FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUN 19 2014 ★
BROOKLYN OFFICE

FILED
CLERK
2014 JUN 19 AM 10:22
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LEE LITIGATION GROUP, PLLC
C.K. Lee (CL 4086)
30 East 39th Street, Second Floor
New York, NY 10016
Tel.: 212-465-1188
Fax: 212-465-1181
Attorneys for Plaintiffs and the Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BARRY STOLTZ and ALLAN CHANG on behalf of themselves and others similarly situated,

Plaintiffs,

v.

FAGE DAIRY PROCESSING, S.A., FAGE USA DAIRY INDUSTRY, INC., and FAGE USA HOLDINGS, INC.,

Defendants.

CV 14 3826

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

BRODIE, J.

MANN. M.J.

Plaintiff BARRY STOLTZ and Plaintiff ALLAN CHANG (collectively "Plaintiffs"), on behalf of themselves and others similarly situated, by and through their undersigned attorneys, hereby file this Class Action Complaint against Defendants, FAGE DAIRY PROCESSING, S.A., a foreign corporation, FAGE USA DAIRY INDUSTRY, INC., a New York corporation, FAGE USA HOLDINGS, INC., a New York corporation (collectively, the "Defendants") and state as follows based upon their own personal knowledge and the investigation of their counsel:

INTRODUCTION

1. Product labels have occupied an important role in assisting consumers in making healthy and informed food choices.

2. Against this backdrop, with consumers demanding healthy options that fit their dietary and nutritional needs, Defendants market their Fage® Greek yogurt products (herein referred to as the "Products," as such term is defined in Paragraph 16 below) as the "#1 Yogurt in Greece." Defendants manufacture, market and sell the Products in over 35 countries, including the United States. The Products purchased by Plaintiffs are sold under Defendants' "Total 0%" product line and come in various flavors.

3. As part of their extensive and comprehensive nationwide marketing campaign, Defendants actively promote the naturalness and health benefits of their Products through the Product packaging, the website www.usa.fage.eu and social media outlets such as Facebook and Twitter to mislead consumers about their yogurt ingredients. Specifically, Defendants prominently display the phrase "Total 0%" on the top and front of the Product packaging without providing any context as to what the 0% represents.

4. Defendants intend to create consumer confusion by causing purchasers to impute any meaning to the 0% that consumers wish, such as that the Products lack sugar, carbohydrates, calories, or any other content which a consumer may believe is unhealthy. Defendants do so by attempting to use similar marketing campaigns as Coke Zero and Pepsi Max, whom also display "Zero" or "0" on their products to indicate that the products are sugar-free or calorie-free. Defendants' Products typically contain about 16 grams of sugar per container, which is equivalent to 4 packets of sugar and is about as healthy as eating a Nestle Fudge ice cream bar, which contains 15 grams of sugar per serving. Defendants' Products do not contain 0% of sugar,

the main cause of obesity in America. (*See* Gary Taubes, *Is Sugar Toxic*, New York Times, Apr. 13, 2011 at http://www.nytimes.com/2011/04/17/magazine/mag-17Sugar-t.html?pagewanted=all).

5. Due to Defendants' marketing campaigns, consumers are led to believe that their Products are healthier than cookies when in reality, they contain more sugar than regular cookies (*See* Paragraph 35 below). Defendants purposely mislead the public because they willfully want the public to think the "0%" means no sugar or calories when consumers are shopping in supermarket aisles and only see the "0%," and not the fine print that shows how unhealthy and full of sugar the Products are.

6. Plaintiffs bring this proposed consumer class action on behalf of themselves and all other persons nationwide, who from the applicable limitations period up to and including the present (the "Class Period"), purchased for consumption and not resale any of Defendants' Products displaying "Total 0%" on their packaging.

7. During the Class Period, Defendants manufactured, marketed and sold the Products throughout the United States. Defendants purposefully misrepresented and continue to misrepresent to consumers that the Products are healthier than they are by prominently displaying "Total 0%" on their packaging.

8. Defendants' actions constitute violations of the federal Food Drug & Cosmetic Act ("FDCA") Section 403(a)(1) (21 U.S.C. 343(a)(1)) and New York's Deceptive Acts or Practices Law, Gen. Bus. Law § 349, as well those similar deceptive and unfair practices and/or consumer protection laws in other states and the District of Columbia.

9. Defendants violated statutes enacted in each of the fifty states and the District of Columbia that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

a. Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.;*
b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak_ Code § 45.50.471, *et seq.;*
c. Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.;*
d. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.;*
e. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.,* and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.;*
f. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.;*
g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.;*
h. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.;*
i. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.;*
j. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.;*
k. Georgia Fair Business Practices Act, § 10-1-390 *et seq.;*
l. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statues § 480 1, *et seq.,* and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.;*
m. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.;*
n. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.;*
o. Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.;*
p. Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.;*
q. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.;*
r. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.,* and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.;*
s. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.;*
t. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq,,* and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.,*
u. Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.;*
v. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
w. Michigan Consumer Protection Act, § § 445.901, *et seq.;*
x. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.;* and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.;*
y. Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.;*
z. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.;*
aa. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.;*
bb. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.,* and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.;*
cc. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.;*
dd. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.;*
ee. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 *1, et seq.;*
ff. New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 *1, et seq.;*
gg. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.;*
hh. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.;*
ii. North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.;*

jj. Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.;*
kk. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.;*
ll. Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.;*
mm. Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.;*
nn. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.;*
oo. South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.;*
pp. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 *1, et seq.;*
qq. Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.;*
rr. Texas Stat. Ann. §§ 17.41, *et seq.,* Texas Deceptive Trade Practices Act
ss. Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.;*
tt. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.;*
uu. Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.;*
vv. Washington Consumer Fraud Act, Wash. Rev, Code § 19.86.010, *et seq.;*
ww. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.;*
xx. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.;*
yy. Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

