

THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

CARMINE CLEMENTE and SAMANTHA
KILGALLEN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

WHOLE FOODS MARKET GROUP, INC.,
and WFM PRIVATE LABEL, L.P.,

Defendants.

Case No. _____

Removed from The Court Of Common Pleas
Philadelphia County

DEFENDANTS' NOTICE OF REMOVAL

Defendants Whole Foods Market Group, Inc., and WFM Private Label, L.P. (collectively, "Defendants"), by and through their attorneys, Seyfarth Shaw LLP, and pursuant to 28 U.S.C. §§ 1332 and 1441, hereby file this Notice of Removal¹ with respect to the above-captioned case, which was filed and currently is pending in the Court of Common Pleas of Philadelphia County, Pennsylvania. In support of this Notice of Removal, Defendants state as follows:

Timeliness of Removal

1. On or about August 11, 2014, Plaintiffs Carmine Clemente and Samantha Kilgallen ("Plaintiffs") initially filed a Class Action Complaint against Defendant Whole Foods Market Inc. in the Court of Common Pleas of Philadelphia County, PA. On or about September 11, 2014, Plaintiffs filed their First Amended Class Action Complaint against Defendants Whole Foods Market Group, Inc. and WFM Private Label, L.P. The lawsuit is recorded on that court's

¹ The arguments raised in this Notice of Removal are for the purposes of removal only. By the assertion or omission of any argument or reliance upon any law, Defendants do not intend to waive and specifically reserve their rights to assert any defenses and/or objections to which they may be entitled to assert through dispositive motion or otherwise.

docket as Case ID No. 140801271. There are no other parties named in Plaintiffs' First Amended Class Action Complaint at the time of filing this removal.

2. The original Class Action Complaint was not served.

3. On September 16, 2014, a copy of the First Amended Class Action Complaint was served by electronic mail upon Defendants' attorneys pursuant to agreement.

4. A true and correct copy of Plaintiff's Class Action Complaint is attached hereto as **Exhibit A**. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of Plaintiffs' First Amended Class Action Complaint, which constitutes "all summons, pleadings, and orders" served upon the Defendants in the Court of Common Pleas action is attached hereto as **Exhibit B**.

5. Because Defendants have filed this Notice of Removal within thirty (30) days of service, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

Basis for Removal

6. The basis for removal is diversity of citizenship under 28 U.S.C. § 1332.

7. The parties are completely diverse:

- (a) Plaintiffs are citizens of the Commonwealth of Pennsylvania;
- (b) The potential class members are all citizens of the Commonwealth of Pennsylvania;
- (c) Defendant Whole Foods Market Group, Inc. is a Delaware Corporation, with its principal place of business in Texas;
- (d) Defendant WFM Private Label, L.P. is a Delaware limited partnership, with its principal place of business in Texas;
- (e) WFM Procurement Investments, Inc., is a 99.99% limited partner of WFM Private Label, L.P. It is a Delaware corporation with a principal place of business in Delaware; and
- (f) WFM Private Label Management, Inc. is a .01% general partner of WFM Private Label, L.P. It is a Delaware corporation with a principal place of business in Texas.

8. Accordingly, this action is one in which none of the parties in interest properly joined and served as a defendant is a citizen of the state in which the action was brought. 28 U.S.C. § 1441(b).

9. The amount-in-controversy requirement is also satisfied. Indeed, several elements of the relief Plaintiffs seek independently exceed the jurisdictional minimum; combined, the relief Plaintiffs seek will undoubtedly exceed it.

10. The First Amended Class Action Complaint asserts claims under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq., and common law breach of express and/or implied warranty, arising from the sale of Whole Foods 365 Everyday Value Plain Greek Yogurt (“Greek Yogurt”). On behalf of a putative class of Pennsylvania citizens of over 10,000 persons, it seeks injunctive and declaratory relief, damages and treble damages, and reasonable attorneys’ fees and costs.

11. In addition to the damages and treble damages Plaintiffs seek, the Pennsylvania Unfair Trade Practices and Consumer Protection Law authorizes recovery of reasonable attorneys’ fees. *See* 73 P.S. § 201-9.2. And Plaintiffs’ seek this relief in their First Amended Complaint. If this putative class action proceeds through class certification and trial to verdict, Plaintiffs’ attorneys’ fees alone will undoubtedly exceed \$75,000 by two or more times.

12. Additionally, the First Amended Class Action Complaint seeks injunctive and/or equitable relief, including “refund and/or recall” of all Greek Yogurt, and apparently removal of “all products bearing” the allegedly “erroneous labels from its shelves.” ¶¶ 35(g), 86, *see also* p. 18 “Prayer for Relief.” Based on Defendants’ review of relevant sales data, sales of the Greek Yogurt in Pennsylvania during the relevant time period totaled several times the minimum jurisdictional amount. Therefore, the refund component alone would exceed the minimum

jurisdictional requirement. And the remaining injunctive relief of a recall and removal of product would by themselves also exceed the jurisdictional minimum. Even if one of these separate components of relief did not by itself exceed the jurisdictional minimum, a combination of all of them exceeds it.

Additional Information

13. This Notice of Removal is being filed in the United States District Court for the Eastern District of Pennsylvania as this is the district court within which the Court of Common Pleas action is pending. 28 U.S.C. § 1441(a).

14. Promptly upon the filing of this Notice of Removal, Defendants shall file a Notice of Filing of Notice of Removal, with a copy of the Notice of Removal, with the Court of Common Pleas of Philadelphia County, PA, and will serve a copy thereof on counsel of record for Plaintiffs, pursuant to 28 U.S.C. § 1446(d). (Court of Common Pleas planned filing attached hereto as **Exhibit C**.)


15. By filing this Notice of Removal, Defendants do not waive any defenses available at law, in equity or otherwise.

WHEREFORE, Defendants respectfully request that the above-referenced civil action proceed in the United States District Court for the Eastern District of Pennsylvania as an action properly removed thereto.

DATED: October 2, 2014

SEYFARTH SHAW LLP

By: _____


Jacob Oslick (PA #311028)

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620 Eighth Avenue

New York, NY 10018-1405

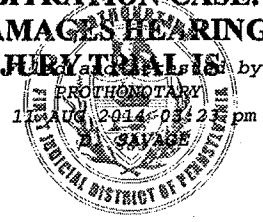
Telephone (212) 218-6480

Facsimile (917) 344-1315

Counsel for Defendants

EXHIBIT A

THIS IS NOT AN ARBITRATION CASE. ASSESSMENT OF DAMAGES HEARING IS REQUIRED. MAJOR JURY TRIALS DEMANDED.



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By: Stephen P. DeNittis, Esquire
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1515 Market Street, Suite 1200
Philadelphia, PA 19102
(215) 564-1721

<p>CARMINE CLEMENTE and SAMANTHA KILGALLEN, on behalf of themselves and all others similarly situated,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>WHOLE FOODS MARKET INC.,</p> <p style="text-align: right;">Defendant.</p>	<p>COURT OF COMMON PLEAS PHILADELPHIA COUNTY</p> <p>TERM</p> <p>NO.</p> <p>CLASS ACTION</p>
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NOTICE - CIVIL ACTION – CONSUMER FRAUD CLASS ACTION

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyers Reference Service
Philadelphia County Bar Association
One Reading Center
Philadelphia, PA 19107
(215) 238-1701

**THIS IS NOT AN ARBITRATION CASE.
ASSESSMENT OF DAMAGES HEARING IS
REQUIRED. MAJOR JURY TRIAL IS
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INTRODUCTION

1. This is a class action, brought under Pennsylvania law, on behalf of a class of Pennsylvania citizens who purchased "Whole Foods 365 Everyday Value Plain Greek Yogurt," in one of the 10 Whole Foods Market stores located in Pennsylvania, between August 11, 2008 and the present.
2. The "Nutrition Facts" label on each and every container of "Whole Foods 365 Everyday Value Plain Greek Yogurt" states in uniform language that this product contains 2 grams of sugar per 170 gram serving.
3. This written, uniform statement of fact on each such "Nutrition Facts" label is false.
4. In actuality, as confirmed in six recent tests conducted by the noted consumer

publication “Consumer Reports,” “Whole Foods 365 Everyday Value Plain Greek Yogurt” contains at least 11.4 grams of sugar per 170 gram serving—nearly six times the stated on the product’s label. See Attachment A, Consumer Report article dated July 17, 2014.

5. Whole Foods Market’s website brags to consumers about how thoroughly Whole Foods Market checks the accuracy of the labels of its store brands, telling consumers:

“Our Private Label registered dietician reviews each nutrition label for accuracy and completeness before the label is printed. All attempts are made to review nutrition labels on a regular basis to ensure accuracy”

6. Unless this statement on Defendant’s website is false, then Whole Foods Market was fully aware of the contents of its store brand Greek yogurt and of the fact that the yogurt’s sugar content does not match what is stated on the label.

7. Upon information and belief, Defendant Whole Foods Market, Inc. has been fully aware that it was drastically understating the amount of sugar on the “Whole Foods 365 Everyday Value Plain Greek Yogurt” label and that the actual sugar content of the product was many times higher than the 2 grams per serving falsely stated on the label.

8. The Greek yogurt offered by Defendant’s competitors generally have a listed sugar content of between 5 and 10 grams of sugar per serving.

