

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

Frederica White, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Abbott Laboratories,

Defendant.

Case No.: 26-cv-08718

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Frederica White (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action against Abbott Laboratories (“Defendant” or “Abbott”), and alleges the following upon personal knowledge as to her own purchases 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 manufacture and sale of Glucerna® 1g Total Sugars shakes (the “Products”) — nutrition shakes marketed to people with diabetes — bearing the front-label claim “1g Total Sugars” (the “Challenged Representation”). In truth, Defendant adds allulose, a monosaccharide sugar, to every bottle during manufacturing: based on Defendant’s own Nutrition Facts declarations and the ingredient list, approximately 3.9 to 5 grams per bottled serving, several times the single gram of total sugars Defendant represents.

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 first among the Products’ minor ingredients, ahead of every flavoring and additive in the

Products, and the amount of allulose per serving can be calculated by employing Defendant's own Nutrition Facts declarations.

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" — the very term Defendant prints on the front of the Products — 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 "1g Total Sugars," the statement is governed by 21 C.F.R. § 101.13(b), (b)(1), and (i)(3). 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 a statement of the amount of a nutrient only if the statement "is not false or misleading in any respect." 21 C.F.R. § 101.13(i)(3).

6. Because the Products actually contain approximately 3.9 to 5 grams of added monosaccharide sugar per bottle via their allulose content — bringing their true total sugars to roughly five to six times the amount declared — Defendant's front-of-package "1g Total Sugars" representation is literally false, highly deceptive to the reasonable consumer, and a direct violation of 21 C.F.R. §§ 101.9(c)(6)(ii) and 101.13(b), (b)(1), and (i)(3), 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 little or no sugar, and Defendant's placement of the "1g Total Sugars" claim — twice — 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 only one gram of 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 New York, New York. Defendant is a corporation organized under the laws of the State of Illinois with its principal place of business in Illinois, and is therefore a citizen of Illinois. 28 U.S.C. § 1332(c)(1).

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 pharmacy retailers, including CVS, 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 purchases of the Products at CVS stores in New York County, New York, which lies within the Southern District of New York.

PARTIES

12. Plaintiff Frederica White is a resident of New York, New York. Within the three years preceding the filing of this Complaint, Plaintiff purchased the Vanilla flavor of the Products bearing the "1g Total Sugars" representation multiple times at CVS stores in New York, New York. Plaintiff paid approximately \$12 per four-pack.

13. Plaintiff has diabetes and, for that reason, pays close attention to the sugar content of the foods and beverages she buys and avoids high-sugar foods. Before purchasing, Plaintiff read and relied upon the "1g Total Sugars" claim, which appears prominently, twice, on the front of each bottle, and she specifically selects the Products over other Glucerna shakes because of it. Based on that representation, Plaintiff believed, reasonably but incorrectly, that each bottle contained a total of only one gram of sugar. After her purchases, Plaintiff learned that the Products contain added allulose — a monosaccharide sugar — in an amount of approximately 5 grams per bottle of the Vanilla flavor. Plaintiff would not have purchased the Products, or would have paid less for them, had she known the truth.

14. Defendant Abbott Laboratories is a corporation organized under the laws of the State of Illinois, with its principal place of business at 100 Abbott Park Road, Abbott Park, Illinois 60064. Defendant owns the GLUCERNA® brand and, through its Abbott Nutrition business, manufactures and distributes the Products. The Products' labels identify their source as "Abbott Nutrition, Abbott Laboratories, Columbus, Ohio."

