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

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MARK BILDER, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

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

Defendants.

Docket No.: _____

NOTICE OF REMOVAL

TO: Clerk of the Court
United States District Court for the District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101

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 Superior Court of New Jersey, Law Division, Burlington County. In support of this Notice of Removal, Defendants state as follows:

Timeliness of Removal

1. On August 8, 2014, Plaintiff Marc Bilder (“Plaintiff”) initially filed a Class Action Complaint against Defendant Whole Foods Market, Inc. in the Superior Court of New Jersey, Law Division, Burlington County. On September 3, 2014, Plaintiff filed a First Amended Class Action Complaint against Defendants Whole Foods Market Inc., and Whole Foods Market Group, Inc. in the Superior Court of New Jersey, Law Division, Burlington County. On September 9, 2014, Plaintiff filed a Second Amended Class Action Complaint against Defendants Whole Foods Market Group, Inc., and WFM Private Label, L.P. in the Superior Court of New Jersey, Law Division, Burlington County. The lawsuit is recorded on that court’s docket as BUR-L-1904-14. There are no other parties named in Plaintiff’s Second Amended Complaint at the time of filing this removal.

2. The initial Class Action Complaint was not served.

3. On September 3, 2014, a copy of the First Amended Complaint was served upon Whole Foods Market Group, Inc.’s agent for service of process in New Jersey. WFM Private Label was not named a party in the First Amended Complaint nor was it served with the First Amended Complaint.

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.

4. On September 10, 2014, a copy of the Second Amended Complaint was served upon Whole Foods Market Group, Inc. and WFM Private Label, L.P. by electronic mail upon Defendants' attorneys pursuant to agreement.

4. A true and correct copy of the Class Action Complaint filed in the Superior Court of New Jersey action is attached hereto as **Exhibit A**. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of Plaintiff's First Amended Class Action Complaint and Second Amended Class Action Complaint, which constitute "all summons, pleadings, and orders" served upon one or more of the removing Defendants in the Superior Court of New Jersey action, are attached hereto as **Exhibit B and C**.

5. Because Defendants have filed this Notice of Removal within thirty (30) days of service of either Defendant, 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) Plaintiff is a citizen of the State of New Jersey;
- (b) Defendant Whole Foods Market Group, Inc. is a Delaware Corporation, with its principal place of business in Texas;
- (c) Defendant WFM Private Label, L.P. is a Delaware limited partnership, with its principal place of business in Texas;
- (d) 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
- (e) 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 Plaintiff seeks independently exceed the jurisdictional minimum; combined, the relief Plaintiff seeks will undoubtedly exceed it.

10. The Second Amended Class Action Complaint asserts claims under the New Jersey Declaratory Judgments Act, N.J.S.A. 2A:16-51, *et seq.*, the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*, common law breach of express warranty, and the New Jersey Truth in Consumer Contract, Warrant And Notice Act, N.J.S.A. 56:12-14, *et seq.*, arising from the sale of Whole Foods 365 Everyday Value Plain Greek Yogurt (“Greek Yogurt”). On behalf of a putative class of New Jersey citizens of over 10,000 persons, it seeks injunctive and declaratory relief, statutory penalties, damages and treble damages, and reasonable attorneys’ fees and costs.

10. In addition to the damages, treble damages, and statutory penalties Plaintiff seeks, the New Jersey Consumer Fraud Act authorizes recovery of reasonable attorneys’ fees. See N.J.S.A. 56:8-19. And Plaintiffs’ seek this relief in their Second Amended Complaint. If this putative class action case proceeds through class certification and trial to verdict, Plaintiff’s attorneys’ fees alone will undoubtedly exceed \$75,000.

11. Additionally, the Second Amended Class Action Complaint seeks injunctive and/or equitable relief, including “refund and/or recall” of all Greek Yogurt, notification of customers of the alleged inaccuracy of the sugar content of the label, and apparently removal of “all products bearing” the allegedly “erroneous labels from its shelves.” ¶¶ 35(g), 71, 86, see also p. 18 “Prayer for Relief.” Based on Defendants’ review of relevant sales data, sales of the Greek

Yogurt in New Jersey 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.

12. Accordingly, even if one of these separate components of relief Plaintiff seeks did not by itself exceed the jurisdictional minimum, a combination of all of them exceeds it.

Additional Information

12. This Notice of Removal is being filed in the United States District Court for the District of New Jersey, Camden Vicinage, as this is the district court within which the Superior Court action is pending. 28 U.S.C. § 1441(a).

13. 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 Superior Court of New Jersey, Law Division, Burlington County, and will serve a copy thereof on counsel of record for Plaintiff, pursuant to 28 U.S.C. § 1446(d). (Superior Court of New Jersey planned filing attached hereto as **Exhibit D.**)

14. 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 District of New Jersey, Camden Vicinage as an action properly removed thereto.

DATED: October 2, 2014

SEYFARTH SHAW LLP

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

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

MARK BILDER, on behalf of himself and all others similarly situated

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

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

Joseph A. Osefchen, Esq., DeNittis Osefchen, P.C., 5 Greentree Centre,
525 Route 73 N., Ste. 410, Marlton, NJ 08052, (856) 797-9951**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)

James S. Yu, Esq., Seyfarth Shaw LLP, 620 Eighth Ave., 32nd Fl.,
New York, NY 10018, (212) 218-5500, jyu@seyfarth.com**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	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<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 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS 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	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))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<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

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 ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332Brief description of cause:
Consumer fraud in violation of the NJ Consumer Fraud Act**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

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 _____

EXHIBIT A

DeNITTIS OSEFCHEN, P.C.
5 Greentree Centre
525 Route 73 North, Suite 410
Marlton, New Jersey 08053
(856) 797-9951
Attorneys for Plaintiff

() Cash ☒ Check
 () Money Order
 Fee: \$14.95 Collected

AUG 11 2014

RECEIVED / CLERK
 SUPERIOR COURT
 BURLINGTON COUNTY
 2014 AUG -8 AM 8:40

\$ 19128
 Amount \$ 300
 Balance \$ 149

RECEIVED
 BY: 006
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 AUG 08 2014

MARK BILDER, on behalf of himself and all others
 similarly situated,

Plaintiff,

v.

WHOLE FOODS MARKET, INC.,

Defendant

699

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION
 BURLINGTON COUNTY

DOCKET NUMBER:

Bur-L-1904-14

CLASS ACTION

July

INTRODUCTION

1. This is a class action, brought under New Jersey law, on behalf of a class of New Jersey citizens who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt,” in one of the 12 Whole Foods Market stores located in New Jersey, between August 6, 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 amount stated on the product’s label. See Attachment A, Consumer Report article dated July 17, 2014.

**COPY RETURNED
 TO FILER**

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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. 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."

11. 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 New Jersey stores every day.

12. This complaint seeks injunctive, declaratory and monetary relief for Plaintiff and the

proposed class of New Jersey purchasers, under the New Jersey Declaratory Judgment Act, ***, the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., New Jersey common law relating to express warranty and the New Jersey Truth in Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-14 through 18.

JURISDICTION AND VENUE

13. All claims in this matter arise exclusively under New Jersey law.

14. This matter is properly venued in the New Jersey Superior Court of New Jersey, Burlington County, in that Plaintiff Bilder purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” at the Whole Foods Market located in Evesham Township, Burlington County, and Defendant Whole Foods Market, Inc. does business, inter alia, in Burlington County, New Jersey.

THE PARTIES

15. Plaintiff Bilder resides in Atlantic County, New Jersey.

16. Like all members of the proposed class, Plaintiff Bilder is a New Jersey citizen who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in New Jersey between August 8, 2008 and August 8, 2014 which stated on “Nutrition Facts” label that the yogurt contained “Sugars 2g” per 170 gram serving.

17. Specifically, Plaintiff Bilder purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from the Whole Foods Market located in Evesham Township, New Jersey on various dates between August 8, 2008 and August 8, 2014, including on August 6, 2014, when Mr. Bilder purchased three containers of “Whole Foods 365 Everyday Value Plain Greek Yogurt” for \$1.29 each at the Whole Foods Market in Evesham, New Jersey. See Attachment B.

18. 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

19. Plaintiff brings this action as a class action pursuant to R 4:32, on behalf of a class defined as:

All New Jersey citizens who, between August 8, 2008 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in New Jersey.

20. Plaintiff also brings this action as a class action pursuant to R 4:32, on behalf of a sub-class defined as:

All New Jersey citizens who, between August 8, 2008 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in New Jersey, using a credit card, debit card or via Whole Foods Market’s “online ordering” program.

21. Plaintiff also brings this action as a class action pursuant to R 4:32, on behalf of a sub-class defined as:

All New Jersey citizens who, between July 18, 2014 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in New Jersey, using a credit card, debit card or via Whole Foods Market’s “online ordering” program.

22. The class and sub-classes for whose benefit this action is brought are so numerous that joinder of all members is impracticable.

23. Upon information and belief, the proposed class is composed of over 10,000 persons and each proposed sub-class is composed of at least 5000 persons.

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

25. Rather, all claims in this matter arise from the identical, false, written affirmative statements on the "Nutrition Facts" label on "Whole Foods 365 Everyday Value Plain Greek Yogurt," which states in uniform language that the product contains "Sugars 2g" per 170 gram serving.

26. There are common questions of law and fact affecting the rights of the class and subclass 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 a false, misleading or deceptive affirmative representation of fact in violation of N.J.S.A. 56:8-2 , the New Jersey Consumer Fraud Act;**
- e. **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 New Jersey common law regarding express warranty;**
- 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 the New Jersey Truth in Consumer Contract, Warranty and Notice Act; and**
- g. **Whether Plaintiff 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.**

27. Plaintiff is a member of the class and sub-classes he seeks to represent.

28. The claims of Plaintiff are not only typical of all class and sub-class members, they are identical.

29. All claims of plaintiff and the class and sub-classes arise from the same identical, false, written statement of affirmative fact on the “Nutrition Facts” label for “Whole Foods 365 Everyday Value Plain Greek Yogurt” which stated “Sugars 2g” per 170 gram serving.

30. All claims of plaintiff and the class are based on the exact same legal theories.

31. Plaintiff has no interest antagonistic to, or in conflict with, the class or sub-class.

32. Plaintiff will thoroughly and adequately protect the interests of the class and sub-class, having retained qualified and competent legal counsel to represent himself and the class and sub-class.

33. Defendant has acted and refused to act on grounds generally applicable to the class and sub-class, thereby making appropriate injunctive and declaratory relief for the class as a whole.

34. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

35. A class action is the only practical, available method for the fair and efficient adjudication of the controversy since, inter alia, the damages suffered by each class member were less than \$5 per container purchased and, as such, individual actions are not economically feasible.

