

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

Lawrence R. Himmel, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Heartland Consumer Products LLC,

Defendant.

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Lawrence R. Himmel (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action against Heartland Consumer Products LLC (“Defendant” or “Heartland”), and alleges the following upon personal knowledge as to his own purchase and experience, and upon information and belief and investigation of counsel as to all other matters.

NATURE OF THE ACTION

1. This is a consumer class action concerning Defendant’s distribution and sale of Splenda® Diabetes Care Shakes (now sold as Splenda® Diabetic Nutrition Shakes) (the “Products”) — nutrition shakes marketed to people with diabetes — bearing the front-label claim “0g No Added Sugar” (the “Challenged Representation”). In truth, Defendant adds allulose, a monosaccharide sugar, to every bottle during manufacturing: by Defendant’s own account, approximately 5.5 to 6.5 grams per bottle.

2. Allulose is a monosaccharide — chemically classified as the C-3 epimer of D-fructose — that functions in food formulation as a sweetener and is itself a sugar. Allulose is not present in the Products in trace or incidental amounts. Defendant’s own ingredient statement lists allulose ahead of every flavoring and additive in the Products, and Defendant’s own website states the number of grams of allulose in each bottle.

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

4. According to 21 C.F.R. § 101.9(c)(6)(ii), the term “Total Sugars” is defined as the sum of all free mono- and disaccharides present in a food product. Because allulose is scientifically and chemically classified as a monosaccharide, it falls squarely within this unambiguous regulatory definition and constitutes a sugar.

5. Because Defendant’s front-of-package label features an express nutrient content claim declaring that the Products contain “0g” sugar and “No Added Sugar,” the statement is governed by 21 C.F.R. §§ 101.13(b) and (b)(1) and 101.60(c). Those regulations require any sugar claim made outside the Nutrition Facts panel to comply with the regulatory definition of “sugars” in 21 C.F.R. § 101.9(c)(6)(ii) — which includes allulose — and permit the claim “no added sugar” only if “[n]o amount of sugars, as defined in § 101.9(c)(6)(ii), or any other ingredient that contains sugars that functionally substitute for added sugars is added during processing or packaging.” 21 C.F.R. § 101.60(c)(2)(i).

6. Because the Products actually contain approximately 5.5 to 6.5 grams of added monosaccharide sugar per bottle via their allulose content, Defendant’s front-of-package “0g No Added Sugar” representation is literally false, highly deceptive to the reasonable consumer, and a direct violation of 21 C.F.R. §§ 101.13(b) and (b)(1) and 101.60(c), and 21 U.S.C. § 343(a)(1), (r)(1)(A).

7. The deception is especially harmful here because Defendant markets the Products specifically to people with diabetes — consumers who monitor their sugar intake closely, often on medical advice, and who choose products on the basis of their sugar content. Consumers consistently pay more for products marketed as containing no sugar, and Defendant’s placement

of the “0g No Added Sugar” claim on the Products’ front-of-package label is a deliberate marketing choice designed to capture that premium. Plaintiff and members of the putative Class paid for a product they believed contained no sugar and no added sugar, and did not receive the benefit of that bargain.

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

JURISDICTION AND VENUE

9. This Court has subject-matter jurisdiction over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because: (a) the proposed Class consists of more than 100 members; (b) the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs; and (c) minimal diversity exists in that at least one member of the proposed Class is a citizen of a state different from Defendant. Plaintiff is, and at all relevant times has been, a citizen of the State of New York, domiciled in Brooklyn, New York. Defendant is an unincorporated association that, for purposes of the Class Action Fairness Act, is a citizen of Delaware, the State under whose laws it is organized, and of Indiana, the State where it has its principal place of business. 28 U.S.C. § 1332(d)(10).

10. This Court has personal jurisdiction over Defendant because Defendant transacts business, distributes products for sale, and derives substantial revenue from goods sold within the State of New York, including within this District; because Defendant sells the Products through online retailers, including Amazon.com, for delivery to consumers in this District; and because the conduct giving rise to this action occurred in substantial part within this District.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims asserted occurred in this District, including Plaintiff's purchase and receipt of the Products at his home in Brooklyn, Kings County, New York, which lies within the Eastern District of New York.

PARTIES

12. Plaintiff Lawrence R. Himmel is a resident of Brooklyn, New York. Within the three years preceding the filing of this Complaint, while living in Brooklyn, Plaintiff regularly purchased the strawberry flavor of the Products bearing the "0g No Added Sugar" representation from Amazon.com for delivery to his home in Brooklyn, New York. Plaintiff paid approximately \$25 to \$36 per multi-pack.

13. Plaintiff has diabetes and, for that reason, pays close attention to the sugar content of the foods and beverages he buys. Before purchasing, Plaintiff read and relied upon the "0g No Added Sugar" claim, which appears prominently on the front of each bottle. Based on that representation, Plaintiff believed, reasonably but incorrectly, that the Products contained no sugar and that no sugar had been added to them. After his purchases, Plaintiff learned that the Products contain added allulose — a monosaccharide sugar — in an amount of approximately 5.5 to 6.5 grams per bottle. Plaintiff would not have purchased the Products, or would have paid less for them, had he known the truth.

