

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Civil Case No.: 8:14-cv-01892-CEH-MAP

RYAN MARKLEY, as an individual, and on :
behalf of all others similarly situated, :

Plaintiff, :

vs. :

WHOLE FOODS MARKET GROUP, INC. :
and WFM PRIVATE LABEL, L.P., foreign :
corporations, :

Defendants. :

**FIRST AMENDED CLASS ACTION COMPLAINT FOR EQUITABLE RELIEF AND
DAMAGES, AND DEMAND FOR JURY TRIAL**

Plaintiff RYAN MARKLEY (“Plaintiff”), files this First Amended Class Action Complaint (“Complaint”) on behalf of himself and all others similarly situated, by and through the undersigned attorneys, and pursuant to the *Federal Rules of Civil Procedure*, against WHOLE FOODS MARKET GROUP, INC. and WFM PRIVATE LABEL, L.P. (hereinafter “Whole Foods” or “Defendants”), and alleges as follows:

I. INTRODUCTION & FACTUAL BACKGROUND

1. This is an action on behalf of Plaintiff, and a class of all others similarly situated against Defendants, the manufacturers of Whole Foods 365 Everyday Value Plain Greek Yogurt (the “Yogurt” and/or “Product”), which expressly states on the label that it contains 2 grams of sugar per serving. This statement is false. In fact, in six recent tests conducted by *Consumer Reports*, the Yogurt had 11.4 grams of sugar per serving on average—nearly six times the represented amount. The claimed amount of sugar is material and significant because it is much

lower than its competitors' products, which generally range between five and ten grams of sugar per serving. As a result of Defendants' materially false statements concerning the sugar content in the Yogurt, Plaintiff and the proposed class ("Class"), defined further below, have been harmed and have suffered damages.

2. One of Whole Foods' slogans is that "Health Starts Here." Defendants market itself and its 365 brand products as a healthier alternative to other stores and brands. Defendants advertise and warrant the statements on its ingredient label, and as the same pertains to the Yogurt, the statements are demonstrably false. As *Consumer Reports* aptly put, "Given Whole Foods' care and attention to food content, this discrepancy in the sugar content in one of its own branded products is that much more bewildering."

3. The Yogurt market in the United States exceeds \$7 billion dollars per year. Greek yogurt, in particular, comprises a major portion of the overall yogurt market, due in large measure to its high protein content and perceived health value over traditional yogurt.

4. Among health conscious consumers, yogurt can be, and is, an important component of a healthy diet. Moreover, for those with health conditions, such as diabetes, for example, the accuracy of a food product's sugar content is extremely important. Defendants have failed to accurately represent the true sugar content in its Yogurt.

5. Defendants are responsible and liable for, among other things, providing notice to consumers of accurate information concerning the sugar content of the Yogurt and repayment of its ill-gotten gains, as well as other related consequential damages that resulted from Defendants' provision of false and misleading information concerning the Yogurt.

6. Plaintiff brings this class action to secure, among other things, damages and equitable relief, declaratory relief, restitution, and in the alternative to damages, relief for unjust

enrichment, for a Class of similarly situated purchasers, against Defendants, for: (1) false, deceptive, unfair, and unlawful business practices in violation of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), FLA. STAT. §§ 501.201, *et seq.*; (2) Negligent Misrepresentation; and (3) Unjust Enrichment (alleged in the alternative to Plaintiff's other causes of action).

7. Plaintiff is seeking damages individually and on behalf of the Class. In addition, Plaintiff is seeking an Order declaring Defendants' business practice to be in violation of FDUTPA and an Order requiring Defendants to cease from representing the Yogurt's sugar content as being 2 grams when it, in fact, contains over 11 grams of sugar.

8. Plaintiff expressly does not seek to contest or enforce any state law that has requirements beyond those required by Federal laws or regulations.

9. All allegations herein are based on information and belief and are likely to have evidentiary support after a reasonable opportunity for discovery.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter presented by this Class Action Complaint because it is a class action arising under the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the plaintiff class is a citizen of a state different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000.00, exclusive of interest and costs.