36. Common questions will predominate, and there will be no unusual manageability issues.

FACTUAL ALLEGATIONS

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

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

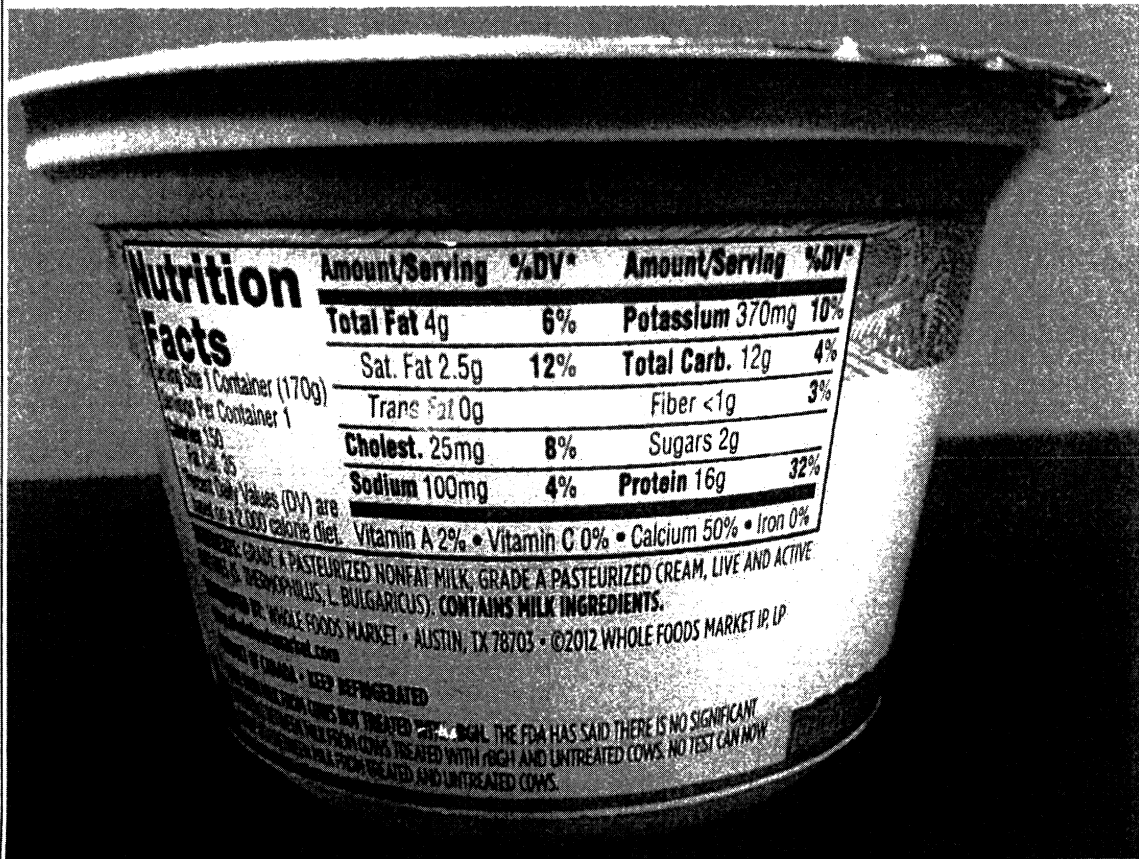
Foods Market store brand, which, as with Defendant's other products, Defendant sells under the store motto "Health Starts Here."

39. 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."

40. Defendant maintains 12 Whole Foods Markets in New Jersey.

41. 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.



42. 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.

43. 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.

44. 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”

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

46. 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.”

47. 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.

48. 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.

49. 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.”

50. 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.”

51. 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 “healthier” than other foods.

52. 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.”

53. 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.

54. 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.

55. 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.

56. Finally, there can simply no dispute that after the Consumer Reports report was published on July 17, 2014, Whole Foods Market had actual 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.

57. 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.

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

59. Such conduct very clearly exhibits knowing intent on the part of Defendant.

COUNT I

INJUNCTIVE AND DECLARATORY RELIEF UNDER THE NEW JERSEY DECLARATORY JUDGMENTS ACT

N.J.S.A. 2A:16-51 et seq.

60. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

61. Plaintiff and the class need, and are entitled to, a declaration that the sugar content per 170 grams of “Whole Foods 365 Everyday Value Plain Greek Yogurt” is substantially higher than 2 grams and that the statement on this product’s label that such a serving contains “Sugar 2g” is inaccurate.

62. Each Plaintiff and class member has a significant interest in this matter.

63. A justifiable controversy was presented in this case, rendering declaratory judgment appropriate.

64. In addition, because the unlawful uniform conduct of Defendant continues, and is on-going, the class also needs, and is entitled to, an order enjoining Defendant from selling “Whole Foods 365 Everyday Value Plain Greek Yogurt” with the current erroneous label in New Jersey and requiring Defendant to notify customers of the inaccuracy of the sugar content on this label.

COUNT II

THE NEW JERSEY CONSUMER FRAUD ACT

N.J.S.A. 56:8-1 et seq.

65. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

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

67. This action does not raise any federal claims.

68. The New Jersey Consumer Fraud Act clearly applies to all sales of “Whole Foods 365 Everyday Value Plain Greek Yogurt” sold to New Jersey consumers in Whole Foods Markets located in New Jersey.

69. The New Jersey Consumer Fraud Act (“CFA”) was enacted to protect consumers against sharp and unconscionable commercial practices by persons engaged in the sale of goods or services. See Marascio v. Campanella, 298 N.J. Super. 491, 500 (App. Div. 1997).

70. The CFA is a remedial statute which the New Jersey Supreme Court has repeatedly held must be construed liberally in favor of the consumer to accomplish its deterrent and protective purposes. See Furst v. Einstein Moomjy, 182 N.J. 1, 11-12 (2004)(“**The Consumer Fraud Act**

is remedial legislation that we construe liberally to accomplish its broad purpose of safeguarding the public.”).

71. With regard to the CFA, “[t]he available legislative history demonstrates that the Act was intended to be one of the strongest consumer protection laws in the nation.” New Mea Const. Corp. v. Harper, 203 N.J. Super. 315, 319 (App. Div. 1986).

72. For this reason, the “history of the Act is one of constant expansion of consumer protection.” Kavky v. Herballife International of America, 359 N.J. Super. 497, 504 (App. Div. 2003).

73. The CFA was intended to protect consumers “by eliminating sharp practices and dealings in the marketing of merchandise and real estate.” Lemelledo v. Beneficial Management Corp., 150 N.J. 255, 263 (1997).

74. Specifically, N.J.S.A. 56:8-2 of the CFA prohibits “unlawful practices,” which are defined as:

“The act, use or employment of any unconscionable commercial practice, deception, fraud, false pretense, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission whether or not any person has in fact been misled, deceived or damaged thereby.”

75. The catch-all term “unconscionable commercial practice” was added to the CFA by amendment in 1971 to ensure that the Act covered, inter alia, “incomplete disclosures.” Skeer v. EMK Motors, Inc., 187 N.J. Super. 465, 472 (App. Div. 1982).

76. In describing what constitutes an “unconscionable commercial practice,” the New Jersey Supreme Court has noted that it is an amorphous concept designed to establish a broad business ethic. See Cox v. Sears Roebuck & Co., 138 N.J. 2, 18 (1994).

77. “Whole Foods 365 Everyday Value Plain Greek Yogurt” is a “credence good,” because its properties and purported benefits cannot be independently assessed or verified by the consumer at the time of purchase and such properties and benefits are made known to consumers only through the information provided on the label by the product's manufacturer and distributor. See Lee v. Carter-Reed Co., L.L.C. 203 N.J. 496, 522 (2010). See also Richard A. Posner, An Economic Approach to the Law of Evidence, 51 Stan. L.Rev. 1477, 1489 (1999) (“**A good is a credence good if the consumer cannot readily determine its quality by inspection or even use, so that he has to take its quality ‘on faith.’**”).

78. The New Jersey Supreme Court in Lee v. Carter-Reed Co., L.L.C. 203 N.J. 496, 522 (2010), recently spoke regarding the relationship between dishonest product labeling and credence goods, stating:

“A rational consumer does not randomly take a bottle of pills off a shelf and then purchase it without reading the packaging and labeling.”

79. In order to state a cause of action under the CFA, a plaintiff does not need to show reliance by the consumer. See Varacallo v. Massachusetts Mut. Life Ins. Co., 332 N.J.Super. 31, 43, 752 A.2d 807 (App.Div.2000); Gennari v. Weichert Co. Realtors, 148 N.J. 582, 607-608, 691 A.2d 350 (1997) (holding that reliance is not required in suits under the CFA because liability results from “**misrepresentations whether ‘any person has in fact been misled, deceived or damaged thereby’**”).

80. Rather, the CFA requires merely a causal nexus between the false statement and the purchase, not actual reliance. See Lee v. Carter-Reed Co., L.L.C. 203 N.J. 496, 522 (2010) (“**causation under the CFA is not the equivalent of reliance**”).

81. As stated by the New Jersey Supreme Court in Lee, 203 N.J. at 528:

“It bears repeating that the CFA does not require proof of reliance, but only a causal connection between the unlawful practice and ascertainable loss.”

82. The purchase of a credence good, where the label on the product contains false misrepresentations of material fact, by itself, establishes a presumption of a causal nexus under the CFA. See Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496 (2010). See also Varcallo, at *49 (“the purchase of the policy by a person who was shown the literature would be sufficient to establish prima facie proof of causation.”).

83. By the acts alleged herein, Defendant has violated the CFA.

84. Specifically, Defendant has made identical, false, written, misstatements of affirmative fact on the “Nutrition Facts” label on each container of “Whole Foods 365 Everyday Value Plain Greek Yogurt” sold between August 6, 2008 and the present, each of which stated that the product contained “Sugars 2g” per serving.

85. This statement was false and Defendant knew or should have known that this statement was false when it was made.

86. As a result of this false, written affirmative misstatement of material fact, Plaintiff and the class have suffered an ascertainable loss of money.

87. Specifically, Plaintiff and the class have been deprived of the benefit of their bargain – a valid measure of “ascertainable loss” under the CFA according to the New Jersey Supreme Court and New Jersey Appellate Division – in that Plaintiff and the class received something less than what was represented in Defendant’s label: a Greek yogurt with 2 grams of sugar per serving.

88. Indeed, Defendant’s written false claim on its label that “Whole Foods 365 Everyday Value Plain Greek Yogurt” had only 2 grams of sugar per serving – which, if true, would have made it the lowest sugar content of any Greek yogurt on the market – induced Plaintiff and the

class to pay a higher price for this yogurt than cheaper yogurts sold by Defendant's competitors which had far less sugar than what was actually contained in "Whole Foods 365 Everyday Value Plain Greek Yogurt."

COUNT III

NEW JERSEY BREACH OF EXPRESS WARRANTY

89. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

90. By operation of New Jersey law, Defendant entered into a contract with each New Jersey class member when the member purchased a container of "Whole Foods 365 Everyday Value Plain Greek Yogurt" in New Jersey.

91. By operation of New Jersey law, the terms of this contract included an express warranty incorporating the identical affirmation, promise and description by Defendant regarding "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.

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

93. Defendant has breached the terms of this express 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.

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

COUNT IV

**TRUTH IN CONSUMER CONTRACT,
WARRANTY AND NOTICE ACT**

N.J.S.A. 56:12-14 et seq

95. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

96. Plaintiff and the class are “consumers” within the meaning of N.J.S.A. 56:12-15 and 16.

97. Defendant is a “seller” within the meaning of N.J.S.A. 56:12-15 and 16.

98. The “Nutrition Facts” label on “Whole Foods 365 Everyday Value Plain Greek Yogurt” is both a consumer “notice” and “warranty” within the meaning of N.J.S.A. 56:12-15 and 16.

99. By the acts alleged herein, Defendant has violated N.J.S.A. 56:12-16 because, in the course of Defendant’s business, Defendant has offered written consumer notices and warranties to Plaintiff and the class which contained provisions which violated their clearly established legal rights under federal law, within the meaning of N.J.S.A. 56:12-15.

