

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

CAROL ROBINSON, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

WORLD FINER FOODS, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Carol Robinson (“Plaintiff”) brings this action on behalf of herself and all others similarly situated against Defendant World Finer Foods, Inc. (“Defendant”). Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to the allegations specifically pertaining to herself, which are based on her personal knowledge.

NATURE OF THE ACTION

1. This is a class action on behalf of purchasers of Defendant’s Wellington Whole Grain Multigrain Cracker products (the “Products”). Defendant’s “Whole Grain” branding and labeling of the Products is deceptive and misleading because it conveys that the Products’ main flour ingredient is whole grain when, in fact, the main flour ingredient is non-whole grain enriched wheat flour. *See Mantikas v. Kellogg Co.*, 910 F.3d 633 (2d Cir. 2018) (finding “Made With Whole Grain” claims to be misleading to a reasonable consumer when the predominant ingredient is enriched white flour).

2. Defendant’s “Whole Grain” representation is featured on the Products’ labeling to induce consumers to purchase items that are made predominantly from whole grain flour. Defendant markets its Products in a systematically misleading manner by misrepresenting that the Products are predominantly made with whole grain flour, even though that is not the case.

As a result, Plaintiff and the putative class members were overcharged for the Products.

3. Defendant has profited unjustly as a result of its deceptive conduct. Plaintiff therefore asserts claims on behalf of herself and similarly situated purchasers for violation of New York General Business Law §§ 349 and 350.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(a) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00 exclusive of interest and costs, there are over 100 members of the putative class, and at least one class member is a citizen of a state different than Defendant.

5. This Court has personal jurisdiction over Defendant because it conducts and transacts business within the District, and contracts to supply and supplies food products within the District by, among other things, marketing, advertising, and selling the Product and because a substantial portion of the events that gave rise to Plaintiff's claims occurred in New York.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial portion of the events that gave rise to Plaintiff's claims occurred in this District.

PARTIES

7. Plaintiff Carol Robinson is a citizen of New York who resides in Brooklyn, New York. Plaintiff Robinson purchased the Product from a Foodtown store in Brooklyn, New York around August 2024. Plaintiff Robinson paid approximately \$4.00 for her purchase of the Product. When purchasing the Product, Plaintiff Robinson relied on the "Whole Grain" representation on the front of the Product package. Based on this representation, Plaintiff believed that the main flour ingredient was whole wheat flour. However, the Product she

purchased was made predominantly with non-whole grain, enriched wheat flour. Because of Defendant's misrepresentation, Plaintiff was overcharged for her purchase. Had Plaintiff known the "Whole Wheat" representation was false and misleading, she would not have purchased the Product.

8. Defendant World Finer Foods, Inc. is a corporation organized under the laws of Delaware with its principal place of business located at 1455 Broad St, Bloomfield, NJ 07003. Defendant formulates, advertises, manufactures, and/or sells the Products throughout New York and the United States.

GENERAL ALLEGATIONS

9. **Defendant misrepresents that the Products are made predominantly from "Whole Grain" flour.** Defendant advertises, in large bolded text on multiple surfaces of the Product packaging (including the front of the package), that the Products are made with "Whole Grain." The labeling leads reasonable consumers to believe that the predominant flour used is whole wheat. However, the Products are made predominantly from non-whole grain, enriched flour.

10. The last two decades have witnessed historic increases in Americans' consumption of foods containing whole grains. This is due to the scientific and nutritional consensus that whole grains provide valuable health benefits not available from non-whole grains. The United States Department of Agriculture ("USDA") recognized this in its 2015-2020 Dietary Guidelines for Americans, which recommends that at least half of all grains eaten each day be whole grains.¹

¹ U.S.D.A., Dietary Guidelines for Americans 2015-2020, 48-49 (8th ed. 2015), https://health.gov/sites/default/files/2019-09/2015-2020_Dietary_Guidelines.pdf.

11. The valuable and material health benefits of eating whole grains are widely publicized to consumers. Here in New York State, for example, the New York Times featured an article titled “What are Whole Grains, Anyway?”² The article quoted a registered dietitian nutritionist who stated that whole grains “tend to be really nutrient- and fiber-rich” which helps “regulat[e] cholesterol and blood sugar levels and improv[es] digestion.”³ Additionally, whole grains can be “a fantastic source of B vitamins” and “essential amino acids like methionine and phenylalanine.”⁴

12. Whole grain flour is derived from the entire milled grain seed consisting of the bran, endosperm, and germ. Baked products made with whole grain flour are healthier than refined non-whole grain flour because they contain key nutrients and vitamins. Refined non-whole grain flour is processed to remove the bran and germ, thus removing dietary fiber and other nutrients, leaving only the starchy endosperm. Flour “enrichment” adds back some the previously removed nutrients but does not add back fiber content—a key nutrient found in whole grain flour—and other nutrients.