14. Defendant Heartland Consumer Products LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 14390 Clay Terrace Boulevard, Suite 205, Carmel, Indiana 46032. Defendant owns the SPLENDA® brand and distributes the Products.

15. Defendant distributes, markets, and sells the Products for sale to consumers. Defendant participates in, reviews, or approves the labeling and packaging under which the Products are sold to New York and nationwide consumers.

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

17. Defendant distributes, markets, and sells the Products through national and regional grocery, pharmacy, and mass-merchandise retailers, as well as through online retailers such as Amazon.com, throughout the State of New York and the United States.

FACTUAL ALLEGATIONS

A. Consumers Actively Seek Out Products Represented as Containing No Sugar

18. A substantial and growing body of market research confirms that consumers actively seek out food products marketed with a low or zero sugar content. Reducing sugar intake is widely recognized, including by public health authorities, as an important component of a healthy diet, and manufacturers have responded by reformulating products and marketing these traits with “no added sugar,” “zero sugar,” “0g sugar,” and similar claims on their packaging.

19. The market for allulose-sweetened products has grown rapidly alongside this trend. Industry researchers estimate the global allulose market was valued at roughly \$0.2 billion in 2024 and project it will grow at a compound annual rate in excess of 12% over the following decade.

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

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

22. Nutrition shakes marketed for diabetes management are a category in which consumers are especially attentive to sugar content. People with diabetes are routinely counseled to limit their intake of sugars, and they purchase products such as the Products because those products are represented to contain no sugar. Defendant launched the Products as "the first and only no added sugar shakes specifically designed to help manage blood sugar."¹

23. A "0g No Added Sugar" claim on the Products is therefore particularly likely to be relied upon, and particularly likely to command a price premium, precisely because nutrition shakes and similar beverages are ordinarily sweetened with added sugar.

B. The Products and the Challenged Representation

24. Defendant distributes, markets, and sells Splenda® Diabetes Care Shakes (now labeled Splenda® Diabetic Nutrition Shakes) in 8 fl. oz. bottles in Milk Chocolate, French Vanilla, strawberry, and Café Latte flavors. The front of each bottle bears a prominent circular badge stating "0g" directly above the words "NO ADDED SUGAR." The front label also states "16G PROTEIN" and "HELPS MANAGE BLOOD SUGAR," and identifies Splenda as the "#1 Sweetener Brand." The Products were originally sold as "Splenda Diabetes Care Shakes" and are currently labeled "Splenda Diabetic Nutrition Shake"; both versions bear the Challenged Representation. The front labels of the Products, as currently shown on Defendant's Amazon.com

¹ Press Release, Splenda, New Splenda® Diabetes Care Shakes: The First and Only Diabetes Shakes with No Added Sugar (June 24, 2020), <https://www.prnewswire.com/news-releases/new-splenda-diabetes-care-shakes-the-first-and-only-diabetes-shakes-with-no-added-sugar-301082601.html>.

product listing, and the current Nutrition Facts panel and ingredient statement for the strawberry flavor, are reproduced below.²

Splenda Diabetic Nutrition Shakes — front labels³



² Discovery may reveal that Defendant distributes additional flavors or varieties bearing the same or a substantially similar representation, and Plaintiff reserves the right to amend this Complaint to add such products.

³ <https://www.amazon.com/dp/B0DF3575HJ> (last visited September 25, 2026).

Splenda Diabetic Nutrition Shake — strawberry flavor (Nutrition Facts and ingredient statement)⁴

Nutrition Facts

Serving Size 1 Bottle (237 mL)

Amount per serving **Calories 170**

	% DV*		% DV*
Total Fat 9g	12%	Total Carbohydrate 15g	5%
Saturated Fat 1g	4%	Dietary Fiber 6g	23%
Trans Fat 0g		Total Sugars 0g	
Polyunsaturated Fat 2.5g		Includes 0g	
Monounsaturated Fat 6g		Added Sugars	0%
Cholesterol 15mg	6%	Protein 16g	
Sodium 200mg	9%		
Vitamin D 10mcg	50%	Vitamin C 90mg	100%
Calcium 390mg	30%	Vitamin B ₁₂ 1.2mcg	50%
Iron 0g	0%	Phosphorus 100mg	8%
Potassium 310mg	6%	Magnesium 55mg	15%

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

INGREDIENTS: WATER, MICROFILTERED MILK PROTEIN, CANOLA OIL, SHORT-CHAIN FRUCTOOLIGOSACCHARIDES, ALLULOSE AND LESS THAN 2% OF NATURAL AND ARTIFICIAL FLAVOR, SALT, POTASSIUM CITRATE, SODIUM CITRATE, SUNFLOWER LECITHIN, CARRAGEENAN, DIPOTASSIUM PHOSPHATE, SPLENDA® SUCRALOSE, RED 40, GELLAN GUM, **VITAMINS & MINERALS:** MAGNESIUM PHOSPHATE, SODIUM ASCORBATE (VITAMIN C), VITAMIN D3, VITAMIN B₁₂ **CONTAINS MILK**

25. The Challenged Representation conveys a single, unambiguous message to a reasonable consumer: that the Products contain zero grams of sugar and that no sugar has been added to them. That is the ordinary, common-sense, and expected meaning of the phrase “0g No Added Sugar.”

⁴ *Id.*

26. That message is false. The Products’ ingredient statement reflects that Defendant adds allulose — a monosaccharide sugar — during processing. By Defendant’s own account, approximately 5.5 to 6.5 grams of allulose is added to each bottle.

27. The Challenged Representation is printed in a large, high-contrast badge on the front of every bottle, alongside Defendant’s other front-of-package claims, and draws the shopper’s attention. By contrast, the word “allulose” appears only in the ingredient statement, printed in small type in the same typeface and size as more than a dozen other ingredients.

28. Nothing about the placement, size, or presentation of the word “allulose” in the ingredient statement would alert a reasonable consumer, unprompted, to its significance as an added sugar that directly contradicts the front-label claim.

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

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

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

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

32. The U.S. Food and Drug Administration has recognized that allulose, as a monosaccharide, falls within the Total Sugars declaration on a Nutrition Facts label absent a specific rulemaking excluding it. FDA has separately issued guidance describing limited

enforcement discretion permitting allulose to be excluded from the Total Sugars and Added Sugars lines of the Nutrition Facts panel in some circumstances — a narrow accommodation that has no bearing on, and does not authorize, an outside-the-panel claim that a product contains “0g” sugar or “No Added Sugar.”

33. The FDA is not the only entity that recognizes allulose is a sugar. Tate & Lyle, the ingredient manufacturer responsible for the production of most commercial grade allulose, has acknowledged in multiple FDA filings that “Allulose is a monosaccharide and is classified as a sugar.” Tate & Lyle Petition⁵; *see also* Tate & Lyle Study⁶ (“Allulose is a monosaccharide, or simple sugar, that naturally presents in small quantities in fruits like figs and raisins and a variety of sweet foods like caramel sauce, maple syrup and brown sugar.”).

34. Early findings suggest that allulose might be processed in the body differently than certain standard sugars for some individuals, but these results come with major limitations. Researchers note that outcomes depend on the amount consumed, individual physiological factors like race and gender, and whether the allulose is liquid or solid, indicating that further investigation is required.⁷

35. Ingesting allulose may lead to digestive issues, including nausea, bloating, diarrhea, and stomach pain.⁸ A major clinical study evaluating how well people tolerate allulose found that

⁵ Citizen Petition Submitted by Tate & Lyle Ingredients Americas LLC requesting that Allulose be Exempt From Being Included As a Carbohydrate, Sugar, or Added Sugar in the Nutrition Facts Label on Foods and Beverages, April 10, 2015, Docket Number FDA-2015-P-1201.

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

⁷ Tani Yuma et al., Allulose for the attenuation of postprandial blood glucose levels in healthy humans: A systematic review and meta-analysis, 18 PLoS One e0281150 (2023) <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0281150> (last visited September 25, 2026).

⁸ Memorandum from Center for Science in the Public Interest to Food and Drug Administration (June 17, 2019) <https://www.cspi.org/sites/default/files/2022-03/allulose%20final%20from%20CSPI.pdf> (last visited September 25, 2026).

individuals who consumed it experienced diarrhea, bloating, and abdominal discomfort much more frequently than those who consumed conventional cane sugar.

36. Additionally, consuming higher doses of allulose led to cases of severe nausea, stomach pain, headaches, loss of appetite, and diarrhea.⁹

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

D. The Products Contain Approximately 5.5 to 6.5 Grams of Allulose Per Bottle

38. Plaintiff's determination of the allulose content per bottle is based on Defendant's own public statements, confirmed by the application of mandatory federal regulatory accounting rules governing nutrition labeling and basic mathematical principles.

39. 21 C.F.R. § 101.9(c)(6) defines "Total Carbohydrate" using the standardized carbohydrate-by-difference method, under which Total Carbohydrate is calculated by subtracting the sum of crude protein, total fat, moisture, and ash from the total weight of the food. Because allulose is a monosaccharide that is none of these four excluded components, any allulose present in a food must be captured within the food's declared Total Carbohydrate figure.

40. Under FDA's guidance, The Declaration of Allulose and Calories from Allulose on Nutrition and Supplement Facts Labels (Oct. 2020, Docket No. FDA-2019-D-0725), allulose must be counted toward a product's "Total Carbohydrate" declaration, even though manufacturers are permitted to omit it from the "Total Sugars" and "Added Sugars" sub-lines.

⁹ Han Y, Choi BR, Kim SY, Kim YH, Kwon EY, & Choi M.S., Gastrointestinal Tolerance of D-Allulose in Healthy and Young Adults. A Non-Randomized Controlled Trial. *Nutrients*, 2018 Dec. 19;10(12):2010 <https://www.mdpi.com/2072-6643/10/12/2010> (last visited September 25, 2026).

41. Total Carbohydrate is in turn composed of several mandatory subcomponents, each independently defined by FDA regulation: (a) “Dietary Fiber,” defined at 21 C.F.R. § 101.9(c)(6)(i) as non-digestible soluble and insoluble carbohydrates, lignin intrinsic to plants, and isolated or synthetic non-digestible carbohydrates that FDA has determined to have a beneficial physiological effect; (b) “Total Sugars,” defined at 21 C.F.R. § 101.9(c)(6)(ii) as the sum of all free mono- and disaccharide sugars in a serving; (c) “Added Sugars,” defined at 21 C.F.R. § 101.9(c)(6)(iii) as sugars that are either added during the processing of foods or packaged as such; and (d) “Sugar Alcohol,” such as erythritol and sorbitol, which is already captured within Total Carbohydrate under the by-difference calculation. Pursuant to 21 C.F.R. § 101.9(c)(6)(iv), Sugar Alcohol content must additionally be declared as a separate line item whenever a claim is made on the label about sugar alcohol, sugars, or added sugars — as is the case here.

42. Allulose is a monosaccharide that is metabolically distinct from the sugars captured by the Total Sugars definition and is not among the substances FDA has classified as dietary fiber. Any carbohydrate mass that does not meet either definition — including allulose — nonetheless remains within the food’s Total Carbohydrate figure under the by-difference calculation, but is not separately captured by the Dietary Fiber, Total Sugars, or Sugar Alcohol sub-lines. It therefore remains as an uncaptured residual once Dietary Fiber, Total Sugars, and Sugar Alcohol are subtracted from Total Carbohydrate.

43. Applying these governing federal regulations to the Nutrition Facts panel for the strawberry flavor yields the following derivation: Total Carbohydrate (15g) – Dietary Fiber (6g) – Total Sugars (0g) – Sugar Alcohol (0g) = approximately 9g of carbohydrate mass unaccounted for by any declared category. The Products declare no sugar alcohol, and Defendant represents that they do not contain erythritol.

44. According to the Products' ingredient statement — which under 21 C.F.R. § 101.4(a)(1) must list ingredients in descending order of predominance by weight — the only carbohydrate ingredients present at more than 2% of the Products by weight are short-chain fructooligosaccharides, which are accounted for in the Dietary Fiber line, and allulose. The unaccounted carbohydrate mass therefore consists predominantly of allulose.

45. The calculations using 21 C.F.R. § 101.9(c)(1)(i) and the Product's calorie declaration confirm the approximate amount of allulose in the Products. Under the 4-4-9 rule, fat contributes 9 calories per gram, protein 4 calories per gram, soluble dietary fiber 2 calories per gram, and allulose 0.4 calories per gram. The strawberry flavor declares 170 calories, 9g of fat (81 calories), and 16g of protein (64 calories), leaving 25 calories attributable to carbohydrate. After subtracting 12 calories for the 6g of dietary fiber, 13 calories remain for the 9g of unaccounted carbohydrate. The only division of that 9g that satisfies both the weight and the calorie balance is approximately 6.4g of allulose (at 0.4 calories per gram) and approximately 2.6g of other carbohydrate (at 4 calories per gram).¹⁰

46. These calculations do not account for the decimal rounding and other minor adjustments permitted by FDA regulation.

47. Plaintiff's calculations are corroborated by Defendant itself. On its own website,¹¹ Defendant states that “[n]et carbs are calculated by subtracting fiber grams and allulose grams from total grams of carbohydrate,” and discloses that the French Vanilla and Strawberry Banana Products each contain 6.5g of allulose per bottle (“15g carb – 6g fiber – 6.5g allulose = 2.5g net

¹⁰ The actual allulose amount can be derived using a simple algebraic equation: Let x be Standard Carbohydrates and y be Allulose: $x+y=9$ grams and $4x+0.4y=13$ calories. $y=6.39$ grams and $x=2.61$ grams.

¹¹ Splenda, What Makes Splenda Diabetes Care Shakes “Keto-Friendly”?, <https://www.splenda.com/faqs/what-makes-splenda-diabetes-care-shakes-keto-friendly/> (last visited September 25, 2026).

carbs”) and that the Milk Chocolate Product contains 5.5g of allulose per bottle (“15g carb – 6g fiber – 5.5g allulose = 3.5g net carbs”).

48. By any measure, the quantity of allulose Defendant adds to the Products — whether based on Plaintiff’s calculations or on Defendant’s own published figures — is a deliberate, material, and functionally significant addition of sugar, precisely what the “0g No Added Sugar” representation denies.

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

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

50. FDA regulations distinguish information appearing within the Nutrition Facts panel from statements appearing elsewhere on a label. Information within the Nutrition Facts panel is not itself a nutrient-content claim, but the same information placed outside that panel is subject to the nutrient-content-claim regulations. 21 C.F.R. § 101.13(c). The challenged “0g No Added Sugar” representation is a nutrient-content claim because it appears outside the Nutrition Facts panel and expressly represents the amount of sugar in the Products and that no sugar has been added to them. 21 C.F.R. § 101.13(b)(1), (c).

51. Nor does the Challenged Representation fall within the narrow factual-statement exclusion of 21 C.F.R. § 101.13(i)(3), which excludes from “nutrient content claim” status a truthful statement of the actual amount of a nutrient, provided the statement does not, in context, imply that the food meets the criteria for a defined nutrient content claim term. Here, the “0g” statement is not truthful; and in any event, displayed in a standalone badge directly above the

words “NO ADDED SUGAR” and alongside the claim that the Products “HELP[] MANAGE BLOOD SUGAR,” it affirmatively implies that the Products are “sugar free” and contain “no added sugar” — both terms FDA has defined. 21 C.F.R. § 101.60(c)(1), (c)(2). The Challenged Representation is therefore a regulated claim subject to 21 C.F.R. §§ 101.13(b) and (c) and 101.60(c).

52. The “0g No Added Sugar” representation is a direct statement about the amount of sugar in the Products and whether sugar has been added to them, and is therefore an express nutrient-content claim. 21 C.F.R. § 101.13(b)(1), (c). Because Defendant adds allulose during manufacturing of its Products, the representation must satisfy 21 C.F.R. §§ 101.9(c)(6)(ii) and (iii) and 101.60(c).

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

- (i) No amount of sugars, as defined in 21 C.F.R. § 101.9(c)(6)(ii), or any other ingredient that contains sugars that functionally substitute for added sugars, is added during processing or packaging;
- (ii) The product does not contain an ingredient containing added sugars, such as jam, jelly, or concentrated fruit juice;
- (iii) The sugars content has not been increased above the amount present in the ingredients by some means, except where the intended functional effect of the process is not to increase the sugars content and the increase is functionally insignificant;
- (iv) The food that the product resembles and for which it substitutes normally contains added sugars; and
- (v) Unless the product qualifies as low or reduced calorie, the product bears a statement that it is not “low calorie” or “calorie reduced” and directs consumers to the nutrition panel for sugar and calorie information.

54. These requirements are conjunctive. Failure to satisfy any single condition renders the claim noncompliant.

55. The Products fail subsection (i). Subsection (i) cross-references 21 C.F.R. § 101.9(c)(6)(ii), which defines “[t]otal sugars” as “the sum of all free mono- and disaccharides (such as glucose, fructose, lactose, and sucrose).” Allulose is a monosaccharide epimer of D-fructose that falls squarely within that definition, and it is an ingredient that functionally substitutes for added sugars. Because Defendant adds approximately 5.5 to 6.5 grams of allulose to each bottle during processing, the “No Added Sugar” representation does not comply with 21 C.F.R. § 101.60(c)(2)(i), and the claim is therefore prohibited.

56. The Products likewise fail 21 C.F.R. § 101.60(c)(1). A food may be labeled “sugar free,” “zero sugar,” “no sugar,” or with a similar claim only if it “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.” 21 C.F.R. § 101.60(c)(1)(i). The Products’ front-label “0g” sugar claim conveys that the Products are sugar free, yet each bottle contains approximately 5.5 to 6.5 grams of allulose.

57. 21 C.F.R. § 101.9(c)(6)(ii) “Total Sugars” requires a “statement of the number of grams of sugars in a serving.” The total sugar content is “not required” only for products that contain less than 1 gram of sugar. 21 C.F.R. § 101.9(c)(6)(iii) “Added Sugars” requires “a statement of the number of grams of added sugars in a serving” except in certain circumstances, not applicable here.

58. The Products also fail 21 C.F.R. § 101.9(c)(6)(ii). That subsection defines “[t]otal sugars” as “the sum of all free mono- and disaccharides (such as glucose, fructose, lactose, and sucrose).” Allulose is a monosaccharide epimer of D-fructose and falls squarely within that definition. Because Defendant adds a significant amount of allulose to each bottle during processing, the “0g” sugar representation does not comply with 21 C.F.R. § 101.9(c)(6)(ii).

59. The Products independently fail 21 C.F.R. § 101.9(c)(6)(iii). That subsection defines “Added sugars” as sugars that are either added during the processing of foods or packaged as such, and includes free mono- and disaccharides added in that manner. Because Defendant adds approximately 5.5 to 6.5 grams of allulose — a free monosaccharide — to each bottle during processing, that allulose is an “added sugar” within the meaning of 21 C.F.R. § 101.9(c)(6)(iii), and the “No Added Sugar” representation does not comply with 21 C.F.R. § 101.9(c)(6)(iii).

