IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

John Frelinghuysen, individually and on behalf of all others similarly situated, Plaintiff, v. Supplying Demand, Inc. d/b/a Liquid Death, Defendant.	Civil Action No. **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff John Frelinghuysen ("Plaintiff") brings this action on behalf of himself and all others similarly situated against Supplying Demand, Inc., doing business as Liquid Death ("Defendant"). Plaintiff makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to the allegations specifically pertaining to him, which are based on his personal knowledge.

NATURE OF THE ACTION

1. Plaintiff brings this class action on behalf of himself and all similarly situated consumers who purchased Liquid Death Sparkling Energy beverages marketed as containing zero sugar (collectively, the "Products").[1]

2. Defendant markets and advertises the Products on their labels and packaging and in related online labeling as containing "0g SUGAR," as a "Zero Sugar Energy Drink," and otherwise as containing "Zero Sugar" (collectively, the "Representations"). However,

[1]The Products are the allulose-sweetened formulations of Liquid Death Sparkling Energy beverages sold during the relevant period in Murder Mystery, Orange Horror, Scary Strawberry, Tropical Terror, and variety packs containing one or more of those flavors.

unbeknownst to reasonable consumers, the Products contain sugar in the form of allulose. Allulose is a monosaccharide and therefore a sugar under the applicable federal labeling standards.

3. Based on their ingredient composition, the Products contain approximately 2 grams of allulose. The Products' labels also list allulose without the ingredient marker prescribed for a zero-sugar claim and use the Representations without labeling the Products "low calorie" or "reduced calorie" or immediately accompanying each use with a prescribed disclaimer. 21 C.F.R. § 101.60(c)(1)(i)–(iii). Defendant's Representations are therefore false, misleading, and impermissible.

4. Accordingly, Plaintiff brings claims against Defendant for violations of (1) New York General Business Law §§ 349 and 350; (2) state consumer-protection statutes; (3) breach of express warranty; (4) intentional misrepresentation; and (5) unjust enrichment.

PARTIES

5. Plaintiff John Frelinghuysen is a citizen of New York residing in New York, New York. While residing there, Plaintiff Frelinghuysen purchased Defendant's Liquid Death Sparkling Energy Variety Pack containing Scary Strawberry, Tropical Terror, Orange Horror, and Murder Mystery (the "Product"). Plaintiff made this purchase for his personal use through Defendant's official Walmart.com listing[2] on April 14, 2026, for $19.98. Prior to making his purchase, Plaintiff saw and relied on Defendant's representations that the Product was a "Zero Sugar Energy Drink," contained "Zero Sugar and 5 Calories," and bore the claim "0g SUGAR." Based on these representations, Plaintiff reasonably believed that the Product contained no sugar. Plaintiff relied on these representations when he decided to purchase the Product. Accordingly, these representations were part of the basis of his bargain, in that Plaintiff would not have purchased the

[2] Liquid Death Sparkling Energy Variety Pack, Zero Sugar Energy Drink, Unextreme Caffeine 100mg, Essential Vitamins, 4 Flavors: Strawberry, Tropical, Orange, and Murder Mystery, 12 fl oz (Pack of 12) - Walmart.com

Product on the same terms had he known that the representations were untrue. Furthermore, in making his purchase, Plaintiff paid a price premium due to Defendant's false and misleading zero-sugar claims. Plaintiff, however, did not receive the benefit of the bargain because the Product was not, in fact, free of sugar. Instead, it was sweetened with allulose, a sugar, in an amount exceeding 0.5 gram per can. Had Plaintiff known that Defendant's representations were false and misleading, he would not have purchased the Product or would have paid substantially less for it.

6. Defendant Supplying Demand, Inc., doing business as Liquid Death, is a Delaware corporation with its principal place of business in Los Angeles, California. Defendant formulates, labels, markets, distributes, and sells the Products throughout New York and the United States, including in this District.

JURISDICTION AND VENUE

7. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005 ("CAFA"), because the proposed Classes include more than 100 members, the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs, and at least one Class Member 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 Plaintiff's claims occurred in this State, including Plaintiff's purchase 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 Plaintiff's claims took place within this District, including Plaintiff's 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.[3]

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. 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. The American Heart Association recommends limiting added sugars to no more than 6 percent of daily calories. This guidance reinforces consumers' attention to categorical representations about whether products contain sugar.[4]

12. Food and beverage manufacturers are acutely aware of this demand and of the premium consumers will pay to satisfy it. Products labeled "sugar free," "zero sugar," and "0g sugar" command higher prices than comparable products that do not bear those claims, and manufacturers reserve the principal display panel of their packaging and prominent portions of online labeling for the claims they believe will most motivate a purchase.

13. Defendant has capitalized on that demand. It markets allulose formulations of the Products, whose predominant non-water ingredient is allulose, a sugar, while labeling and

---

[3]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.

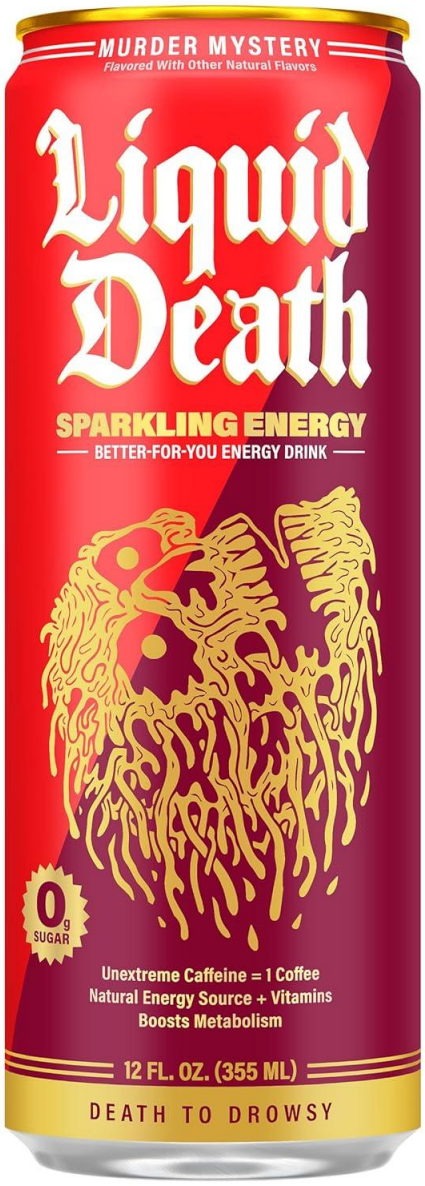
[4]U.S. Department of Health and Human Services & U.S. Department of Agriculture, Dietary Guidelines for Americans, 2025–2030, at 5 (Jan. 2026), https://cdn.realfood.gov/DGA.pdf; World Health Organization, Healthy Diet (Jan. 26, 2026), https://www.who.int/news-room/fact-sheets/detail/healthy-diet; American Heart Association, Added Sugars (last reviewed Aug. 2, 2024), https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/sugar/added-sugars.

advertising them as containing "0g SUGAR" and "Zero Sugar." Defendant thereby obtained an unfair competitive advantage over competitors whose zero-sugar claims are true, at the expense of unwitting consumers.

B. Defendant's Representations and Warranties

14. Defendant prominently places "0g SUGAR" in a promotional starburst on the principal display panel of each Product. On additional labels and in related online labeling, Defendant reinforces that message by representing each Product as a "Zero Sugar Energy Drink" containing "Zero Sugar." These claims are referred to herein as the "Representations."

15. Below is an illustrative sampling of the Products and the Representations:



Murder Mystery principal display panel: "0g SUGAR."



