

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

KATHERINE LYNESS and BRIANNA
MURRAY, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

CREATION FOODS US INC.

Defendant.

Case No. 1:26-cv-8169

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Brianna Murray and Katherine Lyness (“Plaintiffs”) bring this action on behalf of themselves and all others similarly situated against Defendant Creation Foods US Inc. (“Defendant”). Plaintiffs make the following allegations based on the investigation of their counsel, except as to facts within their personal knowledge.

NATURE OF THE ACTION

1. Plaintiffs bring this class action lawsuit on behalf of themselves and all similarly situated New York consumers who purchased Defendant’s HighKey Original Sandwich Cookies with “0g Sugar” (the “Products”)¹.

2. Defendant markets and advertises the Products as “Sugar-Free Sandwich Cookies” that contain “0g Sugar” directly on the front label (the “Zero Sugar Representations”). However, unbeknownst to reasonable consumers, each of the Products contains approximately 5 grams of allulose per serving (3 cookies), substantially more sugar than represented. Allulose is a

¹Discovery may reveal that additional of Defendant’s products are within the scope of this Complaint. Accordingly, Plaintiffs reserve the right to add additional products if necessary.

monosaccharide and therefore a sugar under the applicable federal and New York labeling standards. Its inclusion in the Products is not trivial: 5 grams of sugar is significantly higher than the amount of sugar the Sugar Representations state. Defendant's Sugar Representations are therefore false, misleading, and impermissible.

3. Accordingly, Plaintiffs bring claims against Defendant for: (1) violations of New York's General Business Law § 349; and (2) violations of New York's General Business Law § 350.

PARTIES

4. Plaintiff Katherine Lyness is a citizen of New York residing in Manhattan, New York. While residing there, Plaintiff Lyness purchased three packs of Defendant's Products from Defendant's website from her home as recently as May 2026. She has also purchased them from Amazon.com. Plaintiff Lyness purchased the Products because she wanted a sugar free alternative. Prior to making her purchase, Plaintiff Lyness saw and relied on the Zero Sugar Representation on the Product's front label. Based on this representation, Plaintiff reasonably believed that the Product contained no sugar. Plaintiff relied on this representation when she decided to purchase the Product. Accordingly, this representation was part of the basis of her bargain, in that Plaintiff would not have purchased the Product on the same terms had she known that the representation was untrue. Furthermore, in making her purchase, Plaintiff paid a price-premium due to Defendant's false and misleading Zero Sugar Representation. Plaintiff, however, did not receive the benefit of the bargain because the Product was not, in fact, free of sugar.

5. Plaintiff Brianna Murray is a citizen of New York residing in Brooklyn, New York. While residing there, Plaintiff Murray purchased Defendant's Products from a Stop & Shop in Brooklyn in or around January 2026. Plaintiff Murray specially sought out a sugar-free cookie as she attempts to maintain a low-carb diet. Prior to making her purchase, Plaintiff Murray saw and

relied on the Zero Sugar Representation on the Product's front label. Based on this representation, Plaintiff reasonably believed that the Product contained no sugar. Plaintiff relied on this representation when she decided to purchase the Product. Accordingly, this representation was part of the basis of her bargain, in that Plaintiff would not have purchased the Product on the same terms had she known that the representation was untrue. Furthermore, in making her purchase, Plaintiff paid a price-premium due to Defendant's false and misleading Zero Sugar Representation. Plaintiff, however, did not receive the benefit of the bargain because the Product was not, in fact, free of sugar.

6. Defendant Creation Foods US Inc. is a Delaware corporation with its principal place of business in Ferndale, Washington. Defendant owns and controls the HighKey brand of Products and describes itself as an "in-house innovation team [that] works with partners and specializes in gluten-free recipe development to make some of the tastiest cookies and crackers on the planet."

JURISDICTION AND VENUE

7. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005 ("CAFA"), because the proposed Class includes more than 100 members, the aggregate claims of the proposed Class exceed \$5,000,000, exclusive of interest and costs, and at least one member of the proposed Class is a citizen of a state different from Defendant.

8. This Court has personal jurisdiction over Defendant because it conducts substantial business within New York, including the sale, marketing, and advertising of the Products. Furthermore, a substantial portion of the events giving rise to Plaintiffs' claims occurred in this State, including Plaintiffs' purchases of the Product.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant conducts substantial business in this District and a substantial part of the events giving rise to Plaintiffs' claims took place within this District, including Plaintiffs' purchase of the Product.

FACTUAL ALLEGATIONS

A. Consumers Seek Out and Pay More for Products That Contain No Sugar

10. Consumer demand for products without sugar is well documented. A 2022 nationwide survey found that 73% of Americans ages 18 to 80 reported trying to limit or avoid sugars.²

11. That demand accords with widespread public-health guidance. The 2025–2030 Dietary Guidelines for Americans state that no amount of added sugars is recommended or considered part of a healthy or nutritious diet and that one meal should contain no more than 10 grams of added sugars.³ The World Health Organization recommends limiting free sugars to less than 10 percent of total daily energy intake and states that limiting them further to 5 percent or less may provide additional health benefits.⁴ The American Heart Association recommends limiting added sugars to no more than 6 percent of daily calories.⁵ This guidance reinforces consumers' attention to quantitative representations about how much sugar products contain.

² INTERNATIONAL FOOD INFORMATION COUNCIL, *2022 Food & Health Survey 57* (May 18, 2022), <https://ific.org/wp-content/uploads/2022/06/IFIC-2022-Food-and-Health-Survey-Report-May-2022.pdf>.

³ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES & U.S. DEPARTMENT OF AGRICULTURE, *Dietary Guidelines for Americans, 2025–2030*, at 5 (Jan. 2026), <https://cdn.realfood.gov/DGA.pdf>.

⁴ WORLD HEALTH ORGANIZATION, *Healthy Diet* (Jan. 26, 2026), <https://www.who.int/news-room/fact-sheets/detail/healthy-diet>.

⁵ AMERICAN HEART ASSOCIATION, *Added Sugars*, <https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/sugar/added-sugars>

B. Defendant's Sugar Representations

12. As shown by this image on the landing page of Defendant's website and on Amazon, Defendant's Products claim to contain no sugar directly on the front label:



13. The Products are sold in packs of ten and lists three cookies as the serving size.

14. Defendant disseminated the Sugar Representations through the Products' cartons, individual wrappers, official product pages, and authorized reproductions of the Products' front-label images on its own website and major retailers like Safeway, Amazon, Whole Foods Market,

and other retail product pages. Defendant authored, created, supplied, authorized, approved, adopted, and disseminated the materially uniform front-label images used on those pages.

15. The Sugar Representations communicate to reasonable consumers that each Products contain no sugar per bar. That is the plain and ordinary meaning of “0g Sugar.”

16. Indeed, the ingredients panel affirms this false representations, stating that the Products contain no added sugar, 0 total sugar, but 5 grams of allulose:



Nutrition Facts
5 servings per container
Serving size 3 cookies (31g)

Amount per serving
Calories 70

	% Daily Value ^{††}
Total Fat 5g	6%
Saturated Fat 1.5g	7%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 160mg	7%
Total Carbohydrate 22g	8%
Dietary Fiber 9g	32%
Total Sugars 0g	
Includes 0g Added Sugars	0%
Erythritol 5g	
Allulose 5g	
Protein 1g	
Vitamin D 0.4mcg	0%
Calcium 10mg	0%
Iron 0.7mg	4%
Potassium 100mg	2%

^{††}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: RESISTANT CASSAVA FIBER, ERYTHRITOL, ALLULOSE, WHITE RICE FLOUR, RSPO PALM OIL, NON-GMO CANOLA OIL, COCOA POWDER (PROCESSED WITH ALKALI), EGG WHITES, NATURAL FLAVORS, SUNFLOWER LECITHIN, OLIGOFRUCTOSE, BAKING SODA, SALT, XANTHAN GUM, PSYLLIUM HUSK, WATER, STEVIA EXTRACT, MONK FRUIT EXTRACT.

CONTAINS: EGGS.

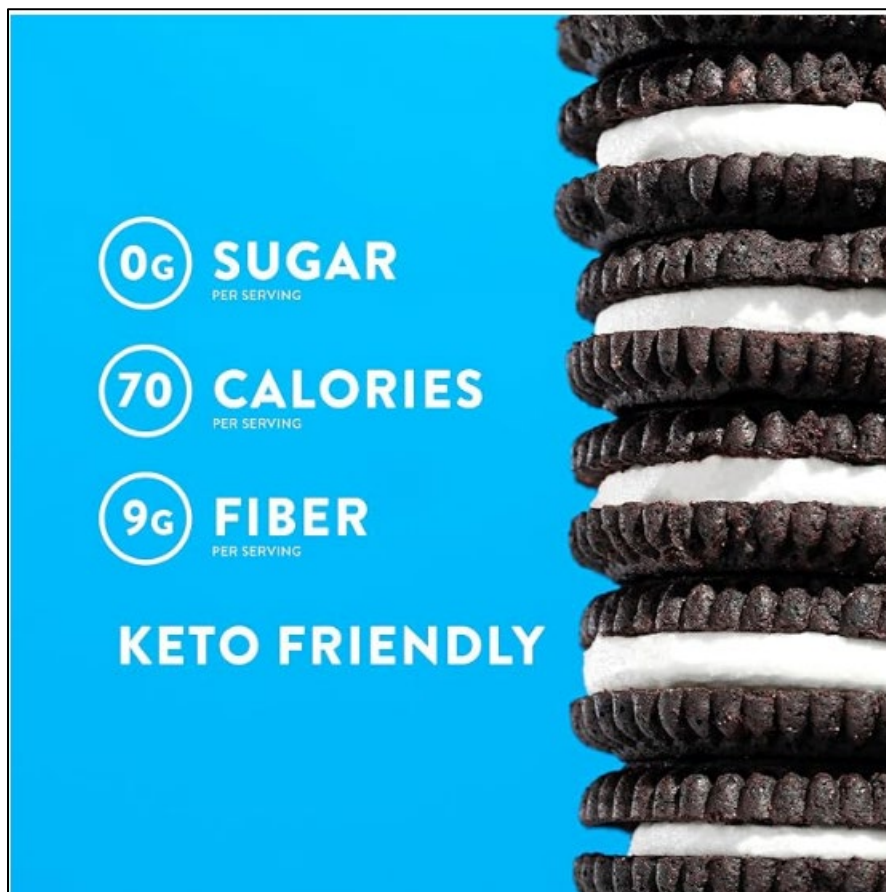
PRODUCED IN A FACILITY THAT ALSO PROCESSES OTHER TREE NUTS AND SEEDS.

SANDWICH COOKIES

ORIGINAL

17. The nutrition facts panel thus does not confirm the Sugar Representation on the front, it contradicts it.

18. On Amazon, for example, Defendant boasts that the Products contain 0 grams of sugar per serving:



C. Allulose Is a Sugar

19. Allulose is a sugar.

20. Chemically, allulose is a monosaccharide. It is the C-3 epimer of D-fructose, meaning that allulose and fructose have the same molecular formula and connectivity but differ in the spatial orientation of a hydroxyl group at the third carbon. “D-allulose, a C-3 epimer of D-

fructose, is a rare monosaccharide used as a food ingredient or a sweetener.”⁶ Allulose is accordingly “a rare sugar,” and “a monosaccharide that is low in calories and that maintains approximately 70% of sweetness relative to sugar.”⁷

21. Allulose is not merely a sugar as a matter of chemical classification. It is used as one. Allulose has “70% of the sweetness of sucrose, which means it is viewed as a potential alternative sweetener.”⁸ The food-science literature describes allulose and other rare sugars as “monosaccharides with sweetness similar to those as caloric sugars, but [with] low caloric values,” which “are now widely used as sugar substitutes.”⁹

22. Because allulose is less sweet than table sugar, it is used in gram-scale quantities as a bulk sweetener. High-intensity sweeteners such as saccharin, aspartame, acesulfame potassium, neotame, sucralose, and advantame are approximately 200 to 20,000 times as sweet as sucrose.¹⁰ By contrast, allulose has approximately 70% of sucrose’s sweetness and, as Defendant’s own product information shows, is used in large quantities as a bulk sweetener.¹¹

23. Allulose also behaves like sugar in food. “It is convenient for the food industry to use D-allulose, as its chemical properties are similar to those of fructose in terms of solubility,

⁶ Han-Joo Maeng et al., *Metabolic Stability of D-Allulose in Biorelevant Media and Hepatocytes: Comparison with Fructose and Erythritol*, 8 FOODS ART. 448, at 1 (2019), <https://doi.org/10.3390/foods8100448>.

⁷ Youngji Han et al., *Gastrointestinal Tolerance of D-Allulose in Healthy and Young Adults. A Non-Randomized Controlled Trial*, 10 NUTRIENTS ART. 2010, at 1–2 (2018), <https://doi.org/10.3390/nu10122010>.

⁸ Maeng et al., *supra* note 6, at 2.

⁹ *Id.* at 9–10.

¹⁰ U.S. FOOD & DRUG ADMINISTRATION, *Aspartame and Other Sweeteners in Food*, <https://www.fda.gov/food/food-additives-petitions/aspartame-and-other-sweeteners-food>.

¹¹ Mengting Tao, Wenli Zhang & Wanmeng Mu, *D-Allulose: A New Generation of Potential Bulk Sweeteners in the Food Industry*, 73 J. AGRIC. & FOOD CHEM. 27,833, 27,833–35 (2025).

water activity, and viscosity.”¹² It is used as “a partial replacement of added sugars.”¹³ Allulose is “widely regarded as a promising substitute for sucrose”—that is, a substitute for table sugar, and one that is itself a sugar.¹⁴

24. Each serving size of the Product contains 5 grams of allulose.

25. The Food and Drug Administration (“FDA”) identifies allulose as a sugar. In its 2016 Nutrition Facts rulemaking, the FDA stated that allulose, “as a monosaccharide, must be included” in the Total Sugars declaration pending any future rulemaking that would otherwise exclude the substance.¹⁵ The current regulation continues to define Total Sugars as “the sum of all free mono- and disaccharides” and does not exclude allulose. 21 C.F.R. § 101.9(c)(6)(ii).

26. The Calorie Control Council likewise describes allulose under the heading “Allulose is a Naturally Occurring Sweetener” and states that “[a] monosaccharide, or simple sugar, allulose is absorbed by the body, but not metabolized, so it is nearly calorie-free.”¹⁶

27. Defendant’s own labels disclose how much allulose each Product contains. Every Product’s ingredient statement identifies allulose, and every label states the allulose amount in grams per serving.

D. The Products Violate the FDA Nutrient Content Regulations

28. Congress empowered the FDA to oversee and regulate food labeling by enacting the Federal Food, Drug, and Cosmetic Act, as amended by the Nutrition Labeling and Education

¹² Han et al., *supra* note 7, at 10.

¹³ *Id.*

¹⁴ Wenli Zhang et al., D-Allulose, a Versatile Rare Sugar: Recent Biotechnological Advances and Challenges, 63 CRITICAL REVIEWS IN FOOD SCIENCE AND NUTRITION 5661, 5661 (2023) (published online Dec. 29, 2021), <https://doi.org/10.1080/10408398.2021.2023091>.

¹⁵ FOOD LABELING: Revision of the Nutrition and Supplement Facts Labels, 81 Fed. Reg. 33,742, 33,796 (May 27, 2016).

¹⁶ CALORIE CONTROL COUNCIL, *Allulose*, <https://caloriecontrol.org/ingredients/sweeteners/allulose/>.

Act, 21 U.S.C. § 301 *et seq.* FDA promulgated the relevant food-labeling regulations in 21 C.F.R. part 101.

29. FDA regulations distinguish mandatory or permitted declarations within the Nutrition Facts panel from nutrient-content claims appearing elsewhere on a label or in labeling. Information appearing as part of the Nutrition Facts panel is not itself a nutrient-content claim. 21 C.F.R. § 101.13(c). By contrast, the Sugar Representations appear outside the Nutrition Facts panel on the Products’ front labels and in Defendant’s marketing and expressly characterize the level of sugar in the Products.

30. 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”).

31. The Sugar Representations are expressed nutrient-content claims. An expressed nutrient content claim is “any direct statement about the level (or range) of a nutrient in the food, e.g., ‘low sodium’ or ‘contains 100 calories.’” 21 C.F.R. § 101.13(b)(1). A statement of a nutrient’s quantity in grams is the regulation’s own example of such a claim.

32. Section 101.13(i) governs statements of the amount of a nutrient appearing outside the Nutrition Facts panel. It permits such a statement only if one of three conditions is met: the statement implicitly characterizes the level of the nutrient and is consistent with a definition for a claim provided in subpart D, *id.* § 101.13(i)(1); the statement implicitly characterizes the level and is not consistent with such a definition, in which case it must be accompanied by an adjacent disclaimer that the food is not “low” in the nutrient, *id.* § 101.13(i)(2); or the statement does not in

any way implicitly characterize the level of the nutrient and “is not false or misleading in any respect,” *id.* § 101.13(i)(3).

33. The Sugar Representations are governed by paragraph (i)(3), which permits a statement of the amount of a nutrient only if the statement “is not false or misleading in any respect.” And to the extent the Sugar Representations are construed to implicitly characterize the level of sugar in the Products, paragraph (i)(2) permits them only where the label bears an adjacent disclaimer, and no such disclaimer appears anywhere on the Products’ labels. The Sugar Representations are impermissible under either paragraph.

34. Sugar is a nutrient “of the type required to be in nutrition labeling under § 101.9.” 21 C.F.R. § 101.13(b). Section 101.9(c)(6)(ii) defines Total Sugars as “the sum of all free mono- and disaccharides.” That same definition governs the Sugar Representations, because compliance with the requirements for nutrient-content claims is determined using the analytical methodology prescribed for nutrition labeling in § 101.9. *Id.* § 101.13(o). Allulose, as a free monosaccharide and the C-3 epimer of D-fructose, falls squarely within that definition and must be included in measuring the Products’ sugar content. Measured that way, the Sugar Representations are false. Defendant’s own labels disclose that each contains 5 grams of allulose per serving. The Nutrition Facts panels and front label visible to consumers separately declares zero grams of Total Sugars for the Products. The Sugar Representations are false and, at minimum, materially misleading, and violate 21 C.F.R. § 101.13(i).

35. Because the Products’ labels and labeling bear false, misleading, and impermissible outside-panel nutrient-content claims, 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), (c), (i)(2)–(3), and (o). Misbranded food may not lawfully be introduced or delivered for introduction into interstate commerce. 21 U.S.C. § 331(a).

36. Plaintiffs do not seek to enforce the FDCA directly. They challenge only the outside-panel Sugar Representations; they do not challenge the Nutrition Facts declarations or seek to require a different Nutrition Facts methodology. They seek relief under independently enforceable state consumer-protection and food-labeling laws, including New York’s prohibition on labeling that is “false or misleading in any particular,” N.Y. Agric. & Mkts. Law § 201(1), and their state-law claims seek to enforce requirements identical to 21 U.S.C. § 343(a)(1) and 21 C.F.R. § 101.13(i), not requirements different from or additional to federal law. Plaintiffs independently allege that the Sugar Representations mislead reasonable consumers.

E. Defendant’s Conduct Violates New York’s Food Labeling Laws

37. Defendant’s marketing, advertising, distribution, and sale of the Products violate the misbranding provisions of New York’s food-labeling standards prohibiting the misbranding of food. New York Agriculture and Markets Law § 201(1) provides that food “shall be deemed to be misbranded . . . [i]f its labeling is false or misleading in any particular.” N.Y. Agric. & Mkts. Law § 201(1). Section 199-a(1) prohibits any person, firm, association, or corporation from manufacturing, producing, processing, packing, transporting, possessing, selling, or offering or exposing for sale within this state any article of food that is misbranded within the meaning of that article. *Id.* § 199-a(1).

38. New York law separately prohibits false advertising of food. Section 202-a(1) provides that “[a]n advertisement concerning a food or food product shall not be false or misleading in any particular.” *Id.* § 202-a(1). An “advertisement” means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of a food or food product. *Id.* § 198(5). Defendant’s reproductions of the Sugar Representations in front-label images disseminated online are advertisements within that definition.

39. Because the Sugar Representations violate 21 C.F.R. § 101.13(i)(2)–(3), read with §§ 101.9(c)(6)(ii) and 101.13(o), the Products’ labeling is false and misleading in a material respect; the Products are misbranded under federal law and New York’s food-labeling standards, and Defendant’s advertising, distribution, and sale of the Products is unlawful.

F. Reasonable Consumers Cannot Detect Defendant’s Deception

40. Reasonable consumers have no reason to search elsewhere on a package or retail product page when presented with the conspicuous front-label representation that each Product contains zero grams of sugar. Consumers are not expected to look beyond a misleading representation on the front of a package to discover that the representation is false. Reasonable consumers rely on the conspicuous Sugar Representations at the point of sale.

41. In an in-store observational study of 11,781 grocery shoppers in six European countries—the United Kingdom, Sweden, France, Germany, Poland, and Hungary—62.6% of shoppers were observed looking at the front of the first product they bought, while only 7.7% were observed looking at that product elsewhere.¹⁷

42. In one observational study of 802 supermarket shoppers, the mean time between arriving at and departing from a product-category display was less than twelve seconds.¹⁸

43. Allulose is not a common household name. Reasonable consumers, including Plaintiffs, are unlikely to recognize the term or to infer from the ingredient list or net-carbohydrate equation alone that it is a sugar that must be included when assessing an outside-panel sugar-amount claim.

¹⁷ Klaus G. Grunert et al., *Use and Understanding of Nutrition Information on Food Labels in Six European Countries*, 18 J. PUB. HEALTH 261, 266 (2010), <https://doi.org/10.1007/s10389-009-0307-0>.

¹⁸ Peter R. Dickson & Alan G. Sawyer, *The Price Knowledge and Search of Supermarket Shoppers*, 54 J. MARKETING 42, 47 (1990), <https://doi.org/10.1177/002224299005400304>.

44. A consumer who reviews a Products' Nutrition Facts panel encounters the same declaration of zero grams of Total Sugars featured on the front. The disclosures therefore do not cure the Sugar Representations.

45. Consumers are also not required to conduct independent scientific testing or research into the chemical classification of listed ingredients, to reconcile separate label components, or to perform arithmetic to verify express label claims. Reasonable consumers do not possess specialized knowledge of carbohydrate chemistry or federal labeling law. Defendant is responsible for ensuring that its express labeling and marketing claims are truthful and not misleading.

G. Defendant Knew The Sugar Representations Were False

46. Defendant knew, or should have known, that the Sugar Representations were false, misleading, deceptive, and unlawful when it marketed, advertised, labeled, distributed, and sold the Products. Specifically, Defendant knew that (a) the Products contain allulose; (b) allulose is a sugar; (c) the Sugar Representations state that the Product contains zero grams of sugar; (d) the Nutrition Facts panels repeat those figures; (e) the net-carbohydrate equations separately quantify allulose; (f) reasonable consumers would rely on the Sugar Representations; (g) consumers would not receive the represented benefit of the bargain; (h) the Sugar Representations enabled Defendant to charge a premium; and (i) no adjacent disclaimer states that the Products are not low in sugar.

47. Defendant formulates the Products and controls the ingredient statements, Nutrition Facts panels, and packaging. Defendant lists allulose as an ingredient on the Products and states the allulose amount on every label, while printing the Sugar Representations prominently on the Products' front labels. Defendant, as the formulator, marketer, and distributor of the Products, controlled, authored, supplied, authorized, approved, adopted, or materially participated in making

the Sugar Representations. Those facts demonstrate that Defendant knew how much allulose the Products contained while making the challenged representations.

48. Defendant could have stopped using the Sugar Representations, accurately qualified them, or ensured that they were true, but chose not to. Despite its knowledge that consumers reasonably rely on the Sugar Representations, Defendant chose to continue using them, thereby causing consumers to buy or overpay for the Products.

H. Defendant's Sugar Representations Injured Plaintiff and the Class

49. Defendant concealed or failed to disclose material facts necessary to prevent the Sugar Representations from misleading consumers, including (a) that allulose is a monosaccharide and sugar; (b) that the Products' Sugar Representations exclude the disclosed allulose amount; (c) each Product's sugar content under 21 C.F.R. § 101.9(c)(6)(ii); (d) the facts that render the Sugar Representations false, misleading, or noncompliant under 21 C.F.R. § 101.13(i); and (e) that the Products are misbranded under federal and New York law when sold bearing the Sugar Representations.

50. As an immediate, direct, and proximate result of Defendant's false, misleading, and deceptive Sugar Representations and omissions, Defendant injured Plaintiffs and the Class Members in that they: (a) paid money for products that were not as represented; (b) paid a premium for the Products; (c) were deprived of the benefit of their bargains; and (d) purchased misbranded Products that could not lawfully have been sold because they violate FDA requirements and, for Class Members, New York's food-labeling standards.

51. Accordingly, Plaintiffs and the Class Members suffered injury in fact and lost money or property because of Defendant's wrongful conduct.

CLASS ALLEGATIONS

52. Plaintiffs bring this action on behalf of themselves and all others similarly situated pursuant to Federal Rules of Civil Procedure 23(a), (b)(1), and (b)(3) in the following Class (the “Class”):

Class: All persons in the State of New York who, during the maximum period of time permitted by law, purchased for personal use one or more of the Products while the Product contained allulose and bore a Sugar Representation.

53. The Class does not include: (1) Defendant or its officers or directors; (2) the Judge or Magistrate Judge assigned to this action; (3) the assigned Judge’s or Magistrate Judge’s staff and family; or (4) Plaintiffs’ counsel or Defendant’s counsel.

54. Plaintiffs reserve the right to amend the class definitions and add classes or subclasses as appropriate based on investigation, discovery, and the specific theories of liability.

55. **Community of Interest:** There is a well-defined community of interest among members of the Class, and the disposition of their claims in a single action will provide substantial benefits to all parties and to the Court.

56. **Numerosity:** While the exact number of members of the Class is unknown to Plaintiffs at this time and can only be determined by appropriate discovery, upon information and belief, members of the Class number at least in the thousands. Members of the Class may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant and third-party retailers and vendors.

57. **Existence and Predominance of Common Questions of Law and Fact:** Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual questions include, but are not limited to:

(a) Whether allulose is a sugar;

- (b) Whether the Products accurately state their sugar content and comply with 21 C.F.R. §§ 101.9(c)(6)(ii) and 101.13(i);
- (c) Whether reasonable consumers would understand Defendant's Sugar Representations to be untrue or misleading;
- (d) Whether Defendant's Sugar Representations were material;
- (e) Whether the Products are misbranded under federal law;
- (f) Whether Defendant was unjustly enriched as a result of the unlawful conduct alleged in this Complaint;
- (g) Whether Plaintiff and the members of the Class have suffered damages as a result of Defendant's actions and the amount of those damages;
- (h) Whether Plaintiffs and the members of the Class are entitled to statutory damages; and
- (i) Whether Plaintiffs and the members of the Class are entitled to attorneys' fees and costs.

58. **Typicality:** Plaintiffs' claims are typical of the claims of other members of the Class because Plaintiffs were exposed to the Sugar Representation, purchased the Products in reliance on that representation, and suffered the same type of economic loss alleged for Class Members who purchased the Products.

59. **Adequacy:** Plaintiffs will fairly and adequately represent and protect the interests of the Class as required by Federal Rule of Civil Procedure 23(a)(4). Plaintiffs are adequate representatives because they have no interests adverse to those of the Class, are committed to the vigorous prosecution of this action, and have retained skilled and experienced counsel.

60. **Superiority:** A class action is superior to all other available methods for the fair and efficient adjudication of the claims asserted in this action under Federal Rule of Civil

Procedure 23(b)(3) because the expense and burden of individual litigation make it economically unfeasible for members of the Class to seek redress outside a class action. Even if Class Members could afford individual litigation, the resulting burden on the courts would be substantial. Individualized litigation would also create a risk of varying, inconsistent, or contradictory judgments and would magnify delay and expense by requiring multiple trials of the same factual issues. By contrast, maintaining this action as a class action with respect to some or all issues presents fewer management difficulties, conserves the resources of the parties and courts, and protects each Class Member's rights. Plaintiffs anticipate no difficulty in managing this action as a class action. Classwide adjudication will resolve common issues of liability and damages. Separate actions could also subject Defendant to inconsistent obligations.

CAUSES OF ACTION

COUNT I

Violations of N.Y. Gen. Bus. Law § 349 (On behalf of Plaintiffs and the Class)

61. Plaintiffs hereby incorporate the foregoing allegations as if fully set forth herein.
62. Plaintiffs bring their claims individually and on behalf of the Class against Defendant.
63. New York General Business Law § 349 declares unlawful “[u]nfair, deceptive, or abusive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.” N.Y.G.B.L. § 349(a).
64. Defendant is a “person” engaged in “business, trade or commerce” within the meaning of GBL § 349, and its marketing, labeling, distribution, and sale of the Products to New York consumers constitute business, trade, or commerce in New York.
65. Defendant’s conduct was consumer-oriented. Defendant marketed and sold the Products to the public through uniform front labeling directed to consumers, including New York

consumers. Defendant profited by making the Zero Sugar Representation even though the Products contain sugar in the form of allulose.

66. Defendant engaged in deceptive acts and practices by falsely representing on the Products' front labels that the Products contain zero sugar even though they contain sugar in the form of allulose.

67. The Zero Sugar Representation was material and was likely to mislead a reasonable consumer acting reasonably under the circumstances.

68. A reasonable consumer would understand the Zero Sugar Representation to mean that the Products contain no sugar when, in fact, they contain allulose.

69. Plaintiffs and members of the Class were injured as a result of Defendant's deceptive acts and practices.

70. In reliance on the Zero Sugar Representation, Plaintiffs and members of the Class paid a premium for Products they otherwise would not have purchased, or would have purchased only at a lower price, and received Products worth less than what they paid. Had they known that the Products contained allulose and were not accurately represented as containing zero sugar, Plaintiffs and members of the Class would not have purchased the Products or would have paid significantly less for them.

71. Defendant made the Zero Sugar Representation willfully and knowingly and with reckless disregard for the truth.

72. On behalf of themselves and the Class members, Plaintiffs seek to recover their actual damages or fifty dollars, whichever is greater; because Defendant's violation was willful and knowing, treble damages not to exceed one thousand dollars; and reasonable attorneys' fees and costs.

COUNT II
Violation of New York Gen. Bus. Law § 350
(On behalf of Plaintiffs and the Class)

73. Plaintiffs hereby incorporate the foregoing allegations as if fully set forth herein.

74. Plaintiffs bring this claim individually and on behalf of the Class against Defendant.

75. New York General Business Law § 350 provides 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.” N.Y. Gen. Bus. Law § 350.

76. GBL § 350-a(1) defines “false advertising” as “advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect,” and provides that, “[i]n determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations.” N.Y. Gen. Bus. Law § 350-a(1).

77. Defendant’s labeling and advertising of the Products constitute “advertising” within the meaning of GBL § 350-a(1).

78. Defendant engaged in false advertising by representing on the Products’ front labels that the Products contain zero sugar even though they contain sugar in the form of allulose.

79. Defendant’s advertising was misleading in a material respect and failed to reveal facts material in light of the Zero Sugar Representation.

80. The Zero Sugar Representation was material and was likely to mislead a reasonable consumer acting reasonably under the circumstances.

81. Plaintiffs and members of the Class relied on Defendant’s false advertising and were injured as a result. They paid a premium for Products they otherwise would not have purchased, or would have purchased only at a lower price, and received Products worth less than

what they paid. Had they known the truth, Plaintiffs and members of the Class would not have purchased the Products or would have paid significantly less for them.

82. Defendant made the Zero Sugar Representation willfully and knowingly and with reckless disregard for the truth.

83. On behalf of themselves and the Class members, Plaintiffs seek to recover their actual damages or five hundred dollars, whichever is greater; because Defendant's violation was willful and knowing, treble damages not to exceed ten thousand dollars; and reasonable attorneys' fees and costs.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all claims so triable.

Dated: September 18, 2026

Respectfully submitted,

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By: /s/ Caroline C. Donovan
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