10. Defendants' misbranding is intentional. While simultaneously marketing their Products as a healthy alternative, Defendants deceived Plaintiffs and other consumers nationwide by mischaracterizing the contents comprising their Products. As a direct result of Defendants' unlawful and deceptive sales practices, the Fage® brand has become one of the best-selling brands of Greek yogurt in the United States with a sales revenue in 2012 of $550 million. Defendants have collected hundreds of millions of dollars from the sale of their Products using the "Total 0%" marketing campaign that they would not have otherwise earned.

JURISDICTION AND VENUE

11. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than Defendants, and the amount in controversy exceeds the sum or value of $5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

12. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States.

13. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the Unites States Constitution.

14. The Court has personal jurisdiction over Defendants because their Products are advertised, marketed, distributed, and sold throughout New York State; Defendants engaged in the wrongdoing alleged in this Complaint throughout the United States, including in New York State; Defendants are authorized to do business in New York State; and Defendants have sufficient minimum contacts with New York and/or otherwise have intentionally availed themselves of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendants are engaged in substantial and not isolated activity within New York State.

15. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District. Plaintiffs are citizens of New York, Plaintiff CHANG resides in this District, and purchased the Products from Defendants in this District. Moreover, Defendants distributed, advertised, and sold the Products, which are the subject of the present Complaint, in this District.

PARTIES

16. a) Plaintiff BARRY STOLTZ is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Westchester County. For the past three years,

Plaintiff STOLTZ has purchased Fage® Greek yogurt Products for personal consumption within the State of New York.

b) Plaintiff ALLAN CHANG is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Queens County. For the past six months, Plaintiff CHANG has purchased Fage® Greek yogurt Products for personal consumption within the State of New York.

c) Plaintiffs have purchased Fage® Greek yogurt in the flavors listed below (together, the "Products"):

Fage Total 0% Products	**Sugar Content (in grams)**
Plain	7
Apple Cinnamon Raisins	16
Apple Cranberry	17
Blueberry Acai	16
Blueberry	16
Cherry Pomegranate	16
Cherry	16
Honey	29
Mango Guanabana	17
Orange Cinnamon	17
Passion Fruit Clementine	15
Peach	16
Raspberry	16
Strawberry	16
Strawberry Goji	16

Plaintiffs purchased the Products from various local stores. Plaintiff CHANG has purchased the Products from stores located in Queens County, including but not limited to Duane Reade, Stop & Shop and Veggie Monster in Queens, New York. Plaintiff STOLTZ has purchased the Products from local stores located in Westchester County as well as from chain supermarkets, including but not limited to a Shoprite located in the town of Scarsdale and a Stew Leonard's in Yonkers, New York. Plaintiff CHANG has purchased the Products for the past six months in

various sizes and product lines as they have become available. Plaintiff STOLTZ has purchased the Products for the past three years in various sizes and product lines as they have become available. The purchase price ranged from $1.79 for a 5.3 oz container to 7.99 for a 35.3 oz. container.

17. a) On information and belief, Defendant FAGE DAIRY PROCESSING S.A. is a Greek corporation with its principal place of business located at 35 Hermous Street Metamorfossi, Athens, Greece 144452 and a U.S. place of business located in Johnstown, New York.

b) On information and belief, Defendant FAGE USA DAIRY INDUSTRY, Inc. is a domestic corporation with its principal place of business located at 1 Opportunity Drive, Johnstown Industrial Park, Johnstown, NY 12095.

c) On information and belief, Defendant FAGE USA HOLDINGS, INC. is a domestic corporation with its principal place of business located at 1 Opportunity Drive, Johnstown Industrial Park, Johnstown, NY 12095.

18. Defendants operate as a single integrated and common enterprise. Together, Defendants manufactured, distributed, advertised, marketed, and sold the Products under the "Total 0%" product line to hundreds of thousands of consumers nationwide, including New York.

FACTUAL ALLEGATIONS

19. Defendants manufacture, market and sell various Greek yogurt products throughout the United States under the brand Fage®, including the Products in the "Total 0%" product line. The Products are distributed to approximately 280 supermarket chains, with

approximately 75,000 retail outlets in over 35 countries. They are also sold to bakeries, confectionaries, dairy stores and other convenience stores. Specifically, the Products are available at most supermarket chains and other retail outlets throughout the United States, including but not limited to Walmart, Costco, Target, Shoprite, Pathmark, Walgreens, and Duane Reade.

20. Defendants purposefully use similar marketing campaigns to Coke Zero and Pepsi Max, whom display "Zero" and "0," respectively, on their products to indicate that they are sugar-free or calorie-free. Defendants deceptively advertise and market their Products using the term "Total 0%," a term that is false and misleading given its vagueness. Defendants prominently display "Total 0%" on the top and front of the Product packaging without providing any context as to what the 0% represents. Defendants intend to create consumer confusion by causing consumers to impute any meaning to the 0%, including but not limited to the representation that the Products lack sugar, carbohydrates, calories, etc. As such, the labeling of "Total 0%" on the packaging, without additional immediate context, is false and misleading. Defendants purposely mislead the public because they willfully want the public to think the 0% means no sugar, calories or carbohydrates when consumers are shopping in supermarket aisles and only see the 0%, and not the fine print that shows how unhealthy and full of sugar the Products are.

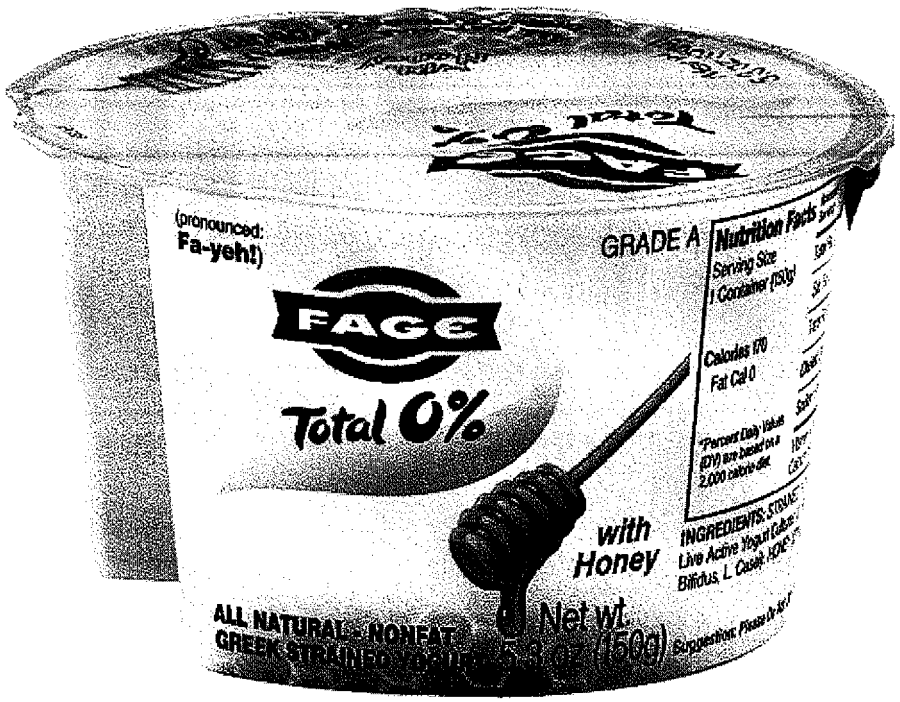
21. Defendants use the term "Total 0%" on their Product packaging to make their Products appear healthier than other products and to increase sales and charge a premium.

22. Defendants sell the Products using the deceptive claim "Total 0%", including but not limited to the following Products:

Fage Greek Yogurt – Total 0%

Product	Label Violation/Misrepresentation
Plain	http://products.usa.fage.eu/fage-total-0-greek-yogurt-6-oz
Raspberry	http://products.usa.fage.eu/fage-total-0-raspberry-53-oz
Strawberry	http://products.usa.fage.eu/fage-total-0-strawberry-53-oz
Peach	http://products.usa.fage.eu/fage-total-0-peach-53-oz
Cherry	http://products.usa.fage.eu/fage-total-0-cherry-53-oz
Cherry pomegranate	http://products.usa.fage.eu/fage-total-0-cherry-pomegranate-53-oz
Blueberry	http://products.usa.fage.eu/fage-total-0-blueberry-53-oz
Honey	http://products.usa.fage.eu/fage-total-0-honey-53-oz
Blueberry Acai	http://products.usa.fage.eu/fage-total-0-blueberry-acai-53-oz
Mango Guanabana	http://products.usa.fage.eu/fage-total-0-mango-guanabana-53-oz
Strawberry-Goji	http://products.usa.fage.eu/fage-total-0-strawberry-goji-53-oz
Apple Cinnamon Raisins	http://products.usa.fage.eu/fage-total-0-apple-cinnamon-raisins
Orange Cinnamon	http://products.usa.fage.eu/fage-total-0-honey-53-oz
Passion Fruit Clementine	http://products.usa.fage.eu/fage-total-0-passion-fruit-clementine
Apple Cranberry	http://products.usa.fage.eu/fage-total-0-apple-cranberry-53oz

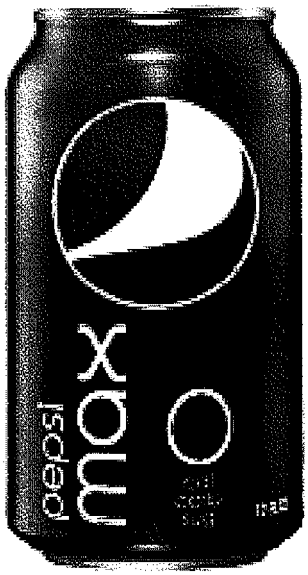
23. Defendants prominently display the number zero percent (shown as "0%") on the top and front of their Product packaging without any indication as to what the value pertains to. See exemplar labels below:



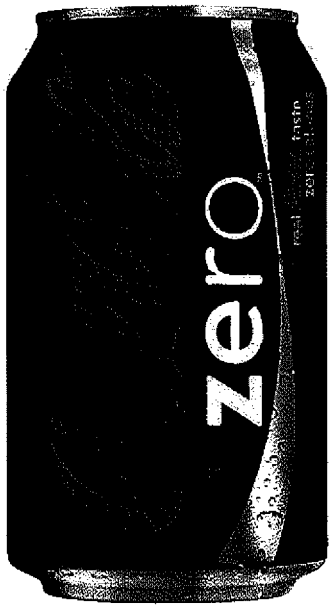
FAGE
Total 0%
with
Apple Cinnamon
Raisin
FAGE
#1 yogurt
in Greece
NONFAT
STRAINED YOGURT
Total 0%
Apple Cinnamon
Raisin

ALL NATURAL · NONFAT GREEK STRAINED YOGURT
FAGE
Total 0%
with
Strawberry
FAGE
#1 yogurt
in Greece

24. Plaintiffs and the Class are left to guess the meaning of the "0%" since Defendants intentionally fail to provide any context. Reasonable consumers may attach any meaning to the representation. For instance, a "0%" similarly appears on some popular beverage products such as Pepsi Max to indicate that the product contains no calories, carbohydrates or sugar. See exemplar label below:



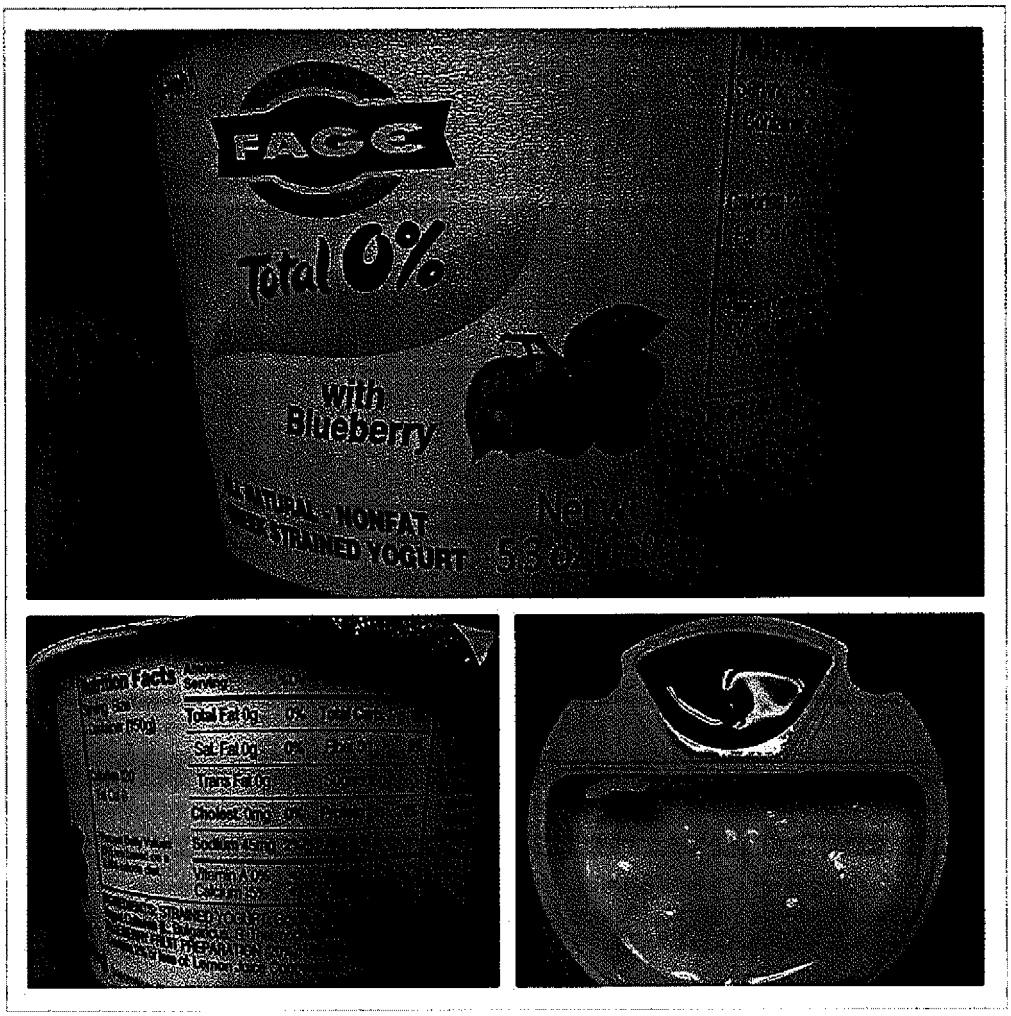
25. Similarly, Coca Cola prominently displays "Zero" on the front label of its Coca Cola Zero product to indicate that it lacks calories or sugar. See exemplar label below:



26. Defendants' competitors also use a "0%" on their packaging but make clear that the value pertains to their products' fat content. See exemplar labels below:

27. Particularly appropriate is that Stonyfield specifies that the 0% only relates to fat, but also concurrently discloses its caloric content up front so as not to confuse consumers that the "0%" could relate to calorie count. This disclosure fully informs the consumers so as to not cause them to believe they can eat as much yogurt as possible without the caloric debt.

28. Defendants ensure an unfair advantage over competitors by failing to disclose to consumers in a clear manner whether their Products with a "0%" are free of fat, sugar, caffeine, carbohydrates, and/or calories. Reasonable consumers are left to impute any meaning to the prominent "0%" on the Products. Further, given that the "0%" is preceded by the word "Total," a reasonable consumer is likely to believe that the Products contain neither fat, sugar, sodium, cholesterol, carbohydrates, calories or any other item required to be disclosed on the Product packaging. Although the fine print on the front and top label of the Products state "All Natural – Nonfat Greek Strained Yogurt," the disclosure is not made in connection to the prominent "Total 0%" claim on the label, thus making it impossible for the reasonable consumer to deduce that "Total 0%" refers only to the fat content in the Products. It is particularly difficult for consumers to reach this conclusion given that there are multiple 0%'s on the "Nutrition Facts" label of the Products. See exemplar label below:



29. As shown, "0%" also pertains to cholesterol, fiber, vitamin A, vitamin C and Iron content in the Products. Without adding a qualifier to "Total 0%," Defendants are causing consumers to have to guess what exactly the term refers to.

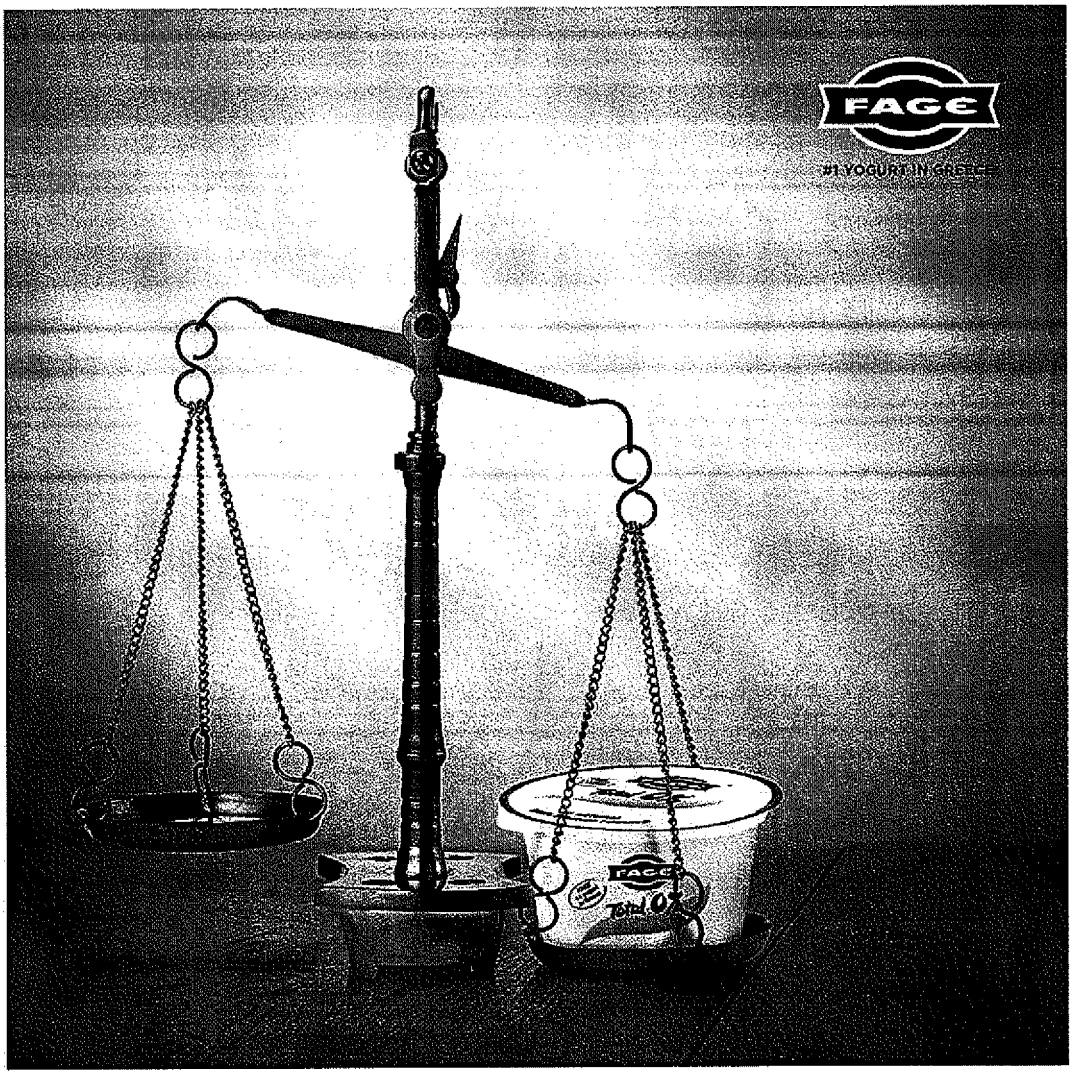
30. Under the Federal Food Drug and Cosmetic Act (herein "FDCA"), the term "false" has its usual meaning of "untruthful," while the term "misleading" is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. "Misleading" is judged in reference to "the ignorant, the unthinking and the credulous who, when making a

purchase, do not stop to analyze." *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled.

31. Defendants mislead consumers into paying a premium price for Products that do not satisfy the minimum standards established by law for those products and for inferior or undesirable ingredients or for products that contain ingredients not listed on the label.

Fage Misrepresentations in Social Media

32. In furtherance of their efforts to deceive consumers as to the contents of their Products, Defendants posted the following on their Facebook page along with a message stating "Tip the scales in your favor with FAGE Total 0%":



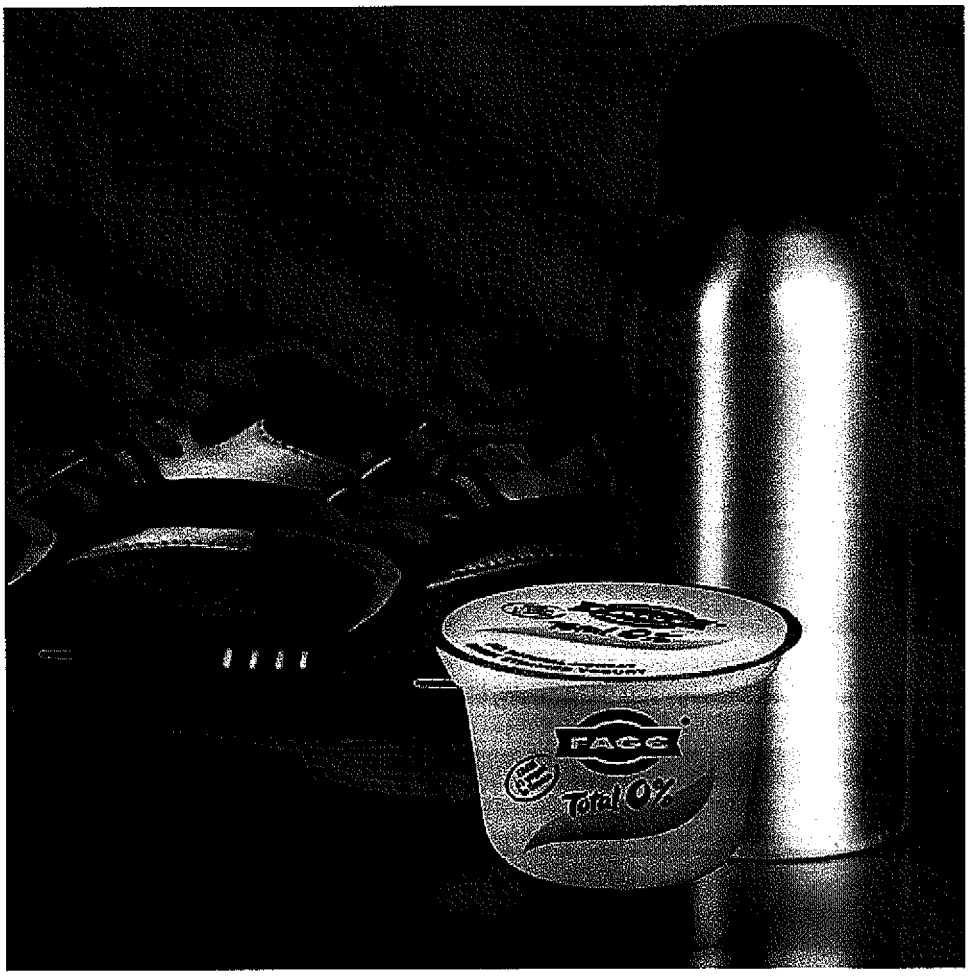
(*See* Facebook Timeline Photos at https://www.facebook.com/photo.php?fbid=10152536176366521&set=a.189004861520.153045.82643606520&type=1&theater, as appeared on 5/29/14).

33. The Products do not "tip the scales" in the consumers' favor as Defendants claim. The Products will not cause consumers to lose weight given that they are high in sugar and caloric content. Defendants are contributing to America's obesity problem when half of all Americans are overweight. If a consumer ate as much of the Products as they liked, they would likely become obese. See sugar content of the Products below:

Fage Total 0% Products	**Sugar Content (in grams)**
Plain	7
Apple Cinnamon Raisins	16
Apple Cranberry	17
Blueberry Acai	16
Blueberry	16
Cherry Pomegranate	16
Cherry	16
Honey	29
Mango Guanabana	17
Orange Cinnamon	17
Passion Fruit Clementine	15
Peach	16
Raspberry	16
Strawberry	16
Strawberry Goji	16

Except for the plain yogurt, all of the Products have more sugar than a Nestle Fudge ice cream bar (which has 15 grams of sugar).

34. A Twitter post by Defendants states "Leave those holiday cookies in the dust" and displays the following:



FAGE @FAGEUSA · Jan 2
Leave those holiday cookies in the dust & get 2014 off to a tasty start. bit.ly/FAGE pic.twitter.com/5LNMfY5cC0
Reply Retweet Favorite Flag

(*See* Twitter Photo at https://twitter.com/FAGEUSA/status/418819017986420736, as appeared on 5/29/14).

35. The statements and images above mislead consumers into believing that the Products are healthy and nutritious when the Products are not. One container of Defendants' Honey flavored Total 0% Greek yogurt has more than twice as much sugar in a serving as Chips Ahoy cookies or Oreo cookies. Except for the plain yogurt, all Products have more sugar than any of the cookies listed below:

Product	Sugar content per serving (in grams)
Fage Total 0% Greek Yogurt – Honey	29
Nabisco Oreo Sandwich Cookies	14
Nabisco Oreo Double Stuf Cookies	13
Nabisco Chips Ahoy Cookies - Original	11

Consumption of the Products is not part of a healthier lifestyle as the Products have no health benefits and are comparable to eating junk food.

36. Plaintiffs and the Class paid a premium price for Defendants' Products as follows:

Brand	Quantity	Price	Unit Price
Total 0%	5.3 oz.	$1.79	$0.34 per oz.
Total 0%	35.3 oz.	$7.99	$0.23 per oz.

Similar products (i.e., non-Greek, non "0%" and non ECJ products) made by Defendants' competitor Dannon are sold at Shoprite as follows:

Brand	Quantity	Price	Unit Price
Dannon Yogurt Light & Fit	6 oz.	10 for $5.00	$0.08 per oz.
Dannon Yogurt Light and Fit	32 oz.	$3.49	$0.11 per oz.

Similar products made by Defendants' competitor Yoplait are sold at Shoprite as follows:

Brand	Quantity	Price	Unit Price
Yoplait Original Yogurt	6 oz.	5 for $4.00	$0.13 per oz.
Yoplait Light Yogurt	6 oz.	5 for $4.00	$0.13 per oz.

37. Through the deceptive practice of marketing and selling their Products displaying "Total 0%", Defendants have been able to command a premium price by deceiving consumers

about the attributes of their yogurt and distinguishing themselves from similar products. For example, the Defendants' Products command a 325% price premium per fluid ounce, over Dannon's Light and Fit yogurt, a competing brand. Defendants were motivated to mislead consumers for no other reason than to take away market share from competing products, thereby increasing their own profits.

38. Plaintiffs and the Class have been damaged by Defendants' deceptive and unfair conduct in that they purchased misbranded Products or paid prices they otherwise would not have paid had Defendants not misrepresented their Products' content.

CLASS ACTION ALLEGATIONS

39. Plaintiffs bring this action as a class action pursuant Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

> All persons or entities in the United States who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

40. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

41. This action is proper for class treatment under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are thousands of Class members. Thus, the Class is so numerous that individual joinder of all Class members is impracticable.

42. Questions of law and fact arise from Defendants' conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

a. whether displaying "0%" on the top and front label of the Products without additional context is deceptive and/or misleading;

b. whether labeling the Products with "Total 0%" renders the Products at issue misbranded;

c. whether Defendants engaged in a marketing practice intended to deceive consumers by advertising their Products as "Total 0%";

d. whether Defendants engaged in a marketing practice intended to deceive consumers by advertising their Products as healthy and conducive to weight loss when they are full of sugar and calories;

e. whether Defendants have been unjustly enriched at the expense of Plaintiffs and the other Class members by their misconduct;

f. whether Defendants must disgorge any and all profits they have made as a result of their misconduct; and

g. whether Defendants should be barred from marketing their Products as "Total 0%."

43. Plaintiffs' claims are typical of those of the Class members because Plaintiffs and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein. Plaintiffs purchased the Products during the Class Period and sustained similar injuries arising out of Defendants' conduct in violation of New York State law. Defendants' unlawful, unfair and fraudulent actions concern the same business practices described herein

irrespective of where they occurred or were experienced. The injuries of the Class were caused directly by Defendants' wrongful misconduct. In addition, the factual underpinning of Defendants' misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

44. Plaintiffs will fairly and adequately represent and pursue the interests of the Class and have retained competent counsel experienced in prosecuting nationwide class actions. Plaintiffs understand the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

45. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

46. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

47. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

48. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

49. Defendants' conduct is generally applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendants' systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

50. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 49 herein and further allege as follows:

51. Plaintiffs bring this claim individually and on behalf of the other members of the Class for an injunction for violations of New York's Deceptive Acts or Practices Law, Gen. Bus. Law § 349 ("NY GBL").

52. NY GBL § 349 provides that deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are unlawful.

53. Any person who has been injured by reason of any violation of the NY GBL may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

54. The practices employed by Defendants, whereby Defendants advertised, promoted, and marketed their Products using the term "Total 0%" are unfair, deceptive, and misleading and are in violation of the N.Y. Agric. and Markets Law § 201 in that said Products are misbranded.

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

56. Defendants should be enjoined from marketing their Products with the term "Total 0%" and should be enjoined from displaying a "0%" on the top and front label Product packaging and as part of their marketing campaigns without additional context as described above pursuant to NY GBL § 349.

57. Plaintiffs, on behalf of themselves and all others similarly situated, respectfully demand a judgment enjoining Defendants' conduct, awarding costs of this proceeding and

attorneys' fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

58. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 57 herein and further allege as follows:

59. Plaintiffs bring this claim individually and on behalf of the other members of the Class for violations of New York's Deceptive Acts or Practices Law, Gen. Bus. Law § 349.

60. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices by misbranding their Products with "Total 0%" claims.

61. The practices employed by Defendants, whereby Defendants advertised, promoted, and marketed their Products using the term "Total 0%" are unfair, deceptive, and misleading and are in violation of the N.Y. Agric. and Markets Law § 201 in that said Products are misbranded.

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

63. Plaintiffs and the other Class members suffered a loss as a result of Defendants' deceptive and unfair trade acts. Specifically, as a result of Defendants' deceptive and unfair trade acts and practices, Plaintiffs and the other Class members suffered monetary losses associated with the purchase of the Products with a "Total 0%" on the top and front label Product packaging, *i.e.*, the purchase price of the Product and/or the premium paid by Plaintiffs and the Class for said Products.

COUNT III

NEGLIGENT MISREPRESENTATION
(All States and the District of Columbia)

64. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 63 of this Complaint, as if fully set forth herein.

65. Defendants, directly or through their agents and employees, made false representations, concealments, and nondisclosures to Plaintiffs and members of the Class.

66. In making the representations of fact to Plaintiffs and members of the Class described herein, Defendants have failed to fulfill their duty to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendants' negligence and carelessness.

67. Defendants, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendants made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class.

68. Plaintiffs and members of the Class relied upon these false representations and nondisclosures by Defendants when purchasing the Products displaying "Total 0%" on the top and front label Product packaging and as part of Defendants' marketing campaign, which reliance was justified and reasonably foreseeable.

69. As a result of Defendants' wrongful conduct, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for Fage® Greek yogurt Products, and any interest that would have been accrued on those monies, all in an amount to be determined according to proof at time of trial.

COUNT IV

BREACH OF EXPRESS WARRANTIES
(All States and the District of Columbia)

70. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 69 of this Complaint, as if fully set forth herein.

71. Defendants provided Plaintiffs and other members of the Class with written express warranties, including, but not limited to, warranties of their Products as having "Total 0%."

72. Defendants breached these warranties by providing Products whose nutrient content does not total "0%" as claimed on the top and front label Product packaging and on their online marketing campaigns.

73. This breach resulted in damages to Plaintiffs and the other members of the Class who bought Defendants' Products but did not receive the goods as warranted in that the Products were not as healthy as they appear to be.

74. As a proximate result of Defendants' breach of warranties, Plaintiffs and the other Class members have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for Products that did not conform to what Defendants promised in their promotion, marketing, advertising, packaging and labeling, and they were deprived of the benefit of their bargain and spent money on Products that did not have any value or had less value than warranted or Products that they would not have purchased and used had they known the true facts about them.

COUNT V

UNJUST ENRICHMENT
(All States and the District of Columbia)

75. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 74 of this Complaint, as if fully set forth herein.

76. Defendants received certain monies as a result of the uniform deceptive marketing of their Products displaying a "Total 0%" on the top and front label Product packaging and as part of their marketing campaigns that are excessive and unreasonable.

77. Plaintiffs and the Class conferred a benefit on Defendants through purchasing their Products displaying a "0%" on the top and front label Product packaging and on their online marketing campaign, and Defendants have knowledge of this benefit and have voluntarily accepted and retained the benefits conferred on it.

78. Defendants will be unjustly enriched if they are allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Defendants and for which Defendants have been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendants, as follows:

A. For an order certifying the nationwide Class and under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and and Plaintiffs' attorneys as Class Counsel to represent members of the Class;

B. For an order declaring the Defendants' conduct violates the statutes referenced herein;

C. For an order finding in favor of Plaintiffs and the nationwide Class;

D. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;

E. For prejudgment interest on all amounts awarded;

F. For an order of restitution and all other forms of equitable monetary relief;

G. For injunctive relief as pleaded or as the Court may deem proper;

H. For an order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit; and

I. Any other relief the Court may deem appropriate.

DEMAND FOR TRIAL BY JURY

Plaintiffs, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: June 19, 2014

Respectfully submitted,

LEE LITIGATION GROUP, PLLC
C.K. Lee (CL 4086)
30 East 39th Street, Second Floor
New York, NY 10016
Tel.: 212-465-1188
Fax: 212-465-1181
Attorneys for Plaintiffs and the Class

By: _____
C.K. Lee, Esq.

SUMMONS ISSUED

CIVIL COVER SHEET

JS 44 (Rev. 1/2013)

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
BARRY STOLTZ and ALLAN CHANG, on behalf of themselves and all others similarly situated

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

DEFENDANTS
FAGE DAIRY PROCESSING S.A., FAGE USA DAIRY INDUSTRY, INC., FAGE USA HOLDINGS, 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.

CV 14 3826

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUN 19 2014 ★
BROOKLYN OFFICE

(c) Attorneys (Firm Name, Address, and Telephone Number)
C.K. Lee, Esq., Lee Litigation Group PLLC
30 East 39th Street, Second Floor, New York, NY 10016
(212) 465-1188

Attorneys (If Known)

BRODIE, J.
MANN, M.J.

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)*

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

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

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

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
Brief description of cause:
An action to recover damages sustained as a result of Defendants' sale of products using deceptive marketing

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

DATE 6-19-14
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

465307541 0

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 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.

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

☒ monetary damages sought are in excess of $150,000, exclusive of interest and costs,

☒ the complaint seeks injunctive relief,

☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:

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 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (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 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: No

2.) If you answered "no" above:
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No

b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

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 ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: