

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

Laura Aiello, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

LUTHMAN BACKLUND FOODS USA
INC.,

Defendant.

Case No.: 26-cv-08378

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Laura Aiello (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action against Defendant Luthman Backlund Foods USA Inc. (“Defendant”), and alleges the following upon personal knowledge as to her own purchase and experience, and upon information and belief and investigation of counsel to all other matters.

NATURE OF THE ACTION

1. This is a consumer class action concerning Defendant’s distribution and sale of Nick’s brand ice cream (the “Products”) bearing the front-label claim “No Added Sugar” (the “Challenged Representation”). In truth, Defendant adds approximately 6.5 to 10 grams of allulose, a monosaccharide sugar, to each serving of the Products during manufacturing.

2. Allulose is a monosaccharide — chemically classified as the C-3 epimer of D-fructose — that functions in food formulation as a sweetener and is itself a sugar. Allulose is not present in the Products in trace or incidental amounts. Defendant’s own ingredient list reflects that each serving contains a meaningful, deliberately added quantity.

3. In making the Challenged Representation, Defendant also violates the Federal nutrient content claim regulations promulgated under the Federal Food, Drug, and Cosmetic Act.

4. FDA regulations restrict when a product may bear a “no sugar added,” “without added sugar,” or equivalent claim. See 21 C.F.R. § 101.60(c)(2). Among other conditions, such a claim is permitted only if no sugar or any other ingredient containing sugars that functionally substitutes for added sugars, as defined at 21 C.F.R. § 101.9(c)(6)(ii) (“the sum of all free mono- and disaccharides”), is added during processing. Allulose falls within the definition of free mono- and disaccharides.

5. Defendant’s “No Added Sugar” claim therefore is inconsistent with the federal regulation that governs the very language Defendant chose to print on its packaging.

6. Consumers consistently pay more for products marketed as free of added sugar, and Defendant’s placement of the “No Added Sugar” claim on the Products’ consumer-facing label is a deliberate marketing choice designed to capture that premium. Plaintiff and members of the putative Class paid for a product they believed contained no added sugar, and did not receive the benefit of that bargain.

7. Accordingly, Plaintiff brings this action against Defendant for violations of New York General Business Law (“GBL”) §§ 349 and 350, violations of the consumer protection statutes of other states and the District of Columbia, and unjust enrichment.

JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because: (a) the proposed Class consists of more than 100 members; (b) the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs; and (c) minimal diversity exists in that at least one member of the proposed Class is a citizen of a state different from Defendant. Plaintiff is, and at all relevant times has been, a citizen of the State of New York, domiciled in New York County, New York.

9. This Court has personal jurisdiction over Defendant because Defendant transacts business, distributes products for sale, and derives substantial revenue from goods sold within the State of New York, including within this District, and because the conduct giving rise to this action occurred in substantial part within this District.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims asserted occurred in this District, including Plaintiff's purchases of the Products, which were delivered to her in New York County, New York, within the Southern District of New York.

PARTIES

11. Plaintiff Laura Aiello is a resident of New York County, New York. Beginning in approximately 2021, while residing in New York County, Plaintiff purchased Nick's ice cream Products bearing the "No Added Sugar" representation many times, including numerous purchases within the three years preceding the filing of this Complaint. Plaintiff purchased the vanilla bean, peanut butter cup, and chocolate chip cookie dough flavors from FreshDirect, an online grocery retailer, for delivery to her home in New York County, New York. Plaintiff paid approximately \$4.99 to \$6.99 for each pint (473 ml) container, depending on whether a promotional price was in effect.

12. Before purchasing, Plaintiff read and relied upon the "No Added Sugar" claim, which appeared on the lower left portion of the Products' consumer-facing label. Plaintiff purchased the Products because they were represented to contain no added sugar. Based on that representation, Plaintiff believed, reasonably but incorrectly, that the Products contained no added sugar. Shortly before the filing of this Complaint, Plaintiff learned that the Products contain added allulose — a monosaccharide sugar — and therefore are not free of added sugar.

13. Defendant Luthman Backlund Foods USA Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business at 373 S. Willow St., Suite 325, Manchester, NH 03103. Defendant markets and sells its products under the “Nick’s” brand.

14. Defendant distributes, markets, and sells Nick’s ice cream Products, as well as Nick’s protein wafers, for sale to consumers. Defendant participates in, reviews, or approves the labeling and packaging under which the Products are sold to New York and nationwide consumers.

15. Defendant places the Products into the stream of commerce with knowledge of, and control over, the representations that appear on the Products’ packaging.

16. Defendant distributes, markets and sells the Products through national and regional grocery, club, and specialty retailers, as well as through online and direct-to-consumer retail channels, throughout the State of New York and the United States.

FACTUAL ALLEGATIONS

A. Consumers Actively Seek Out Products Represented to Be Free of Added Sugar

17. A substantial and growing body of market research confirms that consumers actively seek out food products marketed as free of added sugar. Reducing added-sugar intake is widely recognized, including by public-health authorities, as an important component of a healthy diet, and manufacturers have responded by reformulating products and prominently marketing “no added sugar,” “zero sugar,” and similar claims on their packaging.

18. The market for allulose-sweetened products has grown rapidly alongside this trend. Industry researchers estimate the global allulose market was valued at roughly \$0.2 billion in 2024 and project it will grow at a compound annual rate in excess of 12% over the following decade, with the dairy and frozen-dessert category — including ice cream — representing one of the largest and fastest-growing sectors.

19. Manufacturers favor allulose in these applications because, unlike high-intensity sweeteners such as stevia or monk fruit extract, allulose closely replicates the bulk, texture, browning, and mouthfeel of table sugar, while, unlike sugar alcohols such as erythritol, it does not commonly cause the same degree of gastrointestinal distress at typical use levels — making it an attractive, near-invisible sugar substitute in indulgent categories such as ice cream.

20. Defendant capitalized on this consumer demand by prominently featuring the Challenged Representation on the front of the Products’ packaging, in a location and font size designed to be seen by a shopper.

21. Ice cream and other frozen desserts are a category in which consumers are especially attentive to sugar content, both because the category is widely understood to be calorie- and sugar-dense in its traditional form, and because manufacturers, including Defendant, have increasingly marketed “better-for-you” versions of these indulgent products specifically to appeal to consumers seeking to reduce their sugar intake without foregoing the category altogether.

22. A “No Added Sugar” claim on an ice cream product is therefore particularly likely to be relied upon, and particularly likely to command a price premium, precisely because it promises an exception to what a reasonable consumer would otherwise expect from the category.

B. The Products and the Challenged Representation

23. Defendant distributes, markets, and sells Nick’s brand ice cream bearing the front-panel statement “No Added Sugar” on the lower left of the Products’ label — the portion of the package readily seen by a shopper. Some of the Products’ front label and the ingredient lists are reproduced below.

Nick's brownie cookie dough flavor



INGREDIENTS: CREAM, DAIRY PROTEIN BLEND (WATER, MILK PROTEIN CONCENTRATE, WHEY PROTEIN ISOLATE, ALLULOSE, WATER, ALLULOSE, SOLUBLE CORN FIBER, ERYTHRITOL, EPG (MODIFIED PLAINI-BASED OIL), COCONUT OIL, LESS THAN 2% OF: COCOA PROCESSED WITH ALKALI, ALMOND FLOUR, COCOA, NATURAL FLAVOR, CORN STARCH, SUNFLOWER LECITHIN, WHOLE MILK POWDER, CHICORY ROOT FIBER, BUTTER (CREAM, SALT), TAPIOCA STARCH, WHEY PROTEIN CONCENTRATE, STEVIOL GLYCOSIDES, SALT, GUAR GUM, CELLULOSE GUM, CELLULOSE GEL, MONO & DIGLYCERIDES, LOCUST BEAN GUM, MONK FRUIT EXTRACT.

CONTAINS: MILK, ALMOND

MADE IN A FACILITY THAT PROCESSES EGGS, PEANUTS, SOY, TREE NUTS, AND WHEAT.

Nick's cheesecake brownie flavor



INGREDIENTS: CREAM, DAIRY PROTEIN BLEND (WATER, MILK PROTEIN CONCENTRATE, WHEY PROTEIN ISOLATE, ALLULOSE), WATER, SOLUBLE CORN FIBER, ALLULOSE, ERYTHRITOL, COCONUT OIL, EPG (MODIFIED PLANT-BASED OIL), LESS THAN 2% OF: COCOA, BUTTER (CREAM, SALT), NATURAL FLAVOR, SORBITOL, STEVIOL GLYCOSIDES, SUNFLOWER LECITHIN, CORN STARCH, COCOA PROCESSED WITH ALKALI, MONK FRUIT EXTRACT, GUAR GUM, SALT, INULIN, LACTIC ACID, WHOLE MILK POWDER, CELLULOSE GUM, CELLULOSE GEL, MONO & DIGLYCERIDES, LOCUST BEAN GUM, WHEY PROTEIN CONCENTRATE, TAPIOCA STARCH.

Nick's peanut butter cup flavor



cts er (98g) per container 390 % DV* 3g 36% 1g 85%	*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice. INGREDIENTS: CREAM, DAIRY PROTEIN BLEND/WATER, MILK PROTEIN CONCENTRATE, WHEY PROTEIN ISOLATE, ALLULOSE, WATER, PEANUT BUTTER CUPS (COCONUT OIL, PEANUTS, MALTITOL, LACTITOL, COCOA PROCESSED WITH ALKALI, SOY LECITHIN, SALT, VANILLA EXTRACT), SOLUBLE CORN FIBER, ALLULOSE, EPG (MODIFIED PLANT-BASED OIL), PEANUT BUTTER, ERYTHRITOL, LESS THAN 2% OF: COCONUT OIL, NATURAL FLAVOR, CORN STARCH, LOCUST BEAN GUM, COCOA PROCESSED WITH ALKALI, STEVIOL GLYCOSIDES, SALT, SORBITOL, GUAR GUM, CELLULOSE GUM, CELLULOSE GEL, MONO & DIGLYCERIDES, LOCUST BEAN GUM. CONTAINS: MILK, SOY, PEANUT MADE IN A FACILITY THAT PROCESSES EGGS, TREE NUTS, AND WHEAT. NET CARB (G/PINT) — TOTAL CARB (71%) — DIETARY FIBER (23%) — SUGAR ALCOHOL
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Nick's vanilla bean flavor



INGREDIENTS: CREAM, DAIRY PROTEIN BLEND (WATER, MILK PROTEIN CONCENTRATE, WHEY PROTEIN ISOLATE, ALLULOSE), WATER, SOLUBLE CORN FIBER, ALLULOSE, EPG (MODIFIED PLANT-BASED OIL), ERYTHRITOL, LESS THAN 2% OF: COCONUT OIL, GROUND VANILLA BEAN, NATURAL FLAVOR, STEVIOL GLYCOSIDES, GUAR GUM, CELLULOSE GUM, CELLULOSE GEL, MONO & DIGLYCERIDES, LOCUST BEAN GUM, SALT.

CONTAINS: MILK

MADE IN A FACILITY THAT PROCESSES EGGS, PEANUTS, SOY, TREE NUTS, AND WHEAT.

Nick's mint chocolate chip flavor¹

Nutrition Facts

Serving size 2/3 cup (92g)

Per serving	Per container
110	340
% DV*	% DV*
9g 12%	26g 33%
6g 30%	19g 95%
0g	0g
15mg 5%	40mg 13%
120mg 5%	370mg 16%
19g 7%	58g 21%
7g 25%	22g 79%

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

INGREDIENTS: CREAM, DAIRY PROTEIN BLEND (WATER, MILK PROTEIN CONCENTRATE, WHEY PROTEIN ISOLATE, ALLULOSE), WATER, SOLUBLE CORN FIBER, ALLULOSE, XYLITRITOL, COCONUT OIL, EPG (MODIFIED PLANT-BASED OIL), LESS THAN 2% OF: COCOA, NATURAL FLAVOR, STEVIA GLYCOSIDES, SALT, GUAR GUM, CELLULOSE GUM, CELLULOSE GEL, MONO & DIGLYCERIDES, SUNFLOWER LECITHIN, COCOA PROCESSED WITH ALKALI, MONK FRUIT EXTRACT, TURMERIC AND VEGETABLE JUICE FOR COLOR, MINT EXTRACT, LOCUST BEAN GUM.

CONTAINS: MILK

MADE IN A FACILITY THAT PROCESSES EGGS, PEANUTS, SOY, TREE NUTS, AND WHEAT.

4 NET CARBS/PINT = TOTAL CARB. (58G) - DIETARY FIBER (22G) - SUGAR ALCOHOL (13G) - ALLULOSE (19G)

†† NICK'S MINT CHOCOLATE CHIP LIGHT ICE CREAM CONTAINS 110 CALORIES AND 9G TOTAL FAT PER SERVING COMPARED TO 323 CALORIES AND 20G TOTAL FAT PER SERVING FOR REGULAR MINT CHOCOLATE CHIP ICE CREAM.

¹ Discovery may reveal that Defendant distributes additional products (such as protein wafers), flavors or varieties bearing the same or a substantially similar representation, and Plaintiff reserves the right to amend this Complaint to add such products.

24. The Challenged Representation conveys a single, unambiguous message to a reasonable consumer: that no sugar has been added to the Products during their manufacture. That is the ordinary and expected meaning of the phrase “No Added Sugar” as it is commonly used and understood in food marketing.

25. That message is false. The Products’ ingredient statement reflects that Defendant adds allulose — a monosaccharide sugar — during processing. Although the amount of allulose is not disclosed on the Products, approximately 6.5 to 10 grams of allulose is added per labeled serving.

26. The Challenged Representation is printed in a manner visually comparable to other front-of-package claims on the Products, and is set off from the surrounding artwork so as to draw the shopper’s attention. By contrast, the word “allulose” appears in the ingredient statement, printed in small type on the back of the package, in the same typeface and size as dozens of other ingredients. Nothing about the placement, size, or presentation of the word “allulose” in the ingredient statement would alert a reasonable consumer, unprompted, to its significance as an added sugar that directly contradicts the front-label claim.

27. Allulose is listed as a component of the dairy protein blend (“water, milk protein concentrate, whey protein isolate, allulose”) and is listed again, independently, further down the ingredient statement — meaning Defendant may add allulose to the Products both indirectly, through a purchased blend, and directly, as a standalone added ingredient.

C. Allulose Is a Sugar Within the Meaning of Applicable Labeling Standards

28. Allulose is chemically classified as a monosaccharide and is the C-3 epimer of D-fructose, meaning it shares fructose’s molecular formula and differs only in the spatial arrangement of a single hydroxyl group.

29. Because it is a free monosaccharide, allulose falls within the federal regulatory definition of “total sugars,” which is defined as “the sum of all free mono- and disaccharides.” 21 C.F.R. § 101.9(c)(6)(ii).

30. Allulose is used in food manufacturing specifically because it functions as a sugar: it possesses roughly 70% of the sweetness of table sugar and is added to formulations as a bulk sweetener and partial or complete substitute for conventional sugar. Its solubility, texture, and behavior in finished food products closely mirror those of fructose.

31. The U.S. Food and Drug Administration has recognized that allulose, as a monosaccharide, falls within the Total Sugars declaration on a Nutrition Facts label absent a specific rulemaking excluding it. FDA has separately issued guidance describing limited enforcement discretion permitting allulose to be excluded from the Total Sugars and Added Sugars declarations on the Nutrition Facts panel in some circumstances — a narrow accommodation that has no bearing on, and does not authorize, an outside-the-panel claim that a product contains “no added sugar.”

32. The FDA is not the only entity that recognizes allulose is a sugar. Tate & Lyle, the ingredient manufacturer responsible for the production of most commercial grade allulose, has acknowledged in multiple FDA filings that “Allulose is a monosaccharide and is classified as a sugar.” Tate & Lyle Petition²; see also Tate & Lyle Study³ (“Allulose is a monosaccharide, or simple sugar, that naturally presents in small quantities in fruits like figs and raisins and a variety of sweet foods like caramel sauce, maple syrup and brown sugar.”).

² Citizen Petition Submitted by Tate & Lyle Ingredients Americas LLC requesting that Allulose be Exempt From Being Included As a Carbohydrate, Sugar, or Added Sugar in the Nutrition Facts Label on Foods and Beverages, April 10, 2015, Docket Number FDA-2015-P-1201

³ Tate & Lyle Study Pg. 6, <https://www.regulations.gov/document/FDA-2015-P-1201-0014>, August 13, 2018

33. Early findings suggest that allulose might be processed in the body differently than certain standard sugars for some individuals, but these results come with major limitations. Researchers note that outcomes depend on the amount consumed, individual physiological factors like race and gender, and whether the allulose is liquid or solid, indicating that further investigation is required.⁴

34. Ingesting allulose may lead to digestive issues, including nausea, bloating, diarrhea, and stomach pain.⁵ A major clinical study evaluating how well people tolerate allulose found that individuals who consumed it experienced diarrhea, bloating, and abdominal discomfort much more frequently than those who consumed conventional cane sugar.

35. Additionally, consuming higher doses of allulose led to cases of *severe* nausea, stomach pain, headaches, loss of appetite, and diarrhea.⁶

36. Notwithstanding these open questions about allulose's physiological effects, its regulatory status as a "sugar" for labeling purposes does not turn on whether it is metabolized identically to sucrose.

D. The Products Contain Approximately 6.5 to 10 Grams of Allulose Per Serving

37. Plaintiff's determination of the allulose content per serving is based on the application of mandatory federal regulatory accounting rules governing nutritional labeling, combined with basic mathematical principles.

⁴ Yuma Tani et al., Allulose for the attenuation of postprandial blood glucose levels in healthy humans: A systematic review and meta-analysis, 18 PLoS One e0281150 (2023) <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0281150> (last visited September 2026).

⁵ Memorandum from Center for Science in the Public Interest to Food and Drug Administration (June 17, 2019) <https://www.cspi.org/sites/default/files/2022-03/allulose%20final%20from%20CSPI.pdf> (last visited September 2026).

⁶ Han Y, Choi BR, Kim SY, Kim YH, Kwon EY, & Choi MS, Gastrointestinal Tolerance of D-Allulose in Healthy and Young Adults. A Non-Randomized Controlled Trial, *Nutrients*, 2018 Dec. 19;10(12):2010 <https://www.mdpi.com/2072-6643/10/12/2010> (last visited September 2026).

38. 21 C.F.R. § 101.9(c)(6) defines “Total Carbohydrate” using the standardized carbohydrate-by-difference method, under which Total Carbohydrate is calculated by subtracting the sum of crude protein, total fat, moisture, and ash from the total weight of the food. Because allulose is a monosaccharide that is none of these four excluded components, any allulose present in a food must be captured within the food’s declared Total Carbohydrate figure.

39. Under the FDA Guidance for Industry titled The Declaration of Allulose and Calories from Allulose on Nutrition and Supplement Facts Labels (October 2020, Docket No. FDA-2019-D-0725), allulose must be counted toward the product’s “Total Carbohydrate” declaration, while food manufacturers are permitted to omit allulose from the “Total Sugars” and “Added Sugars” sub-lines.

40. Pursuant to 21 C.F.R. § 101.9(c)(6)(iv), sugar alcohols (such as erythritol and sorbitol) must be declared beneath Total Carbohydrate when a product label makes a claim about sugars.

41. Allulose is not among the substances FDA has classified as dietary fiber, is not a sugar alcohol, and, under the enforcement discretion described in the 2020 guidance, is omitted from the Total Sugars declaration. Allulose therefore remains within the Products’ declared Total Carbohydrate figure but is not captured by the Dietary Fiber, Total Sugars, or Sugar Alcohol lines. It is the uncaptured residual that remains once those lines are subtracted from Total Carbohydrate.

42. Applying these governing federal regulations to the Nutrition Facts panel for Nick’s cheesecake brownie flavor yields the following mathematical derivation: Total Carbohydrate (23g) – Dietary Fiber (7g) – Total Sugars (1g) – Sugar Alcohol (5g) = approximately 10g of carbohydrate mass unaccounted for by any other declared category.

43. According to the product’s ingredient list—which under 21 C.F.R. § 101.4(a)(1) must list ingredients in descending order of predominance by weight—the standalone “allulose” ingredient appears in the fifth position, ahead of soluble corn fiber and erythritol, both of which are independently accounted for in the Dietary Fiber and Sugar Alcohol lines, respectively. The remaining unaccounted carbohydrate mass therefore consists predominantly of allulose, together with only de minimis contributions from the corn starch, tapioca starch, and gum ingredients that are each individually listed among the more than a dozen ingredients constituting less than 2% of the Product by weight.

44. Based on this federal regulatory accounting methodology, the cheesecake brownie flavor contains approximately 7 to 8 grams of allulose per 2/3 cup serving (or 21 to 24 grams per 1-pint container), without taking into account the decimal rounding and other minor adjustments permitted by FDA regulations.

45. In fact, this calculation is corroborated by at least one third-party retailer’s product listing. According to [shopmarketstreet.com](https://www.shopmarketstreet.com/shop/pd/nicks-cheesecake-brownie-ice-cream-16-oz/970692245)⁷, Nick’s cheesecake brownie ice cream contains 21 grams of allulose per one-pint container, which — divided across the container’s three servings — equates to approximately 7 grams of allulose per serving, consistent with Plaintiff’s independent, regulation-based calculation.

46. Applying the standardized carbohydrate-by-difference method yields approximately 8 to 10 grams of allulose per serving of the brownie cookie dough flavor.

47. Using the same methodology, the Products contain approximately the following amounts of allulose in other flavors: peanut butter cup flavor — 7g per serving; vanilla bean — 7g per serving (approximately 20g per pint); and mint chocolate chip — 6.5g per serving.

⁷ <https://www.shopmarketstreet.com/shop/pd/nicks-cheesecake-brownie-ice-cream-16-oz/970692245>, last visited September 6, 2026

48. By any measure, the quantity of allulose Defendant added to the Products is a deliberate, material, and functionally significant addition of sugar — precisely the type of addition the “No Added Sugar” claim does not permit.

E. The Challenged Representation Violates FDA Nutrient Content Regulations and the Products Are Misbranded

49. Congress empowered FDA to oversee and regulate food labeling by enacting the Federal Food, Drug, and Cosmetic Act, as amended by the Nutrition Labeling and Education Act, 21 U.S.C. § 301 et seq. FDA promulgated the relevant food-labeling regulations at 21 C.F.R. part 101.

50. FDA regulations distinguish information appearing within the Nutrition Facts panel from statements appearing elsewhere on a label. Information within the Nutrition Facts panel is not itself a nutrient-content claim, but the same information placed outside that panel is subject to the nutrient-content-claim regulations. 21 C.F.R. § 101.13(c). The challenged “No Added Sugar” representation is a nutrient-content claim because it appears outside the Nutrition Facts panel and expressly represents that no sugar was added to the Products. 21 C.F.R. § 101.13(b)(1), (c).

51. The “No Added Sugar” representation is a direct statement that no sugar was added to the Products and is therefore an express nutrient-content claim. 21 C.F.R. § 101.13(b)(1), (c). Since Defendant adds allulose during manufacturing of its Products, the representation must satisfy 21 C.F.R. § 101.60(c)(2).

52. Section 101.60(c)(2) permits use of the term “no added sugar,” and its recognized variants, only where each of the following conjunctive conditions is satisfied:

- (i) No amount of sugars, as defined in 21 C.F.R. § 101.9(c)(6)(ii), or any other ingredient that contains sugars that functionally substitute for added sugars, is added during processing or packaging;
- (ii) The product does not contain an ingredient containing added sugars, such as jam, jelly, or concentrated fruit juice;

- (iii) The sugars content has not been increased above the amount present in the ingredients by some means, except where the intended functional effect of the process is not to increase the sugars content and the increase is functionally insignificant;
- (iv) The food that the product resembles and for which it substitutes normally contains added sugars; and
- (v) Unless the product qualifies as low or reduced calorie, the product bears a statement that it is not “low calorie” or “calorie reduced” and directs consumers to the nutrition panel for sugar and calorie information.

53. These requirements are conjunctive. Failure to satisfy any single subsection renders the claim noncompliant.

54. *The Products fail subsection (i).* Subsection (i) cross-references 21 C.F.R. § 101.9(c)(6)(ii), which defines “[t]otal sugars” as “the sum of all free mono- and disaccharides (such as glucose, fructose, lactose, and sucrose).” Allulose is a monosaccharide epimer of D-fructose and falls squarely within that definition. Because Defendant adds approximately 6.5 to 10 grams of allulose to each serving of ice cream during processing, the “No Added Sugar” representation does not comply with § 101.60(c)(2)(i).

55. *The Products independently fail subsection (iii).* Subsection (iii) prohibits increasing “sugars content” above the amount present in the base ingredients “by some means,” except where the increase is functionally insignificant. Defendant’s deliberate addition of 6.5 to 10 grams of allulose per serving — a functional sweetener added specifically to replace the sweetness ordinarily supplied by added sucrose or other caloric sweeteners in ice cream — is neither incidental nor functionally insignificant; it is the mechanism by which the Products achieve their sweetness profile while displaying a “No Added Sugar” claim. The addition therefore independently violates § 101.60(c)(2)(iii).

56. Independently, the allulose Defendant adds is an “added sugar” as FDA defines that term. Under 21 C.F.R. § 101.9(c)(6)(iii), added sugars are sugars that are either added during the

processing of foods or packaged as such, and include free mono- and disaccharides. Because Defendant adds allulose — a free monosaccharide — to the Products during processing, the Products contain exactly what the Challenged Representation says they do not: added sugar.

57. FDA’s nonbinding allulose guidance does not authorize the Challenged Representation. In October 2020, FDA issued guidance announcing a policy of enforcement discretion, pending rulemaking, permitting manufacturers to exclude allulose from the gram amounts of Total Sugars and Added Sugars declared numerically on the Nutrition and Supplement Facts panel. U.S. FOOD & DRUG ADMIN., *The Declaration of Allulose and Calories from Allulose on Nutrition and Supplement Facts Labels: Guidance for Industry 1*, 8–9 (Oct. 2020). That guidance is expressly limited to panel declarations. It does not amend the definition of “sugars” in § 101.9(c)(6)(ii), does not address or modify § 101.60(c)(2), and does not purport to authorize a separate, outside-panel “No Added Sugar” claim. Guidance documents, by FDA’s own description and under 21 U.S.C. § 371(h), do not have the force of law and cannot override a binding notice-and-comment regulation. Defendant’s outside-panel “No Added Sugar” representation therefore receives no shelter from the guidance, even assuming full compliance with the panel-labeling enforcement-discretion policy.

58. This conclusion is confirmed by the Seventh Circuit’s recent decision in *Franco v. Chobani, LLC*, No. 25-2087 (7th Cir. July 27, 2026), which considered a “Zero Sugar” yogurt product sweetened with added allulose — the same sweetener, and the same regulatory question, presented here.

59. The Seventh Circuit invited FDA to weigh in, and FDA filed an amicus brief in *Franco* taking the position that 21 C.F.R. § 101.9(c)(6)(ii) is unambiguous and that “Total Sugars” includes all free monosaccharides, including allulose, and that its October 2020 guidance reflects

only a decision not to enforce certain panel-labeling requirements — not an interpretation excluding allulose from the regulatory definition of “sugar.”

60. The Seventh Circuit agreed, holding that “[b]ecause the definition includes every monosaccharide and the following parenthetical is merely a list of examples, allulose is a sugar under § 101.9(c)(6)(ii),” that the plaintiff’s state-law claims were not preempted by the FDCA or the 2020 guidance, and reversing the district court’s dismissal. While *Franco* is not binding on this Court, it reflects FDA’s own current, considered interpretation of 21 C.F.R. § 101.9(c)(6)(ii) and forecloses any argument by Defendant that the 2020 guidance immunizes the Challenged Representation or that allulose is not a “sugar” under governing federal regulations.

61. Because Defendant adds approximately 6.5 to 10 grams of allulose to each serving of ice cream during processing, and the Products nonetheless bear a false, misleading, and impermissible outside-panel nutrient-content claim that satisfies neither § 101.60(c)(2)(i) nor § 101.60(c)(2)(iii), the Products are misbranded under federal law. 21 U.S.C. § 343(a)(1), (r)(1)(A); 21 C.F.R. §§ 101.9(c)(6)(ii), 101.13(b), (b)(1), (b)(4), and (c), and 101.60(a)(1)–(3), (c)(2).

62. Plaintiff does not seek to enforce the FDCA directly since no private right of action exists under 21 U.S.C. § 337(a). Plaintiff instead seeks relief under independently enforceable state consumer-protection statutes and common law, and relies on the federal misbranding standard, and Defendant’s failure to satisfy it, as directly relevant to and probative of whether the “No Added Sugar” representation is false, deceptive, or misleading under those independent state-law standards.

F. Reasonable Consumers Rely on Front-of-Package Claims and Cannot Reasonably Be Expected to Recognize the Deception

63. A reasonable consumer, exercising ordinary care, has no reason to distrust or second-guess an affirmative, prominently placed “No Added Sugar” claim on a product’s

consumer-facing label. Consumers are entitled to rely on the truth of such statements without independently parsing the ingredient list or possessing specialized knowledge of carbohydrate chemistry sufficient to recognize that “allulose” is a sugar.

64. Even a consumer who reviews the ingredient list would find only the word “allulose,” with no indication that it is a monosaccharide or that its inclusion contradicts the Products’ own front-label promise. Nor does the statement appearing elsewhere on the Products’ cartons that “FDA does not list allulose as sugar in nutrition facts labels” disclose, qualify, or correct the Challenged Representation. That statement addresses only how allulose is declared within the Nutrition Facts panel. It does not state that allulose is not a sugar, does not disclose that allulose has been added to the Products, and does not withdraw or qualify the front-label promise that no sugar has been added. If anything, it confirms that Defendant knew allulose would otherwise be counted as a sugar, and chose to make the unqualified “No Added Sugar” claim anyway.

65. Consumers are not required to conduct independent scientific research into the chemical classification of listed ingredients to verify express label claims, nor do reasonable consumers possess specialized knowledge of carbohydrate chemistry.

66. Neither the ingredient list nor the carton statement cures, or can reasonably be expected to cure, the false and misleading impression created by the Challenged Representation. Defendant is responsible for ensuring that its express labeling claims are truthful and not misleading.

G. Defendant’s Conduct Was Undertaken with Knowledge of the Falsity, or Reckless Disregard for the Truth, of the Challenged Representation

67. Defendant’s distribution and sale of the Products, and the labeling under which they are sold, is directed at, and reaches, the consuming public broadly, rather than any private dispute

between particular parties, and is therefore consumer-oriented conduct within the meaning of GBL §§ 349 and 350.

68. Defendant knew, or in the exercise of reasonable diligence should have known, that: (a) the Products contain added allulose; (b) allulose is a monosaccharide and therefore a sugar; (c) the Products’ packaging nonetheless states “No Added Sugar” on the consumer-facing label; and (d) reasonable consumers would rely on that statement in deciding whether, and how much, to pay for the Products.

69. Defendant is a sophisticated, national food manufacturer with access to food-science, regulatory, and legal expertise sufficient to know the composition of its own Products and the requirements applicable to nutrient-content claims made on their labels. Defendant’s addition of allulose was not accidental or incidental; it was, upon information and belief, a deliberate formulation decision made with knowledge of allulose’s function and regulatory classification as a sugar.

70. Defendant’s continued use of the Challenged Representation is particularly difficult to justify given the widespread and growing public attention paid to allulose-labeling practices industry-wide.

71. Defendant could have declined to distribute Products bearing the Challenged Representation, sought reformulation, or stopped using the Challenged Representation, but did not do so.

H. Plaintiff’s and the Class’s Injury

72. Defendant markets the Products, including through its packaging, website, and retail channel, as a premium, “better-for-you” indulgence, consistent with the premium retail price point (approximately \$4.99 to \$8.99 per pint) at which the Products are sold. Consumers who pay a premium price for an ice cream marketed on this basis are especially likely to select the product

specifically because of front-of-package health and nutrition claims such as the Challenged Representation, reinforcing both the materiality of the Challenged Representation and the existence of a price premium attributable to it.

73. As a direct and proximate result of Defendant's distribution and sale of the Products bearing the false and misleading Challenged Representation, Plaintiff and Class Members: (a) paid money for a product that was not as represented; (b) paid a price premium attributable to the false "No Added Sugar" claim; and (c) were denied the benefit of the bargain for which they paid.

74. Plaintiff and Class Members would not have purchased the Products, or would have paid materially less for them, had they known that the Products contained added allulose.

CLASS ACTION ALLEGATIONS

75. Plaintiff brings this action on behalf of herself and all members of the following proposed classes (together, the "Class"), pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3):

New York Class: All persons who purchased a Nick's ice cream Product bearing the "No Added Sugar" representation in the State of New York, for personal, family, or household use, during the period permitted by the applicable statute of limitations.

Nationwide Class: All persons in the United States who purchased a Nick's ice cream Product bearing the "No Added Sugar" representation, for personal, family, or household use, during the period permitted by the applicable statute of limitations.

Multi-State Class: All persons in Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, and Washington who purchased a Nick's ice cream Product bearing the "No Added Sugar" representation, for personal, family, or household use, during the period permitted by the applicable statutes of limitations.

76. Excluded from the Class are: (a) Defendant and its officers, directors, and employees; (b) any entity in which Defendant has a controlling interest; (c) the judge to whom this

action is assigned and members of the judge's immediate family; and (d) counsel of record for the parties.

77. Plaintiff reserves the right to amend or modify the Class definition, and to propose subclasses, as appropriate following discovery.

78. Numerosity (Fed. R. Civ. P. 23(a)(1)): The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class Members is unknown to Plaintiff at this stage and can be ascertained through discovery of Defendant's and its retail partners' sales and distribution records, upon information and belief the Class consists of many thousands of consumers nationwide and many thousands of New York consumers specifically, given the Products' sale through grocery and retail outlets throughout the State and the country.

79. Commonality (Fed. R. Civ. P. 23(a)(2)): Common questions of law and fact exist as to all Class Members, including: (a) whether allulose is a sugar; (b) whether the Products contain added allulose; (c) whether the "No Added Sugar" claim is materially misleading to a reasonable consumer; (d) whether Defendant's conduct is consumer-oriented within the meaning of GBL §§ 349 and 350; (e) whether Defendant knew or should have known the Challenged Representation was false or misleading; (f) whether Defendant's conduct violates the consumer protection statutes of the Multi-State Class jurisdictions; and (g) whether Class Members were injured, and the proper measure of damages or restitution.

80. Typicality (Fed. R. Civ. P. 23(a)(3)): Plaintiff's claims are typical of the claims of the Class because Plaintiff, like all Class Members, purchased a Product bearing the Challenged Representation and was subjected to the same allegedly deceptive practice and the same type of resulting injury.

81. Adequacy (Fed. R. Civ. P. 23(a)(4)): Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff's interests are aligned with, and not antagonistic to, those of the Class, and Plaintiff has retained counsel experienced in consumer class action litigation.

82. Predominance and Superiority (Fed. R. Civ. P. 23(b)(3)): The common questions of law and fact identified above predominate over any questions affecting only individual Class Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. The individual damages available to any single Class Member are likely too small to justify the expense of individual litigation, such that most Class Members would have no realistic avenue for redress absent a class action. A class action will also avoid the risk of inconsistent adjudications and will conserve judicial resources.

83. Plaintiff's claims are typical of the claims of the Multi-State Class members, as all were exposed to the same uniform deceptive representations and omissions, and suffered similar economic harm under substantially similar consumer protection laws.

84. A class action is superior for the Multi-State Class because the variations in state consumer protection laws are not so material as to defeat predominance, and individual actions would be inefficient given the low value of claims.

CAUSES OF ACTION

COUNT I

N.Y. Gen. Bus. Law § 349 — Deceptive Acts and Practices (on behalf of the New York Class)

85. Plaintiff repeats and re-alleges each of the foregoing allegations as though fully set forth herein.

86. GBL § 349(a) declares unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce.” A private right of action is conferred by GBL § 349(h) on any person injured by reason of a violation of this section.

87. Defendant’s distribution and sale of the Products bearing the Challenged Representation is consumer-oriented conduct, as it is directed at, and affects, consumers generally rather than any private dispute unique to the parties.

88. The Challenged Representation is materially misleading to a reasonable consumer acting reasonably under the circumstances, because it represents that the Products contain no added sugar when, in fact, Defendant adds approximately 6.5 to 10 grams of allulose — a sugar — to each serving.

89. As a direct and proximate result of Defendant’s deceptive act or practice, Plaintiff and Class Members suffered actual injury, including but not limited to payment of money for Products that did not conform to their representations and payment of a price premium attributable to the Challenged Representation.

90. Pursuant to GBL § 349(h), Plaintiff and Class Members are entitled to recover actual damages or fifty dollars, whichever is greater, and, because Defendant’s conduct was willful or knowing, up to three times actual damages, not to exceed one thousand dollars, together with reasonable attorneys’ fees and costs.

COUNT II

N.Y. Gen. Bus. Law § 350 — False Advertising (on behalf of the New York Class)

91. Plaintiff repeats and re-alleges each of the foregoing allegations as though fully set forth herein.

92. GBL § 350 declares unlawful “[f]alse advertising in the conduct of any business, trade or commerce.” GBL § 350-a defines advertising as false or misleading where it is likely to mislead a reasonable consumer acting reasonably under the circumstances, and where the misleading aspect is material. A private right of action is conferred by GBL § 350-e.

93. The Challenged Representation constitutes advertising within the meaning of GBL § 350, as it appears directly on the Products’ consumer-facing packaging and is intended to induce consumers to purchase the Products.

94. The Challenged Representation is false and misleading in a material respect because it represents that the Products contain no added sugar, when in fact Defendant adds approximately 6.5 to 10 grams of allulose — a sugar — to each serving, a fact that would be material to a reasonable consumer’s purchasing decision.

95. Defendant knew, or in the exercise of reasonable care should have known, that the Challenged Representation was false or misleading at the time the Products were distributed and sold in New York.

96. As a direct and proximate result of Defendant’s false advertising, Plaintiff and Class Members suffered injury in the form of money paid for Products that did not conform to their representations and a price premium attributable to the Challenged Representation.

97. Pursuant to GBL § 350-e, Plaintiff and Class Members are entitled to recover actual damages or five hundred dollars, whichever is greater, and, because Defendant’s conduct was willful or knowing, up to three times actual damages up to ten thousand dollars, together with reasonable attorneys’ fees and costs.

COUNT III

**Violations of the Consumer Protection Statutes of
Other States and the District of Columbia
(on behalf of the Multi-State Class)**

98. Plaintiff repeats and re-alleges each of the foregoing allegations as though fully set forth herein.

99. The consumer protection statutes of the Multi-State Class jurisdictions prohibit deceptive, unfair, and unconscionable acts and practices in the conduct of trade or commerce, similar to GBL §§ 349 and 350. These statutes include, but are not limited to:

Arizona Consumer Fraud Act, Ariz. Rev. Stat. §§ 44-1521 *et seq.*;

California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.* and

Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*;

Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101 *et seq.*;

Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a *et seq.*;

Delaware Consumer Fraud Act, Del. Code Ann. tit. 6, §§ 2511 *et seq.*;

District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28-3901 *et seq.*;

Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 *et seq.*;

Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 *et seq.*;

Kansas Consumer Protection Act, Kan. Stat. Ann. §§ 50-623 *et seq.*;

Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110 *et seq.*;

Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 *et seq.*;

Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A, §§ 1 *et seq.*;

Michigan Consumer Protection Act, Mich. Comp. Laws §§ 445.901 *et seq.*;

New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1 *et seq.*;

North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1 *et seq.*;

Oregon Unlawful Trade Practices Act, Or. Rev. Stat. §§ 646.605 *et seq.*;

Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Stat. Ann. §§ 201-1 *et seq.*;

Rhode Island Deceptive Trade Practices Act, R.I. Gen. Laws §§ 6-13.1-1 *et seq.*;

Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41 *et seq.*;

Virginia Consumer Protection Act, Va. Code Ann. §§ 59.1-196 *et seq.*; and

Washington Consumer Protection Act, Wash. Rev. Code §§ 19.86.010 *et seq.*

100. The conduct of Defendant alleged herein constitutes recurring deceptive, unfair, and unconscionable acts and practices in violation of the consumer protection statutes of the Multi-State Class jurisdictions, and as such, Plaintiff and the members of the Multi-State Class seek monetary damages, including actual, compensatory, and statutory damages where available under these statutes.

101. Defendant misleadingly, inaccurately, and deceptively presented the Products to consumers in the Multi-State Class jurisdictions through the uniform representation that the Products contain “No Added Sugar,” when in fact Defendant adds approximately 6.5 to 10 grams of allulose — a monosaccharide sugar — to each serving.

102. Additionally, Defendant failed to clearly disclose that the Products contain added sugar, identifying allulose only by name in small type in the ingredient statement while prominently displaying “No Added Sugar” on the front of the package, thereby misleading

reasonable consumers about the Products' true nature. Defendant's improper consumer-oriented conduct is misleading in a material way in that it, *inter alia*, induced Plaintiff and the members of the Multi-State Class to purchase and/or pay a premium for the Products when they otherwise would not have.

103. Defendant made its untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

104. Defendant's material misrepresentations were substantially uniform in content, presentation, and impact upon consumers at large in the Multi-State Class jurisdictions. Moreover, Plaintiff and the members of the Multi-State Class who purchased the Products were exposed to Defendant's material misrepresentations.

105. Plaintiff and the members of the Multi-State Class viewed and relied on the Challenged Representation.

106. Plaintiff and the members of the Multi-State Class expected that the Products they purchased would contain no added sugar, consistent with Defendant's labeling.

107. Plaintiff and the members of the Multi-State Class have been injured inasmuch as the Products they received were not as advertised.

108. Accordingly, Plaintiff and the members of the Multi-State Class received less than they bargained for and/or paid and would not have purchased the Products, or would have paid materially less for them, had they known that the Products contained added allulose.

109. Plaintiff and the members of the Multi-State Class seek price-premium and/or benefit-of-the-bargain damages for their purchases of the Products.

110. As a result of Defendant's deceptive, unfair, and unconscionable practices, Plaintiff and the members of the Multi-State Class are entitled to monetary and compensatory damages,

interest, attorneys' fees and costs, and statutory damages where provided under the respective consumer protection statutes.

COUNT IV

Unjust Enrichment

(on behalf of the Nationwide Class)

111. Plaintiff repeats and re-alleges each of the foregoing allegations as though fully set forth herein.

112. By distributing and selling Products bearing the false Challenged Representation, Defendant obtained money from Plaintiff and Class Members in the form of the purchase price paid for the Products, including any premium attributable to the Challenged Representation.

113. Defendant was thereby enriched at the expense of Plaintiff and Class Members, and equity and good conscience require Defendant to disgorge, and make restitution of, the benefit unjustly retained.

114. It would be inequitable for Defendant to retain the benefit conferred without restitution to Plaintiff and Class Members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, respectfully requests that this Court enter judgment as follows:

A. Certifying the Class as defined herein, appointing Plaintiff as Class Representative, and appointing Plaintiff's counsel as Class Counsel pursuant to Federal Rule of Civil Procedure 23;

B. Awarding Plaintiff and the Class actual, compensatory, and price-premium damages in an amount to be proven at trial;

C. Awarding Plaintiff and the Class statutory damages of \$50 per violation under N.Y. Gen. Bus. Law § 349(h) and \$500 per violation under N.Y. Gen. Bus. Law § 350-e(3), and statutory

damages where available under the consumer protection statutes of the Multi-State Class jurisdictions;

D. Awarding treble damages for Defendant's knowing and willful violations under N.Y. Gen. Bus. Law §§ 349(h) and 350-e(3);

E. Awarding restitution and disgorgement of the amounts by which Defendant has been unjustly enriched;

F. Ordering that Defendant bear the cost of notice to the Class;

G. Awarding Plaintiff and the Class pre- and post-judgment interest;

H. Awarding Plaintiff and the Class reasonable attorneys' fees, expenses, and costs of suit; and

I. Granting such other and further relief as this Court deems just and proper.

JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury on all issues so triable.

Dated: September 25, 2026

Respectfully submitted,

/s/ James Chung
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