11. Pursuant to 28 U.S.C. § 1332(d)(2)(A), Plaintiff alleges that the total claims of the individual members of the Plaintiff Class in this action are in excess of \$5,000,000.00, in the aggregate, exclusive of interest and costs, and as set forth below, diversity of citizenship exists

under CAFA because, as more fully set forth below, Plaintiff is a citizen of Florida, and Defendants can be considered a citizen of Texas and/or Delaware for diversity purposes.

12. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(a) because, as set forth below, Defendants conduct business in, and may be found in, this district, and because Plaintiff made some or all of purchases of the Yogurt in this judicial district.

III. THE PARTIES

13. Plaintiff Ryan Markley is an individual more than 18 years of age, is a citizen of Florida and a resident of Tampa, Hillsborough County, Florida. Over the last several years, Plaintiff has repeatedly purchased the Yogurt, most recently in June of 2014. Plaintiff made his purchases of the Yogurt during the Class Period from a Whole Foods Market located at 1548 N. Dale Mabry Hwy, Tampa, Florida 33607. Plaintiff purchased the Yogurt because of its purported health benefits—including its stated low sugar content.

14. Although Plaintiff was unaware of the *Consumer Reports* article concerning the false information Defendants provided about the Yogurt at the time of his purchases, upon information and belief, Plaintiff's purchases occurred after Defendants were made aware of the discrepancies demonstrated by *Consumer Reports*' testing. Despite notice of the discrepancy Defendants have not removed the Yogurt from the shelves or provided any corrective notice to purchasers, like Plaintiff.

15. Based upon information and belief, Whole Foods Market Group, Inc., sold, and continues to sell the Product. Whole Foods Market Group, Inc., is incorporated in Delaware and maintains a principal place of business in Texas. Based upon information and belief, WFM Private Label, L.P., owns the trademark, and markets, advertises, and promotes the Product. WFM Private Label, L.P., is incorporated in Delaware and maintains a principal place of business of business in

Texas. Based upon information and belief, Whole Foods Market, Inc. is a holding company for both Defendants, and is also incorporated in Texas. Both Defendants, and Whole Foods Market, Inc., maintain their principal executive offices at 550 Bowie Street in Austin, Texas. Whole Foods Market, Inc.'s most recent form 10k indicates that as of September 29, 2013, Whole Foods operates 347 stores in 40 states. Whole Foods operates 19 of its stores in the State of Florida, including one located at 1548 N. Dale Mabry Hwy., Tampa, Florida 33607, where Plaintiff purchased the Yogurt.

16. The Yogurt's advertising relied upon by Plaintiff was prepared and/or approved by Defendants and its agents and related and/or affiliated companies, and was disseminated by Defendants and its agents through advertising containing the misrepresentations alleged herein.

17. The advertising for the Yogurt was designed to encourage consumers to purchase the Yogurt and reasonably misled the reasonable consumer, *i.e.* Plaintiff and the Class into purchasing the Yogurt.

18. Defendants are the owner, manufacturer and distributor of the Yogurt, and are the companies that created and/or authorized the unlawful, fraudulent, unfair, misleading and/or deceptive labeling for the Yogurt.

19. Plaintiff alleges that, at all times relevant herein, Defendants and its subsidiaries, affiliates, and other related entities, as well as their respective employees, were the agents, servants and employees of Defendants, and at all times relevant herein, each was acting within the purpose and scope of that agency and employment.

20. Plaintiff further alleges on information and belief that at all times relevant herein, the distributors and retailers who delivered and sold the Yogurt, as well as their respective employees, also were Defendants' agents, servants and employees, and at all times herein, each was acting within the purpose and scope of that agency and employment.

21. In addition, Plaintiff alleges that, in committing the wrongful acts alleged herein, Defendants, in concert with its subsidiaries, affiliates, and/or other related entities and their respective employees, induced members of the public to purchase the Yogurt by means of untrue, misleading, deceptive, and/or fraudulent representations, and that Defendants participated in the making of such representations in that it disseminated those misrepresentations and/or caused them to be disseminated.

22. Whenever reference in this Complaint is made to any act by Defendants or its subsidiaries, affiliates, distributors, retailers and other related entities, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of Defendants committed, knew of, performed, authorized, ratified and/or directed that act or transaction on behalf of Defendants while actively engaged in the scope of their duties.

IV. FACTUAL ALLEGATIONS

23. Upon information and belief Defendants are, and at all times relevant hereto were, engaged in the business of designing, developing, manufacturing, distributing, marketing, and selling, among other things, the Yogurt. Defendants promoted, distributed and sold the Yogurt through its 19 stores located in the State of Florida.

24. Defendants knew or should have known that the information it provided concerning the sugar content of the Yogurt was false.

25. *Consumer Reports* indicated that it tested 27 varieties of Greek yogurt with five grams of sugar being the absolute lowest sugar content of any other Yogurt.

26. Upon information and belief, Defendants were able to realize a competitive advantage by providing nutritional information that was markedly better, *i.e.*, lower sugar

content, than the other manufacturers in the marketplace.

27. The misleading nature of Defendants' statements concerning the Yogurt are all the more concerning because of the numerous members of the consuming public for whom sugar is not just an important component of their diet, but an essential part of their health and wellbeing. For example, for those with diabetes, every gram of sugar must be specifically accounted for.

28. Due to Whole Foods' materially misleading ingredients statements, Plaintiff and members of the Class have suffered harm and injury through their purchase of Yogurt that did not conform to Defendants' advertising or warranties.

V. FALSE ADVERTISING OF THE YOGURT

29. Defendants falsely advertised that the Yogurt contains two grams of sugar per serving. In reality the Yogurt contains over 11 grams of sugar per serving. This misstatement constitutes a substantial misrepresentation and false statement of a material fact and undermines Defendants' assertions concerning the health benefits of the Yogurt.

30. Had Defendants not withheld and omitted important information about the nutritional content of the Yogurt, Plaintiff and the members of the Class would not have purchased the Yogurt, or would have paid less.

31. Defendants' false and misleading advertising is likely to deceive reasonable consumers.

32. Defendants' false and misleading representations and omissions are likely to deceive Plaintiff and other reasonable consumers.

33. Reasonable consumers must and do rely on food label representations and

information in making purchase decisions.

34. Defendants' statement that the Yogurt contains only 2 grams of sugar is material to a reasonable consumer's purchase decision because reasonable consumers, such as Plaintiff and members of the Class, care about the amount of sugar they ingest for dietary and other health reasons.

35. Reasonable consumers attach importance to a product ingredient label's identification of the presence of sugar in the product when making a purchasing decision.

36. Defendants market and advertise the Yogurt as only having 2 grams of sugar in it in order to increase sales derived from the Yogurt. Defendants are well-aware that claims of food being low in sugar are material to reasonable consumers.

37. Plaintiff and the other Class members reasonably relied to their detriment on Defendants' misleading representations and omissions.

38. Plaintiff and the other Class members were among the intended recipients of Defendants' deceptive representations and omissions.

39. Upon information and belief, Defendants made the deceptive representations and omissions regarding the Yogurt with the intent to induce Plaintiff's and the other Class members' purchase of the Yogurt.

40. Defendants' representations and omissions are material in that a reasonable person would attach importance to such information and would be induced to act upon such information in making purchase decisions.

41. Thus, Plaintiff and the other Class members' reliance upon Defendants' misleading and deceptive representations and omissions may be presumed. The materiality of

those representations and omissions also establishes causation between Defendant's conduct and the injuries sustained by Plaintiff and the Class.

42. Upon information and belief, in making the false, misleading, and deceptive representations and omissions, Defendants knew or should have known that consumers would pay a price premium for the Yogurt over comparable products that are not identified as only having 2 grams of sugar, furthering Defendants' private interest of increasing sales for the Yogurt, and decreasing the sales of similar yogurt products by Defendants' competitors that do not claim to contain only 2 grams of sugar.

43. As an immediate, direct, and proximate result of Defendants' false, misleading, and deceptive representations and omissions, Defendants injured Plaintiff and the other Class members in that Plaintiff and other Class members:

- A. paid a sum of money for the Yogurt that was not as represented;
- B. paid a premium price for the Yogurt that was not as represented;
- C. were deprived the benefit of the bargain because the Yogurt they purchased was different than what Defendants warranted;
- D. were deprived the benefit of the bargain because the Yogurt they purchased had less value than what was represented by Defendants;
- E. did not receive a Yogurt that measured up to their expectations as created by Defendants;
- F. ingested a substance that was other than what was represented by Defendants;
- G. ingested a substance that Plaintiff and the other members of the Class did not expect or consent to;
- H. ingested a product that contained more sugar content than they intended;
- I. ingested a substance that was of a lower quality than what Defendants promised;
- J. were denied the benefit of knowing what they ingested;

- K. were denied the benefit of truthful food labels;
 - L. were denied the benefit of supporting an industry that sells yogurt low in sugar content;
 - M. were denied the benefit of the beneficial properties of food low in sugar content.
44. Had Defendants not made the false, misleading, and deceptive representations and omissions, Plaintiff and the other Class members would not have been economically injured because Plaintiff and the other Class members would not have purchased the Yogurt.
45. Accordingly, Plaintiff and the other Class members have suffered injury in fact and lost money or property as a result of Defendant's wrongful conduct.
46. Plaintiff and the other Class members did not obtain the full value of the advertised Yogurt due to Defendants' misrepresentations and omissions.
47. Plaintiff and the other Class members purchased, purchased more of, or paid more for the Yogurt than they would have done had they known the truth about the Yogurt.

A. Plaintiff's Reliance and Damages

48. Plaintiff has purchased one or more of the Yogurt in Hillsborough County, Florida, during the Class Period, including, but not limited to a purchase for personal use from a Whole Foods Market in Tampa, Florida.
49. The Yogurt purchased by Plaintiff claimed to contain only 2 grams of sugar on the ingredient label, which Plaintiff perceived, read and relied on in making Plaintiff's purchase.
50. However, the Yogurt contains over 11 grams of sugar.
51. Subsequent to purchasing the Yogurt, Plaintiff discovered that they contain significantly greater amounts of sugar than represented, namely, over 11 grams of sugar versus the 2 grams Defendants claimed the Yogurt contained. Plaintiff and members of the Class paid a price

premium for the Yogurt because of the Yogurt's misleadingly represented ingredient label indicating the Yogurt's low sugar quantity.

52. Plaintiff and members of the Class would not have purchased the Yogurt had they known that they contained such a high sugar content.

53. Likewise, if Plaintiff and members of the Class had known the Yogurt contained over 11 grams of sugar rather than the erroneously stated 2 gram sugar content, as the Yogurt was labeled, Plaintiff and the Class would not have purchased the Yogurt.

54. As a result, Plaintiff and members of the Class have suffered economic damages as a result of purchasing the Yogurt that claims to contain only 2 grams of sugar because the Yogurt contains over 11 grams of sugar.

55. The Yogurt is valueless, worth less than what Plaintiff and members of the Class paid for it, and/or is not what Plaintiff and members of the Class reasonably intended to receive.

56. Plaintiff contends that the Product was rendered valueless because it is misbranded and not what Defendants represented it to be. The Statement constitutes an unfair business practice because the Product cannot do what Defendants claim it does. Thus, Plaintiff and the Class have been economically damaged in the amount of the full retail purchase price charged for each purchase of the Product throughout the Class period, plus tax. An illegal misbranded Product has no market value. Plaintiff and the Class seek damages equal to the aggregate purchase price paid for the Yogurt during the Class Period and injunctive relief described below. Alternatively, because the Product is worth less than what Plaintiff and the Class paid for it, Plaintiff contends that a minimum, she and the Class have been economically damaged in the amount of the difference between the premium price charged for the Product and the true value of the Product.

The Statement allows Defendants to charge a price premium for the Product above its true market value.

VI. CLASS ACTION ALLEGATIONS

57. Plaintiff re-alleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Class Action Complaint as if fully set forth herein.

58. Pursuant to *Federal Rule of Civil Procedure 23*, Plaintiff brings this class action and seeks certification of the claims and certain issues in this action on behalf of a Class defined as: defined as Statewide Classes and additionally and/or alternatively, Nationwide Classes as follows:

- a. **Statewide Classes.** Plaintiff brings this action on behalf of himself and on behalf of statewide classes, as follows:
 - i. **Florida Classes.** Pursuant to Rule 23(a) and (b)(2), all Florida residents who purchased the Products identified in Plaintiff's Complaint, during the period from August 5, 2010, for personal use and not resale, through and to the date Notice is provided to the Class;
 - ii. Pursuant to Rule 23(a) and (b)(3), all Florida residents who purchased the Products identified in Plaintiff's Complaint, during the period from August 5, 2010, for personal use and not resale, through and to the date Notice is provided to the Class.
- b. **Nationwide Classes.** Plaintiff brings this action on behalf of himself and on behalf of statewide classes, as follows:
 - i. **Nationwide Classes.** Pursuant to Rule 23(a) and (b)(2), all United States residents who purchased the Products identified in Plaintiff's Complaint,

during the period from August 5, 2010, for personal use and not resale, through and to the date Notice is provided to the Class;

- ii. Pursuant to Rule 23(a) and (b)(3), all United States residents who purchased the Products identified in Plaintiff's Complaint, during the period from August 5, 2010, for personal use and not resale, through and to the date Notice is provided to the Class.

59. Plaintiff respectfully reserves the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified, including modifying the Class definition to only include States in which the Product was sold. Excluded from the Class are governmental entities, Defendants, any entity in which Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

60. Defendants' practices and omissions were applied uniformly to all members of the Class, including any subclass, so that the questions of law and fact are common to all members of the Class and any subclass. All members of the Class and any subclass were and are similarly affected by the deceptive advertising for the Yogurt, and the relief sought herein is for the benefit of Plaintiff and members of the Class and any subclass.

61. Based on the annual sales of the Yogurt and the popularity of the Yogurt, it is readily apparent that the number of consumers in both the Class and any subclass is so large as to make joinder impractical, if not impossible.

62. Questions of law and fact common to the Plaintiff Class and any subclass exist that predominate over questions affecting only individual members, including, *inter alia*:

- a. Whether Defendants' business practices violated FDUTPA, FLA. STAT. §§ 501.201, *et seq.*;
- b. Whether the Yogurt actually contains only 2 grams of sugar;
- c. Whether the Yogurt's ingredient label is material to a reasonable consumer;
- d. Whether the claim that the Yogurt contains only 2 grams of sugar is misleading to a reasonable consumer;
- e. Whether a reasonable consumer is likely to be deceived by a claim that a product with a label that contains only 2 grams of sugar when in fact the same contains over 11 grams;
- f. Whether Defendants were unjustly enriched by the sale of the Yogurt; and
- g. Whether Defendants' conduct as set forth above injured consumers and if so, the extent of the injury.

63. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Plaintiff Class and any subclass, as the claims arise from the same course of conduct by Defendants, and the relief sought within the Class and any subclass is common to the members of each.

64. Plaintiff will fairly and adequately represent and protect the interests of the members of the Plaintiff Class and any subclass.

65. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation.

66. Certification of this class action is appropriate under *Federal Rule of Civil*

Procedure 23 because the questions of law or fact common to the respective members of the Class and any subclass predominate over questions of law or fact affecting only individual members. This predominance makes class litigation superior to any other method available for a fair and efficient decree of the claims.

67. Absent a class action, it would be highly unlikely that the representative Plaintiff or any other members of the Class or any subclass would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery.

68. Certification also is appropriate because Defendants acted, or refused to act, on grounds generally applicable to both the Class and any subclass, thereby making appropriate the declaratory and injunctive relief sought on behalf of the Class and any subclass as respective wholes.

69. Further, given the large number of consumers of the Yogurt, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

70. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that individual actions would engender.

71. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

**VII. FIRST CAUSE OF ACTION:
FOR VIOLATIONS OF FLORIDA’S DECEPTIVE AND UNFAIR TRADE PRACTICES
ACT, FLA. STAT. §§ 501.201, *ET SEQ.***

72. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs numbered one (1) through seventy-one (71) of this Complaint as if fully set forth herein verbatim.

73. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 501.213, *Florida Statutes*.

74. The express purpose of FDUTPA is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” FLA. STAT. § 501.202(2).

75. Section 501.204(1), *Florida Statutes* declares as unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

76. The sale of the Yogurt at issue in this cause was a “consumer transaction” within the scope of FDUTPA.

77. Plaintiff is a “consumer” as defined by Section 501.203, *Florida Statutes*.

78. Defendants’ Yogurt is goods within the meaning of FDUTPA and Defendants are engaged in trade or commerce within the meaning of FDUTPA.

79. Defendants’ unfair and deceptive practices are likely to mislead – and have misled – reasonable consumers, such as Plaintiff and members of the Class, and therefore, violate Section 500.04, *Florida Statutes*.

80. Defendants have violated FDUTPA by engaging in the unfair and deceptive practices described above, which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers.

81. Specifically, Defendants have represented that the Yogurt contains only 2 grams of sugar when in fact, the Yogurt contains over 11 grams of sugar—over five times more than Defendants represented.

82. Plaintiff and Class Members have been aggrieved by Defendants' unfair and deceptive practices in violation of FDUTPA, in that they purchased and consumed Defendants' mislabeled Yogurt.

83. Reasonable consumers rely on Defendants to honestly represent the true nature of its ingredients.

84. Defendants have deceived reasonable consumers, like Plaintiff and the Class, into believing the Yogurt was something it was not; specifically that it is only contained 2 grams of sugar as opposed to the more than 11 grams of sugar.

85. The knowledge required to discern the true nature of the Yogurt is beyond that of the reasonable consumer—namely that the Yogurt does or does not contain 2 grams of sugar.

86. Plaintiff and the Class suffered damages and are entitled to injunctive relief.

87. Pursuant to sections 501.211(2) and 501.2105, *Florida Statutes*, Plaintiff and the Class make claims for damages, attorney's fees and costs. The damages suffered by the Plaintiff and the Class were directly and proximately caused by the deceptive, misleading and unfair practices of Defendants. Pursuant to Section 501.211(1), *Florida Statutes*, Plaintiff and the Class seek injunctive relief for, *inter alia*, the Court to enjoin Defendants' above-described wrongful acts and practices, and for restitution and disgorgement.

88. Plaintiff seeks all available remedies, damages, and awards as a result of Defendant's violations of FDUTPA.

**VIII. SECOND CAUSE OF ACTION:
NEGLIGENT MISREPRESENTATION**

89. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs numbered one (1) through seventy-one (71) of this Complaint as if fully set forth herein verbatim.

90. Defendants have negligently represented that the Yogurt contains 2 grams of sugar.

91. Defendants have represented that the Yogurt contains only 2 grams of sugar when in fact, the Yogurt contains over 11 grams of sugar.

92. Defendants have misrepresented a material fact to the public, including Plaintiff and Class Members, about the Yogurt.

93. The Yogurt is marketed directly to consumers by Defendants, come in sealed packages, and does not change from the time it leaves Defendants' possession until it arrives in stores to be sold to consumers.

94. Defendants know the Yogurt's misstatements are material to the reasonable consumer and Defendants intend for consumers to rely upon the misstatements when choosing to purchase the Yogurt.

95. Defendants knew or should have known that these misstatements or omissions would materially affect Plaintiff's and Class members' decisions to purchase the Yogurt.

96. Plaintiff and other reasonable consumers, including the Class members, reasonably relied on Defendants' representations set forth herein, and, in reliance thereon, purchased the Yogurt.

97. The reliance by Plaintiff and Class members was reasonable and justified in that Defendants appeared to be, and represented itself to be, a reputable business, and it distributed the Yogurt through reputable companies.

98. Plaintiff and Class members would not have been willing to pay for Defendants' Yogurt if they knew that the Yogurt contained more than 2 grams of sugar.

99. As a direct and proximate result of Defendants' misrepresentations, Plaintiff and members of the Class were induced to purchase Defendants' Yogurt, and have suffered damages to be determined at trial, in that, among other things, they have been deprived of the benefit of their bargain in that they bought a product, the Yogurt, that was not what it was represented to be, and they have spent money on the Yogurt that had less value than was reflected in the premium purchase price they paid for the Yogurt.

100. Plaintiff seeks all available remedies, damages, and awards as a result of Defendants' negligent misrepresentations.

**IX. THIRD CAUSE OF ACTION:
UNJUST ENRICHMENT**

102. Plaintiff re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs numbered one (1) through seventy-one (71) of this Complaint as if fully set forth herein verbatim.

103. In its marketing and advertising, Defendants have made false and misleading statements and/or omissions regarding the Yogurt, as described herein.

104. Defendants have represented that the Yogurt contains 2 grams of sugar when in fact, the same contains over 11 grams of sugar.

105. The Yogurt is marketed directly to consumer by Defendants, comes in sealed packages, and does not change from the time they leave Defendants' possession until they arrive in stores to be sold to consumers.

106. Plaintiff and Class Members conferred a benefit on Defendants by purchasing the Yogurt. Defendants accepted and retained the benefit in the amount of the purchase price and/or profits it earned from sales of the Yogurt to Plaintiff and other Class members.

107. Defendants profited from its unlawful, unfair, misleading, and deceptive practices and advertising at the expense of Plaintiff and Class members, under circumstances in which it would be unjust for Defendants to be permitted to retain said benefit.

108. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendants' actions, as set forth herein. Defendants are aware that the claims and/or omissions that it makes about the Yogurt are false, misleading, and likely to deceive reasonable consumers, such as Plaintiff and members of the Class.

109. Plaintiff and Class members do not have an adequate remedy at law against Defendant (in the alternative to the other causes of action alleged herein).

110. Accordingly, the Yogurt is valueless such that Plaintiff and Class members are entitled to restitution in an amount not less than the purchase price of the Yogurt paid by Plaintiff and Class members during the Class Period.

111. Plaintiff and Class members are entitled to restitution of the excess amount paid for the Yogurt, over and above what they would have paid if the Yogurt had been adequately advertised, and Plaintiff and Class members are entitled to disgorgement of the profits Defendants derived from the sale of the Yogurt.

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all others similarly situated, prays for relief pursuant to each cause of action set forth in this Complaint as follows:

1. For an order certifying that the action may be maintained as a class action, certifying Plaintiff as representative of the Class, and designating Plaintiff's attorneys Class counsel;
2. For an award of equitable relief for all causes of action as follows:
 - (a) Declaring Defendants' conduct to be in violation of FDUTPA and enjoining Defendants from continuing to engage, use, or employ any unfair and/or deceptive business acts or practices related to the design, testing, manufacture, assembly, development, marketing, advertising, or sale of the Yogurt for the purpose of selling the Yogurt in such manner as set forth in detail above, or from making any claims found to violate FDUTPA or the other causes of action as set forth above;
 - (b) Requiring Defendants to make full restitution of all monies wrongfully obtained as a result of the conduct described in this Complaint;
 - (c) Restoring all monies that may have been acquired by Defendants as a result of such unfair and/or deceptive act or practices; and
 - (d) Requiring Defendants to disgorge all ill-gotten gains flowing from the conduct described herein.
3. For actual damages in an amount to be determined at trial for all causes of action;
4. For an award of attorney's fees and costs;
5. For any other relief the Court might deem just, appropriate, or proper; and

6. For an award of pre- and post-judgment interest on any amounts awarded.

XIII. DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a jury trial on all issues so triable.

Respectfully Submitted By,

Dated: August 27, 2014

/s/ Joshua H. Eggnatz

THE EGGNATZ LAW FIRM, P.A.

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