

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NICOLE DOUGLAS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WILD PLANET FOODS, INC.,

Defendant.

Case No.: 26-7687

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Nicole Douglas (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her undersigned counsel, brings this action against Wild Planet Foods, Inc. (“Wild Planet” or “Defendant”), and alleges the following upon her own knowledge as to herself and her own acts, and upon information and belief and the investigation of her counsel as to all other matters.

NATURE OF THE ACTION

1. This is a consumer class action about a phrase that Defendant knows is false: “Lightly Smoked.”

2. Defendant manufactures, markets, and sells Wild Planet Wild Sardines in Extra Virgin Olive Oil, Lightly Smoked, in a 4.4-ounce can (the “Product”). On the front of the can, in prominent type, Defendant represents that the sardines are “Lightly Smoked.”

3. In truth, the Product is never subjected to a smoking process using smoldering wood or a smoking chamber. Instead, Defendant applies a manufactured chemical additive—identified on the ingredients panel as “Aqueous Natural Smoke” (liquid smoke)—to imitate a smoked flavor.

4. Defendant's front-label representation also violates the federal regulatory standards, including 21 C.F.R. § 101.22(h)(6), which prohibits representing that a food product has been "smoked" when its flavor is derived from added smoke flavorings rather than actual smoking.

5. Plaintiff and members of the proposed Class purchased the Product believing it was genuinely smoked. Because genuinely smoked seafood requires a labor-intensive process that commands a price premium, Defendant's deceptive labeling enabled it to charge a premium for a low-cost, chemically flavored product.

6. As a direct result, Plaintiff and Class members suffered injury by paying a price premium or purchasing a product they otherwise would not have bought.

7. Plaintiff brings this class action on behalf of herself and all others similarly situated to recover restitution and damages for the Class of consumers who were exposed to Defendant's misleading practices.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs; the proposed Class consists of more than 100 members; and minimal diversity exists because Plaintiff is a citizen of the State of New York and Defendant is a citizen of a State other than New York.

9. This Court has personal jurisdiction over Defendant because Defendant transacts substantial business within the State of New York, markets and sells the Product to consumers in New York, derives substantial revenue from goods sold in New York, and has purposefully availed itself of the New York market.

10. Venue is proper in this District under 28 U.S.C. § 1391(b) because Plaintiff resides in Bronx County, which is situated within this District; Plaintiff purchased the Product and received delivery in this District; Plaintiff suffered her economic injury in this District; and Defendant markets, distributes, and sells the Product to consumers throughout this District.

PARTIES

11. Plaintiff Nicole Douglas is a resident and citizen of the State of New York, residing in the Bronx, Bronx County, New York. Plaintiff resided in Bronx County at the time she purchased the Product.

12. Defendant Wild Planet Foods, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business at 1585 Heartwood Drive, Suite F, McKinleyville, California 95519.

13. Defendant manufactures, packages, labels, advertises, distributes, and sells the Product throughout the United States, including in New York, through national and regional retailers and through online retailers including Amazon.com.

14. Defendant is responsible for the design and content of the Product's label and packaging, including the "Lightly Smoked" representation challenged in this Complaint.

FACTUAL ALLEGATIONS

A. Defendant's "Lightly Smoked" Representation

15. The Product at issue in this action is Wild Planet Wild Sardines in Extra Virgin Olive Oil, Lightly Smoked, sold in a 4.4-ounce can. The Product label is reproduced below.



16. The front label of the Product bears the representation “Lightly Smoked” in conspicuous type, positioned so that it is among the first elements a consumer sees when viewing the Product on a retail shelf or on an online product page.

17. The front label of the Product bore the “Lightly Smoked” representation at the time of Plaintiff’s purchase and at all times during the applicable statute of limitations period preceding the filing of this Complaint (the “Class Period”), and Defendant marketed and sold the Product under that representation throughout that period.

18. Defendant repeats the representation in its marketing and in the product descriptions supplied to retailers. Amazon’s listing for the Product identifies it as “Wild Sardines in Extra Virgin Olive Oil, Lightly Smoked.”

19. The Product is not smoked. The sardines are not exposed to smoke from smoldering wood at any stage of production. The entirety of the Product’s smoke character derives from the added aqueous smoke flavoring.

20. Nothing on the front of the can discloses that the smoke character is supplied by an added flavoring. The front label contains no “flavored” designation, no “with smoke flavor” qualifier, no “naturally flavored” statement, and no other language that would alert a consumer that no smoking occurred.

B. Consumer Preference and Demand for Genuinely Smoked Seafood

21. Smoked seafood occupies a premium position in the market. Consumers associate smoked fish with craft production, traditional methods, and superior quality, and they pay accordingly.

22. Market analyses of the smoked fish and seafood category report that the premium segment is driven by consumer preference for handcrafted products with authentic flavors, that producers using traditional smoking techniques command higher prices, and that consumers are willing to pay a premium for perceived authenticity.¹

23. Peer-reviewed research reaches the same conclusion. Studies of seafood purchasing report that the premium image of smoked fish justifies higher prices for consumers seeking superior quality, and that consumption of smoked fish increases willingness to pay, reflecting the premium status associated with smoked products.²

24. Consumer research further reflects that purchasers of smoked fish favor products in which the smoke character derives from the process itself rather than from added flavorings, and disfavor products that rely on artificial flavoring to produce a smoky taste.

¹Smoked Fish & Seafood Market Size, Industry Trends & Forecast, Verified Market Reports, <https://www.verifiedmarketreports.com/product/smoked-fish-seafood-market-size-and-forecast/> (last accessed September 8, 2026).

²Consumers’ attitudes toward and willingness to pay for organic aquaculture products: Evidence from Spain, Aquaculture (2025), <https://www.sciencedirect.com/science/article/pii/S0044848625000122> (last accessed September 8, 2026).

25. The reason for that preference is straightforward. A consumer who wanted only a smoky taste could buy a bottle of liquid smoke for a few dollars and apply it at home. What the consumer is paying for when purchasing “smoked” fish is the process — the time, the wood, the craft, and the transformation of the fish that only smoking produces.

26. Because the smoking process is what commands the premium, a representation that a product has been smoked is material to a reasonable consumer’s purchasing decision. It informs the consumer what she is buying, why it costs more, and how it will taste.

C. The Distinction Between Wood Smoking and Liquid Smoke Flavoring

27. Smoking is one of the oldest methods of preserving and flavoring food. In the context of food products, smoking involves exposing food to smoke generated by smoldering hardwood — typically alder, hickory, oak, maple, or beech — over a sustained period, under controlled temperature and humidity.

28. The process works on the food itself. Wood smoke carries phenols, carbonyls, and organic acids that penetrate the surface of the flesh and migrate inward. These compounds bind to proteins, inhibit microbial growth, retard lipid oxidation, and deposit the characteristic aroma and taste associated with smoked food.

29. Smoking simultaneously dehydrates the food. The loss of surface moisture firms the texture, concentrates flavor, and contributes to preservation. In fish, this yields the dense, slightly resilient mouthfeel that distinguishes smoked fish from fish that has merely been cooked and infused with smoke flavor.

30. Sardines and other small oily fish are especially well suited to smoking. Their high surface-area-to-volume ratio allows smoke compounds to distribute evenly and quickly through

the flesh, producing uniform flavor. Smoked sardines have been a traditional product of the North Atlantic and Baltic fisheries for well over a century.

31. Smoking is expensive. It requires smokehouses or smoking chambers, hardwood fuel, trained operators, extended production time, and yield loss from moisture reduction. It cannot be performed instantaneously or at scale without significant capital investment.

32. Conversely, liquid smoke — identified on Defendant’s ingredient list as “Aqueous Natural Smoke” — is not smoke. It is a manufactured flavoring produced by burning wood under controlled conditions, condensing the resulting vapors into an aqueous solution, and filtering that solution to remove tars, ash, and polycyclic aromatic hydrocarbons.

33. The resulting liquid is a concentrated flavoring ingredient. It is sold in bulk to food manufacturers, dosed by volume, and applied by spraying, dipping, injecting, or blending it into a finished or nearly finished product.

34. Applying liquid smoke is not smoking. It takes seconds rather than hours. It requires no smokehouse, no hardwood, and no skilled operator. It does not dehydrate the food, does not alter its texture, does not extend shelf life in the manner that smoking does, and does not deposit smoke compounds progressively through the flesh.

35. The food science literature treats liquid smoke expressly as a substitute for, and an alternative to, the smoking process. Researchers describe it as a product “used to impart a smoky flavour without resorting to the traditional smoking technique,” valued because it is inexpensive, easy to dose, and simple to control.³

³ See, e.g., Optimizing liquid smoke conditions for the production and preservation of innovative fish products, Food Chemistry: X (2023), <https://www.sciencedirect.com/science/article/pii/S2212429223003632> (last accessed September 8, 2026).

36. Liquid smoke is therefore cheaper, faster, and materially different from smoking in both process and result. It produces a one-dimensional smoke note that food professionals commonly describe as flat, harsh, or acrid relative to the layered character of genuine wood smoke, and it does not replicate the texture, moisture profile, or preservative effect of an actual smoking process.

37. Defendant uses liquid smoke instead of smoking its sardines because doing so is substantially less expensive and substantially faster. Defendant nonetheless labels and prices the Product as though the process had been performed.

D. “Lightly” Is a Measure of Process, Not of Flavoring

38. The phrase “Lightly Smoked” communicates the intensity and duration of a manufacturing process, rather than the addition of a flavor ingredient.

39. Defendant did not simply write “smoked.” It wrote “Lightly Smoked.” That choice defeats any argument that the word “smoked” was intended, or would be understood, as a mere flavor descriptor.

40. An adverb of degree modifies something that occurs by degree. Food can be lightly salted because salt is applied in measurable quantity. Food can be lightly sweetened because sweetener is applied in measurable quantity. And food can be lightly smoked because smoking is a process performed for a measurable duration at a measurable smoke density.

41. The phrase “lightly smoked” has an established and specific meaning in the seafood trade. It denotes fish exposed to smoke for a shorter period, at lower temperature or lower smoke density, yielding a subtle rather than assertive smoke character while retaining more moisture and a more delicate texture.

42. Defendant's use of "Lightly" therefore does not soften or qualify the claim. It specifies the intensity at which a process was performed. A consumer reading "Lightly Smoked" understands that the fish were smoked, and that they were smoked gently. Both halves of that understanding are false.

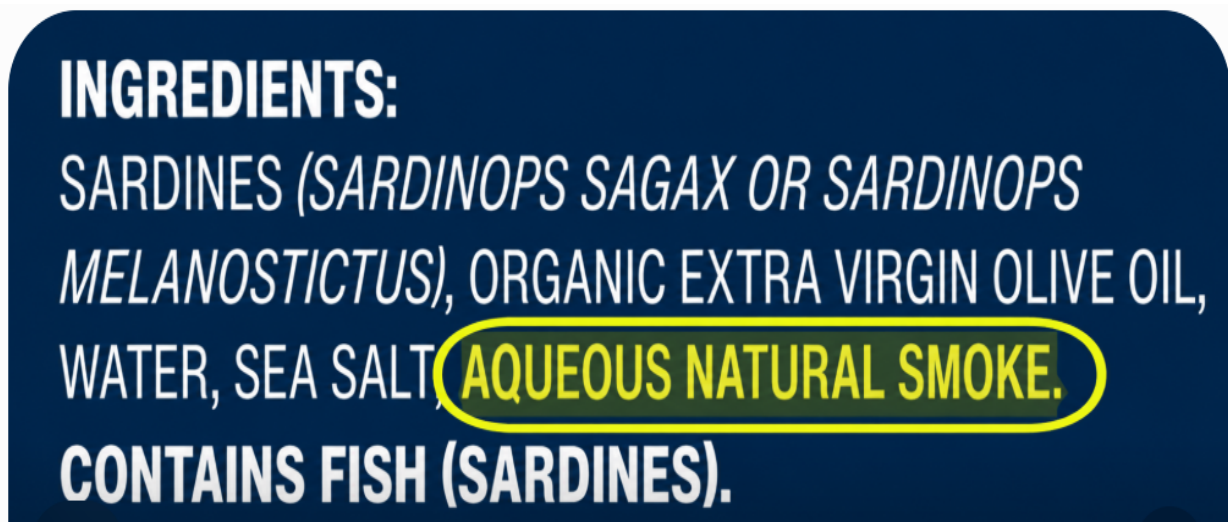
43. This distinguishes the Product from labels that use "smoked" as part of a compound flavor name without any process modifier. Defendant did not name a flavor. It described a manufacturing step, and it described how much of that step was performed.

E. The Back Ingredient Disclosure Does Not Cure the Front-Label Deception

44. Defendant discloses that the Product is infused with "aqueous natural smoke," buried at the end of the ingredient list on the back of the can.

45. The complete ingredient list for the Product is: "Sardines (*Sardinops sagax* or *Sardinops melanostictus*), organic extra virgin olive oil, water, sea salt, aqueous natural smoke." The ingredient list is reproduced below.

46. "Aqueous natural smoke" appears last in the ingredient list, denoting that it is present in the smallest quantity by weight.



47. As the Second Circuit held in *Mantikas v. Kellogg Co.*, 910 F.3d 633, 637 (2d Cir. 2018), a misleading front-of-package representation is not cured by accurate information elsewhere, because reasonable consumers should not be expected to look beyond misleading representations on the front of the package to discover the truth from an ingredient list in small print on the side or back.

48. Moreover, the ingredient list itself is misleading. “Aqueous natural smoke” is an artificial chemical compound rather than a “natural” food ingredient. 21 CFR 101.22(h)(6).

49. A consumer shopping for canned sardines on a retail shelf, or viewing a product image online, sees the front of the can. The “Lightly Smoked” representation is the hook that drives consumers’ purchasing decisions.

F. Federal Regulations Expressly Prohibit Representing a Liquid-Smoke-Flavored Food as “Smoked”

50. The Food and Drug Administration has long recognized the precise deception at issue here and has promulgated a regulation that forbids it.

51. Specifically, 21 C.F.R. § 101.22(h)(6) provides, in relevant part, that where a food is flavored with pyroligneous acid or other artificial smoke flavor:

“[N]o representation may be made, either directly or implied, that a food flavored with pyroligneous acid or other artificial smoke flavor has been smoked or has a true smoked flavor”

52. The regulation draws exactly the line that Defendant has crossed. It does not merely require disclosure of the flavoring in the ingredient list. It prohibits the affirmative representation that the food “has been smoked.”

53. Defendant’s front-label representation that the Product is “Lightly Smoked” is a direct representation that the sardines have been smoked. It is not an implied representation, a

suggestion, or a stylized allusion. It is the claim the regulation forbids, stated in the words the regulation uses.

54. Separately, 21 C.F.R. § 101.22(i) requires that a food containing a characterizing flavor derived from a flavoring rather than from the characterizing food itself be labeled with the word “flavored” in conjunction with the name of the characterizing flavor. The truthful designation for the Product would therefore be “Smoke Flavored” or “with Smoke Flavor,” not “Smoked.”

55. New York has adopted the federal food labeling standards. N.Y. Agric. & Mkts. Law § 201 provides that food is misbranded if its labeling is false or misleading in any particular, and New York regulations incorporate the federal identity, quality, and labeling requirements.

56. Plaintiff does not seek to enforce the Food, Drug, and Cosmetic Act or its implementing regulations privately. Plaintiff pleads those regulations as evidence of the settled understanding — shared by the federal food-labeling authority, by the industry, and by consumers — that a representation that food “has been smoked” communicates that a smoking process was performed, and that using a liquid smoke flavoring to make that claim is deceptive. Defendant’s conduct is independently deceptive under New York law without reference to any federal regulation.

G. Industry Practices Demonstrate How This Product Should Be, and Can Be, Labeled

57. Defendant’s conduct is not the product of ambiguity in the marketplace or of any practical constraint on labeling. Defendant’s own competitors — selling the same kind of product, in the same category, on the same shelf, in tins of comparable size — label their products truthfully.

1. King Oscar: “Lightly Smoked” Sardines That Are Genuinely Smoked

58. King Oscar, one of the largest sardine brands sold in the United States, markets brisling sardines that are genuinely smoked over wood. King Oscar describes its fish as “naturally

wood smoked,” and its ingredient lists identify the first ingredient as “Lightly Smoked Brisling Sardines.”

59. King Oscar thus uses the identical phrase Defendant uses — “lightly smoked” — to describe fish that have in fact undergone a wood-smoking process. This is powerful evidence of what the phrase means in this product category and of what a reasonable consumer encountering it on a can of sardines would understand it to convey.

60. A consumer choosing between Defendant’s “Lightly Smoked” sardines and King Oscar’s lightly smoked sardines is presented with the same words and has no way to know that only one of the two products was actually smoked.

2. Chicken of the Sea: Smoke Flavoring, Disclosed on the Package

61. Chicken of the Sea sells a canned sardine product whose smoke character, like Defendant’s, comes from an added flavoring. Its ingredient list reads: “Sardines (*Sprattus Sprattus* or *Clupea Harengus*), Soybean Oil, Salt, Smoke Flavor.”

62. Unlike Defendant, Chicken of the Sea discloses that fact on the package itself, stating: “Made with natural smoke flavor.”

63. Chicken of the Sea therefore establishes that a manufacturer using smoke flavoring can and does tell the consumer so, on the package, without abandoning the marketing benefit of the smoke claim and without redesigning the product.

64. On information and belief, Chicken of the Sea’s smoke-flavored sardines retail for approximately \$1.24 per 3.75-ounce can, or roughly \$0.33 per ounce — between one-third and one-half of the per-ounce price Defendant charges for a product made by the same method.

3. *Trader Joe's: The Same Item, Relabeled Truthfully*

65. Trader Joe's sells canned sardines in olive oil in a 4.25-ounce tin — the same category, the same format, and effectively the same size as Defendant's Product.

66. Trader Joe's previously sold this item under item number 026527, with a front label reading "Lightly SMOKED SARDINES IN OLIVE OIL." The tin bore Trader Joe's name, an illustration of sardines and olive branches, and the net and drained weights. That label is reproduced below.



Trader Joe's item 026527, prior front label: "Lightly Smoked Sardines in Olive Oil."

67. Trader Joe's now sells the same item number — SKU 26527 — in a tin of the same size, in the same colorway, bearing the same sardine-and-olive-branch artwork, under a materially different front label. The current label reads "Wild Caught SARDINES IN OLIVE OIL WITH SMOKE FLAVOR," followed by the further disclosure "FLAVORED WITH OTHER NATURAL FLAVORS." That label is reproduced below.



Trader Joe's SKU 26527, current front label: "Sardines in Olive Oil with Smoke Flavor — Flavored with Other Natural Flavors."

68. The two labels are separated by a single change of substance: the process claim “Lightly Smoked” has been replaced with the flavoring disclosure “with Smoke Flavor — Flavored with Other Natural Flavors.” Everything else — the item number, the tin, the artwork, the color, the 4.25-ounce net weight, the 3-ounce drained weight — is materially unchanged.

69. Trader Joe’s accomplished this on the lid of a small sardine tin, in a space no larger than the one available to Defendant, without eliminating the smoke claim, without redesigning the package, and without any apparent loss of shelf presence.

70. Trader Joe’s conduct forecloses any contention that the front of a sardine tin lacks room for a truthful flavoring disclosure, that such a disclosure is commercially impracticable, or that the industry lacks a settled and workable format for making one.

71. Bumble Bee likewise agreed to relabel its canned smoked salmon products as “smoke flavored” rather than “smoked” after its labeling was challenged, further confirming that the flavoring disclosure is the recognized standard in the canned seafood category.

72. Together, these comparators establish a clear spectrum. King Oscar performs the smoking process and says so. Chicken of the Sea uses smoke flavoring and says so. Trader Joe's uses smoke flavoring and now says so, on the identical product format. Defendant uses smoke flavoring, says nothing on the front of the package, and claims the process instead. Defendant stands alone.

H. Plaintiff's Experience

73. On or about May 20, 2024, Plaintiff Nicole Douglas purchased a twelve-can case of the Product from Amazon.com for delivery to her residence in Bronx County, New York, paying approximately \$33.14, or approximately \$2.76 per can.

74. Before purchasing, Plaintiff reviewed the Product listing and the accompanying product images, which displayed the front of the can and the "Lightly Smoked" representation.

75. Plaintiff selected the Product specifically because it was represented to be lightly smoked. She understood that representation to mean that the sardines had been exposed to smoke from smoldering wood for a short duration, producing a subtle smoke character.

76. Plaintiff wanted smoked sardines rather than sardines flavored to taste as though they had been smoked. The smoking representation was material to her decision and was a substantial factor in causing her to purchase the Product.

77. Plaintiff did not know, and had no reasonable way of knowing at the time of purchase, that the Product had never been smoked, or that its smoke character was supplied entirely by an added liquid smoke flavoring.

78. Had Plaintiff known that the Product was not smoked and that its smoke character came from an added flavoring, she would not have purchased the Product, or would have paid substantially less for it.

79. Plaintiff paid a price premium for the Product that she would not have paid absent the “Lightly Smoked” representation. She therefore received less than what she bargained and paid for, and suffered economic injury.

CLASS ACTION ALLEGATIONS

80. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3) on behalf of the following Class:

All persons who purchased the Product in the State of New York for personal, family, or household use, and not for resale, during the Class Period and through the date of class certification (the “Class”).

81. Excluded from the Class are Defendant; Defendant’s officers, directors, employees, subsidiaries, and affiliates; the judicial officers assigned to this action and their staff and immediate family members; and any persons who timely opt out.

82. Plaintiff reserves the right to modify or amend the Class definition, and to seek certification of subclasses, as appropriate following discovery.

83. Numerosity. The Class is so numerous that joinder of all members is impracticable. The Product is sold through national retailers and online throughout New York. On information and belief, the Class comprises tens of thousands of purchasers. The precise number and identities of Class members are ascertainable from Defendant’s records and the records of its retailers and distributors.

84. Commonality. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual members, including:

a. Whether the Product’s smoke character is derived from an added smoke flavoring rather than from a smoking process;

- b. Whether the “Lightly Smoked” representation is materially false or misleading to a reasonable consumer;
- c. Whether the representation is material to a reasonable consumer’s purchasing decision;
- d. Whether Defendant’s conduct constitutes a deceptive act or practice under N.Y. Gen. Bus. Law § 349;
- e. Whether Defendant’s conduct constitutes false advertising under N.Y. Gen. Bus. Law § 350;
- f. Whether Defendant was unjustly enriched by its retention of the price premium;
- g. Whether Defendant’s conduct was knowing or willful;
- h. Whether Plaintiff and the Class are entitled to damages, statutory damages, and restitution, and in what amounts.

85. Typicality. Plaintiff’s claims are typical of the claims of the Class. Plaintiff and each Class member purchased the Product bearing the same uniform “Lightly Smoked” representation, were exposed to the same misrepresentation, and suffered the same type of economic injury arising from the same course of conduct.

86. Adequacy. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interests antagonistic to or in conflict with those of the Class, and has retained counsel competent and experienced in consumer class action litigation.

87. Predominance and Superiority. Questions of law and fact common to the Class predominate over any questions affecting individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy because:

a. The damages suffered by individual Class members are small relative to the burden and expense of individual litigation, making it impracticable for Class members to seek redress individually;

b. Individual actions would risk inconsistent or varying adjudications establishing incompatible standards of conduct for Defendant;

c. The claims arise from uniform labeling and a uniform course of conduct, so classwide adjudication will conserve judicial resources; and

d. Absent a class action, Defendant would retain the benefits of its wrongdoing and there would be a failure of justice.

88. Plaintiff knows of no difficulty likely to be encountered in the management of this action that would preclude its maintenance as a class action.

COUNT I

Violation of New York General Business Law § 349 — Deceptive Acts and Practices

89. Plaintiff incorporates by reference each preceding paragraph as though fully set forth herein.

90. N.Y. Gen. Bus. Law § 349(a) declares unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

91. Defendant’s conduct was consumer-oriented. Defendant labeled, marketed, and sold the Product to the general consuming public throughout New York through national and regional retailers and online marketplaces. The “Lightly Smoked” representation appeared uniformly on every unit sold.

92. Defendant’s conduct was materially misleading. Representing that the Product is “Lightly Smoked” when the sardines have never been exposed to smoke, and when the entire

smoke character derives from an added liquid smoke flavoring, is likely to mislead a reasonable consumer acting reasonably under the circumstances.

93. Plaintiff and Class members suffered injury as a result. They purchased a Product they would not have purchased, or paid a premium they would not have paid, had the truth been disclosed. The Product they received was worth materially less than the price paid.

94. Defendant's violation was knowing and willful. Defendant knows how the Product is manufactured and knows that no smoking process is performed. Defendant was further placed on written notice of the deception alleged in this Complaint by letters from counsel dated March 3, 2026 and May 11, 2026, to which it did not respond.

95. Plaintiff and the Class are entitled to actual damages, statutory damages of fifty dollars (\$50) per violation pursuant to § 349(h), treble damages up to one thousand dollars (\$1,000) per violation for Defendant's willful conduct, reasonable attorneys' fees, costs, and pre- and post-judgment interest.