13. “Enriched flour” is not “whole grain flour” under Food and Drug Administration (“FDA”) regulations. *Compare* 21 C.F.R. § 137.165 with 21 C.F.R. § 137.200 (defining enriched flour and whole wheat flour). Therefore, “Enriched Flour,” which is listed first on the Products’ ingredients list, is not “Whole Grain Wheat Flour.” And “Enriched Flour” is the predominant flour ingredient since it is listed first. *See Mantikas v. Kellogg Co.*, 910 F.3d 633, 635 (2d Cir. 2018) (“As required by federal regulation, the ingredients were listed in order of

² Hanna Seo, *What Are Whole Grains, Anyway?*, N.Y. Times, (Dec. 3, 2022) (updated Mar. 9, 2023), <https://www.nytimes.com/2022/12/03/well/eat/whole-grains.html>.

³ *Id.* (internal quotations omitted).

⁴ *Id.* (internal quotations omitted).

their predominance, with the primary ingredient listed first.”) (citing 21 C.F.R § 101.4).

14. The FDA and the Federal Trade Commission (“FTC”) staff have recognized that “there is potential for consumers to be misled or confused by unqualified ‘whole grain’ claims for products that contain a mixture of whole grain and refined grain. Many consumers may interpret such unqualified claims to mean that all or nearly all of the grain in the product is whole grain.”⁵

15. This is corroborated by a recent peer-reviewed study which found that 47% of a representative sample incorrectly concluded that mock-up breads with less whole wheat—but labeled with a whole grain “content claim” on the front of the package—were equal or superior to an unlabeled mock-up bread which listed whole wheat as its first ingredient.⁶

16. Defendant’s label falsely implies that “Whole Grain” flour is the primary flour ingredient in the Products. However, the amount of whole grain flour in the Products, compared to the refined grain flour, is de minimis or negligible.

17. Defendant’s misleading and deceptive whole grain Product claim proximately caused harm to Plaintiff and the proposed class members who suffered an injury in fact and lost money or property by being overcharged for the Products as a result of Defendant’s deceptive Product claim.

⁵ Comments of the Staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission, Docket No. 2006-0066, at 3 (April 18, 2006), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-food-and-drug-administration-matter-draft-guidance-industry-and-fda-staff-whole/v060014ftcstaffcommentstothefdaredocketno2006-0066.pdf

⁶ Parke Wilde et al., *Consumer Confusion About Wholegrain Content and Healthfulness In Product Labels: A Discrete Choice Experiment and Comprehension Assessment*, 23 Public Health Nutrition 3324, 3327 (2020), <https://www.cambridge.org/core/journals/public-health-nutrition/article/consumer-confusion-about-wholegrain-content-and-healthfulness-in-product-labels-a-discrete-choice-experiment-and-comprehension-assessment/09632F10BA8F314FBCAFA49276315A60>.

CLASS ACTION ALLEGATIONS

18. Plaintiff seeks to represent a class defined as all persons who, during the applicable statute of limitations period, purchased Defendant's Products in the state of New York (the "Class").

19. Members of the Class are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class number in the hundreds of thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant and third-party retailers and vendors.

20. Common questions of law and fact exist as to all Class members and predominate over questions affecting individual Class members. Common legal and factual questions include, but are not limited to, the true nature and presence of whole grain flour in the Products; whether the marketing, advertising, packaging, labeling, and other promotional materials for the Products are deceptive; whether Plaintiff and the members of the Class have suffered damages as a result of Defendant's actions and the amount thereof; and whether Plaintiff and the members of the Class are entitled to attorneys' fees and costs.

21. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff was exposed to Defendant's false and misleading marketing, purchased Defendant's Products, and suffered a loss as a result of those purchases.

22. Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the Class members she seeks to represent, she has retained competent counsel experienced in prosecuting class actions, and she intends to prosecute this

action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

23. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

CLAIMS FOR RELIEF

CLAIM I

Violation of the New York General Business Law ("GBL") § 349 (On behalf of the Plaintiff and the Class)

24. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

25. Plaintiff brings this cause of action on behalf of herself and members of the Class against Defendant.

26. Plaintiff and Class members are "persons" within the meaning of the GBL § 349(h).

27. Defendant is a "person, firm, corporation or association or agent or employee

thereof” within the meaning of GBL § 349(b).

28. Under GBL § 349, “[d]eceptive acts or practices in the conduct of any business, trade or commerce are unlawful.”

29. Defendant made deceptive and misleading statements by marketing the Products as being made predominantly with whole grain flour when in fact they are made predominantly with non-whole grain, enriched flour.

30. In doing so, Defendant engaged in deceptive acts or practices in violation of GBL § 349.

31. Defendant’s deceptive acts or practices were materially misleading. Defendant’s conduct was likely to and did deceive reasonable consumers, including Plaintiff, about the nature, characteristics and quality of its Products, as alleged herein.