9. No yogurt on the market actually has only 2 grams of sugar per serving.

10. Rather, the Greek yogurt with the lowest sugar content on the market has 5 grams of sugar per 170 gram serving.

11. By falsely claiming a sugar content of only 2 grams per serving, Defendant

Whole Foods Market, Inc. sought to give itself a competitive advantage and to use this false statement of contents to induce consumers to purchase “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

12. Despite the test results published by Consumer Reports, Whole Foods Market has not pulled the mislabeled yogurt off its shelves and continues to sell the mislabeled product to consumers in its Pennsylvania stores every day.

13. This complaint seeks injunctive, declaratory and monetary relief for Plaintiffs and the proposed class of Pennsylvania citizens, under the under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 Pa. Cons.St. § 201–1 et seq and Pennsylvania common law relating to express warranty.

JURISDICTION AND VENUE

14. All claims in this matter arise exclusively under Pennsylvania law.

15. This matter is properly venued in the Philadelphia Court of Common Pleas, in that Plaintiff Clemente purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” at the Whole Foods Market located on South Street, Philadelphia, Plaintiffs reside in Philadelphia and Defendant Whole Foods Market, Inc. does business, inter alia, in Philadelphia.

THE PARTIES

16. Plaintiff Clemente resides in Philadelphia, Pennsylvania.

17. Plaintiff Kilgallen resides in Philadelphia, Pennsylvania.

18. Like all members of the proposed class, Plaintiffs are each Pennsylvania citizens who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in Pennsylvania between August 11, 2008 and August 11, 2014 which stated on “Nutritional Facts” label that the yogurt contained “sugars 2g” per 170 gram serving.

19. Specifically, Plaintiff Clemente purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from the Whole Foods Market located on South Street, Philadelphia on various dates between August 11, 2008 and August 11, 2014, including on August 4, 2014 when he purchased two containers of “Whole Foods 365 Everyday Value Plain Greek Yogurt” for \$1.29 each from Whole Foods Market located on South Street, Philadelphia.

20. Specifically, Plaintiff Kilgallen purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from the Whole Foods Market stores located at 1575 The Fairway, Jenkintown, PA 19046 and 339 E Lancaster Ave, Wynnewood, PA 19096 on various dates between August 11, 2008 and August 11, 2014, including on August 5, 2014 when she purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” for \$1.29.

21. Defendant Whole Foods Market, Inc. is incorporated in Texas and maintains its principal executive offices at 550 Bowie Street in Austin, Texas.

CLASS ACTION ALLEGATIONS

22. **Class Definitions:** Plaintiffs Clemente and Kilgallen bring this action as a class action pursuant to Rule 1701, et seq. of the Pennsylvania Rules of Civil Procedure on behalf of themselves and all members of the following proposed Class:

All Pennsylvania citizens who, between August 11, 2008 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in Pennsylvania.

23. Plaintiff Kilgallen also brings this action as a class action pursuant to Rule 1701, et seq. of the Pennsylvania Rules of Civil Procedure on behalf of herself and all members of the following proposed Sub-Class:

All Pennsylvania citizens who, between August 11, 2008 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek

Yogurt” from a Whole Foods Market located in Pennsylvania, using a credit card, debit card or via Whole Foods Market’s “online ordering” program.

24. **Rule 1702(1) Numerosity**: The class and sub-class for whose benefit this action is brought is so numerous that joinder of all members is impracticable.

25. Upon information and belief, the proposed class is composed of at least 10,000 Persons and the proposed sub-class is composed of at least 5,000 persons.

26. **Rule 1702(2) Commonality**: Common questions of law and fact exist as to each class member.

27. All claims in this action arise exclusively from the uniform labeling policy as alleged herein.

28. No violations alleged in this complaint are a result of any individualized oral communications or individualized interaction of any kind between class members and Defendant or anyone else.

29. Rather, all claims in this matter arise from the identical, false affirmative statements made by Defendant on the “Nutrition Facts” label on all containers of “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

30. There are common questions of law and fact affecting the rights of the class members, including, inter alia, the following:

- a. Whether “Whole Foods 365 Everyday Value Plain Greek Yogurt” contains more than “Sugars 2g” per 170 gram serving;
- b. Whether Defendant was aware that “Whole Foods 365 Everyday Value Plain Greek Yogurt,” contained at least 11 grams of sugar per 170 gram serving;
- c. The date Defendant became aware that “Whole Foods 365 Everyday Value Plain Greek Yogurt,” contained at least 11 grams of sugar per 170 gram serving;

- d. Whether Defendant's act in placing the words "Sugars 2g" per 170 gram serving on Defendant's "Nutrition Facts" label for "Whole Foods 365 Everyday Value Plain Greek Yogurt," was as "deceptive conduct which creates a likelihood of confusion or misunderstanding" within the meaning of 73 P.S. § 201-2(4)(xxi);
- e. Whether Defendant engaged in a knowing omission of material fact by failing to inform consumers in any fashion that the actual sugar content of a 170 gram serving of "Whole Foods 365 Everyday Value Plain Greek Yogurt," was over 11 grams of sugar;
- f. Whether Defendant's act in placing the words "Sugars 2g" per 170 gram serving on Defendant's "Nutrition Facts" label for "Whole Foods 365 Everyday Value Plain Greek Yogurt" violated Pennsylvania common law regarding express warranty; and
- g. Whether Plaintiffs and the class are entitled to an order for declaratory and injunctive relief directing Defendant to participate in a court-supervised program of refund and/or recall of "Whole Foods 365 Everyday Value Plain Greek Yogurt" which contain the label described herein.

31. **Rule 1702(3) Typicality:** The claims of Plaintiffs are typical of those of all class members.

32. The claims of plaintiffs are not only typical of all class members, they are identical.

33. All claims of plaintiffs and the class arise from the same identical, false, statement of affirmative fact by Defendant, in which Defendant placed the words "sugars 2g" per 170 gram serving on Defendant's "Nutrition Facts" label for "Whole Foods 365 Everyday Value Plain Greek Yogurt" and from the same material omission of fact in that Defendant failed to warn customers in any fashion that this product had an actual sugar content of over 11 grams of sugar per 170 gram serving.

34. All claims of plaintiffs and the class are based on the exact same legal theories.

35. **Rule 1702(4) Adequacy of Class Representation:** Plaintiffs will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709.

36. Plaintiffs are members of the class they seek to represent and Plaintiff Kilgallen is a member of the sub-class she seeks to represent.

37. Plaintiffs have no interest antagonistic to, or in conflict with, the class.

38. Plaintiffs will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent themselves and the class.

39. Plaintiffs have no interest antagonistic to, or in conflict with, the class.

40. Plaintiffs will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent themselves and the class.

41. **Rule 1702(5)**: A class action would provide a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

42. **Rule 1708**: A class action is a fair and efficient method of adjudicating the controversy.

43. Common questions of law or fact predominate over any question affecting only individual members.

44. The prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would confront Defendant with incompatible standards of conduct.

45. Adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of other members not parties to the adjudications and would substantially impair or impede their ability to protect their interests.

46. To plaintiffs' knowledge, no other litigation has already commenced raising these same issues against Defendant in Pennsylvania or under Pennsylvania law.

47. This particular forum is appropriate for the litigation of the claims of the entire class since all proposed class members purchased "Whole Foods 365 Everyday Value Plain Greek Yogurt" from Whole Foods Market stores in Pennsylvania, the action raises claims exclusive

under Pennsylvania law, and Plaintiff Clemente purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” at the Whole Foods Market in Philadelphia.

48. The expenses of litigation of separate claims by individual class members would be high compared to the potential recovery of each individual class member.

49. Indeed, the product at issue costs less than \$5 and thus individual actions to recover that amount, or any portion of that amount, are not economically feasible.

50. Thus, the absence of class certification would spell the death knell of any litigation over Defendant’s failure to live up to the sugar content promised on its nutrition label.

51. The exact size of the class and sub-class is currently unknown to plaintiffs but is believed to be over 10,000 and 5,000 respectively and there will be no difficulties likely to be encountered in the management of the action as a class action.

52. **Rule 1709:** The attorneys for the representative parties will adequately represent the interests of the class and sub-class.

53. Plaintiffs’ attorneys have participated in over 100 class actions and have been appointed by courts to serve as sole class counsel or class co-counsel in over 50 certified class actions.

