

**NEW YORK SUPREME COURT  
KINGS COUNTY**

BARBARA SEAMAN, individually and  
on behalf of all others similarly situated,

Plaintiff,

- against -

CIBO VITA INC.

Defendant.

Index No.

Class Action Complaint

Jury Trial Demanded

Barbara Seaman (“Plaintiff”) through Counsel, alleges upon information and belief, except for allegations about Plaintiff, which are based on personal knowledge:

1. According to food industry observers, yogurt is “the ‘food of the decade.’”
2. This is in part, because of its well-deserved reputation as a source for essential dairy ingredients, delivering necessary protein, along with active bacterial cultures.
3. Beyond appreciation for yogurt’s components, it is widely recognized as beneficial to digestive health, based on having live, active cultures.
4. Research from the New Product Database’s (“NPD”) National Eating Trends shows per capita yogurt consumption has more than doubled during the past decade, with nearly one in three individuals eating yogurt regularly.

5. To appeal to these consumers, Cibo Vita Inc. (“Defendant”) manufactures and/or distributes two-ounce bags of berry flavored “Yoggies,” described as “Real Fruit Pieces,” that are “Coated By Creamy Yogurt,” depicted on the label, under the Nature’s Garden brand (“Product”).



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6. The Product is “misbranded,”<sup>1</sup> because instead of being coated in yogurt, the pieces are covered in the equivalent of “candy coating,” mainly sugar and palm oil, having a de minimis amount of yogurt, shown by the fine print ingredient list<sup>2</sup>

<sup>1</sup> “Misbranded” is the statutory term for labeling that is false and/or misleading. “Adulterated” is the statutory term meaning to “render (something) poorer in quality by adding another substance, typically an inferior one.”

<sup>2</sup> **Ingredients:** Apple Mixed Berry Fruit Cubes (Fruits [Apple Puree, Apple Juice Concentrate, Strawberry Puree, Blueberry Puree, Raspberry Puree, Lemon Juice Concentrate, Elderberry Juice Concentrate], Soluble Corn Fiber, Citrus Fiber, Citrus

on the back. AGM § 201(1).



7. First, in contrast to yogurt, known and recognized for its health qualities, sugar and/or palm oil are consistently frowned upon by global public health bodies.
8. This is because of their direct contributions to health-related ailments.
9. Second, though the yogurt powders contain dairy ingredients, their main

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Pectin, Palm Fat [RSPO-SG], Natural Blueberry Flavor WONF), Yogurt Coating (Sugar, Palm Kernel Oil, Nonfat Dry Milk, Yogurt Powder [Cultured Whey Protein Concentrate and Cultured Skim Milk], Greek Yogurt Powder [Nonfat Milk Solids, Culture, Lactic Acid, Natural Flavor], Soy Lecithin [Emulsifier], Lactic Acid, Natural Flavor, Salt), Natural Mixed Berry Type Flavor, Microencapsulated Probiotic Lactobacillus Rhamnosus GG.

components are not the required basic dairy ingredients, i.e., cream, milk, partially skimmed milk, or skim milk, but “whey protein concentrate” and “nonfat milk solids.”

10. Third, though the confectionery coating includes two types of “yogurt powder,” the National Yogurt Association (“NYA”) confirms this is typically an ersatz ingredient.

11. This is because the heating required to convert real yogurt to a powder deactivates its beneficial cultures

12. Though purchasers realize they are not buying “yogurt,” of the type eaten with a spoon, they expect it have more than a de minimis amount of yogurt, and/or to contain only or mostly yogurt as part of its coating, instead of a “candy coating.”

13. As a result of the false and misleading representations and/or omissions, the Product is sold at a premium price, approximately \$2.29.

14. This price is higher than the Product would be sold for, if it were represented in a non-misleading way.

15. This will, and/or can be, determined through methods including conjoint analysis, choice analysis, choice-based ranking, hedonic pricing, and/or other similar methods, which evaluate a product’s attributes, and/or features.

16. By determining consumers’ willingness to pay for products, including the Product at issue, with and/or without the challenged claims, representations,

and/or omissions, the value of the challenged claims, representations, and/or omissions, can be reduced to a monetary value.

### **JURISDICTION**

17. Plaintiff Seaman is a citizen of New York.

18. Plaintiff Seaman is a resident of Kings County, New York.

19. The Court has jurisdiction over Defendant, because it transacts business within New York, and sells the Product to consumers within New York, through stores, in this State, to citizens of this State.

### **VENUE**

20. Venue is in this Court, because Plaintiff Seaman's residence is in Kings County.

### **PARTIES**

21. Plaintiff Seaman is a consumer, not a merchant or re-seller.

22. Plaintiff Seaman is a citizen of New York.

23. Plaintiff Seaman is a resident of Kings County, New York.

24. Defendant Cibo Vita Inc. is a New Jersey corporation, with its principal place of business in New Jersey.

25. Plaintiff is like many consumers, and looks to a front label, to see what she is buying, and/or to learn basic information.

26. Plaintiff is like many consumers, accustomed to a front label telling them

signum

about significant characteristics, nutrients, attributes, quantity, qualities, ingredients, and/or features.

27. Plaintiff is like many consumers, who appreciate yogurt, for reasons including its health properties, and such attributes are a factor in purchasing decisions.

28. Plaintiff read, was exposed to, was aware of, relied on, and/or was caused to pay more money as a result of, "Yoggies," "Coated By Creamy Yogurt," and/or what appeared to be thick, white yogurt.

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29. Plaintiff bought the Product, with the labeling and/or packaging identified here, at or around the above-referenced price.

30. Plaintiff was injured by reason of Defendant's violations of GBL §§ 349 and 350, through the labeling and/or packaging, which included, "Yoggies," "Coated By Creamy Yogurt," and/or what appeared to be thick, white yogurt, because these statements and/or omissions enabled it to charge an artificially inflated price for the Product, which Plaintiff paid.

31. Plaintiff purchased or paid money towards the Product, between November 2022 and August 2025, in New York.

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32. Plaintiff paid more for the Product than she would have, had she known it did not contain more than a de minimis amount of yogurt, was mostly covered in a "candy coating," and/or could not provide the health benefits associated with

yogurt, as she would have paid less.

33. The Product was not “worthless” to Plaintiff, but worth less, than what Plaintiff paid, and she would not have paid as much, absent Defendant’s false and misleading statements, and/or omissions.

34. Plaintiff obtained value from the Product, because it tasted good and/or provided sustenance, but seeks the cost difference between the Product, as presented, and as delivered.

35. The Product’s features and/or attributes, when taken together, and/or utilized for the purpose of conjoint analysis, choice analysis, choice-based ranking, choice-based conjoint analysis, regression, hedonic pricing, and/or other similar methods, impacted Plaintiff’s purchasing choice, compared to similar products lacking its features and/or attributes.

### **CLASS ALLEGATIONS**

36. Plaintiff is a consumer, not a re-seller or merchant.

37. Plaintiff seeks to represent other consumers, in the class identified below, against a business.

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Only citizens of New York, who purchased or paid money towards the Product, for personal and/or household consumption and/or use, in New York, during the statutes of limitations.

38. Plaintiff’s claims are based upon New York’s General Business Law

(“GBL”) §§ 349 and 350, passed by the New York Legislature, to protect the New York public, and unsophisticated New York consumers, against businesses.

39. Excluded from the Class are (i) Defendant, Defendant’s board members, executive-level officers, members, attorneys, and immediate family, (ii) governmental entities, (iii) the Court, the Court’s immediate family, and Court staff, (iv) any person that timely and properly excludes himself or herself from the Class, (v) non-citizens of New York, (vi) persons who bought the Product outside New York, (vii) persons who used or consumed the Product outside New York, (viii) persons who may be citizens of more than one state, and (ix) any persons who would otherwise be eligible to be a part of the Class, but seek to pursue statutory penalties, as opposed to actual damages.

40. Common questions of issues, law, and fact predominate, and include whether Defendant’s representations were, and are misleading, and if Plaintiff and class members are entitled to actual damages.

41. Plaintiff’s claims and basis for relief are typical to other members, because all were subjected to the same unfair, misleading, and/or deceptive representations, omissions, and/or actions.

42. Plaintiff is an adequate representative, because her interests do not conflict with other members.

43. No individual inquiry is necessary, since the focus is only on

Defendant's practices, and the class is definable and ascertainable.

44. Individual actions would risk inconsistent results, be repetitive, and/or are impractical to justify, as the claims are modest, relative to the scope of the harm.

45. The class is sufficiently numerous, because the Product is sold throughout the State, with the representations, omissions, packaging, and/or labeling identified here, in this State, to citizens of this State.

46. Plaintiff does not seek any penalty as a measure of damages.

47. To the extent required, Plaintiff waives recovery of any penalty as a measure of damages, and in the event persons wish to seek such penalties, they may opt-out of the proposed class.

48. Plaintiff's Counsel is competent and experienced in consumer class actions, and intends to protect class members' interests adequately and fairly.

## **CAUSES OF ACTION**

### **COUNT I**

#### New York General Business Law ("GBL") §§ 349 and 350

49. To the extent required, this section incorporates by reference other paragraphs, as necessary. signum

50. The purpose of the GBL is to protect New York consumers against unfair and/or deceptive practices.

51. This includes making New York's consumer protection and enforcement consistent with established policies of other jurisdictions relating to consumer

protection.

52. The GBL considers false advertising, unfair acts, and deceptive practices, in the sale of consumer goods, to be unlawful.

53. Violations of the GBL can be based on (1) other laws and standards related to consumer deception, (2) public policy, established through statutes, laws, or regulations, (3) principles of other jurisdictions, (4) decisions with respect to those principles, (5) any rules promulgated pursuant to acts designed to prevent deception, and/or (6) standards of unfairness and deception set forth and interpreted by other agencies, entities, tribunals, and bodies.

54. Defendant's false and deceptive representations and omissions, with respect to the Product's contents, origins, nutrient values, servings, ingredients, flavoring, taste, type, functionality, amount, quantity, and/or quality, were material in that they were likely to influence consumer purchasing decisions.

55. The packaging and labeling of the Product violated the GBL, because the representations, including, "Yoggies," "Coated By Creamy Yogurt," and/or what appeared to be thick, white yogurt, caused purchasers to expect it contained more than a de minimis amount of yogurt, was covered mainly in yogurt, and/or could provide the health benefits associated with yogurt, which was unfair and deceptive to consumers.

56. The packaging and labeling of the Product violated laws, statutes, rules,

regulations, and/or norms, which prohibit unfair, deceptive, and/or unconscionable conduct, against the public.

57. The packaging and labeling of the Product violated the GBL, because the representations and/or omissions, including, “Yoggies,” “Coated By Creamy Yogurt,” and/or what appeared to be thick, white yogurt, caused purchasers to expect it contained more than a de minimis amount of yogurt, was covered mostly in yogurt, and/or could provide the health benefits associated with yogurt, contrary to statutes and/or regulations, which prohibit consumer deception by companies in the labeling of products.

58. Plaintiff paid more for the Product, and would not have paid as much, if she knew that it did not contain more than a de minimis amount of yogurt, was mostly covered in a “candy coating,” and/or could not provide the health benefits associated with yogurt.

59. Plaintiff seeks to recover for economic injury and/or loss she sustained, based on the misleading labeling and/or packaging of the Product, a deceptive practice under the GBL.

60. Plaintiff may produce evidence showing how she and/or consumers paid more than they would have paid for the Product, based on Defendant’s representations, omissions, packaging, and/or labeling, using statistical and economic analyses, hedonic regression, hedonic pricing, conjoint analysis, choice-

based ranking, choice-based conjoint analysis, and/or other advanced and complicated methodologies.

61. Based on the labeling and/or packaging, including, “Yoggies,” “Coated By Creamy Yogurt,” and/or what appeared to be thick, white yogurt, Defendant can charge a higher price for the Product, compared to if it did not have these representations and/or omissions.

62. This higher price was paid by Plaintiff and the proposed class, causing them economic or financial injury.

63. Damages will be based on the value attributed to the challenged claims, practices, and/or omissions, a percentage of the total price paid, instead of the Product’s total price.

64. This is the difference between what they paid based on its labeling, packaging, representations, statements, omissions, and/or marketing, and how much it would have been sold for, without the misleading labeling, packaging, representations, statements, omissions, and/or marketing, identified here.

65. This difference can be between a few cents and several dollars per unit, a fraction or percentage of the total price.

66. As a result of Defendant’s misrepresentations and/or omissions, Plaintiff was economically injured, and/or caused to suffer economic or financial damages, by payment of the above-identified price premium for the Product.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

**WHEREFORE**, Plaintiff seeks:

1. To declare this a proper class action, certifying Plaintiff as representative, and the undersigned as Counsel for the Class; and signum
2. Actual damages, but neither (1) a penalty, nor minimum measure of recovery created or imposed by statute, which may be prohibited, (2) full value damages, nor (3) punitive damages.

September 13, 2025

Respectfully submitted,

/s/ Spencer Sheehan

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Counsel for Plaintiff

**Certificate of Service**

I certify, that on September 13, 2025, I served and/or transmitted the foregoing, by the method below to the persons or entities indicated, at their last known address of record (blank where not applicable).

	Electronic	Email	First-Class Mail	Fax
Defendant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plaintiff	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

/s/ Spencer Sheehan