

Raphael Janove (SBN 361193)
raphael@janove.law
JANOVE PLLC
115 Broadway, 5th Fl.
New York, NY 10006
(646) 347-3940

Counsel for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KARL TRUTY, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

SUPPLYING DEMAND, INC., a
California corporation,

Defendant.

Case No. 2:26-cv-10164

CLASS ACTION COMPLAINT

1. VIOLATION OF THE ILLINOIS
CONSUMER FRAUD AND
DECEPTIVE BUSINESS
PRACTICES ACT, 815 ILL.
COMP. STAT. §§ 505/1 *et seq.*
2. BREACH OF EXPRESS
WARRANTY
3. RESTITUTION BASED ON
QUASI-CONTRACT/UNJUST
ENRICHMENT

DEMAND FOR JURY TRIAL

1 Plaintiff Karl Truty (“**Plaintiff**”), individually and on behalf of all others
 2 similarly situated, brings this class action complaint against Defendant Supplying
 3 Demand, Inc. (“**Defendant**” or “**Liquid Death**”) and alleges as follows:

4 **SUMMARY OF THE ACTION**

5 1. This is a class action lawsuit brought on behalf of all purchasers of
 6 Defendant’s Liquid Death “0g Sugar” Sparkling Energy drink products (the
 7 “**Products**”), sold online and at retail locations throughout Illinois, California, and
 8 the United States.¹

9 2. Defendant falsely and deceptively advertises the Products as “0g Sugar”
 10 and “Zero Sugar” (collectively, the “**Challenged Representations**”). However,
 11 contrary to the Challenged Representations, as explained in detail below, the
 12 Products actually contain allulose, which qualifies as a sugar since it is undisputedly
 13 a monosaccharide. Indeed, allulose is not merely present in the Products in trace
 14 amounts: it is the second-listed, and therefore the second most predominant,
 15 ingredient in the Products. Federal law permits maximum amount of sugar to be less
 16 than 0.5 grams in a product labeled “sugar free.” 21 C.F.R. § 101.60(c)(1)(i); 21
 17 C.F.R. § 101.9(c)(6)(ii). Therefore, the “0g Sugar” claim in the Product that contains
 18 allulose as the second largest ingredient is false and misleading.

19 3. On July 27, 2026, the United States Court of Appeals for the Seventh
 20 Circuit confirmed this exact conclusion in *Franco v. Chobani, LLC*, 184 F.4th 599,
 21 (7th Cir. 2026), holding that “[a]llulose is a sugar under the relevant federal
 22 regulation” because 21 C.F.R. § 101.9(c)(6)(ii) defines total sugars as the sum of all
 23 free mono- and disaccharides, and allulose is undisputedly a monosaccharide. The
 24 Seventh Circuit further held that state consumer protection claims premised on “sugar
 25 free” labeling of allulose-sweetened products are not preempted, and that consumers

26
 27 ¹ The 0g Sugar Products include, but are not limited to, the following flavors and
 28 configurations of Liquid Death 0g Sugar Sparkling Energy Drink: Murder Mystery,
 Scary Strawberry, Orange Horror, and Tropical Terror: including variety packs, in
 all pack sizes.

1 plausibly allege deception where a product makes an absolute “sugar free” promise
2 while containing four grams of allulose per serving. The same is true here.

3 4. Defendant seeks to take advantage of consumers’ desire for truly
4 premium products that are free from sugar by falsely, misleadingly, and deceptively
5 labeling the Products with the Challenged Representations. Defendant does so at the
6 expense of unwitting consumers, as well as Defendant’s lawfully acting competitors,
7 over whom Defendant maintains an unfair competitive advantage.

8 5. Plaintiff brings this action individually and in a representative capacity
9 on behalf of similarly situated consumers who purchased the Products during the
10 relevant Class Period (Class and/or Subclass defined *infra*). Plaintiff seeks, on his
11 individual behalf and on behalf of the Class/Subclass, injunctive relief to stop
12 Defendant’s unlawful manufacture, marketing, and sale of the Products with the
13 Challenged Representations to avoid or mitigate the risk of deceiving the public into
14 believing that the Products conform to the Challenged Representations, by requiring
15 Defendant to change their business practices, which may include one or more of the
16 following: removal or modification of the Challenged Representations from the
17 Products’ labels, removal or modification of the Challenged Representations from
18 the Products’ advertising, modification of the Products’ formulation be it a change in
19 ingredients or its sourcing and manufacturing processes, and/or discontinuance of the
20 Products’ manufacture, marketing, and/or sale.

21 *A true and correct copy of the Products’ packaging label is pictured below*
22 *(Scary Strawberry flavor shown; all 0g sugar flavors bear materially identical*
23 *Challenged Representations).*^{2 3}

24
25
26 ² Liquid Death Sparkling Energy Drink product includes but is not limited to the
27 following flavors: (a) Scary Strawberry; (b) Orange Horror; (c) Tropical Terror; and
28 (d) Murder Mystery.

³ Liquid Death Sparkling Energy Drink product includes but is not limited to the
following types: (a) single-serving 12 oz; and (b) 12-pack of 12 oz.



6. Consumers are deceived by Defendant's labeling and advertising of the Products as "0g Sugar" and "Zero Sugar" into believing that they are purchasing 0g Sugar products. Consumers rely on Defendant's labeling and advertising of the Products as "0g Sugar" and "Zero Sugar" to be truthful and would not know that the Products are actually sweetened with allulose sugar as their second-most predominant ingredient.

7. 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 Sugar" representations.

8. Defendant knows that consumers are willing to pay more for products without any sugar, and advertises the Products with the intention that consumers rely

1 on the representations made on the front of the Products' packaging.

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

4 **PARTIES**

5 10. **Plaintiff Karl Truty:** Plaintiff is, and at all times relevant hereto was,
6 a citizen of Illinois. Plaintiff purchased the Liquid Death Sparkling Energy Variety
7 Pack from Amazon.com in or around August of 2026. In making his purchase,
8 Plaintiff relied upon Defendant's labeling and advertising claims, namely, the
9 Challenged Representations clearly printed on the front label of the Products. These
10 claims were prepared and approved by Defendant and its agents and disseminated
11 statewide and nationwide to encourage consumers to purchase the Products. If
12 Plaintiff had known that the Products contained sugar ingredients, then Plaintiff
13 would not have purchased the Product, or he would have purchased it at a
14 substantially lower price.

15 11. **Plaintiff's Future Harm:** Plaintiff would like to purchase the Products
16 again only if he can be sure that Defendant is compliant with the state consumer
17 protection laws. Plaintiff continues to see Defendant's Products available for
18 purchase, and desires to purchase them again if the Challenged Representations were
19 in fact true. Since Plaintiff would like to purchase the Products again to obtain a
20 hydration product that, as advertised, is truly sugar free, Plaintiff would purchase
21 them again in the future, despite the fact that they were once marred by false
22 advertising or labeling, as Plaintiff would reasonably, but incorrectly, assume the
23 Products were improved (no longer contain sugar). In that regard, Plaintiff is an
24 average consumer who is not sophisticated in the chemistry, manufacturing, and
25 formulation of food and beverage products, such as the Products. Neither Plaintiff,
26 nor reasonable consumers, have the requisite knowledge to accurately determine
27 whether ingredients such as allulose are or are not sugars. Accordingly, Plaintiff is at
28 risk of reasonably, but incorrectly, assuming that Defendant fixed the formulation of

1 the Products such that Plaintiff may buy them again, believing them to no longer be
2 falsely advertised. Plaintiff is, therefore, currently and in the future deprived of the
3 ability to rely on the Challenged Representations. Based on information and belief,
4 the labeling of the Products purchased by Plaintiff is typical of the labeling of the
5 Products purchased by members of the Class.

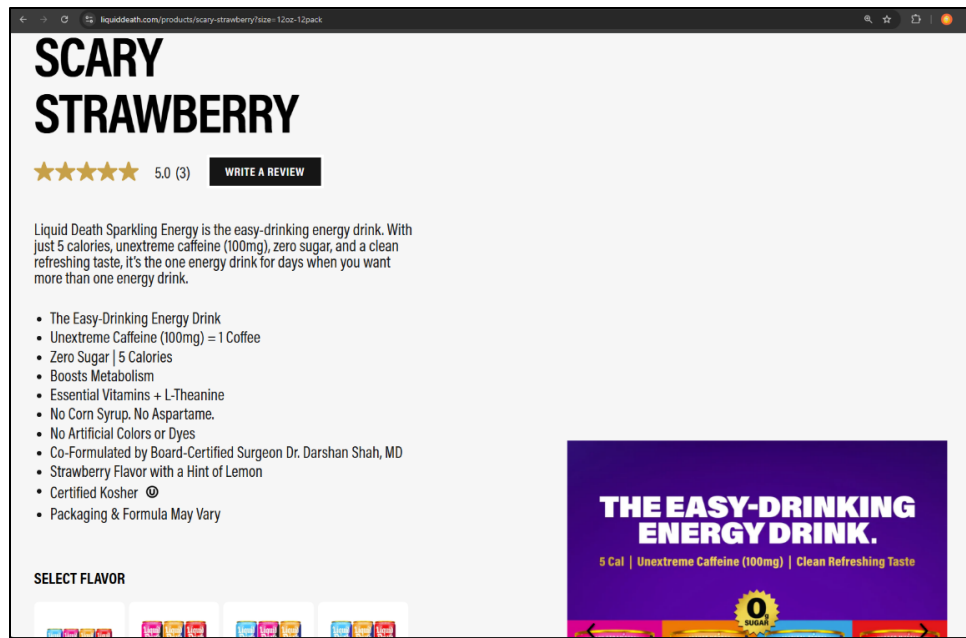
6 12. **Defendant Supplying Demand, Inc.:** Defendant Supplying Demand,
7 Inc. is one of the one of the fastest growing non-alcoholic beverage brands with
8 hundreds of millions in yearly sales, a billion-dollar valuation,⁴ and millions of
9 consumers a day. Among its diverse offerings is Liquid Death Sparkling Energy.
10 Supplying Demand, Inc is a California corporation headquartered in Los Angeles,
11 CA.

12 **JURISDICTION AND VENUE**

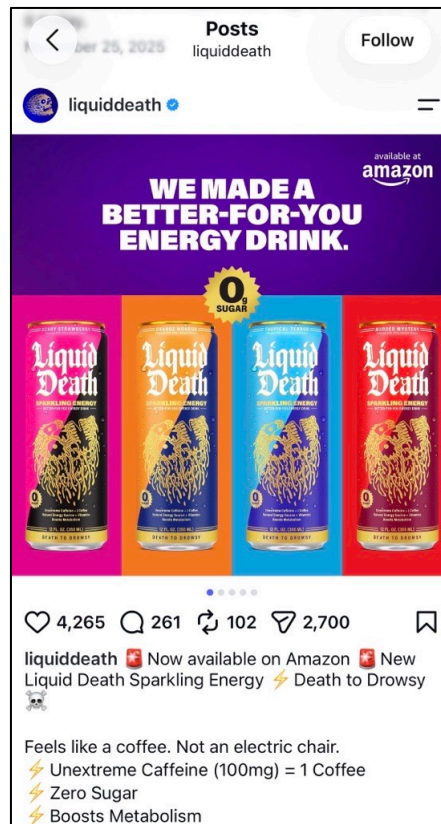
13 13. This Court has subject matter jurisdiction over this action pursuant to 28
14 U.S.C. § 1332 and the Class Action Fairness Act of 2005 because: (i) there are 100
15 or more class members, (ii) there is an aggregate amount in controversy exceeding
16 \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity
17 because at least one plaintiff and one defendant are citizens of different states. This
18 Court has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C.
19 § 1367.

20 14. Venue is proper in this District under 28 U.S.C. § 1391 because a
21 substantial part of the events, omissions, and acts giving rise to the claims herein
22 occurred in this District: Defendant maintains its principal place of business in Los
23 Angeles, California, within this District. Defendant has deliberately marketed,
24 advertised, and sold the Products within this District, and Defendant receives
25 substantial compensation from sales in this District.

26
27 ⁴ Liquid Death's Billion-Dollar Valuation Stresses The Power Of Brand,
28 <https://www.forbes.com/sites/marcuscollins/2024/03/20/liquid-deaths-billion-dollar-valuation-underscores-the-power-of-brand/> (last visited August 2026).

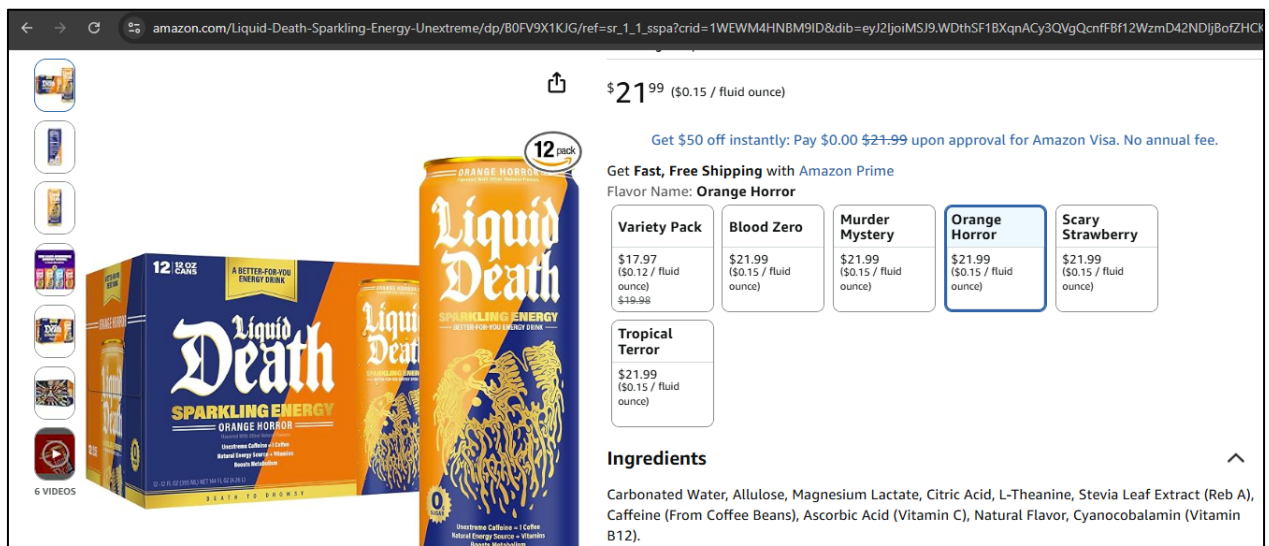


Screenshot of liquiddeath.com product page (“0g SUGAR”; “Zero Sugar”)



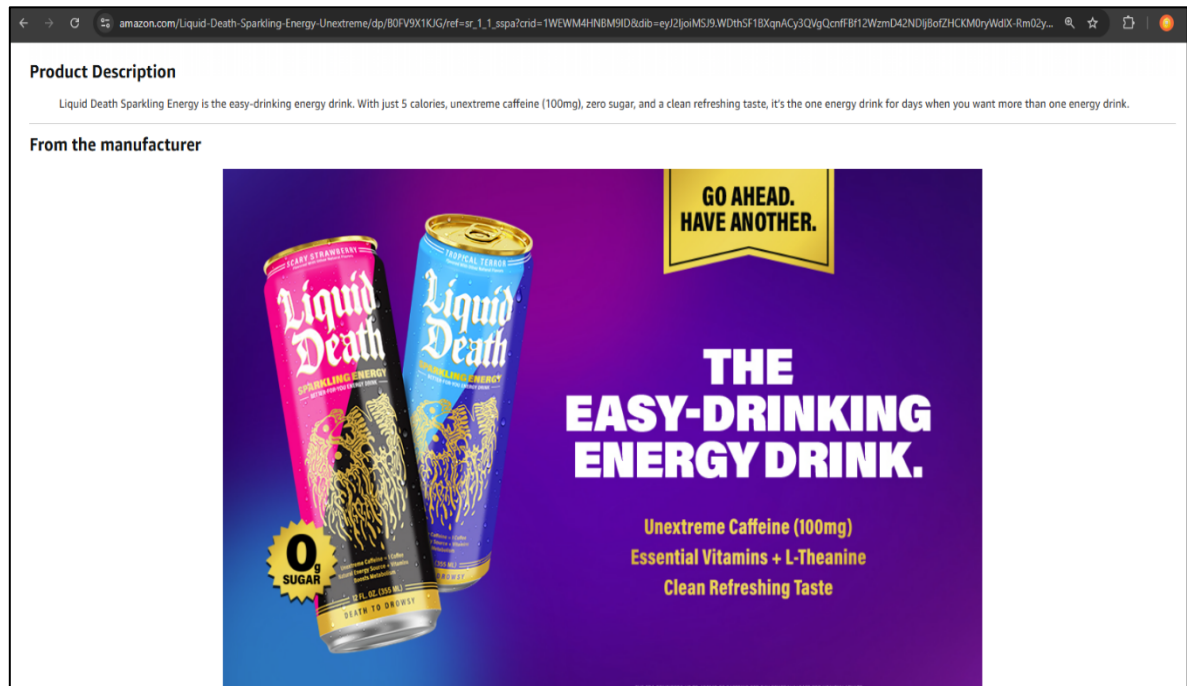
Screenshot of liquid death’s official social media page (“0g SUGAR”; “Zero Sugar.”)

19. Defendant likewise disseminates the Challenged Representations through third-party retail websites. On Amazon.com, Defendant advertises the Products as the “the one energy drink for days when you want more than one energy drink” with “0g Sugar” and “Zero sugar,” and, in a section titled “Ingredients,” admits that the Products’ sweetening system consists of “Allulose” and “Stevia Leaf Extract.” True and correct screenshots from Defendant’s official Amazon brand content are reproduced below:⁶



Screenshot of Defendant’s Amazon.com brand content (“the one energy drink for days when you want more than one energy drink”; “zero sugar”; “0g SUGAR”)

⁶ Instagram, Liquid Death, <https://www.instagram.com/p/DRcmS5hiSXs/?igsh=NTc4MTIwNjQ2YQ==&igsi=NTc4MTIwNjQ2YQ==> (last visited August 2026).



Screenshot of Defendant's Amazon.com brand content ("Ingredients . . . Allulose + Stevia Leaf Extract")

20. The Challenged Representations are a complete deception. In fact, the Products are sweetened by adding allulose, a sugar, and allulose is the second ingredient listed in the Products' ingredient statement: "Carbonated Water, Allulose, Magnesium Lactate, Citric Acid, L-Theanine, Stevia Leaf Extract (Reb A), Caffeine (From Coffee Beans), Ascorbic Acid (Vitamin C), Natural Flavor, Cyanocobalamin (Vitamin B12). . . ." Under federal labeling law, ingredients must be listed in descending order of predominance by weight. 21 C.F.R. § 101.4(a)(1). Allulose, a sugar, is therefore the second largest ingredient in the Products.

21. There is no such thing as "0g Sugar" 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, California, and the country.

B. Allulose Is a Sugar

22. Allulose is a sugar.

23. It is a naturally occurring sugar found in small quantities in foods such as figs, raisins, wheat, maple syrup, and molasses.⁷

24. Chemically, allulose is a monosaccharide epimer of fructose.⁸

25. Allulose and fructose are both sugar carbohydrates that differ only in the position of a single carbon atom.⁹

26. 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)”).

27. 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 declaration pending any future rulemaking that would otherwise exclude the substance. No such rulemaking has ever occurred.¹⁰

28. 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.”¹¹ Tate & Lyle has likewise

⁷Cleveland 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.”). (last visited August 21, 2026).

⁸A 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”). (last visited August 21, 2026).

⁹Han-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. (last visited August 21, 2026).

¹⁰Food Labeling: Revision of the Nutrition and Supplement Facts Labels, 81 Fed. Reg. 33,742, 33,795-96 (May 27, 2016). (last visited August 21, 2026).

¹¹Citizen Petition Submitted by Tate & Lyle Ingredients Americas LLC requesting that Allulose be Exempt From Being Included As a Carbohydrate, Sugar, or Added

1 acknowledged that “[a]llulose is a monosaccharide, or simple sugar.”¹²

2 29. Even the sweetener industry’s own website, allulose.org, plainly states
3 that “Allulose (also called psicose) is a low-calorie sugar.”¹³

4 30. “0g Sugar” Liquid Death sweetened predominantly with allulose is
5 really just an energy drink sweetened with sugar; its very name is a lie.

6 31. There are also important differences between consuming allulose and
7 consuming no sugar. While some preliminary research suggests allulose may
8 metabolize differently than some other sugars in some people, that research carries
9 significant caveats: studies have concluded that “dose difference of allulose may
10 result in a different effect,” that “the effect may differ by race as well as gender,” and
11 that “there might be a difference between a liquid form and a solid form” of allulose,
12 and experts have concluded that more research needs to be done.¹⁴

13 32. Consumption of allulose can also cause gastrointestinal effects such as
14 nausea, bloating, diarrhea, and abdominal pain.¹⁵ A large clinical trial on the
15 gastrointestinal tolerance of allulose determined that, compared to traditional cane
16 sugar, consumption of allulose resulted in significantly higher frequencies of
17 symptoms of diarrhea, abdominal distention, and abdominal pain, and that increasing
18 the level of ingested allulose resulted in incidences of severe nausea, abdominal pain,

19
20 Sugar in the Nutrition Facts Label on Foods and Beverages, April 10, 2015, Docket
Number FDA-2015-P-1201. (last visited August, 2026).

21 ¹²Tate & Lyle Study, Aug. 13, 2018, at p. 6,
22 <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.”). (last visited August, 2026).

23 ¹³Calorie Control Council, Frequently Asked Questions, [https://allulose.org/allulose-](https://allulose.org/allulose-info/low-calorie-sugar/)
24 [info/low-calorie-sugar/](https://allulose.org/allulose-info/low-calorie-sugar/) (“Allulose (also called psicose) is a low-calorie sugar.”). (last
visited August, 2026).

25 ¹⁴Tani 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),
26 <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0281150>. (last
visited August, 2026).

27 ¹⁵Memorandum from Center for Science in the Public Interest to Food and Drug
Administration (June 17, 2019),
28 [https://cspinet.org/sites/default/files/attachment/allulose%20final%20from%20CSP](https://cspinet.org/sites/default/files/attachment/allulose%20final%20from%20CSP%20I.pdf)
I.pdf. (last visited August, 2026).

1 headache, anorexia, and diarrheal symptoms.¹⁶

2 **C. Federal Law Prohibits Defendant’s “0g Sugar” Labels, and Plaintiff’s**
 3 **Claims Are Not Preempted**

4 33. Plaintiff sues for violations of Illinois law because he and the Class were
 5 tricked into buying Products deceptively labeled “0g Sugar” that are actually made
 6 by adding sugar as the second-most predominant ingredient. Plaintiff does not sue
 7 for any violation of FDA regulations. However, the deceptive labeling also violates
 8 federal laws and regulations regarding food labeling, such that Plaintiff’s state law
 9 claims are not preempted.

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

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

23 36. Nutrient content claims are statements that “expressly or implicitly
 24 characterize[] the level of a nutrient,” such as sugar. 21 C.F.R. § 101.13(b). The “0g
 25 Sugar,” and “Zero Sugar,” statements that appear repeatedly and prominently on the
 26

27 ¹⁶Han Y, Choi BR, Kim SY, Kim SB, Kim YH, Kwon EY, & Choi M.S.,
 28 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. (last visited August, 2026).

1 Products' packaging and in Defendant's advertising are all nutrient content claims.

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

8 38. Within Subpart D, section 101.60(c)(1) specifically governs the use of
9 the "sugar free" and "zero sugar" nutrient content claims at issue in this case. That
10 regulation provides that terms such as "sugar free," "free of sugar," "no sugar," "zero
11 sugar," "without sugar," "sugarless," and "trivial source of sugar" may not be used
12 on the label or in labeling of a food unless, among other requirements:

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

15 (ii) The food contains no ingredient that is a sugar or that
16 is generally understood by consumers to contain sugars
17 unless the listing of the ingredient in the ingredient
18 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"
. . . .

19 21 C.F.R. § 101.60(c)(1)(i)-(ii). These requirements are conjunctive; both must be
20 satisfied.

21 39. The Products flunk the very first requirement. To determine the amount
22 of sugar in a food, section 101.60(c)(1)(i) cross-references 21 C.F.R.
23 § 101.9(c)(6)(ii), which defines sugars as "the sum of all free mono- and
24 disaccharides (such as glucose, fructose, lactose, and sucrose)." Allulose, as a
25 monosaccharide epimer of fructose, falls squarely within this definition. The allulose
26 in the Products must therefore be included when calculating the amount of sugars for
27 purposes of the 0.5-gram threshold in section 101.60(c)(1)(i).
28

40. By Defendant’s own admission on the Products’ labels, every flavor of the Products contains allulose as the second largest component, which is not a trivial, negligible, or dietarily insignificant amount of sugar. Thus, the disclaimer is itself false and misleading.

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

42. 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 Sugar” Claims for Allulose-Sweetened Products Are Unlawful and Deceptive, and That These Claims Are Not Preempted

43. On July 27, 2026, in *Franco v. Chobani, LLC*, 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.¹⁷

44. 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).”

¹⁷*Franco v. Chobani, LLC*, 184 F.4th 599 (7th Cir. 2026).

1 *Franco*, 184 F.4th at 604.

2 45. Notably, the FDA itself, appearing as amicus curiae at the Seventh
3 Circuit's invitation, "took the position that the text of § 101.9(c)(6)(ii) is
4 unambiguous, and that total sugars as defined in that regulation include all
5 monosaccharides, including allulose." *Id.* The court found the FDA's reading
6 persuasive, thorough, and consistent with the agency's earlier statements, including
7 the FDA's 2016 rulemaking statement that allulose, as a monosaccharide, "must be
8 included" in the Total Sugars declaration. *Id.*; 81 Fed. Reg. 33,742, 33,795-96 (May
9 27, 2016).

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

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

1 48. The Seventh Circuit accordingly held that the plaintiffs’ state law claims
2 were not preempted: “The federal requirements at issue are plain—food products
3 cannot be labeled sugar free unless they have less than half a gram of sugar, and
4 sugars include every monosaccharide, including allulose. . . . The [plaintiffs] want to
5 hold Chobani liable under state law for violating identical standards, and so their
6 claims are not preempted.” *Id.* at *5 (citing 21 U.S.C. § 343-1(a)(5); *Bell v. Publix*
7 *Super Markets, Inc.*, 982 F.3d 468, 484 (7th Cir. 2020)).

8 49. The Seventh Circuit further held that the plaintiffs plausibly alleged
9 consumer deception, reasoning that “given the absolute promise on Chobani’s
10 products (sugar free),” the allegation that consumers were fooled by the labels was
11 not implausible, and that “how reasonable consumers perceive [the] labels and make
12 decisions about [the] products are questions of fact that cannot be answered” on the
13 pleadings. *Id.* at *5-6 (citing *Bell*, 982 F.3d at 480-81; *Dumont v. Reily Foods Co.*,
14 934 F.3d 35, 41 (1st Cir. 2019)).

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

23 51. Each of those holdings applies with equal or greater force here. Like
24 Chobani’s yogurt, the Products make an absolute “0g Sugar” and “Zero Sugar”
25 promise while containing allulose as the second-listed and second-most predominant
26 ingredient in Defendant’s Products. This representation is false and misleading,
27 because allulose is a sugar under 21 C.F.R. § 101.9(c)(6)(ii).

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

52. 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*.

53. 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.”¹⁸ Such nonbinding recommendations are insufficient to preempt state law.

54. 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 “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.”

55. 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 only that

¹⁸ U.S. Food & Drug Admin., The Declaration of Allulose and Calories from Allulose on Nutrition and Supplement Facts Labels: Guidance for Industry (Oct. 2020). (last visited August, 2026).

1 it intended to address any potential revisions at an unspecified “later date” when
2 “time and resources permit.”¹⁹

3 56. In the years since, the FDA has never taken any action to amend the
4 regulations governing sugar nutrient content claims. To the contrary, in May 2022
5 the FDA refused a petition to amend the regulatory definition of sugar in connection
6 with the sugar tagatose and reiterated that the existing definition at 21 C.F.R.
7 § 101.9(c)(6)(ii) remains in effect.²⁰ Allulose falls within the scope of that definition
8 and is thus a “sugar” under existing FDA regulations.

9 **F. Defendant Misleads Plaintiff and Reasonable Consumers, Who Relied on**
10 **the Material and False Advertising Claims to Their Detriment**

11 57. **Materiality.** The Challenged Representations are material to reasonable
12 consumers, including Plaintiff, in deciding to buy the Products. Specifically, the
13 composition of the Products, containing no sugar, is important to consumers and
14 motivates them to buy the Products. Consumer demand for 0g Sugar products is well
15 documented: consumer surveys have determined that over 70% of Americans are
16 trying to limit or avoid sugars in their diet.²¹ Defendant’s own marketing strategy,
17 which pairs the “0g Sugar” claim with “zero sugar” messaging, is expressly designed
18 to capitalize on this demand.

19 58. **Reliance.** The Class, including Plaintiff, reasonably relied on the
20 Challenged Representations in deciding to purchase the Products.

21 59. **Consumers Lack Knowledge of Falsity.** Consumers, including
22 Plaintiff, do not know, and have no reason to know, at the time of purchase, that the

23
24 ¹⁹ Notice, 85 Fed. Reg. 202 (October 19, 2020),
<https://www.govinfo.gov/content/pkg/FR-2020-10-19/pdf/2020-22900.pdf>. (last
visited August 2026).

25 ²⁰ U.S. Food & Drug Admin., Final Response to Citizen Petition from FDA CFSAN
to Bonumose LLC, Regulations.gov, May 19, 2022,
26 <https://www.regulations.gov/document/FDA-2018-P-0874-0053>. (last visited
August 2026).

27 ²¹ International Food Information Council, 2022 Food and Health Survey, May 18,
28 2022, [https://foodinsight.org/wp-content/uploads/2022/06/IFIC-2022-Food-and-
Health-Survey-Report-May-2022.pdf](https://foodinsight.org/wp-content/uploads/2022/06/IFIC-2022-Food-and-Health-Survey-Report-May-2022.pdf). (last visited August 2026).

1 Products' Challenged Representations are false, misleading, deceptive, and unlawful.
 2 That is because consumers, including Plaintiff, do not work for Defendant and
 3 therefore have no personal knowledge of the actual ingredients used to make the
 4 Products or how those ingredients are classified. Additionally, average consumers do
 5 not have the specialized knowledge of a chemist or product developer. Allulose is
 6 not a common household name among consumers: in a 2021 marketing survey, only
 7 15% of respondents had even heard of allulose, let alone knew it was a sugar.²² Thus,
 8 reasonable consumers, like Plaintiff, cannot discern from the Products' ingredient
 9 disclosures that the Products contain sugar. Furthermore, reasonable consumers do
 10 not ordinarily review information on the back or side panels of a consumer product's
 11 packaging, particularly dense, fine-print ingredient disclosures. Indeed, studies show
 12 that only approximately 7.7% to 11.6% of people even look at the side or back labels
 13 of consumer goods, such as ingredient lists, before they buy them.²³

14 60. The average consumer generally spends no more than approximately 13
 15 seconds making an in-store purchasing decision.²⁴ That decision is heavily based
 16 upon the product's front labeling because consumers do not have time to review and
 17 read every portion of the label and inspect in detail the rear label, which depicts the

19 ²²Perceptions and Use of Dietary Sweeteners, International Food Information
 20 Council, FoodInsight.Org, May 2021, [https://foodinsight.org/wp-](https://foodinsight.org/wp-content/uploads/2021/05/IFIC-Sweeteners-Survey.May-2021.pdf)
 21 [content/uploads/2021/05/IFIC-Sweeteners-Survey.May-2021.pdf](https://foodinsight.org/wp-content/uploads/2021/05/IFIC-Sweeteners-Survey.May-2021.pdf). (last visited
 22 August 2026).

23 ²³Grunert, Klaus, et al., Nutrition knowledge, and use and understanding of nutrition
 24 information on food labels among consumers in the UK, 55 *Appetite* 177, 179-181
 25 (2010) (in-store observational study finding only 11.6% of respondents who placed
 26 a product in their cart were observed looking at the side or back panels of its
 27 packaging before doing so); Grunert, Klaus, et al., Use and understanding of nutrition
 28 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).

²⁴Dickson, 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).

1 ingredients in small print.

2 **61. Defendant’s Knowledge.** Defendant knew, or should have known, that
3 the Challenged Representations were false, misleading, deceptive, and unlawful at
4 the time that Defendant manufactured, marketed, advertised, labeled, and sold the
5 Products using the Challenged Representations to Plaintiff and the Class. Defendant
6 intentionally and deliberately used the Challenged Representations, alongside its
7 massive marketing campaign and brand strategy, to cause Plaintiff and similarly
8 situated consumers to buy the Products believing that the Challenged Representations
9 are true.

10 **62. Knowledge of Falsity.** Defendant marketed the Products with the
11 Challenged Representations, but Defendant opted to formulate and manufacture them
12 in a manner that does not conform to those representations. Specifically, Defendant
13 advertised and labeled the Products as “0g Sugar,” but, instead of using only non-
14 sugar ingredients, Defendant chose to make the Products with allulose, a well-
15 documented sugar, as their second-most predominant ingredient. Defendant knew
16 that: (a) it was putting allulose in the Products; (b) allulose is a sugar; (c) its own
17 labels misrepresented the presence and amount of sugar in the Products; (d)
18 reasonable consumers would view and assume to be true the information on the labels
19 when making purchasing decisions; (e) reasonable consumers would, and in fact did,
20 rely on Defendant’s deceptive representations and labels in making their purchasing
21 decisions; (f) Defendant was not giving consumers the benefit of the bargain; and (g)
22 Defendant was charging consumers a premium for “0g Sugar” products because it
23 knew there was sugar in the Products.

24 **63. Knowledge of Reasonable Consumers’ Perception.** Defendant knew,
25 or should have known, that the Challenged Representations would lead reasonable
26 consumers into believing that the Products were sugar free, i.e., that the Products do
27 not contain sugar. Not only has Defendant labeled the Products with the Challenged
28 Representations and executed a long-standing brand strategy and advertising

1 campaign to identify the Products with the Challenged Representations, but
2 Defendant also has an obligation under section 5 of the Federal Trade Commission
3 Act, codified at 15 U.S.C. § 45, to evaluate its marketing claims from the perspective
4 of the reasonable consumer. That means Defendant was statutorily obligated to
5 consider whether the Challenged Representations, be it in isolation or in conjunction
6 with its marketing campaign, would mislead reasonable consumers into believing
7 that the Products contain no sugar. Thus, Defendant either knew the Challenged
8 Representations were misleading before it marketed the Products to the Class,
9 including Plaintiff, or Defendant would have known that they were deceptive had
10 Defendant complied with its statutory obligations.

11 64. **Knowledge of Materiality.** Defendant knew or should have known that
12 the Challenged Representations are material to consumers. *First*, manufacturers and
13 marketers, like Defendant, generally reserve the front primary display panel of labels
14 on consumer products for the most important and persuasive information, which they
15 believe will motivate consumers to buy the products. Here, the conspicuousness of
16 the Challenged Representations on the Products' labels, including "0g Sugar" printed
17 in large type across the front of every pack and every can, demonstrates Defendant's
18 awareness of their importance to consumers and Defendant's understanding that
19 consumers prefer and are motivated to buy products that conform to the Challenged
20 Representations. *Second*, manufacturers and marketers repeat marketing claims to
21 emphasize and characterize a brand or product line, shaping consumers'
22 expectations, because they believe those repeated messages will drive consumers to
23 buy the products. Here, the constant, unwavering use of the Challenged
24 Representations on the Products, on Defendant's website, on third-party retail
25 websites, and throughout Defendant's marketing campaign evidences Defendant's
26 awareness that the falsely advertised product attribute is important to consumers. It
27 also evidences Defendant's intent to convince consumers that the Products conform
28 to the Challenged Representations and, ultimately, drive sales.

1 **65. Defendant’s Continued Deception, Despite Its Knowledge.**

2 Defendant, as the manufacturer and marketer of the Products, had exclusive control
 3 over the Challenged Representations’ inclusion on the Products’ labels and
 4 advertisements. Defendant readily and easily could have stopped using the
 5 Challenged Representations to sell the Products. However, despite Defendant’s
 6 knowledge of the Challenged Representations’ falsity, and Defendant’s knowledge
 7 that consumers reasonably rely on the Challenged Representations in deciding to buy
 8 the Products, Defendant deliberately chose to market the Products with the
 9 Challenged Representations, thereby misleading consumers into buying or otherwise
 10 overpaying for the Products. Thus, Defendant knew, or should have known, at all
 11 relevant times, that the Challenged Representations mislead reasonable consumers,
 12 such as Plaintiff, into buying the Products to attain the product attributes that
 13 Defendant falsely advertised and warranted. Defendant’s continued use of the
 14 Challenged Representations after the Seventh Circuit’s July 27, 2026 decision in
 15 *Franco v. Chobani* confirming that allulose is a sugar under federal law further
 16 evidences the knowing and willful character of Defendant’s misconduct.

17 **66. Price Premium.** Defendant charges a substantial price premium for the
 18 Products based on the Challenged Representations. For example, Defendant sells a
 19 12-pack of the Products on Amazon for \$21.99. Plaintiff and Class members paid
 20 more for the Products, and would only have been willing to pay less or unwilling to
 21 purchase them at all, absent the false Challenged Representations.

22 **G. The Products Are Substantially Similar**

23 **67.** As described *supra*, Plaintiff purchased the Liquid Death “0g Sugar”
 24 Sparkling Energy Drink Scary Strawberry Zero Sugar Energy Drink (the “Purchased
 25 Product”). The additional unpurchased Products are substantially similar to the
 26 Purchased Product:

- 27 a. **Defendant.** All Products are manufactured, sold, marketed, advertised,
 28 labeled, and packaged by Defendant.

- 1 b. **Brand.** All Products are sold under the Liquid Death “0g Sugar”
2 Sparkling Energy Drink brand name and trade dress.
- 3 c. **Marketing Demographics.** All Products are marketed directly to
4 consumers for personal use.
- 5 d. **Purpose.** All Products are intended for the primary purpose of
6 hydration, and are prepared and consumed in the same manner: by
7 drinking.
- 8 e. **False Advertising Claims.** All Products contain the same Challenged
9 Representations on their labeling and packaging. In addition, all
10 Products prominently display the Challenged Representations on the
11 front label in order to focus the consumer’s attention on the Challenged
12 Representations.
- 13 f. **Key Ingredients.** All Products are sweetened with allulose, a sugar, as
14 their second-listed and second-most predominant ingredient.
- 15 g. **Misleading Effect.** The misleading effect of the Challenged
16 Representations on consumers is the same for all Products: consumers
17 are tricked into buying or otherwise overpaying a premium for products
18 represented to contain no sugar, but they receive products that, contrary
19 to the Products’ labels, are sweetened predominantly with allulose, a
20 sugar.

21 **H. No Adequate Remedy at Law**

22 68. **No Adequate Remedy at Law.** Plaintiff and members of the Class are
23 entitled to equitable relief as no adequate remedy at law exists.

24 69. **Injunctive Relief to Cease Misconduct and Dispel Misperception.**
25 Injunctive relief is appropriate on behalf of Plaintiff and members of the Class
26 because Defendant continues to misrepresent the Products with the Challenged
27 Representations. Injunctive relief is necessary to prevent Defendant from continuing
28 to engage in the unfair, fraudulent, and/or unlawful conduct described herein and to

1 prevent future harm, none of which can be achieved through available legal remedies
2 (such as monetary damages to compensate past harm). Further, injunctive relief, in
3 the form of affirmative disclosures, is necessary to dispel the public misperception
4 about the Products that has resulted from years of Defendant's unfair, fraudulent, and
5 unlawful marketing efforts. Such disclosures would include, but are not limited to,
6 publicly disseminated statements that the Products' Challenged Representations are
7 not true and providing accurate information about the Products' true nature; and/or
8 requiring prominent qualifications and/or disclaimers on the Products' front labels
9 concerning the Products' true nature. An injunction requiring affirmative disclosures
10 to dispel the public's misperception, and to prevent the ongoing deception and repeat
11 purchases based thereon, is also not available through a legal remedy (such as
12 monetary damages). In addition, Plaintiff is currently unable to accurately quantify
13 the damages caused by Defendant's future harm, because discovery and Plaintiff's
14 investigation have not yet been completed, rendering injunctive relief all the more
15 necessary. For example, because the Court has not yet certified any class, the
16 following remains unknown: the scope of the class, the identities of its members,
17 their respective purchasing practices, prices of past/future Products' sales, and
18 quantities of past/future Products' sales.

19 **70. Illinois vs. Nationwide Class Claims.** Violations of the ICFA are
20 claims asserted on behalf of Plaintiff and the Illinois Subclass against Defendant,
21 while breach of warranty and unjust enrichment/restitution are asserted on behalf of
22 Plaintiff and the Nationwide Class. Dismissal of farther-reaching claims, such as
23 restitution, would bar recovery for non-Illinois members of the Class. In other words,
24 legal remedies available or adequate under the Illinois-specific causes of action have
25 no impact on this Court's jurisdiction to award equitable relief under the remaining
26 causes of action asserted on behalf of non-Illinois putative class members.

27 **CLASS ALLEGATIONS**

28 **71. Class Definition.** Plaintiff brings this action as a class action pursuant

1 to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of himself and
 2 all others similarly situated, and as members of the Classes defined as follows:

3 All persons or entities that, within the relevant limitations
 4 period, purchased the Products in the United States,
 5 displaying the Challenged Representations on the
 6 Products' labels, for purposes other than resale
 7 ("Nationwide Class"); and

8 All persons or entities that, within the relevant limitations
 9 period, purchased the Products in Illinois, displaying the
 10 Challenged Representations on the Products' labels, for
 11 purposes other than resale ("Illinois Subclass")

12 ("Nationwide Class" and "Illinois Subclass," collectively,
 13 "Class").

14 72. **Class Definition Exclusions.** Excluded from the Class are: (i)
 15 Defendant, its assigns, successors, and legal representatives; (ii) any entities in which
 16 Defendant has controlling interests; (iii) federal, state, and/or local governments,
 17 including, but not limited to, their departments, agencies, divisions, bureaus, boards,
 18 sections, groups, counsels, and/or subdivisions; and (iv) any judicial officer presiding
 19 over this matter and persons within the third degree of consanguinity to such judicial
 20 officer.

21 73. **Reservation of Rights to Amend the Class Definition.** Plaintiff
 22 reserves the right to amend or otherwise alter the class definitions presented to the
 23 Court at the appropriate time in response to facts learned through discovery, legal
 24 arguments advanced by Defendant, or otherwise.

25 74. **Numerosity:** Members of the Class are so numerous that joinder of all
 26 members is impracticable. Upon information and belief, the Nationwide Class
 27 consists of hundreds of thousands of purchasers (if not more) dispersed throughout
 28 the United States, and the Illinois Subclass likewise consists of tens of thousands of
 purchasers (if not more) dispersed throughout the State of Illinois. Accordingly, it
 would be impracticable to join all members of the Class before the Court.

75. **Common Questions Predominate:** There are numerous and substantial
 questions of law or fact common to all members of the Class that predominate over

1 any individual issues. Included within the common questions of law or fact are:

- 2 a. Whether Defendant engaged in unlawful, unfair, or deceptive business
3 practices by advertising and selling the Products;
- 4 b. Whether allulose is a sugar, including under 21 C.F.R. § 101.9(c)(6)(ii);
- 5 c. Whether Defendant's conduct of advertising and selling the Products as
6 "0g Sugar," creating the reasonable assumption that the Products do not
7 contain any sugar, when the Products are sweetened predominantly with
8 allulose, a sugar, constitutes an unfair method of competition, or unfair
9 or deceptive act or practice, in violation of 815 ILCS 505/2;
- 10 d. Whether Defendant used deception, fraud, false pretense, false promise,
11 or misrepresentation, or concealed, suppressed, or omitted a material
12 fact, in connection with the sale of the Products, in violation of 815
13 ILCS 505/2;
- 14 e. Whether Defendant intended that Plaintiff and the Class rely on the
15 Challenged Representations;
- 16 f. Whether Defendant's conduct occurred in the course of conduct
17 involving trade or commerce;
- 18 g. Whether Defendant's conduct offends public policy, is immoral,
19 unethical, oppressive, or unscrupulous, or causes substantial injury to
20 consumers, and is therefore unfair within the meaning of 815 ILCS
21 505/2;
- 22 h. Whether Defendant's conduct proximately caused actual damage to
23 Plaintiff and the Class;
- 24 i. Whether Plaintiff and the Class paid more money for the Products than
25 they actually received;
- 26 j. How much more money Plaintiff and the Class paid for the Products
27 than they actually received;
- 28 k. Whether Defendant's conduct constitutes breach of warranty;

1. Whether Plaintiff and the Class are entitled to injunctive relief; and
- m. Whether Defendant was unjustly enriched by its unlawful conduct.

76. **Typicality:** Plaintiff's claims are typical of the claims of the Class members he seeks to represent because Plaintiff, like the Class members, purchased Defendant's misleading and deceptive Products. Defendant's unlawful, unfair, and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and the Class sustained similar injuries arising out of Defendant's conduct. Plaintiff's and Class members' claims arise from the same practices and course of conduct and are based on the same legal theories.

77. **Adequacy:** Plaintiff is an adequate representative of the Class he seeks to represent because his interests do not conflict with the interests of the Class members Plaintiff seeks to represent. Plaintiff will fairly and adequately protect Class members' interests and has retained counsel experienced and competent in the prosecution of complex class actions, including complex questions that arise in consumer protection litigation.

78. **Superiority and Substantial Benefit:** A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claims presented in this case predominate over any questions of law or fact, if any exist at all, affecting any individual member of the Class;
- b. Absent a Class, the members of the Class will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoys its ill-gotten gains;
- c. Given the size of individual Class members' claims, few, if any, Class members could afford to or would seek legal redress individually for the

wrongs Defendant committed against them, and absent Class members have no substantial interest in individually controlling the prosecution of individual actions;

d. When the liability of Defendant has been adjudicated, claims of all members of the Class can be administered efficiently and/or determined uniformly by the Court; and

e. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and Class members can seek redress for the harm caused to them by Defendant.

79. **Inconsistent Rulings.** Because Plaintiff seeks relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendant.

80. **Injunctive/Equitable Relief.** The prerequisites to maintaining a class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

81. **Manageability.** Plaintiff and Plaintiff's counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

COUNT ONE

Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act 815 Ill. Comp. Stat. §§ 505/1 *et seq.*

(Individually and On Behalf of the Illinois Subclass)

82. Plaintiff re-alleges and incorporates by reference all allegations contained in this Complaint, as though fully set forth herein.

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

4 84. Defendant engages in “trade” or “commerce” in Illinois as defined by
5 815 ILCS 505/1(f).

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

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

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

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

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

19 90. Defendant knew the Products contained allulose, a sugar, despite
20 representing that they contain “0g Sugar” and “Zero Sugar.”

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

26 92. Defendant’s misrepresentations and other deceptive conduct, including
27 the misrepresentations and other deceptive conduct described herein, occurred before
28 Plaintiff and the Illinois Subclass decided to purchase the Products.

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

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

9 95. For example, a reasonable consumer, such as Plaintiff, would want to
10 know that food items, such as the Products, that were advertised as containing "0g
11 Sugar" and "Zero Sugar," included allulose, a sugar.

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

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

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

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

27 100. Plaintiff is entitled to pursue a claim on behalf of the Illinois Subclass
28 against Defendant for actual damages, punitive damages, injunctive relief, other

1 equitable relief, and attorneys' fees and costs to remedy Defendant's violations of the
2 ICFA pursuant to 815 ILCS 505/10a.

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

5 **COUNT TWO**

6 **Breach of Express Warranty**

7 ***(Individually and On Behalf of the Nationwide Class and Illinois Subclass)***

8 102. Plaintiff re-alleges and incorporates by reference all allegations
9 contained in this Complaint, as though fully set forth herein.

10 103. By advertising and selling the Products at issue, Defendant made
11 promises and affirmations of fact on the Products' labeling, and through its marketing
12 and advertising, as described herein, including that the Products are "0g Sugar" and
13 contain "Zero Sugar." This labeling and advertising constitute express warranties and
14 became part of the basis of the bargain between Plaintiff and members of the Class
15 and Defendant. Defendant purports, through the Products' labeling and advertising,
16 to create express warranties that the Products, among other things, conform to the
17 Challenged Representations.

18 104. All conditions precedent to Defendant's liability under this contract
19 have been performed by Plaintiff and the Class.

20 105. Defendant breached the terms of the contract, including the express
21 warranties, with Plaintiff and the Class by not providing Products that conform to the
22 advertising and label claims. The Products are not sugar free; they are sweetened
23 predominantly with allulose, a sugar, as the second most predominant component.

24 106. As a direct and proximate result of Defendant's breach of express
25 warranty, Plaintiff and members of the Class were harmed in the amount of the
26 purchase price premium they paid for the Products. Further, Plaintiff and members
27 of the Class have suffered and continue to suffer economic losses and other damages
28 including, but not limited to, the amounts paid for the Products, and any interest that

1 would have accrued on those monies, in an amount to be proven at trial. Accordingly,
2 Plaintiff seeks a monetary award for breach of warranty in the form of damages,
3 restitution, and/or disgorgement of ill-gotten gains to compensate Plaintiff and the
4 Class for said monies, as well as injunctive relief to enjoin Defendant's misconduct
5 to prevent ongoing and future harm that will result.

6 107. Plaintiff seeks punitive damages pursuant to this cause of action for
7 breach of warranty on behalf of Plaintiff and the Class. Defendant's unfair,
8 fraudulent, and unlawful conduct described herein constitutes malicious, oppressive,
9 and/or fraudulent conduct warranting an award of punitive damages as permitted by
10 law. Defendant's misconduct is malicious as Defendant acted with the intent to cause
11 Plaintiff and consumers to pay for product attributes that they were not, in fact,
12 receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and
13 consumers as Defendant was aware of the probable consequences of its conduct and
14 deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's
15 misconduct is oppressive as, at all relevant times, said conduct was so vile, base,
16 and/or contemptible that reasonable people would look down upon it and/or
17 otherwise would despise such misconduct. Said misconduct subjected Plaintiff and
18 consumers to cruel and unjust hardship in knowing disregard of their rights.
19 Defendant's misconduct is fraudulent as Defendant, at all relevant times,
20 intentionally misrepresented and/or concealed material facts with the intent to
21 deceive Plaintiff and consumers. The wrongful conduct constituting malice,
22 oppression, and/or fraud was committed, authorized, adopted, approved, and/or
23 ratified by officers, directors, and/or managing agents of Defendant.

24 108. As a result of Defendant's breach, Plaintiff and the Class have been
25 damaged in an amount to be determined at trial.
26
27
28

COUNT THREE

Unjust Enrichment/Restitution

(Individually and On Behalf of the Nationwide Class and Illinois Subclass)

109. Plaintiff re-alleges and incorporates by reference all allegations contained in this Complaint, as though fully set forth herein.

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

111. 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.

112. 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.

113. 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.

114. 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.

115. Plaintiff seeks punitive damages pursuant to this cause of action for unjust enrichment on behalf of Plaintiff and the Class. Defendant's unfair, fraudulent, and unlawful conduct described herein constitutes malicious, oppressive, and/or

1 fraudulent conduct warranting an award of punitive damages as permitted by law.
2 Defendant's misconduct is malicious as Defendant acted with the intent to cause
3 Plaintiff and consumers to pay for product attributes that they were not, in fact,
4 receiving. Defendant willfully and knowingly disregarded the rights of Plaintiff and
5 consumers as Defendant was aware of the probable consequences of its conduct and
6 deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's
7 misconduct is oppressive as, at all relevant times, said conduct was so vile, base,
8 and/or contemptible that reasonable people would look down upon it and/or
9 otherwise would despise such corporate misconduct. Said misconduct subjected
10 Plaintiff and consumers to cruel and unjust hardship in knowing disregard of their
11 rights. Defendant's misconduct is fraudulent as Defendant, at all relevant times,
12 intentionally misrepresented and/or concealed material facts with the intent to
13 deceive Plaintiff and consumers. The wrongful conduct constituting malice,
14 oppression, and/or fraud was committed, authorized, adopted, approved, and/or
15 ratified by officers, directors, and/or managing agents of Defendant.

16 **PRAYER FOR RELIEF**

17 116. WHEREFORE, Plaintiff, individually and on behalf of all others
18 similarly situated, prays for judgment against Defendant as follows:

- 19 a. **Certification:** For an order certifying this action as a class action,
20 appointing Plaintiff as the Class Representative, and appointing
21 Plaintiff's Counsel as Class Counsel, consistent with applicable law;
22 b. **Declaratory Relief:** For an order declaring that Defendant's conduct
23 violates the statutes and laws referenced herein, consistent with
24 applicable law and pursuant to only those causes of action so permitted;
25 c. **Injunction:** For an order requiring Defendant to change its business
26 practices to prevent or mitigate the risk of the consumer deception and
27 violations of law outlined herein. This includes, for example, orders that
28 Defendant immediately cease and desist from selling the unlawful

Products in violation of law; that enjoin Defendant from continuing to market, advertise, distribute, and sell the Products in the unlawful manner described herein; that require Defendant to engage in an affirmative advertising campaign to dispel the public misperception of the Products resulting from Defendant's unlawful conduct; and/or that require Defendant to take all further and just corrective action, consistent with applicable law and pursuant to only those causes of action so permitted;

- d. **Damages/Restitution/Disgorgement:** For an order awarding monetary compensation in the form of damages, restitution, and/or disgorgement to Plaintiff and the Class, consistent with applicable law and pursuant to only those causes of action so permitted;
- e. **Punitive Damages/Penalties:** For an order awarding punitive damages, statutory penalties, and/or monetary fines, consistent with applicable law and pursuant to only those causes of action so permitted;
- f. **Attorneys' Fees & Costs:** For an order awarding attorneys' fees and costs, consistent with applicable law and pursuant to only those causes of action so permitted;
- g. **Pre/Post-Judgment Interest:** For an order awarding pre-judgment and post-judgment interest, consistent with applicable law and pursuant to only those causes of action so permitted; and
- h. **All Just & Proper Relief:** For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues and causes of action so triable.

1 DATED: September 10, 2026

Respectfully submitted,

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3 By: /s/ Raphael Janove
Raphael Janove

4 Raphael Janove (SBN 361193)
5 **JANOVE PLLC**
6 115 Broadway, 5th Fl.
7 New York, NY 10006
8 (646) 347-3940
9 raphael@janove.law

Counsel for Plaintiff & the Proposed Classes