15. Defendant manufactures, 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, including CVS, 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,” “1g total sugars,” 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 little or no sugar. Defendant promotes the Products to this audience directly, stating that "[e]ach shake has 1g total sugars to help people with diabetes or prediabetes minimize their sugar intake."¹

23. A "1g Total Sugars" 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 sugar.

B. The Products and the Challenged Representation

24. Defendant manufactures, markets, and sells Glucerna® 1g Total Sugars shakes in 10 fl. oz. bottles, individually and in multi-packs, in Vanilla and Milk Chocolate flavors. The front of each bottle states "1g TOTAL SUGARS" twice: once in large white capital letters on the bottle's neck, and again in large bold type directly beneath the GLUCERNA® logo. The front label also states "#1 DOCTOR RECOMMENDED BRAND," "15g PROTEIN," and "1 CARB CHOICE," states that the Products are "made with CARBSTEADY® to help manage blood sugar response,"

¹ Abbott Store, Glucerna 1g Total Sugars Vanilla Shake, 10 fl oz Bottle, Case of 16, <https://abbottstore.com/adult-nutrition/glucerna/glucerna-shake/glucerna-1g-total-sugars-shake/glucerna-1g-total-sugars-vanilla-shake-10-fl-oz-bottle-case-of-16-69086.html> (last visited October 2, 2026).

and describes the Products as scientifically designed for people with diabetes. The front label of the Vanilla flavor, and the Nutrition Facts panel and ingredient statement for the Vanilla flavor, as shown on the Products' CVS.com product listing, are reproduced below.²

Glucerna 1g Total Sugars Shake — Vanilla (front label)³



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 CVS Pharmacy, Glucerna 1g Total Sugars Vanilla Shake, <https://www.cvs.com/shop/glucerna-hunger-smart-diabetes-nutritional-shake-homemade-vanilla-10-fl-oz-4-ct-prodid-816327> (last visited October 2, 2026).

**Glucerna 1g Total Sugars Shake — Vanilla
(Nutrition Facts and ingredient statement)⁴**

Nutrition Facts	
Serving size	10 fl oz (296 mL)
Amount per serving	
Calories	180
	% DV*
Total Fat 10g	13%
Saturated Fat 1.5g	8%
Trans Fat 0g	
Polyunsaturated Fat 3g	
Monounsaturated Fat 5g	
Cholesterol 10mg	3%
Sodium 300mg	13%
Total Carbohydrate 14g	5%
Dietary Fiber 4g	14%
Total Sugars 1g	
Includes 0g Added Sugars	0%
Protein 15g	30%
Vitamin D 12mcg 60% • Calcium 330mg 25% • Iron 4.5mg 25%	
Potassium 330mg 6% • Vitamin A 25% • Vitamin C 100%	
Vitamin E 50% • Vitamin K 30% • Thiamin 35% • Riboflavin 30%	
Niacin 25% • Vitamin B ₆ 35% • Folate (72mcg Folic Acid) 30%	
Vitamin B ₁₂ 25% • Biotin 25% • Pantothenic Acid 30%	
Phosphorus 25% • Iodine 25% • Magnesium 25% • Zinc 30%	
Selenium 25% • Copper 25% • Manganese 20% • Chromium 50%	
Molybdenum 40% • Chloride 10% • Choline 25%	
*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, MILK PROTEIN CONCENTRATE, CANOLA OIL; LESS THAN 2% OF: ALLULULOSE, CORN MALTODEXTRIN, SOY PROTEIN ISOLATE, CALCIUM CASEINATE, SOLUBLE CORN FIBER, CORN OIL, GLYCERIN, SHORT-CHAIN FRUCTOOLIGOSACCHARIDES, SODIUM CITRATE, NATURAL AND ARTIFICIAL FLAVORS, CELLULOSE GEL, SOY FIBER, MAGNESIUM PHOSPHATE, ASCORBIC ACID, POTASSIUM CITRATE, POTASSIUM CHLORIDE, MONOGLYCERIDES, SOY LECITHIN, CHOLINE CHLORIDE, SUCRALOSE, CELLULOSE GUM, CALCIUM PHOSPHATE, CARRAGEENAN, POTASSIUM HYDROXIDE, SALT, MAGNESIUM CHLORIDE, ACESULFAME, POTASSIUM, DI-ALPHA-TOCOPHERYL ACETATE, FERROUS SULFATE, GELLAN GUM, ZINC SULFATE, NIACINAMIDE, VITAMIN B ₁₂ , CALCIUM PANTOTHENATE, THIAMINE HYDROCHLORIDE, PYRIDOXINE HYDROCHLORIDE, MANGANESE SULFATE, RIBOFLAVIN, CITRIC ACID, COPPER SULFATE, VITAMIN A PALMITATE, FOLIC ACID, CHROMIUM CHLORIDE, POTASSIUM IODIDE, PHYLLGLUCONONE, SODIUM SELENATE, SODIUM MOLYBDATE, BIOTIN, AND VITAMIN D ₃ . CONTAINS MILK AND SOY INGREDIENTS.	
Scan here for more food information or call 1-866-938-9730 	
ABBOTT NUTRITION, ABBOTT LABORATORIES, COLUMBUS, OHIO 43219-3034 USA	

⁴ *Id.*

25. The Challenged Representation conveys a single, unambiguous message to a reasonable consumer: that each bottled serving of the Products contains a total of only one gram of sugar. That is the ordinary, common-sense, and expected meaning of the phrase “1g Total Sugars.”

26. That message is false. The Products’ ingredient statement reflects that Defendant adds allulose — a monosaccharide sugar — during processing. Based on Defendant’s own Nutrition Facts declarations, approximately 5 grams of allulose is added to each bottle of the Vanilla flavor, and approximately 3.9 grams to each bottle of the Milk Chocolate flavor, so that the Products’ true total sugars are roughly five to six times the amount Defendant represents.

27. The Challenged Representation is printed in large, high-contrast type twice 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 after the words “Less than 2% of:” and in the same typeface and size as some fifty 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 about the amount of “Total Sugars” a product contains.

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.”).

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.

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 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 3.9 to 5 Grams of Allulose Per Bottle

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

⁷ Yuma Tani 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).

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).

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.

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 panels for the Products yields the following derivation. For the Vanilla flavor: Total Carbohydrate (14g) – Dietary Fiber (4g) – Total Sugars (1g) – Sugar Alcohol (0g) = approximately 9g of carbohydrate mass unaccounted for by any declared category. For the Milk Chocolate flavor: Total Carbohydrate (14g) – Dietary Fiber (6g) – Total Sugars (1g) – Sugar Alcohol (0g) = approximately 7g. The Products declare no sugar alcohol.

44. According to the Products' ingredient statements — which under 21 C.F.R. § 101.4(a) must list ingredients in descending order of predominance by weight, except that ingredients present at 2% or less may be grouped at the end, 21 C.F.R. § 101.4(a)(2) — the Products' carbohydrate ingredients consist of allulose; soluble corn fiber, short-chain fructooligosaccharides, and soy fiber, which are accounted for in the Dietary Fiber line; and smaller amounts of full-calorie carbohydrates such as glycerin, cocoa powder in the Milk Chocolate flavor, and corn maltodextrin in the Vanilla flavor. The unaccounted carbohydrate mass therefore consists of allulose together with those full-calorie carbohydrates, which can be separated using the Products' declared calories.

45. The calculations using 21 C.F.R. § 101.9(c)(1)(i) and the Products' calorie declarations 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, sugars and other digestible carbohydrates 4 calories per gram, soluble dietary fiber 2 calories per gram, and allulose 0.4

calories per gram. Each flavor declares 180 calories, 10g of fat (90 calories), and 15g of protein (60 calories), leaving 30 calories attributable to carbohydrate. For the Vanilla flavor, after subtracting 4 calories for the 1g of declared sugars and 8 calories for the 4g of dietary fiber, 18 calories remain for the 9g of unaccounted carbohydrate.

46. The actual allulose amount can be derived using a simple algebraic equation: Let x be Standard Carbohydrates and y be Allulose. For the Vanilla flavor: $x + y = 9$ grams and $4x + 0.4y = 18$ calories; $y = 5.0$ grams and $x = 4.0$ grams.

47. For the Milk Chocolate flavor, after subtracting 4 calories for the 1g of declared sugars and 12 calories for the 6g of dietary fiber, 14 calories remain for the 7g of unaccounted carbohydrate. For the Milk Chocolate flavor: $x + y = 7$ grams and $4x + 0.4y = 14$ calories; $y = 3.89$ grams and $x = 3.11$ grams.

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

49. These figures are consistent with Defendant's ingredient statements, which list allulose among the ingredients present at less than 2% of the Products by weight — that is, less than approximately 6 grams in a 10 fl. oz. bottle. Accordingly, each bottle of the Products contains approximately 4.9 grams (Milk Chocolate: 3.9g of allulose plus the 1g of declared sugars) to 6 grams (Vanilla: 5g of allulose plus the 1g of declared sugars) of total sugars as defined by 21 C.F.R. § 101.9(c)(6)(ii), not the “1g” Defendant represents.

50. By any measure, the quantity of allulose Defendant adds to the Products is a deliberate, material, and functionally significant addition of sugar — several times the entire amount of sugar that the “1g Total Sugars” representation discloses.

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

51. 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.

52. 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 “1g Total Sugars” representation is a nutrient-content claim because it appears outside the Nutrition Facts panel and expressly represents the amount of sugar in the Products. 21 C.F.R. § 101.13(b)(1), (c).

53. Nor does the Challenged Representation fall within the narrow factual-statement provision of 21 C.F.R. § 101.13(i)(3), which permits a statement of the actual amount of a nutrient only where the statement “does not in any way implicitly characterize the level of the nutrient in the food and it is not false or misleading in any respect.” Here, the “1g Total Sugars” statement is not truthful, because the Products’ total sugars, as defined in 21 C.F.R. § 101.9(c)(6)(ii), are several times greater than one gram. And in any event, displayed twice in large type on the front of a product designed for people with diabetes, beside the statement that the Products are “made with CARBSTEADY® to help manage blood sugar response,” and promoted by Defendant as having “1g total sugars to help people with diabetes or prediabetes minimize their sugar intake,” the statement implicitly characterizes the Products as low in sugar — a characterization FDA has never defined or authorized. The Challenged Representation is therefore a regulated claim subject to 21 C.F.R. § 101.13(b), (c), and (i).

54. The “1g Total Sugars” representation is a direct statement about the amount of sugar in the Products, and it expressly invokes the regulatory term “Total Sugars.” It is therefore an express nutrient-content claim, 21 C.F.R. § 101.13(b)(1), (c), and because Defendant adds allulose during manufacturing of its Products, the representation must be measured against the definition of “total sugars” in 21 C.F.R. § 101.9(c)(6)(ii).

55. The Products 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 approximately 3.9 to 5 grams of allulose to each bottle during processing, the Products contain approximately 4.9 to 6 grams of total sugars per bottle, and the “1g Total Sugars” representation does not comply with 21 C.F.R. § 101.9(c)(6)(ii).

56. The allulose Defendant adds is also an “added sugar” under 21 C.F.R. § 101.9(c)(6)(iii), which 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. Defendant’s Nutrition Facts panel nonetheless declares that the Products include “0g Added Sugars,” reinforcing the false impression created by the front-label claim that each bottle contains a single gram of sugar, none of it added.

57. 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. § 101.13, and does not purport to authorize a separate, outside-panel claim about the amount of “Total Sugars” in a product. 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 “1g Total Sugars” representation therefore receives no shelter from the guidance, even assuming full compliance with the panel-labeling enforcement-discretion policy.

58. 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.

59. 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.”

60. 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.

61. Because Defendant adds approximately 3.9 to 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 complies with neither § 101.9(c)(6)(ii) nor § 101.13, the Products are misbranded under federal law. 21 U.S.C. § 343(a)(1), (r)(1)(A); 21 C.F.R. §§ 101.9(c)(6)(ii), 101.13(b), (b)(1), (c), and (i)(3).

62. 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 "1g Total Sugars" 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

63. 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.

64. 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.

65. Defendant does not disclose anywhere on the Products — or, upon information and belief, anywhere else — how much allulose they contain.

66. Defendant formulates and manufactures the Products and knows precisely how much allulose — a sugar — it adds to each bottle. Yet on the Products themselves, Defendant tells purchasers that the Products contain a total of only “1g” of sugar.

67. Even a consumer who read the word “allulose” in the ingredient list would not reasonably understand that the Products contain sugar beyond the single gram the Challenged Representation discloses. The ingredient list does not use the word “sugar” in connection with allulose, explain that allulose functions as a sugar, or disclose how much allulose the Products contain.

68. Even if consumers knew that allulose was a sugar, they would have no way to determine from the label how much allulose the Products contain, and the Challenged Representation affirmatively tells them that the Products contain a total of only one gram of sugar, when each bottle in fact contains several additional grams of an added sweetening ingredient that is itself a sugar.

69. 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.

70. 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

71. 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.

72. 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 “1g Total Sugars” 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.

73. Defendant is one of the largest health-care and nutrition companies in the world — the owner of the GLUCERNA® brand, which it markets specifically to people with diabetes — 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.

74. 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.

75. Defendant could have reformulated the Products, accurately disclosed their total sugar content, or stopped using the Challenged Representation, but did not do so.

H. Plaintiff’s and the Class’s Injury

76. Defendant markets the Products, including through their packaging, Defendant’s website, and retail channels, as a specialized nutrition product “scientifically designed for people with diabetes” and made “to help manage blood sugar response,” 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.

77. 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 “1g Total Sugars” claim; and (c) were denied the benefit of the bargain for which they paid.

78. 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 — in an amount several times greater than the total sugars Defendant represents.

CLASS ACTION ALLEGATIONS

79. Plaintiff brings this action on behalf of herself 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 “1g Total Sugars” 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 “1g Total Sugars” 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 “1g Total Sugars” representation, for personal, family, or household use, during the period permitted by the applicable statutes of limitations.

80. 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.

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

82. 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.

83. 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 "1g Total Sugars" 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.

84. 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.

85. 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.

86. 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)

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

88. 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.

89. 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.

90. The Challenged Representation is materially misleading to a reasonable consumer acting reasonably under the circumstances, because it represents that the Products contain a total of only one gram of sugar when, in fact, Defendant adds approximately 3.9 to 5 grams of allulose — a sugar — to each bottle.

91. 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.

92. 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)

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

94. 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.

95. 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.

96. The Challenged Representation is false and misleading in a material respect because it represents that the Products contain a total of only one gram of sugar, when in fact Defendant adds approximately 3.9 to 5 grams of allulose — a sugar — to each bottle, a fact that would be material to a reasonable consumer's purchasing decision.

97. 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.

98. 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.

99. 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)

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

101. 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.

102. 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.

103. Defendant misleadingly, inaccurately, and deceptively presented the Products to consumers in the Multi-State Class jurisdictions through the uniform “1g Total Sugars” representation, which conveys that the Products contain a total of only one gram of sugar, when in fact Defendant adds approximately 3.9 to 5 grams of allulose — a sugar — to each bottle during processing.

104. 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.

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

106. 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.

107. Plaintiff and the members of the Multi-State Class viewed and relied on the materially misleading “1g Total Sugars” representation on the Products.

108. Plaintiff and the members of the Multi-State Class expected that the Products they purchased would contain a total of only one gram of sugar, consistent with Defendant's labeling.

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

110. 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.

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

112. 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)

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

114. 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.

115. 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.

116. 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: October 2, 2026

/s/ James Chung

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