100. Specifically, the clearly established rights of Plaintiff and the class under federal law include the right under the Nutrition Labeling and Education Act of 1990 (“NLEA”) and 21 CFR 101.9 (g)(5), which provide that a food with a label declaration of calories, sugars, total fat, saturated fat, trans fat, cholesterol, or sodium shall be deemed to be misbranded under section 403(a) of the Act if the nutrient content of the composite is greater than 20 percent in excess of the value for that nutrient declared on the label.

101. The purpose of the NLEA and its implementing regulations was to prohibit the mislabeling of products in the manner which occurred in the case at bar.

102. Moreover, the clearly established rights of Plaintiff and the class under state law include the right not to be subjected to false written affirmative statements of fact in the sale of goods, as prohibited by N.J.S.A. 56:8-2.

103. Pursuant to N.J.S.A. 56:12-17, this class complaint seeks a statutory penalty of \$100 for each class member, as well as actual damages and attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this court to:

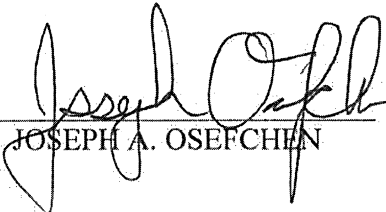
- a. Certify the proposed class as a class action pursuant to R 4:32;
- b. Enter an order for injunctive and declaratory relief as described herein;
- c. Enter judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;
- d. Award plaintiff reasonable attorneys' fees and costs;
- e. Award plaintiff and the class treble damages;
- f. Award each class member a \$100 statutory penalty under N.J.S.A. 56:12-17; and
- h. Grant such other and further legal and equitable relief as the court deems just and equitable.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

DeNITTIS OSEFCHEN, P.C.

By: _____


JOSEPH A. OSEFCHEN

Dated: _____

8/8/14

CERTIFICATION PURSUANT TO R. 4:5-1

To the best of Plaintiff's knowledge, there are no other actions based on the same facts pending against Defendant in New Jersey or any New Jersey law. No arbitration proceeding is pending or contemplated. There is an action against Defendant in federal court in Massachusetts that does not raise any claims under New Jersey law. There are no other parties known to Plaintiff at this time who should be joined in this action.

CERTIFICATION PURSUANT TO N.J.S.A. 56:8-1 et seq.

The undersigned hereby certify that a copy of this complaint has been forwarded to the Attorney General of the State of New Jersey and the Burlington County Offices of Consumer Affairs.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Stephen DeNittis is designated as trial counsel.

DeNITTIS OSEFCHEN, P.C.

By: _____

JOSEPH A. JOSEFCHEN

Dated: _____

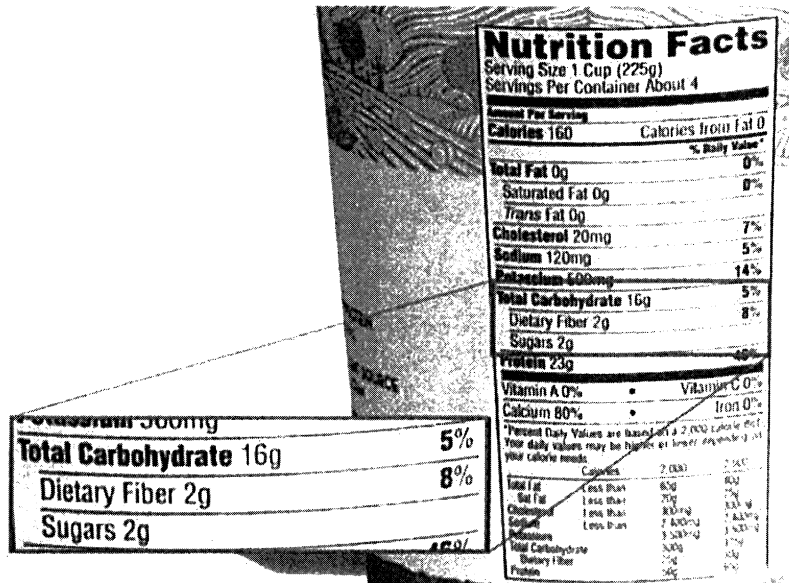
8/8/14

ConsumerReports.org

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

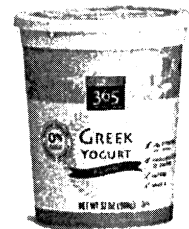


During a recent test of plain Greek yogurts for nutrition and taste, our food experts noted something curious about Whole Foods 365 Every Day Value Plain Fat-Free Greek Yogurt. While the Nutrition Facts labels on the other 12 plain yogurts we evaluated had a range of between 5 and 10 grams of sugar per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

MARKET

Save more dough, all day, every day!
Made In-House Large Pizzas 2 for \$20

365 CRG SWEET HONE	3.91 F
BRAND 365 MILK WHO	3.51 F
365 CRK YOGURT, 2%	1.21 F
365 CRK YOGURT, 2%	1.21 F
365 CRK YOGURT, 2%	1.21 F
JASON STYLING GEL	8.91 T
KISS DEOD STR MENS	5.91 T
365 CRK YOGURT, 2%	1.21 F
**** TAX 1.04	BAL 28.74

DEBIT 28.74

PIN USED

ACCT # *****9140

SEC # 1477

Authorization #



CHANGE .00

3/06/14 12:55 PM 0039 05 0066 1756

Your cashier today is WANDA

Thank You For Shopping At Whole Food
Market Marlton (856) 797-1115

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1 Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed		FOR USE BY CLERK'S OFFICE ONLY		
					PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA		
					CHG/CK NO.		
					AMOUNT:		
						OVERPAYMENT:	
						BATCH NUMBER:	
ATTORNEY / PRO SE NAME Joseph A. Osefchen, Esquire			TELEPHONE NUMBER (856) 797-9951		COUNTY OF VENUE Burlington <input type="checkbox"/>		
FIRM NAME (if applicable) DeNittis Osefchen, P.C.			DOCKET NUMBER (when available) <i>Bur L-1904-14</i>				
OFFICE ADDRESS 525 Route 73 North, Suite 410 Marlton, NJ 08053			DOCUMENT TYPE Complaint				
			JURY DEMAND <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				
NAME OF PARTY (e.g., John Doe, Plaintiff) Mark Bilder, plaintiff			CAPTION Bilder v. Whole Foods Market, Inc.				
CASE TYPE NUMBER (See reverse side for listing) 699		HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.			
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS					
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN					
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.							
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION							
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS					
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO							
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION							
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION					
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE?					
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).							
ATTORNEY SIGNATURE: <i>Joseph A. Osefchen</i>							

Side 2



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1***CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)**Track I - 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE – PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE – PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT – OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 288 PRUDENTIAL TORT LITIGATION |
| 271 ACCUTANE/ISOTRETINOIN | 289 REGLAN |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 278 ZOMETA/ARELIA | 291 PELVIC MESH/GYNECARE |
| 279 GADOLINIUM | 292 PELVIC MESH/BARD |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 293 DEPUY ASR HIP IMPLANT LITIGATION |
| 282 FOSAMAX | 295 ALLODERM REGENERATIVE TISSUE MATRIX |
| 284 NUVARING | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS | 297 MIRENA CONTRACEPTIVE DEVICE |
| 286 LEVAQUIN | 601 ASBESTOS |
| 287 YAZ/YASMIN/OCELLA | 623 PROPECIA |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category



Putative Class Action



Title 59

EXHIBIT B



**Service of Process
Transmittal**

09/03/2014

CT Log Number 525636982

TO: Roberta Lang
Whole Foods Market, Inc.
550 Bowie Street
Austin, TX 78703

RE: **Process Served in New Jersey**

FOR: Whole Foods Market Group, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Mark Bilder, on behalf of himself and all others similarly situated, Pltf. vs. Whole Foods Market, Inc. and Whole Foods Market Group, Inc., Dfts.

DOCUMENT(S) SERVED: Letter(s), Attachment(s), Notice(s), First Amended Class Action Complaint(s), Certification(s), Exhibit(s)

COURT/AGENCY: Burlington County Superior Court - Law Division, NJ
Case # BURL190414

NATURE OF ACTION: Product Liability Litigation - Breach of Warranty - Whole Foods 365 Everyday Value Plain Greek Yogurt - Seeking Injunctive and Declaratory Relief

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, West Trenton, NJ

DATE AND HOUR OF SERVICE: By Courier on 09/03/2014

JURISDICTION SERVED : New Jersey

APPEARANCE OR ANSWER DUE: Within 35 days from the date you received the summons, not counting the date you received it

ATTORNEY(S) / SENDER(S): Joseph A. Osefchen
DeNittis Osefchen, P.C.
5 Greentree Centre
525 Route 73 North
Suite 410
Marlton, NJ 08053
856-797-9951

ACTION ITEMS: CT has retained the current log, Retain Date: 09/05/2014, Expected Purge Date: 09/10/2014
Image SOP
Email Notification, Email Process SOP@WHOLEFOODS.COM
Email Notification, Roberta Lang barbara.jenkins@wholefoods.com

SIGNED: The Corporation Trust Company

ADDRESS: 820 Bear Tavern Road
3rd Floor
West Trenton, NJ 08628

TELEPHONE: 609-538-1818

From: (973) 491-3800
 Jennifer E. Rowley
 LeChairRyan
 One Riverfront Plaza
 1037 Raymond Boulevard
 Newark, NJ 07102

Origin ID: VAKA



J14201406190326

Ship Date: 02SEP14
 ActWgt: 0.6 LB
 CAD: 100184275INET3550

Delivery Address Bar Code



SHIP TO: (609) 534-1818

BILL SENDER

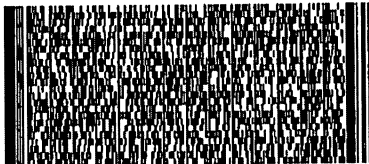
C/O Registered Agent Corporate Trus
 United Services Automobile Assoc.
 820 BEAR TAVERN RD

EWING TOWNSHIP, NJ 08628

Ref # 43918.0003
 Invoice #
 PO #
 Dept # 3183

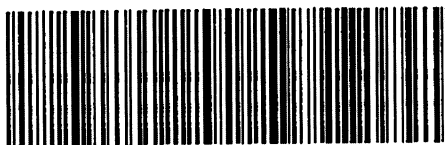
WED - 03 SEP AA
 STANDARD OVERNIGHT

TRK# 7710 1353 5239
 0201



E2 TTNA

08628
 NJ-US
 EWR



52201UC0648AC3

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

DeNITTIS OSEFCHEN, P.C.

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

5 GREENTREE CENTRE

525 ROUTE 73 NORTH, SUITE 410

MARLTON, NEW JERSEY 08053

TEL: (856) 797-9951 FAX: (856) 797-9978

www.denittislaw.com

STEPHEN P. DeNITTIS*
JOSEPH A. OSEFCHEN
SHANE T. PRINCE*

1515 MARKET STREET, SUITE 1200
PHILADELPHIA, PA 19102
TEL: (215) 564-1721
FAX: (215) 564-1759

- * MEMBER OF THE NJ & PA BAR
- * CERTIFIED CIVIL TRIAL ATTORNEY BY THE
SUPREME COURT OF NEW JERSEY

September 3, 2014

Via Hand Delivery

The Corporation Trust Company
As registered agent for Whole Foods Market Group, Inc.
820 Bear Tavern Road
West Trenton, NJ 08628

Re: **Bilder, et al. v. Whole Foods Market Group, Inc.**
Docket No. BUR-L-1904-14

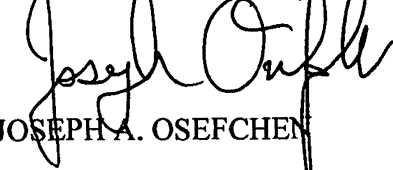
Dear Sir or Madam:

Enclosed please find a copy of the Summons and Complaint in the above captioned matter. Please provide your response pursuant to the Rules of the Court.

