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Jennifer Goodwin

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – UNLIMITED CIVIL**

**JENNIFER GOODWIN,  
Individually And On Behalf Of  
All Others Similarly Situated,**

**Plaintiff,****v.**

**WHOLE FOODS MARKET,  
INC.; MRS. GOOCH'S  
NATURAL FOOD MARKETS,  
INC; WHOLE FOODS  
MARKET CALIFORNIA, INC.,**

**Defendants.****Case No.: 21STCV40456**

**THIRD AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES AND  
PUBLIC INJUNCTIVE RELIEF  
FOR VIOLATIONS OF:**

- 1) CONSUMER LEGAL  
REMEDIES ACT, CAL. CIVIL  
CODE §§ 1750, *ET SEQ.*;**
- 2) UNFAIR COMPETITION LAW,  
CAL. BUS. & PROF. §§ 17200,  
*ET SEQ.*;**
- 3) FALSE ADVERTISING LAW,  
CAL. BUS. & PROF. §§ 17500,  
*ET SEQ.*; AND,**
- 4) NEGLIGENT  
MISREPRESENTATION.**

**JURY TRIAL DEMANDED**

## INTRODUCTION

1. The average consumer spends a mere 13 seconds making an in-store purchasing decision, or between 10 to 19 seconds for an online purchase.<sup>1</sup> That decision is heavily dependent on a product's packaging, and particularly the package dimensions. "Most of our studies show that 75 to 80 percent of consumers don't even bother to look at any label information, no less the net weight ... Faced with a large box and a smaller box, both with the same amount of product inside ... consumers are apt to choose the larger box because they think it's a better value."<sup>2</sup>

2. This lawsuit challenges the unfair and unlawful business practices of MRS. GOOCH'S NATURAL FOOD MARKETS, INC. ("Mrs. Gooch's") and WHOLE FOODS MARKET CALIFORNIA, INC. ("WFM California") (jointly, "Defendants") resulting from Defendants' intentional packaging of its 365 by Whole Foods Market Organic Hot Cocoa Flavor Mix, Rich Chocolate ("Product")<sup>3</sup> in large and opaque 12 oz containers that contain approximately **44% empty space**. Consumers, in reliance on the size of the containers, paid a price for the Product which they would not have paid had they known that the containers were substantially empty.

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<sup>1</sup> Randall Beard, *Make The Most Of Your Brand's 20-Second Window*, <http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-your-brands-20-second-window.html> (January 13, 2015) *citing* the Ehrenberg-Bass Institute of Marketing Science's report "Shopping Takes Only Seconds...In-Store and Online."

<sup>2</sup> <http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm> (quoting Brian Wansink, professor and director of the Cornell Food and Brand Lab, who studies shopping behavior of consumers).

<sup>3</sup> <https://www.wholefoodsmarket.com/product/365-by-whole-foods-market-organic-hot-cocoa-flavor-mix-rich-chocolate-canister-12-oz-b074hbmft4> (last visited on June 7, 2021). The Product was previously named "365 Everyday Value Organic Hot Cocoa Rich Chocolate Flavor Mix" prior to approximately the year 2020.

1 3. Jennifer Goodwin (“Plaintiff”), individually and on behalf of all others  
2 similarly situated, brings this Class Action Complaint for damages, injunctive relief,  
3 and any other available legal or equitable remedies, resulting from Defendants’  
4 unlawful and deceptive actions, with respect to the packaging of their Product.

5 4. Plaintiff alleges as follows upon personal knowledge as to herself and her own  
6 acts and experiences, and, as to all other matters, upon information and belief,  
7 including investigation conducted by her attorneys.

8 5. Mrs. Gooch’s is a California Corporation that was acquired by Whole Foods  
9 Market, Inc. in 1993.<sup>4</sup> Mrs. Gooch’s is a subsidiary corporation of Whole Foods  
10 Market, Inc.<sup>5</sup>

11 6. WFM California is a California Corporation that was formed in 1988.<sup>6</sup> Like  
12 Mrs. Gooch’s, WFM California is a subsidiary corporation of Whole Foods Market,  
13 Inc.<sup>7</sup>

14 7. Whole Foods Market Inc. is a multinational supermarket chain that sells  
15 health food products including 365 by Whole Foods Market products at brick-and-  
16 mortar Whole Foods stores.

17 8. Defendants offer products for sale online, including on  
18 wholefoodsmarket.com, and the website of its parent company, Amazon.com, Inc.

19 9. In June of 2021, a 12 oz container of the Product sold for approximately  
20 \$3.99.<sup>8</sup>

21  
22 <sup>4</sup> See Whole Foods Market History, [https://www.wholefoodsmarket.com/company-](https://www.wholefoodsmarket.com/company-info/whole-foods-market-history)  
23 [info/whole-foods-market-history](https://www.wholefoodsmarket.com/company-info/whole-foods-market-history) (last visited Dec. 9, 2021); *see also*  
<https://www.latimes.com/archives/la-xpm-1993-05-13-fi-34954-story.html>.

24 <sup>5</sup> See SEC Archives, Subsidiaries of Whole Foods Market, Inc.,  
25 [https://www.sec.gov/Archives/edgar/data/865436/000093066102004403/dex211.h](https://www.sec.gov/Archives/edgar/data/865436/000093066102004403/dex211.htm)  
tm (last visited Oct. 8, 2024).

26 <sup>6</sup> <https://bizfileonline.sos.ca.gov/search/business> (last visited Oct. 8, 2024).

27 <sup>7</sup> See, *supra*, n.5.

28 <sup>8</sup> See *supra* note 3; <https://www.amazon.com/365-Everyday-Value-Organic->

1 10. According to wholefoodsmarket.com, Whole Foods is “the world’s leader in  
2 natural and organic foods, with 500+ stores in North America and the UK.” In  
3 addition, Whole Foods claims that it “seek[s] out the finest natural and organic foods  
4 available, maintain[s] the strictest quality standards in the industry, and [has] an  
5 unshakeable commitment to sustainable agriculture.”<sup>9</sup>

6 11. On or about March 22, 2021, Plaintiff purchased the Product from a Whole  
7 Foods store (located in Valencia, California), expecting to receive a full container of  
8 the Product. The Product is packaged in non-transparent containers, as depicted  
9 below.

