

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX**

DEIDRE BASILE, individually and on behalf of all others similarly situated,

Plaintiff,

- against -

GENERAL MILLS SALES INC.,

Defendant.

Class Action Complaint

Jury Trial Demanded

Deidre Basile (“Plaintiff”), through Counsel, alleges upon information and belief, except for allegations about Plaintiff, which are based on personal knowledge:

1. According to recent reports, over forty percent of the United States population is overweight.

2. Though multiple factors have contributed to this, experts have identified one of the main culprits as refined flour.

3. In contrast to whole grain flours, which include the three grain components of the endosperm, bran, and germ, refined flour has its nutrient-dense bran and germ removed.

4. The consumption of foods containing refined flour, based on the starchy endosperm, causes insulin levels to spike, without abating hunger, leading to more consumption, and higher caloric intake.

5. The bran and germ contain important nutrients like fiber, vitamins, minerals, and antioxidants, such as iron, zinc, folate, magnesium, thiamin, niacin, selenium, riboflavin, manganese, copper, vitamin A, vitamin E, vitamin K, and vitamin B6.

6. The darker color of the bran and germ, compared to the white endosperm, is why whole grain products have a brownish hue, compared to those made only from the endosperm, which is the source of the name, “white flour.”

7. These refined grains then add back previously removed iron and B vitamins, such as thiamin, riboflavin, niacin, and folic acid, which is why this type of flour is also referred to as “enriched flour.”

8. Though refined flour adds back some nutrients, these do not include fiber, vitamin E, vitamin B6, vitamin K, magnesium, manganese, potassium, phosphorus, copper, calcium, and selenium.

9. Consumers are increasingly aware of the benefits of whole grains compared to non-whole grains, and trying to consume more of them.

10. This was confirmed by the United States Department of Agriculture’s (“USDA”) 2015-2020 Dietary Guidelines for Americans (“Dietary Guidelines”).

11. The Dietary Guidelines recommended that at least half of all grains eaten each day be whole grains, for a total of 48g of whole grains, and 28g of fiber.

12. That there is “Consumer confusion about wholegrain content” was

confirmed by a recent study in the journal Public Health Nutrition.<sup>1</sup>

13. According to non-profit public health watchdog, the Center for the Science in Public Interest (“CSPI”), “companies exploit the whole grain halo by tacking it on products mostly made with white refined flour.”<sup>2</sup>

14. One of these methods involves using the names of whole grain flours, or what appear to be whole wheat flours, in a food’s name, even though the main flour is from refined grains.

15. These include terms such as “Whole Wheat,” “Milled Wheat,” “Stoned Wheat,” “Stoned Ground Wheat,” “Hearty Wheat,” “Honey Wheat,” “Original Wheat,” “Harvest Wheat,” “Harvest Grain,” “Multigrain,” “Country Wheat,” “Graham,” “Rye,” “Dark Rye,” and “Hearty Rye.”

16. The popularity of all things rye has seen a resurgence within the past decade, based on reports about the benefits of the Scandinavian Diet, also known as the Nordic Diet.<sup>3</sup>

17. This is based on rye grains, specially suited for the unforgiving soils and harsh winters near the Arctic Circle.

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<sup>1</sup> Parke Wilde, et al., “Consumer Confusion About Wholegrain Content and Healthfulness in Product Labels: A Discrete Choice Experiment and Comprehension Assessment,” Public Health Nutrition, 23.18 (2020): 3324-3331.

<sup>2</sup> CSPI, Comments to 2006 FDA Draft Guidance on Whole Grain Labeling.

<sup>3</sup> <https://www.houseofwellness.com.au/health/dieting/nordic-diet-boost-health>

18. While rye flour exists in light and dark varieties, it is the latter type which propelled the Vikings on seafaring voyages.

19. While initially used in porridge, it proved useful in making breads.

20. Since rye flour lacks the gluten content of traditional wheat, the breads it produced were denser and more compact, facilitating its packing and storage.

21. Further, its high fiber kept it moist and flavorful for longer periods.

22. Beyond its nutritive and functional attributes, rye grains produce foods known for their pungent and earthy aroma.

23. However, despite Americans' intentions to consume more whole grains, including rye, such as dark rye, compared to refined grains, the Food and Drug Administration ("FDA"), the Federal Trade Commission ("FTC"), and CSPI, have recognized how the public is often stymied in these efforts.<sup>4</sup>

24. A common method to mislead consumers about the relative and absolute amounts of whole grains, such as dark rye, involves exploiting "extrinsic cues such as visual information on labels and packaging," based on the public's association of whole grain foods with darker colors, due to their bran and germ content.<sup>5</sup>

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<sup>4</sup> In the Matter of Draft Guidance for Industry and FDA Staff: Whole Grains Label Statements, Docket No. 2006-0066, Comments of the Staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the FTC, Apr. 18, 2006.

<sup>5</sup> Lancelot Miltgen et al., "Communicating Sensory Attributes and Innovation

25. This entails the addition of coloring agents, such as caramel color, malted barley, molasses, and/or honey, which impart a darker brown hue, making foods consisting mainly of refined, white flour, appear darker in color.

26. The practice of selling consumers grains, and foods based on grains, which were less valuable and nutritious than expected, is not new.

27. At the turn of the twentieth century, Congress enacted the Mixed Flour Law, to prevent unscrupulous millers from selling “patent flours,” and foods made from these mixtures, which consisted not only of wheat, but significant amounts of less nutritious and cheaper corn and potato starch.

28. The Pure Food and Drug Act of 1906, followed by the Federal Food, Drug and Cosmetic Act (“FFDCA”) of 1938, sought to prohibit “misbranding” and adulteration not just for grains, but across the sources of nourishment sought by American families. 21 U.S.C. § 301 *et seq.*<sup>6</sup>

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through Food Product Labeling,” *Journal of Food Products 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; Okamoto and Ippaita, “Extrinsic Information Influences Taste and Flavor Perception: A Review from Psychological and Neuroimaging Perspectives,” *Seminars in Cell & Developmental Biology*, 24.3, Academic Press, 2013; Clement, J., *Visual Influence on In-Store Buying Decisions: An Eye-Track Experiment on the Visual Influence of Packaging Design*, *Journal of Marketing Management*, 23, 917-928 (2007); Gupta K, O. et al., *Package Downsizing: Is it Ethical?* 21 *AI & Society* 239-250 (2007).

<sup>6</sup> “Misbranded” is the statutory term for labeling that is false and/or misleading, while “adulterated” means to “render (something) poorer in quality by adding another substance, typically an inferior one.”

29. New York adopted these rules through its Agriculture and Markets Law (“AGM”), to “encourage the agricultural industry...[and] to prevent frauds in the traffic therein.” AGM § 3.<sup>7</sup>

30. To appeal to the growing number of consumers seeking foods made predominantly, and/or with a significant amount, of whole grains, including rye and/or dark rye, General Mills Sales Inc. (“Defendant”) manufactures, labels, markets and/or packages, (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table, (6) under the Gardetto’s brand (“Product”).

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<sup>7</sup> Article 17, Adulteration, Packing, and Branding of Food and Food Products, AGM § 198 *et seq.*; Official Compilation of Codes, Rules and Regulations of the State of New York (“N.Y.C.R.R.”), Title 1, Department of Agriculture and Markets, Chapter VI, Food Control, Subchapter C, Food and Food Products (Article 17, AGM), including 1 N.Y.C.R.R. § 250.1 (adopting federal standards of identify for foods), 1 N.Y.C.R.R. § 259.1(a) (adopting Parts 100, 101 and 102 of Title 21), and 1 N.Y.C.R.R. § 265.1 (adopting federal standards of identify for cereal flours and related products).



31. Despite the emphasis on rye, and by extension, rye flour, the fine print ingredients, listed in order of predominance by weight, on the back of the bag, reveal (1) the most predominant ingredient is “Enriched Flour,” a type of refined, non-whole grain, wheat flour, (2) followed by vegetable oils, (3) only then listing “Rye Flour,” before “Sugar [and] Salt,” (4) with the last ingredient of “Caramel Color” likely responsible for the chips’ dark color, so it appears they are made mainly or with a significant amount of dark rye flour, when this is false. 21 C.F.R. § 101.4(a).



**Ingredients:** Enriched Flour (wheat flour, niacin, iron, riboflavin, thiamin mononitrate, folic acid), Vegetable Oil (high oleic canola, high oleic soybean, high oleic sunflower, palm, fractionated palm, palm olein and/or soybean), Rye Flour, Sugar, Salt. Contains 2% or less of: Yeast, Monosodium Glutamate, Maltodextrin, Dried Worcestershire Sauce (vinegar, molasses, corn syrup, salt, caramel color, garlic powder, sugar, spice, tamarind, natural flavor), Onion Powder, Garlic Powder, Fumaric Acid, Spice, Sodium Diacetate, Disodium Inosinate, Disodium Guanylate, Caramel Color. Freshness Preserved by BHT.

tamarind, natural flavor), Onion Powder, Garlic Powder, Fumaric Acid, Spice, Sodium Diacetate, Disodium Inosinate, Disodium Guanylate, Caramel Color. Freshness Preserved by BHT.

32. The Product is “adulterated” and misleads consumers, because despite the labeling and packaging, (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table, (6) under the Gardetto’s brand,



causing purchasers to expect that rye flour, and/or dark rye flour, which are typically whole grains, is the predominant flour ingredient, or at least present in a significant amount, “[this] valuable constituent [of rye flour, and/or dark rye flour] has been in whole or in part omitted or abstracted.” AGM § 200(7); 21 U.S.C. § 342(b)(1).

33. The Product is “adulterated” and misleads consumers, because despite the labeling and packaging, (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table, (6) under the Gardetto’s brand, causing purchasers to expect that rye flour, and/or dark rye flour, which are typically whole grains, is the predominant flour ingredient, or at least present in a significant amount, “[refined flour, from non-whole grains, or ‘enriched flour’] has been substituted wholly or in part [] for [rye flour, and/or dark rye flour, which are typically whole grains].” AGM § 200(8); 21 U.S.C. § 342(b)(2).

34. The Product is “adulterated” and misleads consumers, because despite the labeling and packaging, (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table, (6) under the Gardetto’s brand, causing purchasers to expect that rye flour, and/or dark rye flour, which are typically

whole grains, is the predominant flour ingredient, or at least present in a significant amount, the “substance [of caramel color] has been added thereto or mixed or packed therewith so as to...make it appear better or of greater value than it is.” AGM § 200(10); 21 U.S.C. § 342 (b)(4).

35. The small amount of added caramel color darkens the chips’ naturally white color, based on the predominant amount of refined, non-whole grain, enriched white flour, contributing to consumers’ expectation that rye flour, and/or dark rye flour, which are typically whole grains, is the predominant flour ingredient, or at least present in a significant amount, when this is false.

36. The Product is “misbranded” and misleads consumers, because despite the labeling and packaging, (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table, (6) under the Gardetto’s brand, causes purchasers to expect that rye flour, and/or dark rye flour, which are typically whole grains, is the predominant flour ingredient, or at least present in a significant amount, even though the predominant grain is refined flour, not from whole grains. AGM § 201(1); 21 U.S.C. § 343(a)(1).

37. This is furthered by the dark brown colors of the chips depicted on the front label, which consumers understand as reflective of foods made with a

significant amount of whole grains.

38. Investigations of the FTC and FDA concluded that “[m]any reasonable consumers will likely understand ‘whole grain’ [claims],” such as using the name of a type of whole wheat flour as part of a food’s name, like “Garlic Rye Chips,” “to mean that...all of the grain ingredients in the [Product] are whole grains,” even though (1) not all of the grain ingredients used are whole grains, and (2) the predominant grain ingredient is not rye flour, and/or dark rye flour, which are typically whole grains, but refined flour.<sup>8</sup>

39. The Product is “misbranded” and misleads consumers, because despite the labeling and packaging, (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table, (6) under the Gardetto’s brand, is inconsistent with what consumers would expect from foods promoted as whole grain or what consumers expect to be whole grain. AGM § 201(1); 21 U.S.C. § 343(a)(1).

40. Though the Product’s predominant grain, based on the ingredient list, is refined, enriched flour, this information, even if purchasers reviewed it, does not

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<sup>8</sup> In the Matter of Draft Guidance for Industry and FDA Staff: Whole Grains Label Statements, Docket No. 2006-0066, Comments of the Staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the FTC, Apr. 18, 2006.

inform purchasers whether this food (1) is a dietarily significant source of whole grains, (2) whether the rye flour used is whole grain dark rye flour, and/or (3) the percentage of its grain content from rye flour compared to enriched flour.

41. Consumers are misled by the labeling and packaging, including (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table, (6) under the Gardetto’s brand, representations conveying they are buying a food containing dietarily significant amounts of whole grains, because, upon information and belief, and the investigation of counsel, it is not a dietarily significant source of whole grains, and such allegations are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

42. The Product is “misbranded” and misleads consumers because the ingredient of caramel color acts as a coloring agent, darkening the chips’ otherwise white color, based on the relative amount of enriched flour, compared to rye flour, and/or dark rye flour, causing purchasers to expect a greater amount of whole grains. AGM § 201(1); 21 U.S.C. § 343(a)(1).

43. The Product is “misbranded” and misleads consumers, because (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the

color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker's wooden table, (6) under the Gardetto's brand, causes them to expect that rye flour, and/or dark rye flour, which are typically whole grains, is the predominant flour ingredient, or at least present in a significant amount, even though this "fails to reveal facts material in light of such representations," because in place of an absolute and relatively greater amount of rye flour, and/or dark rye flour,

44. it has substituted non-whole grain enriched, refined flour. AGM § 201(1); 21 U.S.C. § 343(a)(1); 15 U.S.C. § 55(a)(1).

45. Substituting refined flour for rye flour, and/or dark rye flour, which are typically whole grains, is of material interest to consumers, because whole grains cost more than refined grains.

46. Substituting refined grains for whole grains, from rye flour, and/or dark rye flour, is of material interest to consumers, because whole grains contain more nutrients than refined grains.

47. Substituting refined grains for whole grains, from rye flour, and/or dark rye flour, is of material interest to consumers, because (1) whole grains contains contain all the parts of the grain, the bran, germ, and endosperm, in their natural proportions, (2) whole grains are more natural ingredients, made with less processing, because non-whole grains are highly refined and subjected to industrial processing, and/or (3) whole grains do not, and/or are less likely to, contain additives

in the form of man-made vitamins, added back to restore lost nutrients.

48. The Product is “misbranded” and misleads consumers, because (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table, (6) under the Gardetto’s brand, includes and/or suggests the ingredients of rye flour, and/or dark rye flour, but does not include non-whole grain, refined flour, even though this is identified on the ingredient list, in fine print, on the back of the package. AGM § 201(1); 21 U.S.C. § 343(a)(1); 21 C.F.R. § 101.18(b).

49. The Product is “misbranded” and misleads consumers, because “Garlic Rye Chips” is not a truthful or non-misleading “common or usual name[s]” for a food with a predominant flour ingredient of non-whole grain, refined flour. AGM § 201(9); 21 U.S.C. § 343(i).

50. “Garlic Rye Chips” does not “accurately identify or describe[s], in as simple and direct terms as possible, the basic nature of th[is] food or its characterizing properties or ingredients.” 21 C.F.R. § 102.5(a).

51. Based on the labeling and packaging, (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table, (6) under the

Gardetto’s brand, rye flour, and/or dark rye flour, which are typically whole grains, is a characterizing ingredient in the Product. 21 C.F.R. § 102.5(b).

52. First, this is because “the proportion of [rye flour, and/or dark rye flour, which are typically whole grains] in the food has a material bearing on [the Product’s] price.” 21 C.F.R. § 102.5(b).

53. Numerous reports indicate that whole grains, and products made from whole grains, cost more than refined grains.<sup>9</sup>

54. One reason is their shorter shelf life, as their natural grain components remain in place, and are not highly refined, making them more prone to spoilage.

55. Another reason is because the production and sale of whole grains, like rye flour, lacks the economies of scale of non-whole wheat flour, contributing to its higher relative price.

56. Second, rye flour, and/or dark rye flour, is a characterizing ingredient because its usage has a material bearing on consumer acceptance of the Product. 21 C.F.R. § 102.5(b).

57. A significant percentage of consumers will pay more money for foods containing a predominant and/or relatively significant amount of whole wheat flour, compared to non-whole wheat flour.

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<sup>9</sup> C. Harriman, “Shrinking the Price Gap for Whole Grains,” Proceedings, Whole Grain Summit (2012).

58. In making such decisions, over half of consumers look to a food's front label for (1) references to whole grains, whether as part of a product's name or description, including identification of any flour components, (2) pictures of foods with darker colors, and/or (3) images or references to whole grains.

59. A survey by the Oldways Whole Grains Council indicates "consumers are increasingly seeking whole grain foods," due in part to their recognized health benefits, compared to non-whole grains.<sup>10</sup>

60. Third, rye flour, and/or dark rye flour, which are typically whole grains is a characterizing ingredient, because "the [Product's] labeling [and] appearance," including, (1) a food described as Garlic Rye Chips, (2) with "Rye" emphasized by lines above and below, (2) described as a "Special Request," (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker's wooden table, (6) under the Gardetto's brand, "creates an erroneous impression that [rye flour, and/or dark rye flour, which are typically whole grains] is present in an amount greater than is actually the case." 21 C.F.R. § 102.5(b).

61. Consumers will expect the Product contains a predominant and/or relatively significant amount of rye flour, and/or dark rye flour, which are typically whole grains, because (1) they are familiar with foods made from these ingredients,

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<sup>10</sup> Oldways Whole Grains Council, [Survey Shows More Than 75 Percent of Americans Think They Should Increase their Whole Grain Intake](#), Aug. 23, 2023.



(2) the name of “Garlic Rye Chips” is based on the name of a type of flour, rye flour, and/or dark rye flour, which are typically whole grains, and/or (3) the dark appearance of the chips on the label, created in part by the addition of caramel color, which acts, in part, as a coloring agent, is consistent with consumers’ association of whole grains with darker colors.

62. Since rye flour, and/or dark rye flour, which are typically whole grains is a characterizing ingredient, the labeling is required to “include the percentage(s) of [rye flour, and/or dark rye flour, which are typically whole grains],” “on the basis of [its] quantity in the finished [P]roduct,” so consumers will not be misled about the relative and absolute amount of rye flour, and/or dark rye flour, compared to refined flour. 21 C.F.R. § 102.5(b) and 21 C.F.R. § 102.5(b)(1).

63. The amount of rye flour, and/or dark rye flour, which are typically whole grains, is required to “be declared by the words ‘containing (or contains) \_\_\_ percent (or %) \_\_\_\_\_’ or ‘\_\_\_ percent (or %) \_\_\_\_\_’ with the first blank filled in with the percentage expressed as a whole number not greater than the actual percentage of [rye flour, and/or dark rye flour]...and the second blank filled in with the common or usual name of [rye flour, and/or dark rye flour].” 21 C.F.R. § 102.5(b)(2).

64. As a result of the false and misleading representations, the Product is sold at a premium price, approximately \$2.49 for a bag of 4.75 oz (134 grams), 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

65. Plaintiff Basile is a citizen and resident of New York.

66. The Court has jurisdiction over Defendant because it transacts business within New York and sells the Product to consumers within New York, through its sale and/or distribution by grocery stores, big box stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores, and/or online, to citizens of this State.

67. Defendant transacts business in New York, through the sale of the Product to citizens of New York, from grocery stores, big box stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores, and/or online, to citizens of this State.

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

69. Defendant has committed tortious acts outside this State by labeling, packaging, representing, and selling the Product in a manner which causes injury to consumers within this State, by misleading them as to its contents, production practices, type, origins, quantity, 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.

70. 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, ingredients, production practices, type, origins, 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.

### VENUE

71. Plaintiff Basile resides in Bronx County, New York.

72. Venue is in this Court because Plaintiff Basile's residence is in Bronx County.

73. Venue is in this Court because a substantial or entire part of the events or omissions giving rise to Plaintiff Basile's claims occurred in Bronx County.

74. This is because Plaintiff Basile purchased, applied, used, and/or consumed the Product in Bronx County, in reliance on the packaging and labeling identified here, and/or learned the representations and omissions identified here were false and/or misleading in Bronx County.

### PARTIES

75. Plaintiff Basile is a citizen of Bronx County, New York.

76. Defendant General Mills Sales Inc. is a Delaware corporation with a principal place of business in Minnesota.

77. Defendant sells and distributes the Product for sale to consumers from grocery stores, big box stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores in New York, and/or online, to citizens of New York.

78. Plaintiff is like most consumers, who try to buy foods which have whole wheat flour, based on whole grains, as the predominant flour ingredient, or is at least present in a significant amount, compared to refined grains.

79. 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 it.

80. Plaintiff is like most consumers, who try to consume more whole grains, and less or fewer non-whole or refined grains, because they believe the latter ingredients are unhealthy or less healthy, highly processed, less natural, and/or inconsistent with recommended dietary practices and guidelines.

81. Plaintiff read, saw, and relied on the packaging and labeling, (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table,

(6) under the Gardetto's brand, to mean rye flour, and/or dark rye grains, which were whole grains, was the predominant flour ingredient, or at least present in a significant amount, when this was false and misleading, because the predominant flour ingredient was refined flour, from non-whole grains, and/or the Product was not a dietarily significant source of whole grains

82. Plaintiff bought the Product with the labeling and packaging identified here, (1) a food described as Garlic Rye Chips, (2) with "Rye" emphasized by lines above and below, (2) described as a "Special Request," (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker's wooden table, (6) under the Gardetto's brand, at or around the above-referenced price.

83. Plaintiff purchased the Product between July 2021 and July 2024, at grocery stores, big box stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, and/or specialty grocery stores, in this State.

84. Plaintiff did not expect that whole grain rye flour, which may include dark rye, a type of whole grain, was not the Product's predominant flour ingredient, nor was it present in a significant amount, compared to refined, non-whole grain flour.

85. Plaintiff paid more for the Product than he would have, had he known whole grain rye flour, which may include dark rye, a type of whole grain, was not

the Product's predominant flour ingredient, nor was it present in a significant amount, compared to refined, non-whole grain flour, as he would have paid less.

86. 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/or omissions.

87. Plaintiff chose between Defendant's Product and products represented similarly, but which did not misrepresent their attributes, features, and/or components.

### CLASS ALLEGATIONS

88. Plaintiff seeks to represent the following class:

All persons in New York who purchased the Product in New York during the statutes of limitations for each cause of action alleged.

89. Excluded from the Class are (a) Defendant, Defendant's board members, executive-level officers, members, 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.

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

91. 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.

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

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

94. 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.

95. The class is sufficiently numerous, with over 100 members, because the Product has been sold throughout the State for several years with the representations, omissions, packaging, and/or labeling identified here, at grocery stores, big box stores, bodegas, gas stations, warehouse club stores, drug stores, convenience stores, specialty grocery stores, and/or online, to citizens of this State.

96. 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

#### General Business Law ("GBL") §§ 349 and 350

97. To the extent required, this section incorporates by reference paragraphs 1-64, and/or other such paragraphs, as necessary.

98. The purpose of the GBL is to protect consumers against unfair and deceptive practices.

99. This includes making state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

100. The GBL considers false advertising, unfair acts, and deceptive practices in the conduct of any trade or commerce to be unlawful.

101. Violations of the GBL can be based on other laws and standards related to consumer deception.

102. Violations of the GBL can be based on the principles of the Federal Trade Commission Act (“FTC Act”) and FTC decisions with respect to those principles. 15 U.S.C. § 45 *et seq.*

103. A GBL violation can occur whenever any rules promulgated pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.*, are violated.

104. A GBL violation can occur whenever the standards of unfairness and deception set forth and interpreted by the FTC or the federal courts relating to the FTC Act are violated.

105. A GBL violation can be based on public policy, established through statutes, laws, or regulations.

106. A GBL violation can occur whenever any law, statute, rule, regulation, or ordinance, which proscribes unfair, deceptive, or unconscionable acts or practices



is violated.

107. 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).

108. In considering whether a product’s label is misleading, it is required to consider not only representations made or suggested by statements, images, and/or design, but also the extent to which it fails to prominently and conspicuously reveal facts relative to the proportions or absence of certain components, ingredients, and/or other relevant facts, which are of material interest to consumers.

109. Defendant’s false and deceptive representations and omissions with respect to the Product’s contents, origins, ingredients, flavoring, type, functionality, and/or quality, (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table, (6) under the Gardetto’s brand, are material in that they are likely to influence consumer purchasing decisions.

110. The replacement of rye flour, and/or dark rye grains, which are whole grains, with refined flour, not from whole grains, is of material interest to consumers, because (1) whole grains cost more than non-whole grains, (2) whole grains are more

natural ingredients than refined grains, (3) whole wheat and whole grains are healthier than non-whole grains and non-whole wheat, because they contain the entire part of the grain, the bran, germ, and endosperm, in their natural proportions, which are sources of fiber and nutrients, (4) they seek to incorporate the Dietary Guidelines' recommendations and/or general nutritional advice, to make half their grains whole, and/or eat more whole grains, (5) whole grains are made with less processing, because non-whole grains are highly refined and subjected to industrial processing, and/or (6) whole wheat does not contain additives, in the form of man-made vitamins, added back to restore lost nutrients.

111. The labeling of the Product violated the FTC Act and thereby violated the GBL because the representations, omissions, packaging, and/or labeling, (1) a food described as Garlic Rye Chips, (2) with "Rye" emphasized by lines above and below, (2) described as a "Special Request," (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker's wooden table, (6) under the Gardetto's brand, caused consumers to expect they were buying a food that (i) contained rye flour, and/or dark rye flour, which were whole grains, as the predominant flour ingredient, or at least were present in a significant amount, and/or (ii) was a dietarily significant source of whole grains, even though the predominant flour was from non-whole grains, which was unfair and deceptive to consumers.

112. The labeling of the Product violates laws, statutes, rules and regulations which proscribe unfair, deceptive, or unconscionable acts or practices, thereby violating the GBL.

113. The labeling of the Product violates laws, statutes, rules and regulations that are intended to protect the public.

114. The labeling of the Product violated the GBL because the representations, omissions, labeling, and/or packaging, (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table, (6) under the Gardetto’s brand, caused consumers to expect they were buying a food that (i) contained rye flour, and/or dark rye flour, which were whole grains, as the predominant flour ingredient, or at least were present in a significant amount, and/or (ii) was a dietarily significant source of whole grains, even though the predominant flour was from non-whole grains, was unfair and deceptive to consumers.

115. The labeling of the Product violated the GBL because the representations, omissions, packaging, and/or labeling, (1) a food described as Garlic Rye Chips, (2) with “Rye” emphasized by lines above and below, (2) described as a “Special Request,” (3) above seven, dark brown chips, the color of dark rye, (4) with visible garlic seasoning, (5) laid across a baker’s wooden table, (6) under the

Gardetto's brand, when these representations and omissions were false and/or misleading, because the Product (i) did not contain rye flour, and/or dark rye flour, which were whole grains, as the predominant flour ingredient, nor was it present in a significant amount, and/or (ii) was not a dietarily significant source of whole grains, was contrary to statutes and/or regulations below, which prohibit consumer deception by companies in the labeling of food products.

<u>Federal</u>	<u>State</u>
21 U.S.C. § 342(b)(1)	AGM § 200(7)
21 U.S.C. § 342(b)(2)	AGM § 200(8)
21 U.S.C. § 342(b)(4)	AGM § 200(10)
21 U.S.C. § 343(a)(1)	AGM § 201(1)
21 U.S.C. § 343(i)	AGM § 201(9)
21 C.F.R. § 101.18(b)	
21 C.F.R. § 102.5(a)	1 N.Y.C.R.R. § 259.1(a)
21 C.F.R. § 102.5(b)	

116. Plaintiff believed the Product (1) contained rye flour, and/or dark rye flour, which were whole grains, as the predominant flour ingredient, or at least were present in a significant amount, and/or (2) was a dietarily significant source of whole grains, even though (i) did not contain rye flour, and/or dark rye flour, which were whole grains, as the predominant flour ingredient, nor was it present in a significant amount, and/or (ii) was not a dietarily significant source of whole grains.

117. Plaintiff paid more for the Product, and would not have paid as much, if he knew that it (1) did not contain rye flour, and/or dark rye flour, which were whole grains, as the predominant flour ingredient, nor was it present in a significant amount, and/or (2) was not a dietarily significant source of whole grains.

118. 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 the GBL.

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

120. This means the individual damages will be based on the value attributed to the challenged claims and/or omissions, a percentage of the price paid.

121. As a result of Defendant's misrepresentations and omissions, Plaintiff was injured and suffered damages by payment of a price premium for the Product, which is the difference between what he paid based on its labeling, packaging, representations, statements, omissions, and/or marketing, and how much it would have been sold for without the misleading labeling, packaging, representations, statements, omissions, and/or marketing identified here.

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: August 5, 2024

Respectfully submitted,

/s/ Spencer Sheehan

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Notice of Lead Counsel Designation:

Lead Counsel for Plaintiff

Spencer Sheehan

Sheehan & Associates P.C.

Counsel for Plaintiff

### Certificate of Service

I certify that on August 5, 2024, I served and/or transmitted the foregoing by the method below to the persons or entities indicated, at their last known address of record (blank where not applicable).

	Electronic Filing	First-Class Mail	Email	Fax
Defendant's Counsel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plaintiff's Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

/s/ Spencer Sheehan