Thank you for your attention in this matter.

Very truly yours,

DeNITTIS OSEFCHEN, P.C.



JOSEPH A. OSEFCHEN

JAO: jra
Encl.

DeNITTIS OSEFCHEN, P.C.
5 Greentree Centre
525 Route 73 North, Suite 410
Marlton, New Jersey 08053
(856) 797-9951
Attorneys for Plaintiff

MARK BILDER, on behalf of himself and all others
 similarly situated,

Plaintiff,

v.

WHOLE FOODS MARKET, INC.,

Defendant

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION
 BURLINGTON COUNTY

DOCKET NUMBER: BUR-L-1904-14

CLASS ACTION

From The State of New Jersey

To The Defendant(s) Named Above: Whole Foods Market Group, Inc.

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received the summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of services with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for fee legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Dated: September 3, 2014

/s/ MICHELLE M. SMITH

Clerk of the Superior Court

Name of defendant(s) to be served: Whole Foods Market Group, Inc.
c/o The Corporation Trust Company, Registered Agent
820 Bear Tavern Road
West Trenton, NJ 08628

ATLANTIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division, Direct Filing
1201 Bacharach Blvd., First Fl.
Atlantic City, NJ 08401

LAWYER REFERRAL
(609) 345-3444
LEGAL SERVICES
(609) 348-4200

BERGEN COUNTY:

Deputy Clerk of the Superior Court
Case Processing Section, Room 119
Justice Center, 10 Main St.
Hackensack, NJ 07601-0769

LAWYER REFERRAL
(201) 488-0044
LEGAL SERVICES
(201) 487-2166

BURLINGTON COUNTY:

Deputy Clerk of the Superior Court
Central Processing Office
Attn: Judicial Intake
First Fl., Courts Facility
49 Rancocas Road
Mt. Holly, NJ 08060

LAWYER REFERRAL
(609) 261-4862
LEGAL SERVICES
(609) 261-1088

CAMDEN COUNTY:

Deputy Clerk of the Superior Court
Civil Processing Office
1st Fl., Hall of Records
101 S. 5th Street
Camden, NJ 08103

LAWYER REFERRAL
(856) 964-4520
LEGAL SERVICES
(856) 964-2010

CAPE MAY COUNTY:

Deputy Clerk of the Superior Court
9 N. Main Street
Box DN-209
Cape May Court House, NJ 08210

LAWYER REFERRAL
(609) 463-0313
LEGAL SERVICES
(609) 465-3001

CUMBERLAND COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Broad & Fayette Sts., P.O. Box 615
Bridgeton, NJ 08302

LAWYER REFERRAL
(856) 692-6207
LEGAL SERVICES
(856) 451-0003

ESSEX COUNTY:

Deputy Clerk of the Superior Court
50 West Market Street
Room 131
Newark, NJ 07102

LAWYER REFERRAL
(973) 622-6207
LEGAL SERVICES
(973) 624-4500

GLOUCESTER COUNTY:

Deputy Clerk of the Superior Court
Civil Case Management Office
Attn: Intake
First Fl., Court House
1 North Broad Street, P.O. Box 129
Woodbury, NJ 08096

LAWYER REFERRAL
(856) 848-4589
LEGAL SERVICES
(856) 848-5360

HUDSON COUNTY:

Deputy Clerk of the Superior Court
Superior Court, Civil Records Dept.
Brennan Court House – 1st Floor
583 Newark Avenue
Jersey City, NJ 07306

LAWYER REFERRAL
(201) 798-2727
LEGAL SERVICES
(201) 792-6363

HUNTERDON COUNTY:

Deputy Clerk of the Superior Court
Civil Division
65 Park Avenue
Flemington, NJ 08862

LAWYER REFERRAL
(908) 735-2611
LEGAL SERVICES
(908) 782-7979

MERCER COUNTY:

Deputy Clerk of the Superior Court
Local Filing Office, Courthouse
175 South Broad St., P.O. Box 8068
Trenton, NJ 08650

LAWYER REFERRAL
(609) 585-6200
LEGAL SERVICES
(609) 695-6249

MIDDLESEX COUNTY:

Deputy Clerk of the Superior Court
Administration Building
Third Floor
1 Kennedy Sq., P.O. Box 2633
New Brunswick, NJ 08903-2633

LAWYER REFERRAL
(732) 828-0053
LEGAL SERVICES
(732) 249-7600

MONMOUTH COUNTY:

Deputy Clerk of the Superior Court
Court House, 71 Monument Park
P.O. Box 1269
Freehold, NJ 07728-1262

LAWYER REFERRAL
(732) 431-5544
LEGAL SERVICES
(732) 866-0020

MORRIS COUNTY:

Deputy Clerk of the Superior Court
Civil Division
30 Schuyler Pl., P.O. Box 910
Morristown, NJ 07960-0910

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 285-6911

OCEAN COUNTY:

Deputy Clerk of the Superior Court
Court House, Room 119
118 Washington Street
Toms River, NJ 08754

LAWYER REFERRAL
(732) 240-3666
LEGAL SERVICES
(732) 341-2727

PASSAIC COUNTY:

Deputy Clerk of the Superior Court
Civil Division
Court House
77 Hamilton Street
Paterson, NJ 07505

LAWYER REFERRAL
(973) 278-9223
LEGAL SERVICES
(973) 345-7171

SALEM COUNTY:

Deputy Clerk of the Superior Court
92 Market St., P.O. Box 18
Salem, NJ 08079

LAWYER REFERRAL
(856) 935-5628
LEGAL SERVICES
(856) 451-0003

SOMERSET COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
New Court House, 3rd Fl.
P.O Box 3000
Somerville, NJ 08876

LAWYER REFERRAL
(908) 685-2323
LEGAL SERVICES
(908) 231-0840

SUSSEX COUNTY:

Deputy Clerk of the Superior Court
Sussex County Judicial Center
43-47 High Street
Newton, NJ 07860

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 383-7400

UNION COUNTY:

Deputy Clerk of the Superior Court
1st Fl., Court House
2 Broad Street
Elizabeth, NJ 07207-6073

LAWYER REFERRAL
(908) 353-4715
LEGAL SERVICES
(908) 354-4340

WARREN COUNTY:

Deputy Clerk of the Superior Court
Civil Division Office
Court House, 413 Second Street
Belvidere, NJ 07823-1500

LAWYER REFERRAL
(973) 267-5882
LEGAL SERVICES
(973) 475-2010

BURLINGTON COUNTY

SUPERIOR COURT

49 RANOCAS ROAD

MT HOLLY

NJ 08060

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (609) 518-2815

COURT HOURS 8:30 AM - 4:30 PM

DATE: AUGUST 12, 2014

RE: BILDER VS WHOLE FOODS MARKET INC

DOCKET: BUR L -001904 14

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 2.

DISCOVERY IS 300 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON JOHN E. HARRINGTON

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 002

AT: (609) 518-2820.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.

PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: STEPHEN DENITTIS

DENITTIS OSEFCHEN PC

525 ROUTE 73 NORTH

5 GREENTREE CENTRE SUITE 410

MARLTON

NJ 08053

JUCFLY0

DeNITTIS OSEFCHEN, P.C.
5 Greentree Centre
525 Route 73 North, Suite 410
Marlton, New Jersey 08053
(856) 797-9951
Attorneys for Plaintiff

SUPERIOR COURT
BURLINGTON COUNTY

2014 SEP -3 PM 1:24

RECEIVED
BY: 005

MARK BILDER, on behalf of himself and all others
similarly situated,

Plaintiff,

v.

WHOLE FOODS MARKET, INC., and WHOLE
FOODS MARKET GROUP, INC.,

Defendants

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION
BURLINGTON COUNTY

DOCKET NUMBER: BUR-L-1904-14

**FIRST AMENDED CLASS ACTION
COMPLAINT**

INTRODUCTION

1. This is a class action, brought under New Jersey law, on behalf of a class of New Jersey citizens who purchased "Whole Foods 365 Everyday Value Plain Greek Yogurt," in one of the 12 Whole Foods Market stores located in New Jersey, between August 6, 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," the "Whole Foods 365 Everyday Value Plain Greek Yogurt" contains at least 11.4 grams of sugar per 170 gram serving – nearly six times the amount 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 Greek 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. 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.”

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 New Jersey stores every day.

13. This complaint seeks injunctive, declaratory and monetary relief for Plaintiff and the

proposed class of New Jersey purchasers, under the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-51 et seq., the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., New Jersey common law relating to express warranty and the New Jersey Truth in Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-14 through 18.

JURISDICTION AND VENUE

14. All claims in this matter arise exclusively under New Jersey law.

15. This matter is properly venued in the New Jersey Superior Court of New Jersey, Burlington County, in that Plaintiff Bilder purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” at the Whole Foods Market located in Evesham Township, Burlington County, and Defendant Whole Foods Market, Inc. does business, inter alia, in Burlington County, New Jersey.

THE PARTIES

16. Plaintiff Bilder resides in Atlantic County, New Jersey.

17. Like all members of the proposed class, Plaintiff Bilder is a New Jersey citizen who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in New Jersey between August 8, 2008 and August 8, 2014 which stated on “Nutrition Facts” label that the yogurt contained “Sugars 2g” per 170 gram serving.

18. Specifically, Plaintiff Bilder purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from the Whole Foods Market located in Evesham Township, New Jersey on various dates between August 8, 2008 and August 8, 2014, including on August 6, 2014, when Mr. Bilder purchased three containers of 2% “Whole Foods 365 Everyday Value Plain Greek Yogurt” for \$1.29 each at the Whole Foods Market in Evesham, New Jersey, each of which

stated on the label that the product contained “Sugars 2g” per 170 gram serving. See Attachment B.

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

20. 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.

21. Together, Defendants Whole Food Market Inc. and Whole Foods Market Group, Inc. 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

22. Plaintiff brings this action as a class action pursuant to R 4:32, on behalf of a class defined as:

All New Jersey citizens who, between August 8, 2008 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in New Jersey.

23. Plaintiff also brings this action as a class action pursuant to R 4:32, on behalf of a sub-class defined as:

All New Jersey citizens who, between August 8, 2008 and the present, purchased “2% Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in the State of New Jersey.

24. Plaintiff also brings this action as a class action pursuant to R 4:32, on behalf of a sub-class defined as:

All New Jersey citizens who, between August 8, 2008 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in New Jersey, using a credit card, debit card or via Whole Foods Market’s “online ordering” program.

25. Plaintiff also brings this action as a class action pursuant to R 4:32, on behalf of a sub-class defined as:

All New Jersey citizens who, between July 18, 2014 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in New Jersey, using a credit card, debit card or via Whole Foods Market’s “online ordering” program.

26. The class and sub-classes for whose benefit this action is brought are so numerous that joinder of all members is impracticable.

27. Upon information and belief, the proposed class is composed of over 10,000 persons and each proposed sub-class is composed of at least 5000 persons.

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

29. Rather, all claims in this matter arise from the identical, false, written affirmative statements on the “Nutrition Facts” label on “Whole Foods 365 Everyday Value Plain Greek Yogurt,” which states in uniform language that the product contains “Sugars 2g” per 170 gram serving.

30. There are common questions of law and fact affecting the rights of the class and subclass 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 a false, misleading or deceptive affirmative representation of fact in violation of N.J.S.A. 56:8-2, the New Jersey Consumer Fraud Act;**
- e. 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 New Jersey common law regarding express warranty;**
- 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 the New Jersey Truth in Consumer Contract, Warranty and Notice Act; and**
- g. Whether Plaintiff 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.**

31. Plaintiff is a member of the class and sub-classes he seeks to represent.

32. The claims of Plaintiff are not only typical of all class and sub-class members, they are identical.

33. All claims of plaintiff and the class and sub-classes arise from the same identical, false, written statement of affirmative fact on the “Nutrition Facts” label for “Whole Foods 365 Everyday Value Plain Greek Yogurt” which stated “Sugars 2g” per 170 gram serving.

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

35. Plaintiff has no interest antagonistic to, or in conflict with, the class or sub-class.

36. Plaintiff will thoroughly and adequately protect the interests of the class and sub-class, having retained qualified and competent legal counsel to represent himself and the class and sub-class.

37. Defendants have acted and refused to act on grounds generally applicable to the class and sub-class, thereby making appropriate injunctive and declaratory relief for the class as a whole.

38. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

39. A class action is the only practical, available method for the fair and efficient adjudication of the controversy since, inter alia, the damages suffered by each class member were less than \$5 per container purchased and, as such, individual actions are not economically feasible.

40. Common questions will predominate, and there will be no unusual manageability issues.

FACTUAL ALLEGATIONS

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

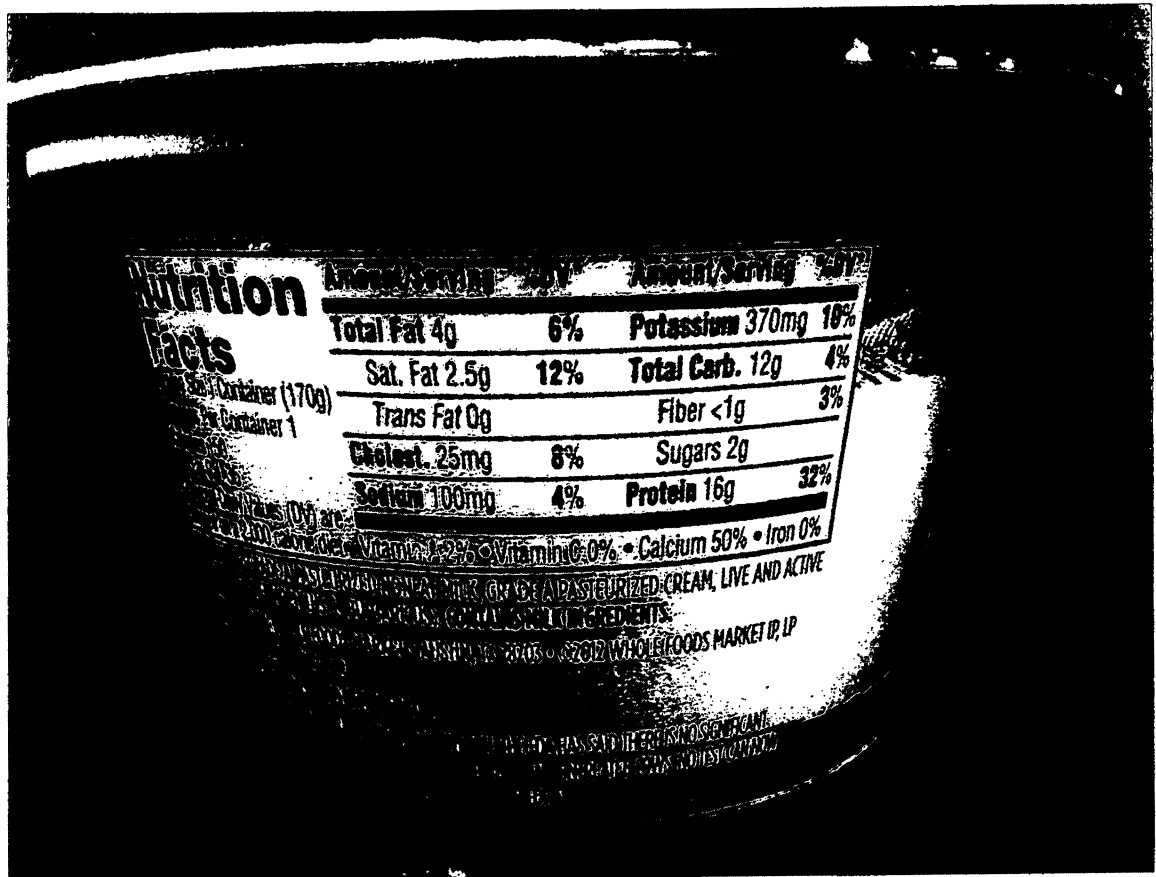
42. The “Whole Foods 365 Everyday Value Plain Greek Yogurt” is a an exclusive Whole Foods Market store brand, which, as with Defendants’ other products, Defendants sell under the store motto “Health Starts Here.”

43. 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.”

44. Defendants maintain 12 Whole Foods Markets in New Jersey.

45. 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.



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

47. Both plain versions contain identical statements on the label that the product contains “Sugars 2g” per 170 gram serving.

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

49. 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.

50. Defendants, as developers, manufacturers, and exclusive sellers and distributors 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.

51. 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”

52. Unless such statements are false, then Defendants were fully aware of the contents of its store brand Greek yogurt.

53. 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 Defendant falsely stated on the label for “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

54. 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.

55. 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 its competitors, all of which list a sugar content at least twice as high as the 2 grams per serving falsely stated on Defendants’ label.

56. 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.”

57. 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.”

58. 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 “healthier” than other foods.

59. 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.”

60. 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.

61. 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.

62. 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.

63. 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.

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

65. Indeed, Defendants continue to sell 2% “Whole Foods 365 Everyday Value Plain Greek Yogurt,” with the same false statement that the product contains “Sugars 2g” per serving on the label, to this very day.

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

COUNT I

INJUNCTIVE AND DECLARATORY RELIEF UNDER THE NEW JERSEY DECLARATORY JUDGMENTS ACT

N.J.S.A. 2A:16-51 et seq.

67. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

68. Plaintiff and the class need, and are entitled to, a declaration that the sugar content per 170 grams of “Whole Foods 365 Everyday Value Plain Greek Yogurt” is substantially higher

than 2 grams and that the statement on this product's label that such a serving contains "Sugar 2g" is inaccurate.

69. Each Plaintiff and class member has a significant interest in this matter.

70. A justifiable controversy was presented in this case, rendering declaratory judgment appropriate.

71. In addition, because the unlawful uniform conduct of Defendants continues, and is on-going, the class also needs, and is entitled to, an order enjoining Defendants from selling "Whole Foods 365 Everyday Value Plain Greek Yogurt" with the current erroneous label in New Jersey and requiring Defendants to notify customers of the inaccuracy of the sugar content on this label.

COUNT II

THE NEW JERSEY CONSUMER FRAUD ACT

N.J.S.A. 56:8-1 et seq.

72. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

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

74. This action does not raise any federal claims.

75. The New Jersey Consumer Fraud Act clearly applies to all sales of "Whole Foods 365 Everyday Value Plain Greek Yogurt" sold to New Jersey consumers in Whole Foods Market stores located in New Jersey.

76. The New Jersey Consumer Fraud Act ("CFA") was enacted to protect consumers against sharp and unconscionable commercial practices by persons engaged in the sale of goods or services. See Marascio v. Campanella, 298 N.J. Super. 491, 500 (App. Div. 1997).

77. The CFA is a remedial statute which the New Jersey Supreme Court has repeatedly held must be construed liberally in favor of the consumer to accomplish its deterrent and protective purposes. See Furst v. Einstein Moomjy, 182 N.J. 1, 11-12 (2004) (“**The Consumer Fraud Act is remedial legislation that we construe liberally to accomplish its broad purpose of safeguarding the public.**”).

78. With regard to the CFA, “[t]he available legislative history demonstrates that the Act was intended to be one of the strongest consumer protection laws in the nation.” New Mea Const. Corp. v. Harper, 203 N.J. Super. 315, 319 (App. Div. 1986).

79. For this reason, the “**history of the Act is one of constant expansion of consumer protection.**” Kavky v. Herballife International of America, 359 N.J. Super. 497, 504 (App. Div. 2003).

80. The CFA was intended to protect consumers “**by eliminating sharp practices and dealings in the marketing of merchandise and real estate.**” Lemelledo v. Beneficial Management Corp., 150 N.J. 255, 263 (1997).

81. Specifically, N.J.S.A. 56:8-2 of the CFA prohibits “**unlawful practices,**” which are defined as:

“The act, use or employment of any unconscionable commercial practice, deception, fraud, false pretense, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission whether or not any person has in fact been misled, deceived or damaged thereby.”

82. The catch-all term “**unconscionable commercial practice**” was added to the CFA by amendment in 1971 to ensure that the Act covered, inter alia, “**incomplete disclosures.**” Skeer v. EMK Motors, Inc., 187 N.J. Super. 465, 472 (App. Div. 1982).

83. In describing what constitutes an **“unconscionable commercial practice,”** the New Jersey Supreme Court has noted that it is an amorphous concept designed to establish a broad business ethic. See Cox v. Sears Roebuck & Co., 138 N.J. 2, 18 (1994).

84. “Whole Foods 365 Everyday Value Plain Greek Yogurt” is a “credence good,” because its properties and purported benefits cannot be independently assessed or verified by the consumer at the time of purchase and such properties and benefits are made known to consumers only through the information provided on the label by the product’s manufacturer and distributor. See Lee v. Carter-Reed Co., L.L.C. 203 N.J. 496, 522 (2010). See also Richard A. Posner, An Economic Approach to the Law of Evidence, 51 Stan. L.Rev. 1477, 1489 (1999) (**“A good is a credence good if the consumer cannot readily determine its quality by inspection or even use, so that he has to take its quality ‘on faith.’”**).

85. The New Jersey Supreme Court in Lee v. Carter-Reed Co., L.L.C. 203 N.J. 496, 522 (2010), recently spoke regarding the relationship between dishonest product labeling and credence goods, stating:

“A rational consumer does not randomly take a bottle of pills off a shelf and then purchase it without reading the packaging and labeling.”

86. In order to state a cause of action under the CFA, a plaintiff does not need to show reliance by the consumer. See Varacallo v. Massachusetts Mut. Life Ins. Co., 332 N.J.Super. 31, 43, 752 A.2d 807 (App.Div.2000); Gennari v. Weichert Co. Realtors, 148 N.J. 582, 607-608, 691 A.2d 350 (1997) (holding that reliance is not required in suits under the CFA because liability results from **“misrepresentations whether ‘any person has in fact been misled, deceived or damaged thereby’”**).

87. Rather, the CFA requires merely a causal nexus between the false statement and the

purchase, not actual reliance. See Lee v. Carter-Reed Co., L.L.C. 203 N.J. 496, 522 (2010) (“causation under the CFA is not the equivalent of reliance”).

88. As stated by the New Jersey Supreme Court in Lee, 203 N.J. at 528:

“It bears repeating that the CFA does not require proof of reliance, but only a causal connection between the unlawful practice and ascertainable loss.”

89. The purchase of a credence good, where the label on the product contains false misrepresentations of material fact, by itself, establishes a presumption of a causal nexus under the CFA. See Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496 (2010). See also Varcallo, at *49 (“the purchase of the policy by a person who was shown the literature would be sufficient to establish prima facie proof of causation.”).

90. By the acts alleged herein, Defendants have violated the CFA.

91. Specifically, Defendants have made identical, false, written, misstatements of affirmative fact on the “Nutrition Facts” label on each container of “Whole Foods 365 Everyday Value Plain Greek Yogurt” sold between August 6, 2008 and the present, each of which stated that the product contained “Sugars 2g” per serving.

92. This statement was false and Defendants knew or should have known that this statement was false when it was made.

93. As a result of this false, written affirmative misstatement of material fact, Plaintiff and the class have suffered an ascertainable loss of money.

94. Specifically, Plaintiff and the class have been deprived of the benefit of their bargain – a valid measure of “ascertainable loss” under the CFA according to the New Jersey Supreme Court and New Jersey Appellate Division – in that Plaintiff and the class received something less than what was represented in Defendants’ label: a Greek yogurt with 2 grams of sugar per serving.

95. Indeed, Defendants' written false claim on its label that "Whole Foods 365 Everyday Value Plain Greek Yogurt" had only 2 grams of sugar per serving – which, if true, would have made it the lowest sugar content of any Greek yogurt on the market – induced Plaintiff and the class to pay a higher price for this yogurt than cheaper yogurts sold by Defendants' competitors which had far less sugar than what was actually contained in "Whole Foods 365 Everyday Value Plain Greek Yogurt."

COUNT III

NEW JERSEY BREACH OF EXPRESS WARRANTY

96. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

97. By operation of New Jersey law, Defendants entered into a contract with each New Jersey class member when the member purchased a container of "Whole Foods 365 Everyday Value Plain Greek Yogurt" in New Jersey.

98. By operation of New Jersey law, the terms of this contract included an express warranty incorporating the identical affirmation, promise and description by Defendants regarding "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.

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

100. Defendants have breached the terms of this express 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.

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

COUNT IV

TRUTH IN CONSUMER CONTRACT, WARRANTY AND NOTICE ACT

N.J.S.A. 56:12-14 et seq

102. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

103. Plaintiff and the class are “consumers” within the meaning of N.J.S.A. 56:12-15 and 16.

104. Defendants are “sellers” within the meaning of N.J.S.A. 56:12-15 and 16.

105. The “Nutrition Facts” label on “Whole Foods 365 Everyday Value Plain Greek Yogurt” is both a consumer “notice” and “warranty” within the meaning of N.J.S.A. 56:12-15 and 16.

106. By the acts alleged herein, Defendants have violated N.J.S.A. 56:12-16 because, in the course of Defendants’ business, Defendants have offered written consumer notices and warranties to Plaintiff and the class which contained provisions which violated their clearly established legal rights under federal law, within the meaning of N.J.S.A. 56:12-15.

107. Specifically, the clearly established rights of Plaintiff and the class under federal law include the right under the Nutrition Labeling and Education Act of 1990 (“NLEA”) and 21 CFR 101.9 (g)(5), which provide that a food with a label declaration of calories, sugars, total fat, saturated fat, trans fat, cholesterol, or sodium shall be deemed to be misbranded under

section 403(a) of the Act if the nutrient content of the composite is greater than 20 percent in excess of the value for that nutrient declared on the label.

108. The purpose of the NLEA and its implementing regulations was to prohibit the mislabeling of products in the manner which occurred in the case at bar.

109. Moreover, the clearly established rights of Plaintiff and the class under state law include the right not to be subjected to false written affirmative statements of fact in the sale of goods, as prohibited by N.J.S.A. 56:8-2.

110. Pursuant to N.J.S.A. 56:12-17, this class complaint seeks a statutory penalty of \$100 for each class member, as well as actual damages and attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this court to:

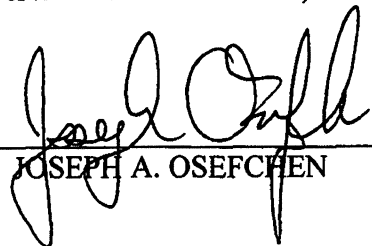
- a. Certify the proposed class as a class action pursuant to R 4:32;
- b. Enter an order for injunctive and declaratory relief as described herein;
- c. Enter judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;
- d. Award plaintiff reasonable attorneys' fees and costs;
- e. Award plaintiff and the class treble damages;
- f. Award each class member a \$100 statutory penalty under N.J.S.A. 56:12-17; and
- h. Grant such other and further legal and equitable relief as the court deems just and equitable.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

DeNITTIS OSEFCHEN, P.C.

By: _____


JOSEPH A. OSEFCHEN

Dated: _____

9/3/14

CERTIFICATION PURSUANT TO R. 4:5-1

To the best of Plaintiff's knowledge, there are no other actions based on the same facts pending against Defendant in New Jersey or any New Jersey law. No arbitration proceeding is pending or contemplated. There is an action against Defendant in federal court in Massachusetts that does not raise any claims under New Jersey law. There are no other parties known to Plaintiff at this time who should be joined in this action.

CERTIFICATION PURSUANT TO N.J.S.A. 56:8-1 et seq.

The undersigned hereby certify that a copy of this complaint has been forwarded to the Attorney General of the State of New Jersey and the Burlington County Offices of Consumer Affairs.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Stephen DeNittis is designated as trial counsel.

DeNITTIS OSEFCHEN, P.C.

By: _____

JOSEPH A. OSEFCHEN

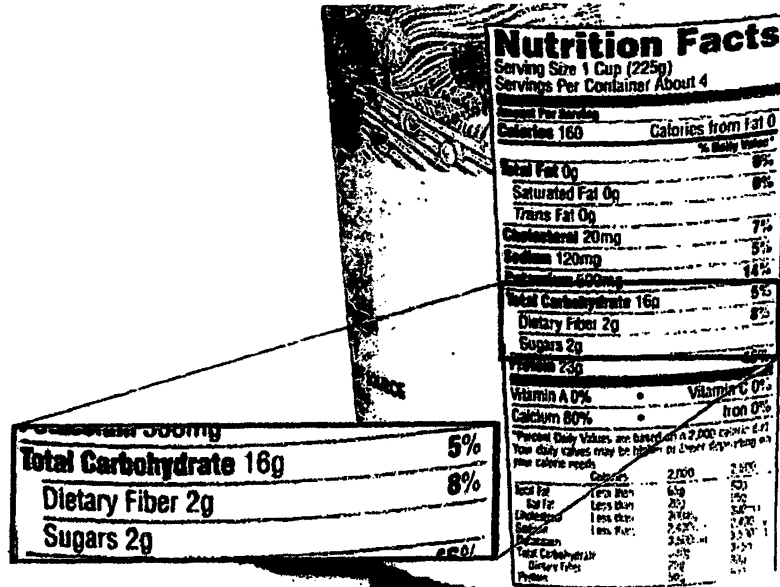
Dated: 9/3/14

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

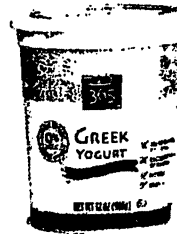


During a recent test of plain Greek yogurts for nutrition and taste, our food experts noted something curious about Whole Foods 365 Every Day Value Plain Fat-Free Greek Yogurt. While the Nutrition Facts labels on the other 12 plain yogurts we evaluated had a range of between 5 and 10 grams of sugar per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

M A R L E T

Save more dough, all day, every day!
Made in-House Large Pizzas 2 for \$20

365 ORG SWEET HONE	3.9
BRAND 365 MILK WHD	3.5
365 GRK YOGURT 2%	1.2
365 GRK YOGURT 2%	1.2
365 GRK YOGURT 2%	1.2
JASON STYLING BEL	8.9
KISS DEOD STK MENS	5.9
365 GRK YOGURT 2%	1.2
**** TAX 1.04 BAL	28.4

Debit 28.77
PIN USED
Acct # *****9140
Seq # 1477
Authorization #
CHANGE .01

3/06/14 12:55 PM 0039 05 0066 1756

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Market Marlton (856) 797-1115

EXHIBIT C

DeNITTIS OSEFCHEN, P.C.
5 Greentree Centre
525 Route 73 North, Suite 410
Marlton, New Jersey 08053
(856) 797-9951
Attorneys for Plaintiff

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BY: 005

MARK BILDER, on behalf of himself and all others
similarly situated,

Plaintiff,

v.

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

Defendants

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION
BURLINGTON COUNTY

DOCKET NUMBER: BUR-L-1904-14

**SECOND AMENDED CLASS
ACTION COMPLAINT**

INTRODUCTION

1. This is a class action, brought under New Jersey law, on behalf of a class of New Jersey citizens who purchased "Whole Foods 365 Everyday Value Plain Greek Yogurt," in one of the 12 Whole Foods Market stores located in New Jersey, between August 6, 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," the "Whole Foods 365 Everyday Value Plain Greek Yogurt" contains at least 11.4 grams of sugar per 170 gram serving – nearly six times the amount 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 Greek 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. 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.”

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 New Jersey stores every day.

13. This complaint seeks injunctive, declaratory and monetary relief for Plaintiff and the

proposed class of New Jersey purchasers, under the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-51 et seq., the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., New Jersey common law relating to express warranty and the New Jersey Truth in Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-14 through 18.

JURISDICTION AND VENUE

14. All claims in this matter arise exclusively under New Jersey law.

15. This matter is properly venued in the New Jersey Superior Court of New Jersey, Burlington County, in that Plaintiff Bilder purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” at the Whole Foods Market located in Evesham Township, Burlington County, and Defendant Whole Foods Market, Inc. does business, inter alia, in Burlington County, New Jersey.

THE PARTIES

16. Plaintiff Bilder resides in Atlantic County, New Jersey.

17. Like all members of the proposed class, Plaintiff Bilder is a New Jersey citizen who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in New Jersey between August 8, 2008 and August 8, 2014 which stated on “Nutrition Facts” label that the yogurt contained “Sugars 2g” per 170 gram serving.

18. Specifically, Plaintiff Bilder purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from the Whole Foods Market located in Evesham Township, New Jersey on various dates between August 8, 2008 and August 8, 2014, including on August 6, 2014, when Mr. Bilder purchased three containers of 2% “Whole Foods 365 Everyday Value Plain Greek Yogurt” for \$1.29 each at the Whole Foods Market in Evesham, New Jersey, each of which

stated on the label that the product contained "Sugars 2g" per 170 gram serving. See Attachment B.

19. 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.

20. 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."

21. 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

22. Plaintiff brings this action as a class action pursuant to R 4:32, on behalf of a class defined as:

All New Jersey citizens who, between August 8, 2008 and the present, purchased "Whole Foods 365 Everyday Value Plain Greek Yogurt" from a Whole Foods Market located in New Jersey.

23. Plaintiff also brings this action as a class action pursuant to R 4:32, on behalf of a sub-class defined as:

All New Jersey citizens who, between August 8, 2008 and the present, purchased "2% Whole Foods 365 Everyday Value Plain

Greek Yogurt” from a Whole Foods Market located in the State of New Jersey.

24. Plaintiff also brings this action as a class action pursuant to R 4:32, on behalf of a sub-class defined as:

All New Jersey citizens who, between August 8, 2008 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in New Jersey, using a credit card, debit card or via Whole Foods Market’s “online ordering” program.

25. Plaintiff also brings this action as a class action pursuant to R 4:32, on behalf of a sub-class defined as:

All New Jersey citizens who, between July 18, 2014 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in New Jersey, using a credit card, debit card or via Whole Foods Market’s “online ordering” program.

26. The class and sub-classes for whose benefit this action is brought are so numerous that joinder of all members is impracticable.

27. Upon information and belief, the proposed class is composed of over 10,000 persons and each proposed sub-class is composed of at least 5000 persons.

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

29. Rather, all claims in this matter arise from the identical, false, written affirmative statements on the “Nutrition Facts” label on “Whole Foods 365 Everyday Value Plain Greek Yogurt,” which states in uniform language that the product contains “Sugars 2g” per 170 gram serving.

30. There are common questions of law and fact affecting the rights of the class and subclass

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 a false, misleading or deceptive affirmative representation of fact in violation of N.J.S.A. 56:8-2, the New Jersey Consumer Fraud Act;
- e. 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 New Jersey common law regarding express warranty;
- 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 the New Jersey Truth in Consumer Contract, Warranty and Notice Act; and
- g. Whether Plaintiff 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.

31. Plaintiff is a member of the class and sub-classes he seeks to represent.

32. The claims of Plaintiff are not only typical of all class and sub-class members, they are identical.

33. All claims of plaintiff and the class and sub-classes arise from the same identical, false, written statement of affirmative fact on the “Nutrition Facts” label for “Whole Foods 365 Everyday Value Plain Greek Yogurt” which stated “Sugars 2g” per 170 gram serving.

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

35. Plaintiff has no interest antagonistic to, or in conflict with, the class or sub-class.

36. Plaintiff will thoroughly and adequately protect the interests of the class and sub-class, having retained qualified and competent legal counsel to represent himself and the class and sub-class.

37. Defendants have acted and refused to act on grounds generally applicable to the class and sub-class, thereby making appropriate injunctive and declaratory relief for the class as a whole.

38. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

39. A class action is the only practical, available method for the fair and efficient adjudication of the controversy since, inter alia, the damages suffered by each class member were less than \$5 per container purchased and, as such, individual actions are not economically feasible.

40. Common questions will predominate, and there will be no unusual manageability issues.

FACTUAL ALLEGATIONS

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

42. 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."

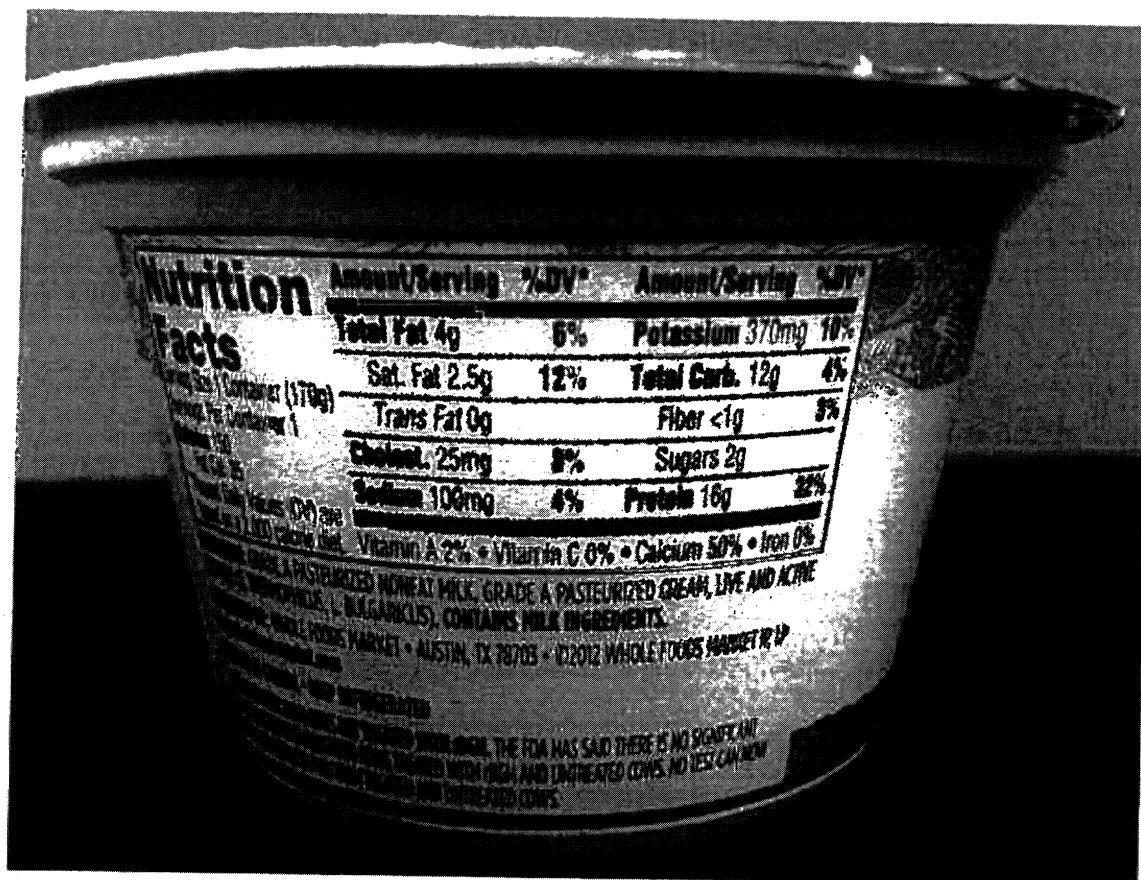
43. Whole Foods Market's website touts the high nutritional value of its products, stating:

"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.”

44. Defendants maintain 12 Whole Foods Markets in New Jersey.

45. 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.



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

47. Both plain versions contain identical statements on the label that the product contains “Sugars 2g” per 170 gram serving.

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

49. 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.

50. Defendants, as developers, manufacturers, and exclusive sellers and distributors 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.

51. 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"

52. Unless such statements are false, then Defendants were fully aware of the contents of its store brand Greek yogurt.

53. 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 Defendant falsely stated on the label for "Whole Foods 365 Everyday Value Plain Greek Yogurt."

54. 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.

55. 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 its competitors, all of which list a sugar content at least twice as high as the 2 grams per serving falsely stated on Defendants’ label.

56. 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.”

57. 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.”

58. 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 “healthier” than other foods.

59. 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.”

60. 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.

61. 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.

62. 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.

63. 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.

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

65. Indeed, Defendants continue to sell 2% “Whole Foods 365 Everyday Value Plain Greek Yogurt,” with the same false statement that the product contains “Sugars 2g” per serving on the label, to this very day.

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

COUNT I

INJUNCTIVE AND DECLARATORY RELIEF UNDER THE NEW JERSEY DECLARATORY JUDGMENTS ACT

N.J.S.A. 2A:16-51 et seq.

67. Plaintiff incorporates all preceding paragraphs as though fully set forth at length

herein.

68. Plaintiff and the class need, and are entitled to, a declaration that the sugar content per 170 grams of “Whole Foods 365 Everyday Value Plain Greek Yogurt” is substantially higher than 2 grams and that the statement on this product’s label that such a serving contains “Sugar 2g” is inaccurate.

69. Each Plaintiff and class member has a significant interest in this matter.

70. A justifiable controversy was presented in this case, rendering declaratory judgment appropriate.

71. In addition, because the unlawful uniform conduct of Defendants continues, and is on-going, the class also needs, and is entitled to, an order enjoining Defendants from selling “Whole Foods 365 Everyday Value Plain Greek Yogurt” with the current erroneous label in New Jersey and requiring Defendants to notify customers of the inaccuracy of the sugar content on this label.

COUNT II

THE NEW JERSEY CONSUMER FRAUD ACT

N.J.S.A. 56:8-1 et seq.

72. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

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

74. This action does not raise any federal claims.

75. The New Jersey Consumer Fraud Act clearly applies to all sales of “Whole Foods 365 Everyday Value Plain Greek Yogurt” sold to New Jersey consumers in Whole Foods Market stores located in New Jersey.

76. The New Jersey Consumer Fraud Act ("CFA") was enacted to protect consumers against sharp and unconscionable commercial practices by persons engaged in the sale of goods or services. See Marascio v. Campanella, 298 N.J. Super. 491, 500 (App. Div. 1997).

77. The CFA is a remedial statute which the New Jersey Supreme Court has repeatedly held must be construed liberally in favor of the consumer to accomplish its deterrent and protective purposes. See Furst v. Einstein Moomjy, 182 N.J. 1, 11-12 (2004) ("The Consumer Fraud Act is remedial legislation that we construe liberally to accomplish its broad purpose of safeguarding the public.").

78. With regard to the CFA, "[t]he available legislative history demonstrates that the Act was intended to be one of the strongest consumer protection laws in the nation." New Mea Const. Corp. v. Harper, 203 N.J. Super. 315, 319 (App. Div. 1986).

79. For this reason, the "history of the Act is one of constant expansion of consumer protection." Kavky v. Herballife International of America, 359 N.J. Super. 497, 504 (App. Div. 2003).

80. The CFA was intended to protect consumers "by eliminating sharp practices and dealings in the marketing of merchandise and real estate." Lemelledo v. Beneficial Management Corp., 150 N.J. 255, 263 (1997).

81. Specifically, N.J.S.A. 56:8-2 of the CFA prohibits "unlawful practices," which are defined as:

"The act, use or employment of any unconscionable commercial practice, deception, fraud, false pretense, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission whether or not any person has in fact been misled, deceived or damaged thereby."

82. The catch-all term **“unconscionable commercial practice”** was added to the CFA by amendment in 1971 to ensure that the Act covered, inter alia, **“incomplete disclosures.”** Skeer v. EMK Motors, Inc., 187 N.J. Super. 465, 472 (App. Div. 1982).

83. In describing what constitutes an **“unconscionable commercial practice,”** the New Jersey Supreme Court has noted that it is an amorphous concept designed to establish a broad business ethic. See Cox v. Sears Roebuck & Co., 138 N.J. 2, 18 (1994).

84. “Whole Foods 365 Everyday Value Plain Greek Yogurt” is a “credence good,” because its properties and purported benefits cannot be independently assessed or verified by the consumer at the time of purchase and such properties and benefits are made known to consumers only through the information provided on the label by the product's manufacturer and distributor. See Lee v. Carter-Reed Co., L.L.C. 203 N.J. 496, 522 (2010). See also Richard A. Posner, An Economic Approach to the Law of Evidence, 51 Stan. L.Rev. 1477, 1489 (1999) (**“A good is a credence good if the consumer cannot readily determine its quality by inspection or even use, so that he has to take its quality ‘on faith.’”**).

85. The New Jersey Supreme Court in Lee v. Carter-Reed Co., L.L.C. 203 N.J. 496, 522 (2010), recently spoke regarding the relationship between dishonest product labeling and credence goods, stating:

“A rational consumer does not randomly take a bottle of pills off a shelf and then purchase it without reading the packaging and labeling.”

86. In order to state a cause of action under the CFA, a plaintiff does not need to show reliance by the consumer. See Varacallo v. Massachusetts Mut. Life Ins. Co., 332 N.J. Super. 31, 43, 752 A.2d 807 (App.Div.2000); Gennari v. Weichert Co. Realtors, 148 N.J. 582, 607-608, 691

A.2d 350 (1997) (holding that reliance is not required in suits under the CFA because liability results from “**misrepresentations whether ‘any person has in fact been misled, deceived or damaged thereby’**”).

87. Rather, the CFA requires merely a causal nexus between the false statement and the purchase, not actual reliance. See Lee v. Carter-Reed Co., L.L.C. 203 N.J. 496, 522 (2010) (“**causation under the CFA is not the equivalent of reliance**”).

88. As stated by the New Jersey Supreme Court in Lee, 203 N.J. at 528:

“It bears repeating that the CFA does not require proof of reliance, but only a causal connection between the unlawful practice and ascertainable loss.”

89. The purchase of a credence good, where the label on the product contains false misrepresentations of material fact, by itself, establishes a presumption of a causal nexus under the CFA. See Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496 (2010). See also Varcallo, at *49 (“**the purchase of the policy by a person who was shown the literature would be sufficient to establish prima facie proof of causation.**”).

90. By the acts alleged herein, Defendants have violated the CFA.

91. Specifically, Defendants have made identical, false, written, misstatements of affirmative fact on the “Nutrition Facts” label on each container of “Whole Foods 365 Everyday Value Plain Greek Yogurt” sold between August 6, 2008 and the present, each of which stated that the product contained “Sugars 2g” per serving.

92. This statement was false and Defendants knew or should have known that this statement was false when it was made.

93. As a result of this false, written affirmative misstatement of material fact, Plaintiff and the class have suffered an ascertainable loss of money.

94. Specifically, Plaintiff and the class have been deprived of the benefit of their bargain – a valid measure of “ascertainable loss” under the CFA according to the New Jersey Supreme Court and New Jersey Appellate Division – in that Plaintiff and the class received something less than what was represented in Defendants’ label: a Greek yogurt with 2 grams of sugar per serving.

95. Indeed, Defendants’ written false claim on its label that “Whole Foods 365 Everyday Value Plain Greek Yogurt” had only 2 grams of sugar per serving – which, if true, would have made it the lowest sugar content of any Greek yogurt on the market – induced Plaintiff and the class to pay a higher price for this yogurt than cheaper yogurts sold by Defendants’ competitors which had far less sugar than what was actually contained in “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

COUNT III

NEW JERSEY BREACH OF EXPRESS WARRANTY

96. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

97. By operation of New Jersey law, Defendants entered into a contract with each New Jersey class member when the member purchased a container of “Whole Foods 365 Everyday Value Plain Greek Yogurt” in New Jersey.

98. By operation of New Jersey law, the terms of this contract included an express warranty incorporating the identical affirmation, promise and description by Defendants regarding “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.

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

100. Defendants have breached the terms of this express 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.

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

COUNT IV

**TRUTH IN CONSUMER CONTRACT,
WARRANTY AND NOTICE ACT**

N.J.S.A. 56:12-14 et seq

102. Plaintiff incorporates all preceding paragraphs as though fully set forth at length herein.

103. Plaintiff and the class are “consumers” within the meaning of N.J.S.A. 56:12-15 and 16.

104. Defendants are “sellers” within the meaning of N.J.S.A. 56:12-15 and 16.

105. The “Nutrition Facts” label on “Whole Foods 365 Everyday Value Plain Greek Yogurt” is both a consumer “notice” and “warranty” within the meaning of N.J.S.A. 56:12-15 and 16.

106. By the acts alleged herein, Defendants have violated N.J.S.A. 56:12-16 because, in the course of Defendants’ business, Defendants have offered written consumer notices and warranties to Plaintiff and the class which contained provisions which violated their clearly established legal rights under federal law, within the meaning of N.J.S.A. 56:12-15.

107. Specifically, the clearly established rights of Plaintiff and the class under federal law

include the right under the Nutrition Labeling and Education Act of 1990 ("NLEA") and 21 CFR 101.9 (g)(5), which provide that a food with a label declaration of calories, sugars, total fat, saturated fat, trans fat, cholesterol, or sodium shall be deemed to be misbranded under section 403(a) of the Act if the nutrient content of the composite is greater than 20 percent in excess of the value for that nutrient declared on the label.

108. The purpose of the NLEA and its implementing regulations was to prohibit the mislabeling of products in the manner which occurred in the case at bar.

109. Moreover, the clearly established rights of Plaintiff and the class under state law include the right not to be subjected to false written affirmative statements of fact in the sale of goods, as prohibited by N.J.S.A. 56:8-2.

110. Pursuant to N.J.S.A. 56:12-17, this class complaint seeks a statutory penalty of \$100 for each class member, as well as actual damages and attorney's fees and costs.

PRAYER FOR RELIEF

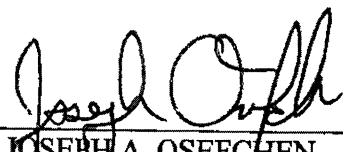
WHEREFORE, Plaintiff asks this court to:

- a. Certify the proposed class as a class action pursuant to R 4:32;
- 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 plaintiff reasonable attorneys' fees and costs;
- e. Award plaintiff and the class treble damages;
- f. Award each class member a \$100 statutory penalty under N.J.S.A. 56:12-17; and
- h. Grant such other and further legal and equitable relief as the court deems just and equitable.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

DeNITTIS OSEFCHEN, P.C.

By: 
JOSEPH A. OSEFCHEN

Dated: 9/9/14

CERTIFICATION PURSUANT TO R. 4:5-1

To the best of Plaintiff's knowledge, there are no other actions based on the same facts pending against Defendant in New Jersey or any New Jersey law. No arbitration proceeding is pending or contemplated. There is an action against Defendant in federal court in Massachusetts that does not raise any claims under New Jersey law. There are no other parties known to Plaintiff at this time who should be joined in this action.

CERTIFICATION PURSUANT TO N.J.S.A. 56:8-1 et seq.

The undersigned hereby certify that a copy of this complaint has been forwarded to the Attorney General of the State of New Jersey and the Burlington County Offices of Consumer Affairs.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Stephen DeNittis is designated as trial counsel.

DeNITTIS OSEFCHEN, P.C.

By: _____

JOSEPH A. OSEFCHEN

Dated: 9/9/14

Exhibit A

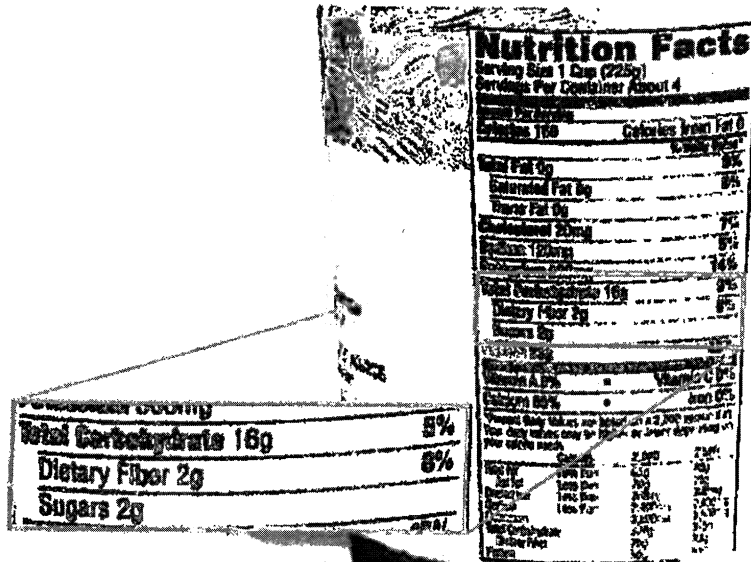
A Whole Foods Yogurt Has Five Times More Sugar Than Its Nutrition Label Shows - Co... Page 1 of 1

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



Serving Size 1 Cup (225g)	
Servings Per Container About 4	
% Daily Value*	
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat 0g	0%
Cholesterol 20mg	4%
Sodium 120mg	6%
Total Carbohydrate 16g	3%
Dietary Fiber 2g	4%
Sugars 2g	4%
*Percent Daily Values are based on a diet of other people's secrets.	

CARBOHYDRATE COUNTING	
Total Carbohydrate 16g	3%
Dietary Fiber 2g	4%
Sugars 2g	4%

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 carbohydrate 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 B

WHOLE FOODS MARKET

Save more dough, all day, every day
Made In-House Large Pizzas 2 For \$20

365 ORG SWEET HONE	3 2 1
BRAND 365 MILK WHD	3 5 1 F
365 GRK YOGURT 2%	1 2 1 F
365 GRK YOGURT 2%	2
365 GRK YOGURT 2%	1 2 1 F
JASON STYLING DEL	6 9
KISS DEOD STR HENS	5 9
365 GRK YOGURT 2%	1 2 1 F
**** TRX 1.04 BAL	28 14

Dep't 28 14
PTN USED
Acct # *****9140
Seq # 1477
Authorization #
CHANGE .01

11/06/14 12:55 PM 0039 05 0066 1756

Your cashier today is WANDA

Thank You For Shopping At Whole Food
Market Marlton (856) 797-1115

EXHIBIT D

James S. Yu - ID No. 037492000
SEYFARTH SHAW LLP
620 Eighth Avenue, 32nd Floor
New York, New York 10018
(212) 218-5500

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

MARK BILDER, on behalf of himself and all others
similarly situated,

Plaintiff,

v.

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

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
BURLINGTON COUNTY

DOCKET NO.: BUR-L-1904-14

NOTICE OF FILING OF REMOVAL

TO: Clerk of the Court
Superior Court of New Jersey
Law Division, Burlington County
County Office Building
49 Rancocas Road, Suite 354
Mount Holly, NJ 08060

Joseph A. Osefchen, Esq.
DeNITTIS OSEFCHEN, P.C.
5 Greentree Centre
525 Route 73 North, Suite 410
Marlton, NJ 08053

PLEASE TAKE NOTICE that, on October 2, 2014, pursuant to 28 U.S.C. § 1446(a),
attorneys for Defendants, Whole Foods Market Group, Inc. and WFM Private Label, L.P.
(collectively, “Defendants”), filed with the Clerk of the United States District Court for the

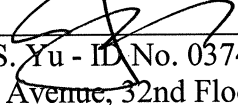
District of New Jersey, Camden Vicinage, a Notice of Removal of the above-captioned action.

Attached hereto as **Exhibit A** is a copy of the Federal Notice of Removal of this case.

Pursuant to 28 U.S.C. § 1446(d), the filing of the Notice of Removal in the United States District Court for the District of New Jersey, together with the filing of a copy of the Notice of Removal with this Court, effects the removal of this action, and this Court may proceed no further unless and until the action is remanded.

Respectfully submitted,

SEYFARTH SHAW LLP

By 
James S. Yu - ID No. 037492000
620 Eighth Avenue, 32nd Floor
New York, New York 10010-1405
(212) 218-5500

Attorneys for Defendants

Dated: October 2, 2014

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2014, a true and correct copy of the foregoing Notice of Filing of Removal and accompanying papers were sent to counsel for the Plaintiff at the following address via Federal Express:

Joseph A. Osefchen, Esq.
DeNITTIS OSEFCHEN, P.C.
5 Greentree Centre
525 Route 73 North, Suite 410
Marlton, NJ 08053


James S. Yu - ID No. 037492000

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2014, a true and correct copy of the Defendants' NOTICE OF REMOVAL WITH EXHIBITS A THROUGH D, CIVIL COVER SHEET, AND FED. R. CIV. P. 7.1 CORPORATE DISCLOSURE STATEMENT were electronically filed with the Clerk of the District Court via the Court's CM/ECF system, and served upon the Attorney for the Plaintiffs at the following address via Federal Express:

Joseph A. Osefchen, Esq.
DeNittis Osefchen, P.C.
5 Greentree Centre
525 Route 73 N., Ste. 410
Marlton, NJ 08052

By: /s/ James S. Yu
James S. Yu