

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

JUAN RESTREPO, individually and on
behalf of all others similarly situated,

Plaintiff,

- against -

WISE FOODS INC.,

Defendant

Class Action Complaint

Jury Trial Demanded

Plaintiff Juan Restrepo (“Plaintiff”) alleges upon information and belief, except for allegations about Plaintiff, which are based on personal knowledge:

I. BUTTER AND POPCORN

1. In 1885, “Charles Cretors introduced the first mobile popcorn machine,” “which ushered in the now well-known combination of popcorn, butter, and salt.”



2. These machines were used in the movie theaters of that era, introducing

this food to the public for the first time.

3. Part of the reason consumers valued popcorn with butter was because they were both minimally processed foods with nutritive value.

4. Popcorn, a whole grain, is relatively high in fiber and low in calories.

5. Butter, made from milk and cream, is high in protein, good fats, and calcium.

6. Over a hundred years later, “Popcorn and butter are now almost ubiquitous together.”

7. The use of real butter in packaged popcorn is increasingly common, because, according to one food industry executive, “Consumers are reading product labels more closely,” with an increased focus on ingredients, especially in snack foods.

8. Consumer research company Mintel attributed this demand for “real ingredients” in part due to media attention focused on lack of transparency in the food industry.¹

9. This is because the public still want to consume foods with the types of ingredients they have in their refrigerators, instead of highly processed and synthetic substitutes.

¹ Lynn Dornblaser, Director, Innovation & Insight, Mintel, “Clean Label: Why this Trend is Important Now,” 2017.

II. CONTRAST BUTTER AND ARTIFICIAL FLAVORS

10. Consumer preferences for butter compared to synthetic flavoring materials used to imitate butter are well-established.

11. First, Americans' per capita butter consumption reached six pounds, the highest level in 50 years.

12. Most butter is not consumed directly from sticks, but as additions to homemade and packaged foods.

13. In contrast, according to the trade journal, *Perfumer & Flavorist*, consumer opposition to artificial flavors means their future is bleak.²

14. Second, consumer research firm Mintel attributed butter's popularity to its "natural appeal."

15. Butter's definition, as "made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, and containing not less than 80 per centum by weight of milk fat," fits this bill. 21 U.S.C. § 321a.

16. "Artificial flavors," on the other hand, refers to "any substance, the function of which is to impart flavor," from synthetic or chemical sources, like petroleum, made through chemical reactions in a laboratory. 21 C.F.R. §

² Jim Kavanaugh, *The Future of Artificial Flavors & Ingredients*, *Perfumer & Flavorist*, June 12, 2017.

101.22(a)(1).

17. Third, “When [consumers] think about whether a food is healthy or not, [they] likely consider whether or not it has the word ‘artificial’ in the ingredients list.”

18. According to the Wall Street Journal, “As consumer concern rises over artificial ingredients, more food companies are reconstructing recipes” to remove artificial flavors.³

19. Mintel deemed “Artificial: Public Enemy No. 1” for consumers.⁴

20. Surveys by Nielsen, New Hope Network, and Label Insight confirmed that between sixty and eighty percent of the public tries to avoid artificial flavors, believing them to be potentially unhealthy and contributing to a wide range of maladies.

21. Butter is considered a nutritious food, because it is high in protein, heart healthy fats and key nutrients like calcium and Vitamin D.

³ Lauren Manning, How Big Food is Using Natural Flavors to Win Consumer Favor, Wall Street Journal.

⁴ Alex Smolokoff, Natural color and flavor trends in food and beverage, Natural Products Insider, Oct. 11, 2019; Thea Bourianne, Exploring today’s top ingredient trends and how they fit into our health-conscious world, March 26-28, 2018; Nancy Gagliardi, Consumers Want Healthy Foods – And Will Pay More For Them, Forbes, Feb 18, 2015.

III. LEGAL BACKGROUND

22. The preference for wholesome ingredients like butter, added to popcorn instead of highly processed, artificial flavoring molecules, is not new.

23. In response to an unregulated environment where companies used synthetic molecules to conceal the absence of the ingredients prominently advertised, the Pure Food and Drug Act of 1906 sought to protect consumers from such deception.

24. These requirements were strengthened when Congress adopted the Federal Food, Drug and Cosmetic Act (“FFDCA”) in 1938. 21 U.S.C. § 301 *et seq.*

25. Florida adopted these laws through the Food Safety Act (“FSA”) and accompanying regulations. Fla. Stat. § 500.01 *et seq.*; Fla. Stat. § 500.02(2) (“Provide legislation which shall be uniform, as provided in this chapter, and administered so far as practicable in conformity with the provisions of, and regulations issued under the authority of, the [FFDCA].”); FL Admin Code § 5K-4.002(1)(d) (adopting 21 C.F.R. Parts 101 and 102).

26. The newly established Food and Drug Administration (“FDA”) was aware of how companies used advanced scientific knowledge to substitute lower cost and lower quality ingredients in place of nutrient-dense and natural ingredients valued by consumers.

27. The newly established Food and Drug Administration (“FDA”) was

aware of how companies used advanced scientific knowledge to substitute additives in place of nutrient-dense and natural ingredients valued by consumers.

28. Beyond the potential to cause physical harm, these synthetic substances were significantly cheaper than the ingredients they replaced.

29. Since “consumers initially [] rely on extrinsic cues such as visual information on labels and packaging,” it made sense to require a food’s “common or usual name” to disclose “its characterizing properties or ingredients.” 21 C.F.R. § 102.5(a).⁵

30. To facilitate an honest marketplace, the FDA required the source of a food’s taste to be conspicuously disclosed as part of its name. 21 C.F.R. § 101.22(i)(1).

31. According to one scholar, this rule “is premised on the simple notion that consumers value ‘the real thing’ versus a close substitute and should be able to rely on the label to readily distinguish between the two.”⁶

IV. LABELING

32. Ingredient supplier Cargill found “consumers want both indulgence and

⁵ Lancelot Miltgen et al., “Communicating Sensory Attributes and Innovation through Food Product Labeling,” *Journal of Food Product Marketing*, 22.2 (2016): 219-239; Helena Blackmore et al., “A Taste of Things to Come: The Effect of Extrinsic and Intrinsic Cues on Perceived Properties of Beer Mediated by Expectations,” *Food Quality and Preference*, 94 (2021): 104326.

⁶ Steven Steinborn, Hogan & Hartson LLP, *Regulations: Making Taste Claims*, PreparedFoods.com, August 11, 2006.

health and are willing to pay more for baked goods that deliver on both.”

33. These “healthy indulgences” are “treat[s] with all the flavor and taste desired, without the guilt of eating something ‘bad’ for you,” due to the presence of ingredients associated with positive health benefits, like popcorn and butter.

34. Recognizing consumer demand for wholesome ingredients like butter and their aversion to synthetic flavoring chemicals, Wise Foods Inc. (“Defendant”) markets “Butter Popcorn,” in packaging of various shades of yellow, described as “air popped,” “gluten free” and “whole grain,” with images of popped kernels (“Product”).



35. This is revealed through the fine print on the bottom corner of the bag, not even visible to purchasers at the point-of-sale, since the weight of the bag causes it to crumple over, obscuring the statement of “Naturally and Artificially Flavored [Popcorn].”



36. The small print on the back of package’s ingredients, listed in order of predominance by weight, reveal the absence of butter, and instead identify “Artificial Flavors (Contains Lipolyzed Cream), [and] Natural Flavor.” 21 C.F.R. § 101.4(a)(1).

INGREDIENTS: POPCORN, VEGETABLE OIL (CONTAINS ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, SUNFLOWER OR CANOLA OIL), SALT, CORN SYRUP SOLIDS, BETA CAROTENE (COLOR), MODIFIED CORN STARCH, MEDIUM CHAIN TRIGLYCERIDES, ARTIFICIAL FLAVORS (CONTAINS LIPOLYZED CREAM), NATURAL FLAVOR, TOCOPHEROL (VITAMIN E), ASCORBYL PALMITATE.

INGREDIENTS: POPCORN, VEGETABLE OIL (CONTAINS ONE OR MORE OF THE FOLLOWING: CORN, COTTONSEED, SUNFLOWER OR CANOLA OIL), SALT, CORN SYRUP SOLIDS, BETA CAROTENE (COLOR), MODIFIED CORN STARCH, MEDIUM CHAIN TRIGLYCERIDES, **ARTIFICIAL FLAVORS** (CONTAINS LIPOLYZED CREAM), **NATURAL FLAVOR**, TOCOPHEROL (VITAMIN E), ASCORBYL PALMITATE.

37. Though the “Artificial Flavors” contains “Lipolyzed Cream,” this is not butter nor would consumers consider this chemical invention the equivalent of butter.

38. Instead, this ingredient starts with cream, part of butter, and treats it with lipase enzymes to produce fatty acids.

39. Artificial and natural flavors generally contain hundreds of components, with solvents comprising over 80% of their volume.

40. These are developed by scientists who attempt to replicate the taste of butter by creating molecular compounds, using natural and synthetic starting materials.

41. The result is that even “natural flavor” contains some oil, protein, or

essence from ingredients which may have once been a component of what it seeks to imitate, though bearing little resemblance to that ingredient.⁷

42. Though dairy-derived ingredients may be used to manufacture the Product's taste, it is not butter as reasonable consumers would understand it.

43. Unfortunately for consumers, chemical flavor compounds manufactured to mimic the taste of butter provides none of the health benefits of butter.

44. Moreover, according to flavor expert Bob Holmes, ingredients like "natural flavor" are unable to provide "all the flavor depth of [butter] itself."

V. "BUTTER POPCORN" WITHOUT QUALIFYING TERMS MISLEADS CONSUMERS TO EXPECT BUTTER

45. In considering whether a food's label is misleading, it is required to "take[] into account, among other things, not only representations made or suggested by statement, word, design, [] or in any combination thereof, but also the extent to which the labeling or advertisement fails to prominently and conspicuously reveal facts relative to the proportions or absence of certain ingredients or other facts concerning ingredients in the food, which facts are of material interest to consumers." Fla. Stat. § 500.03(2)(b).

46. The replacement of butter with artificial and natural flavoring is "of material interest to consumers," because butter costs more than these chemical and

⁷ Roni Caryn Rabin, Are 'Natural Flavors' Really Natural?, New York Times, Feb. 1, 2019.

synthetic alternatives. Fla. Stat. § 500.03(2)(b).

47. The replacement of butter with artificial and natural flavoring is “of material interest to consumers,” because these compounds lack the nutrients and other benefits of butter. Fla. Stat. § 500.03(2)(b).

48. The failure to disclose the source of the Product’s butter taste misleads consumers who expect they are buying a product whose taste comes only from butter.

49. The result is that the Product is “misbranded” and misleads consumers to expect its taste is only from butter, which is false, because its taste comes from artificial butter flavoring. 21 U.S.C. § 343(a)(1); Fla. Stat. § 500.11(1)(a).

50. The emphasis on the Product’s “whole grain” attributes contributes to the expectation it will contain butter, because whole grains are natural and known for their health benefits.

51. The Product is “misbranded” and misleading because its labeling fails to conspicuously display the required information that its butter taste is provided by artificial flavoring. 21 U.S.C. § 343(f); Fla. Stat. § 500.11(1)(f).

52. The Product is “misbranded” and misleading because it includes artificial butter flavoring but “it [does not] bear[s] labeling stating that fact,” not in the manner required by law. 21 U.S.C. § 343(k); Fla. Stat. § 500.11(1)(k).

53. The Product is “misbranded” and misleading because “Butter Popcorn”

is not a truthful or non-misleading “common or usual name.” 21 U.S.C. § 343(i); Fla. Stat. § 500.11(1)(i).

54. “Butter Popcorn” does not “accurately identif[y] or describe, in as simple and direct terms as possible, the basic nature of the food or its characterizing properties or ingredients.” 21 C.F.R. § 102.5(a); 21 C.F.R. § 101.3(b)(2).

55. This is because it fails to disclose the source of the butter, based on the use of artificial flavoring, which imparts the taste of butter. 21 C.F.R. § 101.22(i)(2).

56. Federal and state regulations require that because the taste is represented as “Butter Popcorn,” yet contains artificial flavoring that imparts the flavor of butter, “Butter” is required to “be accompanied by the word(s) ‘artificial’ or ‘artificially flavored,’” such as “Artificial Butter Flavored Popcorn” or “Artificially Flavored Butter Popcorn.” 21 C.F.R. § 101.22(i)(2).

57. Instead, “Butter” is immediately beneath the word “Popcorn,” which is false and misleading based on the use of artificial butter flavoring.

58. Artificial and natural flavoring lack the nutrients of butter.

59. Artificial and natural flavoring lack the creamy and smooth taste of butter.

VI. CONCLUSION

60. By substituting artificial and natural flavoring, purchasers are misled based on the failure to adequately disclaim the reference to “Butter.”

61. The Product could have included butter or like other brands, sufficiently and conspicuously disclosed that it was artificially flavored, instead of placing this information in a way consumers would not notice, at the bottom corner of the package.

62. Marketing “Butter Popcorn” without any butter is misleading to consumers because who will not expect this food to lack butter and get its taste from artificial flavoring, when its presence is not prominently disclosed to them, on the part of the package they expect to see it.

63. As a result of the false and misleading representations and omissions, the Product is sold at a premium price, at or around \$2.25 for 2.25 oz, excluding tax and sales, higher than similar products, represented in a non-misleading way, and higher than it would be sold for absent the misleading representations and omissions.

JURISDICTION

64. Plaintiff is a citizen of Florida.

65. Jurisdiction is based on the Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C. § 1332(d)(2).

66. The aggregate amount in controversy exceeds \$5 million, including any statutory or punitive damages, exclusive of interest and costs.

67. Plaintiff is a citizen of Florida.

68. Defendant is a citizen of Delaware based on its corporate formation.

69. Defendant is a citizen of Pennsylvania based on its principal place of business.

70. The class of persons Plaintiff seeks to represent includes persons who are citizens of a different state from which Defendant is a citizen.

71. The members of the proposed class Plaintiff seeks to represent are more than one hundred, because the Product has been sold at hundreds of retail stores in this State, such as grocery stores, big box stores, warehouse club stores, drug stores, convenience stores, and online to citizens of this State.

72. The Court has jurisdiction over Defendant because it transacts business within Florida and sells the Product to consumers within Florida from hundreds of retail stores in this State and online to citizens of this State.

73. Defendant transacts business in Florida, through the sale of the Product to citizens of Florida from hundreds of retail stores in this State and online to citizens of this State.

74. Defendant has committed tortious acts within this State through the distribution and sale of the Product, which is misleading to consumers in this State.

75. Defendant has committed tortious acts outside this State by labeling, representing and selling the Product in a manner which causes injury to consumers within this State by misleading them as to its contents, amount and/or quality, by regularly doing or soliciting business, or engaging in other persistent courses of

conduct to sell the Product to consumers in this State, and/or derives substantial revenue from the sale of the Product in this State.

76. Defendant has committed tortious acts outside this State by labeling the Product in a manner which causes injury to consumers within this State by misleading them as to its contents, amount and/or quality, through causing the Product to be distributed throughout this State, such that it expects or should reasonably expect such acts to have consequences in this State and derives substantial revenue from interstate or international commerce.

77. The Court has jurisdiction over Defendant because it transacts business within Florida and sells the Product to consumers within Florida from hundreds of retail stores in this State and online to citizens of this State.

78. The Court has jurisdiction over Defendant because it has committed tortious acts within this State through the labeling, distribution and/or sale of the Product, which is misleading to consumers in this State.

79. The Court has jurisdiction over Defendant because it has committed tortious acts outside this State by labeling, representing and selling the Product in a manner which causes injury to consumers within this State by misleading them as to its contents, attributes, amount and/or quality, by regularly doing or soliciting business, or engaging in other persistent courses of conduct to sell the Product to consumers in this State, and/or derives substantial revenue from the sale of the

Product in this State, such that it expects or should reasonably expect such acts to have consequences in this State and derives substantial revenue from interstate or international commerce.

VENUE

80. Plaintiff resides in Miami-Dade County.

81. Venue in the Miami Division of this District is based on Plaintiff's residence in Miami-Dade County.

82. Venue is based on Plaintiff's residence in Miami-Dade County because a substantial or the entire part of the events or omissions giving rise to his claims occurred in Miami-Dade County, including his purchase of the Product based on the representations and omissions identified here.

83. Venue is based on Plaintiff's residence in Miami-Dade County because this is where his causes of action accrued, including his purchase, payment of money for or towards, use and/or consumption of the Product.

84. Plaintiff purchased, paid money for or towards, used and/or consumed the Product in reliance on the representations and omissions identified here in Miami-Dade County.

85. Plaintiff first became aware the representations and omissions were false and misleading in Miami-Dade County.

PARTIES

86. Plaintiff Juan Restrepo is a citizen of Miami-Dade County, Florida.

87. Defendant Wise Foods Inc. is a Delaware corporation with a principal place of business in Pennsylvania.

88. Plaintiff is like most consumers and seeks foods promoted as containing ingredients known to have health benefits.

89. Plaintiff is like most consumers and values the nutrients provided by real butter.

90. Plaintiff expected a whole grain snack like popcorn to use real butter.

91. Plaintiff is like most consumers and seeks foods promoted as containing the types of ingredients they are likely to have in their homes, like butter.

92. Plaintiff is like most consumers and values the taste provided by butter.

93. Plaintiff is like most consumers and prefers to consume foods which get their taste from the ingredients promoted on the packaging.

94. Plaintiff is like most consumers and looks to the front label of foods to see what he is buying and to learn basic information about them.

95. Plaintiff is like most consumers and is accustomed to the front label of packaging telling them if what they are buying gets its taste from artificial flavoring.

96. Plaintiff is like most consumers and when he sees that a front label emphasizes an ingredient, without any qualifying statements, he expects it contains

that ingredient to provide its taste.

97. Plaintiff is like most consumers and when he saw the Product's front label telling him he was buying "Butter Popcorn," he believed this, and expected the taste to come from butter, not artificial flavor.

98. Plaintiff read, saw and relied on the label's statements of "Butter Popcorn," in packaging of various shades of yellow, described as "air popped," "gluten free" and "whole grain," with images of popped kernels, to expect it contained butter and that its taste was from butter, not artificial flavor.

99. Plaintiff purchased the "Butter Popcorn," in packaging of various shades of yellow, described as "air popped," "gluten free" and "whole grain," with images of popped kernels, the labeling identified here, at grocery stores, drug stores, gas stations, pharmacies, big box stores, warehouse club stores, and/or convenience stores, in Miami-Dade County, between December 2022 and December 2023.

100. Plaintiff bought the Product at, around or exceeding the above-referenced price.

101. Plaintiff paid more for the Product than he would have had he known it lacked butter, at least in a form and amount reasonable consumers would expect, as he would have paid less or not purchased it.

102. The Product was worth less than what Plaintiff paid, and he would not have paid as much absent Defendant's false and misleading statements and

omissions.

CLASS ALLEGATIONS

103. Plaintiff seeks to represent the following class:

All persons in Florida who purchased Wise Butter Popcorn labeled as identified here, during the statutes of limitations for each cause of action alleged.

104. Excluded from the Class are (a) Defendant, Defendant's board members, executive-level officers, and attorneys, and immediate family members of any of the foregoing persons, (b) governmental entities, (c) the Court, the Court's immediate family, and Court staff and (d) any person that timely and properly excludes himself or herself from the Class.

105. Common questions of issues, law, and fact predominate and include whether Defendant's representations and omissions were and are misleading and if Plaintiff and class members are entitled to damages.

106. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair, misleading, and deceptive representations, omissions, and actions.

107. Plaintiff is an adequate representative because his interests do not conflict with other members.

108. No individual inquiry is necessary since the focus is only on Defendant's practices and the class is definable and ascertainable.

109. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

110. The class is sufficiently numerous and likely includes several thousand people.

111. This is because Defendant sells the Product to consumers from hundreds of its stores in the State Plaintiff is seeking to represent.

112. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to protect class members' interests adequately and fairly.

CAUSES OF ACTION

COUNT I

Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"), Fla. Stat. § 501.201, *et seq.*

113. Plaintiff incorporates by reference paragraphs 1-63.

114. The purpose of FDUTPA is "To protect the consuming public...from those who engage in...deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. § 501.202(2).

115. This includes "making state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection." Fla. Stat. § 501.202(3).

116. FDUTPA considers any "unfair or deceptive acts or practices in the conduct of any trade or commerce [to be] unlawful." Fla. Stat. § 501.204(1).

117. Such “unfair or deceptive acts or practices” must be construed so that “due consideration and great weight shall be given to the interpretations of the FTC and the federal courts relating to [the FTC Act,] 15 U.S.C. § 45(a)(1).” Fla. Stat. § 501.204(2).

118. Violations of FDUTPA can be based on other laws and standards related to consumer deception. Fla. Stat. § 501.203(3).

119. An FDUTPA violation occurs whenever “Any rules promulgated pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.*” are violated. Fla. Stat. § 501.203(3)(a).

120. An FDUTPA violation occurs whenever “The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission (‘FTC’) or the federal courts” relating to the FTC Act are violated. Fla. Stat. § 501.203(3)(b).

121. An FDUTPA violation occurs whenever “Any law, statute, rule, regulation, or ordinance which proscribes...unfair, deceptive, or unconscionable acts or practices” is violated. Fla. Stat. § 501.203(3)(c).

122. In considering whether advertising is misleading in a material respect, the FTC Act recognizes that the effect of advertising includes not just representations made or suggested by words and images, “but also the extent to which [it] fails to reveal facts material in the light of such representations.” 15 U.S.C. § 55(a)(1).

123. In considering whether a food’s label is misleading, it is required to

“take[] into account, among other things, not only representations made or suggested by statement, word, design, [] or in any combination thereof, but also the extent to which the labeling or advertisement fails to prominently and conspicuously reveal facts relative to the proportions or absence of certain ingredients or other facts concerning ingredients in the food, which facts are of material interest to consumers.” Fla. Stat. § 500.03(2)(b).

124. Defendant’s false and deceptive representations and omissions are material in that they are likely to influence consumer purchasing decisions.

125. This is because consumers prefer foods with the ingredients promoted on their front labels, instead of using artificial, synthetic compounds to replace those ingredients.

126. The labeling of the Product violated the FTC Act and thereby violated FDUTPA because the representations and omissions of “Butter Popcorn” in packaging of various shades of yellow, with emphasis on the healthy ingredients of “whole grains,” created the erroneous impression it contained butter, when this was false, because it lacked butter and got its artificial butter taste from artificial flavoring. Fla. Stat. § 501.203(3)(a).

127. The labeling of the Product violates laws, statutes, rules and regulations “which proscribe[]...unfair, deceptive, or unconscionable acts or practices,” thereby violating FDUTPA. Fla. Stat. § 501.203(3)(c).

128. The labeling of the Product violated FDUTPA because the representations and omissions of “Butter Popcorn” in packaging of various shades of yellow, with emphasis on the healthy ingredients of “whole grains,” when it lacked butter and got its artificial butter taste from artificial flavoring, was unfair and deceptive to consumers. Fla. Stat. § 501.204(1).

129. The labeling of the Product violated FDUTPA because the representations and omissions of “Butter Popcorn” in packaging of various shades of yellow, with emphasis on the healthy ingredients of “whole grains,” when it lacked butter and got its artificial butter taste from artificial flavoring, was contrary to the Food Safety Act, which adopted the FFDCA and accompanying regulations.

130. The FFDCA and its regulations prohibit consumer deception by companies in the labeling of food. Fla. Stat. § 501.203(3)(c).

131. These include the following federal and state laws and regulations described above.

Federal	State
21 U.S.C. § 343(a)(1)	Fla. Stat. § 500.11(1)(a)
21 U.S.C. § 343(f)	Fla. Stat. § 500.11(1)(f)
21 U.S.C. § 343(k)	Fla. Stat. § 500.11(1)(k)
21 U.S.C. § 343(i)	Fla. Stat. § 500.11(1)(i)
21 C.F.R. § 101.22(i)(2)	FL Admin Code § 5K-4.002(1)(d)
21 C.F.R. § 101.3(b)(2)	FL Admin Code § 5K-4.002(1)(d)

21 C.F.R. § 102.5(a)

FL Admin Code § 5K-4.002(1)(d)

132. Plaintiff believed the Product's butter taste was from butter, even though it lacked butter, and its butter taste was from artificial flavor.

133. Plaintiff paid more for the Product and would not have paid as much if he knew that it lacked butter, at least in a form he and reasonable consumers would expect and substituted artificial flavoring.

134. Plaintiff seeks to recover for economic injury and/or loss he sustained based on the misleading labeling and packaging of the Product, a deceptive practice under FDUTPA, by paying more for it than he otherwise would have.

135. Plaintiff will produce evidence showing how he and consumers paid more than they otherwise would have paid for the Product, relying on Defendant's representations and omissions, using statistical and economic analyses, hedonic regression, hedonic pricing, conjoint analysis and other advanced methodologies.

COUNT II

False and Misleading Advertising.

Fla. Stat. § 817.41

136. Plaintiff incorporates by reference paragraphs 1-63.

137. Defendant made misrepresentations and omissions of material fact, that the Product contained butter and got its taste from butter, even though it lacked butter and got its butter taste from artificial flavoring, through its advertisements and marketing in various forms of media, product packaging and descriptions, and/or

targeted digital advertising.

138. Defendant failed to truthfully disclose that the Product did not contain butter, at least in a form and amount Plaintiff and consumers would expect, and got its butter taste from artificial flavoring, which it was required to do.

139. Defendant falsely and/or deceptively stated and/or implied the Product contained butter and that its butter taste was from butter, even though it was from artificial flavoring.

140. Defendant's false and deceptive representations and omissions are material in that they are likely to influence consumer purchasing decisions.

141. Defendant knew these statements and omissions were false and/or misleading.

142. Defendant intended for consumers to rely on its false statements and omissions for the purpose of selling the Product.

143. Plaintiff and class members did in fact rely upon these statements and omissions.

144. Reliance was reasonable and justified because of the public trust placed in foods sold under the Wise brand, who expect them to be labeled accurately and in a non-misleading manner.

145. Plaintiff paid more for the Product, as he would not have paid as much or bought it if he knew that it did not contain butter, at least in a form and amount

Plaintiff and consumers would expect and got its butter taste from artificial flavoring.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

WHEREFORE, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying Plaintiff as representative and the undersigned as counsel for the class;
2. Awarding monetary damages and interest;
3. Awarding costs and expenses, including reasonable fees for Plaintiff's attorneys and experts; and
4. Other and further relief as the Court deems just and proper.

