

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

DAVID FREIFELD, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

MAGIC SPOON INC.,

Defendant.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Case No. 1:26-cv-08281

Plaintiff David Freifeld, individually and on behalf of all others similarly situated, brings this class action suit for damages and equitable relief against Magic Spoon Inc. (“Defendant”). Plaintiff alleges the following based upon personal information as to allegations regarding himself, and the investigation of his counsel, and on information and belief as to all other allegations:

NATURE OF THE ACTION

1. In 2019, Defendant launched Magic Spoon, a high-protein, keto-friendly cereal that delivers 13g protein and **0g total sugars** per serving, a product it billed as the solution to cereal “stuck in that old paradigm of grains and sugar.”¹

2. Defendant manufactures, markets, and sells “0g Total Sugars”, “0g Added Sugar” and “No Added Sugar” Magic Spoon Protein Cereal in the following flavors: (A) Fruity; (B) Cocoa; (C) Peanut Butter; (D) Frosted; (E) Blueberry Muffin; (F) Honey Nut; (G) Chocolate Chip Cookie; (H) Birthday Cake; (I) Cinnamon Crunch; (J) Maple Waffle (collectively, “the Products”). A representative sample (the Fruity Protein Cereal) is depicted below.



¹ *About Us*, Magic Spoon, available at <https://magicspoon.com/pages/our-story> (last accessed August 13, 2026).

3. Defendant prominently markets the Products as containing “0g Total Sugars.” This claim appears on the Products’ front labels and across channels through which Defendant sells and markets them.

4. However, Defendant’s own side-panel labeling admits that each serving of the Products contains “10g allulose per serving.” Ten grams of allulose (which is sugar) per serving is not trivial. It is *twenty* times the maximum amount of total sugars (less than 0.5 grams) that a product may contain to be lawfully labeled sugar free under 21 C.F.R. § 101.60(c)(1)(i).

5. Thus, “0g Total Sugars” representation is both false and misleading. There is no such thing as “sugar-free” allulose; it does not exist. To peddle this contradiction in terms, Defendant deceives the public through misleading packaging statements and labels. This deception has earned Defendant many millions of dollars, while doing substantial damage to a broad class of consumers across Illinois, New York and the country.

6. Defendant’s false and misleading statements caused Plaintiff and members of the proposed class to pay a price premium for the Products. Had they known the truth, Plaintiff and members of the proposed classes would not have purchased the Products or would have paid less.

7. Plaintiff and the proposed classes seek monetary and injunctive relief against Defendant.

THE PARTIES

8. **Plaintiff David Freifeld** is an Illinois resident. Plaintiff purchased Defendant’s Fruity Protein Cereal from Aldi in Vernon Hills, Illinois, in approximately July 2026. Plaintiff relied on Defendant’s representations that the Products contained “0g Total Sugars” and would not have purchased the Products, or would have paid less, had he known the truth. This claim was prepared and approved by Defendant and its agents and disseminated statewide and nationwide to encourage consumers to purchase the Products.

9. **Plaintiff's Future Harm:** Plaintiff would like to purchase the Products again only if he can be sure that Defendant is compliant with relevant consumer protection law. Plaintiff continues to see Defendant's Products available for purchase, and desires to purchase them again if the "0g Total Sugars" Representation was in fact true. Since Plaintiff would like to purchase the Products again to obtain a cereal product that, as advertised, is truly free of sugars, Plaintiff would purchase them again in the future, despite the fact that they were once marred by false advertising or labeling, as Plaintiff would reasonably, but incorrectly, assume the Products were improved (no longer contain sugar). In that regard, Plaintiff is an average consumer who is not sophisticated in the chemistry, manufacturing, and formulation of food and beverage products, such as the Products. Neither Plaintiff, nor reasonable consumers, have the requisite knowledge to accurately determine whether ingredients such as allulose are or are not sugars. Accordingly, Plaintiff is at risk of reasonably, but incorrectly, assuming that Defendant fixed the formulation of the Products such that Plaintiff may buy them again, believing them to no longer be falsely advertised. Plaintiff is, therefore, currently and in the future deprived of the ability to rely on the "0g Total Sugars" Representations. Based on information and belief, the labeling of the Products purchased by Plaintiff is typical of the labeling of the Products purchased by members of the Class.

10. **Defendant Magic Spoon Inc.** is a Delaware corporation with its principal place of business in New York, New York. Defendant operates the Magic Spoon brand which sells cereal products including the Products challenged in this Complaint. Defendant sells the Products throughout Illinois, including in this District.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d) in that: (1) this is a class action involving more than 100 Class members; (2) the parties are minimally diverse, as at least one member of the proposed Class(es) is a citizen of a

state different than Defendant's state of citizenship; and (3) the amount in controversy is in excess of \$5,000,000, exclusive of interest and costs.

12. This Court has general personal jurisdiction over Defendant because its principal place of business is located in New York, New York, within this District, and it is therefore at home in New York. In addition, the conduct giving rise to Plaintiff's claims, including the development, review, approval, and dissemination of the Sugar Free Representation, was directed from Defendant's headquarters in this District.

13. 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 Plaintiff's claims occurred in this District. Defendant maintains its principal place of business and world headquarters in New York, New York, which lies in New York County within this District, and the labeling, packaging, marketing, and advertising decisions that produced and disseminated the challenged Sugar Free Representation were made, reviewed, and approved there. Venue is also proper under 28 U.S.C. § 1391(b)(1) and (c)(2) because Defendant resides in this District, in that each is subject to this Court's personal jurisdiction with respect to this action.

FACTUAL ALLEGATIONS

A. Defendant Market the Products as Containing 0g Total Sugars

14. Reasonable consumers understand the phrase "0g Total Sugars" in its ordinary, everyday sense: 0g, meaning "zero grams," and total sugars meaning to "include sugars naturally present in many nutritious foods and beverages, such as sugar in milk and fruits as well as any added sugars that may be present in the product."²

² *Sugars on the Nutrition Facts Label* U. S. FOOD AND DRUG ADMINISTRATION, available at <https://www.merriam-webster.com/dictionary/flavor> (last accessed August 17, 2026).

15. In April 2019, Defendant announced the launch of the Products as a way to “recreate classic childhood cereals, with more protein, less sugar [and] less carbs[.]”³

16. Defendant prominently markets the Products as containing “0g Total Sugars,” including on their front labels:



³ Julia Waldow, *Being 'everywhere that people buy and sell cereal: ' How Magic Spoon went from online-only to wholesale in six months*, MODERNRETAIL (2023), <https://www.modernretail.co/operations/being-everywhere-that-people-buy-and-sell-cereal-how-magic-spoon-went-from-online-only-to-wholesale-in-six-months/>



17. Defendant also labels the back-packaging of the Products with an explanation of “Why [it’s] special,” including a chart that states its “total sugars” or “sugar” as being “0g.” The back label claims for each Product are depicted below.





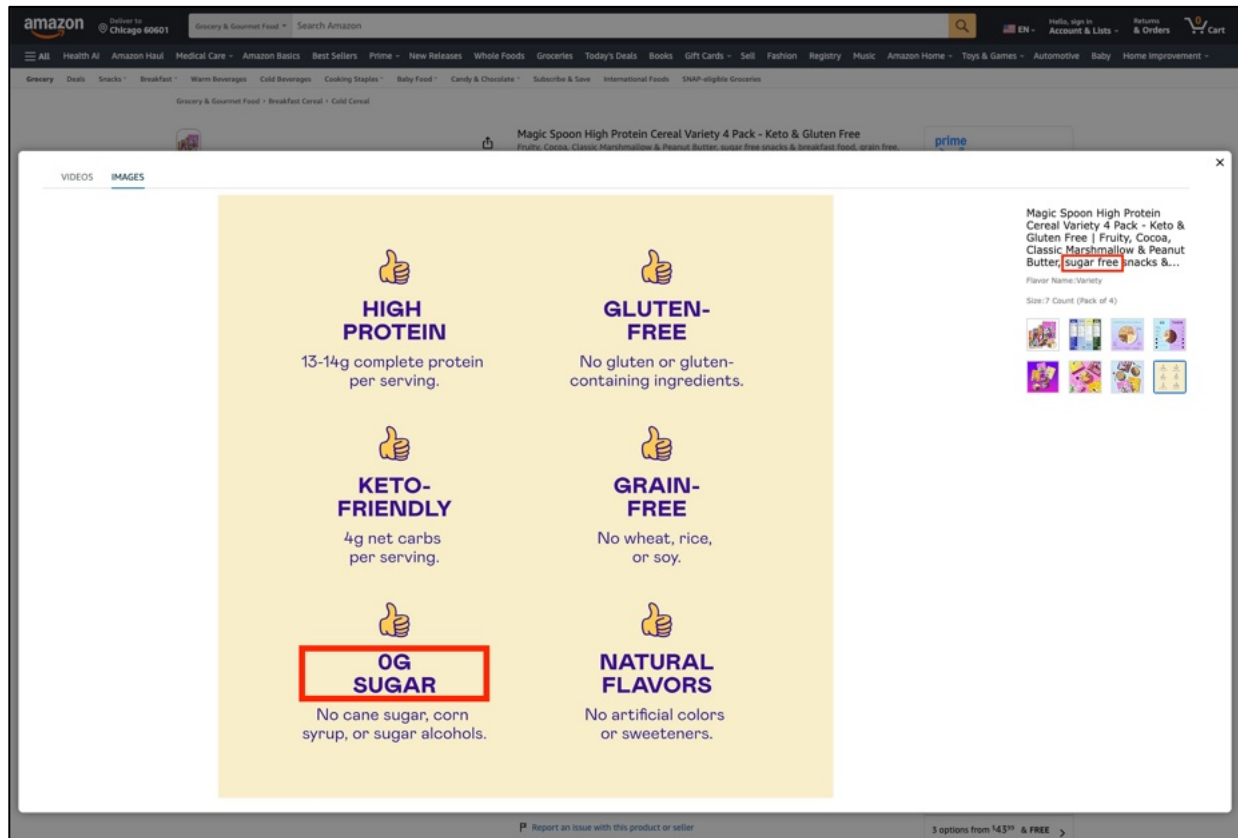
18. Defendant’s “0g Total Sugars” marketing extends beyond the label. Its digital campaign—spanning TV, in-app, and paid social media advertising—repeats the same message.

19. In Defendant’s video ad, the voice narrates: “13 grams of protein, **0 sugar**” and another voice responds: “taste for yourself”⁴ (emphasis added).

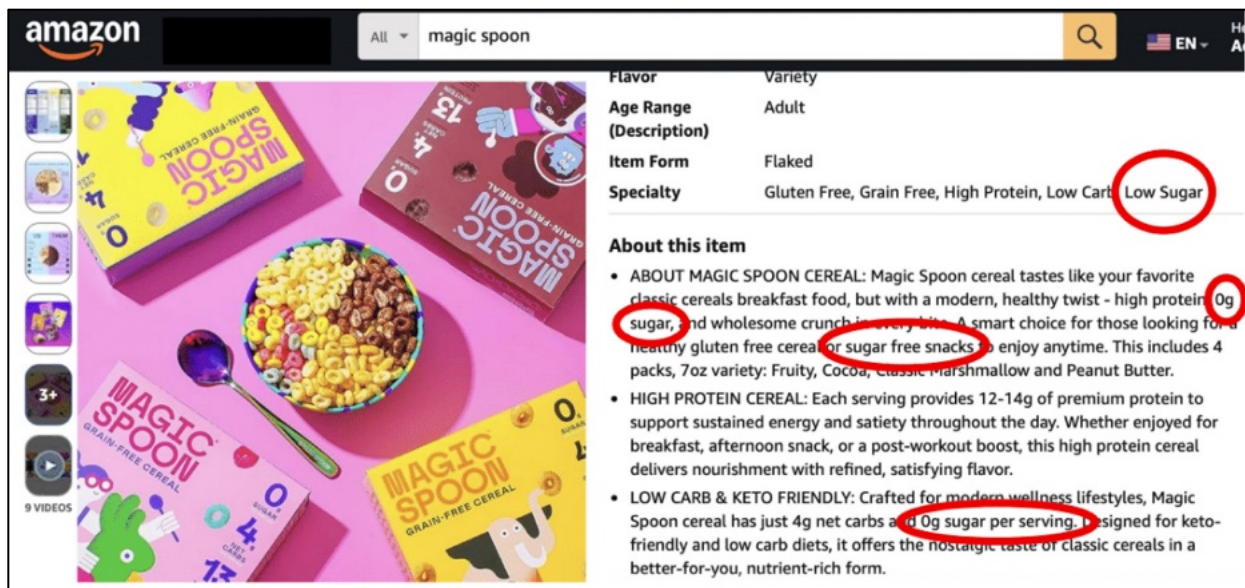
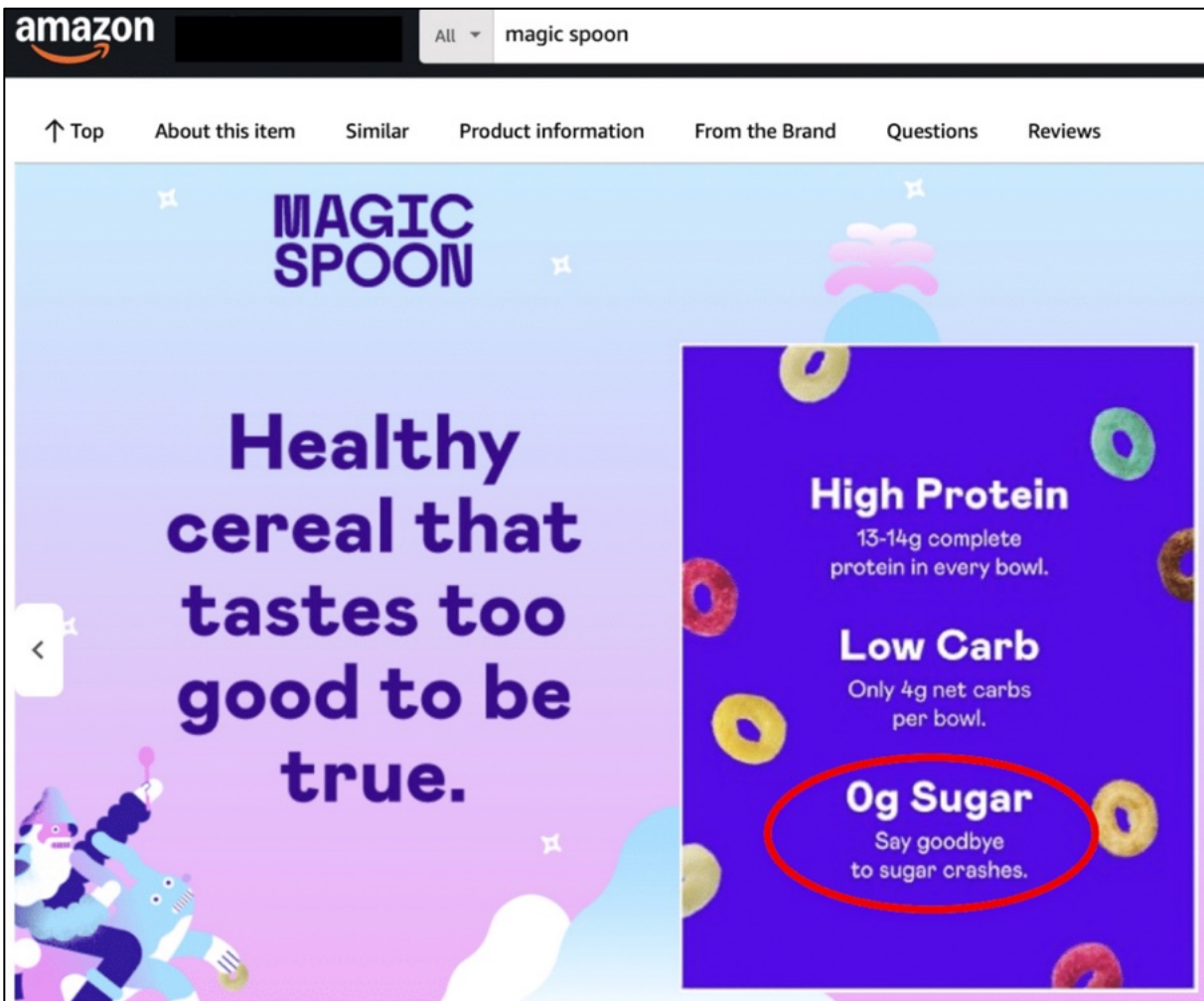
20. Defendant carries the “0g Total Sugars” campaign onto every third-party retail platform where it sells the Products.

⁴ *Magic Spoon Cereal – Talking Box – 15s*, MAGIC SPOON (2026), <https://youtu.be/rzdJ5jZDAJ4?is=nGrcWqzJCuR-K-OV>.

21. On Amazon, Defendant name the Products “sugar free snacks & breakfast food . . .” and repeat “0g Sugar” and “Low Sugar” in scrollable graphics.⁵

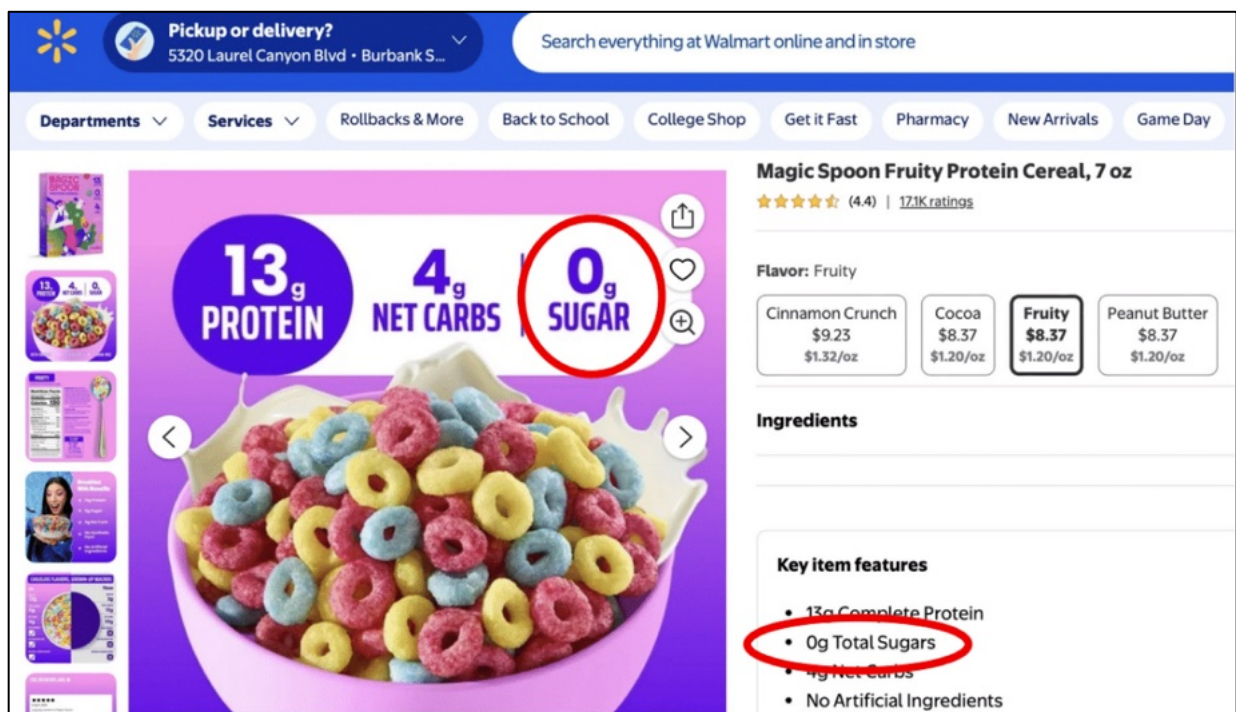
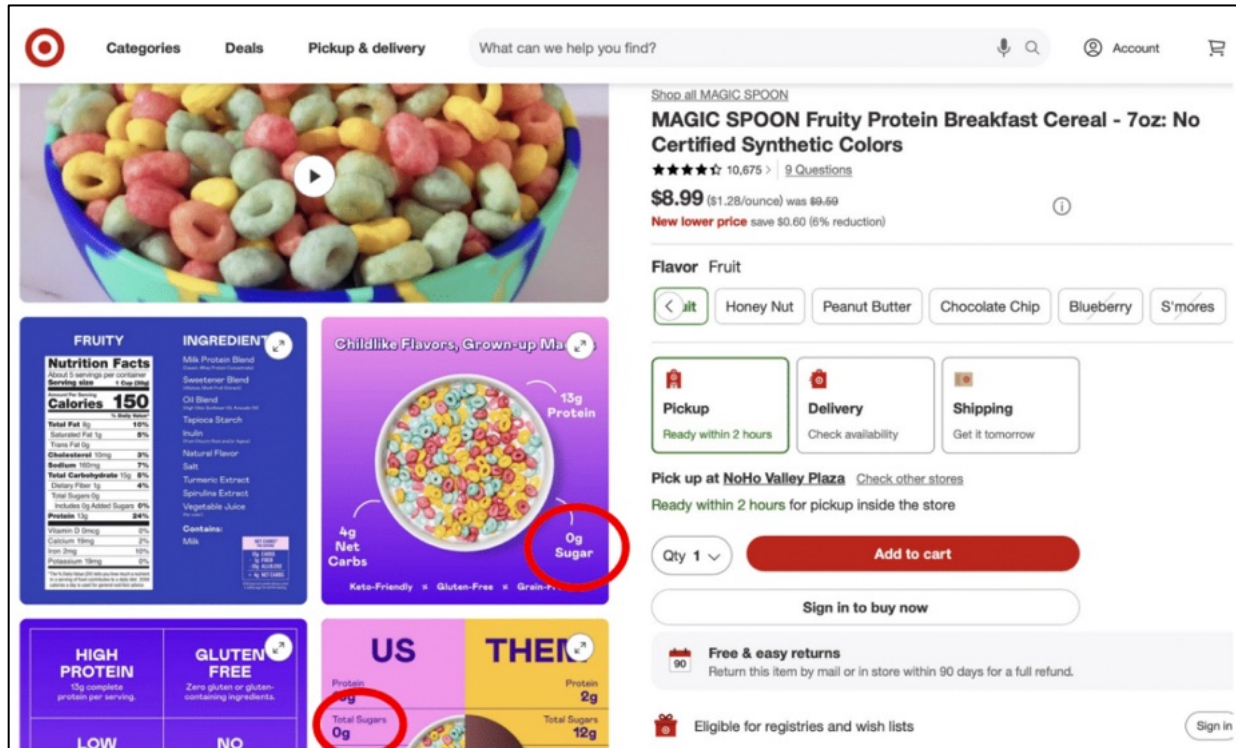


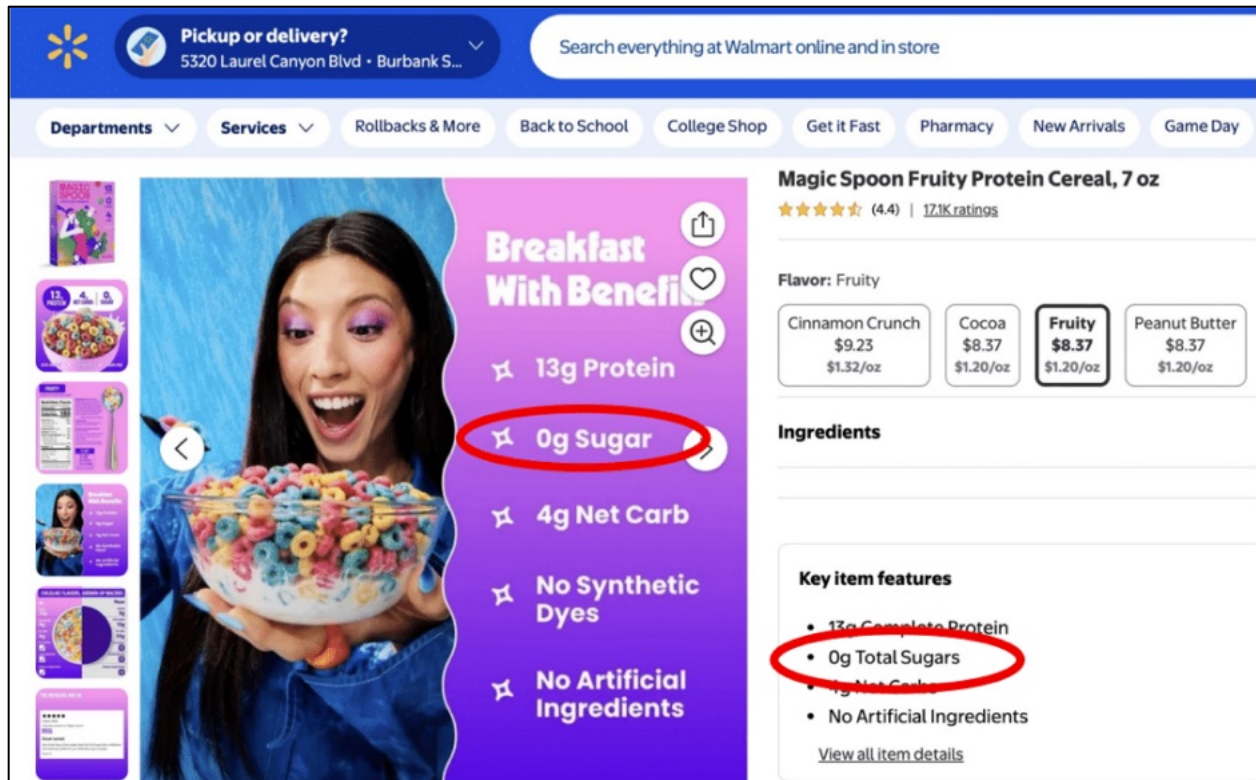
⁵ *Magic Spoon High Protein Cereal Variety 4 Pack - Keto & Gluten Free Fruity, Cocoa, Classic Marshmallow & Peanut Butter, sugar free snacks & breakfast food, grain free, low carb* AMAZON available at https://www.amazon.com/dp/B08SSVY1PQ?ref=cm_sw_r_cp_ud_dp_9J38J6Z2B1PR914J7PMV (last accessed August 17, 2026).



22. The same graphics appear across Product flavors and Defendant's other third-party retail pages.

23. On Target and Walmart, Defendant also uses the following graphics:





24. On Amazon, Defendant embeds the claim in the Product name itself, in the product description, and specialty.⁶

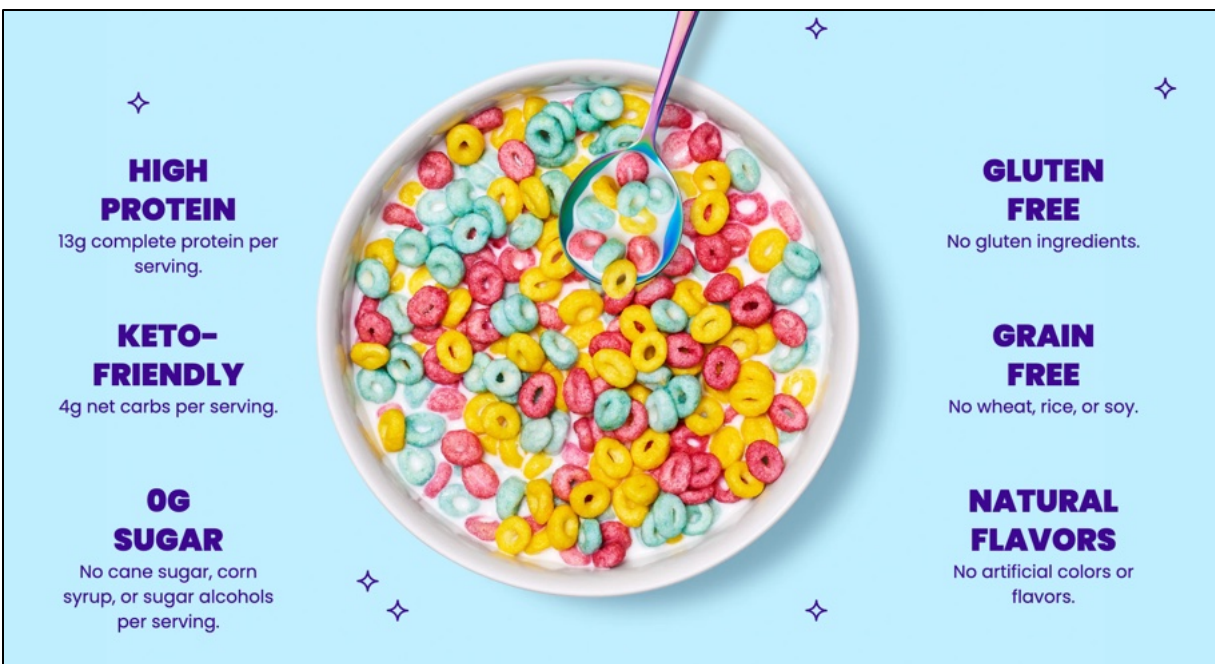
25. On its website, magicspoon.com, Defendant maintains the same messaging. Under “Ingredients,” a field consumers reasonably understand to reflect the product’s actual composition, Defendant list general “Sweetener Blend” component without mentioning allulose as a separate ingredient.⁷

⁶ Magic Spoon High Protein Cereal Variety 4 Pack - Keto & Gluten Free Fruity, Cocoa, Classic Marshmallow & Peanut Butter, sugar free snacks & breakfast food, grain free, low carb AMAZON available at https://www.amazon.com/dp/B08SSVY1PQ?ref=cm_sw_r_cp_ud_dp_9J38J6Z2B1PR914J7P_MV (last accessed August 17, 2026).

⁷ VARIETY 6 PROTEIN CEREAL - 6 BOX CASE, MAGIC SPOON available at https://magicspoon.com/products/variety-1-case-6-boxes-1?selling_plan=3408035902 (last accessed August 17, 2026).

Ingredients: Milk Protein Blend, Sweetener Blend, Oil Blend, Tapioca Starch, Chicory Root Inulin, Vegetable Juice, Salt, Natural Flavors, Peanut Flour, Peanut Extract, Cocoa powder, Blueberry Powder, Cinnamon.

26. Defendant also prominently displays the “0g of sugar” claim across its website, including on the pages where it sells the Products.⁸



⁸ *Fruity Protein Cereal – 4 Box Case*, MAGIC SPOON, available at https://magicspoon.com/products/fruity-keto-cereal-case?selling_plan=3403284542 (last accessed August 18, 2026).

27. Similarly, on Instagram, Defendant launch post reads simply: “0g sugar.” The screenshots of some of the Highlights under “US” is shown below.⁹



⁹ INSTAGRAM, *available at* <https://www.instagram.com/magicspooncereal?igsh=NTc4MTIwNjQ2YQ==&igsi=NTc4MTIwNjQ2YQ==> (last accessed August 17, 2026).

28. The “0g Total Sugars” marketing campaign is widespread, consistent, and aggressive and appears at multiple points in consumers’ interactions with the Products.

29. All of these claims are false and misleading, as demonstrated below.

B. Allulose is a Sugar

30. Allulose is a sugar.

31. It is a naturally occurring sugar found in small quantities in foods such as figs, raisins, wheat, maple syrup, and molasses.¹⁰

32. Chemically, allulose is a monosaccharide epimer of fructose.¹¹

33. Allulose and fructose are both sugar carbohydrates that differ only in the position of a single carbon atom.¹²

34. As a monosaccharide, allulose falls squarely within the Food and Drug Administration (“FDA”)’s codified definition of sugar. 21 C.F.R. § 101.9(c)(6)(ii) (defining “Total sugars” as “the sum of all free mono- and disaccharides (such as glucose, fructose, lactose, and sucrose)”).

35. Consistent with that regulatory definition, in its 2016 Nutrition Facts rulemaking the FDA stated that allulose, “as a monosaccharide, must be included” in the Total Sugars

¹⁰ Cleveland Clinic Health Essentials, *What Is Allulose?*, available at <https://health.clevelandclinic.org/what-is-allulose/> (“Allulose is a naturally occurring” sugar); see also <https://www.medicalnewstoday.com/articles/326198> (“Allulose is a type of sugar that resembles fructose, which is the sugar that occurs naturally in fruit.”).

¹¹ *A Clinical Study on the Effect of Allulose, a Low-Calorie Sugar, on in vivo Dental Plaque pH*, The Forsyth Inst., at p. 6 (2018) (“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.”).

¹² Han-Joo Maeng et al., *Metabolic Stability of D-Allulose in Biorelevant Media and Hepatocytes: Comparison with Fructose and Erythritol*, 8 *Foods* 448 (Oct. 1, 2019), https://www.researchgate.net/figure/Chemical-structures-of-a-D-allulose-b-D-fructose-c-D-glucose-and-d-erythritol_fig4_336222515.

declaration pending any future rulemaking that would otherwise exclude the substance. No such rulemaking has ever occurred.¹³

36. The FDA is not the only entity that recognizes that 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.”¹⁴ Tate & Lyle has likewise acknowledged that “[a]llulose is a monosaccharide, or simple sugar.”¹⁵

37. Even the sweetener industry’s own website, allulose.org, plainly states that “Allulose (also called psicose) is a low-calorie sugar.”¹⁶

38. “0g Total Sugars” Magic Spoon Cereals sweetened predominantly with allulose is really just a cereal sweetened with sugar; its very name is a lie.

39. There are also important differences between consuming allulose and consuming no sugar. While some preliminary research suggests allulose may metabolize differently than some other sugars in some people, that research carries significant caveats: studies have concluded that “dose difference of allulose may result in a different effect,” that “the effect may differ by race as

¹³ *Food Labeling: Revision of the Nutrition and Supplement Facts Labels*, 81 Fed. Reg. 33,742, 33,795-96 (May 27, 2016).

¹⁴ *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.

¹⁵ *Tate & Lyle Study*, Aug. 13, 2018, at p. 6, <https://www.regulations.gov/document/FDA-2015-P-1201-0014> (“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.”).

¹⁶ Calorie Control Council, *Frequently Asked Questions*, <https://allulose.org/allulose-info/low-calorie-sugar/> (“Allulose (also called psicose) is a low-calorie sugar.”).

well as gender,” and that “there might be a difference between a liquid form and a solid form” of allulose, and experts have concluded that more research needs to be done.¹⁷

40. Consumption of allulose can also cause gastrointestinal effects such as nausea, bloating, diarrhea, and abdominal pain.¹⁸ A large clinical trial on the gastrointestinal tolerance of allulose determined that, compared to traditional cane sugar, consumption of allulose resulted in significantly higher frequencies of symptoms of diarrhea, abdominal distention, and abdominal pain, and that increasing the level of ingested allulose resulted in incidences of severe nausea, abdominal pain, headache, anorexia, and diarrheal symptoms.¹⁹

41. In short, allulose is a sugar—chemically, scientifically, and under the FDA’s codified definition. That allulose may contain fewer calories, but it does not transform it into “no sugar” or make a cereal sweetened predominantly with allulose (10g per serving) truthfully describable as containing “0g Total Sugar.”

C. Federal Law Prohibits Defendant’s “0g Total Sugars” Labels, and Plaintiff’s Claims Are Not Preempted

42. Plaintiff and the class members were tricked into buying Products deceptively labeled “0g Total Sugars” that are actually made by adding sugar. Plaintiff does not sue for any violation of FDA regulations. However, the deceptive labeling also violates federal laws and regulations regarding food labeling, such that Plaintiff’s state law claims are not preempted.

¹⁷ Tani Yuma et al., *Allulose for the attenuation of postprandial blood glucose levels in healthy humans: A systematic review and meta-analysis*, 18 PLoS One 4 (2023), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0281150>.

¹⁸ *Memorandum from Center for Science in the Public Interest to Food and Drug Administration* (June 17, 2019), <https://cspinet.org/sites/default/files/attachment/allulose%20final%20from%20CSPI.pdf>.

¹⁹ Han Y, Choi BR, Kim SY, Kim SB, Kim YH, Kwon EY, & Choi M.S., *Gastrointestinal Tolerance of D-Allulose in Healthy and Young Adults. A Non-Randomized Controlled Trial*. *Nutrients*, 2018 Dec 19;10(12):2010, doi: 10.3390/nu10122010.

43. Congress empowered the FDA to oversee and regulate food labeling by enacting the Food, Drug and Cosmetic Act, as amended by the Nutrition Labeling and Education Act. 21 U.S.C. § 301 *et seq.* These statutes allow the FDA to enact and enforce formal regulations, which the FDA has codified at 21 C.F.R. § 100.1 *et seq.*

44. The FDA’s regulations draw a sharp distinction between two types of food label statements: (i) nutrition panel declarations, and (ii) nutrient content claims. The FDA has established the well-known “nutrition panel” and tightly controls exactly what declarations may, and may not, appear within the four walls of that panel. See, e.g., 21 C.F.R. § 101.9. None of Plaintiff’s claims relate to or depend on any declaration made within the Products’ nutrition panels. At issue in this case are the separate, deceptive nutrient content claims that Defendant has placed prominently on the Products’ packaging and advertising outside of the nutrition panel.

45. Nutrient content claims are statements that “expressly or implicitly characterize[] the level of a nutrient,” such as sugar. 21 C.F.R. § 101.13(b). The “0g Total Sugar,” “Sugar-Free,” “Zero Sugar,” and “0 Sugar” statements that appear repeatedly and prominently on the Products’ packaging and in Defendant’s advertising are all nutrient content claims.

46. Nutrient content claims are strictly forbidden unless specifically allowed under FDA regulations. 21 C.F.R. § 101.13(b) (“A claim that expressly or implicitly characterizes the level of a nutrient of the type required to be in nutrition labeling under § 101.9 or under § 101.36 (that is, a nutrient content claim) may not be made on the label or in labeling of foods unless the claim is made in accordance with this regulation and with the applicable regulations in subpart D”).

47. Within Subpart D, section 101.60(c)(1) specifically governs the use of the “0g Total Sugars” “sugar free” and “zero sugar” nutrient content claims at issue in this case. That regulation

provides that terms such as “sugar free,” “free of sugar,” “no sugar,” “zero sugar,” “without sugar,” “sugarless,” and “trivial source of sugar” may not be used on the label or in labeling of a food unless, among other requirements:

(i) The food contains less than 0.5 g of sugars, as defined in § 101.9(c)(6)(ii), per reference amount customarily consumed and per labeled serving . . . ; and

(ii) The food contains no ingredient that is a sugar or that is generally understood by consumers to contain sugars unless the listing of the ingredient in the ingredient statement is followed by an asterisk that refers to the statement below the list of ingredients, which states “adds a trivial amount of sugar,” “adds a negligible amount of sugar,” or “adds a dietarily insignificant amount of sugar”

48. 21 C.F.R. § 101.60(c)(1)(i)-(ii). These requirements are conjunctive; both must be satisfied.

49. The Products flunk the very first requirement. To determine the amount of sugar in a food, section 101.60(c)(1)(i) cross-references 21 C.F.R. § 101.9(c)(6)(ii), which defines sugars as “the sum of all free mono- and disaccharides (such as glucose, fructose, lactose, and sucrose).” Allulose, as a monosaccharide epimer of fructose, falls squarely within this definition. The allulose in the Products must therefore be included when calculating the amount of sugars for purposes of the 0.5-gram threshold in section 101.60(c)(1)(i).

50. By Defendant’s own admission on the Products’ labels, every serving of the Products contains ten grams of allulose. That amount of sugar, by itself, is twenty times more than the FDA’s threshold for labeling a product “0g total sugar,” “sugar free” or “zero sugar” under section 101.60(c)(1)(i). The Products therefore cannot lawfully bear the “0g Total Sugars” representations, and Defendant’s asterisked “FDA does not consider allulose a total or added sugar for nutrition labeling” disclaimer cannot save them: the disclaimer option under section 101.60(c)(1)(ii) is available only where the independent under-0.5-gram requirement of section

101.60(c)(1)(i) is also met, which it is not. Moreover, ten grams per serving is not a “trivial,” “negligible,” or “dietarily insignificant” amount of sugar, so the disclaimer is itself false and misleading.

51. Because the Products’ labels include deceptive and impermissible nutrient content claims, the Products are “misbranded” under federal law. 21 U.S.C. § 343(r).

52. The FDCA’s express preemption provision, 21 U.S.C. § 343-1(a), permits states to impose food labeling requirements that are identical to the federal requirements. Because Plaintiff’s state law claims are based on the exact same deceptive nutrient content claims that cause the Products to be misbranded under federal law, and seek to enforce requirements identical to those federal requirements, there is no conflict between the two regimes and no preemption.

D. The Seventh Circuit’s Decision in *Franco v. Chobani* Confirms That Allulose Is a Sugar, That “0g Total Sugars” Claims for Allulose-Sweetened Products Are Unlawful and Deceptive, and That These Claims Are Not Preempted

53. On July 27, 2026, in *Franco v. Chobani, LLC*, --- F.4th---, 2026 WL 2150193 (7th Cir. July 27, 2026), the Seventh Circuit reversed the dismissal of state consumer protection claims materially identical to those pled here, which challenged Chobani’s “Zero Sugar” yogurt sweetened with four grams of allulose per serving.

54. The Seventh Circuit held that allulose is a sugar under 21 C.F.R. § 101.9(c)(6)(ii). The court explained that the regulation “defines ‘Total Sugars’ as ‘the sum of all free mono-and disaccharides (such as glucose, fructose, lactose, and sucrose),’” that “[t]here’s no dispute that allulose is a monosaccharide,” and 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).” *Franco*, 2026 WL 2150193, at *3.

55. Notably, the FDA itself, appearing as amicus curiae at the Seventh Circuit’s invitation, “took the position that the text of § 101.9(c)(6)(ii) is unambiguous, and that total sugars

as defined in that regulation include all monosaccharides, including allulose.” *Id.* The court found the FDA’s reading persuasive, thorough, and consistent with the agency’s earlier statements, including the FDA’s 2016 rulemaking statement that allulose, as a monosaccharide, “must be included” in the Total Sugars declaration. *Id.*; 81 Fed. Reg. 33,742, 33,795-96 (May 27, 2016).

56. The Seventh Circuit rejected the argument that the parenthetical “(such as glucose, fructose, lactose, and sucrose)” limits the definition of sugars to substances sharing the physiological characteristics of the listed examples. The court held that the FDA “defined a class by way of chemistry; it reinforced that definition through examples, all of which share the same chemical structure,” and that contextual evidence about physiological impact “cannot override the plain language of § 101.9(c)(6)(ii).” *Franco*, 2026 WL 2150193, at *3-4.

57. The Seventh Circuit also held that the FDA’s October 2020 Allulose Guidance, in which the agency announced its intent to exercise enforcement discretion for the exclusion of allulose from Total Sugars and Added Sugars declarations on the nutrition panel, is not entitled to deference and does not change the analysis, for two independent reasons: first, the regulation is unambiguous, so “there is no plausible reason for deference”; and second, “[t]he Allulose Guidance isn’t an interpretation of § 101.9(c)(6)(ii)”; rather, “it’s an announcement of a change in enforcement policy.” *Id.* at *4 (citing *Kisor v. Wilkie*, 588 U.S. 558 (2019); *Heckler v. Chaney*, 470 U.S. 821 (1985)). The court further observed that even if the Guidance had interpreted the regulation to exclude allulose, deference would have been inappropriate because such an interpretation would conflict with the agency’s prior position. *Id.*

58. The Seventh Circuit accordingly held that the plaintiffs’ state law claims were not preempted: “The federal requirements at issue are plain—food products cannot be labeled sugar free unless they have less than half a gram of sugar, and sugars include every monosaccharide,

including allulose. . . . The [plaintiffs] want to hold Chobani liable under state law for violating identical standards, and so their claims are not preempted.” *Id.* at *5 (citing 21 U.S.C. § 343-1(a)(5); *Bell v. Publix Super Markets, Inc.*, 982 F.3d 468, 484 (7th Cir. 2020)).

59. The Seventh Circuit further held that the plaintiffs plausibly alleged consumer deception, reasoning that “given the absolute promise on Chobani’s products (sugar free),” the allegation that consumers were fooled by the labels was not implausible, and that “how reasonable consumers perceive [the] labels and make decisions about [the] products are questions of fact that cannot be answered” on the pleadings. *Id.* at *5-6 (citing *Bell*, 982 F.3d at 480-81; *Dumont v. Reily Foods Co.*, 934 F.3d 35, 41 (1st Cir. 2019)).

60. The Seventh Circuit also rejected the argument that reliance on the Allulose Guidance or FDA label approvals could immunize the manufacturer from state law suits: “the fact that one sovereign (the United States) indicated that it would not enforce its labeling requirements with respect to allulose should not have led Chobani to believe that the states would take a similar approach,” and the manufacturer, as “a sophisticated actor[,] . . . should have been aware that the FDA’s decisions about its enforcement priorities would not immunize the company from suits based on state law.” *Id.* at *5.

61. Each of those holdings applies with equal or greater force here. Like Chobani’s yogurt, the Products make an absolute “0g Total Sugars” promise while containing ten grams of allulose per serving. Unlike Chobani’s yogurt, in which allulose was merely an added sweetener, allulose is the first-listed sub-ingredient in the second-listed and second most predominant ingredient—“Sweetener Blend”—in Defendant’s Products.

E. The FDA Has Not Made Any Changes to the Sugar Nutrient Content Claim Regulations, and Its Nonbinding 2020 Guidance Does Not Apply to Them

62. It is possible that Defendant may attempt to support a preemption defense by mischaracterizing the FDA’s nonbinding October 2020 Allulose Guidance. Any such argument would rely on a gross misunderstanding of that guidance, and has now been squarely rejected by the Seventh Circuit in *Franco*.

63. The 2020 Allulose Guidance begins with a prominent disclaimer noting that it merely “represents the current thinking of the [FDA],” is “not binding on the FDA or the public,” “does not establish any rights for any person,” and “should be viewed only as recommendations.”²⁰ Such nonbinding recommendations are insufficient to preempt state law.

64. Further, the Allulose Guidance is expressly limited to declarations made within the four walls of the nutrition panel (the Total Sugars and Added Sugars declarations). It does not amend any existing law or regulation, does not assert that allulose is not a “sugar,” and says nothing about the separate regulations governing “0g total sugar,” “sugar free” and “zero sugar” nutrient content claims, which remain in full force and effect as written. Indeed, the Guidance reaffirms the FDA’s view that allulose “is a monosaccharide with a molecular formula of C₆H₁₂O₆, and is an epimer of D-fructose,” and discusses ongoing research regarding “sugars like allulose.”

65. Shortly after issuing the Allulose Guidance, the FDA established a docket inviting public comment regarding the labeling of certain sugars on the Nutrition and Supplement Facts label. Like the Guidance itself, that Request for Information was limited to potential changes within the nutrition panel; the FDA confirmed that it was not presently considering any changes to the nutrient content claims regulations related to the amount of sugars in a product, and stated

²⁰ U.S. Food & Drug Admin., *The Declaration of Allulose and Calories from Allulose on Nutrition and Supplement Facts Labels: Guidance for Industry* (Oct. 2020).

only that it intended to address any potential revisions at an unspecified “later date” when “time and resources permit.”²¹

66. In the years since, the FDA has never taken any action to amend the regulations governing sugar nutrient content claims. To the contrary, in May 2022 the FDA refused a petition to amend the regulatory definition of sugar in connection with the sugar tagatose and reiterated that the existing definition at 21 C.F.R. § 101.9(c)(6)(ii) remains in effect.²² Allulose falls within the scope of that definition and is thus a “sugar” under existing FDA regulations.

F. The Products Contain Sugar Contrary to Defendant’s Claims

67. Defendant falsely and deceptively advertises the Products as “0g Total Sugar.” However, contrary to this representation, as explained in detail above, the Products contain allulose, which qualifies as a sugar since it is a monosaccharide. Under federal labeling law, ingredients must be listed in descending order of predominance by weight. 21 C.F.R. § 101.4(a)(1). Thus, allulose is not merely present in the Products in trace amounts. It is the first-listed sweetener and Defendant’s own labeling admits the Products contain ten grams of allulose per serving. Ten grams of sugar per serving is twenty times more than the maximum amount of sugar (less than 0.5 grams) that federal and California law permit in a product labeled sugar free. 21 C.F.R. § 101.60(c)(1)(i); 21 C.F.R. § 101.9(c)(6)(ii).

68. Just weeks ago, on July 27, 2026, the United States Court of Appeals for the Seventh Circuit confirmed this exact conclusion in *Franco v. Chobani, LLC*, --- F.4th---, 2026 WL 2150193 (7th Cir. July 27, 2026), holding that “[a]llulose is a sugar under the relevant federal

²¹ Notice, 85 Fed. Reg. 202 (October 19, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-10-19/pdf/2020-22900.pdf>.

²² U.S. Food & Drug Admin., *Final Response to Citizen Petition from FDA CFSAN to Bonumose LLC*, Regulations.gov, May 19, 2022, <https://www.regulations.gov/document/FDA-2018-P-0874-0053>.

regulation” because 21 C.F.R. § 101.9(c)(6)(ii) defines total sugars as the sum of all free mono- and disaccharides, and allulose is undisputedly a monosaccharide. The Seventh Circuit further held that state consumer protection claims premised on “sugar free” labeling of allulose-sweetened products are not preempted, and that consumers plausibly allege deception where a product makes an absolute “sugar free” promise while containing four grams of allulose per serving. The same is true here.

69. Defendant seeks to take advantage of consumers’ desire for truly premium products that are free from sugar by falsely, misleadingly, and deceptively labeling the Products with the “0g Total Sugars” representation. Defendant does so at the expense of unwitting consumers, as well as Defendant’s lawfully acting competitors, over whom Defendant maintains an unfair competitive advantage.

70. Labeling the Products as free from sugars, or implying that the Products contain 0g total sugar, is false and misleading.

G. These Misrepresentations Are Material to Consumers

71. Consumers are deceived by Defendant’s labeling and advertising of the Products as “0g Total Sugars” into believing that they are purchasing sugar-free products. Consumers rely on Defendant’s labeling and advertising of the Products as with “0g Total Sugars” to be truthful and would not know that the Products are actually sweetened with allulose sugar as the first-listed sub-ingredient in their second predominant ingredient, “Sweetener Blend.”

72. Consumer demand for sugar-free products is well documented: consumer surveys have determined that over 70% of Americans are trying to limit or avoid sugars in their diet.²³

²³ International Food Information Council, *2022 Food and Health Survey*, May 18, 2022, <https://foodinsight.org/wp-content/uploads/2022/06/IFIC-2022-Food-and-Health-Survey-Report-May-2022.pdf>.

Defendant's own marketing strategy, which pairs the "Sugar-Free" claim with "0g of Sugar" messaging, is expressly designed to capitalize on this demand.

73. Reasonable consumers such as Plaintiff do not have the specialized knowledge necessary to identify ingredients in the Products, such as allulose, as being inconsistent with Defendant's advertised "0g Total Sugars" representations. Allulose is not a common household name among consumers: in a 2021 marketing survey, only 15% of respondents had even heard of allulose, let alone known it was a sugar.²⁴ Thus, reasonable consumers, like Plaintiff, cannot discern from the Products' ingredient disclosures that the Products contain sugar. Furthermore, reasonable consumers do not ordinarily review information on the back or side panels of a consumer product's packaging, particularly dense, fine-print ingredient disclosures. Indeed, studies show that only approximately 7.7% to 11.6% of people even look at the side or back labels of consumer goods, such as ingredient lists, before they buy them.²⁵

74. The average consumer generally spends no more than approximately 13 seconds making an in-store purchasing decision.²⁶ That decision is heavily based upon the product's front

²⁴ *Perceptions and Use of Dietary Sweeteners*, International Food Information Council, FoodInsight.Org, May 2021, <https://foodinsight.org/wp-content/uploads/2021/05/IFIC-Sweeteners-Survey.May-2021.pdf>.

²⁵ Grunert, Klaus, et al., *Nutrition knowledge, and use and understanding of nutrition information on food labels among consumers in the UK*, 55 *Appetite* 177, 179-181 (2010) (in-store observational study finding only 11.6% of respondents who placed a product in their cart were observed looking at the side or back panels of its packaging before doing so); Grunert, Klaus, et al., *Use and understanding of nutrition information on food labels in six European countries*, 18(3) *Journal of Public Health* 261, 263, 266 (2010) (finding 62.6% of respondents looked at front packaging and only 7.7% looked elsewhere on the packaging for products they bought); Benn, Yael, et al., *What information do consumers consider and how do they look for it, when shopping for groceries online*, 89 *Appetite* 265, 270 (2015) (online eye-tracking study finding respondents tend to look at product pictures rather than detailed product information, with only 3.30% fixating on ingredient information).

²⁶ Dickson, Peter R. & Sawyer, Alan G., *The Price Knowledge and Search of Supermarket Shoppers*, 54 *Journal of Marketing* 42-53 (1990) (finding supermarket shoppers spent an average of approximately 12-13 seconds selecting an item).

labeling because consumers do not have time to review and read every portion of the label and inspect in detail the rear label, which depicts the ingredients in small print. Defendant's deception is especially insidious here because even a consumer who did read the ingredient statement would be met with Defendant's further false assurance, printed directly below the Products' nutrition panel, that "FDA does not consider allulose a total or added sugar for nutrition labeling."

75. Defendant knows that consumers are willing to pay more for products without any sugar, and advertises the Products with the intention that consumers rely on the representations made on the front of the Products' packaging.

76. Defendant charges a substantial price premium for the Products based on the "0g Total Sugars" Representations. Industry articles confirm that "Magic Spoon cereal is an investment in comparison to a traditional box of cereal, running \$8-\$10 (depending on where you purchase) per seven-ounce box. This is an average of two to three times more than your average box of sugary cereal."²⁷ Plaintiff and the class members paid more for the Products, and would only have been willing to pay less or unwilling to purchase them at all, absent the false "0g Total Sugars" Representation.

77. By falsely labeling the Products as "0g Total Sugar," Defendant has profited from consumers' preference for products that are made without sugar.

H. The Products Are Substantially Similar

78. As described *supra*, Plaintiff purchased the Fruity Protein Cereal (the "Purchased Product"). The additional unpurchased Products are substantially similar to the Purchased Product:

²⁷ Samantha Lande, *We Tried All of the Magic Spoon Cereal Flavors and Here Is Our Take* FOOD NETWORK (2023), available at <https://www.foodnetwork.com/how-to/packages/shopping/product-reviews/magic-spoon-cereal-review> (last accessed August 17, 2026)

- a. **Defendant.** All Products are manufactured, sold, marketed, advertised, labeled, and packaged by Defendant.
- b. **Brand.** All Products are sold under the Magic Spoon “0g Total Sugars” brand name and trade dress.
- c. **Marketing Demographics.** All Products are marketed directly to consumers for personal use.
- d. **Purpose.** All Products are intended for the primary purpose of consumption, and are prepared and consumed in the same manner: by adding milk and eating.
- e. **False Advertising Claims.** All Products contain the same “0g Total Sugars” Representation on their labeling and packaging. In addition, all Products prominently display the “0g Total Sugars” Representation on the front label in order to focus the consumer’s attention on the “0g Total Sugars” Representation.
- f. **Key Ingredients.** All Products are sweetened with allulose, a sugar, as the first-listed sub-ingredient in their second-listed and second predominant ingredient—“Sweetener Blend”—and all Products contain ten grams of allulose per serving.
- g. **Misleading Effect.** The misleading effect of the “0g Total Sugars” Representation on consumers is the same for all Products: consumers are tricked into buying or otherwise overpaying a premium for products represented to contain no sugar, but they receive products that, contrary to the Products’ labels, are sweetened predominantly with allulose, a sugar.

CLASS ACTION ALLEGATIONS

79. Plaintiff brings this action on behalf of himself and all others similarly situated pursuant to Federal Rules of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3). The proposed classes are defined below (collectively, the “Classes”):

All individuals in the United States who purchased a Product within the relevant limitations period, for purposes other than resale, and/or such subclasses as the Court may deem appropriate; (“**Nationwide Class**”);

All individuals in the State of Illinois who purchased a Product within the relevant limitations period, for purposes other than resale, and/or such subclasses as the Court may deem appropriate (“**Illinois Subclass**”)

All individuals in the State of Illinois who purchased a Product within the relevant limitations period, for purposes other than resale, and/or such subclasses as the Court may deem appropriate (“**New York Subclass**”) (collectively with Nationwide and Illinois Subclass, the “**Class**”).

80. Excluded from the proposed Class are Defendant and their parents, subsidiaries, affiliates, officers, and directors, and any entity in which Defendant have a controlling interest.

81. Plaintiff reserves the right to re-define any of the class definitions prior to class certification and after having the opportunity to conduct discovery.

82. The claims of all class members derive directly from a single course of conduct by Defendant. Defendant has engaged and continue to engage in uniform and standardized conduct toward the putative class members. Defendant do not differentiate, in degree of care or candor, in their actions or inactions, or the content of their statements or omissions, among individual class members.

83. Certification of Plaintiff’s claims is appropriate because Plaintiff can prove the elements of Plaintiff’s claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

84. Accordingly, Plaintiff brings this lawsuit as a class action on Plaintiff’s own behalf and on behalf of all other individuals similarly situated pursuant under Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23.

85. Specifically, this action has been properly brought and may properly be maintained as a class action under Rule 23(a)(1-4), Rule 23(b)(1), (2), or (3), and/or Rule 23(c)(4) of the Federal Rules of Civil Procedure.

86. **Numerosity** (Fed. R. Civ. P. 23(a)(1)). The members of the proposed Class are each so numerous that their individual joinder would be impracticable. While the exact number is not known at this time, it is generally ascertainable by appropriate discovery, and it is believed each Class includes many hundreds of thousands of members. The precise number of Class members, and their addresses, are unknown to Plaintiff at this time but can be ascertained from Defendant's records.

87. **Ascertainability**. The Class is ascertainable because its members can be readily identified using business records, and other information kept by Defendant in the usual course of business and within their control. Plaintiff anticipates providing appropriate notice to the Class to be approved by the Court after class certification, or pursuant to court order.

88. **Commonality and Predominance** (Fed. R. Civ. P. 23(a)(2); 23(b)(3)). Common questions of law and fact exist as to all Class members. These questions predominate over the questions affecting only individual Class members. The common legal and factual questions include, without limitation:

- (a) Whether Defendant's marketing claims about the Product are misleading to a reasonable consumer;
- (b) Whether Defendant engaged in the conduct alleged in this Complaint;
- (c) Whether Defendant violated the applicable statutes alleged herein;
- (d) Whether Plaintiff and the class members are injured and harmed directly by Defendant's conduct;

- (e) Whether Plaintiff and the class members are entitled to damages due to Defendant's conduct as alleged in this Complaint, and if so, in what amounts;
- (f) Whether Plaintiff and the class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief as requested in this Complaint;
- (g) Whether Plaintiff and the class members are entitled to actual, compensatory, nominal, statutory, enhanced, and/or punitive damages;
- (h) Whether Plaintiff and the class members are entitled to injunctive, declaratory relief, or other equitable relief;
- (i) Whether Plaintiff and the class members are entitled to civil penalties; and
- (j) Whether Plaintiff and the class members are entitled to reasonable attorneys' fees and costs.

89. **Typicality of Claims** (Fed. R. Civ. P. 23(a)(3)). The claims of Plaintiff and the putative class members are based on the same legal theories and arise from the same unlawful and willful conduct of Defendant, resulting in the same injury to Plaintiff and the putative class members. Plaintiff and all class members are similarly affected by Defendant's wrongful conduct, were damaged in the same way, and seek the same relief. Plaintiff's interests coincide with, and are not antagonistic to, those of the other class members. Plaintiff has been damaged by the same wrongdoing set forth in this Complaint.

90. **Adequacy of Representation** (Fed. R. Civ. P. 23(a)(4)). Plaintiff is an adequate representative of the Class because their interests do not conflict with the interests of the class members, and they have retained competent and experienced class counsel. Plaintiff and their counsel will fairly and adequately protect the interest of the class members.

91. **Superiority of a Class Action** (Fed. R. Civ. P. 23(b)(3)). A class action is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and class members. There is no special interest in class members individually controlling the prosecution of separate actions. The damages suffered by individual class members, while significant, are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible for the class members individually to redress effectively the wrongs done to them. And, even if class members themselves could afford such individual litigation, the court system could not, given the tens or even hundreds of thousands of cases that would need to be filed. Individualized litigation would also present a potential for inconsistent or contradictory judgments. Individualized litigation would increase the delay and expense to all parties and the court system, given the complex legal and factual issues involved. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

92. **Risk of Inconsistent or Dispositive Adjudications and the Appropriateness of Final Injunctive or Declaratory Relief** (Fed. R. Civ. P. 23(b)(1) and (2)). In the alternative, this action may properly be maintained as a class action, because:

- (a) the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudication with respect to individual Class members, which would establish incompatible standards of conduct for Defendant; or
- (b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to individual Class members which would, as a practical matter, be dispositive of the interests of other Class members not parties to the

adjudications, or substantially impair or impede their ability to protect their interests;
or

- (c) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

Violation of Illinois' Consumer Fraud and Deceptive Business Practices Act 815 Ill. Comp. Stat. §§ 505/1 *et seq.* (On Behalf of Plaintiff and the Illinois Subclass)

93. Plaintiff incorporates by reference all allegations in this Complaint and restates them as if fully set forth herein.

94. Plaintiff and the Illinois Subclass members, and Defendant are “persons” within the meaning of the Illinois Consumer Fraud and Deceptive Practices Act (“ICFA”). 815 ILCS 505/1(c).

95. Defendant engages in “trade” or “commerce” in Illinois as defined by 815 ILCS 505/1(f).

96. The Products are “merchandise.” 815 Ill. Comp. Stat. § 505/1(b).

97. There was a sale of merchandise. 815 Ill. Comp. Stat. § 505/1(d).

98. ICFA declares unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact[.]” 815 Ill. Comp. Stat. § 505/2.

99. Defendant’s misrepresentations and other deceptive conduct, including the misrepresentations and other deceptive conduct as described herein constitute a violation of the ICFA.

100. Defendant engaged in deceptive acts or practices in violation of the ICFA by knowingly concealing, omitting, or failing to disclose the Products' sugar content, including through the misrepresentations and other deceptive conduct as described herein.

101. Defendant knew the Products contained allulose, a sugar, despite representing that they had "0g Total Sugars."

102. Defendant intended that Plaintiff and the Illinois Subclass would rely on the overall impression of the packaging, along with the misrepresentations and other deceptive conduct, including through the misrepresentations and other deceptive conduct as described herein regarding the Products' sugar content when deciding to purchase the Products, unaware that the Products contained allulose, a sugar.

103. Defendant's misrepresentations and other deceptive conduct, including the misrepresentations and other deceptive conduct described herein, occurred before Plaintiff and the Illinois Subclass decided to purchase the Products.

104. Plaintiff and the Illinois Subclass relied on, and were in fact deceived by, the overall impression of the packaging, along with the misrepresentations and other deceptive conduct, including the misrepresentations and other deceptive conduct described herein, with respect to the Products' sugar content.

105. The facts misrepresented, concealed, and/or not disclosed by Defendant were material facts in that Plaintiff and the Illinois Subclass, and other reasonable consumers would have considered them in deciding whether to purchase the Products.

106. For example, a reasonable consumer, such as Plaintiff, would want to know that food items, such as the Products, that were advertised as containing "0g Total Sugars," included allulose, a sugar.

107. Had Plaintiff and the Illinois Subclass known the Products contained sugar, they would not have purchased the Products or paid the premium price.

108. A significant portion of the general consuming public or of Defendant's targeted consumers, acting reasonably in the circumstances, could be misled or deceived by Defendant's misrepresentations and other deceptive conduct as described herein.

109. Defendant's misrepresentations and other deceptive acts or practices caused Plaintiff and the Illinois Subclass to suffer injury in the form of actual damages when they purchased the Products that were worth less than the price they paid and that they would not have purchased had they known the Products contained allulose, a sugar.

110. As a direct and proximate result of Defendant's deceptive, misleading, unfair, and unconscionable practices as set forth above, Plaintiff and the Illinois Subclass are entitled to actual damages, compensatory damages, injunctive relief, attorneys' fees, and costs, as set forth in Section 10a of the ICFA.

111. Plaintiff is entitled to pursue a claim on behalf of the Illinois Subclass against Defendant for actual damages, punitive damages, injunctive relief, other equitable relief, and attorneys' fees and costs to remedy Defendant's violations of the ICFA pursuant to 815 ILCS 505/10a.

112. Plaintiff therefore seeks actual and punitive damages, declaratory and injunctive relief, and attorneys' fees and costs.

SECOND CAUSE OF ACTION

Violations of New York Gen. Bus. Law § 349 (On Behalf of Plaintiff and the Class)

113. Plaintiff incorporates by reference all allegations in this Complaint and restates them as if fully set forth herein.

114. NY GBL § 349 declares unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

115. New York law applies to Plaintiff and the class members because Defendant is headquartered in New York, its key executives and employees are in New York, the State of New York has a strong interest in regulating businesses in New York to prevent them from engaging in false advertising and deceptive business practices, and the false and misleading representations emanated from New York.

116. Any person who has been injured by reason of any violation of NY GBL § 349 may bring an action in his or her own name to enjoin such unlawful acts or practices, an action to recover their actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not exceeding three times the actual damages, in addition to one thousand dollars per violation, if the court finds that the Defendant willfully or knowingly violated this section. The court may award reasonable attorneys’ fees to a prevailing plaintiff.

117. The practices employed by Defendant, by which it labels and markets the Products, are materially misleading and deceptive within the meaning of NY GBL § 349.

118. Defendant’s acts and practices deceived Plaintiff and the class members. Plaintiff and class members reasonably relied on these representations and believed they were purchasing products free from sugars.

119. Plaintiff and class members did not receive the benefit of their bargain. They paid a price premium for products that were falsely marketed.

120. Defendant disseminated these false and misleading statements throughout New York, which were known, or should have been known through reasonable care, to be untrue and misleading to consumers, including Plaintiff and the class members.

121. Plaintiff and the class members have been injured by Defendant's deceptive acts or practice, suffering an ascertainable loss by paying more for a product than they otherwise would have but for the false advertising.

122. Plaintiff and the class members have no adequate remedy at law.

123. Defendant's conduct has caused and continues to cause immediate and irreparable injury to Plaintiff and the class members and will continue to mislead consumers unless enjoined by this Court.

THIRD CAUSE OF ACTION

Violations of New York Gen. Bus. Law § 350 (On Behalf of Plaintiff and the Class)

124. Plaintiff incorporates by reference all allegations in this Complaint and restates them as if fully set forth herein.

125. By reason of the acts set forth above, Defendant has been and is engaged in consumer-oriented advertising and marketing against Plaintiff and the class members by engaging in business conduct that is false and misleading in material respects, in violation of NY GBL § 350, which provides, in part, that "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful."

126. Defendant caused statements that were untrue or misleading, and which it knew to be untrue or misleading, to be disseminated from New York State, through labeling, marketing, or other publications.

127. New York law applies to Plaintiff and the class members because Defendant is headquartered in New York, its key executives and employees are in New York, the State of New York has a strong interest in regulating businesses in New York to prevent them from engaging in false advertising and deceptive business practices, and the false and misleading representations emanated from New York.

128. Defendant's misrepresentations were material and substantially uniform in content, presentation, and impact upon consumers at large. Consumers were and continue to be exposed to Defendant's material misrepresentations.

129. Plaintiff and the class members have been injured by Defendant's deceptive acts or practices.

130. Plaintiff and the class members have no adequate remedy at law.

131. Defendant's conduct has caused and is causing immediate and irreparable injury to Plaintiff and the class members and will continue to damage both Plaintiff and the class members and deceive the public unless enjoined by this Court.

132. Pursuant to NY GBL § 350-e, Plaintiff and the class members seek monetary damages (including actual damages or \$500, whichever is greater, and minimum, punitive, or treble and/or statutory damages pursuant to NY GBL § 350-a(1)), injunctive relief, restitution, and disgorgement of all monies obtained by means of Defendant's unlawful conduct, interest, and attorneys' fees and costs.

133. Defendant's conduct has also substantially injured the public, as consumers were exposed to and relied upon Defendant's false labeling and marketing in deciding to purchase the Products.

134. Defendant's conduct thus caused real-world harm and poses an ongoing risk of further injury if not enjoined.

FOURTH CAUSE OF ACTION

Breach of Express Warranty

(On Behalf of Plaintiff and the Class)

135. Plaintiff hereby incorporates the foregoing paragraphs as if fully set forth herein.

136. Plaintiff brings this claim individually and on behalf of the Multi-State Warranty Subclass against Defendant.²⁸

137. Plaintiff and members of the Multi-State Warranty Subclass formed contracts with Defendant when they purchased the Products.

138. The terms of those contracts include the promises and affirmations of fact Defendant made on the Products' packaging and in its online labeling that the Products contained "0g Total Sugars."

²⁸ While discovery may alter the following, Plaintiff asserts that the states with similar express warranty laws under the facts of this case include, but are not limited to: Alaska Stat. § 45.02.313; Ariz. Rev. Stat. § 47-2313; Ark. Code § 4-2-313; Cal. Com. Code § 2313; Colo. Rev. Stat. § 4-2-313; Conn. Gen. Stat. § 42a-2-313; 6 Del. C. § 2-313; D.C. Code § 28:2-313; Ga. Code § 11-2-313; Haw. Rev. Stat. § 490:2-313; Idaho Code § 28-2-313; 810 ILCS 5/2-313; Ind. Code § 26-1-2-313; Kan. Stat. § 84-2-313; Ky. Rev. Stat. § 355.2-313; 11 Me. Rev. Stat. § 2-313; Mass. Gen. Laws ch. 106, § 2-313; Minn. Stat. § 336.2-313; Miss. Code Ann. § 75-2-313; Mo. Rev. Stat. § 400.2-313; Mont. Code Ann. § 30-2-313; Neb. U.C.C. § 2-313; Nev. Rev. Stat. § 104.2313; N.H. Rev. Stat. § 382-A:2-313; N.J. Stat. Ann. § 12A:2-313; N.M. Stat. Ann. § 55-2-313; N.Y. U.C.C. Law § 2-313; N.C. Gen. Stat. § 25-2-313; N.D. Cent. Code § 41-02-30; Ohio Rev. Code § 1302.26; Okla. Stat. tit. 12A, § 2-313; Or. Rev. Stat. § 72.3130; 13 Pa. C.S. § 2313; R.I. Gen. Laws § 6A-2-313; S.C. Code Ann. § 36-2-313; S.D. Codified Laws § 57A-2-313; Tenn. Code Ann. § 47-2-313; Tex. Bus. & Com. Code § 2.313; Utah Code Ann. § 70A-2-313; 9A V.S.A. § 2-313; Va. Code § 8.2-313; Wash. Rev. Code § 62A.2-313; W. Va. Code § 46-2-313; and Wyo. Stat. Ann. § 34.1-2-313.

139. This labeling and advertising constitute express warranties and became part of the basis of the bargain and the standardized contracts between Plaintiff and members of the Multi-State Warranty Subclass, on the one hand, and Defendant, on the other.

140. As set forth above, Defendant purports through its labeling, marketing, and packaging to warrant that the Products contain zero sugar. Defendant breached its express warranties by selling Products containing sugar in the form of allulose. The Products do not conform to Defendant's Representations and warranties.

141. Plaintiff and members of the Multi-State Warranty Subclass satisfied, or were excused from, any applicable conditions precedent.

142. Plaintiff and members of the Multi-State Warranty Subclass would not have purchased the Products, or would have paid less for them, had they known the Products' true nature.

143. As a result, Defendant breached the express warranties made to Plaintiff and the Multi-State Warranty Subclass. Plaintiff and all members of the Multi-State Warranty Subclass suffered financial injury and are entitled to relief allowed by law.

FIFTH CAUSE OF ACTION

Unjust Enrichment/Restitution (On Behalf of Plaintiff and the Class)

144. Plaintiff incorporates by reference all allegations in this Complaint and restates them as if fully set forth herein.

145. Plaintiff brings this claim individually and on behalf of the Class who purchased the Products within the applicable statute of limitations.

146. By purchasing the Products, Plaintiff and members of the Class conferred a benefit on Defendant in the form of the purchase price of the Products.

147. Defendant had knowledge of such benefit and Defendant appreciated the benefit because, were consumers not to purchase the Products, Defendant would not generate revenue from the sales of the Products.

148. Defendant's knowing acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent, misleading, and deceptive representations and omissions.

149. Plaintiffs lack an adequate remedy at law.

150. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and members of the Class were harmed in the amount of the purchase price premium they paid for the Products. Further, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff seeks a monetary award for unjust enrichment in damages, restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the Class for said monies, as well as injunctive relief to enjoin Defendant's conduct to prevent ongoing and future harm that will result.

151. To the extent required, Plaintiff asserts this cause of action in the alternative to her legal claims, as permitted by Federal Rule of Civil Procedure 8.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the proposed Class, pray for relief and judgment against Defendant as follows:

- A. certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, appointing Plaintiff as representatives of the Class, and designating Plaintiff's counsel as Class Counsel;

- B. awarding Plaintiff and the Class compensatory damages and actual damages, trebled, in an amount exceeding \$5,000,000, to be determined by proof;
- C. awarding Plaintiff and the Class appropriate relief, including actual and statutory damages;
- D. awarding Plaintiff and the Class exemplary and punitive damages;
- E. awarding Plaintiff and the Class civil penalties;
- F. granting Plaintiff and the Class declaratory and equitable relief, including restitution and disgorgement;
- G. enjoining Defendant from continuing to engage in the wrongful acts and practices alleged herein;
- H. awarding Plaintiff and the Class the costs of prosecuting this action, including expert witness fees;
- I. awarding Plaintiff and the Class reasonable attorneys' fees and costs as allowable by law;
- J. awarding pre-judgment and post-judgment interest; and
- K. granting any other relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

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

Dated: September 23, 2026

Respectfully submitted,

/s/ Raphael Janove

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