60. FDA’s nonbinding allulose guidance does not authorize the Challenged Representation. In October 2020, FDA issued guidance announcing a policy of enforcement discretion, pending rulemaking, permitting manufacturers to exclude allulose from the gram amounts of Total Sugars and Added Sugars declared numerically on the Nutrition and Supplement Facts panel. U.S. FOOD & DRUG ADMIN., *The Declaration of Allulose and Calories from Allulose on Nutrition and Supplement Facts Labels: Guidance for Industry 1*, 8–9 (Oct. 2020). That guidance is expressly limited to panel declarations. It does not amend the definition of “sugars” in 21 C.F.R. § 101.9(c)(6)(ii), does not address or modify 21 C.F.R. § 101.9(c)(6)(iii) or § 101.60(c), and does not purport to authorize a separate, outside-panel “0g” or “No Added Sugar” claim. Guidance documents, by FDA’s own description and under 21 U.S.C. § 371(h), do not have the force of law and cannot override a binding notice-and-comment regulation. Defendant’s outside-panel “0g No Added Sugar” representation therefore receives no shelter from the guidance, even assuming full compliance with the panel-labeling enforcement-discretion policy.

61. This conclusion is confirmed by the Seventh Circuit’s recent decision in *Franco v. Chobani, LLC*, No. 25-2087 (7th Cir. July 27, 2026), which considered materially identical allegations regarding a “Sugar Free”/“Zero Sugar” yogurt product containing added allulose.

62. At the panel’s invitation, the FDA itself filed an amicus brief in *Franco* taking the position that 21 C.F.R. § 101.9(c)(6)(ii) is unambiguous and that “Total Sugars” includes all free monosaccharides, including allulose, and that its October 2020 guidance reflects only a decision not to enforce certain panel-labeling requirements — not an interpretation excluding allulose from the regulatory definition of “sugar.”

63. The Seventh Circuit agreed with the FDA’s reading, held that the plaintiffs’ state-law claims were not preempted by the FDCA or the 2020 guidance, and reversed the district court’s dismissal of the action. While *Franco* arises from the Seventh Circuit and is not binding on this Court, it reflects the FDA’s own current, considered interpretation of 21 C.F.R. § 101.9(c)(6)(ii) and directly forecloses any argument by Defendant that the 2020 guidance immunizes the Challenged Representation or that allulose is not a “sugar” under governing federal regulations.

64. Because Defendant adds approximately 5.5 to 6.5 grams of allulose to each bottle during processing, and the Products nonetheless bear a false, misleading, and impermissible outside-panel nutrient-content claim that satisfies neither § 101.9(c)(6)(ii), § 101.9(c)(6)(iii), nor § 101.60(c), 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) and (iii), 101.13(b), (b)(1), (b)(4), and (c), and 101.60(c).

65. Plaintiff does not seek to enforce the FDCA directly since no private right of action exists under 21 U.S.C. § 337(a). Plaintiff instead seeks relief under independently enforceable state consumer-protection statutes and relies on the federal misbranding standard, and Defendant’s failure to satisfy it, as directly relevant to and probative of whether the “0g No Added Sugar” representation is false, deceptive, or misleading under those independent state-law standards.

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

66. Although the ingredient list discloses the presence of allulose in the Products, a reasonable consumer exercising ordinary care has no reason to distrust or second-guess an affirmative, prominently placed Challenged Representation on a Product’s consumer-facing label. Consumers are entitled to rely on the truth of such statements without independently parsing the ingredient list or possessing specialized knowledge of carbohydrate chemistry sufficient to recognize that allulose is a sugar.

67. Even a consumer who reviews the ingredient list would find only the word “allulose,” with no indication that it is a monosaccharide or that its inclusion contradicts the Products’ own front-label promise. Nothing on the Products’ packaging discloses, qualifies, or corrects the Challenged Representation.

68. Defendant does not disclose anywhere on the front of the Products how much allulose they contain. Defendant publishes that figure elsewhere — on a “frequently asked questions” page of its website directed at consumers following ketogenic diets — where it states that each bottle contains 5.5 to 6.5 grams of allulose.

69. That disclosure confirms that Defendant knows precisely how much allulose — a sugar — it adds to each bottle. Yet on the Products themselves, Defendant tells purchasers that the Products contain “0g” sugar and “No Added Sugar.”

70. Even a consumer who read Defendant’s website as well as the word “allulose” in the ingredient list would not reasonably understand that the Products contain added sugar in contradiction of the Challenged Representation. Neither disclosure uses the word “sugar,” explains that allulose functions as a sugar, or clarifies the relationship between the allulose content and the “0g No Added Sugar” claim.

71. Even if consumers knew that allulose was a sugar, Defendant's marketing would still convey two irreconcilable messages: the Challenged Representation states that the Products contain no sugar and no added sugar, while Defendant's own figures reveal that each bottle contains approximately 5.5 to 6.5 grams of an added sweetening ingredient functionally equivalent to sugar.

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

73. Nothing on the Products' packaging cures, or can reasonably be expected to cure, the false and misleading impression created by the Challenged Representation on the front label. Defendant is responsible for ensuring that its express labeling and marketing claims are truthful and not misleading.

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

74. Defendant's distribution and sale of the Products, and the labeling under which they are sold, are directed at, and reach, the consuming public broadly, rather than any private dispute between particular parties, and are therefore consumer-oriented conduct within the meaning of GBL §§ 349 and 350.

75. Defendant knew, or in the exercise of reasonable diligence should have known, that: (a) the Products contain added allulose; (b) allulose is a monosaccharide and therefore a sugar; (c) the Products' packaging nonetheless states "0g No Added Sugar" on the consumer-facing label; and (d) reasonable consumers would rely on that statement in deciding whether, and how much, to pay for the Products.

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

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

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

H. Plaintiff’s and the Class’s Injury

79. Defendant markets the Products, including through their packaging, Defendant’s website, and retail channels, as a specialized nutrition product for people with diabetes that “helps manage blood sugar,” consistent with the premium retail price point at which the Products are sold. Consumers who pay a premium price for the Products marketed on this basis are especially likely to select the product specifically because of front-of-package health and nutrition claims such as the Challenged Representation, reinforcing both the materiality of the Challenged Representation and the existence of a price premium attributable to it.

80. As a direct and proximate result of Defendant’s distribution and sale of the Products bearing the false and misleading Challenged Representation, Plaintiff and Class Members: (a) paid money for a product that was not as represented; (b) paid a price premium attributable to the false “0g No Added Sugar” claim; and (c) were denied the benefit of the bargain for which they paid.

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

CLASS ACTION ALLEGATIONS

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

New York Class: All persons who purchased a Product bearing the “0g No Added Sugar” representation in the State of New York, for personal, family, or household use, during the period permitted by the applicable statute of limitations.

Nationwide Class: All persons in the United States who purchased a Product bearing the “0g No Added Sugar” representation, for personal, family, or household use, during the period permitted by the applicable statute of limitations.

Multi-State Class: All persons in Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, and Washington who purchased a Product bearing the “0g No Added Sugar” representation, for personal, family, or household use, during the period permitted by the applicable statutes of limitations.

83. Excluded from the Class are: (a) Defendant and its officers, directors, and employees; (b) any entity in which Defendant has a controlling interest; (c) the judge to whom this action is assigned and members of the judge’s immediate family; and (d) counsel of record for the parties.

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

85. Numerosity (Fed. R. Civ. P. 23(a)(1)): The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class Members is unknown to Plaintiff at this stage and can be ascertained through discovery of Defendant’s and its retail

partners' sales and distribution records, upon information and belief the Class consists of many thousands of consumers nationwide and many thousands of New York consumers specifically, given the Products' sale through grocery and retail outlets throughout the State and the country.

86. Commonality (Fed. R. Civ. P. 23(a)(2)): Common questions of law and fact exist as to all Class Members, including: (a) whether allulose is a sugar; (b) whether the Products contain added allulose; (c) whether the "0g No Added Sugar" claim is materially misleading to a reasonable consumer; (d) whether Defendant's conduct is consumer-oriented within the meaning of GBL §§ 349 and 350; (e) whether Defendant's conduct violates the consumer protection statutes of the Multi-State Class jurisdictions; (f) whether Defendant knew or should have known the Challenged Representation was false or misleading; and (g) whether Class Members were injured, and the proper measure of damages or restitution.

87. Typicality (Fed. R. Civ. P. 23(a)(3)): Plaintiff's claims are typical of the claims of the Class because Plaintiff, like all Class Members, purchased a Product bearing the Challenged Representation and was subjected to the same allegedly deceptive practice and the same type of resulting injury. Plaintiff's claims are also typical of the claims of the Multi-State Class members, all of whom were exposed to the same uniform representation and suffered similar economic harm under substantially similar consumer protection laws.

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

89. Predominance and Superiority (Fed. R. Civ. P. 23(b)(3)): The common questions of law and fact identified above predominate over any questions affecting only individual Class Members, and a class action is superior to other available methods for the fair and efficient

adjudication of this controversy. The individual damages available to any single Class Member are likely too small to justify the expense of individual litigation, such that most Class Members would have no realistic avenue for redress absent a class action. A class action will also avoid the risk of inconsistent adjudications and will conserve judicial resources. A class action is also superior for the Multi-State Class because the variations among the consumer protection laws of the Multi-State Class jurisdictions are not so material as to defeat predominance, and individual actions would be inefficient given the low value of the individual claims.

CAUSES OF ACTION

COUNT I

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

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

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

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

93. The Challenged Representation is materially misleading to a reasonable consumer acting reasonably under the circumstances, because it represents that the Products contain no sugar and no added sugar when, in fact, Defendant adds approximately 5.5 to 6.5 grams of allulose — a sugar — to each bottle.

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

95. Pursuant to GBL § 349(h), Plaintiff and Class Members are entitled to recover actual damages or fifty dollars, whichever is greater, and, because Defendant's conduct was willful or knowing, up to three times actual damages, together with reasonable attorneys' fees and costs.

COUNT II

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

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

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

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

99. The Challenged Representation is false and misleading in a material respect because it represents that the Products contain no sugar and no added sugar, when in fact Defendant adds approximately 5.5 to 6.5 grams of allulose — a sugar — to each bottle, a fact that would be material to a reasonable consumer's purchasing decision.

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

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

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

COUNT III

Violations of the Consumer Protection Statutes of Other States and the District of Columbia

(on behalf of the Multi-State Class)

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

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

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

California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq., and Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq.;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

106. Defendant misleadingly, inaccurately, and deceptively presented the Products to consumers in the Multi-State Class jurisdictions through the uniform “0g No Added Sugar” representation, which conveys that the Products contain no sugar and that no sugar has been added

to them, when in fact Defendant adds approximately 5.5 to 6.5 grams of allulose — a sugar — to each bottle during processing.

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

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

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

110. Plaintiff and the members of the Multi-State Class viewed and relied on the materially misleading "0g No Added Sugar" representation on the Products.

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

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

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

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

115. As a result of Defendant's deceptive, unfair, and unconscionable practices, Plaintiff and the members of the Multi-State Class are entitled to monetary and compensatory damages, interest, attorneys' fees and costs, and statutory damages where provided under the respective consumer protection statutes.

COUNT IV
Unjust Enrichment
(on behalf of the Nationwide Class)

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

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

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

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

PRAYER FOR RELIEF

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

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

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

C. Awarding Plaintiff and the Class statutory damages of \$50 per violation under N.Y. Gen. Bus. Law § 349(h) and \$500 per violation under N.Y. Gen. Bus. Law § 350-e(3), and statutory damages as provided under the consumer protection statutes of the Multi-State Class jurisdictions;

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

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

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

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

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

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

JURY TRIAL DEMANDED

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

Dated: September 25, 2026

Respectfully submitted,

/s/ James Chung

James Chung, Esq.

LAW OFFICE OF JAMES CHUNG

43-22 216th Street

Bayside, NY 11361

T: 718-461-8808

E: jchung_77@msn.com

/s/ James C. Kelly

James C. Kelly, Esq.

Bar No. JK9616

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T: 844-847-8300
E: anthony@therussofirm.com

Counsel for Plaintiff and the Proposed Class

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Lawrence R. Himmel, on behalf of himself
and all others similarly situated,

Plaintiff(s)

V.

Heartland Consumer Products LLC,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Heartland Consumer Products LLC
14390 Clay Terrace Boulevard, Suite 205
Carmel, IN 46032

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: James C. Kelly

James C. Kelly
The Russo Firm
244 5th Avenue, Suite K-278
New York, New York 10001
T: 212-920-5042
E: jkelly@therussosfirm.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

BRENNAN B. MAHONEY
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Lawrence R. Himmel

(b) County of Residence of First Listed Plaintiff Kings County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James C. Kelly, The Russo Firm, 244 5th Ave., Suite
K-278, New York, NY 10001, 212-920-5042

DEFENDANTS

Heartland Consumer Products LLC

County of Residence of First Listed Defendant Hamilton County, IN
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | ☒ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☒ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☒ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee * ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(d)

Brief description of cause:

Class action for false advertising and deceptive trade practices

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

PART A - CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, James C. Kelly, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☒ monetary damages sought are in excess of \$150,000.00 exclusive of interest and costs,
- ☐ the complaint seeks injunctive relief, or
- ☐ the matter is otherwise ineligible for the following reason:

PART B - DISCLOSURE STATEMENT - FEDERAL RULES of CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks. Add an additional page if needed.

PART C - RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 3 in Section VIII on the front of this form. Rule 3(a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 3(a) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case involves identical legal issues, or the same parties." Rule 3 further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (b), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

PART D - NEW YORK EASTERN DISTRICT DIVISION OF BUSINESS RULE 1(d)(3)

If you answer "Yes" to any of the questions below, this case will be designated as a Central Islip case and you **must select Office Code 2**.

1. Is the action being removed from a state court that is located in Nassau or Suffolk County?
2. In actions not involving real property, is the action being brought against United States, its officers or its employees AND the majority of the plaintiffs reside in Nassau or Suffolk County?
3. If you answered "No" to all parts of Questions 1 and 2:
 - a. Did a substantial part of the events or omissions giving rise to claim or claims occur in Nassau or Suffolk County?
 - b. Do the majority of defendants reside in Nassau or Suffolk County?
 - c. Is a substantial amount of any property at issue located in Nassau or Suffolk County?
4. If this is a Fair Debt Collection Practice Act case, was the offending communication received in either Nassau or Suffolk County?
 (Note, a natural person is considered to reside in the county in which that person is domiciled; an entity is considered a resident of the county that is either its principal place of business or headquarters, or if there is no such county in the Eastern District, the county within the District with which it has the most significant contacts).

PART E - BAR ADMISSION

1. I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

If you answered No to E(1), please see instructions and Local Civ. R. 1.3.

2. Are you currently the subject of any disciplinary action (s) in this or any other state or federal court? If yes, please explain:

PART F - IMMIGRATION HABEAS

1. Is this petition based on an immigration detention?

Check Form to Validate Before Signing

I certify the accuracy of all information provided above.

2. Does this case require immediate attention of a judge?

If you answered Yes in Part F, and are filing this action after business hours, please see instructions here: <https://www.nyed.uscourts.gov/emergency-applications-filed-after-business-hours>.

Signature: /s/ James C. Kelly

Date: 09/25/2026