Dated: January 29, 2024

Respectfully submitted,

/s/ William Wright

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Notice of Lead Counsel Designation:

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS: JUAN RESTREPO, individually and on behalf of all others similarly situated. DEFENDANTS: WISE FOODS INC. (b) County of Residence of First Listed Plaintiff: Miami-Dade. County of Residence of First Listed Defendant: (IN U.S. PLAINTIFF CASES ONLY). (c) Attorneys: The Wright Law Office, P.A., 515 N Flagler Dr Ste P300 West Palm Beach FL 33401-4326, (561) 514-0904. (d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only): [] 1 U.S. Government Plaintiff, [] 3 Federal Question (U.S. Government Not a Party), [] 2 U.S. Government Defendant, [X] 4 Diversity (Indicate Citizenship of Parties in Item III). III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant): Citizen of This State [X] 1 PTF, [] 1 DEF; Citizen of Another State [] 2 PTF, [] 2 DEF; Citizen or Subject of a Foreign Country [] 3 PTF, [] 3 DEF; Incorporated or Principal Place of Business In This State [] 4 PTF, [] 4 DEF; Incorporated and Principal Place of Business In Another State [] 5 PTF, [X] 5 DEF; Foreign Nation [] 6 PTF, [] 6 DEF.

IV. NATURE OF SUIT (Place an "X" in One Box Only): CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, PERSONAL PROPERTY, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes categories like Insurance, Marine, Miller Act, Recovery of Overpayment, Medicare Act, Stockholders' Suits, Land Condemnation, Foreclosure, Rent Lease & Ejectment, Torts to Land, Tort Product Liability, All Other Real Property, Other Civil Rights, Habeas Corpus, Alien Detainee, Motions to Vacate Sentence, Other: General, Death Penalty, Mandamus & Other, Civil Rights, Prison Condition, Civil Detainee - Conditions of Confinement, Drug Related Seizure, Other, Appeal, Withdrawal, Copyright, Patent, Trademark, Defend Trade Secrets Act of 2016, Fair Labor Standards Act, Labor/Mgmt. Relations, Railway Labor Act, Family and Medical Leave Act, Other Labor Litigation, Empl. Ret. Inc. Security Act, Naturalization Application, Other Immigration Actions, Taxes (U.S. Plaintiff or Defendant), IRS—Third Party, False Claims Act, Qui Tam (31 USC 3729 (a)), State Reapportionment, Antitrust, Banks and Banking, Commerce, Deportation, Racketeer Influenced and Corrupt Organizations, Consumer Credit (15 USC 1681 or 1692), Telephone Consumer Protection Act (TCPA), Cable/Sat TV, Securities/Commodities/Exchange, Other Statutory Actions, Agricultural Acts, Environmental Matters, Freedom of Information Act, Arbitration, Administrative Procedure Act/Review or Appeal of Agency Decision, Constitutionality of State Statutes.

V. ORIGIN (Place an "X" in One Box Only): [X] 1 Original Proceeding, [] 2 Removed from State Court, [] 3 Re-filed (See VI below), [] 4 Reinstated or Reopened, [] 5 Transferred from another district (specify), [] 6 Multidistrict Litigation Transfer, [] 7 Appeal to District Judge from Magistrate Judgment, [] 8 Multidistrict Litigation - Direct File, [] 9 Remanded from Appellate Court.

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [X] NO. b) Related Cases [] YES [X] NO. JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332; false advertising. LENGTH OF TRIAL via 14 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: [X] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23. DEMAND \$: CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No.

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE. DATE: January 29, 2024. SIGNATURE OF ATTORNEY OF RECORD: /s/ William Wright.

FOR OFFICE USE ONLY: RECEIPT #, AMOUNT, IFP, JUDGE, MAG JUDGE.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

JUAN RESTREPO, individually and on behalf of
all others similarly situated,

Plaintiff(s)

v.

WISE FOODS INC.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Wise Foods Inc.
c/o The Prentice-Hall Corporation System, Inc.
251 Little Falls Dr
Wilmington DE 19808-1674

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

William Wright, The Wright Law Office, P.A., 515 N Flagler Dr Ste P300 West Palm Beach FL 33401-4326, (561) 514-0904

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: