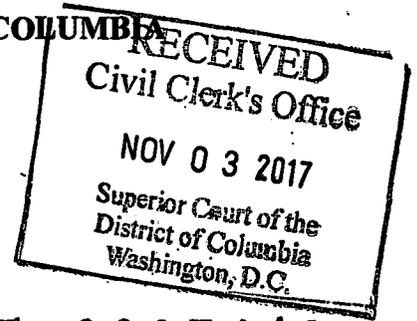


IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
(Civil Division)



THOMAS ALSTON)
10012 Cedarhollow Ln)
Largo, MD 20774)

on behalf of himself and)
all others similarly situated)

Plaintiff,)

v.)

WHOLE FOODS MARKET GROUP)
Serve: C T Corporation System)
1015 15th Street NW, Suite 1000)
Washington, District of Columbia 20005)

Defendant.)

Civil Action No. ~~17-0007449~~

CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

COMPLAINT AND JURY DEMAND

The Plaintiff, Thomas Alston, on behalf of himself and all other similarly situated, brings this complaint, for injunctive relief and damages against defendant Whole Foods Market Group (“Whole Foods”), and alleges as follows:

PRELIMINARY STATEMENT

1. Defendant Whole Foods systematically uses deceptive and fraudulent marketing tactics against its customers. Such deceptive and fraudulent acts violate the District of Columbia Consumer Protection Procedures Act, D.C. Code §28-3901 *et seq.* (“DCCPPA”) and constitute common law fraud.

PARTIES

- 2. Plaintiff is a natural person and “consumer” under D.C. Code §28-3901(a)(2).
- 3. Defendant owns and operates a chain of natural food supermarkets and is a “merchant” under D.C. Code §28-3901(a)(3).

FACTUAL ALLEGATIONS

4. In May 2017, on numerous occasions Mr. Alston visited the Whole Foods natural food store located at 1440 P Street NW in Washington DC.

5. In each or most of his visits, Mr. Alston purchased, among other things, a health bar called the Larabar.

6. The Larabar was being advertised at a sale price of \$1.00.

7. The regular price, or non-sale price, is \$1.29.

8. Mr. Alston purchased the Larabar because it was on sale.

9. Despite being advertised at \$1.00, the Larabar actually cost \$1.29.

10. Mr. Alston made several purchases over several days before he noticed that he was being charged \$1.29 instead of \$1.00.

11. Whole Foods deceptively advertised the Larabar as being on sale for less than the actual costs to generate more sales.

12. Whole Foods calculated that most consumers would not notice the 29 cents overcharge, would not bother to say anything after they noticed the overcharge or that they would simply refund the overcharge if a consumer requested a refund.

13. It is uncommon for a super market, let alone a national super market as well-known as Whole Foods, to employ such fraudulent and deceptive sales tactics.

14. In most circumstances, a consumer can count on an advertised sale being honest and the advertised price being the price that they are charged.

15. It is common for a consumer not to pay attention to exact amounts that they are being charged for their purchase.

16. ^{In the past,} Plaintiff has purchased items, including Larabars, on sale from Whole Foods where the advertised sale price was the price that was charged.

17. Plaintiff had no reason not to trust Whole Foods and justifiably relied on the listed sale prices as being the prices that he would be charged at the cash register.

18. Plaintiff would not have purchased any Larabars or would have purchased less Larabars if he knew the price was \$1.29.

CLASS ACTION ALLEGATIONS

19. Plaintiff seeks to maintain this action as a class action representing a class consisting of the following:

All individuals who, within three years of the filing of this complaint, have ~~been~~ purchased a Larabar from Whole Foods and paid \$1.29 for the Larabar when the Larabar's listed sale price was \$1.00.

20. *Ascertainability/Numerosity*: The class is ascertainable in that it is comprised of individuals who can be identified by reference to purely objective criteria. There are hundreds, if not thousands of members of the class and, therefore, it would be impracticable to bring all, or even a substantial percentage of, such persons before the Court as individual plaintiffs.

21. *Typicality*: The claims of the named plaintiff are typical of the claims of each member of the class he seeks to represent because: (1) they have all been injured in the same manner as a result of Defendant's false advertising.

22. *Adequacy Of Representation*: Plaintiff is an adequate representative of the class he seeks to represent because: (a) he is willing and able to represent the proposed class and has every incentive to pursue this action to a successful conclusion; (b) his interest is not in any way antagonistic to those of the other class members; and (c) he will be represented by experienced and competent counsel.

23. *Commonality*: There are questions of law and fact common to all members of the Class. The overarching questions of law and fact that are common to all members of the class are whether:

- (a) Whole Foods advertised or listed the sale price for the Larabar as \$1.00;
- (b) Individuals of the class bought the Larabars from Whole Foods for \$1.29;
- (c) Individuals believed they were paying \$1.00 for Larabars;
- (d) Whole Foods intended to deceive the individuals into paying more than they thought they would pay;
- (e) Whole Foods deceptive advertising is violation of the DCCPPA; and
- (f) Whole Foods deceptive advertising constitutes fraudulent misrepresentation.

30. ~~*Propriety of Class Certification Under Fed. R. Civ. P. 23(b)(2)*~~ Class certification of plaintiff's claims is appropriate under ~~Fed. R. Civ. P. 23(b)(2)~~ because Defendant has acted and/or refused to act on grounds generally applicable to the class, thereby making declaratory and final injunctive relief appropriate. Such generally applicable grounds consist of Chase's conduct in failing and refusing to follow reasonable procedures in connection with its investigation of erroneous reporting of debts that have been discharged following the issuance of an order approving a consumer's Chapter 7 bankruptcy petition.

31. ~~*Propriety of Class Certification Under Fed. R. Civ. P. 23(b)(3)*~~ Class certification of plaintiff's claims for willful failure to employ reasonable reporting procedures in violation of 15 U.S.C. ~~1681c-2(b)~~ is also appropriate under ~~Fed. R. Civ. P. 23(b)(3)~~. The common questions of law and fact relating to plaintiff's willful violation claims predominate over questions affecting only individual members. Moreover, the class action vehicle is superior to other available methods for the fair and efficient adjudication of these claims. For the vast majority of members of the class, the amount of any potential recovery is too small to justify the cost of prosecuting their claims individually, despite the availability of costs and attorney fees in the event they were to prevail on the merits. Further, requiring each class member to pursue his or her claim individually would entail needless duplication of effort,

would waste the resources of both the parties and the Court, and would risk inconsistent adjudications.

COUNT ONE: VIOLATIONS OF DCCPPA

~~24~~²³ Plaintiff reincorporates all the allegations above by reference.

~~25~~²⁴ Whole Foods made statements that misrepresented the actual price and tended to mislead Plaintiff into believing that the price for the Larabars were less than the actual price of the Larabars.

~~26~~²⁵ Whole Foods statements omitted the actual price of the Larabars which was higher than the listed price and caused Plaintiff to believe the price for the Larabar was lower than the actual price.

~~27~~²⁶ Whole Foods foregoing illegal actions violated D.C. Code §§28-3904(e) and (f) by misrepresenting material facts that have a tendency to mislead and failing to disclose material facts of which such failure tended to mislead.

~~28~~²⁷ As a result of the aforesaid DCCPPA violations, Whole Foods is liable for: treble damages, or \$1,500 per violation pursuant to §28-3904(k)(2)(A); punitive damages in the amount of \$500,000 pursuant to §28-3904(k)(2)(C); and any reasonable attorney fees incurred in the litigation of this action pursuant to §28-3904(k)(2)(B).

COUNT TWO: FRAUD

~~29~~²⁸ Plaintiff incorporates the preceding allegations by reference.

~~30~~²⁹ Whole Foods stated the price was \$1.00 for the Larabar..

~~31~~³⁰ Whole knew the price was \$1.29 and knew that its statements to Plaintiff that the price was \$1.00 was a false representation.

~~32~~³¹ Whole Foods intended that Plaintiff rely on its false representations and purchase the Larabar on the belief that the price was lower than the actual price.

~~33~~ Plaintiff did in fact rely on the representations made by Whole Foods and purchased the Larabars on the misguided belief that the Larabars were on sale for a lower price than the normal price.

~~34~~ Whole Foods conduct had the capacity, tendency or effect of deceiving Plaintiff, who in fact was deceived or misled, causing injury and loss through: purchasing Larabars that he would not have purchased if he knew the Larabar was not on sale; spending more money to purchase the Larabar than the listed price for the Larabar; costs incurred traveling to Whole Foods to buy the Larabars while they were on sale; frustration, irritation, annoyance and anger of being defrauded into expending money that he would not have otherwise spent; physical sickness resulting from emotional and mental distress; and for court costs and attorneys' fees.

JURY DEMAND

~~35~~ Plaintiff demands a trial by jury on behalf of himself and the class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment in his favor for the following:

- (a) Certification of the proposed Class;
- (b) Actual, statutory and punitive damages to Plaintiff;
- (c) Approval of a \$25,000 incentive award for the Named Plaintiff;
- (d) Award reasonable attorney's fees and costs; and
- (e) Any such other relief the Court deems just, equitable and proper.

Respectfully submitted,

THOMAS ALSTON



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