

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

KEVIN GRODNICK, JANET WOO and
KATHY YEUNG, on behalf of themselves
and all others similarly situated,

Plaintiff,

v.

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

Defendants

Civil Action No. 1:14-cv-07035-ALC

ECF Case

**FIRST AMENDED CLASS ACTION
COMPLAINT AND JURY DEMAND**

Kevin Grodnick (“Grodnick”), Janet Woo (“Woo”) and Kathy Yeung (“Yeung”) (hereinafter collectively referred to as “Plaintiffs”), on behalf of themselves and all others similarly situated, by and through their undersigned counsel Paris Ackerman & Schmierer LLP, bring this action against defendant Whole Foods Market Group Inc. and WFM Private Label, L.P., (hereinafter collectively referred to as “Defendants”), demanding a trial by jury, and allege as follows:

1. This is a class action, brought under New York law, on behalf of a class of New York citizens who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt,” in one of the 15 Whole Foods Market stores located in the State of New York, between August 29, 2011 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 Exhibit A, Consumer Report article dated July 17, 2014.

5. By comparison, according to the USDA, the sugar content of an ice cream sandwich is 13 grams; only slightly more than the 11.4 gram sugar content of “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

6. 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.

7. 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 actual sugar content was dramatically higher than what is stated on the label.

8. 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.

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

10. Indeed, no Greek yogurt on the market actually has only 2 grams of sugar per serving, because 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 itself a competitive advantage and to use this false statement of contents to induce consumers to purchase “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

12. Despite the test results published by Consumer Reports, Defendants have not pulled the mislabeled yogurt off its shelves and continues to sell the mislabeled product to consumers in its New York stores every day, bearing the same inaccurate label.

13. This complaint seeks injunctive, declaratory and monetary relief for Plaintiffs and the proposed class of New York purchasers, under the New York General Business Law, §349; New York General Business Law, §350, and New York common law relating to express warranty.

JURISDICTION AND VENUE

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

15. This matter is properly venued in the United States District Court for the Southern District of New York, in that Grodnick purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” at the Whole Foods Market store located on 57th Street in New York, Grodnick resides in the Southern District of New York and Defendants do business, inter alia, in the Southern District of New York.

16. There is original federal subject matter jurisdiction over this matter pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb. 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the original jurisdiction of federal courts in any class action in which at least 100 members are in the proposed plaintiff class, any member of the plaintiff class is a citizen of a State different from the State of citizenship of any defendant, and the matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and costs.

17. In the case at bar, there are at least 100 members in the proposed Class and Sub-classes, the total claims of the proposed Class members are in excess of \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiffs and the class are citizens of New York State and defendant Whole Foods Market Group, Inc. is a Texas corporation.

THE PARTIES

18. Grodnick is, and at all times relevant hereto has been, a citizen of the State of New York residing at 401 East 34th Street, New York, New York.

19. Like all members of the proposed class, Grodnick is a New York citizen who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in the State of New York between August 29, 2008 and the present, which stated on “Nutrition Facts” label that the yogurt contained “Sugars 2g” per 170 gram serving.

20. Specifically, Grodnick purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from the Whole Foods Market located in New York on various dates between August 29, 2011 and August 29, 2014, when Mr. Grodnick purchased a container of “Whole Foods 365 Everyday Value Plain Greek Yogurt” for \$1.29 at the Whole Foods Market on 57th Street in New York, New York.

21. Woo is, and at all times relevant hereto has been, a citizen of the State of New York residing on East Broadway, New York, New York.

22. Like all members of the proposed class, Woo is a New York citizen who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in the State of New York between August 29, 2008 and the present, which stated on “Nutrition Facts” label that the yogurt contained “Sugars 2g” per 170 gram serving.

23. Specifically, Woo purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from the Whole Foods Market located in New York on various dates between August 29, 2011 and August 29, 2014, including on April 19, 2014 when Woo purchased a container of “Whole Foods 365 Everyday Value Plain Greek Yogurt” for \$1.29 at the Whole Foods Market on Houston Street in New York, New York.

24. Yeung is, and at all times relevant hereto has been, a citizen of the State of New York residing in Brooklyn, New York.

25. Like all members of the proposed class, Yeung is a New York citizen who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in the State of New York between August 29, 2008 and the present, which stated on “Nutrition Facts” label that the yogurt contained “Sugars 2g” per 170 gram serving.

26. Specifically, Yeung purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from the Whole Foods Market located in New York on various dates between August 29, 2011 and August 29, 2014, including, May 24, 2014 when Yeung purchased a container of “Whole Foods 365 Everyday Value Plain Greek Yogurt” for \$1.29 at the Whole Foods Market in Manhasset, New York

27. 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.

28. 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."

29. 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

30. Plaintiffs bring this action as a class action pursuant to Fed.R.Civ.P. 23, on behalf of a class defined as:

All New York citizens who, between August 29, 2011 and the present, purchased "Whole Foods 365 Everyday Value Plain Greek Yogurt" from a Whole Foods Market located in the State of New York.

31. Plaintiffs also bring this action as a class action pursuant to Fed.R.Civ.P. 23, on behalf of a sub-class defined as:

All New York citizens who, between August 29, 2011 and the present, purchased "Whole Foods 365 Everyday Value Plain Greek Yogurt" from a Whole Foods Market located in the State of New York, using a credit card, debit card or via Whole Foods Market's "online ordering" program.

32. Plaintiffs also bring this action as a class action pursuant to Fed.R.Civ.P. 23, on behalf of a sub-class defined as:

All New York 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 the State of New York, using a credit card, debit card or via Whole Foods Market's "online ordering" program.

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

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

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

36. 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.

37. 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 Defendants’ “Nutrition Facts” label for “Whole Foods 365 Everyday Value Plain Greek Yogurt,” was a deceptive act or practice in the conduct of any business, trade or commerce in violation of N.Y. Gen. Bus. Law §349;
- 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,” was false advertising in violation of N.Y. Gen. Bus. Law §350;

- f. Whether Defendants’ act in placing the words “Sugars 2g” per 170 gram serving on Defendants’ “Nutrition Facts” label for “Whole Foods 365 Everyday Value Plain Greek Yogurt” violated New York common law regarding express warranty; and
- g. Whether Plaintiffs and the class are entitled to an order for declaratory and injunctive relief directing Defendants to cease the practice of mislabeling “Whole Foods 365 Everyday Value Plain Greek Yogurt” as containing “Sugars 2g,” directing Defendants to cease selling this mislabeled product in New York State, and other injunctive and declaratory relief.

38. Plaintiffs are members of the class and sub-classes they seek to represent.

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

40. All claims of Plaintiffs 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.

41. All claims of Plaintiffs and the class are based on the exact same legal theories.

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

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

44. 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.

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

46. 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.

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

FACTUAL ALLEGATIONS

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

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

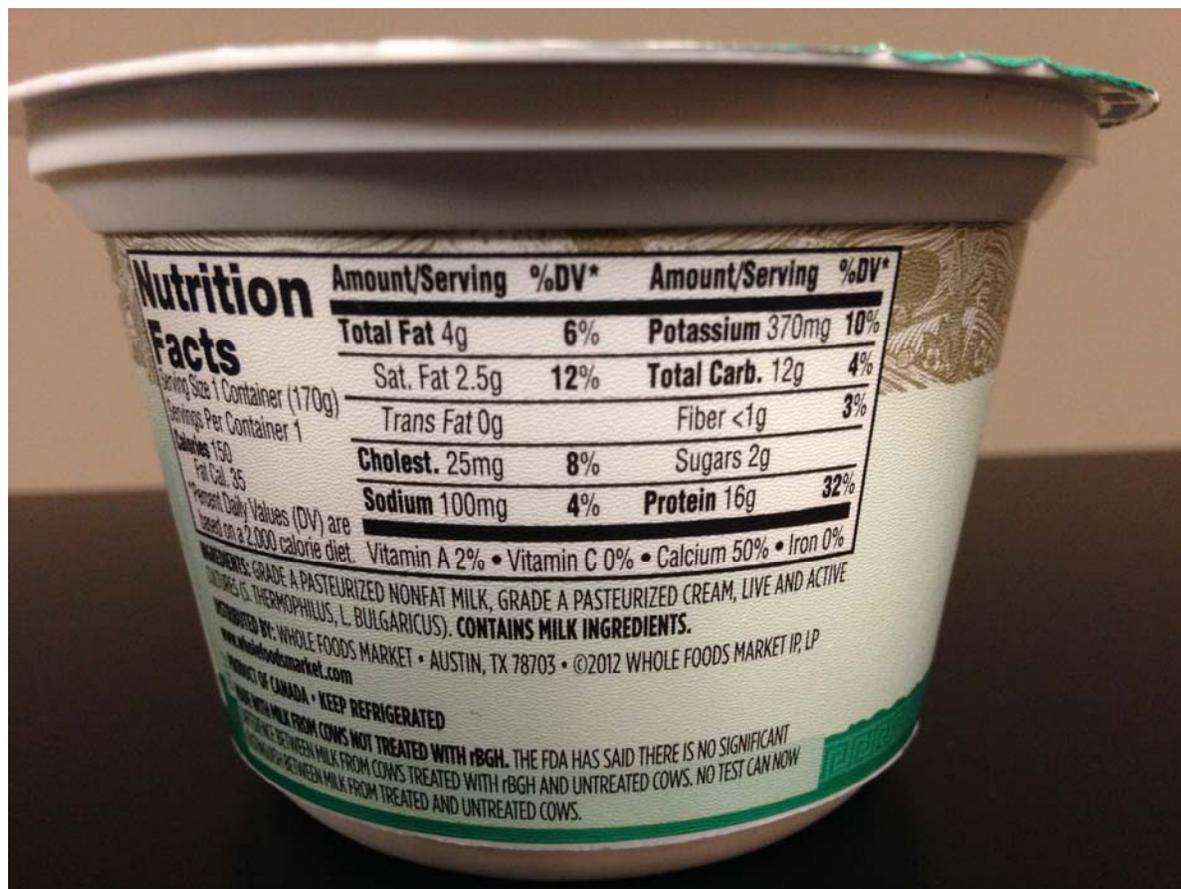
50. Whole Foods Market’s website touts the high nutritional value of its products, stating:

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.

51. Upon information and belief, Defendants maintain 15 Whole Foods Markets in the State of New York.

52. 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 have falsely stated that this yogurt contains “Sugars 2g” per serving.



53. 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 Exhibit A, Consumer Report article dated July 17, 2014.

54. Defendants, as the developer, manufacturer, and exclusive seller and distributor of

“Whole Foods 365 Everyday Value Plain Greek Yogurt” have been aware since the product’s inception that the product contains more than 5 times the amount of sugar represented on the product’s “Nutrition Facts” label.

55. 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.

56. Unless such statements on Defendants’ website are false, then Whole Foods Market was fully aware of the contents of its store brand Greek yogurt.

57. Moreover, Defendants were aware that no Greek yogurt on the market has only 2 grams of sugar per 170 gram serving.

58. As Defendants are fully aware, all yogurt naturally contains more than 2 grams of sugar lactose.

59. Even yogurt into which no additional sugar has been introduced, and even yogurt which is made with non-sugar, artificial “sweeteners,” will still naturally contain more than 2 grams of sugar.

60. As Defendants are fully aware, the lowest sugar content of any Greek yogurt for sale on the market is 5 grams per serving; more than twice as much as what Defendants falsely stated on the label for “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

61. Thus, Defendants’ label is claiming to have less than half the sugar of any other yogurt on the market.

62. Defendants’ act in vastly understating the sugar content of “Whole Foods 365 Everyday Value Plain Greek Yogurt” is not harmless trivia.

63. For many members of the class, sugar content is an important component of their diet.

64. For example, Woo is pre-diabetic and specifically bought “Whole Foods 365 Everyday Value Plain Greek Yogurt” because of the low sugar content claimed on Defendants’ label.

65. 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.

66. 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.”

67. 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.”

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

69. 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.

70. 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 than its competitors.

71. 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.

72. 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 many of Defendants’ competitors.

73. 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.

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

75. In fact, Defendants continue to do so to this very day.

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

COUNT I
VIOLATION OF NEW YORK GENERAL BUSINESS LAW §349

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

78. Plaintiffs bring this claim on behalf of themselves and on behalf of the class and sub-classes, pursuant to New York General Business Law §349 (“N.Y. GEN. BUS. LAW § 349”).

79. N.Y. GEN. BUS. LAW § 349 prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in [New York].”

80. As fully alleged above, by advertising, marketing, distributing, and/or selling “Whole Foods 365 Everyday Value Plain Greek Yogurt” with a label that falsely stated that a 170 gram serving contained “Sugars 2g”, to Mr. Grodnick and the class and sub-class members, Defendants engaged in, and continue to engage in, deceptive acts and practices because the actual sugar content of a 170 gram serving of this yogurt is over 11 gram; more than five times what Defendants’ label represented.

81. Plaintiffs and the class and sub-class members seek to enjoin such unlawful, deceptive acts and practices described above.

82. Unless the Court enjoins Defendants’ unlawful, deceptive actions, Defendants will continue to falsely and misleadingly list the sugar content on “Whole Foods 365 Everyday Value Plain Greek Yogurt” as 2 grams per serving, causing injury to future class members who are unaware of the false nature of this label.

83. There was a causal connection between the injury to Plaintiffs and the class and the deceptive conduct.

84. Plaintiffs and each class member were intended victims of the deceptive conduct alleged herein.

85. Here, the false statement of sugar content was on the label of the product itself and the Court can presume that there was a causal connection between the deceptive conduct and the injuries alleged herein.

86. Plaintiffs and the class and sub-class members were injured in fact and lost money as a result of Defendants' deceptive conduct.

87. Plaintiffs and the class have been deprived of the benefit of their bargain – a valid measure of loss under New York law – in that Plaintiffs and the class received something less than what was represented on Defendants' label: a Greek yogurt with 2 grams of sugar per serving.

88. 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.

89. By reason of the foregoing, Defendants' conduct, as alleged herein, constitutes deceptive acts and practices in violation of N.Y. GEN. BUS. LAW § 349, and Defendants are liable to Plaintiffs and each class member for not less than \$50.00 per person.

90. Plaintiffs and the class seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief prohibiting

Defendants from continuing to disseminate its false and misleading statements, and other relief allowable under N.Y. GEN. BUS. LAW § 349.

COUNT II
VIOLATION OF NEW YORK GENERAL BUSINESS LAW §350

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

92. Plaintiffs bring this claim on behalf of themselves and on behalf of the class and sub-classes, pursuant to New York General Business Law §350 (“N.Y. GEN. BUS. LAW §350”).

93. N.Y. GEN. BUS. LAW §350 makes “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service” in New York unlawful.

94. Under N.Y. GEN. BUS. LAW § 350 , the term “false advertising” means, in relevant part, “advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect.” N.Y. Gen. Bus. Law § 350-a(1).

95. As fully alleged above, by advertising “Whole Foods 365 Everyday Value Plain Greek Yogurt” with a label that falsely stated that a 170 gram serving contained “**Sugars 2g**”, to Plaintiffs and the class and sub-class members, Defendants engaged in false and misleading advertising in a material respect concerning the composition of this yogurt product.

96. Plaintiffs and the class and sub-class members seek to enjoin such unlawful acts and practices as described above.

97. Unless the Court enjoins Defendants’ unlawful, deceptive actions, Defendants will continue to falsely and misleadingly list the sugar content on “Whole Foods 365 Everyday

Value Plain Greek Yogurt” as 2 grams per serving, causing injury to future class members who are unaware of the false nature of this label.

98. Plaintiffs and the class and sub-class members believed Defendants’ representations on the label that the sugar content was only 2 grams per serving and would not have purchased the products had they known that representation was false as alleged in detail above.

99. Moreover, the Court can presume such reliance under the circumstances of the case at bar, because the false statements as to sugar content were placed by Defendants on the label of the product itself for the purpose of inducing a purchase as part of a course of conduct intended to deceive, and because Defendants’ yogurt was more expensive than many other, cheaper Greek yogurts available for purchase whose labels listed a higher sugar content than what Defendants’ label claimed, but which in fact had less actual sugar per serving than what was actually contained in Defendants’ yogurt.

100. Plaintiffs and the class suffered an injury and loss as a result of this false advertising.

101. Plaintiffs and the class have been deprived of the benefit of their bargain – a valid measure of loss under New York law – in that Plaintiffs and the class received something less than what was represented on Defendants’ label: a Greek yogurt with 2 grams of sugar per serving.

102. 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.

103. By reason of the foregoing, Defendants' conduct, as alleged herein, constitutes false advertising in violation of N.Y. GEN. BUS. LAW §350, and Defendants are liable to Grodnick and each class member for not less than \$500.00 per person.

104. Plaintiffs and the class seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief prohibiting Defendants from continuing to disseminate its false and misleading statements, and other relief allowable under N.Y. GEN. BUS. LAW §350.

COUNT III
NEW YORK BREACH OF EXPRESS WARRANTY

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

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

97. By operation of New York 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.

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

99. 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.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court to:

- a. Certify the proposed class as a class action pursuant to Fed.R.Civ.P. 23;
- b. Enter an order for injunctive and declaratory relief as described herein;
- c. Enter judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;
- d. Award Plaintiffs reasonable attorneys’ fees and costs;
- e. Award Plaintiffs and each class member damages of at least \$50 each under N.Y. GEN. BUS. LAW §349 and \$500 each under N.Y. GEN. BUS. LAW § 350;
- f. Grant such other and further legal and equitable relief as the court deems just and equitable.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs, on behalf of themselves and all others similarly situated, demands a trial by jury on all questions of fact raised by the complaint.

Date: New York, New York
September 19, 2014

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