COUNT II

Violation of New York General Business Law § 350 — False Advertising

96. Plaintiff incorporates by reference each preceding paragraph as though fully set forth herein.

97. N.Y. Gen. Bus. Law § 350 declares unlawful "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state."

98. N.Y. Gen. Bus. Law § 350-a(1) defines "false advertising" as advertising, including labeling, that is "misleading in a material respect," taking into account not only affirmative representations but also "the extent to which the advertising fails to reveal facts material in the light of such representations."

99. The Product's labeling constitutes advertising within the meaning of § 350-a(1).

100. Defendant's labeling is misleading in a material respect. Defendant affirmatively represents that the Product has been smoked when it has not, and it fails to properly reveal or disclose the material fact that the Product's smoke character is supplied by an added liquid smoke flavoring.

101. Defendant's advertising was directed at consumers throughout New York and was uniform in content and presentation across every unit sold.

102. Plaintiff and Class members saw and relied upon the "Lightly Smoked" representation in deciding to purchase the Product, and were injured thereby, having paid a premium for a product that was not as advertised.

103. Plaintiff and the Class are entitled to actual damages, statutory damages of five hundred dollars (\$500) per violation pursuant to § 350-e(3), treble damages up to ten thousand dollars (\$10,000) per violation for Defendant's willful conduct, reasonable attorneys' fees, costs, and pre- and post-judgment interest.

COUNT III

Unjust Enrichment

104. Plaintiff incorporates by reference each preceding paragraph as though fully set forth herein.

105. Plaintiff and Class members conferred a benefit on Defendant by purchasing the Product, and Defendant knowingly and voluntarily accepted and retained that benefit.

106. The benefit conferred includes not only the purchase price of the Product but specifically the price premium attributable to the false "Lightly Smoked" representation — the additional amount consumers paid because they believed they were purchasing genuinely smoked fish rather than fish flavored to taste as though it had been smoked.

107. Defendant obtained that premium through a misrepresentation of a material fact concerning how the Product is made, and did so without performing the more costly process that the premium was understood to compensate.

108. Defendant knew or should have known that Plaintiff and Class members paid for the Product with the expectation that it had been smoked as represented.

109. Under the circumstances, it would be inequitable and unjust for Defendant to retain the price premium it obtained through its misrepresentation.

110. Plaintiff and the Class are entitled to restitution and disgorgement of the amounts by which Defendant was unjustly enriched, together with an accounting, interest, and such other relief as the Court deems just.

PRAYER FOR RELIEF

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

A. Certifying the Class as defined herein, appointing Plaintiff as Class Representative, and appointing Plaintiff's counsel as Class Counsel pursuant to Federal Rule of Civil Procedure 23;

B. Awarding Plaintiff and the Class actual, compensatory, and price-premium damages in an amount to be proven at trial;

C. Awarding Plaintiff and the Class statutory damages of \$50 per violation under N.Y. Gen. Bus. Law § 349(h) and \$500 per violation under N.Y. Gen. Bus. Law § 350-e(3);

D. Awarding treble damages for Defendant's knowing and willful violations under N.Y. Gen. Bus. Law §§ 349(h) and 350-e(3);

- E. Awarding restitution and disgorgement of the amounts by which Defendant has been unjustly enriched;
- F. Ordering that Defendant bear the cost of notice to the Class;
- G. Awarding Plaintiff and the Class pre- and post-judgment interest;
- H. Awarding Plaintiff and the Class reasonable attorneys' fees, expenses, and costs of suit; and
- I. Granting such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury on all issues so triable.

Dated: September 8, 2026

Respectfully submitted,

/s/ James Chung
James Chung, Esq.
LAW OFFICE OF JAMES CHUNG
43-22 216th Street
Bayside, NY 11361
T: 718-461-8808
E: jchung_77@msn.com

/s/ James C. Kelly
James C. Kelly, Esq.
SDNY Bar No. JK9616
THE RUSSO FIRM
244 5th Avenue, Suite K-278
New York, NY 10001
T: 212-920-5042
E: jkelly@therussofirm.com

Anthony J. Russo, Jr., Esq.
THE RUSSO FIRM
1001 Yamato Road, Suite 106
Boca Raton, FL 33431
T: 844-847-8300
E: anthony@therussofirm.com

Counsel for Plaintiff and the Proposed Class