10 12. Plaintiff was surprised and disappointed when she opened the Product to  
11 discover that the container had approximately 44% empty space, or slack-fill. Had  
12 Plaintiff known about the slack-fill at the time of purchase, she would not have  
13 bought Defendants’ Product.

14 13. Defendants’ conduct is misleading to reasonable consumers.

15 **JURISDICTION AND VENUE**

16 14. Subject matter jurisdiction is proper in this Court for the California statutory  
17 causes of action.

18 15. This Court has personal jurisdiction over Mrs. Gooch’s because it conducts  
19 business in the County of Los Angeles, State of California, and Plaintiff was injured  
20 in the County of Los Angeles where Plaintiff resides.

21 16. This Court has personal jurisdiction over WFM California because it conducts  
22 business in the State of California, and WFM California consents to jurisdiction for  
23 settlement purposes only.

24 17. Venue is proper.

25  
26  
27 Chocolate/dp/B074HBMFT4/ref=cm\_cr\_srp\_d\_product\_top?ie=UTF8 (last  
visited on June 7, 2021).

28 <sup>9</sup> <https://www.wholefoodsmarket.com/company-info> (last visited June 7, 2021).

1 **PARTIES**

2 18. Plaintiff is a citizen of the State of California and resides in the Country of  
3 Los Angeles, State of California.

4 19. Upon information and belief, Mrs. Gooch's is a corporation whose State of  
5 Incorporation is California, and whose headquarters are located in Glendale,  
6 California. Mrs. Gooch's is a subsidiary of Whole Foods Market, Inc., incorporated  
7 in the State of Texas and headquartered in Austin, Texas.

8 20. Upon information and belief, WFM California is a corporation whose State of  
9 Incorporation is California, and whose headquarters are located in Emeryville,  
10 California. WFM California is a subsidiary of Whole Foods Market, Inc.,  
11 incorporated in the State of Texas and headquartered in Austin, Texas.

12 21. Upon information and belief, Mrs. Gooch's and WFM California own and  
13 operate the Whole Foods Market stores in California, with Mrs. Gooch's owning an  
14 operating the stores located generally south of Fresno, California.

15 **FACTUAL ALLEGATIONS**

16 **Federal and California Law Prohibit Non-functional Slack Full**

17 22. The Federal Food Drug and Cosmetic Act ("FDCA"), 21 U.S.C. §§ 301 *et*  
18 *seq.*, governs the sale of foods, drugs and cosmetics in the United States. The  
19 classification of a product as a food, drug, or cosmetic affects the regulations by  
20 which the manufacturer must abide. In general, a product is characterized according  
21 to its intended use, which may be established, among other ways, by: (a) claims  
22 stated on the product's labeling, in advertising, on the Internet, or in other  
23 promotional materials; (b) consumer perception established through the product's  
24 reputation, for example by asking why the consumer is buying it and what the  
25 consumer expects it to do; or (c) the inclusion of ingredients well-known to have  
26 therapeutic use, for example fluoride in toothpaste. The Product is characterized and  
27 understood by consumers to be a food.

28 23. Under the FDCA, the term "false" has its usual meaning of untruthful, while

1 the term “misleading” is a term of art.

2 24. Misbranding reaches not only false claims, but also those claims that might  
3 be technically true, but still misleading.

4 25. If any representation on the labeling is misleading, the entire Product is  
5 misbranded. No other statement in the labeling cures a misleading statement.

6 26. “Misleading” is judged in reference to “the ignorant, the unthinking and the  
7 credulous who, when making a purchase, do not stop to analyze.” *United States v.*  
8 *El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not  
9 necessary to prove that anyone was actually misled.

10 27. California has its own FDCA equivalent, the California Fair Packaging and  
11 Labeling Act (“CFPLA”), Cal. Bus. & Prof. Code § 12606.2, which also seeks to  
12 prevent companies from misleading consumers about the amount of a given product  
13 contained within a package they are purchasing.

14 28. Specifically, CFPLA is considered the “Slack Fill” law for food products in  
15 California. *See* Bus. & Prof. Code § 12606.2(a). Pursuant to this statute, “[n]o food  
16 containers shall be made, formed, or filled as to be misleading.” *Id.* § 12606.2(b).

17 29. Moreover, “[a] container that does not allow the consumer to fully view its  
18 contents shall be considered to be filled as to be misleading if it contains  
19 nonfunctional slack fill.” *Id.* § 12606.2(c).

20 **A. Misbranding of Foods**

21 30. The Product, a hot cocoa mix, is packaged in a container roughly 9 centimeters  
22 tall, not including the thin double seams at the top and bottom of the container.

23 31. Approximately 44% of the container’s volume is slack-fill, as only 5  
24 centimeters out of the 9 centimeter container is filled with Product. The package  
25 contains no scoop for its contents.

26 32. Under the FDCA, 21 U.S.C. § 343, a food shall be deemed to be misbranded  
27 if “(a) . . . (1) its labeling is false or misleading in any particular”; or “(d) If its  
28 container is so made, formed, or filled as to be misleading.”

1 33. Pursuant to 21 C.F.R. §100.100, a food is misbranded if “its container is so  
2 made, formed or filled as to be misleading.” In addition, “(a) A container that does  
3 not allow the consumer to fully view its contents shall be considered to be filled as  
4 to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference  
5 between the actual capacity of a container and the volume of product contained  
6 therein.

7 34. Nonfunctional slack-fill is the empty space in a package that is filled to less  
8 than its capacity for reasons other than:

9 (1) Protection of the contents of the package;

10 (2) The requirements of the machines used for enclosing the contents in such  
11 package;

12 (3) Unavoidable product settling during shipping and handling;

13 (4) The need for the package to perform a specific function (e.g., where  
14 packaging plays a role in the preparation or consumption of a food), where  
15 such function is inherent to the nature of the food and is clearly communicated  
16 to consumers;

17 (5) The fact that the product consists of a food packaged in a reusable  
18 container where the container is part of the presentation of the food and has  
19 value which is both significant in proportion to the value of the product and  
20 independent of its function to hold the food, e.g., a gift product consisting of  
21 a food or foods combined with a container that is intended for further use after  
22 the food is consumed; or durable commemorative or promotional packages;  
23 or

24 (6) Inability to increase level of fill or to further reduce the size of the package.

25 . . .

26 21 C.F.R. 100.100(a)(1)-(6).

27 35. None of the above federal safe-harbor provisions apply to the Product.

28 36. Plaintiff is informed and believes that:



- 1 (1) The Product, a hot cocoa powder, does not require protective packaging,  
2 as it is not fragile or breakable;
- 3 (2) The machines used to package the Product do not require 44% of the  
4 container to include slack fill;
- 5 (3) Such considerable slack fill cannot be explained by unavoidable product  
6 settling during shipping and handling, as fine powder is not the sort of product  
7 that “settles” significantly enough to require nearly double the amount of  
8 packaging space;
- 9 (4) The packaging performs no specific function such as a role in the  
10 preparation or consumption of a food—it merely contains the Product;
- 11 (5) To the extent that the Product is packaged in a reusable container, the  
12 container is not part of the presentation of the food and has no value significant  
13 in proportion to the value of the Product and independent of its function to  
14 hold the Product; and
- 15 (6) Defendants could easily increase the level of Product fill or further  
16 reduce the size of the package.

17 *See* 21 C.F.R. 100.100(a)(1)-(6).

18 37. Under the CFPLA, “[s]lack fill is the difference between the actual capacity  
19 of a container and the volume of product contained therein.” Bus. & Prof. Code §  
20 12606.2(c). “Nonfunctional slack fill is the empty space in a package that is filled to  
21 substantially less than its capacity for reasons other than” one of the enumerated safe  
22 harbor provisions. *Id.*

23 38. The CFPLA imposes requirements which mirror the federal law, but also adds  
24 further safe-harbors. *See* Cal. Bus. & Prof. Code § 12606.2(c)(7)-(8).

25 39. California Business & Professions Code states, “[n]o container shall be made,  
26 formed, or filled as to be misleading” and “[a] container that does not allow the  
27 consumer to fully view its contents shall be considered to be filled as to be  
28 misleading if it contains nonfunctional slack fill.” *See* Cal. Bus. & Prof. Code §



1 12606(b) (incorporating the safe-harbor provisions of the Code of Federal  
2 Regulations); *see also* Cal. Health & Safety Code § 110690 (“Any food is  
3 misbranded if its container is so made, formed, or filled as to be misleading.”).

4 40. In addition to incorporating the safe-harbor provisions found in the Code of  
5 Federal Regulations, which are listed above, the CFPLA also provides that slack-fill  
6 is permissible when:

7 (7) One or more of the following [apply]:

8 (A) The dimensions of the product or immediate product container are  
9 visible through the exterior packaging.

10 (B) The actual size of the product or immediate product container is  
11 clearly and conspicuously depicted on any side of the exterior  
12 packaging, excluding the bottom, accompanied by a clear and  
13 conspicuous disclosure that the depiction is the “actual size” of the  
14 product or immediate product container. . . .

15 (C) A line or a graphic that represents the product or product fill and a  
16 statement communicating that the line or graphic represents the product  
17 or product fill such as “Fill Line,” both of which are clearly and  
18 conspicuously depicted on exterior packaging or the immediate product  
19 container if visible at point of sale. If the product is subject to settling,  
20 the line shall represent the minimum amount of product after settling.

21 (8) The mode of commerce does not allow the consumer to view or handle the  
22 physical container or product.

23 Cal. Bus. & Prof. Code § 12606.2(c)(7)-(8).

24 41. None of the above safe-harbor provisions apply to the Product. Plaintiff is  
25 informed and believes that:

26 (1) The dimensions of the Product are not visible through the exterior  
27 packaging;

28 (2) The actual size of the Product is not depicted on any side of the exterior

1 packaging;

2 (3) The packaging contains no line or graphic representing the Product fill;  
3 and

4 (4) The mode of commerce allows the consumer to view or handle the  
5 physical container holding the Product, whether the Product is purchased at a  
6 brick-and-mortar Whole Foods store or through an online seller.

7 *See* Cal. Bus. & Prof. Code § 12606.2(c)(7)-(8).

8 42. The contents of the Product are in a powdered form that do not need slack fill  
9 to protect the contents.

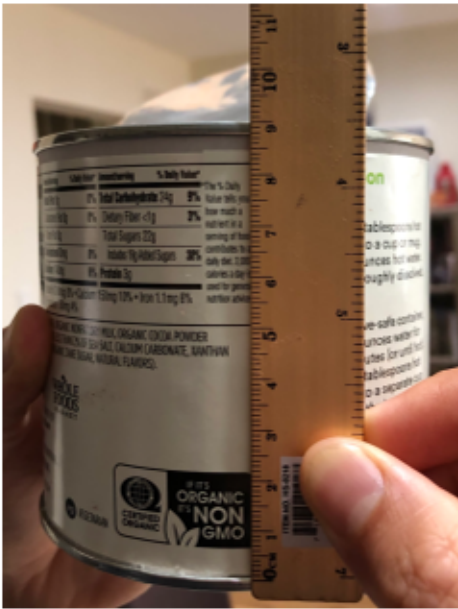
10 43. Defendants intentionally incorporated non-functional slack-fill in their  
11 packaging of the Product in order to mislead consumers, including Plaintiff and  
12 Members of the Class.

13 **Defendants' Product Contains Non-Functional Slack-Fill**

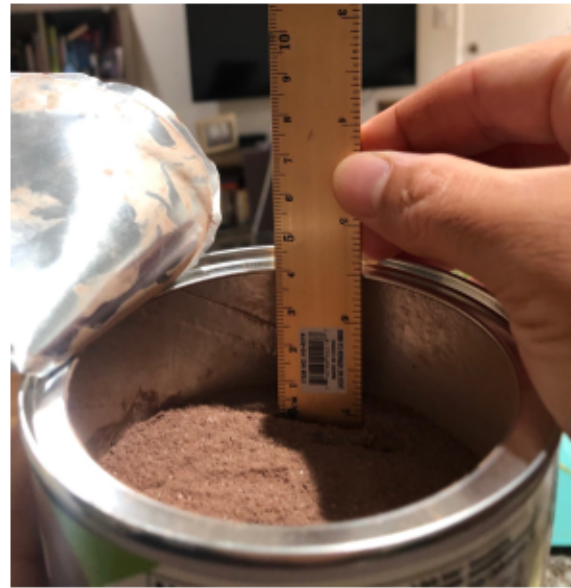
14 44. Defendants' Product is sold in non-transparent containers with significant  
15 slack-fill, as described below. The Product container depicted below is roughly 9  
16 centimeters tall, not including the thin double seams at the top and bottom of the  
17 container. *See* Photograph A below.

18 45. Between the double seams, approximately 4 centimeters, or 44% of the  
19 interior of the container, is comprised of empty space, or non-functional slack fill.  
20 *See* Photographs B, C below.

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**PHOTOGRAPH A**



**PHOTOGRAPH B**



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**PHOTOGRAPH C**



23 46. Judging from the size of the container, a reasonable consumer would expect  
24 it to be nearly completely filled with Product. Consumers are misled into believing  
25 that they are purchasing substantially more Product than they receive.

26 47. There is no functional reason for including 44% slack-fill in the Product  
27 container.

28 48. Indeed, as evidenced by the above three pictures, this Product is in powder

1 form rendering the slack-fill completely unnecessary for function as the Product  
2 cannot be damaged or lose its shape.

3 49. On information and belief, consumers have relied upon, and are continuing to  
4 rely upon, the size of the Product container as the basis for making purchasing  
5 decisions.

6 50. Consumers believe that the Product container is substantially full because they  
7 cannot see the actual contents within the non-transparent container.

8 51. On information and belief, Defendants are selling and will continue to sell the  
9 Product using these blatantly deceptive and misleading slack-filled containers.

10 52. Defendants utilize this unlawful and unfair practice of including non-  
11 functional slack-fill in the Product by concealing the powdered hot chocolate within  
12 an entirely opaque, hard tin-type circular box so that the consumer is unable to see  
13 or feel any part of the actual amount of the contents within the package. Only when  
14 the consumer opens the tin lid will they be able to look inside the packaging and see  
15 the actual mix comprises of about half of the size of the tin box.

16 53. Thus, Defendants' packaging and advertising of the Product violates various  
17 state and federal laws against misbranding, as described herein.

18 **Plaintiff Relied on Defendants' Misleading and Deceptive Conduct**  
19 **and Was Injured as a Result**

20 54. The types of misrepresentations made, as described herein, were considered  
21 by Plaintiff and Class Members (as would be considered by a reasonable consumer)  
22 when deciding to purchase the Product.

23 55. Reasonable consumers, including Plaintiff and Class Members, attached  
24 importance to whether Defendants' Product was misbranded, i.e., not legally salable,  
25 or capable of legal possession, and/or contained non-functional slack-fill.

26 56. Plaintiff and the Class Members did not know, and had no reason to know,  
27 that the Product contained non-functional slack-fill.  
28

1 57. Defendants' Product packaging was a material factor in Plaintiff and the Class  
2 Members' decisions to purchase the Product. Based on Defendants' Product  
3 packaging, Plaintiff and the Class Members believed at the time of sale that they  
4 were getting more Product than was actually being sold.

5 58. Had Plaintiff known Defendants' packaging was slack-filled, she would not  
6 have bought the Product.

7 59. Plaintiff and the Class Members paid the full price of the Product and received  
8 less Product than they expected due to the non-functional slack-fill in the Product  
9 container.

10 60. Plaintiff wants to purchase the Product again but cannot be certain that  
11 Plaintiff would not be misled again in the future unless and until Defendants make  
12 appropriate changes to their Product advertising and/or Product containers, as  
13 requested herein.

14 61. There is no practical reason for the non-functional slack-fill used to package  
15 the Product other than to mislead consumers as to the actual volume of the Product  
16 being purchased by consumers.

17 62. As a result of Defendants' misrepresentations, Plaintiff and thousands of  
18 others throughout California purchased the Product. Plaintiff and the Class (defined  
19 below) have been damaged by Defendants' deceptive and unfair conduct.

20 63. Defendants advertise and sell over 3,500 products under the "365" brand,  
21 some of which include but not limited to beverages, vitamins, and grains.<sup>10</sup>

22 64. In addition to the Product, Plaintiff would also like to purchase one or more  
23 of the products sold by Defendants under the 365 brand, but Plaintiff cannot be  
24 certain that such products would not include non-functional slack-fill, particularly  
25 when sold in opaque containers.

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28 <sup>10</sup> See <https://www.wholefoodsmarket.com/departments/365-products>, last  
accessed on February 11, 2022.

1 65. Upon information and belief, additional products of Defendants in the same  
2 product line, i.e., the 365 brand, contain non-functional slack-fill in the product  
3 container, including but not limited to Defendant's Long Grain & Wild Rice – Rice  
4 Pilaf, 6 oz. (the "Rice Pilaf Product").<sup>11</sup>

5 66. In January of 2021, Whole Foods was sued in federal court in Illinois for  
6 claims of non-functional slack-fill as it concerns its Rice Pilaf Product. *See Jacobs*  
7 *v. Whole Foods Marketing Group, Inc.*, No. 1:22-cv-00002 (N.D. Ill.), filed on  
8 January 1, 2022.

9 67. Based on Plaintiff's investigation, through counsel, a box of the Rice Pilaf  
10 Product purchased in February 2022, from Mrs. Gooch's store in Newport Beach,  
11 California, contains over 50% empty space, including non-functional slack-fill.

12 68. Specifically, the Rice Pilaf Product is packaged in a box that measures about  
13 6.75 inches in height, 4.2 inches in length and 1.5 inches wide.

14 69. Since the Rice Pilaf Product is packaged in an opaque box, consumers are  
15 unable to see from the exterior packaging how much product is contained within the  
16 box to learn before their purchase that it only contains approximately 2.50 inches of  
17 actual product (including the seasoning packet).

18 70. Because the Rice Pilaf Product's box does not allow consumers to view its  
19 contents, and contains nonfunctional slack-fill, the packaging is misleading to  
20 consumers.

21 Upon information and belief, there is no functional reason for including over 50%  
22 slack-fill in the Rice Pilaf Product box. The Rice Pilaf Product is in a dry solid form,  
23 rendering the empty space unnecessary for function, as the Rice Pilaf Product cannot  
24 be easily damaged or lose its shape.

25  
26  
27  
28 <sup>11</sup> For the avoidance of doubt, the present lawsuit brought by Ms. Goodwin does not  
assert a cause of action against Defendant as it concerns the Rice Pilaf Product.

71. Plaintiff brings this action as a class action pursuant to California Code of Civil Procedure Section 382 on behalf of herself and the following California class (collectively, the “Class”), defined as:

72. The proposed Class excludes current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any entity in which it has or has had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

74. Numerosity: This action has been brought and may properly be maintained as a class action against Defendants under California Code of Civil Procedure Section

76. Typicality: Plaintiff's claims are typical of the claims of the Members of the Class as all Members of the Class are similarly affected by Defendants' wrongful conduct, as detailed herein.



1 77. Adequacy: Plaintiff will fairly and adequately protect the interests of the  
2 Members of the Class in that she has no interests antagonistic to those of the other  
3 Members of the Class. Plaintiff has retained experienced and competent counsel.

4 78. Superiority: A class action is superior to other available methods for the fair  
5 and efficient adjudication of this controversy. Since the damages sustained by  
6 individual Class Members may be relatively small, the expense and burden of  
7 individual litigation makes it impracticable for the Members of the Class to  
8 individually seek redress for the wrongful conduct alleged herein. Furthermore, the  
9 adjudication of this controversy through a class action will avoid the potentially  
10 inconsistent and conflicting adjudications of the claims asserted herein. There will  
11 be no difficulty in the management of this action as a class action. If class treatment  
12 of these claims were not available, Defendants would likely unfairly receive  
13 thousands of dollars or more in improper revenue.

14 79. Common Questions Predominate: Common questions of law and fact exist  
15 as to all Members of the Class and predominate over any questions solely affecting  
16 individual Members of the Class. Among the common questions of law and fact  
17 applicable to the Class are:

- 18 i. Whether Defendants sold the Product in an opaque container;
- 19 ii. Whether Defendants sold the Product in containers containing at least  
20 30% empty space;
- 21 iii. Whether Defendants labeled, packaged, marketed, advertised and/or  
22 sold the Product to Plaintiff, and those similarly situated, using false,  
23 misleading and/or deceptive packaging and labeling;
- 24 iv. Whether Defendants' actions constitute violations of the FDCA, 21  
25 U.S.C. §§ 301, *et. seq.*;
- 26 v. Whether Defendants' actions constitute violations of CFPLA, Cal. Bus.  
27 & Prof. Code § 12606.2;
- 28

- 1 vi. Whether Defendants omitted and/or misrepresented material facts in  
2 connection with the labeling, packaging, marketing, advertising and/or sale of  
3 its Product;
- 4 vi. Whether Defendants' labeling, packaging, marketing, advertising  
5 and/or selling of the Product constituted an unfair, unlawful or fraudulent  
6 practice;
- 7 vii. Whether Defendants' packaging of the Product constituted  
8 nonfunctional slack-fill;
- 9 ix. Whether, and to what extent, injunctive relief should be imposed on  
10 Defendants to prevent such conduct in the future;
- 11 x. Whether the Members of the Class have sustained damages as a result  
12 of Defendants' wrongful conduct;
- 13 xi. The appropriate measure of damages and/or other relief; and
- 14 xii. Whether Defendants should be enjoined from continuing their unlawful  
15 practices.

16 80. The Class is readily definable, and prosecution of this action as a class action  
17 will reduce the possibility of repetitious litigation. Plaintiff knows of no difficulty  
18 which will be encountered in the management of this litigation which would  
19 preclude its maintenance as a class action.

20 81. The prerequisites to maintaining a class action for injunctive relief or  
21 equitable relief are met, as Defendants have acted or refused to act on grounds  
22 generally applicable to the Class, thereby making appropriate final injunctive or  
23 equitable relief with respect to the Class as a whole.

24 82. The prerequisites to maintaining a class action for injunctive relief or  
25 equitable relief are also met, as questions of law or fact common to the Class  
26 predominate over any questions affecting only individual Members; and a class  
27 action is superior to other available methods for fairly and efficiently adjudicating  
28 the controversy.

83. The prosecution of separate actions by Members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. Additionally, individual actions may be dispositive of the interest of all Members of the Class, although certain Class Members are not parties to such actions.

84. Defendants' conduct is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate, in particular where Plaintiff alleges that at least two products sold by Mrs. Gooch's under the same 365 brand contain non-functional slack-fill.

#### **FIRST CAUSE OF ACTION**

#### **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT, ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.***

85. Plaintiff realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

86. Plaintiff brings this claim individually and on behalf of the Class for Defendants' violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*

87. Defendants' actions, representations, and conduct have violated, and continue to violate the CLRA, because they extend to transactions that intended to result, or which have resulted in, the sale of goods to consumers.

88. Plaintiff and the Class Members are consumers who purchased the Product for personal, family or household purposes.

89. Defendant is a "person" as defined by Cal. Civ. Code § 1761(c).

90. Plaintiff and the Class Members are "consumers" as that term is defined by the CLRA in California Civil Code § 1761(d). Plaintiff and the Class Members are

1 not sophisticated experts with independent knowledge of corporate branding,  
2 labeling and packaging practices.

3 91. The Product that Plaintiff and other Class Members purchased from  
4 Defendants was a “good” within the meaning of California Civil Code § 1761(a).

5 92. Defendants violated federal and California law because the Product is  
6 packaged in containers made, formed or filled as to be misleading, as it contains non-  
7 functional slack-fill and is intentionally packaged to prevent the consumer from  
8 being able to fully see its contents.

9 93. California Civil Code § 1770(a)(5), prohibits “[m]isrepresenting that goods or  
10 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or  
11 quantities which they do not have or that a person has a sponsorship, approval, status,  
12 affiliation, or connection which he or she does not have.”

13 94. By engaging in the conduct set forth herein, Defendants violated and continue  
14 to violate the CLRA—specifically, section 1770(a)(5) of the California Civil  
15 Code—because Defendants’ conduct constitutes unfair methods of competition and  
16 unfair or fraudulent acts or practices, in that it misrepresents that the Product has  
17 quantities and ingredients it does not have.

18 95. California Civil Code § 1770(a)(9) further prohibits “[a]dvertising goods or  
19 services with intent not to sell them as advertised.”

20 96. By engaging in the conduct set forth herein, Defendants violated and continue  
21 to violate section 1770(a)(9), because Defendants’ conduct constitutes unfair  
22 methods of competition and unfair or fraudulent acts or practices, in that it advertises  
23 a good as containing more Product and ingredients than it in fact contains.

24 97. Plaintiff and the Class Members are not sophisticated experts about corporate  
25 branding, labeling and packaging practices. Plaintiff and the Class acted reasonably  
26 when they purchased the Product based on their belief that Defendants’  
27 representations were true and lawful.

1 98. Plaintiff and the Class suffered injuries caused by Defendants because (a) they  
2 would not have purchased the Product on the same terms absent Defendants' illegal  
3 and misleading conduct as set forth herein; (b) they paid a price premium for the  
4 Product due to Defendants' misrepresentations and deceptive packaging in  
5 containers made, formed or filled as to be misleading and containing non-functional  
6 slack-fill; and (c) the Product did not have the quantities and ingredients as promised.

7 99. Plaintiff and Class members reasonably relied upon Defendants'  
8 representations regarding Defendants' Product, and Plaintiff and the Class  
9 reasonably expected that the Product would not be illegally labeled in a misleading  
10 manner. Thus, Plaintiff and the Class reasonably relied to their detriment on  
11 Defendants' misleading representations.

12 100. Defendants knew or should have known that its representations about their  
13 Product as described herein violated state and federal consumer protection laws, and  
14 that these statements would be relied upon by Plaintiffs and Class members.

15 101. As a direct and proximate result of Defendants' violations of Cal. Civ. Code  
16 §§ 1750, *et seq.*, Plaintiff and each Class member have suffered harm in the form of  
17 paying monies to Defendants for the Product when they otherwise would not have  
18 paid for it if they knew it was illegally labeled and contained significantly less  
19 product that the packaging lead them to believe.

20 102. Pursuant to California Civil Code § 1782(a), on or about July 1, 2021 Plaintiff  
21 sent Defendants, through their parent corporation Whole Foods Market Inc.,  
22 individually and on behalf of the proposed Class, a letter via Certified Mail, advising  
23 of the violations of the CLRA alleged herein, and demanding that they cease and  
24 desist from such violations and make full restitution by refunding the monies  
25 received therefrom.

26 103. On August 10, 2021, Plaintiff sent a second demand letter, via Certified Mail,  
27 to Defendants' parent corporation Whole Foods Market Inc., pursuant to California  
28 Civil Code § 1782(a), again advising of the alleged violations of the CLRA and

1 demanding that they cease and desist from such violations and make full restitution  
2 to Plaintiff and Class Members

3 104. Defendants were adequately put on notice of Plaintiff's July 1, 2021 and  
4 August 10, 2021 notice of violation and demand for corrective action pursuant to  
5 California Civil Code § 1782(a). Indeed, these two demand letters were sent via  
6 Certified mail to Whole Foods Market Inc.'s registered agent for service of process  
7 in Texas as well as its corporate headquarters in Austin, Texas. Defendants are  
8 California corporate subsidiaries of Whole Foods Market Inc.

9 105. In compliance with California Civil Code § 1782(a), Plaintiff also served  
10 these July 2021 and August 2021 demand letters, via Certified Mail, to the "place  
11 where the transaction occurred" (i.e. the Whole Foods Market physical retail store  
12 located in Valencia, California). *See* California Civil Code § 1782(a). Plaintiff's  
13 August 10, 2021, notice of violation and demand for corrective action pursuant to  
14 California Civil Code § 1782(a) was delivered to this Valencia, California store  
15 location where Plaintiff purchased the Product on or about August 31, 2021.

16 106. Defendants failed, within 30 days of receipt of Plaintiff's demands, to provide  
17 Plaintiff with an appropriate correction, repair, replacement, or other remedy, and  
18 have offered no relief or cure for the Class Members. In fact, Defendants have not  
19 provided any response to Plaintiff's CLRA demands.

20 107. Under Cal. Civ. Code § 1780(a) and (b), Plaintiff and the putative Classes are  
21 entitled to, and seek, public injunctive relief prohibiting such conduct in the future.

22 108. Pursuant to § 1782 (e), Plaintiff and the Class assert claims for damages and  
23 attorneys' fees and costs.

24 Attached hereto as **Exhibit A** is a sworn declaration from Plaintiff pursuant to Cal.  
25 Civ. Code § 1780(d).

26  
27  
28 //

1  
2 **SECOND CAUSE OF ACTION**

3 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW,**  
4 **("UCL"), California Business & Professions Code §§ 17200, *et seq.***

5 109. Plaintiff realleges and incorporates herein by reference the allegations  
6 contained in all preceding paragraphs, and further alleges as follows:

7 110. Plaintiff brings this claim individually and on behalf of the Members of the  
8 Class for Defendants' violations of California's Unfair Competition Law, Cal. Bus.  
9 & Prof. Code §§ 17200, *et seq.*

10 111. The UCL provides, in pertinent part: "Unfair competition shall mean and  
11 include unlawful, unfair or fraudulent business practices and unfair, deceptive,  
12 untrue or misleading advertising . . ."

13 112. Defendants violated federal and California law because their Product is  
14 packaged in containers made, formed or filled as to be misleading, as it contains non-  
15 functional slack-fill, does not include ingredients depicted on the packaging, and is  
16 intentionally packaged to prevent the consumer from being able to fully see its  
17 contents.

18 ***A. "Unlawful" Prong***

19 113. Defendants' business practices, described herein, violated the "unlawful"  
20 prong of the UCL by violating section 352 of the FDCA, 21 U.S.C. § 301, the CLRA,  
21 California Business & Professions Code § 12606 (CFPLA), California Health &  
22 Safety Code § 110690, the CLRA, and other applicable law as described herein.

23 114. Defendants violated the FDCA and CFPLA, in that Defendants packaged their  
24 Product in non-conforming type containers by using non-functional slack fill. Said  
25 non-conforming packages contained extra space by volume in the interior of the  
26 container. The extra space provided no benefit to the contents of the packaging and  
27 misled consumers. In addition, Defendants packaged their Product in containers  
28



1 made, formed, or filled as to be misleading to a potential customer as to the actual  
2 size and filling of the package with Defendants' Product.

3 115. In addition, Defendants violated the CLRA by representing that Plaintiffs and  
4 Class members were receiving a Product that was correctly filled, when in fact  
5 Defendants were selling their Products using illegal and misleading packaging.

6 116. Defendants had other reasonably available alternatives to further its business  
7 interests, other than the unlawful conduct described herein, such as appropriately  
8 labeling its Product.

9 117. Instead, Defendants deliberately and illegally misled consumers for  
10 Defendants' own economic gain.

11 118. Plaintiff and Class members reserve the right to allege other violations of law,  
12 which constitute other unlawful business practices or acts, as such conduct is  
13 ongoing and continues to this date.

14 ***B. "Unfair" Prong***

15 119. Defendants' business practices, described herein, violated the "unfair" prong  
16 of the UCL in that its conduct is substantially injurious to consumers, offends public  
17 policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the  
18 conduct outweighs any alleged benefits. Defendants' advertising is of no benefit to  
19 consumers.

20 120. Without limitation, it is an unfair business act or practice for Defendants to  
21 knowingly mislabel their Product leading consumers to believing they are getting  
22 more Product than actually contained in the packaging. Plaintiff could not have  
23 reasonably avoided the injury suffered.

24 121. Plaintiff reserves the right to allege further conduct that constitutes other  
25 unfair business acts or practices.

26 ***C. "Fraudulent" Prong***

27 122. Defendants violated the "fraudulent" prong of the UCL by misleading  
28 Plaintiff and the Class to believe that the Product contained more content and

1 ingredients than it actually contained, and that such packaging and labeling practices  
2 were lawful, true and not intended to deceive or mislead consumers.

3 123. Plaintiff and the Class Members are not sophisticated experts about the  
4 corporate branding, labeling, and packaging practices of the Product. Plaintiff and  
5 the Class acted reasonably when they purchased the Product based on their belief  
6 that Defendants' representations were true and lawful.

7 124. Plaintiff and the Class lost money or property as a result of Defendants' UCL  
8 violations because (a) they would not have purchased the Product on the same terms  
9 absent Defendants' illegal conduct as set forth herein, or if the true facts were known  
10 concerning Defendants' representations; (b) they paid a price premium for the  
11 Product due to Defendants' misrepresentations; and (c) the Product did not have the  
12 quantities and ingredients as represented.

13 125. The conduct of Defendants as set forth above demonstrates the necessity for  
14 granting injunctive relief restraining such and similar acts of unfair competition  
15 pursuant to California Business and Professions Code. Unless enjoined and  
16 restrained by order of the court, Defendants will retain the ability to, and may engage  
17 in, said acts of unfair competition, and misleading advertising. As a result, Plaintiff  
18 and the Class are entitled to injunctive and monetary relief.

19  
20 **THIRD CAUSE OF ACTION**

21 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW, ("FAL"),**  
22 **California Business & Professions Code §§ 17500, *et seq.***

23 126. Plaintiff realleges and incorporates herein by reference the allegations  
24 contained in all preceding paragraphs, and further alleges as follows:

25 127. Plaintiff brings this claim individually and on behalf of the Members of the  
26 Class for Defendants' violations of California's False Advertising Law ("FAL"),  
27 California Business & Professions Code §§ 17500, *et seq.*  
28

1 128. Under the FAL, the State of California makes it “unlawful for any person to  
2 make or disseminate or cause to be made or disseminated before the public in this  
3 state ... in any advertising device . . . or in any other manner or means whatever,  
4 including over the Internet, any statement, concerning . . . personal property or  
5 services, professional or otherwise, or performance or disposition thereof, which is  
6 untrue or misleading and which is known, or which by the exercise of reasonable  
7 care should be known, to be untrue or misleading.”

8 129. Defendants engaged in a scheme of offering a misbranded Product for sale to  
9 Plaintiff and the Class Members by way of packaging the Product in containers  
10 made, formed or filled as to be misleading and which contained non-functional  
11 slack-fill.

12 130. Such practice misrepresented the content and quantity of the misbranded  
13 Product. Defendants’ advertisements were made in California and come within the  
14 definition of advertising as contained in California Business & Professions Code §§  
15 17500, *et seq.* in that the product packaging was intended as inducements to purchase  
16 Defendants’ Product. Defendants knew their conduct was unauthorized, inaccurate,  
17 and misleading.

18 131. Defendants violated federal and California law because the Product is  
19 packaged in containers made, formed or filled as to be misleading, as the Product  
20 contains non-functional slack-fill, does not include ingredients depicted on the  
21 packaging, and is intentionally packaged to prevent the consumer from being able  
22 to fully see its contents.

23 132. Defendants violated section 17500, *et seq.* by misleading Plaintiff and the  
24 Class to believe that the Product packaging contains more Product and ingredients  
25 than it in fact contains, as described herein.

26 133. Defendants knew or should have known, through the exercise of reasonable  
27 care that the Product was and continues to be misbranded, and that their  
28

1 representations about the quantities and ingredients of the Product were untrue and  
2 misleading.

3 134. Plaintiff and the Class Members lost money or property as a result of  
4 Defendant's FAL violations because (a) they would not have purchased the Product  
5 on the same terms absent Defendants' illegal conduct as set forth herein, or if the  
6 true facts were known concerning Defendants' representations; (b) they paid a price  
7 premium for the Product due to Defendants' misrepresentations; and (c) the Product  
8 did not have the ingredients, or quantities as promised, and as a result the class is  
9 entitled to monetary and injunctive relief.

10  
11 **FOURTH CAUSE OF ACTION**  
**NEGLIGENT MISREPRESENTATION**

12 135. Plaintiff repeats and realleges each and every allegation contained above as if  
13 fully set forth herein, and further alleges as follows:

14 136. Defendants, directly or through their agents and employees, made false  
15 representations, concealments and non-disclosures to Plaintiff and Members of the  
16 Class.

17 137. Defendants as the manufacturers, packagers, labelers and initial sellers of the  
18 Product purchased by Plaintiff and Class Members had a duty to disclose the true  
19 quantity and ingredients of the Product and to refrain from selling it in containers  
20 made, formed or filled as to be misleading and which contain non-functional slack-  
21 fill and do not include ingredients depicted on the packaging.

22 138. Defendants had exclusive knowledge of material facts not known or  
23 reasonably accessible to Plaintiff and Class Members; Defendants actively  
24 concealed material facts from Plaintiff and Class Members; and Defendants made  
25 partial representations that are misleading because some other material fact has not  
26 been disclosed.

27 139. Defendants' failure to disclose the information it had a duty to disclose  
28 constitutes material misrepresentations and materially misleading omissions which

1 misled Plaintiff and Class Members, who relied on Defendants in this regard to  
2 disclose all material facts accurately, truthfully and fully.

3 140. Plaintiff and Members of the Class reasonably relied on Defendants'  
4 representation that the Product contains more Product and ingredients than actually  
5 packaged.

6 141. In making the representations of fact to Plaintiff and Members of the Class  
7 described herein, Defendants have failed to fulfill its duties to disclose the material  
8 facts set forth above. The direct and proximate cause of this failure to disclose was  
9 Defendants' negligence and carelessness.

10 142. Defendants, in making the misrepresentations and omissions, and in engaging  
11 in the acts alleged above, knew or reasonably should have known that the  
12 representations were not true. Defendants made and intended the misrepresentations  
13 to induce the reliance of Plaintiff and Members of the Class.

14 143. As the manufacturer of its Product, Defendants are in the unique position of  
15 being able to provide accurate information about their Product. Therefore, there is  
16 a special and privity-like relationship between Defendants and Plaintiff and other  
17 consumers.

18 144. Defendants have a duty to correct the misinformation it disseminated through  
19 their advertising of the Product. By not informing Plaintiff and Members of the  
20 Class, Defendant breached its duty. Defendant also gained financially from and as  
21 a result of this breach.

22 145. By and through such deceit, misrepresentations and/or omissions, Defendants  
23 intended to induce Plaintiff and Members of the Class to alter their position to their  
24 detriment. Plaintiff and Members of the Class relied upon these false representations  
25 when purchasing the Product in over-sized containers depicting ingredients not  
26 included in the Product, which reliance was justified and reasonably foreseeable.

27 146. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff  
28 and Members of the Class have suffered and continue to suffer economic losses and

1 other general and specific damages, including but not limited to the amounts paid  
2 for the Product, and any interest that would have been accrued on those monies, all  
3 in an amount to be determined according to proof at time of trial.

4 147. Defendants acted with intent to defraud, or with reckless or negligent  
5 disregard of the rights of Plaintiff and Members of the Class.

6 148. Plaintiff and Members of the Class are entitled to relief in an amount to be  
7 proven at trial, and injunctive relief.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, and each  
10 of them, as follows:

- 11 • For an Order certifying the Class and appointing Plaintiff as class  
12 representative, and designating Plaintiff's counsel as counsel for the Class;
- 13 • For an Order declaring that Defendants' conduct violated the CLRA,  
14 California Civil Code §§ 1750, *et seq.*, and awarding (i) injunctive relief, (ii)  
15 costs of suit, and (iii) reasonable attorneys' fees;
- 16 • For an Order declaring that Defendants' conduct violated California's Unfair  
17 Competition Law, California Business & Professions Code §§ 17200, *et seq.*;  
18 and California's False Advertising Law, California Business & Professions  
19 Code §§ 17500, *et seq.*; and awarding (i) injunctive relief, (ii) actual damages,  
20 (iii) prejudgment and post judgment interest; (iv) exemplary and/or punitive  
21 damages pursuant to California Civil Code § 3294, (v) costs of suit, and (iv)  
22 reasonable attorneys' fees pursuant to, *inter alia*, California Code of Civil  
23 Procedure § 1021.5;
- 24 • An Order compelling Defendants to recall and destroy all misleading and  
25 deceptive advertising materials, including through public injunctive relief;
- 26 • For an Order requiring Defendants to disgorge all monies, revenues, and  
27 profits obtained by means of any wrongful act or practice;

- For an order requiring imposition of a constructive trust and and/or disgorgement of Defendants' ill-gotten gains and to pay restitution to Plaintiff and all members of the Class and to restore to Plaintiff and members of the Class all funds acquired by means of any act or practice declared by this court to be an unlawful, fraudulent, or unfair business act or practice, in violation of laws, statutes or regulations, or constituting unfair competition, plus pre- and post-judgment interest thereon;
- For an Order finding that Defendants made Negligent Misrepresentations, and awarding special, general, and compensatory damages to Plaintiff and the Class;
- For pre and post-judgment interest on all amounts awarded;
- For actual damages, injunctive relief, restitution, and punitive damages pursuant to California Code of Civil Procedure § 1780;
- For an order of restitution and all other forms of equitable monetary relief, as pleaded;
- For public injunctive relief as pleaded or as the Court may deem proper;
- For an Order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit as pleaded; and
- For such other and further relief as the Court deems just and proper.

#### **DEMAND FOR TRIAL BY JURY**

Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: October 28, 2024

Respectfully submitted,

**KAZEROUNI LAW GROUP, APC**

By:   
Abbas Kazerounian, Esq.  
ATTORNEY FOR PLAINTIFF



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# **Exhibit A**



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$650K Hot Cocoa Settlement Ends Whole Foods Slack-Fill Class Action Lawsuit](#)

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