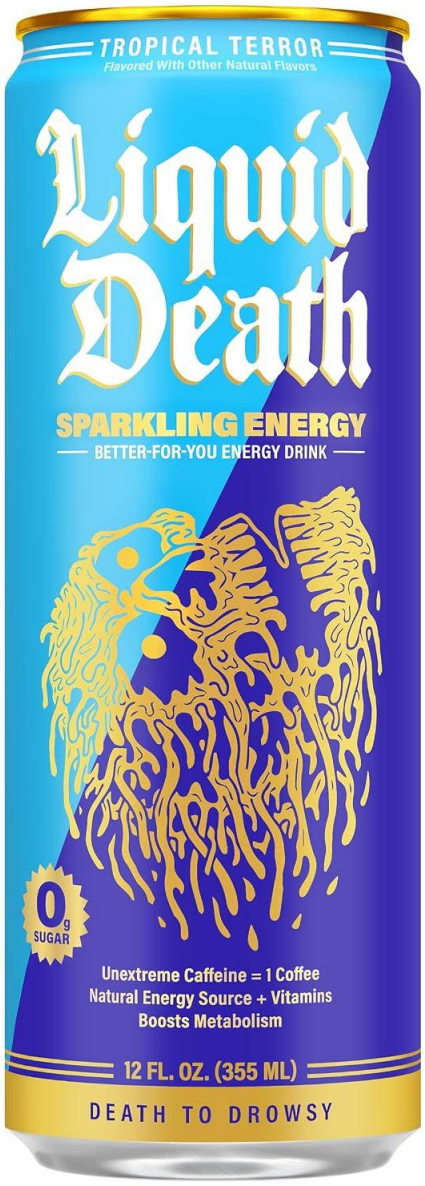
Murder Mystery information panel (reviewed allulose formulation): 2g Total Carbohydrate, 0g Total Sugars, and allulose listed second.



Representative front labels for Scary Strawberry, Orange Horror, and Murder Mystery.



Representative information panels for the reviewed allulose formulations of Scary Strawberry, Orange Horror, and Murder Mystery.



Tropical Terror principal display panel: "0g SUGAR."



Tropical Terror information panel (reviewed allulose formulation): the same 2g Total Carbohydrate, 0g Total Sugars, and allulose-first-after-water formulation.

16. Defendant disseminated the Representations through the Products' packaging, its own website, Amazon.com, Walmart.com, Target.com, Kroger, and other online labeling. Defendant's official pages for the four challenged flavors and identified variety packs use "Zero Sugar | 5 Calories" and materially uniform zero-sugar copy.[5] Defendant authored, created, supplied, authorized, approved, adopted, and disseminated the materially uniform product copy and images used in the retailer listings. Defendant's official pages also direct consumers to identified retailer destinations, including Walmart and Amazon, further demonstrating Defendant's knowledge, authorization, and adoption of the Representations. The Product pages supplement and explain the Products and are therefore labeling subject to the applicable FDA nutrient-content regulations.

17. The marketing claims associated with each Product, and their placement on the Products' labels and online labeling, are described and illustrated above.

18. The Representations communicate to reasonable consumers that the Products contain no sugar. That is the plain and ordinary meaning of "0g SUGAR" and "Zero Sugar." Federal and New York law prescribe an objective standard governing when those terms may be used.

19. The Representations are not ambiguous. "Zero Sugar" is an absolute, objective, and quantitative claim concerning a measurable physical attribute of the Products. Federal law permits that claim only when a product satisfies each applicable condition governing zero-sugar claims. The Products' 0-gram Total Sugars and Added Sugars declarations reinforce the no-sugar message,

---

[5]See Liquid Death product pages: Murder Mystery, https://liquiddeath.com/products/murder-mystery; Scary Strawberry, https://liquiddeath.com/products/scary-strawberry; Orange Horror, https://liquiddeath.com/products/orange-horror; Tropical Terror, https://liquiddeath.com/products/tropical-terror; 4-Flavor Variety Pack, https://liquiddeath.com/products/sparkling-energy-vp1?size=12oz-12pack; 3-Flavor Variety Pack, https://liquiddeath.com/products/sparkling-energy-vp2; 18-Pack Variety Pack, https://liquiddeath.com/products/sparkling-energy-vp3; and 18-Pack Variety Pack, https://liquiddeath.com/products/sparkling-energy-vp4 (all last visited Aug. 25, 2026).

making it impossible for reasonable consumers to discover from the labeling that the Products contain sugar in the form of allulose.

C. Allulose Is a Sugar

20. Allulose is a sugar.

21. 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]

22. 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]

23. 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

---

[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]Maeng et al., supra note 6, at 9–10.

sucrose.[10] By contrast, allulose has approximately 70% of sucrose's sweetness and is used in gram-scale quantities as a bulk sweetener.[11]

24. 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, 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]

25. The Food and Drug Administration ("FDA") has recognized that allulose is a sugar. In its 2016 Nutrition Facts rulemaking, 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 contains no allulose exclusion. 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 Sugar" and states that "[a] monosaccharide, or simple sugar, allulose is absorbed by the body, but not metabolized, so it is nearly calorie-free."[16]

---

[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 (last visited Aug. 18, 2026).
[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) (Viewpoint), https://doi.org/10.1021/acs.jafc.5c13620.
[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 Revs. Food Sci. & 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/ (last visited Aug. 11, 2026).

27. Allulose appears second in the Products' ingredient statements, immediately after carbonated water and before magnesium lactate, citric acid, L-theanine, stevia leaf extract, caffeine, ascorbic acid, natural flavor, and cyanocobalamin. Under federal labeling law, ingredients must be listed in descending order of predominance by weight unless ingredients present at 2 percent or less are grouped after an appropriate quantifying phrase. 21 C.F.R. § 101.4(a)(1)–(2). The Products' ingredient statements use no such grouping phrase. Allulose is therefore present in a greater amount by weight than every other ingredient except carbonated water.

28. Each 355-milliliter can of the Products declares 2 grams of Total Carbohydrate, 0 grams of Total Sugars, and 0 grams of Added Sugars. The Nutrition Facts panel contains no sugar-alcohol line and states that the Products are not a significant source of dietary fiber. Total Carbohydrate is calculated by subtraction and expressed to the nearest gram, so the declared 2 grams reflects an actual content of at least 1.5 grams. 21 C.F.R. § 101.9(c)(6). The fiber statement means less than 1 gram rather than zero. *Id.* § 101.9(c)(6)(i). The 2-gram figure is a direct declaration of total carbohydrate; that allulose accounts for it is an inference drawn from the facts below.

29. No ingredient in the Products other than allulose is a source of significant carbohydrates. Carbonated water contributes no carbohydrate. The panel declares the quantities of several remaining ingredients in milligrams: magnesium 40 milligrams, vitamin C 54 milligrams, caffeine 100 milligrams, and vitamin B12 1.44 micrograms. Stevia leaf extract (Reb A) is a high-intensity sweetener hundreds of times sweeter than sucrose and is used at milligram levels. Citric acid, L-theanine, and natural flavor are likewise present at milligram levels. Collectively, the non-allulose ingredients account for a fraction of a single gram. Allulose is the only ingredient capable of accounting for the declared carbohydrate.

30. The label declares 40 milligrams of elemental magnesium and identifies magnesium lactate as the only magnesium source. Using the atomic weight of magnesium (24.305) and published molecular weights for anhydrous magnesium lactate (202.45) and magnesium lactate dihydrate (238.48), 40 milligrams of elemental magnesium corresponds to approximately 0.33 to 0.39 gram of magnesium lactate. Because allulose is listed ahead of magnesium lactate, allulose is present in a greater amount by weight. This cross-check does not establish the precise quantity of allulose, but it independently confirms that allulose is not present in a trace amount.

31. Taken together—Defendant's admission that allulose sweetens the beverage, allulose's position as the predominant non-water ingredient, the 2-gram Total Carbohydrate declaration, the sub-one-gram fiber declaration, the absence of sugar alcohol, and the magnesium-lactate cross-check—these facts support a reasonable inference that allulose supplies the 2 grams of declared carbohydrates.

32. The Products are therefore beverages intentionally sweetened with a material quantity of allulose, while Defendant uses categorical no-sugar messaging outside the Nutrition Facts panel to hide that inclusion.

D. The Products Violate the FDA Nutrient Content Regulations

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

34. 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 Representations appear outside the Nutrition Facts panel on

the Products' packaging and in related online labeling and expressly or implicitly characterize the level of sugar in the Products.

35. 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 . . . .").

36. The Representations are nutrient-content claims because they expressly or implicitly characterize the level of sugar. 21 C.F.R. § 101.13(b). They are governed by 21 C.F.R. §§ 101.13 and 101.60(c)(1).

37. The "0g SUGAR" representation is part of Defendant's unified categorical zero-sugar campaign. FDA has explained that a neutral statement using the regulatory nutrient name—for example, "0 g total sugars"—may be an amount statement under § 101.13(i).[17] If "0g SUGAR" is classified as an amount statement under § 101.13(i)(3), it is nevertheless actionable because such a statement may appear only if it is not false or misleading in any respect. The "0g SUGAR" representation, presented in a promotional starburst, without the regulatory word "Total," and alongside repeated literal zero-sugar representations, is false and materially misleading in context. Compliance is determined using the analytical methodology prescribed by § 101.9. 21 C.F.R. § 101.13(o).

[17]U.S. Food & Drug Administration, Industry Resources on the Changes to the Nutrition Facts Label, Label Claims Q&A, answer to the question beginning "Sugar content claims described in 21 CFR 101.60(c), such as 'sugar free' and 'no sugar' . . .," https://www.fda.gov/food/nutrition-food-labeling-and-critical-foods/industry-resources-changes-nutrition-facts-label (last visited Aug. 25, 2026).

38. Alternatively, the "0g SUGAR" representation implicitly characterizes categorical absence. Its promotional presentation, use of "SUGAR" rather than "Total Sugars," and placement alongside zero-sugar representations cause it to function as a categorical zero-sugar claim. It must therefore be consistent with the applicable defined claim under §§ 101.13(i)(1) and 101.60(c)(1).

39. Section 101.60(c)(1) specifically governs the use of the "sugar free" and "zero sugar" nutrient-content claims at issue here. That regulation provides that terms such as "sugar free," "free of sugar," "no sugar," "zero sugar," "without sugar," "sugarless," and "trivial source of sugar" may not be used on the label or in labeling of a food unless:

> (i) The food contains less than 0.5 g of sugars, as defined in § 101.9(c)(6)(ii), per reference amount customarily consumed and per labeled serving or, in the case of a meal product or main dish product, less than 0.5 g of sugars per labeled serving; and
>
> (ii) The food contains no ingredient that is a sugar or that is generally understood by consumers to contain sugars unless the listing of the ingredient in the ingredient statement is followed by an asterisk that refers to the statement below the list of ingredients, which states "adds a trivial amount of sugar," "adds a negligible amount of sugar," or "adds a dietarily insignificant amount of sugar;" and
>
> (iii)(A) It is labeled "low calorie" or "reduced calorie" or bears a relative claim of special dietary usefulness labeled in compliance with paragraphs (b)(2), (b)(3), (b)(4), or (b)(5) of this section, or, if a dietary supplement, it meets the definition in paragraph (b)(2) of this section for "low calorie" but is prohibited by §§ 101.13(b)(5) and 101.60(a)(4) from bearing the claim; or
>
> (B) Such term is immediately accompanied, each time it is used, by either the statement "not a reduced calorie food," "not a low calorie food," or "not for weight control."

40. The requirements of 21 C.F.R. § 101.60(c)(1)(i)–(iii) are conjunctive; each must be satisfied.

41. First, § 101.60(c)(1)(i) incorporates § 101.9(c)(6)(ii), which defines Total Sugars as the sum of all free mono- and disaccharides. Allulose, as a free monosaccharide epimer of fructose, falls squarely within that definition and must be included when determining compliance with the 0.5-gram threshold. On information and belief, each Product contains more than 0.5 gram and approximately 2 grams of allulose per can.

42. Second, the Product labels violate § 101.60(c)(1)(ii). Allulose is a sugar ingredient, yet its listing is not followed by an asterisk keyed to any prescribed statement that it adds a trivial, negligible, or dietarily insignificant amount of sugar. This condition contains no quantity threshold and applies to the literal and implicit zero-sugar representations even if the exact allulose quantity remains disputed. The omission is established by the face of the labels and does not depend on estimating the amount of allulose.

43. Third, the Representations violate § 101.60(c)(1)(iii). A numerical "5 Calories" statement does not label a product "low calorie" or "reduced calorie" and is not a relative claim of special dietary usefulness. The Products are beverages, not dietary supplements; they are not labeled "low calorie" or "reduced calorie"; and the Representations are not immediately accompanied, each time they are used, by any of the three prescribed statements. These omissions are established by the face of the labeling and do not depend on estimating the amount of allulose.

44. 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), 101.12(b), tbl. 2, 101.13(b), (c), (i), and (o), and 101.60(c)(1).

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

45. 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).

46. 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 online Representations are advertisements within that definition.

47. Because the Representations fail one or more independent conditions in 21 C.F.R. § 101.60(c)(1), and because "0g SUGAR" is false or misleading under § 101.13(i)(3) or alternatively fails the defined zero-sugar conditions under § 101.13(i)(1), 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 are unlawful.

F. Reasonable Consumers Cannot Detect Defendant's Deception

48. Reasonable consumers may rely on the conspicuous Representations at the point of sale. Consumers are not required to search elsewhere on a package or online Product page to contradict an express representation.

49. 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.[18]

50. 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.[19]

51. Allulose is not a common household name. Reasonable consumers, including Plaintiff, are unlikely to recognize the term or to infer from the ingredient list alone that it is a sugar.

52. A consumer who reviews the Nutrition Facts panel encounters 0 grams of Total Sugars and 0 grams of Added Sugars. Those entries reinforce rather than correct the categorical no-sugar message. The panel does not explain FDA's limited enforcement-discretion policy or disclose how much allulose the Product contains.

53. The ingredient list does not cure the deception. Although it names allulose, it neither identifies allulose as a monosaccharide in ordinary consumer language nor states its gram amount. A reasonable consumer is not expected to know carbohydrate chemistry, ingredient-order rules, or how to infer formulation quantities.

54. The deception is actionable independently of the technical misbranding theory. In ordinary language and context, the Representations convey that the Products contain no sugar, while Defendant deliberately sweetens the Products with a material quantity of a monosaccharide and withholds that quantity.

55. Consumers are not required to conduct independent scientific testing or research into the chemical classification of listed ingredients to verify express labeling claims. Reasonable

---

[18]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.

[19]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.

consumers do not possess specialized knowledge of carbohydrate chemistry. Defendant is responsible for ensuring that its express labeling and marketing claims are truthful and not misleading.

G. Defendant Knew the Representations Were False

56. Defendant knew, or should have known, that the 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 Representations communicated that the Products contained no sugar; (d) reasonable consumers would rely on the Representations when purchasing; (e) consumers would not receive the represented benefit of the bargain; (f) the Representations enabled Defendant to charge a premium; (g) the ingredient statements did not contain the marker prescribed by § 101.60(c)(1)(ii); and (h) each use of the Representations was not accompanied by the labeling or disclaimer prescribed by § 101.60(c)(1)(iii).

57. Defendant, as the formulator, marketer, and distributor of the Products, controlled, authored, supplied, authorized, approved, adopted, or materially participated in making the Representations on the Products' labels and in online labeling. Defendant could have stopped using the Representations, ensured that they were true, or used any required qualification. Despite its knowledge that consumers reasonably rely on the Representations, Defendant chose to continue using them, thereby causing consumers to buy or overpay for the Products.

H. Defendant's Representations Injured Plaintiff and the Classes

58. Defendant concealed or failed to disclose material facts about the Products, including (a) allulose's status as a monosaccharide sweetener; (b) the undisclosed material quantity of allulose; (c) allulose's position as the predominant non-water ingredient by weight; (d) the facts that render the Representations false, misleading, or noncompliant under the alternative routes

alleged above; and (e) the fact that the Products are misbranded under federal and New York law when sold bearing the Representations.

59. As an immediate, direct, and proximate result of Defendant's false, misleading, and deceptive representations and omissions, Defendant injured Plaintiff and the Class Members in that they (a) paid money for products that were not as represented; (b) paid a premium price for products that were not as represented; (c) were deprived of the benefit of the bargain because the Products they purchased differed from what Defendant warranted; (d) purchased Products worth less than represented; (e) did not receive products that met the expectations Defendant created; (f) purchased Products that Plaintiff and Class Members did not expect or consent to receive; and (g) purchased Products containing sugar despite intending to buy products represented to contain none.

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

CLASS ALLEGATIONS

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

> **Nationwide Class:** All persons in the United States who, during the maximum period of time permitted by law, purchased Defendant's Products for their personal use.
>
> **State Consumer Protection Subclasses:** For each of the following jurisdictions, a subclass is defined as all persons who, during the maximum period of time permitted by law, purchased one or more of the Products for personal use in that jurisdiction: Alaska, Arizona, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, and the District of Columbia. Each such subclass is referred to by the name of the jurisdiction followed by "Subclass" (e.g., the "New York Subclass") and collectively as the "State Subclasses."

Multi-State Warranty Subclass: All persons who, during the maximum period permitted by law, purchased one or more of the Products for personal use in a state with express-warranty law materially similar to the laws identified herein.

62. The Classes do 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) Plaintiff's counsel or Defendant's counsel.

63. Plaintiff reserves the right to amend the class definitions and add classes or subclasses as appropriate based on investigation, discovery, and the specific theories of liability.

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

65. **Numerosity:** While the exact number of members of the Classes is unknown to Plaintiff at this time and can only be determined by appropriate discovery, upon information and belief, members of the Classes number at least in the thousands. Members of the Classes 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.

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

(a) Whether allulose is a sugar;

(b) Whether the Products were accurately represented as containing zero sugar, including whether they contain more than 0.5 gram of sugar and otherwise satisfy the conditions in 21 C.F.R. § 101.60(c)(1);

(c) Whether reasonable consumers would understand Defendant's representations and warranties concerning the Products to be untrue and misleading;

(d) Whether Defendant's representations and warranties 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 Classes have suffered damages as a result of Defendant's actions and the amount of those damages;

(h) Whether Plaintiff and the members of the Classes are entitled to statutory damages; and

(i) Whether Plaintiff and the members of the Classes are entitled to attorneys' fees and costs.

67. **Typicality:** Plaintiff's claims are typical of the claims of other members of the Classes because Plaintiff was exposed to Defendant's Representations, purchased one of the Products in reliance on those Representations, and suffered the same type of economic loss alleged for Class Members who purchased the Products.

68. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of the Classes as required by Federal Rule of Civil Procedure 23(a)(4). Plaintiff is an adequate representative because he has no interests adverse to those of the Classes, is committed to the vigorous prosecution of this action, and has retained skilled and experienced counsel.

69. **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 Classes 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. Plaintiff anticipates no difficulty in managing this action as a class action. Classwide relief is essential to compel compliance with applicable consumer-protection laws. Separate actions could also subject Defendant to inconsistent obligations.

CAUSES OF ACTION

COUNT I
Violation of N.Y. Gen. Bus. Law § 349
(On Behalf of Plaintiff Frelinghuysen and the New York Subclass)

70. Plaintiff Frelinghuysen hereby incorporates the foregoing allegations as if fully set forth herein.

71. Plaintiff Frelinghuysen brings this claim individually and on behalf of the New York Subclass against Defendant.

72. 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. Gen. Bus. Law § 349(a).

73. 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.

74. Defendant's conduct was consumer-oriented. Defendant marketed and sold the Products to the public through uniform labeling and nationwide online labeling directed to consumers, including New York consumers. Defendant profited by making the Representations even though the Products contain sugar in the form of allulose.

75. Defendant engaged in deceptive acts and practices by falsely representing that the Products contain zero sugar even though they contain sugar in the form of allulose.

76. The Representations were material and were likely to mislead a reasonable consumer acting reasonably under the circumstances.

77. A reasonable consumer would understand the Representations to mean that the Products contain no sugar when, in fact, they contain allulose.

78. Plaintiff Frelinghuysen and members of the New York Subclass were injured as a result of Defendant's deceptive acts and practices.

79. In reliance on the Representations, Plaintiff Frelinghuysen and members of the New York Subclass 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, Plaintiff Frelinghuysen and members of the New York Subclass would not have purchased the Products or would have paid significantly less for them.

80. Defendant made the Representations willfully and knowingly and with reckless disregard for the truth.

81. As a direct and proximate result of Defendant's violations of GBL § 349, Plaintiff Frelinghuysen and members of the New York Subclass are entitled to recover their actual damages or fifty dollars, whichever is greater, together with treble damages up to one thousand dollars for Defendant's willful and knowing violations, reasonable attorneys' fees, and injunctive relief enjoining Defendant from continuing the deceptive acts and practices alleged herein. N.Y. Gen. Bus. Law § 349(h).

COUNT II
Violation of N.Y. Gen. Bus. Law § 350
(On Behalf of Plaintiff Frelinghuysen and the New York Subclass)

82. Plaintiff Frelinghuysen hereby incorporates the foregoing allegations as if fully set forth herein.

83. Plaintiff Frelinghuysen brings this claim individually and on behalf of the New York Subclass against Defendant.

84. 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.

85. 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).

86. Defendant's labeling and advertising of the Products constitute "advertising" within the meaning of GBL § 350-a(1).

87. Defendant engaged in false advertising by representing that the Products contain zero sugar even though they contain sugar in the form of allulose. Defendant's advertising was misleading in a material respect and failed to reveal facts material in light of the Representations Defendant made.

88. The Representations were material and were likely to mislead a reasonable consumer acting reasonably under the circumstances.

89. Plaintiff Frelinghuysen and members of the New York Subclass 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, Plaintiff Frelinghuysen and members of the New York Subclass would not have purchased the Products or would have paid significantly less for them.

90. Defendant made the Representations willfully and knowingly and with reckless disregard for the truth.

91. As a direct and proximate result of Defendant's violations of GBL § 350, Plaintiff Frelinghuysen and members of the New York Subclass are entitled to recover their actual damages or five hundred dollars, whichever is greater, together with treble damages up to ten thousand dollars for Defendant's willful and knowing violations, reasonable attorneys' fees, and injunctive relief enjoining Defendant from continuing to disseminate the false advertising alleged herein. N.Y. Gen. Bus. Law § 350-e(3).

COUNT III
Violation of Alaska Statutes § 45.50.471
(On Behalf of Plaintiff and the Alaska Subclass)

92. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

93. Alaska Statutes § 45.50.471 prohibits unfair or deceptive acts or practices in the conduct of trade or commerce.

94. In its sale of the Products throughout the State of Alaska, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Alaska Statutes § 45.50.471.

95. The Alaska Subclass members are consumers who purchased Defendant's Products for their personal use.

96. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than

0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

97. The foregoing deceptive acts and practices were directed at consumers.

98. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

99. As a result of Defendant's deceptive practices, the Alaska Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

100. On behalf of himself and the Alaska Subclass members, Plaintiff seeks to recover three times the actual damages for each unlawful act or practice, or $500 for each unlawful act or practice, whichever is greater, and other necessary and proper relief as provided under Alaska Statutes § 45.50.531.

COUNT IV
Violation of Arizona Revised Statutes § 44-1522
(On Behalf of Plaintiff and the Arizona Subclass)

101. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

102. Arizona Revised Statutes § 44-1522 prohibits deceptive acts or practices in the conduct of any trade or commerce.

103. In its sale of the Products throughout the State of Arizona, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Arizona Revised Statutes § 44-1522.

104. The Arizona Subclass members are consumers who purchased Defendant's Products for their personal use.

105. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

106. The foregoing deceptive acts and practices were directed at consumers.

107. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

108. As a result of Defendant's deceptive practices, the Arizona Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

109. On behalf of himself and the Arizona Subclass members, Plaintiff seeks to recover actual damages, and punitive damages if Defendant's conduct was wanton or reckless, together with costs, pursuant to the private right of action recognized under Arizona Revised Statutes § 44-1533.

COUNT V
Violation of Colorado Revised Statutes § 6-1-105
(On Behalf of Plaintiff and the Colorado Subclass)

110. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

111. Colorado Revised Statutes § 6-1-105 prohibits deceptive trade practices in the course of a person's business, vocation, or occupation.

112. In its sale of the Products throughout the State of Colorado, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Colorado Revised Statutes § 6-1-105.

113. The Colorado Subclass members are consumers who purchased Defendant's Products for their personal use.

114. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

115. The foregoing deceptive acts and practices were directed at consumers.

116. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

117. As a result of Defendant's deceptive practices, the Colorado Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

118. On behalf of himself and the Colorado Subclass members, Plaintiff seeks to recover actual damages and reasonable attorney fees and costs, as provided under Colorado Revised Statutes § 6-1-113(2.9).

COUNT VI
Violation of Delaware Code Title 6 § 2513
(On Behalf of Plaintiff and the Delaware Subclass)

119. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

120. Delaware Code Title 6 § 2513 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

121. In its sale of the Products throughout the State of Delaware, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Delaware Code Title 6 § 2513.

122. The Delaware Subclass members are consumers who purchased Defendant's Products for their personal use.

123. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

124. The foregoing deceptive acts and practices were directed at consumers.

125. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

126. As a result of Defendant's deceptive practices, the Delaware Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

127. On behalf of himself and the Delaware Subclass members, Plaintiff brings this claim pursuant to the private right of action provided under Delaware Code Title 6 § 2525, and seeks to recover actual damages, together with costs, as well as punitive damages if the fraud is found to be gross, oppressive, or aggravated.

COUNT VII
Violation of Florida Statutes § 501.204
(On Behalf of Plaintiff and the Florida Subclass)

128. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

129. Florida Statutes § 501.204 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

130. In its sale of the Products throughout the State of Florida, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Florida Statutes § 501.204.

131. The Florida Subclass members are consumers who purchased Defendant's Products for their personal use.

132. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are

labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

133. The foregoing deceptive acts and practices were directed at consumers.

134. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

135. As a result of Defendant's deceptive practices, the Florida Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

136. On behalf of himself and the Florida Subclass members, Plaintiff seeks to recover actual damages, attorneys' fees, and court costs as provided under Florida Statutes §§ 501.211 and 501.2105.

COUNT VIII
Violation of Hawaii Revised Statutes § 480-2
(On Behalf of Plaintiff and the Hawaii Subclass)

137. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

138. Hawaii Revised Statutes § 480-2 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

139. In its sale of the Products throughout the State of Hawaii, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Hawaii Revised Statutes § 480-2.

140. The Hawaii Subclass members are consumers who purchased Defendant's Products for their personal use.

141. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

142. The foregoing deceptive acts and practices were directed at consumers.

143. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

144. As a result of Defendant's deceptive practices, the Hawaii Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

145. On behalf of himself and the Hawaii Subclass members, Plaintiff seeks to recover threefold the damages sustained, the $1,000 minimum recovery being inapplicable in a class action under Hawaii Revised Statutes § 480-13(c)(1), together with reasonable attorneys' fees and the costs of suit.

COUNT IX
Violation of Idaho Code § 48-603
(On Behalf of Plaintiff and the Idaho Subclass)

146. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

147. Idaho Code § 48-603 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

148. In its sale of the Products throughout the State of Idaho, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Idaho Code § 48-603.

149. The Idaho Subclass members are consumers who purchased Defendant's Products for their personal use.

150. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

151. The foregoing deceptive acts and practices were directed at consumers.

152. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

153. As a result of Defendant's deceptive practices, the Idaho Subclass members suffered an economic injury because they would not have purchased the Products, or would have

paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

154. On behalf of himself and the Idaho Subclass members, Plaintiff seeks to recover the actual damages sustained by the class or a total for the class not exceeding $1,000, whichever is greater, as provided under Idaho Code § 48-608(1), together with restitution, punitive damages, and reasonable attorneys' fees and costs.

COUNT X
Violation of Illinois Compiled Statutes Chapter 815 § 505/2
(On Behalf of Plaintiff and the Illinois Subclass)

155. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

156. Illinois Compiled Statutes Chapter 815 § 505/2 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

157. In its sale of the Products throughout the State of Illinois, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Illinois Compiled Statutes Chapter 815 § 505/2.

158. The Illinois Subclass members are consumers who purchased Defendant's Products for their personal use.

159. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

160. The foregoing deceptive acts and practices were directed at consumers.

161. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

162. As a result of Defendant's deceptive practices, the Illinois Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

163. On behalf of himself and the Illinois Subclass members, Plaintiff seeks to recover actual economic damages, and reasonable attorneys' fees and costs, as provided under Illinois Compiled Statutes Chapter 815 § 505/10a.

COUNT XI
Violation of Kansas Statutes Annotated § 50-626
(On Behalf of Plaintiff and the Kansas Subclass)

164. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

165. Kansas Statutes Annotated § 50-626 prohibits deceptive acts or practices in the conduct of any trade or commerce.

166. In its sale of the Products throughout the State of Kansas, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Kansas Statutes Annotated § 50-626.

167. The Kansas Subclass members are consumers who purchased Defendant's Products for their personal use.

168. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are

labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

169. The foregoing deceptive acts and practices were directed at consumers.

170. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

171. As a result of Defendant's deceptive practices, the Kansas Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

172. Defendant knowingly represented that the Products possessed a particular composition, ingredient characteristic, and quantity—"0g SUGAR" and "Zero Sugar"—that the Products did not possess because they contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can, a deceptive act specifically proscribed by Kansas Statutes Annotated § 50-626(b)(1)(A). On behalf of himself and the Kansas Subclass members, Plaintiff seeks to recover the damages caused by that act and practice under Kansas Statutes Annotated § 50-634(d)(1), together with reasonable attorneys' fees under § 50-634(e).

COUNT XII
Violation of Kentucky Revised Statutes § 367.170
(On Behalf of Plaintiff and the Kentucky Subclass)

173. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

174. Kentucky Revised Statutes § 367.170 prohibits unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.

175. In its sale of the Products throughout the State of Kentucky, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Kentucky Revised Statutes § 367.170.

176. The Kentucky Subclass members are consumers who purchased Defendant's Products for their personal use.

177. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

178. The foregoing deceptive acts and practices were directed at consumers.

179. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

180. As a result of Defendant's deceptive practices, the Kentucky Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

181. Defendant made the Representations directly to Kentucky consumers on the Products' principal display panels and related online labeling. Those representations were intended

to induce purchases and formed part of the transactions in which Kentucky Subclass members purchased the Products from retailers. On behalf of himself and the Kentucky Subclass members, Plaintiff seeks actual damages, punitive damages, and reasonable attorneys' fees and costs under Kentucky Revised Statutes § 367.220.

COUNT XIII
Violation of Maryland Commercial Law Code § 13-303
(On Behalf of Plaintiff and the Maryland Subclass)

182. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

183. Maryland Commercial Law Code § 13-303 prohibits unfair or deceptive trade practices in the conduct of any trade or commerce.

184. In its sale of the Products throughout the State of Maryland, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Maryland Commercial Law Code § 13-303.

185. The Maryland Subclass members are consumers who purchased Defendant's Products for their personal use.

186. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

187. The foregoing deceptive acts and practices were directed at consumers.

188. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

189. As a result of Defendant's deceptive practices, the Maryland Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

190. On behalf of himself and the Maryland Subclass members, Plaintiff seeks to recover actual damages, and reasonable attorneys' fees and costs, as provided under Maryland Commercial Law Code § 13-408.

COUNT XIV
Violation of Michigan Compiled Laws § 445.903
(On Behalf of Plaintiff and the Michigan Subclass)

191. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

192. Michigan Compiled Laws § 445.903 prohibits unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of any trade or commerce.

193. In its sale of the Products throughout the State of Michigan, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Michigan Compiled Laws § 445.903.

194. The Michigan Subclass members are consumers who purchased Defendant's Products for their personal use.

195. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5

Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

196. The foregoing deceptive acts and practices were directed at consumers.

197. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

198. As a result of Defendant's deceptive practices, the Michigan Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

199. On behalf of himself and the Michigan Subclass members, Plaintiff seeks to recover the actual damages caused by Defendant's unlawful methods, acts, and practices, as provided under Michigan Compiled Laws § 445.911(4).

COUNT XV
Violation of Minnesota Statutes § 325F.69
(On Behalf of Plaintiff and the Minnesota Subclass)

200. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

201. Minnesota Statutes § 325F.69 prohibits unfair, unconscionable, or deceptive trade practices in the conduct of any trade or commerce.

202. In its sale of the Products throughout the State of Minnesota, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Minnesota Statutes § 325F.69.

203. The Minnesota Subclass members are consumers who purchased Defendant's Products for their personal use.

204. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

205. The foregoing deceptive acts and practices were directed at consumers.

206. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

207. As a result of Defendant's deceptive practices, the Minnesota Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

208. This action benefits the public because Defendant made the Representations to the consuming public at large, on the packaging of every unit of the Products sold in Minnesota, and the relief sought will halt those misrepresentations as to all Minnesota consumers. On behalf of himself and the Minnesota Subclass members, Plaintiff seeks to recover actual damages, reasonable attorneys' fees, and costs, including costs of investigations, as provided under Minnesota Statutes § 8.31, subd. 3a.

COUNT XVI
Violation of Missouri Revised Statutes § 407.020
(On Behalf of Plaintiff and the Missouri Subclass)

209. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

210. Missouri Revised Statutes § 407.020 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

211. In its sale of the Products throughout the State of Missouri, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Missouri Revised Statutes § 407.020.

212. The Missouri Subclass members are consumers who purchased Defendant's Products for their personal use.

213. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

214. The foregoing deceptive acts and practices were directed at consumers.

215. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

216. As a result of Defendant's deceptive practices, the Missouri Subclass members suffered an economic injury because they would not have purchased the Products, or would have

paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

217. The Missouri Subclass members acted as reasonable consumers would in light of all the circumstances; Defendant's misrepresentations would cause a reasonable person to enter into the transaction that resulted in damages; and their individual damages are susceptible of calculation to a reasonable degree of certainty by reference to the price premium attributable to the Representations. On behalf of himself and the Missouri Subclass members, Plaintiff seeks to recover actual damages, punitive damages, and reasonable attorneys' fees and costs, as provided under Missouri Revised Statutes § 407.025.1, which claim Plaintiff asserts on a class-wide basis as authorized by Missouri Revised Statutes §§ 407.025.2 and 407.025.3.

COUNT XVII
Violation of Nebraska Revised Statutes § 59-1602
(On Behalf of Plaintiff and the Nebraska Subclass)

218. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

219. Nebraska Revised Statutes § 59-1602 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

220. In its sale of the Products throughout the State of Nebraska, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Nebraska Revised Statutes § 59-1602.

221. The Nebraska Subclass members are consumers who purchased Defendant's Products for their personal use.

222. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5

Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

223. The foregoing deceptive acts and practices were directed at consumers.

224. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

225. As a result of Defendant's deceptive practices, the Nebraska Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

226. On behalf of himself and the Nebraska Subclass members, Plaintiff seeks to recover actual damages, and up to $1,000 in additional damages if the actual damages are not susceptible to measurement by ordinary pecuniary standards, and reasonable attorneys' fees and costs, as provided under Nebraska Revised Statutes § 59-1609.

COUNT XVIII
Violation of Nevada Revised Statutes § 598.0915
(On Behalf of Plaintiff and the Nevada Subclass)

227. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

228. Nevada Revised Statutes § 598.0915 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

229. In its sale of the Products throughout the State of Nevada, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Nevada Revised Statutes § 598.0915.

230. The Nevada Subclass members are consumers who purchased Defendant's Products for their personal use.

231. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

232. The foregoing deceptive acts and practices were directed at consumers.

233. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

234. As a result of Defendant's deceptive practices, the Nevada Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

235. On behalf of himself and the Nevada Subclass members, Plaintiff seeks to recover actual damages, and reasonable attorneys' fees and costs, as provided under Nevada Revised Statutes § 41.600.

COUNT XIX
Violation of New Hampshire Revised Statutes § 358-A:2
(On Behalf of Plaintiff and the New Hampshire Subclass)

236. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

237. New Hampshire Revised Statutes § 358-A:2 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

238. In its sale of the Products throughout the State of New Hampshire, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of New Hampshire Revised Statutes § 358-A:2.

239. The New Hampshire Subclass members are consumers who purchased Defendant's Products for their personal use.

240. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

241. The foregoing deceptive acts and practices were directed at consumers.

242. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

243. As a result of Defendant's deceptive practices, the New Hampshire Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

244. On behalf of himself and the New Hampshire Subclass members, Plaintiff seeks to recover actual damages, together with reasonable attorneys' fees, as provided under New Hampshire Revised Statutes § 358-A:10-a.

COUNT XX
Violation of New Jersey Revised Statutes § 56:8-2
(On Behalf of Plaintiff and the New Jersey Subclass)

245. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

246. New Jersey Revised Statutes § 56:8-2 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

247. In its sale of the Products throughout the State of New Jersey, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of New Jersey Revised Statutes § 56:8-2.

248. The New Jersey Subclass members are consumers who purchased Defendant's Products for their personal use.

249. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

250. The foregoing deceptive acts and practices were directed at consumers.

251. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

252. As a direct result of Defendant's deceptive practices, the New Jersey Subclass members suffered an ascertainable loss because they paid a price premium for Products worth less than represented and would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

253. On behalf of himself and the New Jersey Subclass members, Plaintiff seeks to recover threefold the damages sustained, together with reasonable attorneys' fees, filing fees, and reasonable costs of suit, as provided under New Jersey Revised Statutes § 56:8-19.

COUNT XXI
Violation of New Mexico Statutes § 57-12-3
(On Behalf of Plaintiff and the New Mexico Subclass)

254. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

255. New Mexico Statutes § 57-12-3 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

256. In its sale of the Products throughout the State of New Mexico, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of New Mexico Statutes § 57-12-3.

257. The New Mexico Subclass members are consumers who purchased Defendant's Products for their personal use.

258. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5

Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

259. The foregoing deceptive acts and practices were directed at consumers.

260. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

261. As a result of Defendant's deceptive practices, the New Mexico Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

262. On behalf of himself and the New Mexico Subclass members, Plaintiff seeks, for himself as named plaintiff, actual damages or one hundred dollars, whichever is greater, and, because Defendant willfully engaged in the trade practice, up to three times actual damages or three hundred dollars, whichever is greater, as provided under New Mexico Statutes § 57-12-10(B) and (E); such actual damages as were suffered by each member of the class, as provided under New Mexico Statutes § 57-12-10(E); and reasonable attorney fees and costs, as provided under New Mexico Statutes § 57-12-10(C).

COUNT XXII
Violation of North Carolina General Statutes § 75-1.1
(On Behalf of Plaintiff and the North Carolina Subclass)

263. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

264. North Carolina General Statutes § 75-1.1 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

265. In its sale of the Products throughout the State of North Carolina, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of North Carolina General Statutes § 75-1.1.

266. The North Carolina Subclass members are consumers who purchased Defendant's Products for their personal use.

267. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

268. The foregoing deceptive acts and practices were directed at consumers.

269. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

270. As a result of Defendant's deceptive practices, the North Carolina Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

271. On behalf of himself and the North Carolina Subclass members, Plaintiff seeks judgment for treble the amount of damages fixed by the verdict, as provided under North Carolina General Statutes § 75-16, and reasonable attorneys' fees and costs, as provided under North Carolina General Statutes § 75-16.1.

COUNT XXIII
Violation of North Dakota Century Code § 51-15-02
(On Behalf of Plaintiff and the North Dakota Subclass)

272. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

273. North Dakota Century Code § 51-15-02 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

274. In its sale of the Products throughout the State of North Dakota, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of North Dakota Century Code § 51-15-02.

275. The North Dakota Subclass members are consumers who purchased Defendant's Products for their personal use.

276. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

277. The foregoing deceptive acts and practices were directed at consumers.

278. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

279. As a result of Defendant's deceptive practices, the North Dakota Subclass members suffered an economic injury because they would not have purchased the Products, or would have

paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

280. On behalf of himself and the North Dakota Subclass members, Plaintiff seeks to recover actual damages, and up to three times the actual damages if the violation was committed knowingly, and reasonable attorneys' fees and costs, as provided under North Dakota Century Code § 51-15-09.

COUNT XXIV
Violation of Oklahoma Statutes Title 15 § 753
(On Behalf of Plaintiff and the Oklahoma Subclass)

281. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

282. Oklahoma Statutes Title 15 § 753 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

283. In its sale of the Products throughout the State of Oklahoma, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Oklahoma Statutes Title 15 § 753.

284. The Oklahoma Subclass members are consumers who purchased Defendant's Products for their personal use.

285. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

286. The foregoing deceptive acts and practices were directed at consumers.

287. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

288. As a result of Defendant's deceptive practices, the Oklahoma Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

289. On behalf of himself and the Oklahoma Subclass members, Plaintiff seeks to recover actual damages, and reasonable attorneys' fees and costs, as provided under Oklahoma Statutes Title 15 § 761.1.

COUNT XXV
Violation of Oregon Revised Statutes § 646.608
(On Behalf of Plaintiff and the Oregon Subclass)

290. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

291. Oregon Revised Statutes § 646.608 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

292. In its sale of the Products throughout the State of Oregon, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Oregon Revised Statutes § 646.608.

293. The Oregon Subclass members are consumers who purchased Defendant's Products for their personal use.

294. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are

labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

295. The foregoing deceptive acts and practices were directed at consumers.

296. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

297. As a result of Defendant's deceptive practices, the Oregon Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

298. Defendant's use and employment of the unlawful methods, acts, and practices alleged herein were at a minimum reckless or knowing as to the Oregon Subclass members, each of whom sustained an ascertainable loss of money or property as a result. On behalf of himself and the Oregon Subclass members, Plaintiff seeks to recover actual damages, or statutory damages of $200 if that is greater, as provided under Oregon Revised Statutes § 646.638(1) and (8)(a), together with punitive damages and reasonable attorneys' fees and costs.

COUNT XXVI
Violation of Pennsylvania Statutes Title 73 § 201-3
(On Behalf of Plaintiff and the Pennsylvania Subclass)

299. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

300. Pennsylvania Statutes Title 73 § 201-3 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

301. In its sale of the Products throughout the State of Pennsylvania, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Pennsylvania Statutes Title 73 § 201-3.

302. The Pennsylvania Subclass members are consumers who purchased Defendant's Products for their personal use.

303. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

304. The foregoing deceptive acts and practices were directed at consumers.

305. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

306. The Pennsylvania Subclass members saw and justifiably relied on the front-label and online Representations before purchasing the Products. As a direct result of Defendant's deceptive practices, they suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

307. On behalf of himself and the Pennsylvania Subclass members, Plaintiff seeks to recover actual damages, or $100 if that is greater, and up to three times the actual damages in the

Court's discretion, and reasonable attorneys' fees and costs, as provided under Pennsylvania Statutes Title 73 § 201-9.2.

COUNT XXVII
Violation of Rhode Island General Laws § 6-13.1-2
(On Behalf of Plaintiff and the Rhode Island Subclass)

308. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

309. Rhode Island General Laws § 6-13.1-2 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

310. In its sale of the Products throughout the State of Rhode Island, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Rhode Island General Laws § 6-13.1-2.

311. The Rhode Island Subclass members are consumers who purchased Defendant's Products for their personal use.

312. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

313. The foregoing deceptive acts and practices were directed at consumers.

314. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

315. As a result of Defendant's deceptive practices, the Rhode Island Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

316. On behalf of himself and the Rhode Island Subclass members, Plaintiff seeks to recover actual damages or $500, whichever is greater, treble damages, and reasonable attorneys' fees and costs, as provided under Rhode Island General Laws § 6-13.1-5.2.

COUNT XXVIII
Violation of South Dakota Codified Laws § 37-24-6
(On Behalf of Plaintiff and the South Dakota Subclass)

317. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

318. South Dakota Codified Laws § 37-24-6 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

319. In its sale of the Products throughout the State of South Dakota, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of South Dakota Codified Laws § 37-24-6.

320. The South Dakota Subclass members are consumers who purchased Defendant's Products for their personal use.

321. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than

0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

322. The foregoing deceptive acts and practices were directed at consumers.

323. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

324. As a result of Defendant's deceptive practices, the South Dakota Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

325. On behalf of himself and the South Dakota Subclass members, Plaintiff seeks to recover actual damages, as provided under South Dakota Codified Laws § 37-24-31.

COUNT XXIX
Violation of Vermont Statutes Title 9 § 2453
(On Behalf of Plaintiff and the Vermont Subclass)

326. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

327. Vermont Statutes Title 9 § 2453 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

328. In its sale of the Products throughout the State of Vermont, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Vermont Statutes Title 9 § 2453.

329. The Vermont Subclass members are consumers who purchased Defendant's Products for their personal use.

330. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and

packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

331. The foregoing deceptive acts and practices were directed at consumers.

332. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

333. As a result of Defendant's deceptive practices, the Vermont Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

334. On behalf of himself and the Vermont Subclass members, Plaintiff seeks to recover actual damages, or the consideration given for the Products, reasonable attorneys' fees and costs, and exemplary damages not exceeding three times the value of that consideration, as provided under Vermont Statutes Title 9 § 2461(b).

COUNT XXX
Violation of Virginia Code § 59.1-200
(On Behalf of Plaintiff and the Virginia Subclass)

335. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

336. Virginia Code § 59.1-200 prohibits fraudulent acts or practices by suppliers in connection with consumer transactions. Defendant is a supplier, and the purchases of the Products by Virginia Subclass members were consumer transactions within the meaning of the statute.

337. In its sale of the Products throughout the State of Virginia, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Virginia Code § 59.1-200.

338. The Virginia Subclass members are consumers who purchased Defendant's Products for their personal use.

339. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

340. The foregoing deceptive acts and practices were directed at consumers.

341. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

342. As a result of Defendant's deceptive practices, the Virginia Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

343. On behalf of himself and the Virginia Subclass members, Plaintiff seeks to recover actual damages or $500, whichever is greater, or if the violation was willful, treble damages or $1,000, whichever is greater, as well as reasonable attorneys' fees and costs, as provided under Virginia Code § 59.1-204.

COUNT XXXI
Violation of Revised Code of Washington § 19.86.020
(On Behalf of Plaintiff and the Washington Subclass)

344. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

345. Revised Code of Washington § 19.86.020 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

346. In its sale of the Products throughout the State of Washington, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of Revised Code of Washington § 19.86.020.

347. The Washington Subclass members are consumers who purchased Defendant's Products for their personal use.

348. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than 0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

349. The foregoing deceptive acts and practices were directed at consumers.

350. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

351. As a result of Defendant's deceptive practices, the Washington Subclass members suffered an economic injury because they would not have purchased the Products, or would have

paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

352. On behalf of himself and the Washington Subclass members, Plaintiff seeks to recover actual damages, together with such increase in the damages award as the Court may in its discretion allow, up to three times the actual damages sustained and not exceeding $25,000, as well as reasonable attorneys' fees and costs, as provided under Revised Code of Washington § 19.86.090.

COUNT XXXII
Violation of D.C. Code § 28-3904
(On Behalf of Plaintiff and the District of Columbia Subclass)

353. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Complaint as though fully set forth herein.

354. District of Columbia Code § 28-3904 prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

355. In its sale of the Products throughout the District of Columbia, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of District of Columbia Code § 28-3904.

356. The District of Columbia Subclass members are consumers who purchased Defendant's Products for their personal use.

357. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the Products' labeling and packaging, online listings, and marketing materials that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Despite those Representations, the Products contain sugar in the form of allulose and, on information and belief, contain more than

0.5 gram and approximately 2 grams of allulose per 355-milliliter can. The Products do not conform to the Representations.

358. The foregoing deceptive acts and practices were directed at consumers.

359. The foregoing deceptive acts and practices are misleading in a material way because they misrepresent the nature, composition, sugar content, quality, and value of the Products.

360. As a result of Defendant's deceptive practices, the District of Columbia Subclass members suffered an economic injury because they would not have purchased the Products, or would have paid less for them, had they known that the Products contained sugar and did not conform to the Representations.

361. On behalf of himself and the District of Columbia Subclass members, Plaintiff seeks to recover treble damages or $1,500 per violation, whichever is greater, as well as punitive damages and reasonable attorneys' fees and costs, as provided under District of Columbia Code § 28-3905(k)(2).

COUNT XXXIII
Breach of Express Warranty
(On Behalf of Plaintiff and the Multi-State Warranty Subclass)

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

363. Plaintiff brings this claim individually and on behalf of the Multi-State Warranty Subclass against Defendant.[20]

---

[20]While discovery may alter the following, Plaintiff asserts that the states with similar express warranty laws under the facts of this case include, but are not limited to: Alaska Stat. § 45.02.313; Ariz. Rev. Stat. § 47-2313; Ark. Code § 4-2-313; Cal. Com. Code § 2313; Colo. Rev. Stat. § 4-2-313; Conn. Gen. Stat. § 42a-2-313; 6 Del. C. § 2-313; D.C. Code § 28:2-313; Ga. Code § 11-2-313; Haw. Rev. Stat. § 490:2-313; Idaho Code § 28-2-313; 810 ILCS 5/2-313; Ind. Code § 26-1-2-313; Kan. Stat. § 84-2-313; Ky. Rev. Stat. § 355.2-313; 11 Me. Rev. Stat. § 2-313; Mass. Gen. Laws ch. 106, § 2-313; Minn. Stat. § 336.2-313; Miss. Code Ann. § 75-2-313; Mo. Rev. Stat. § 400.2-313; Mont. Code Ann. § 30-2-313; Neb. U.C.C. § 2-313; Nev. Rev. Stat. § 104.2313; N.H. Rev. Stat. § 382-A:2-313; N.J. Stat. Ann. § 12A:2-313; N.M. Stat. Ann. § 55-2-313; N.Y. U.C.C. Law § 2-313; N.C. Gen. Stat. § 25-2-313; N.D. Cent. Code § 41-02-30; Ohio

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

365. The terms of those contracts include the promises and affirmations of fact Defendant made on the Products' packaging and in its online labeling that the Products contained "0g SUGAR," were labeled as a "Zero Sugar Energy Drink," contained "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contained "Zero Sugar" or "zero sugar."

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

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

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

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

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

Rev. Code § 1302.26; Okla. Stat. tit. 12A, § 2-313; Or. Rev. Stat. § 72.3130; 13 Pa. C.S. § 2313; R.I. Gen. Laws § 6A-2-313; S.C. Code Ann. § 36-2-313; S.D. Codified Laws § 57A-2-313; Tenn. Code Ann. § 47-2-313; Tex. Bus. & Com. Code § 2.313; Utah Code Ann. § 70A-2-313; 9A V.S.A. § 2-313; Va. Code § 8.2-313; Wash. Rev. Code § 62A.2-313; W. Va. Code § 46-2-313; and Wyo. Stat. Ann. § 34.1-2-313.

COUNT XXXIV
Intentional Misrepresentation
(On Behalf of Plaintiff and the Nationwide Class)

371. Plaintiff incorporates by reference the allegations in all preceding paragraphs of this Complaint.

372. Plaintiff brings this claim individually and on behalf of the Nationwide Class.

373. Defendant represented on the Products' packaging and in related online labeling that the Products contain "0g SUGAR," are labeled as a "Zero Sugar Energy Drink," contain "Zero Sugar | 5 Calories" or "Zero Sugar and 5 Calories," and otherwise contain "Zero Sugar" or "zero sugar." Those representations were false or misleading because the Products contain sugar in the form of allulose and do not conform to the Representations.

374. The Representations were material because they concerned the Products' sugar content, composition, quality, healthfulness, and value and were important to reasonable consumers' purchasing decisions.

375. Defendant knew the Representations were false or misleading or acted recklessly without regard to their truth. Defendant intended consumers to rely on them, as shown by their conspicuous placement on the Products' principal display panels and in related online labeling and by Defendant's uniform advertising centered on zero-sugar claims.

376. Plaintiff and Class Members reasonably and justifiably relied on the Representations when purchasing the Products. Had they known the truth, they would not have purchased the Products or would have paid less. As a direct and proximate result, they suffered economic losses, including the amounts paid and any interest that would have accrued on those funds, in an amount to be proven at trial.

COUNT XXXV
Unjust Enrichment
(On Behalf of Plaintiff and the Nationwide Class)

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

378. Plaintiff brings this claim individually and on behalf of the Nationwide Class against Defendant under New York law or, in the alternative, under the substantially similar laws of the states applicable to members of the Nationwide Class.

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

380. Defendant's false and misleading Representations caused Plaintiff and Class Members to pay a price premium for the Products.

381. Defendant thereby received a direct and unjust benefit at the expense of Plaintiff and Class Members.

382. Plaintiff and Class Members seek the return of that unjust benefit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant as follows:

a) For an order certifying the Classes under Fed. R. Civ. P. 23 and naming Plaintiff as representative of the Classes, and Plaintiff's Counsel as Class Counsel;

b) For an order declaring that Defendant's conduct violates each of the statutes referenced herein;

c) For an order finding in favor of Plaintiff and the Classes on all counts asserted herein;

d) For damages available under the asserted causes of action;

e) For prejudgment interest on all amounts awarded;

f) For restitution to the extent permitted by applicable law;

g) For injunctive relief as pleaded or as the Court may deem proper, including an order requiring Defendant to cease labeling, marketing, and selling the Products with the Representations and to make affirmative disclosures sufficient to dispel the public misperception created by Defendant's conduct;

h) For an order awarding Plaintiff's and the Classes' reasonable attorneys' fees, expenses, and costs of suit; and

i) For such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable as of right.

Dated: August 25, 2026

Respectfully submitted,

GUCOVSCHI LAW FIRM, PLLC

By: */s/ Adrian Gucovschi*
Adrian Gucovschi, Esq.
165 Broadway, Fl. 23
New York, NY 10006
Telephone: (212) 884-4230
Email: adrian@gucovschilaw.com

BURSOR & FISHER, P.A.
L. Timothy Fisher (*Pro hac vice* forthcoming)
Joshua B. Glatt (*Pro hac vice* forthcoming)
1990 North California Blvd., 9th Floor
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com
jglatt@bursor.com

Counsel for Plaintiff and the Classes