsel as the Class and Sub-Class Counsel;
- j. An order requiring Defendant, at its own cost, to notify all members of the Class and the Sub-Class of the unlawful, unfair, deceptive, and unconscionable conduct herein;
- k. Judgment against Defendant in an amount to be determined at trial;

- l. An order for injunctive relief prohibiting such conduct by Defendant in the future;
- m. Judgment against Defendant for Plaintiff's attorneys' fees, court costs, and other litigation costs; and
- n. Any other relief deemed just and proper by this Court.

JURY DEMAND

Plaintiff demands a trial by jury on all issues in this action so triable, except for any issues relating to the amount of attorneys' fees and costs to be awarded should Plaintiff prevail on any of her claims in this action.

RESPECTFULLY SUBMITTED,

MICHAEL DALY



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