54. Plaintiffs have no conflict of interest with other class members.

55. Plaintiffs seek the same relief for himself as for every other class member.

56. Plaintiffs have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

FACTS GIVING RISE TO THE CAUSE OF ACTION

57. Defendant is in the business of manufacturing, distributing, marketing, and selling, inter alia, “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

58. The “Whole Foods 365 Everyday Value Plain Greek Yogurt” is an exclusive

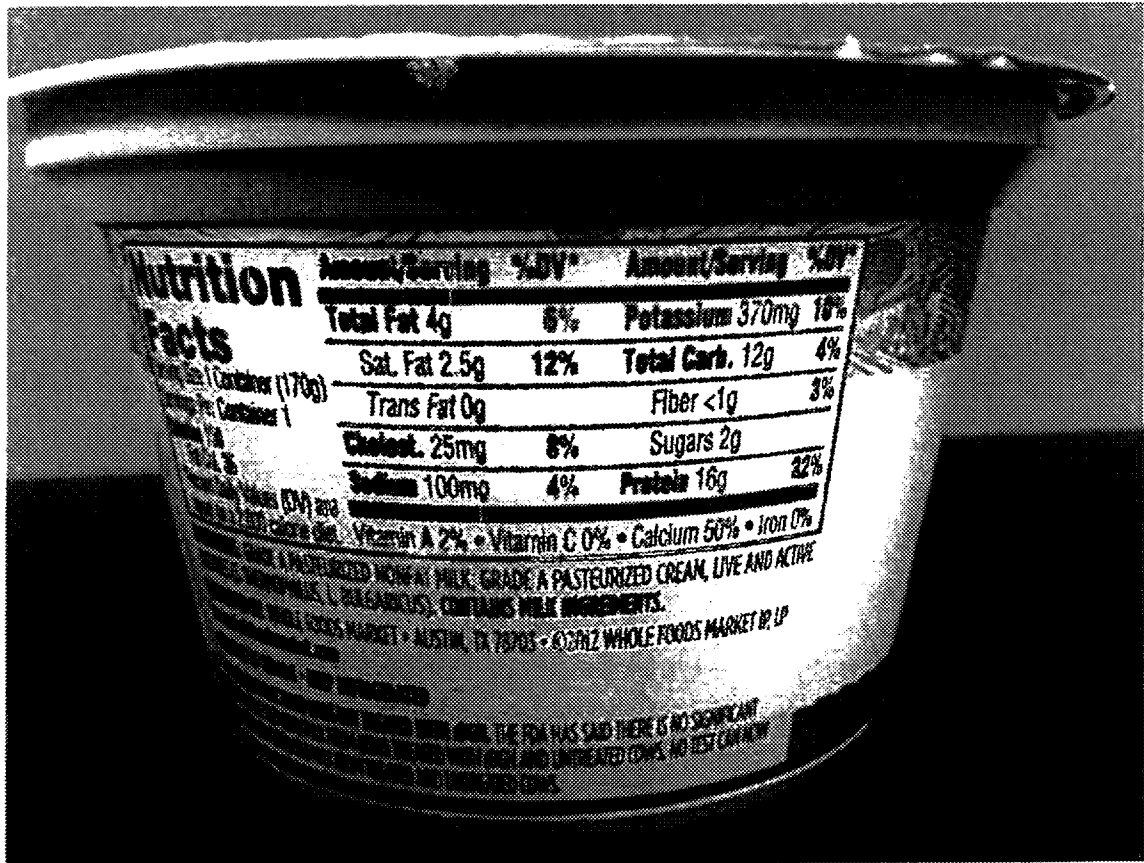
Whole Foods Market store brand, which, as with Defendant's other products, Defendant sells under the store motto "Health Starts Here."

59. Whole Foods Market's website touts the high nutritional value of its products, stating:

"Healthy eating is a basic foundation for optimum health and well-being. By supporting healthy eating education we inspire and empower our stakeholders to make the best health-supportive, delicious foods choices to maximize personal health and vitality."

60. Defendant maintains 10 Whole Foods Markets in Pennsylvania.

61. Since the initial offering of "Whole Foods 365 Everyday Value Plain Greek Yogurt," each and every "Nutrition Facts" label on each container of "Whole Foods 365 Everyday Value Plain Greek Yogurt" sold by Defendant has falsely stated that this yogurt contains "Sugars 2g" per serving.



62. In July of 2014, the noted consumer publication “Consumer Reports” published the results of six recent tests conducted by Consumer Reports on “Whole Foods 365 Everyday Value Plain Greek Yogurt,” which revealed to the public that “Whole Foods 365 Everyday Value Plain Greek Yogurt” contains at least 11.4 grams of sugar per 170 gram serving—nearly six times the stated on the product’s label. See Attachment A, Consumer Report article dated July 17, 2014.

63. Defendant, as the developer, manufacturer, and exclusive seller and distributor of “Whole Foods 365 Everyday Value Plain Greek Yogurt” has been aware since the product’s inception that the product contains more than 5 times the amount of sugar represented on the product’s “Nutrition Facts” label.

64. Indeed, Whole Foods Market’s website brags to consumers about how thoroughly Whole Foods Market checks the accuracy of the labels of its store brands, telling consumers:

“Our Private Label registered dietician reviews each nutrition label for accuracy and completeness before the label is printed. All attempts are made to review nutrition labels on a regular basis to ensure accuracy”

65. Unless such statements are false, then Whole Foods Market was fully aware of the contents of its store brand Greek yogurt.

66. Moreover, Defendant was aware that no Greek yogurt on the market has only 2 grams of sugar per 170 gram serving and that the lowest sugar content of any Greek yogurt for sale is 5 grams per serving; more than twice as much as what Defendant falsely stated on the label for “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

67. Defendant’s act in vastly understating the sugar content of “Whole Foods 365 Everyday Value Plain Greek Yogurt” is not harmless trivia. For many members of the class, sugar content is an important component of their diet.

68. Defendant was fully aware that drastically understating the sugar content on the label of its “Whole Foods 365 Everyday Value Plain Greek Yogurt” would give Defendant a competitive advantage over its competitors, all of which list a sugar content at least twice as high as the 2 grams per serving falsely stated on Defendant’s label.

69. Many of Defendant’s competitors sell their Greek yogurt for substantially less than the price charged by Defendant for “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

70. Indeed, numerous internet blogs and consumer websites maintain that Whole Foods Market’s prices are generally higher than those of competing grocery stores, leading some consumers to nickname it “Whole Paycheck Market.”

71. These sites maintain that Whole Foods Market attempts to justify its generally higher prices by claiming that the “value” of Defendant’s products derives from its high quality and the fact that it is supposedly “healthier” than other foods.

72. For example, Whole Foods Market’s website states:

“Our goal is to sell the highest quality ingredients that also offer high value for our consumers. High value is a product of high quality at a competitive price. Our product quality standards focus on ingredients, freshness, taste nutritive value, safety and/or appearance.”

73. It appears that Whole Foods Market attempts to convey the idea to its customers that its higher prices are “worth it” because it has higher quality and healthier products.

74. By falsely understating the sugar content of “Whole Foods 365 Everyday Value Plain Greek Yogurt,” Defendant made it seem as if the higher price of this product was justified because it had only 2 grams of sugar per serving; which – if true – would have made it the Greek yogurt with the lowest sugar content on the market.

75. Thus, it was Defendant's conscious intent to induce consumers to purchase "Whole Foods 365 Everyday Value Plain Greek Yogurt" by falsely stating that the sugar content per serving was only 2 grams, when, in fact, the actual sugar content was over 11 grams per serving; higher than the cheaper Greek yogurts being sold by Defendant's competitors.

76. Finally, there can simply no dispute that after the Consumer Reports report was published on July 17, 2014, Whole Foods Market had actually notice that the label on its "Whole Foods 365 Everyday Value Plain Greek Yogurt" was erroneous and that this product had more than 5 times the amount of sugar per serving than what it stated on the label.

77. Despite this, Defendant has not removed the products bearing these erroneous labels from its shelves, and continued to sell this product, with the same misstatement on the label, after July 17, 2014.

78. Indeed, Defendant continues to do so to this very day.

79. Such conducts very clearly exhibits knowing intent on the part of Defendant.

COUNT I

Pennsylvania Unfair Trade Practices and Consumer Protection Law 73 Pa. Cons.St. § 201-1 et seq

80. Plaintiffs incorporate all preceding paragraphs of this complaint as if set forth fully herein.

81. This action does not raise any claims of common law fraud.

82. Rather, all claims in this action arise exclusively under the UTPCPL.

83. "The purpose of the UTPCPL is to protect the public from fraud and unfair or deceptive business practices." Keller v. Volkswagen of Am., Inc., 733 A.2d 642, 646 (Pa.Super.1999).

84. It is well-established that, in order to carry out that purpose, the UTPCPL must be liberally construed. See Chiles v. Ameriquest Mortg. Co., 551 F.Supp.2d 393, 398 (E.D.Pa.2008)(“**The UTPCPL must be construed liberally.**”); Pirozzi v. Penske Olds-Cadillac-GMC, Inc., 413 Pa.Super. 308, 605 A.2d 373, 376, appeal denied, 532 Pa. 665, 616 A.2d 985 (1992)(“**our supreme court held that the UTPCPL is to be liberally construed in order to effect its purpose.**”)

85. In order to prevail under the UTPCPL, a plaintiff must prove the transaction between plaintiff and defendant constituted “trade or commerce” within the meaning of the UTPCPL and that the defendant was engaged in unfair or deceptive acts or practices.

86. The conduct alleged herein took place during “trade and commerce” within the meaning of the UTPCPL.

87. The conduct alleged herein constitutes a deceptive practice.

88. The UTPCPL 73 P.S. § 201-2(4)(xxi) defines unfair or deceptive acts or practices, inter alia, as any: “**deceptive conduct which creates a likelihood of confusion or misunderstanding.**”

89. Prior to 1996, 73 P.S. § 201-2(4)(xxi) required that a defendant engage in the equivalent of common law fraud. See Flores v. Shapiro & Kreisman, 246 F.Supp.2d 427, 432 (E.D.Pa.2002); Commonwealth of Pa. v. Percudani, 825 A.2d 743, 746-47 (Pa.Comm.w.2003).

90. In 1996, however, UTPCPL 73 P.S. § 201-2(4)(xxi) was amended to add the word “deceptive” as an alternative to “fraud” in describing the practices prohibited by this section. Bennett v. A.T. Masterpiece Homes at Broadsprings, LLC, 40 A.3d 145 (Pa.Super.2012) (holding that the amendment to the catch-all provision that added the language “or deceptive conduct” changed the requirement from proving actual fraud to merely proving deceptive

conduct); Commonwealth of Pa. v. Percudani, 825 A.2d 743, 746-47 (Pa. Commw.2003) (a plaintiff who alleges deceptive conduct to proceed without proving all of the elements of common law fraud); Flores v. Shapiro & Kreisman, 246 F.Supp.2d 427, 432 (E.D.Pa.2002):

“by adding a prohibition on ‘deceptive’ conduct, the 1996 amendment to the CPL eliminated the need to plead all of the elements of common law fraud in actions under the CPL. Under general principles of statutory interpretation, no word should be rendered redundant. The new word “deceptive” in the statute, therefore, must have been intended to cover conduct other than fraud.”

91. As alleged herein, Defendant has engaged in deceptive conduct which creates a likelihood of confusion or misunderstanding.

92. Such conduct is based on both affirmative misrepresentations, material nondisclosures and material omissions.

93. In the case at bar, Defendant’s act in placing the words “Sugars 2g” per 170 gram serving on Defendant’s “Nutrition Facts” label for “Whole Foods 365 Everyday Value Plain Greek Yogurt,” was as “deceptive conduct which creates a likelihood of confusion or misunderstanding” within the meaning of 73 P.S. § 201-2(4)(xxi).

94. Defendant also engaged in a knowing omission of material fact by failing to inform consumers in any fashion that the actual sugar content of a 170 gram serving of “Whole Foods 365 Everyday Value Plain Greek Yogurt,” was over 11 grams of sugar.

95. This combination of affirmative representations and omissions was, at best, a deceptive practice.

96. Numerous cases have held that, after 1996, 73 P.S. § 201-2(4)(xxi) does not require actual fraud. See Bennett v. A.T. Masterpiece Homes at Broadsprings, LLC, 40 A.3d 145 (Pa.Super.2012) (holding that the amendment to the catch-all provision that added the language

“or deceptive conduct” changed the requirement from proving actual fraud to merely proving deceptive conduct); Flores v. Shapiro & Kreisman, 246 F.Supp.2d 427, 432 (E.D.Pa.2002); Commonwealth of Pa. v. Percudani, 825 A.2d 743, 746-47 (Pa.Commw.2003); Rubenstein v. Dovenmuehle Mortg., Inc., 2009 WL 3467769 (E.D.Pa.2009) at *6.

97. In the case at bar, however, the elements of fraud are met.

98. By the acts alleged herein, Defendant has made a misrepresentation of a material fact and a material nondisclosure, as described herein.

99. Defendant acted with knowledge that its conduct was deceptive and with intent that such conduct deceived consumers.

100. While it is not clear that actual reliance is required, plaintiffs and the class did justifiably rely upon the misrepresentation and material nondisclosure; a reliance which may be presumed in this case where a defendant has engaged in a common course of identical conduct.

101. In addition, Defendant’s conduct violated 73 P.S. § 201-2(4) (vii) by “**representing that goods... are of a particular standard, quality or grade... if they are of another**”.

102. As a proximate result of this conduct, plaintiffs and the class have suffered an ascertainable loss of money.

COUNT II

PENNSYLVANIA BREACH OF EXPRESS AND/OR IMPLIED WARRANTY

103. Plaintiffs incorporate all preceding paragraphs of this complaint as if set forth fully herein.

104. By operation of Pennsylvania law, the label on Defendant’s yogurt constitute an

express or implied warranty that this product met the description by Defendant of the contents of “Whole Foods 365 Everyday Value Plain Greek Yogurt,” made in writing on the “Nutrition Facts” label, which stated that the good contained 2 grams of sugar per 170 gram serving.

105. The relevant terms and language of that warranty between Defendant and each member of the class are identical.

106. Defendant has breached the terms of this warranty in an identical manner for each class member because “Whole Foods 365 Everyday Value Plain Greek Yogurt” did not and could not conform to the affirmation, promise and description on this label because, in fact, the product actually contained over 11 grams of sugar per serving.

107. As a direct and proximate result of this breach of express warranty by Defendant, Plaintiffs and each member of the class has suffered economic loss.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this court to:

- a. Certify the class and sub-class as a class action pursuant to Rule 1701, et seq. of the Pennsylvania Rules of Civil Procedure;
- b. Enter an order for injunctive and declaratory relief as described herein;
- c. Enter judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;
- d. Award plaintiffs reasonable attorneys’ fees and costs;
- e. Award plaintiffs and the class treble damages; and
- f. Grant such other and further legal and equitable relief as the court deems just and equitable.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues so triable.

DeNITTIS OSEFCHEN, P.C.



BY: STEPHEN P. DeNITTIS, ESQ. (ID NO. 80080)
SHANE T. PRINCE, ESQ. (ID NO. 89325)
1515 Market Street, Suite 1200
Philadelphia, PA 19102
(215) 564-1721 – phone
(215) 564-1759 – fax

Dated: 8/11/14

VERIFICATION

I, Carmine Clemente, hereby states:

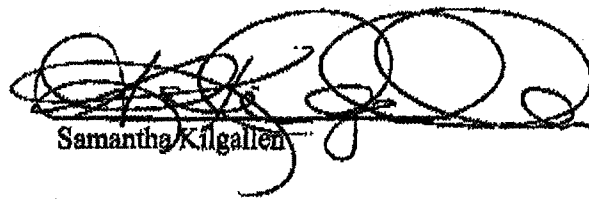
1. I am the Plaintiff in the within matter.
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information and belief.
3. I understand that the statements in said complaint are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Carmine Clemente

VERIFICATION

I, Samantha Kilgallen, hereby states:

1. I am the Plaintiff in the within matter.
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information and belief.
3. I understand that the statements in said complaint are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

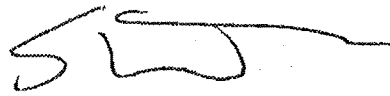


Samantha Kilgallen

VERIFICATION

I, Shane T. Prince, hereby state:

1. I am the attorney for the Plaintiffs in the within matter.
2. I verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.
3. I understand that the statements in said Complaint are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.



Shane T. Prince

Dated: 8/11/14

EXHIBIT B

THIS IS NOT AN ARBITRATION CASE. ASSESSMENT OF DAMAGES HEARING IS REQUIRED. MAJOR JURY TRIAL IS DEMANDED.



DeNITTIS OSEFCHEN, P.C.
By: Stephen P. DeNittis, Esquire
Identification No: 80080
1515 Market Street, Suite 1200
Philadelphia, PA 19102
(215) 564-1721

CARMINE CLEMENTE and SAMANTHA KILGALLEN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

WHOLE FOODS MARKET GROUP, INC., and WFM PRIVATE LABEL, L.P

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

TERM August 2014

NO. 1271

FIRST AMENDED CLASS ACTION COMPLAINT

NOTICE - CIVIL ACTION – CONSUMER FRAUD CLASS ACTION

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyers Reference Service
Philadelphia County Bar Association
One Reading Center
Philadelphia, PA 19107
(215) 238-1701

**THIS IS NOT AN ARBITRATION CASE.
ASSESSMENT OF DAMAGES HEARING IS
REQUIRED. MAJOR JURY TRIAL IS
DEMANDED.**

DeNITTIS OSEFCHEN, P.C.
By: Stephen P. DeNittis, Esquire
Identification No: 80080
1515 Market Street, Suite 1200
Philadelphia, PA 19102
(215) 564-1721

<p>CARMINE CLEMENTE and SAMANTHA KILGALLEN, on behalf of themselves and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>WHOLE FOODS MARKET GROUP, INC., and WFM PRIVATE LABEL, L.P</p> <p style="text-align: center;">Defendants.</p>	<p>COURT OF COMMON PLEAS PHILADELPHIA COUNTY</p> <p>TERM August 2014</p> <p>NO. 1271</p> <p>FIRST AMENDED CLASS ACTION COMPLAINT</p>
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INTRODUCTION

1. This is a class action, brought under Pennsylvania law, on behalf of a class of Pennsylvania citizens who purchased "Whole Foods 365 Everyday Value Plain Greek Yogurt," in one of the 10 Whole Foods Market stores located in Pennsylvania, between August 11, 2008 and the present.
2. The "Nutrition Facts" label on each and every container of "Whole Foods 365 Everyday Value Plain Greek Yogurt" states in uniform language that this product contains 2 grams of sugar per 170 gram serving.
3. This written, uniform statement of fact on each such "Nutrition Facts" label is false.
4. In actuality, as confirmed in six recent tests conducted by the noted consumer

publication “Consumer Reports,” “Whole Foods 365 Everyday Value Plain Greek Yogurt” contains at least 11.4 grams of sugar per 170 gram serving—nearly six times the stated on the product’s label. See Attachment A, Consumer Report article dated July 17, 2014.

5. Whole Foods Market’s website brags to consumers about how thoroughly Whole Foods Market checks the accuracy of the labels of its store brands, telling consumers:

“Our Private Label registered dietician reviews each nutrition label for accuracy and completeness before the label is printed. All attempts are made to review nutrition labels on a regular basis to ensure accuracy”

6. Unless this statement on Defendants’ website is false, then Whole Foods Market was fully aware of the contents of its store brand Greek yogurt and of the fact that the yogurt’s sugar content does not match what is stated on the label.

7. Upon information and belief, Defendants have been fully aware that they were drastically understating the amount of sugar on the “Whole Foods 365 Everyday Value Plain Greek Yogurt” label and that the actual sugar content of the product was many times higher than the 2 grams per serving falsely stated on the label.

8. The Greek yogurt offered by Defendants’ competitors generally have a listed sugar content of between 5 and 10 grams of sugar per serving.

9. No yogurt on the market actually has only 2 grams of sugar per serving.

10. Indeed, all Greek yogurt – even yogurt to which no sugar is added and/or which is artificially “sweetened” – naturally contains more than 2 grams of sugar lactose.

11. The Greek yogurt with the lowest actual sugar content on the market has 5 grams of sugar per 170 gram serving; more than twice as much as what the label Whole Foods 365 Everyday Value Plain Greek Yogurt” claims.

12. By falsely claiming a sugar content of only 2 grams per serving, Defendants sought to give themselves a competitive advantage and to use this false statement of contents to induce consumers to purchase “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

13. Despite the test results published by Consumer Reports, Whole Foods Market has not pulled all the mislabeled yogurt off its shelves and continues to sell the mislabeled product to consumers in its Pennsylvania stores every day.

14. This complaint seeks injunctive, declaratory and monetary relief for Plaintiffs and the proposed class of Pennsylvania citizens, under the under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 Pa. Cons.St. § 201–1 et seq and Pennsylvania common law relating to express warranty.

JURISDICTION AND VENUE

15. All claims in this matter arise exclusively under Pennsylvania law.

16. This matter is properly venued in the Philadelphia Court of Common Pleas, in that Plaintiff Clemente purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” at the Whole Foods Market located on South Street, Philadelphia, Plaintiffs reside in Philadelphia and Defendant Whole Foods Market Group, Inc. does business, inter alia, in Philadelphia.

THE PARTIES

17. Plaintiff Clemente resides in Philadelphia, Pennsylvania.

18. Plaintiff Kilgallen resides in Philadelphia, Pennsylvania.

19. Like all members of the proposed class, Plaintiffs are each Pennsylvania citizens who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in Pennsylvania between August 11, 2008 and August 11, 2014 which stated on “Nutritional Facts” label that the yogurt contained “sugars 2g” per 170 gram serving.

20. Specifically, Plaintiff Clemente purchased 2% “Whole Foods 365 Everyday Value Plain Greek Yogurt” from the Whole Foods Market located on South Street, Philadelphia on various dates between August 11, 2008 and August 11, 2014, including on August 4, 2014 when he purchased two containers of 2% “Whole Foods 365 Everyday Value Plain Greek Yogurt” for \$1.29 each from Whole Foods Market located on South Street, Philadelphia.

21. Specifically, Plaintiff Kilgallen purchased 0% “Whole Foods 365 Everyday Value Plain Greek Yogurt” from the Whole Foods Market stores located at 1575 The Fairway, Jenkintown, PA 19046 and 339 E Lancaster Ave, Wynnewood, PA 19096 on various dates between August 11, 2008 and August 11, 2014, including on August 5, 2014 when she purchased 0% “Whole Foods 365 Everyday Value Plain Greek Yogurt” for \$1.29.

22. Defendant Whole Foods Market Group, Inc. is a wholly owned subsidiary of Whole Foods Market Inc. which is incorporated in Delaware and maintains its principal executive offices at 550 Bowie Street in Austin, Texas. Defendant Whole Foods Markets Group, Inc. owns and operates all Whole Foods Market stores in New Jersey.

23. Defendant WFM Private Label, L.P. is incorporated in Delaware and maintains its principal offices at 550 Bowie Street in Austin, Texas. WFM Private Label, L.P. manufactures, distributes, and labels Whole Foods’ store brand products, such as “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

24. Together, Defendants Whole Food Market Group Inc. and WFM Private Label, L.P. jointly manufactured, distributed, advertised, labeled and sold “Whole Foods 365 Everyday Value Plain Greek Yogurt,” with each defendant jointly determining that each such container would state that the product contained “Sugars 2g” per serving on the product’s label.

CLASS ACTION ALLEGATIONS

25. **Class Definitions:** Plaintiffs Clemente and Kilgallen bring this action as a class action pursuant to Rule 1701, et seq. of the Pennsylvania Rules of Civil Procedure on behalf of themselves and all members of the following proposed Class:

All Pennsylvania citizens who, between August 11, 2008 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in Pennsylvania.

26. Plaintiff Kilgallen also brings this action as a class action pursuant to Rule 1701, et seq. of the Pennsylvania Rules of Civil Procedure on behalf of herself and all members of the following proposed Sub-Class:

All Pennsylvania citizens who, between August 11, 2008 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in Pennsylvania, using a credit card, debit card or via Whole Foods Market’s “online ordering” program.

27. Plaintiff Clemente also brings this action as a class action pursuant to Rule 1701, et seq. of the Pennsylvania Rules of Civil Procedure on behalf of himself and all members of the following proposed Sub-Class:

All Pennsylvania citizens who, between August 11, 2008 and the present, purchased 2% “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in Pennsylvania.

28. Plaintiff Kilgallen also brings this action as a class action pursuant to Rule 1701, et seq. of the Pennsylvania Rules of Civil Procedure on behalf of herself and all members of the following proposed Sub-Class:

All Pennsylvania citizens who, between August 11, 2008 and the present, purchased 0% “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in Pennsylvania.

29. **Rule 1702(1) Numerosity:** The class and sub-classes for whose benefit this action is brought is so numerous that joinder of all members is impracticable.

30. Upon information and belief, the proposed class is composed of at least 10,000 persons and each proposed sub-class is composed of at least 5,000 persons.

31. **Rule 1702(2) Commonality:** Common questions of law and fact exist as to each class member.

32. All claims in this action arise exclusively from the uniform labeling policy as alleged herein.

33. No violations alleged in this complaint are a result of any individualized oral communications or individualized interaction of any kind between class members and Defendant or anyone else.

34. Rather, all claims in this matter arise from the identical, false affirmative statements made by Defendants on the "Nutrition Facts" label on all containers of "Whole Foods 365 Everyday Value Plain Greek Yogurt."

35. There are common questions of law and fact affecting the rights of the class members, including, inter alia, the following:

- a. Whether "Whole Foods 365 Everyday Value Plain Greek Yogurt" contains more than "Sugars 2g" per 170 gram serving;
- b. Whether Defendants were aware that "Whole Foods 365 Everyday Value Plain Greek Yogurt," contained at least 11 grams of sugar per 170 gram serving;
- c. The date Defendants became aware that "Whole Foods 365 Everyday Value Plain Greek Yogurt," contained at least 11 grams of sugar per 170 gram serving;
- d. Whether Defendants' act in placing the words "Sugars 2g" per 170 gram serving on Defendant's "Nutrition Facts" label for "Whole Foods 365 Everyday Value Plain Greek Yogurt," was as "deceptive conduct which creates a likelihood of confusion or misunderstanding" within the meaning of 73 P.S. § 201-2(4)(xxi);

- e. Whether Defendants engaged in a knowing omission of material fact by failing to inform consumers in any fashion that the actual sugar content of a 170 gram serving of “Whole Foods 365 Everyday Value Plain Greek Yogurt,” was over 11 grams of sugar;
- f. Whether Defendants’ act in placing the words “Sugars 2g” per 170 gram serving on Defendant’s “Nutrition Facts” label for “Whole Foods 365 Everyday Value Plain Greek Yogurt” violated Pennsylvania common law regarding express warranty; and
- g. Whether Plaintiffs and the class are entitled to an order for declaratory and injunctive relief directing Defendants to participate in a court-supervised program of refund and/or recall of “Whole Foods 365 Everyday Value Plain Greek Yogurt” which contain the label described herein.

36. **Rule 1702(3) Typicality:** The claims of Plaintiffs are typical of those of all class members.

37. The claims of plaintiffs are not only typical of all class members, they are identical.

38. All claims of plaintiffs and the class arise from the same identical, false, statement of affirmative fact by Defendants, in which Defendants placed the words “sugars 2g” per 170 gram serving on Defendants’ “Nutrition Facts” label for “Whole Foods 365 Everyday Value Plain Greek Yogurt” and from the same material omission of fact in that Defendants failed to warn customers in any fashion that this product had an actual sugar content of over 11 grams of sugar per 170 gram serving.

39. All claims of plaintiffs and the class are based on the exact same legal theories.

40. **Rule 1702(4) Adequacy of Class Representation:** Plaintiffs will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709.

41. Plaintiffs are members of the class they seek to represent and Plaintiff Kilgallen is a member of the sub-class she seeks to represent.

42. Plaintiffs have no interest antagonistic to, or in conflict with, the class.

43. Plaintiffs will thoroughly and adequately protect the interests of the class, having retained

qualified and competent legal counsel to represent themselves and the class.

44. Plaintiffs have no interest antagonistic to, or in conflict with, the class.

45. Plaintiffs will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent themselves and the class.

46. **Rule 1702(5)**: A class action would provide a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

47. **Rule 1708**: A class action is a fair and efficient method of adjudicating the controversy.

48. Common questions of law or fact predominate over any question affecting only individual members.

49. The prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would confront Defendants with incompatible standards of conduct.

50. Adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of other members not parties to the adjudications and would substantially impair or impede their ability to protect their interests.

51. To plaintiffs' knowledge, no other litigation has already commenced raising these same issues against Defendants in Pennsylvania or under Pennsylvania law.

52. This particular forum is appropriate for the litigation of the claims of the entire class since all proposed class members purchased "Whole Foods 365 Everyday Value Plain Greek Yogurt" from Whole Foods Market stores in Pennsylvania, the action raises claims exclusive under Pennsylvania law, and Plaintiff Clemente purchased "Whole Foods 365 Everyday Value Plain Greek Yogurt" at the Whole Foods Market in Philadelphia.

53. The expenses of litigation of separate claims by individual class members would be high

compared to the potential recovery of each individual class member.

54. Indeed, the product at issue costs less than \$5 and thus individual actions to recover that amount, or any portion of that amount, are not economically feasible.

55. Thus, the absence of class certification would spell the death knell of any litigation over Defendants' failure to live up to the sugar content promised on its nutrition label.

56. The exact size of the class and sub-class is currently unknown to plaintiffs but is believed to be over 10,000 and 5,000 respectively and there will be no difficulties likely to be encountered in the management of the action as a class action.

57. **Rule 1709:** The attorneys for the representative parties will adequately represent the interests of the class and sub-classes.

58. Plaintiffs' attorneys have participated in over 100 class actions and have been appointed by courts to serve as sole class counsel or class co-counsel in over 50 certified class actions.

59. Plaintiffs have no conflict of interest with other class members.

60. Plaintiffs seek the same relief for himself as for every other class member.

61. Plaintiffs have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

FACTS GIVING RISE TO THE CAUSE OF ACTION

62. Defendants are in the business of manufacturing, distributing, marketing, and selling, inter alia, "Whole Foods 365 Everyday Value Plain Greek Yogurt."

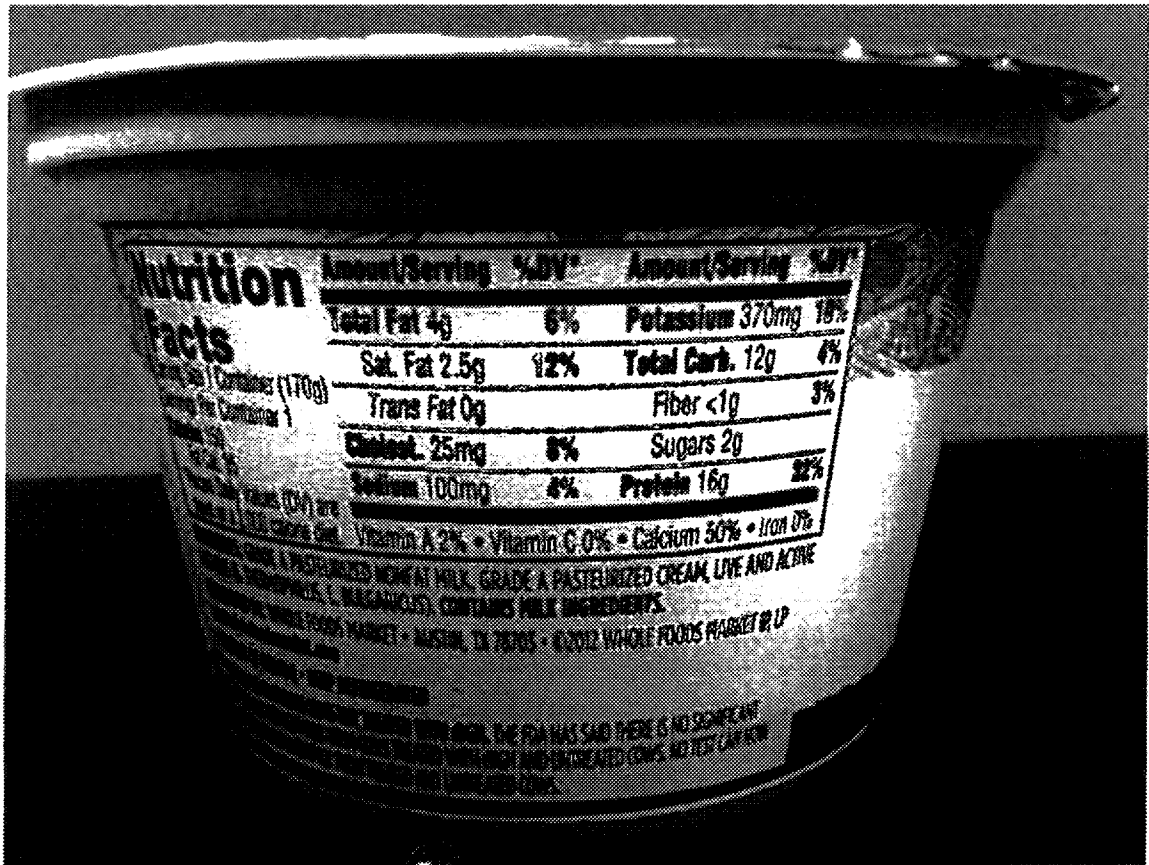
63. The "Whole Foods 365 Everyday Value Plain Greek Yogurt" is a an exclusive Whole Foods Market store brand, which, as with Defendants' other products, Defendants sell under the store motto "Health Starts Here."

64. Whole Foods Market's website touts the high nutritional value of its products, stating:

“Healthy eating is a basic foundation for optimum health and well-being. By supporting healthy eating education we inspire and empower our stakeholders to make the best health-supportive, delicious foods choices to maximize personal health and vitality.”

65. Defendants maintain 10 Whole Foods Markets in Pennsylvania.

66. Since the initial offering of “Whole Foods 365 Everyday Value Plain Greek Yogurt,” each and every “Nutrition Facts” label on each container of “Whole Foods 365 Everyday Value Plain Greek Yogurt” sold by Defendants has falsely stated that this yogurt contains “Sugars 2g” per serving.



67. “Whole Foods 365 Everyday Value Plain Greek Yogurt” comes in two varieties: a “2% milk fat” version and a “0% milk fat” version.

68. Both plain versions contain identical statements on the label that the product contains

“Sugars 2g” per 170 gram serving.

69. Both plain versions actually contain over 11 grams of sugar per 170 gram serving.

70. In July of 2014, the noted consumer publication “Consumer Reports” published the results of six recent tests conducted by Consumer Reports on “Whole Foods 365 Everyday Value Plain Greek Yogurt,” which revealed to the public that “Whole Foods 365 Everyday Value Plain Greek Yogurt” contains at least 11.4 grams of sugar per 170 gram serving – nearly six times the stated on the product’s label. See Attachment A, Consumer Report article dated July 17, 2014.

71. Defendants, as the developer, manufacturer, and exclusive seller and distributor of “Whole Foods 365 Everyday Value Plain Greek Yogurt” have been aware since the product’s inception that the product contains more than 5 times the amount of sugar represented on the product’s “Nutrition Facts” label.

72. Indeed, Whole Foods Market’s website brags to consumers about how thoroughly Whole Foods Market checks the accuracy of the labels of its store brands, telling consumers:

“Our Private Label registered dietician reviews each nutrition label for accuracy and completeness before the label is printed. All attempts are made to review nutrition labels on a regular basis to ensure accuracy”

73. Unless such statements are false, then Whole Foods Market was fully aware of the contents of its store brand Greek yogurt.

74. Moreover, Defendants were aware that no Greek yogurt on the market has only 2 grams of sugar per 170 gram serving and that the lowest sugar content of any Greek yogurt for sale is 5 grams per serving; more than twice as much as what Defendants falsely stated on the label for “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

75. Indeed, all Greek yogurt – even yogurt to which no sugar is added and/or which is

artificially “sweetened” – naturally contains more than 2 grams of sugar lactose.

76. Defendants’ act in vastly understating the sugar content of “Whole Foods 365 Everyday Value Plain Greek Yogurt” is not harmless trivia. For many members of the class, sugar content is an important component of their diet.

77. Defendants were fully aware that drastically understating the sugar content on the label of its “Whole Foods 365 Everyday Value Plain Greek Yogurt” would give Defendants a competitive advantage over competitors, all of which list a sugar content at least twice as high as the 2 grams per serving falsely stated on Defendants’ label.

78. Many of Defendants’ competitors sell their Greek yogurt for substantially less than the price charged by Defendants for “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

79. Numerous internet blogs and consumer websites maintain that Whole Foods Market’s prices are generally higher than those of competing grocery stores, leading some consumers to nickname it “Whole Paycheck Market.”

80. These sites maintain that Whole Foods Market attempts to justify its generally higher prices by claiming that the “value” of Defendants’ products derives from its high quality and the fact that it is supposedly “healthier” than other foods.

81. For example, Whole Foods Market’s website states:

“Our goal is to sell the highest quality ingredients that also offer high value for our consumers. High value is a product of high quality at a competitive price. Our product quality standards focus on ingredients, freshness, taste nutritive value, safety and/or appearance.”

82. It appears that Whole Foods Market attempts to convey the idea to its customers that its higher prices are “worth it” because it has higher quality and healthier products.

83. By falsely understating the sugar content of “Whole Foods 365 Everyday Value Plain

Greek Yogurt,” Defendants made it seem as if the higher price of this product was justified because it had only 2 grams of sugar per serving; which – if true – would have made it the Greek yogurt with the lowest sugar content on the market.

84. Thus, it was Defendants’ conscious intent to induce consumers to purchase “Whole Foods 365 Everyday Value Plain Greek Yogurt” by falsely stating that the sugar content per serving was only 2 grams, when, in fact, the actual sugar content was over 11 grams per serving; higher than the cheaper Greek yogurts being sold by Defendants’ competitors.

85. Finally, there can simply no dispute that after the Consumer Reports report was published on July 17, 2014, Whole Foods Market had actually notice that the label on its “Whole Foods 365 Everyday Value Plain Greek Yogurt” was erroneous and that this product had more than 5 times the amount of sugar per serving than what it stated on the label.

86. Despite this, Defendants have not removed all the products bearing these erroneous labels from its shelves, and continued to sell this product, with the same misstatement on the label, after July 17, 2014.

87. Indeed, Defendants continue to sell 2% “Whole Foods 365 Everyday Value Plain Greek Yogurt,” with the same false statement “Sugars 2g” per serving on the label, to this very day, despite actual notice that this product contains over 11 grams of sugar per serving.

88. Such conducts very clearly exhibits knowing intent on the part of Defendants.

COUNT I

**Pennsylvania Unfair Trade Practices and Consumer Protection Law
73 Pa. Cons.St. § 201–1 et seq**

89. Plaintiffs incorporate all preceding paragraphs of this complaint as if set forth fully herein.

90. This action does not raise any claims of common law fraud.

91. Rather, all claims in this action arise exclusively under the UTPCPL.

92. **“The purpose of the UTPCPL is to protect the public from fraud and unfair or deceptive business practices.”** Keller v. Volkswagen of Am., Inc., 733 A.2d 642, 646 (Pa.Super.1999).

93. It is well-established that, in order to carry out that purpose, the UTPCPL must be liberally construed. See Chiles v. Ameriquest Mortg. Co., 551 F.Supp.2d 393, 398 (E.D.Pa.2008)(**“The UTPCPL must be construed liberally.”**); Pirozzi v. Penske Olds-Cadillac-GMC, Inc., 413 Pa.Super. 308, 605 A.2d 373, 376, appeal denied, 532 Pa. 665, 616 A.2d 985 (1992)(**“our supreme court held that the UTPCPL is to be liberally construed in order to effect its purpose.”**)

94. In order to prevail under the UTPCPL, a plaintiff must prove the transaction between plaintiff and defendant constituted “trade or commerce” within the meaning of the UTPCPL and that the defendant was engaged in unfair or deceptive acts or practices.

95. The conduct alleged herein took place during “trade and commerce” within the meaning of the UTPCPL.

96. The conduct alleged herein constitutes a deceptive practice.

97. The UTPCPL 73 P.S. § 201-2(4)(xxi) defines unfair or deceptive acts or practices, inter alia, as any: **“deceptive conduct which creates a likelihood of confusion or misunderstanding.”**

98. Prior to 1996, 73 P.S. § 201-2(4)(xxi) required that a defendant engage in the equivalent of common law fraud. See Flores v. Shapiro & Kreisman, 246 F.Supp.2d 427, 432 (E.D.Pa.2002); Commonwealth of Pa. v. Percudani, 825 A.2d 743, 746-47 (Pa.Comm.w.2003).

99. In 1996, however, UTPCPL 73 P.S. § 201-2(4)(xxi) was amended to add the word “deceptive” as an alternative to “fraud” in describing the practices prohibited by this section. Bennett v. A.T. Masterpiece Homes at BROADSPRINGS, LLC, 40 A.3d 145 (Pa.Super.2012) (holding that the amendment to the catch-all provision that added the language “or deceptive conduct” changed the requirement from proving actual fraud to merely proving deceptive conduct); Commonwealth of Pa. v. Percudani, 825 A.2d 743, 746-47 (Pa.Commw.2003) (a plaintiff who alleges deceptive conduct to proceed without proving all of the elements of common law fraud); Flores v. Shapiro & Kreisman, 246 F.Supp.2d 427, 432 (E.D.Pa.2002):

“by adding a prohibition on ‘deceptive’ conduct, the 1996 amendment to the CPL eliminated the need to plead all of the elements of common law fraud in actions under the CPL. Under general principles of statutory interpretation, no word should be rendered redundant. The new word “deceptive” in the statute, therefore, must have been intended to cover conduct other than fraud.”

100. As alleged herein, Defendants have engaged in deceptive conduct which creates a likelihood of confusion or misunderstanding.

101. Such conduct is based on both affirmative misrepresentations, material nondisclosures and material omissions.

102. In the case at bar, Defendants’ act in placing the words “Sugars 2g” per 170 gram serving on Defendant’s “Nutrition Facts” label for “Whole Foods 365 Everyday Value Plain Greek Yogurt,” was as “deceptive conduct which creates a likelihood of confusion or misunderstanding” within the meaning of 73 P.S. § 201-2(4)(xxi).

103. Defendants also engaged in a knowing omission of material fact by failing to inform consumers in any fashion that the actual sugar content of a 170 gram serving of “Whole Foods 365 Everyday Value Plain Greek Yogurt,” was over 11 grams of sugar.

104. This combination of affirmative representations and omissions was, at best, a deceptive practice.

105. Numerous cases have held that, after 1996, 73 P.S. § 201-2(4)(xxi) does not require actual fraud. See Bennett v. A.T. Masterpiece Homes at Broadsprings, LLC, 40 A.3d 145 (Pa.Super.2012) (holding that the amendment to the catch-all provision that added the language “or deceptive conduct” changed the requirement from proving actual fraud to merely proving deceptive conduct); Flores v. Shapiro & Kreisman, 246 F.Supp.2d 427, 432 (E.D.Pa.2002); Commonwealth of Pa. v. Percudani, 825 A.2d 743, 746-47 (Pa.Comm.2003); Rubenstein v. Dovenmuehle Mortg., Inc., 2009 WL 3467769 (E.D.Pa.2009) at *6.

106. In the case at bar, however, the elements of fraud are met.

107. By the acts alleged herein, Defendants have made a misrepresentation of a material fact and a material nondisclosure, as described herein.

108. Defendants acted with knowledge that their conduct was deceptive and with intent that such conduct deceived consumers.

109. While it is not clear that actual reliance is required, plaintiffs and the class did justifiably rely upon the misrepresentation and material nondisclosure; a reliance which may be presumed in this case where a defendant has engaged in a common course of identical conduct.

110. In addition, Defendants’ conduct violated 73 P.S. § 201-2(4) (vii) by “**representing that goods... are of a particular standard, quality or grade... if they are of another**”.

111. As a proximate result of this conduct, plaintiffs and the class have suffered an ascertainable loss of money.

COUNT II

**PENNSYLVANIA BREACH OF EXPRESS AND/OR
IMPLIED WARRANTY**

112. Plaintiffs incorporate all preceding paragraphs of this complaint as if set forth fully herein.

113. By operation of Pennsylvania law, the label on Defendants' yogurt constitute an express or implied warranty that this product met the description by Defendant of the contents of "Whole Foods 365 Everyday Value Plain Greek Yogurt," made in writing on the "Nutrition Facts" label, which stated that the good contained 2 grams of sugar per 170 gram serving.

114. The relevant terms and language of that warranty between Defendants and each member of the class are identical.

115. Defendants have breached the terms of this warranty in an identical manner for each class member because "Whole Foods 365 Everyday Value Plain Greek Yogurt" did not and could not conform to the affirmation, promise and description on this label because, in fact, the product actually contained over 11 grams of sugar per serving.

116. As a direct and proximate result of this breach of express warranty by Defendants, Plaintiffs and each member of the class has suffered economic loss.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this court to:

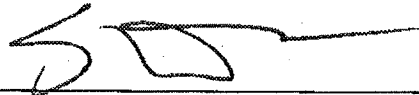
- a. Certify the class and sub-class as a class action pursuant to Rule 1701, et seq. of the Pennsylvania Rules of Civil Procedure;
- b. Enter an order for injunctive and declaratory relief as described herein;
- c. Enter judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;

- d. Award plaintiffs reasonable attorneys' fees and costs;
- e. Award plaintiffs and the class treble damages; and
- f. Grant such other and further legal and equitable relief as the court deems just and equitable.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues so triable.

DeNITTIS OSEFCHEN, P.C.



BY: STEPHEN P. DeNITTIS, ESQ. (ID NO. 80080)
SHANE T. PRINCE, ESQ. (ID NO. 89325)
1515 Market Street, Suite 1200
Philadelphia, PA 19102
(215) 564-1721 – phone
(215) 564-1759 – fax

Dated: 9/11/14

VERIFICATION

I, Carmine Clemente, hereby states:

1. I am the Plaintiff in the within matter.
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information and belief.
3. I understand that the statements in said complaint are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Carmine Clemente

08/11/2014 MON 12:17 FAX gill@mlhs.org

001/001

VERIFICATION

I, Samantha Kilgallen, hereby states:

1. I am the Plaintiff in the within matter.
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information and belief.
3. I understand that the statements in said complaint are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Samantha Kilgallen

VERIFICATION

I, Shane T. Prince, hereby state:

1. I am the attorney for the Plaintiffs in the within matter.
2. I verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.
3. I understand that the statements in said Complaint are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.



Shane T. Prince

Dated: 9/11/14

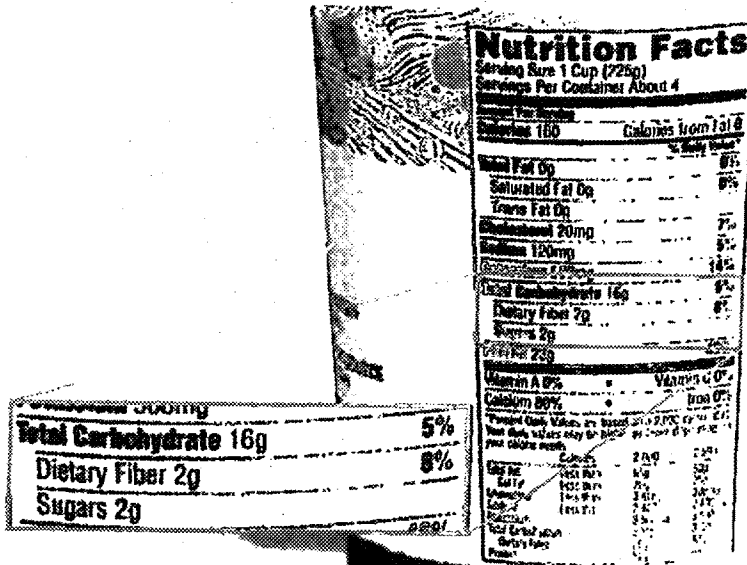
Attachment A

Consumer Reports

A Whole Foods 365 Greek yogurt has five times more sugar than its nutrition label shows

Consumer Reports' tests reveal the plain fat-free yogurt has 11 grams of sugar per serving

Published July 17, 2014 05:00 PM



During a recent test of plain Greek yogurts for nutrition and taste, our food experts noted something curious about Whole Foods 365 Every Day Value Plain Fat-Free Greek Yogurt. While the Nutrition Facts labels on the other 12 plain yogurts we evaluated had a range of between 5 and 10 grams of sugar per 8-ounce serving, this 365 yogurt listed only 2 grams.

Too good to be true? To find out, we analyzed six samples of the yogurt from six different lots for sugar content. The results showed an average of 11.4 grams per serving—more than five times what's listed on the label.

To put this in context, bear in mind that all yogurt naturally contains the sugar lactose. That means that even plain yogurts and those made with non-nutritive sweeteners such as stevia and sucralose (not just flavored yogurts that contain added sugar) have some sugar. What's more, the label on this 365 yogurt also listed 16 grams of total carbohydrates per serving. Since lactose provides the vast majority of carbs in yogurt, the numbers just didn't add up.

One of Whole Foods Market's slogans is "Health Starts Here." On the company's website, you'll find a list of more than 75 ingredients it deems "unacceptable" for use in foods sold in its stores, including high-fructose corn syrup, partially hydrogenated oils, and artificial colors. Given Whole Foods' care and attention to food content, this discrepancy in the sugar content in one of its own branded products is that much more bewildering.



Find out how to make your own Greek yogurt. Plus learn how we rated Greek yogurt dips and frozen Greek yogurt.

When we contacted Whole Foods Market, a company spokesman expressed surprise about our data. In a statement, the company said: "We are working with our vendor to understand the testing results you have provided. They are not consistent with testing results we have relied upon from reputable third-party labs. We take this issue seriously and are investigating the matter, and will of course take corrective action if any is warranted."

We'll let you know when we get an update from Whole Foods. In the meantime, know that Whole Foods 365 Every Day Value Plain Fat-Free Greek Yogurt is a nutritious food to be sure. It's rich in protein and calcium and it received an Excellent score for nutrition in our tests, even when we analyzed it with 11.4 grams of sugar.

But our data show that its sugar content is in line with other plain Greek yogurts. For people with diabetes and others who watch their sugar intake carefully, every gram—whether it's added or occurs naturally in a food—counts, and consumers have the right to expect that what they read on Nutrition Facts labels is correct.

—Consumer Reports

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EXHIBIT C

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA

CARMINE CLEMENTE and SAMANTHA
KILGALLEN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

WHOLE FOODS MARKET GROUP, INC.,
and WFM PRIVATE LABEL, L.P.,

Defendants.

Civil Action No. 140801271

NOTICE OF FILING OF REMOVAL TO FEDERAL COURT

To: Prothonotary for the
Court of Common Pleas,
Philadelphia County, Pennsylvania
Philadelphia, PA 19107

Stephen P. DeNittis, Esq.
DeNITTIS OSEFCHEN, P.C.
1515 Market Street, Suite 1200
Philadelphia, Pennsylvania 19102

Pursuant to 28 U.S.C. § 1446(d), Defendants Whole Foods Market Group, Inc., and WFM Private Label, L.P. (collectively, "Defendants") hereby notify the Court that on October __, 2014, they filed in the United States District Court for the Eastern District of Pennsylvania, their Notice of Removal of this lawsuit, a copy of which is attached as **Exhibit A**. Pursuant to 28 U.S.C. § 1446(d), the Court of Common Pleas of Philadelphia County, Pennsylvania may not proceed further with the case entitled *Carmine Clemente and Samanta Kilgallen, on behalf of themselves and all others similarly situated v. Whole Foods Market Group, Inc., and WFM Private Label, L.P., Civil Action No. 140801271*.

DATED: October __, 2014

Respectfully submitted,

SEYFARTH SHAW LLP

By: _____

Jacob Oslick (Pa. Bar No. 311028)

joslick@seyfarth.com

620 Eighth Avenue

New York, New York 10018

Telephone: (212) 218-5500

Facsimile: (212) 218-5526

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF FILING OF REMOVAL TO FEDERAL COURT** was served on all counsel of record, as listed below, via Federal Express overnight mail on the ___ day of October, 2014.

Stephen P. DeNittis, Esq.
DeNITTIS OSEFCHEN, P.C.
1515 Market Street, Suite 1200
Philadelphia, Pennsylvania 19102

Jacob Oslick (Pa. Bar No. 311028)

JS 44 (Rev. 12/12)



CIVIL COVER SHEET

14 5652

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Carmine Clemente and Samantha Kilgallen

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Stephen P. DeNittis, Esq., DeNittis Osefchen, P.C., 1515 Market St., Ste. 1200, Philadelphia, PA 19102, (215) 564-1721

DEFENDANTS

Whole Foods Market Group, Inc., and WFM Private Label, L.P.

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

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

Attorneys (If Known)
Jacob Oslick, Esq., Seyfarth Shaw LLP, 620 Eighth Ave., 32nd Fl., New York, NY 10018, (212) 218-6480

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

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			PROPERTY RIGHTS	
			<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
			LABOR	
		<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY	
			<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

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

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332

Brief description of cause:
Consumer fraud in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMANDS** CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 10/02/2014 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

OCT 03 2014

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Carmine Clemente, 1727 Bainbridge St., Philadelphia, PA 19146

Address of Defendant: Whole Foods Market Group, Inc., 550 Bowie St., Austin, TX 78703-4644

Place of Accident, Incident or Transaction: 10 Whole Foods Market Stores located in the Commonwealth of Pennsylvania (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes [] No [x]

Does this case involve multidistrict litigation possibilities? RELATED CASE, IF ANY: See attached Yes [x] No []

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [] No [x]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [] No [x]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [] No [x]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [] No [x]

CIVIL: (Place [x] in ONE CATEGORY ONLY)

- A. Federal Question Cases:
1. [] Indemnity Contract, Marine Contract, and All Other Contracts
2. [] FELA
3. [] Jones Act-Personal Injury
4. [] Antitrust
5. [] Patent
6. [] Labor-Management Relations
7. [] Civil Rights
8. [] Habeas Corpus
9. [] Securities Act(s) Cases
10. [] Social Security Review Cases
11. [] All other Federal Question Cases (Please specify)

- B. Diversity Jurisdiction Cases:
1. [] Insurance Contract and Other Contracts
2. [] Airplane Personal Injury
3. [] Assault, Defamation
4. [] Marine Personal Injury
5. [] Motor Vehicle Personal Injury
6. [] Other Personal Injury (Please specify)
7. [] Products Liability
8. [] Products Liability — Asbestos
9. [x] All other Diversity Cases (Please specify) Unfair trade practices

ARBITRATION CERTIFICATION (Check Appropriate Category)

I, Jacob Ostlick, counsel of record do hereby certify: Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs; Relief other than monetary damages is sought.

DATE: 10/2/2014 Jacob Ostlick Attorney-at-Law 311028 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10/02/2014 Jacob Ostlick Attorney-at-Law 311028(PA) Attorney I.D.#

Eastern District of Pennsylvania - Designation Form Attachment

1.	Carmine Clemente/Samantha Kilgallen v. Whole Foods Market Court of Common Pleas Philadelphia County - No.: 140801271
2.	Tracey Knox v. Whole Foods Market, Inc. U.S.D.C. - District of Massachusetts CIVIL DOCKET FOR CASE #: 1:14-cv-13185-RGS
3.	Ryan Markley v. Whole Foods Market, Inc. Assigned to: Judge Charlene Edwards Honeywell U.S.D.C. - Middle District of Florida - Tampa Division CIVIL DOCKET FOR CASE #: 14-cv-01892-CEH-MAP
4.	Mark Bilder v. Whole Foods Market, Inc. Superior Court of New Jersey - Burlington County; Case No.: Bur.-L. 1904-14
5.	Chase Jackson and Jose Koffman v. WHOLE FOODS MARKET, INC. USDC - Central District of California (Western Division - Los Angeles) CIVIL DOCKET FOR CASE #: 2:14-cv-06705
6.	Kevin Grodnick v. Whole Foods Market Inc. U.S. District Court - Southern District of New York (Foley Square) CIVIL DOCKET FOR CASE #: 1:14-cv-07035-ALC
7.	Sarah Rodhouse v. Whole Foods Market Group, Inc. Circuit Court of the City of St. Louis - State of Missouri Case No. 1422-CC09626



IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Carmine Clemente and Samantha Kilgallen, on behalf of themselves and all others similarly situated, Plaintiffs

CIVIL ACTION

Whole Foods Market Group, Inc., and WFM Private Label, C.P., Defendants

14 NO. 5052

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)
(f) Standard Management – Cases that do not fall into any one of the other tracks. ()

10/02/2014 Date Attorney-at-law Defendant's Attorney for
(212) 218-6480 Telephone (917) 344-1315 FAX Number joslick@sesforth.com E-Mail Address

OCT 03 2014