32. Plaintiff and Class members were unaware of, and lacked a reasonable means of, discovering the material facts about the actual composition of the Products.

33. Defendant’s actions set forth above occurred in the conduct of trade or commerce.

34. The foregoing deceptive acts and practices were directed at consumers.

35. Defendant’s misleading Product claim is consumer-facing and concerns widely purchased consumer products. Defendant’s conduct includes unfair and misleading acts or practices that have the capacity to deceive consumers and are harmful to the public at large. Defendant’s conduct is misleading in a material way because it fundamentally misrepresents the composition and quality of the Products.

36. Plaintiff and Class members suffered ascertainable loss as a direct and proximate result of Defendant’s GBL violations in that (a) they would not have purchased the Products had they known the truth about their composition, and (b) they overpaid for the Products on account

of the “Whole Grain” misrepresentation, as alleged herein.

37. On behalf of herself and other members of the Class, Plaintiff seeks to enjoin Defendant’s unlawful acts and practices described herein, to recover her actual damages or \$50, whichever is greater, reasonable attorney’s fees and costs, and any other just and proper relief available under GBL § 349.

CLAIM II
Violation of the New York General Business Law § 350
(On behalf of the Plaintiff and the Class)

38. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

39. Plaintiff brings this claim individually and on behalf of the members of the Class against Defendant.

40. GBL § 350 provides that “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.”

41. Defendant’s labeling and advertisement of the Products was false and misleading in a material way. Specifically, Defendant advertised the Products as being made predominantly with whole grain flour when in fact they are made predominantly with non-whole grain, enriched flour. *See Mantikas v. Kellogg Co.*, 910 F.3d 633 (2d Cir. 2018) (finding “Made With Whole Grain” claims to be misleading to a reasonable consumer when the predominant ingredient is enriched white flour)

42. Plaintiff and the putative class members reasonably understand Defendant’s misrepresentations to mean that the Products are made predominantly with whole grain flour.

43. This misrepresentation was consumer-oriented and was likely to mislead a

reasonable consumer acting reasonably under the circumstances.

44. This misrepresentation has resulted in consumer injury or harm to the public interest.

45. As a result of this misrepresentation, Plaintiff and the Class members have suffered economic injury because (a) they would not have purchased the Product had they known the truth about their composition, and (b) they overpaid for the Products on account of the “Whole Grain” misrepresentation, as described herein.

46. By reason of the foregoing and as a result of Defendant’s conduct, Plaintiff and the Class members seek to enjoin the unlawful acts and practices described herein, to recover their actual damages or five hundred dollars, whichever is greater, three times actual damages, reasonable attorneys’ fees and costs, and any other just and proper relief available under GBL § 350.

PRAYER FOR RELIEF

WHEREFORE Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- (a) For an order certifying the Class and the Class under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiff as representative of the Class, and naming Plaintiff’s attorneys as Class Counsel to represent the Class;
- (b) For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- (c) For compensatory and statutory damages in amounts to be determined by the Court and/or jury;
- (d) For prejudgment interest on all amounts awarded;
- (e) For an order of restitution and all other forms of equitable monetary relief;
- (f) For an order enjoining Defendant from continuing the illegal practices detailed herein and compelling Defendant to undertake a corrective advertising campaign; and
- (g) For an order awarding reasonable attorneys’ fees and expenses and costs of suit.

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable as of right.

Dated: November 7, 2024

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Joseph I. Marchese
Joseph I. Marchese

Joseph I. Marchese
Israel Rosenberg
1330 Avenue of the Americas, 32nd Floor
New York, New York 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
E-Mail: jmarchese@bursor.com
irosenberg@bursor.com

CIVIL COVER SHEET

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.)

I. (a) PLAINTIFFS

CAROL ROBINSON, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Kings County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joseph I. Marchese Bursor & Fisher, P.A. 1330 Avenue of the Americas New York, NY 10019 646-837-7410 (tel)

DEFENDANTS

WORLD FINER FOODS, INC.,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)(2). Brief description of cause: False Claims

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000+. CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 11/07/2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Joseph I. Marchese

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

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, Joseph I. Marchese, counsel for Carol Robinson, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 3 in Section VIII on the front of this form. Rule 3(a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 3(a) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case involves identical legal issues, or the same parties." Rule 3 further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (b), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 1(d)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: _____

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No
(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: /s/ Joseph I. Marchese

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

CAROL ROBINSON, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

WORLD FINER FOODS, INC.

Defendant(s)

Civil Action No. 1:24-cv-7789

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) World Finer Foods, Inc. 1455 Broad St Bloomfield, NJ 07003

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:

Joseph I. Marchese Bursor & Fisher, P.A. 1330 Avenue of the Americas New York, NY 10019 646-837-7410 (tel)

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.

BRENNA B. MAHONEY 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 \$ _____ 0.00 _____ .

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: