UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

BENJAMIN GELBER, on behalf of himself and all others similarly situated, Plaintiff, v. KENNY'S CANDY & CONFECTIONS, INC., Defendant.	Case No. _____ **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Benjamin Gelber ("Plaintiff"), individually and on behalf of all others similarly situated, brings this class action against Kenny's Candy & Confections, Inc. ("Defendant") and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class action on behalf of consumers who purchased Defendant's Wiley Wallaby 1G Sugar Licorice (the "Products") during the applicable Class Period (as defined below). Defendant formulates, labels, markets, advertises, distributes, and sells the Products throughout the United States, including in the State of New York. Defendant sells the Products through retail stores, online retailers, and other channels of commerce.

2. The Products include, but are not limited to, the following: Wiley Wallaby 1G Sugar Watermelon Licorice and Wiley Wallaby 1G Sugar Very Berry Licorice, including any size,

count, label, package, flavor, or retail listing bearing the same or substantially similar sugar-content representations challenged herein.[1]

3. Defendant prominently markets the Products to consumers as containing "1G SUGAR," "1 gram sugar licorice," and "removed all but 1 gram of sugar" and through substantially similar representations that communicate to consumers that the Products contain only one gram of sugar (collectively, the "One-Gram Sugar Representations"). These representations are false and misleading. The Products contain eight grams of sugar, including seven grams of allulose, and put simply, allulose is sugar. Allulose is not present in the Products in trace or incidental amounts. Allulose is the second-listed ingredient in the Products' ingredient list, indicating it is the second most prevalent of the Products' listed ingredients by weight.

4. The State of New York has adopted and incorporated federal food labeling regulations including 21 C.F.R. Part 101, which encompasses §§ 101.13 and 101.9(c)(6)(ii). N.Y. Comp. Codes R. & Regs. tit. 1, § 259.1. Under the governing federal and parallel New York regulations, allulose is sugar. Those regulations define "sugars" as "the sum of all free mono- and disaccharides." 21 C.F.R. § 101.9(c)(6)(ii). Allulose is a monosaccharide, and nothing in the regulatory definition excludes it. Under the plain terms of the governing regulations, the allulose in the Products is sugar.

5. The governing federal and parallel New York regulations also prohibit the precise deception at issue here. Each of the One-Gram Sugar Representations is a "direct statement about the level . . . of a nutrient in the food" and is therefore a nutrient content claim. 21 C.F.R. § 101.13(b)(1); *see also* § 101.13(c). Those regulations permit a label to state the amount of a

[1] Wiley Wallaby, *Less Sugar, Gluten Free*, Wiley Wallaby: Gourmet Licorice, https://wileywallaby.com/less-sugar-gluten-free/ (last visited Oct. 13, 2026). Plaintiff reserves the right to add to the list of Products if more become apparent during the litigation.

nutrient only under specified conditions, including that the statement "is not false or misleading in any respect." § 101.13(i)(3). The One-Gram Sugar Representations fail to satisfy that requirement. Defendant tells consumers that the Products contain only one gram of sugar, yet the One-Gram Sugar Representations do not disclose that the Products contain seven additional grams of sugar in the form of allulose. The Products thus contain a substance that constitutes sugar under the governing federal and parallel New York regulations in an amount that far exceeds the represented amount. The Products therefore do not conform with the One-Gram Sugar Representations. As set forth more fully below, the One-Gram Sugar Representations are false and misleading in violation of the governing federal and parallel New York regulations.

6. The deception alleged here is straightforward. Defendant tells consumers, in prominent and unqualified terms, that the Products contain "1G SUGAR." Yet the Products are deliberately formulated with seven grams of allulose per serving in addition to the one gram of sugar Defendant discloses, for a total of eight grams of sugar per serving, far exceeding the represented amount.

7. Defendant nevertheless seeks to capitalize on consumers' desire for products that contain low amounts of sugar by falsely, misleadingly, and deceptively labeling and advertising the Products with the One-Gram Sugar Representations. Defendant's One-Gram Sugar Representations appear prominently on the Products' labels and in Defendant's advertising and marketing materials. Defendant thereby conveys an unqualified message to consumers as a selling point: the Products contain only one gram of sugar. That message is false or misleading because the Products contain eight grams of sugar.

8. The One-Gram Sugar Representations are material. The sugar content is a characteristic that a reasonable consumer, acting reasonably under the circumstances, would

consider important in deciding whether to purchase the Products. The amount of sugar in the Products is an important characteristic of the Products and is precisely the characteristic Defendant prominently features in its marketing, which Defendant would not do if it did not help sell the Products.

9. Defendant knows that consumers place substantial value on products represented as containing only one gram of sugar and uses the One-Gram Sugar Representations to induce consumers to purchase the Products. Among other things, Defendant charges consumers for the Products based upon the value consumers place on the Products' represented characteristics, including the representation that they contain only one gram of sugar. Defendant's Products containing the One-Gram Sugar Representations are priced at a premium over comparable Wiley Wallaby Licorice products that do not carry such representations as set forth below, further demonstrating the material economic value of the One-Gram Sugar Representations.

10. Plaintiff and Class Members therefore suffered economic injury at the point of purchase. They paid a price premium for Products with the One-Gram Sugar Representations but they received Products with eight times that amount.

11. Plaintiff brings this action individually and in a representative capacity on behalf of similarly situated consumers who purchased the Products during the relevant Class Period. Plaintiff seeks on his individual behalf and on behalf of the Class, actual damages, statutory damages, and all other relief available under applicable law to remedy Defendant's deceptive conduct.

12. As set forth below, Defendant's conduct violates applicable consumer-protection laws, including New York General Business Law §§ 349 and 350.

PARTIES

13. Plaintiff Benjamin Gelber is, and at all times relevant hereto was, a citizen of the State of New York residing in Queens, New York. He purchased Wiley Wallaby 5.5 Ounce Very Berry 1G Sugar Licorice from Amazon.com for personal, family, or household use on or about March 25, 2025, for approximately $8.41. He also purchased the Products on multiple occasions from grocery stores in New York, including a K Corner located in Brooklyn, New York, on or about June 14, 2026, for approximately $6.25.

14. Defendant Kenny's Candy & Confections, Inc. is a Minnesota corporation that maintains its principal place of business in Perham, Minnesota. Defendant formulates, labels, markets, distributes, and/or sells the Products throughout the United States, including throughout the State of New York. The Products' packaging identifies the Products as "Manufactured by: Kenny's Candy & Confections, A KLN Family Brands Company, Perham, MN 56573."[2]

JURISDICTION AND VENUE

15. The Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class includes more than 100 members, the aggregate amount in controversy exceeds five million dollars, exclusive of interest and costs, and at least one member of the proposed Class is a citizen of a state different from Defendant. Plaintiff is a citizen of New York. The proposed Class is defined as all persons who purchased the Products in New York and accordingly may include citizens of New York and other states. Defendant is a Minnesota corporation that maintains its principal place of business in Minnesota. Defendant is

[2] Wiley Wallaby, *Low Sugar Gluten Free Watermelon Licorice*, Shop Wiley Wallaby, https://shop.wileywallaby.com/collections/low-sugar-gluten-free-licorice/products/low-sugar-gluten-free-watermelon-licorice (last visited Oct. 13, 2026).

therefore a citizen of Minnesota and is diverse from at least one member of the proposed Class. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d).

16. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiff's claims occurred here: Plaintiff resides in this District, encountered the One-Gram Sugar Representations here, and purchased and received the Products here.

17. The Court has personal jurisdiction over Defendant because Plaintiff's claims arise from Defendant's transacting business in the State of New York, and the exercise of jurisdiction comports with due process based upon sufficient minimum contacts which exist between Defendant and the State of New York. Defendant's Products are advertised, marketed, distributed, and sold throughout New York. Defendant engages in the conduct alleged in this Complaint within New York. Defendant's activity within New York is substantial, not merely isolated. Plaintiff's claims arise out of and relate to Defendant's marketing and sale of the Products in New York. Defendant has purposefully availed itself of the New York market and has sufficient minimum contacts, rendering the exercise of jurisdiction by the Court consistent with traditional notions of fair play and substantial justice.

ALLEGATIONS OF FACT

Defendant Markets, Advertises, and Sells the Products Using the One-Gram Sugar Representations.

18. Defendant formulates, labels, markets, advertises, distributes, and sells the Products to consumers throughout the United States, including in the State of New York. The Products are sold online and through major retailers, including Target, CVS, Walgreens, Amazon, and other retail stores.

19. Defendant markets and sells the Products as food products intended for purchase and consumption by ordinary consumers. Defendant controls the Products' formulation, ingredients, packaging, labeling, advertising, website content, point-of-sale materials, and other representations made to consumers concerning the Products. Defendant therefore possesses, or has access to, information concerning the Products' ingredients and formulation that consumers do not possess.

20. Defendant's Products prominently display the One-Gram Sugar Representations. These Representations are affirmative representations concerning a material characteristic of the Products.

21. The One-Gram Sugar Representations appear, or have appeared, on the Products' packaging, and in Defendant's other marketing and advertising materials, including Defendant's website, Amazon product listings, and other retailer listings. Defendant thus places the One-Gram Sugar Representations directly before consumers at the time they encounter, evaluate, and decide whether to purchase the Products.

22. As depicted below, Defendant's Products bear the One-Gram Sugar Representations on the front label, which states "1G SUGAR" in large, bold type:



Figure 1[3]

[3] Wiley Wallaby, *Low Sugar Gluten Free Watermelon Licoric*e, Shop Wiley Wallaby, https://shop.wileywallaby.com/collections/low-sugar-gluten-free-licorice/products/low-sugar-gluten-free-watermelon-licorice (last visited Oct. 13, 2026).

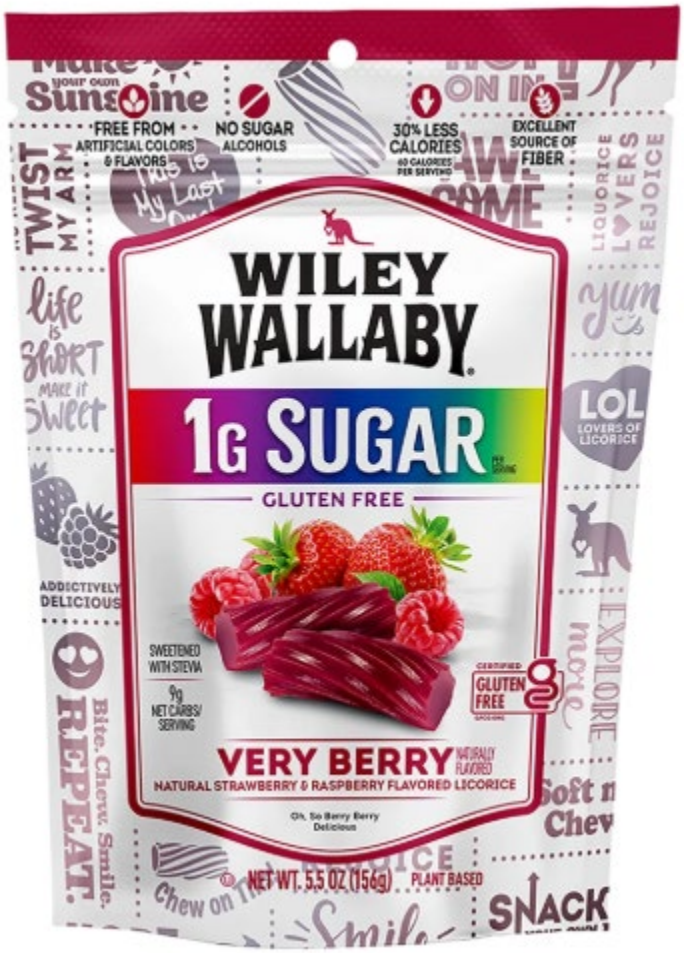

Figure 2[4]

23. The One-Gram Sugar Representations also appear prominently in the Products' description and marketing materials. Defendant's website, for example, states: "Even though we removed all but 1 gram of sugar and all of the gluten, dairy, and high fructose corn syrup, we kept the soft, chewy texture and bursts of flavor you love. Finally, you can feel free to give into your

[4] Wiley Wallaby, *Low Sugar Gluten Free Very Berry Licoric*e, Shop Wiley Wallaby, https://shop.wileywallaby.com/collections/low-sugar-gluten-free-licorice/products/low-sugar-gluten-free-very-berry-licorice (last visited Oct. 13, 2026).

craving!"[5] Retailer listings for the Products likewise describe them as containing one gram of sugar. For instance, Amazon's product listing states, "Healthy Candy: Wiley Wallaby's 1 gram sugar licorice is a low calorie candy, and a low carb candy making it perfect if you are looking for low calorie snacks or a keto candy option."[6]

24. The One-Gram Sugar Representations are displayed prominently and are presented to consumers as an objective fact concerning the Products, rather than as an opinion, estimate, or qualified statement.

25. Defendant repeatedly uses the false One-Gram Sugar Representations to identify, distinguish, brand, advertise, and sell the Products in the marketplace. The representations therefore form an important part of the Products' labeling, branding, advertising, and overall marketing message. The One-Gram Sugar Representations also serve to distinguish the Products from Defendant's other products, which Defendant acknowledges do contain more than one gram of sugar. For example, Defendant's standard Wiley Wallaby Watermelon Licorice discloses 12 grams of added sugars per serving.[7]

26. Upon information and belief, Defendant labeled and marketed the Products in a materially identical manner throughout the Class Period, uniformly conveying through the One-Gram Sugar Representations that the Products contain only one gram of sugar.

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[5] Wiley Wallaby, *Low Sugar Gluten Free Watermelon Licorice*, Shop Wiley Wallaby, https://shop.wileywallaby.com/collections/low-sugar-gluten-free-licorice/products/low-sugar-gluten-free-watermelon-licorice (last visited Oct. 13, 2026).

[6] *Wiley Wallaby Low Sugar Licorice Candy, Berry & Watermelon, 5.5oz, 2Pk,* Amazon, https://www.amazon.com/dp/B0CNF7CV18 (last visited Oct. 13, 2026).

[7] *Wiley Wallaby, Wiley Wallaby Watermelon Licorice,* Shop Wiley Wallaby, https://shop.wileywallaby.com/products/wiley-wallaby-watermelon-licorice (last visited Oct. 13, 2026).

27. An ordinary consumer encountering an unqualified representation that a product contains "1G SUGAR" would reasonably understand that representation according to its ordinary meaning: that the Products contain only one gram of sugar.

28. Defendant's decision to place the One-Gram Sugar Representations prominently on the Products demonstrates that Defendant understood the representations were material and intended them to communicate an important product attribute and to influence consumers' purchasing decisions.

The Products Contain Allulose.

29. Contrary to Defendant's One-Gram Sugar Representations, the Products contain eight grams of sugar per serving, including seven grams of allulose. Allulose is the second-listed ingredient in the Products' ingredient lists.

30. Allulose is not an incidental contaminant, trace substance, or ingredient that appears in the Products by accident. It is an intentionally selected ingredient in the Products' formulation. Defendant deliberately uses allulose in manufacturing the Products and knowingly places Products containing allulose into the marketplace.

31. Allulose is a naturally occurring sugar found in small amounts in figs, raisins, wheat, maple syrup, and molasses. Chemically, allulose is a monosaccharide, just like fructose. Allulose and fructose are both sugar carbohydrates.

32. Defendant knows that the Products contain allulose because Defendant formulates, manufactures, packages, markets, and/or sells the Products and controls the Products' ingredient information and labeling.

33. Allulose is an ingredient intentionally included in the Products' formulation and identified in the Products' ingredient lists. For example, allulose is the second-listed ingredient for

the Wiley Wallaby Watermelon 1G Sugar Licorice: "Soluble Corn Fiber, ***Allulose***, Rice Flour, Tapioca Syrup, Water, Tapioca Starch, Glycerine, Natural Flavor, Palm Oil, Malic Acid, Sodium Citrate, Sunflower Lecithin, Fruit & Vegetable Juice for Color, Citric Acid, Fumaric Acid, Potassium Sorbate (Preservative), Tartaric Acid, Stevia."[8] Similarly, allulose is the second-listed ingredient for the Wiley Wallaby Very Berry 1G Sugar Licorice: "Soluble Corn Fiber, ***Allulose***, Rice Flour, Tapioca Syrup, Water, Tapioca Starch, Glycerine, Natural Flavor, Palm Oil, Malic Acid, Sodium Citrate, Sunflower Lecithin, Fruit & Vegetable Juice for Color, Citric Acid, Fumaric Acid, Potassium Sorbate (Preservative), Tartaric Acid, Stevia."[9]

34. Under federal labeling law, ingredients must be listed in descending order of predominance by weight. 21 C.F.R. § 101.4(a)(1). The fact that allulose is identified as the second ingredient further demonstrates that allulose is a substantial component of the Products, rather than a de minimis or incidental ingredient.

35. The back labels of both flavors of the Products further state that each serving contains seven grams of allulose:



[8] *Wiley Wallaby Low Sugar Licorice Candy, Watermelon, 5.5oz, 2Pk,* Amazon, https://www.amazon.com/dp/B0CL7QZP9K (last visited Oct. 13, 2026).

[9] *Wiley Wallaby Low Sugar Licorice Candy, Very Berry, 5.5oz, 2Pk*, Amazon, https://www.amazon.com/dp/B09R6Y22JG (last visited Oct. 13, 2026).

Figure 3[10]



Figure 4[11]

36. Thus, Defendant's own admissions establish the presence, quantity, and knowing and intentional use of allulose in the Products.

37. The Products therefore contain a substantial quantity of sugar in the form of allulose notwithstanding Defendant's repeated One-Gram Sugar Representations.

38. Defendant's marketing creates a direct contradiction. Allulose is sugar; a product sweetened with allulose is by definition a product containing sugar. By prominently telling consumers that the Products contain only one gram of sugar while intentionally formulating the Products with seven grams of allulose per serving, Defendant deceives the public through misleading packaging statements and labels. This deception has earned Defendant substantial revenue while damaging a broad class of consumers across the State of New York.

39. The back-panel disclosures and ingredient list do not cure the misleading message conveyed by the front label and advertising. Reasonable consumers do not look past a prominent,

[10] Wiley Wallaby, *Low Sugar Gluten Free Watermelon Licorice*, Shop Wiley Wallaby, https://shop.wileywallaby.com/collections/low-sugar-gluten-free-licorice/products/low-sugar-gluten-free-watermelon-licorice (last visited Oct. 13, 2026).

[11] Wiley Wallaby, *Low Sugar Gluten Free Very Berry Licorice*, Shop Wiley Wallaby, https://shop.wileywallaby.com/collections/low-sugar-gluten-free-licorice/products/low-sugar-gluten-free-very-berry-licorice (last visited Oct. 13, 2026).

unqualified front-label representation to discover that the Products contain eight grams of sugar, including seven grams of allulose.

Allulose Is a Sugar Under the Applicable Definition.

40. Federal regulations govern how a manufacturer may describe the amount of a nutrient on a food label. Those regulations apply to all "foods that are intended for human consumption and that are offered for sale." 21 C.F.R. § 101.13(a). A claim that "expressly or implicitly characterizes the level of a nutrient of the type required to be in nutrition labeling under § 101.9" is a "nutrient content claim," and it "may not be made on the label or in labeling of foods unless the claim is made in accordance with" the governing regulations. § 101.13(b). An "expressed nutrient content claim" is "any direct statement about the level (or range) of a nutrient in the food." § 101.13(b)(1). The One-Gram Sugar Representations are direct statements about the level of sugar in the Products. They are therefore express nutrient content claims.

41. The regulations allow a label to state the amount of a nutrient only if the statement meets one of three alternative conditions. § 101.13(i)(1)–(3). A statement of amount that "does not in any way implicitly characterize the level of the nutrient in the food" is permitted only if "it is not false or misleading in any respect." § 101.13(i)(3). A statement of amount that does implicitly characterize the nutrient's level must instead be consistent with a regulatory definition for a claim or be accompanied by an adjacent disclaimer. § 101.13(i)(1)–(2).

42. Here, the One-Gram Sugar Representations each state the number of grams of sugar. They do not use a descriptor such as "less" or "reduced," and they take the same form as the examples the regulation gives of statements that do not implicitly characterize the level of a nutrient, such as "100 calories" or "5 grams of fat." 21 C.F.R. § 101.13(i)(3). The One-Gram Sugar

Representations are therefore permitted only if they are "not false or misleading in any respect." *Id.*

43. Section 101.9(c)(6)(ii), in turn, expressly defines "Total Sugars" broadly as "the sum of all free mono- and disaccharides (such as glucose, fructose, lactose, and sucrose)."

44. Allulose is a monosaccharide. It therefore falls within the express language of § 101.9(c)(6)(ii), which encompasses "all free mono- and disaccharides."

45. Nothing in the regulatory text of § 101.9(c)(6)(ii) excludes allulose from the definition of "Total Sugars."

46. The FDA's regulatory history confirms this reading. In its 2016 final rule revising the Nutrition Facts label, the FDA specifically considered the treatment of allulose and stated that "[a]llulose, as a monosaccharide, must be included" in the Total Sugars declaration unless and until the agency adopted a different rule.[12]

47. The FDA's 2016 statement is consistent with the text of § 101.9(c)(6)(ii): because allulose is a monosaccharide, it falls within the regulation's definition of "Total Sugars."

48. The FDA subsequently issued guidance concerning allulose in October 2020. That guidance did not amend § 101.9(c)(6)(ii), did not promulgate a new definition of "Total Sugars," and did not formally exclude allulose from the regulatory definition of sugar.[13]

49. Instead, the 2020 guidance announced an exercise of enforcement discretion concerning the declaration of allulose on Nutrition Facts and Supplement Facts labels, pending further consideration through rulemaking. The guidance addressed the FDA's enforcement

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[12] *Food Labeling: Revision of the Nutrition and Supplement Facts Label*s, 81 Fed. Reg. 33,742, 33,795-96 (May 27, 2016).

[13] U.S. Food & Drug Admin., *The Declaration of Allulose and Calories from Allulose on Nutrition and Supplement Facts Labels: Guidance for Industry* 1 (Oct. 2020).

position concerning how allulose should be treated for purposes of specified nutrition-panel declarations; it did not amend the underlying regulation or establish a new definition of sugar.

50. Nothing in the 2020 guidance authorizes a manufacturer to disregard the separate regulatory requirements governing nutrient-content claims, including express nutrient content claims like "1G Sugar."

51. The FDA's decision not to enforce provisions of law does not amend the text of the law or absolve actors of their violations of law. The 2020 guidance therefore did not transform the regulatory definition of "Total Sugars" into a definition that excludes allulose.

52. Nor does the FDA's exercise of enforcement discretion establish that a manufacturer may affirmatively, and falsely, represent that a product contains "1G Sugar" while the product contains approximately seven grams per serving of a monosaccharide encompassed by the regulation's definition of "Total Sugars."

53. The FDA itself has since rejected any reading of its 2020 guidance as narrowing the regulatory definition. In *Franco v. Chobani, LLC*, the FDA filed an amicus brief taking the position that "the text of § 101.9(c)(6)(ii) is unambiguous, and that total sugars as defined in that regulation include all monosaccharides, including allulose."[14] The Seventh Circuit agreed, holding that "sugars include every monosaccharide, including allulose."[15]

54. Applicable New York laws and regulations likewise incorporate and impose an identical or materially similar requirement governing the use of express nutrient content claims and the definition of sugar. New York Comp. Codes R. & Regs. tit. 1, § 259.1 incorporates

[14] *Franco v. Chobani, LLC*, 184 F.4th 599, 604 (7th Cir. 2026).
[15] *Id.* at 606.

applicable federal food labeling requirements, including 21 C.F.R. Part 101, which encompasses §§ 101.13 and 101.9(c)(6)(ii).

55. Plaintiff seeks to enforce only those identical requirements. Plaintiff does not seek to impose any labeling requirement in addition to, or different from, those imposed by 21 C.F.R. §§ 101.9(c)(6)(ii) and 101.13, and does not ask that Defendant make any disclosure or use any label statement that federal law does not already require. Plaintiff challenges Defendant's front-label and advertising One-Gram Sugar Representations, not the Products' Nutrition Facts panel.

The One-Gram Sugar Representations Are False and Misleading.

56. Defendant represents the Products contain "1G SUGAR," but the Products contain eight grams of sugar, including seven grams of allulose per serving.

57. Because allulose is a monosaccharide that falls within the applicable definition of sugar and is the second-listed ingredient, the Products' actual sugar content exceeds the one gram of sugar Defendant represents. The representations are false and misleading; thus, the Products cannot bear the One-Gram Sugar Representations under §§ 101.13(i) or 101.13(c).

58. Accordingly, Defendant's Products do not satisfy the federal regulatory standard governing the use of the One-Gram Sugar Representations, nor do they satisfy the identical state regulatory standards.

59. Defendant's One-Gram Sugar Representations are objectively false. The Products contain eight grams of sugar per serving, including seven grams of allulose.

60. The One-Gram Sugar Representations are also independently misleading to reasonable consumers because an unqualified representation that the Products contain only one gram of sugar communicates that the Products do in fact contain only one gram of sugar. In reality, Defendant's Products contain eight grams of sugar per serving, including seven grams of allulose.

61. The deception is particularly material because Defendant does not qualify its representations by stating that the Products have only one gram of certain types of sugar. To the contrary, Defendant affirmatively tells consumers that the Products contain "1 gram sugar" and that Defendant "removed all but 1 gram of sugar."

62. The prominence and repetition of the One-Gram Sugar Representations reinforce their significance. Defendant places the One-Gram Sugar Representations on the Products' packaging and uses them throughout Internet and retail product listings, thereby presenting the Products' represented sugar content as an important attribute and selling point of the Products.

Defendant Knowingly Misrepresents the Amount of Sugar in the Products.

63. Defendant knew that the Products contained substantial amounts of allulose before placing the Products on the market.

64. Defendant knew the amount of allulose contained in each serving of the Products.

65. Defendant necessarily possessed this information because Defendant controls the Products' formulation, ingredient specifications, manufacturing, packaging, labeling, and marketing.

66. Defendant also knew that consumers would encounter and consider the One-Gram Sugar Representations when deciding whether to purchase the Products. The Products' packaging and advertisements highlight the "1G SUGAR" nature of the Products.

67. Upon information and belief, Defendant selected and used the One-Gram Sugar Representations as part of a deliberate marketing strategy designed to distinguish the Products from other products, including its own Wiley Wallaby licorice products containing conventional sugar, and to appeal to consumers willing to pay a premium for products with less sugar.

68. Defendant's repeated use of the One-Gram Sugar Representations on the Products' packaging and in its advertising was not the result of an isolated printing error, inadvertent omission, or one-time mistake. Rather, Defendant incorporated the representations into the Products' branding and marketing and sold the Products to customers while using those representations.

69. Upon information and belief, Defendant was aware that allulose is a sugar but nevertheless made false and misleading nutrient-content claims via the One-Gram Sugar Representations.

70. Defendant's use of the representations despite its knowledge of the Products' formulation further demonstrates that the representations were an intentional and material component of Defendant's marketing and sale of the Products.

71. Defendant continues to market and sell the Products using the One-Gram Sugar Representations.

72. Defendant's conduct was undertaken in the course of its business and in connection with the marketing, advertising, distribution, and sale of the Products to consumers.

73. Defendant had the ability to accurately describe the Products or to simply make no nutrient-content claim concerning sugar at all. Instead, Defendant affirmatively chose to market and sell the Products using the One-Gram Sugar Representations, thereby inducing consumers seeking products with less sugar to purchase the Products.

Plaintiff and Consumers Were Injured by Defendant's Misrepresentations.

74. Plaintiff Benjamin Gelber purchased Wiley Wallaby 5.5 Ounce Very Berry 1G Sugar Licorice for personal, family, or household use, and not for resale, from Amazon.com on or about March 25, 2025, for approximately $8.41, while in New York. He also purchased the

Products on multiple occasions from grocery stores in New York, including from a K Corner location in Brooklyn on or about June 14, 2026, for approximately $6.25. Each price reflected the value of the One-Gram Sugar Representations.

75. Before purchasing the Products, Plaintiff encountered Defendant's One-Gram Sugar Representations on the Products' front label and product listing.

76. The One-Gram Sugar Representations are material. The quantity of sugar that a food contains is a characteristic that a reasonable consumer, acting reasonably under the circumstances, would consider important in deciding whether to purchase it. Defendant's own conduct confirms materiality: Defendant placed the One-Gram Sugar Representations on the front of every package and charged a premium for the Products bearing them.

77. Had Defendant accurately represented that the Products contained more than one gram of sugar per serving, Plaintiff would not have purchased the Products or would have purchased them only for substantially less money. The Products were worth less to Plaintiff than they would have been had they actually conformed to Defendant's representations that Defendant had "removed all but 1 gram of sugar."

78. Defendant charges a higher price for its Products with the One-Gram Sugar Representations than for comparable products that do not bear those representations. For example, on Defendant's website, a 10-ounce bag of regular Wiley Wallaby Watermelon Licorice was priced at $5.99, while a 5.5-ounce bag of Wiley Wallaby 1G Sugar Watermelon Licorice was priced at $5.99—the same price for approximately half the amount of licorice, and approximately an 81.8% per-ounce premium attributable to the One-Gram Sugar Representations:[16]

[16] Wiley Wallaby, *Wiley Wallaby Watermelon Licorice*, Shop Wiley Wallaby, https://shop.wileywallaby.com/products/wiley-wallaby-watermelon-licorice (last visited Oct. 13, 2026); Wiley Wallaby, *Low Sugar Gluten Free Watermelon Licorice*, Shop Wiley Wallaby,



Figure 5



Figure 6

79. This comparison is illustrative, but it confirms what the labeling misrepresentation makes obvious: every purchaser paid for Products represented as containing only one gram of sugar, received Products containing eight grams of sugar, and therefore paid more than the Products were worth.

80. Plaintiff paid a price that incorporated the value of Defendant's One-Gram Sugar Representations but received Products that did not conform to those representations.

81. Plaintiff therefore suffered economic injury at the point of purchase.

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https://shop.wileywallaby.com/collections/low-sugar-gluten-free-licorice/products/low-sugar-gluten-free-watermelon-licorice (last visited Oct. 13, 2026).

82. Plaintiff did not receive the benefit of the bargain for which he paid. Instead, Plaintiff received Products that contained eight grams of sugar despite Defendant's One-Gram Sugar Representations.

83. Plaintiff's injury was caused by Defendant's misrepresentations. The challenged representations concern an important characteristic of the Products that Defendant affirmatively placed before consumers as a reason to purchase them.

84. The same deception affected other consumers who purchased the Products after encountering the One-Gram Sugar Representations. Those consumers were exposed to the same materially misleading representations, purchased Products containing a substantial amount of sugar, and received Products that did not conform to Defendant's representations.

85. The challenged conduct is therefore consumer-oriented and arises from Defendant's common marketing, labeling, advertising, and sale of the Products to the public.

86. Defendant's conduct constitutes deceptive, misleading, unfair, and/or unlawful conduct under the consumer-protection laws applicable to Plaintiff's purchases and claims, including New York General Business Law §§ 349 and 350.

87. Defendant made representations concerning the Products that were objectively false and/or misleading to reasonable consumers.

88. Defendant's representations were material because they concerned the Products' sugar content, which is a material characteristic of the Products.

89. Defendant's conduct caused Plaintiff to suffer ascertainable economic injury in the form of a price premium. Plaintiff paid more for the Products than the Products were worth, and more than he would have paid, because Defendant's deceptive representations inflated the price of the Products.

90. As a direct and proximate result of Defendant's deceptive, misleading, unfair, and unlawful conduct described above, Plaintiff and members of the proposed Class were injured in fact and suffered ascertainable economic losses when they paid a premium for products bearing Defendant's false or misleading One-Gram Sugar Representations. The foregoing allegations establish Plaintiff's and the proposed Class members' claims arising from Defendant's common course of conduct, which forms the basis for the class allegations set forth below.

CLASS ACTION ALLEGATIONS

91. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23 on his own behalf and on behalf of all others similarly situated. The proposed Class is defined as follows:

> All persons who, during the three years prior to the filing of the Complaint (the "Class Period"), purchased the Products in the State of New York for personal, family, or household use, and not for resale.

92. The Class does not include: (i) Defendant, its assigns, successors, and legal representatives; (ii) any entities in which Defendant has controlling interests; (iii) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, councils, and/or subdivisions; (iv) any judicial officer presiding over this matter and persons within the third degree of consanguinity to such judicial officer; and (v) Plaintiff's counsel and Defendant's counsel.

93. Plaintiff reserves the right to amend or otherwise alter the class definition presented to the Court at the appropriate time in response to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

94. Members of the Class are so numerous that joinder of all members is impracticable. Upon information and belief, the Class consists of thousands of purchasers. Accordingly, it would be impracticable to join all members of the Class before the Court.

95. There are numerous questions of law or fact common to all members of the putative Class. Included within the common questions of law or fact are:

a. Whether the Products contain allulose and, if so, the amount of allulose contained in the Products;

b. Whether allulose is a sugar under the applicable laws, regulations, and standards governing the One-Gram Sugar Representations;

c. Whether Defendant represented that the Products contained "1G SUGAR," "1 gram sugar," or substantially similar nutrient-content claims;

d. Whether these representations were false, deceptive, misleading, or otherwise unlawful under the laws asserted herein;

e. Whether Defendant's labeling, packaging, advertising, marketing, and sale of the Products constituted consumer-oriented conduct and/or advertising directed to consumers;

f. Whether Defendant knew that the Products contained seven grams of allulose and that the Products did not conform to the One-Gram Sugar Representations;

g. Whether the One-Gram Sugar Representations were material and likely to mislead a reasonable consumer acting reasonably under the circumstances;

h. Whether Defendant's conduct violated New York General Business Law §§ 349 and 350;

i. Whether Defendant's conduct caused economic injury to purchasers of the Products in the form of a price premium attributable to the One-Gram Sugar Representations, and the appropriate method for measuring that premium; and

j. Whether Plaintiff and Class Members are entitled to actual damages or statutory damages and other relief, and if so, in what amount.

96. Plaintiff's claims are typical of the claims of the Class members he seeks to represent. Plaintiff, like the Class members, purchased Defendant's Products labeled with Defendant's deceptive One-Gram Sugar Representations. Plaintiff purchased the Products during the Class Period and was exposed to the same or substantially similar One-Gram Sugar Representations. Plaintiff suffered the same type of economic loss as the other Class members. Plaintiff's and the Class members' claims are based on the same legal theories and arise from the same course of conduct by Defendant.

97. Plaintiff is an adequate representative because he has no interests adverse to those of the Class, is committed to the vigorous prosecution of this action, and has retained skilled and experienced counsel. Plaintiff will fairly and adequately represent and protect the interests of the Class as required by Fed. R. Civ. P. 23(a)(4).

98. A class action is superior to all other available methods for the fair and efficient adjudication of the claims asserted in this action. Common questions of law and fact predominate over any questions affecting only individual Class members, and a class action is superior because the common issues can be resolved through common evidence and a single adjudication. Individual joinder of all Class members is impracticable, and no other available method of adjudication would provide a more efficient or consistent means of resolving the claims asserted herein. The prerequisites to maintain this action pursuant to Fed. R. Civ. P. 23(b)(3) are satisfied for at least the following reasons:

a. The central issues in this action, including whether the Products contain seven grams of allulose, whether allulose constitutes sugar under the applicable laws and

regulations, what Defendant represented concerning the Products' sugar content, whether those representations were false or misleading, whether Defendant knew the Products did not conform to those representations, and whether Defendant's conduct violated the applicable consumer-protection statutes, are common to the Class and predominate over any individual questions;

b. The One-Gram Sugar Representations were disseminated to consumers through common labeling, packaging, advertising, and marketing materials, such that the principal evidence concerning Defendant's conduct, the content of the representations, and their alleged falsity or misleading nature will be common to the Class;

c. To the extent individual issues exist concerning the circumstances of particular purchases, such issues do not predominate over the common questions because liability will principally turn on Defendant's uniform conduct, the Products' characteristics, Defendant's representations, and the applicable law;

d. The economic injury alleged by Plaintiff and the Class arises from the same alleged misconduct and can be established through common evidence and a common methodology. Individual differences, if any, in the amount paid, purchase date, quantity purchased, or resulting monetary recovery do not defeat predominance where the existence and methodology of the alleged injury can be established through common proof;

e. Given the relatively modest value of individual Class members' claims compared with the cost and burden of individual litigation, many Class members would have little incentive or ability to pursue their claims individually. A class action therefore

provides an effective mechanism for Class members to obtain relief for alleged injuries that might otherwise go unremedied;

f. Class members have no substantial interest in individually controlling the prosecution of separate actions because the claims arise from Defendant's common course of conduct and present substantially overlapping factual and legal issues;

g. Concentrating the claims in a single proceeding is desirable because the alleged misconduct involves common Products, common representations, common labeling and marketing practices, and common questions concerning Defendant's conduct. A single proceeding will promote consistent adjudication of those issues and avoid unnecessary duplication of discovery, motion practice, expert testimony, and trial proceedings;

h. Individual litigation would create a substantial risk of inconsistent or varying adjudications concerning the same Products, One-Gram Sugar Representations, and underlying conduct. Class-wide adjudication will promote consistency and judicial economy;

i. There are no pending individual actions known to Plaintiff that would make separate adjudication a preferable method of resolving the controversy, and concentrating the claims in this forum is desirable and efficient; and

j. This action is manageable as a class action because the central liability issues are capable of resolution through common evidence and because damages can be calculated on a class-wide basis using a common methodology, with any remaining issues concerning the administration of relief addressed through appropriate claim procedures or other case-management mechanisms ordered by the Court.

COUNT ONE
Violation of New York General Business Law § 349
N.Y. Gen. Bus. Law § 349
(Individually and on Behalf of the Class)

99. Plaintiff restates and realleges the allegations set forth in paragraphs 1 through 98 of this Complaint as though fully set forth herein.

100. This cause of action is brought pursuant to New York General Business Law § 349 ("§ 349"), on behalf of Plaintiff and the Class.

101. New York General Business Law § 349(a) declares unlawful "[u]nfair, deceptive, or abusive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state." Section 349(h) provides that "any person who has been injured by reason of any deceptive act or practice made unlawful by this section may bring an action." To state a claim under § 349, a plaintiff must allege consumer-oriented conduct, a materially misleading act or practice that is likely to mislead a reasonable consumer under the circumstances, and an injury caused by the deceptive act.

102. Defendant's labeling, advertising, marketing, packaging, distribution, and sale of the Products constitute consumer-oriented conduct within the meaning of § 349. Defendant disseminated the One-Gram Sugar Representations to consumers throughout New York, including through the Products' packaging, website, and third-party retailer listings. The challenged conduct was directed at consumers generally and had a broad impact on the consuming public.

103. Defendant engaged in materially deceptive acts and practices by representing that the Products have only one gram of sugar, when the Products do not conform to that representation. As alleged herein, the Products contain eight grams of sugar per serving.

104. Each of Defendant's One-Gram Sugar Representations constitutes an unfair or deceptive act or practice within the meaning of New York General Business Law § 349(a) because

each states that the Products contain one gram of sugar when, in fact, the Products contain eight grams of sugar per serving. By making the One-Gram Sugar Representations, Defendant misrepresented that the Products possessed characteristics, ingredients, quantities, and qualities that they did not have and that they were of a particular standard or quality when they were of another.

105. Allulose is a monosaccharide and therefore a sugar under 21 C.F.R. § 101.9(c)(6)(ii). Allulose is the second-listed ingredient in the Products, and the Products contain seven grams of allulose per serving. The Products therefore did not possess the One-Gram Sugar Representations' characteristics or qualities.

106. The One-Gram Sugar Representations were materially misleading because they were likely to mislead a reasonable consumer acting reasonably under the circumstances. A reasonable consumer would understand a One-Gram Sugar Representation to mean that the Products contained only one gram of sugar. The One-Gram Sugar Representations were material because sugar content is the very characteristic by which Defendant distinguishes the Products from its licorice products containing conventional sugar and by which Defendant prices the Products.

107. Defendant knew that the Products contained eight grams of sugar per serving, including seven grams of allulose, and nevertheless marketed and sold the Products using the One-Gram Sugar Representations. Defendant's conduct was not isolated or incidental, but instead was part of a broader marketing and labeling practice directed at consumers throughout New York and elsewhere.

108. Before making his purchases, Plaintiff was exposed to the One-Gram Sugar Representations displayed on the Products' packaging and product listing on Amazon.com, as well as the Products' packaging when he purchased them in grocery stores.

109. Plaintiff and Class members purchased the Products in New York for personal, family, or household purposes and not for resale.

110. The One-Gram Sugar Representations appeared uniformly on the Products' front labels, packaging, and retail listings presented to Plaintiff and the Class.

111. Had Defendant accurately represented the Products, Plaintiff would have paid substantially less for them or would not have purchased them at all.

112. As a result of Defendant's deceptive acts and practices, Plaintiff and members of the Class suffered actual injury. They paid a premium for Products represented to contain only one gram of sugar per serving when the Products actually contain eight grams of sugar per serving.

113. Defendant's unlawful trade practices caused Plaintiff and the Class to suffer ascertainable losses. They paid a price premium for Products represented as containing one gram of sugar. Defendant charges a higher price per ounce for its Products with One-Gram Sugar Representations than for its comparable products that are not advertised as containing only one gram of sugar. Had Defendant accurately labeled the Products, Plaintiff and members of the Class would have paid less for the Products or would not have purchased them.

114. The ascertainable loss of the Class is a premium-price loss. Defendant's One-Gram Sugar Representations inflated the market price of the Products, and Plaintiff and members of the Class paid more for the Products than they otherwise would have paid.

115. The same deceptive acts and practices caused similar injury to numerous other persons similarly situated.

116. Defendant's violations of § 349 were willful and knowing within the meaning of § 349. Defendant formulates, manufactures, packages, and markets the Products. Defendant knew that the Products contain eight grams of sugar per serving yet continued to use the One-Gram Sugar Representations. Moreover, the FDA stated in its 2016 rulemaking that allulose, "as a monosaccharide, must be included" in the Total Sugars declaration. 81 Fed. Reg. 33,742, 33,795–96 (May 27, 2016). That published statement put Defendant on notice (to the extent that it was not already on notice) that allulose constitutes sugar under the applicable regulatory definition.

117. Pursuant to New York General Business Law § 349(h), Plaintiff and the Class seek actual damages or fifty dollars ($50) per class member, whichever is greater, and, to the extent the Court finds that Defendant willfully or knowingly violated § 349, an increase in damages to an amount not exceeding three times the actual damages, up to one thousand dollars ($1,000) per class member. Plaintiff and the Class also seek reasonable attorneys' fees and such other relief as the Court deems appropriate.

COUNT TWO
Violation of New York General Business Law § 350
N.Y. Gen. Bus. Law §§ 350, 350-a, and 350-e
(Individually and on Behalf of the Class)

118. Plaintiff restates and realleges the allegations set forth in paragraphs 1 through 98 of this Complaint as though fully set forth herein.

119. This cause of action is brought pursuant to New York General Business Law §§ 350, 350-a, and 350-e (collectively, "§ 350"), on behalf of Plaintiff and the Class.

120. New York General Business Law § 350 declares unlawful "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state." False advertising includes "advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect," taking into account "not only representations made by

statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations." N.Y. Gen. Bus. Law § 350-a(1).

121. Defendant's packaging, product names, website content, and retailer listings for the Products constitute advertising, including labeling, of a commodity within the meaning of §§ 350 and 350-a. Defendant disseminated that advertising to consumers in New York through the Products' packaging and labeling and through Defendant's and third-party retailers' websites and other marketing channels.

122. Defendant's labeling and advertising were materially misleading because Defendant represented that the Products contained only one gram of sugar while the Products contain eight grams of sugar per serving, including seven grams of allulose. A reasonable consumer would understand a One-Gram Sugar Representation to mean that the Products contained only one gram of sugar. As alleged herein, allulose is a sugar, and the Products therefore do not conform to Defendant's representations.

123. The One-Gram Sugar Representations were material because the quantity of sugar that a food contains is a material characteristic of the Products and was likely to affect a reasonable consumer's purchasing decision. Additionally, sugar content is the very characteristic by which Defendant distinguishes the Products from its licorice products containing conventional sugar and by which Defendant prices the Products. Defendant's advertising therefore had the capacity, tendency, or likelihood to mislead consumers acting reasonably under the circumstances.

124. Defendant knew that the Products did not conform to the One-Gram Sugar Representations. Defendant nevertheless continued to label, advertise, market, distribute, and sell the Products using those representations.

125. Before making his purchases, Plaintiff was exposed to the One-Gram Sugar Representations displayed on the Products' packaging and product listing on Amazon.com, as well as the Products' packaging when he purchased them in grocery stores.

126. Plaintiff and Class members purchased the Products in New York for personal, family, or household purposes and not for resale.

127. The One-Gram Sugar Representations appeared uniformly on the Products' front labels, packaging, and retail listings presented to Plaintiff and the Class.

128. Had Defendant accurately represented the Products, Plaintiff would have paid substantially less for them or would not have purchased them at all.

129. As a direct and proximate result of Defendant's false advertising, Plaintiff and members of the Class suffered actual economic injury and lost money or property. They paid a premium for Products represented as containing only one gram of sugar and received Products that do not conform to that representation. Defendant charges a higher price per ounce for its Products with the One-Gram Sugar Representations than for its comparable products that are not advertised as containing only one gram of sugar. Accordingly, Plaintiff and members of the Class were deprived of the benefit of their bargain and paid more for the Products than they otherwise would have paid.

130. The same false advertising caused similar injury to numerous other persons similarly situated.

131. Defendant's violations of §§ 350 and 350-a were willful and knowing within the meaning of § 350-e(3). Defendant formulates, manufactures, packages, and markets the Products. Defendant knew that the Products contained eight grams of sugar per serving, including seven grams of allulose, while continuing to advertise and label the Products using the One-Gram Sugar

Representations. Moreover, the FDA stated in its 2016 rulemaking that allulose, "as a monosaccharide, must be included" in the Total Sugars declaration. 81 Fed. Reg. 33,742, 33,795–96 (May 27, 2016). That published statement put Defendant on notice (to the extent that it was not already on notice) that allulose constitutes sugar under the applicable regulatory definition.

132. Pursuant to New York General Business Law § 350-e(3), Plaintiff and the Class seek actual damages or five hundred dollars ($500) per class member, whichever is greater. To the extent the Court finds that Defendant willfully or knowingly violated §§ 350 or 350-a, Plaintiff and the Class further seek an increase in damages to an amount not exceeding three times the actual damages, up to ten thousand dollars ($10,000) per class member. Plaintiff and the Class also seek reasonable attorneys' fees and such other relief as the Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, respectfully requests that the Court enter judgment in his favor and against Defendant and grant the following relief:

a) For an order certifying the proposed Class pursuant to Fed. R. Civ. P. 23, appointing Benjamin Gelber as Class Representative, and appointing Plaintiff's counsel as Class Counsel, as appropriate;

b) For actual, statutory, and/or other monetary relief available under the asserted causes of action, including damages under New York General Business Law §§ 349(h) and 350-e(3), in amounts to be determined at trial or otherwise permitted by applicable law;

c) For pre-judgment and post-judgment interest on all amounts awarded, to the extent permitted by applicable law;

d) For an order awarding Plaintiff and the Class members reasonable attorneys' fees, costs, and expenses to the extent authorized by applicable law; and

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

DEMAND FOR JURY TRIAL

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

Dated: October 30, 2026

Respectfully submitted,

/s/ Samuel R. Jackson

Samuel R. Jackson (SBN 5332325)
CARNEY BATES & PULLIAM, PLLC
One Allied Drive, Suite 1400
Little Rock, AR 72202
Telephone: (501) 312-8500
Facsimile: (501) 312-8505
Email: sjackson@cbplaw.com

Attorneys for Plaintiff and the Proposed Class

Revised 7.16.2026; Effective 7.16.2026

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

BENJAMIN GELBER, on behalf of himself and all others similarly situated

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

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

Carney Bates & Pulliam, PLLC, One Allied Drive, Suite 1400
Little Rock, Arkansas 72202; Tel. (501) 312-8500

DEFENDANTS

KENNY'S CANDY & CONFECTIONS, INC.

County of Residence of First Listed Defendant
(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)*

(For Diversity Cases Only)

	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
- ☐ 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

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

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

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

FORFEITURE/PENALTY
- ☐ 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

BANKRUPTCY
- ☐ 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

OTHER STATUTES
- ☐ 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

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:
Defendant fraudulently advertises its products.

VII. REQUESTED IN COMPLAINT:

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

DEMAND $

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 _____

* Please respond to Part F on Page 2

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: No

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

- [x] 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 or 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? No
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? No
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? No
   b. Do the majority of defendants reside in Nassau or Suffolk County? No
   c. Is a substantial amount of any property at issue located in Nassau or Suffolk County? No
4. If this is a Fair Debt Collection PracticeAct case, was the offending communication received in either Nassau or Suffolk County? No

(*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, of 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. Yes

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? No If yes, please explain:

PART F - IMMIGRATION HABEAS

1. Is this petition based on an immigration detention? No
2. Does this case require immediate attention of a judge? No

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.

Check Form to Validate Before Signing

I certify the accuracy of all information provided above.

Signature: /s/ Samuel R. Jackson Date: 10/30/2026

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

BENJAMIN GELBER, on behalf of himself and all others similarly situated,

Plaintiff(s)

v.

KENNY'S CANDY & CONFECTIONS, INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* KENNY'S CANDY & CONFECTIONS, INC.
DARREN FUJII
109 LAKESIDE DRIVE
PERHAM, MN 56573–0230

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:

Samuel R. Jackson
CARNEY BATES & PULLIAM, PLLC
One Allied Drive, Suite 1400
Little Rock, AR 72202

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.

BRENNA B. MAHONEY
CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc: