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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

ASHLEY RICHARDS, individually, and on behalf of herself and all others similarly situated,

Plaintiff,

v.

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

Defendants.

Case No.:

CLASS ACTION COMPLAINT

(Jury Trial Demanded)

Plaintiff Ashley Richards (referred to hereinafter as “Plaintiff”) brings this action, by and through her undersigned counsel, against Whole Foods Market Group, Inc. and WFM Private Label, L.P. (hereinafter collectively referred to as “Whole Foods” or “Defendants”) on behalf of herself and all others similarly situated in the Class, based on information and belief and the investigation of counsel, except for information based on personal knowledge, hereby alleges as follows:

I. NATURE OF ACTION

1. This is a class action brought on behalf of Plaintiff, and a class of all others similarly situated against Defendants, the manufacturers, promoters and sellers of Whole Foods 365 Everyday Value Plain Greek Yogurt (hereinafter the “Yogurt”).

2. The label on each and every container of the Yogurt expressly states in uniform language that the Yogurt contains 2 grams of sugar per 170 gram serving. This

1 statement is false. In fact, as confirmed in six recent tests conducted by the venerable
2 consumer publication “Consumer Reports,” the Yogurt contains at least 11.4 grams of sugar
3 per 170 gram serving—nearly six times the stated amount. *See* Exhibit A, Consumer Report
4 article dated July 17, 2014.

5 3. By comparison, according to the USDA, the sugar content of an ice cream
6 sandwich is 13 grams; only slightly more than the 11.4 gram sugar content of the Yogurt.

7 4. The claimed amount of sugar is much lower than that of competitors, which
8 generally range between five and 10 grams of sugar per serving, and is a big draw for
9 consumers who look to limit their sugar intake. Additionally, low sugar is generally
10 considered healthier, and the low sugar characteristics of a food product command a
11 premium in the marketplace. As a result of the false representation, Defendants were able to
12 sell the Yogurt at a higher price than they would have had they labeled the sugar content
13 accurately. Thus, all consumers who purchased the Yogurt, whether or not they cared about
14 the sugar content, paid more for the Yogurt than they would have had it been truthfully
15 labeled. As a result of Defendants’ materially false statements concerning the sugar content
16 in the Yogurt, Plaintiff and the proposed classes have been harmed and have suffered
17 damages.

18 5. One of the mottos of Whole Foods is “Health Starts Here”. Defendants market
19 itself and its 365 brand products as a healthier alternative to other stores and brands.
20 Defendants advertise and warrant the statements on their label, and as they pertain to the
21 Yogurt the statements are demonstrably false. As Consumer Reports aptly put it, “Given
22 Whole Foods’ care and attention to food content, this discrepancy in the sugar content in
23 one of its own branded products is that much more bewildering.” Even a cursory review of
24 the Yogurt compared to competitors should have revealed to the nutrition experts working
25 for Defendants that something was wrong.

26 6. The Yogurt market in the United States is enormous by any standard—it tops
27 \$7 billion dollars per year. Greek yogurt, in particular, comprises a major portion of the
28 overall yogurt market, due in large measure to its high protein content and perceived health

1 value over traditional yogurt.

2 7. Among health conscious consumers, yogurt can be and is an important
3 component of a healthy diet. For those with health conditions, such as diabetes, the accuracy
4 of sugar content in products is extremely important. Defendants have a duty to provide
5 accurate information on their product labels, but they have failed to satisfy that obligation.

6 8. Additionally, any consumer who purchased the Yogurt suffered harm,
7 irrespective of their health conscious sensibilities or health conditions, in the form of a
8 higher price that Defendants were able to command for the product based on the false
9 representation regarding its sugar content.

10 9. Sugar content is material to class members shopping at Whole Foods. An
11 accurate representation of a product's sugar content is information a reasonable person
12 shopping at Whole Foods would want to know and would consider in making a purchase
13 decision. A misrepresentation of such sugar content, as described further herein, is
14 therefore, material to reasonable consumers, such as Plaintiff and Class members, shopping
15 at Whole Foods.

16 10. Had the actual sugar content been disclosed accurately, reasonable people in
17 the class would have considered such data and selected another Greek yogurt product.
18 Defendants, thus, gained sales as a result of the conduct complained of herein.

19 11. Materiality is determined using an objective test subject to class wide proof.

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

25 **II. JURISDICTION AND VENUE**

26 13. This Court has diversity jurisdiction over this action under 28 U.S.C. §1332(a)
27 and (d) because the amount in controversy for the Class exceeds \$5,000,000.00, and
28 Plaintiff and other Class members are citizens of States different from the State where

1 Defendants are incorporated and have their principal place of business. This Court also has
2 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367

3 14. This Court has personal jurisdiction over Plaintiff because Plaintiff submits to
4 the Court's jurisdiction. This Court has personal jurisdiction over Defendants because
5 Defendants conduct substantial business in this District, and some of the actions giving rise
6 to the Complaint took place in this District.

7 15. Venue is proper in this District under 28 U.S.C. §1391 because a substantial
8 part of the events or omissions giving rise to the claims occurred within this District, and
9 because Plaintiff is a resident of Phoenix, Arizona, which is in this District. Additionally,
10 Defendants transact business within the District, and some of the events establishing the
11 claims arose in this District.

12 **III. PARTIES**

13 16. Plaintiff Ashley Richards is a resident of Phoenix, Arizona. Like all members
14 of the proposed class, Plaintiff Richards purchased the Yogurt on various dates during the
15 Class Period, including as recently as June 2014. Plaintiff Richards has repeatedly
16 purchased the Yogurt. Plaintiff purchased the yogurt, in part, because of its purported health
17 benefits – including the stated low sugar content.

18 17. Although Plaintiff was unaware of the Consumer Reports report concerning
19 the false information Defendants provided about the Yogurt at the time of purchase,
20 Plaintiff's purchase occurred after Defendants were made aware of the discrepancies
21 demonstrated by Consumer Reports' testing. Upon information and belief, despite notice of
22 the discrepancy Defendants have not provided any corrective notice to purchasers, like
23 Plaintiff.

24 18. Whole Foods Market Group, Inc., is incorporated in Delaware and maintains
25 its principal executive offices at 550 Bowie Street in Austin, Texas. Defendant Whole Foods
26 Market Group, Inc. is a subsidiary of Whole Foods Market, Inc., which is simply a holding
27 company. The most recent form 10k indicates that as of September 29, 2013, Whole Foods
28 operates 347 stores in 40 states and the District of Columbia. There are 11 Whole Foods

1 Stores in Arizona.

2 19. WFM Private Label, L.P. is incorporated in Delaware and maintains its
3 principal executive offices at 550 Bowie Street in Austin, Texas. Upon information and
4 belief, WFM Private Label, L.P. is responsible for Whole Foods’ branded products, such as
5 the Yogurt.

6 20. Together, Defendants Whole Food Market Group, Inc. and WFM Private
7 Label, L.P. jointly manufactured, distributed, advertised, labeled and sold “Whole Foods
8 365 Everyday Value Plain Green Yogurt,” which each defendant jointly determining that
9 each such container would state that the product contained 2 grams of sugar per serving on
10 the product’s label.

11 **IV. FACTUAL ALLEGATIONS**

12 21. Upon information and belief Defendants are, and at all times relevant hereto
13 were, engaged in the business of designing, developing, manufacturing, distributing,
14 marketing, and selling, among other things, the Yogurt. Defendants promoted, distributed
15 and sold the Yogurt through their 347 stores located throughout the United States, including
16 the 11 stores located in Arizona.

17 22. The Yogurt is an exclusive Whole Foods Market store brand, which, as with
18 Defendants’ other products, Defendants sell under the store motto “Health Starts Here.”

19 23. Since the initial offering of the Yogurt, each and every “Nutrition Facts” label
20 on each container of the Yogurt sold by Defendants has falsely stated that the Yogurt
21 contains 2 grams of sugar per serving.

22 24. In July of 2014, the noted consumer publication “Consumer Reports”
23 published the results of six recent tests conducted by Consumer Reports on the Yogurt,
24 which revealed that the Yogurt contains at least 11.4 grams of sugar per 170 gram serving—
25 nearly six times the stated on the product’s label. *See* Exhibit A, Consumer Report article
26 dated July 17, 2014.

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

1 26. Consumer Reports indicated that it tested 27 varieties of Greek yogurt with
2 five grams of sugar being the absolutely lowest sugar content of any other yogurt.

3 27. In the face of the powerful evidence from Consumer Reports and test results
4 that simply do not pass the straight-face test, Defendants weakly responded to the evidence
5 of its false nutritional information by simply asserting that they relied upon testing results
6 from reputable third-party labs. This statement suggests that Defendants relied upon
7 multiple labs. But Defendants did not identify any lab by name, nor when the testing was
8 conducted. Indeed, it stands to reason that any reputable lab experienced in food testing
9 would compare its test results with test results for other similar products as the most basic
10 form of quality control. It does not appear that Defendants' labs are as reputable as they
11 suggest.

12 28. Upon information and belief, Defendants were able to realize a competitive
13 advantage by providing nutritional information that was markedly better, *i.e.* lower sugar
14 content, than the other manufactures in the marketplace.

15 29. Defendants' act in vastly understating the sugar content of its Yogurt is not
16 harmless trivia.

17 30. For many members of the class sugar is not just an important component of
18 their diet, but an essential part of their health and well-being. For example, for those with
19 diabetes, every gram of sugar must be specifically accounted for. Defendants' callous
20 disregard and/or negligence put these and other people at risk.

21 31. Even more egregious, is Defendants' refusal to recall the Yogurt after it was
22 on notice of the mislabeling, and continuing to sell the product with the false labeling.

23 32. At the very least, Defendants were negligent in their testing by their failure to
24 provide accurate nutritional information or exercise reasonable care in ensuring that the
25 nutritional information on the label of the Yogurt was accurate. Defendants knew or should
26 have known that the information they provided concerning the sugar content of the Yogurt
27 was false.

28 33. Defendants' false and misleading conduct is likely to deceive reasonable

1 consumers.

2 34. Defendants' false and misleading representations and omissions are likely to,
3 and did in fact deceive Plaintiff and other reasonable consumers, including members of the
4 class.

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

8 36. Consumers must and do rely on food label representations and information in
9 making purchase decisions.

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

14 38. Further, the statement that the Yogurt contains only 2 grams of sugar is
15 material to Plaintiff and the Class because reasonable consumers would want to know that a
16 product met the nutritional standards that manufacturer represented it to be and which
17 justified the premium price being charged before paying for the product.

18 39. Due to the materially misleading statements at issue in this case, Plaintiff and
19 members of the Class have suffered injury, incurred damage and financial loss as a result of
20 Defendants' conduct complaint of herein. Among other things, Plaintiff and the Class paid a
21 premium price for the Yogurt believing that the Yogurt contained only 2 grams of sugar per
22 serving, when in fact, the Yogurt contained materially higher sugar content per serving.
23 Like other Class members, had Plaintiff known that the Yogurt did not meet the represented
24 nutritional standards they would not have paid the premium price that they paid for it, but
25 less, and/or would have purchased a substitute Greek yogurt product. Defendants injured
26 Plaintiff and members of the Class, caused them damage and caused them to incur out of
27 pocket financial loss.

VI. CLASS ALLEGATIONS

40. Plaintiff seeks to bring this class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The proposed class (the “National Class”) is defined as follows:

All persons in the United States who purchased Defendants’ Yogurt during the Class Period for personal use and not resale.

41. Additionally, and alternatively, Plaintiff proposes the following Subclass:

All persons in the State of Arizona who purchased Defendants’ Yogurt during the Class Period for personal use and not resale.

42. The “Class Period” for the Class and any Subclass dates back to October 6, 2010, and continues through the present and the date of judgment. Alternatively, “Class Period” for the Class and any Subclass dates back to the length of the longest applicable statute of limitations for any claims asserted on behalf of that Class from the date this action was commenced and continues through the present and the date of judgment. Excluded from the Class are Defendants, their employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; any individuals who experienced physical injuries as a result of the defects at issue in this litigation; and the judge and court staff to whom this case is assigned. Plaintiff reserves the right to amend the definition of the class if discovery or further investigation reveals that the class should be expanded or otherwise modified.

43. All requirements for class certification in Fed. R. Civ. P. 23(a), 23(b)(1), 23(b)(2) and/or 23(b)(3) (or any other applicable state or federal rule of civil procedure) are satisfied with respect to the Class and each Subclass.

44. Numerosity of the Class. Members of the Class are so numerous that their individual joinder herein is impracticable. The precise number of members of the Class and their addresses are presently unknown to Plaintiff. Upon information and belief Plaintiff alleges that the total number of members of the Class is well in excess of 500 persons who would fall within the proposed class definition.

1 45. Ascertainable Class. The community of interest among these class members
2 in the litigation is well defined and the proposed classes are ascertainable from objective
3 criteria. If necessary to preserve the case as a class action, the court itself can redefine the
4 Class and any Subclass.

5 46. Common Questions of Fact and Law Exist and Predominate over Individual
6 Issues. There is a well-defined community of interest in the questions of law and fact
7 involved affecting the parties to be represented. These common questions of law and fact
8 exist as to all members of the Class and predominate over the questions affecting only
9 individual members of the class. These common legal and factual questions include without
10 limitation:

- 11 a. Whether Defendants sold the Yogurt with false nutritional data
12 concerning the amount of sugar per serving;
- 13 b. Whether Defendants failed to prevent damages by failing to timely
14 remove the Yogurt from their shelves when the false information
15 became public;
- 16 c. Whether Defendants were unjustly enriched by the sale of the Yogurt
17 through false and/or deceptive tactics;
- 18 d. Whether Defendants knowingly provided false information to Plaintiff
19 and the Class members;
- 20 e. Whether Defendants omitted material information when they sold the
21 Yogurt;
- 22 f. Whether the members of the Class have sustained damages and, if so,
23 the proper measure of such damages

24 47. Defendants have engaged in a common course of conduct giving rise to the
25 legal rights sought to be enforced by Plaintiff individually and on behalf of the other
26 members of the Classes. Similar or identical statutory and common law violations, business
27 practices, and injuries are involved as to all members in the Classes. Individual questions, if
28

1 any, pale by comparison, in both quality and quantity, to the numerous common questions
2 that dominate this action.

3 48. Plaintiff is a member of both Classes and presents claims that are typical of
4 the claims of members of the Classes. Plaintiff purchased Defendants' Yogurt during the
5 Class Period. Plaintiff and every member of the Class were subjected to the same false,
6 written statements of affirmative fact on the nutritional label of the Yogurt, which falsely
7 stated 2 grams of sugar per serving. The same material facts that Defendants withheld from
8 Plaintiff were withheld from the other members of the Class. The test for materiality is an
9 objective test subject to class wide proof.

10 49. All members of the Class have been the subject of Defendants' unfair and
11 unlawful business practices as described herein. The relief sought is common, unitary, and
12 class-wide in nature.

13 50. Adequacy of Representation. Plaintiff will fairly and adequately represent
14 and protect the interest of the members of the Class. Plaintiff shares a common interest with
15 all Class members, with respect to the conduct of the Defendants herein, and redress of
16 same. Plaintiff has suffered an injury-in-fact as a result of the conduct of the Defendants, as
17 alleged herein. Plaintiff has retained counsel who are competent and experienced in the
18 prosecution of complex consumer fraud, mass tort and class actions. Plaintiff and her
19 counsel intend to prosecute this action vigorously and faithfully for the benefit of the Class
20 members. Plaintiff has no interests contrary to the class members, and will fairly and
21 adequately protect the interests of the class.

22 51. Community of Interest. The proposed class has a well-defined community of
23 interest in the questions of fact and law to be litigated. The common questions of law and
24 fact are predominant with respect to the liability issues, relief issues and anticipated
25 affirmative defenses. The Named Plaintiff has claims typical of the Class.

26 52. Superiority of Class Adjudication. The certification of a class in this action is
27 superior to the litigation of a multitude of cases by members of the putative classes. Class
28 adjudication will conserve judicial resources and will avoid the possibility of inconsistent

1 rulings. Moreover, there are class members who are unlikely to join or bring an action due
2 to, among other reasons, their reluctance to sue Defendants and/or their inability to afford a
3 separate action. Equity dictates that all persons who stand to benefit from the relief sought
4 herein should be subject to the lawsuit and hence subject to an order spreading the costs of
5 the litigation among the class members in relationship to the benefits received. Even if the
6 members of the class themselves could afford individual litigation, the court system could
7 not. Individualized litigation presents a potential for inconsistent or contradictory
8 judgments. Individualized litigation increases the delay and expense to all parties and the
9 court system presented by the complex legal and factual issues of the case. By contrast, the
10 class action device presents far fewer management difficulties, and provides the benefits of
11 single adjudication, economy of scale, and comprehensive supervision by a single court.

12 53. In the alternative, the above-defined Class may be certified pursuant to Fed.
13 R. Civ. P. 23(b)(1) and (b)(2) because:

- 14 a. The prosecution of separate actions by the individual members of the Class
15 would create a risk of inconsistent or varying adjudication with respect to
16 individual class members' claims which would establish incompatible
17 standards of conduct for Defendants;
- 18 b. The prosecution of separate actions by individual members of the class would
19 create a risk of adjudications which would as a practical matter be dispositive
20 of the interests of other members of the class who are not parties to the
21 adjudications, or which would substantially impair or impede the ability of
22 other class members to protect their interests; and,
- 23 c. Defendants have acted or refused to act on grounds generally applicable to the
24 classes, thereby making appropriate final and injunctive relief with respect to
25 the Class.

26 **TOLLING OF ANY APPLICABLE STATUTES OF LIMITATIONS**

27 54. Plaintiff and putative members of the Class are within the applicable statute
28 of limitation for the claims presented here. Defendants failed to disclose this known but

1 non-public information about the Yogurt—information over which it had exclusive control
2 until at the earliest July 2014. Because Plaintiff and Class members therefore could not
3 reasonably have known that the sugar content on the Yogurt was false, Defendants are
4 estopped from asserting any statute of limitation defenses that might otherwise be
5 applicable to the claims asserted herein.

6 **FIRST CAUSE OF ACTION**
7 **Breach of Warranty**
8 **(On Behalf of the National Class and Subclass)**

9 55. Plaintiff and the Class incorporate by reference each factual allegation in this
10 Complaint as though fully set forth herein.

11 56. Whole Foods sold the Yogurt in its regular course of business. Plaintiff and
12 Class members purchased the Yogurt.

13 57. Defendants made promises and representations in an express warranty
14 provided to all consumers, which became the basis of the bargain between Plaintiff, Class
15 members and Defendants. Defendants gave these express warranties to Plaintiff and Class
16 members in written form on the labels of the Yogurt.

17 58. Defendants' written affirmations of fact, promises and/or descriptions as
18 alleged are each a written warranty.

19 59. In addition, or in the alternative, by placing the Yogurt into the stream of
20 commerce, by operation of law, Defendants also impliedly warranted to Plaintiff and Class
21 members that the Yogurt was accurately labeled in conformance with the law.

22 60. Defendants breached the warranties because the Yogurt's nutritional labeling
23 of sugar content per serving is false and the Yogurt did not contain the properties
24 Defendants represented.

25 61. Due to the breaches, the Yogurt was not merchantable or fit for the intended
26 purpose it was sold – a low sugar product.

27 62. The sugar content was inaccurate when the Yogurt left Defendants'
28 possession, was distributed to Defendants' markets and remained false when the Yogurt was
sold to Plaintiff and the Class members. The false nutritional information provided on the

1 label was undiscoverable to Plaintiff and the Class members at the time of purchase of the
2 Yogurt.

3 63. All conditions precedent to seeking liability under this claim for breach of
4 express and implied warranty have been performed by or on behalf of Plaintiff and others in
5 terms of paying for the goods at issue. Defendants had actual and/or constructive notice of
6 the false labeling information and to date have taken no action to remedy their breaches of
7 express and implied warranty.

8 64. To the extent notice is required, Defendants were on notice of their breaches
9 of warranty by virtue of the Consumer Reports article referenced herein, as well as
10 numerous stories including one that appeared on Good Morning America. Further,
11 Defendants previously knew or should have known of the falsity of the label because the
12 claimed sugar content on the Yogurt was strikingly low when compared to the entire
13 remainder of the Greek yogurt business segment. Defendants have refused to remedy such
14 breaches.

15 65. Defendants' breach of warranty has caused Plaintiff and Class members to
16 suffer injuries, paying for falsely labeled products, and entering into transactions they would
17 not have entered into for the consideration paid. As a direct and proximate result of
18 Defendants' breach of warranty, Plaintiff and Class members have suffered damages and
19 continue to suffer damages, including economic damages in terms of the difference between
20 the value of the Yogurt as promised and the value of the Yogurt as delivered.

21 66. As a result of the breach of warranty, Plaintiff and Class members are entitled
22 to legal and equitable relief including damages, costs, attorneys' fees, rescission, and/or
23 other relief as deemed appropriate, for an amount to compensate them for not receiving the
24 benefit of their bargain.

25 **SECOND CAUSE OF ACTION**
26 **Unjust Enrichment/Money Had and Received**
27 **(On Behalf of the National Class and Subclass)**

28 67. Plaintiff re-alleges and incorporates by reference all factual allegations in this
Class Action Complaint as though set forth fully herein.

1 68. Plaintiff and the Class have conferred substantial benefits on Defendants by
2 purchasing the Yogurt, and Defendants have knowingly and willingly accepted and enjoyed
3 these benefits.

4 69. Defendants either knew or should have known that the payments rendered by
5 Plaintiff and the Class were given and received with the expectation that the Yogurt would
6 be as represented and warranted. For Defendants to retain the benefit of the payments under
7 these circumstances is inequitable.

8 70. Defendants, through deliberate misrepresentations or omissions in connection
9 with the advertising, marketing, promotion, and sale of the Yogurt reaped benefits, which
10 resulted in Defendants' wrongful receipt of profits.

11 71. Equity demands disgorgement of Defendants' ill-gotten gains. Defendants
12 will be unjustly enriched unless Defendants are ordered to disgorge those profits for the
13 benefit of Plaintiff and the Class.

14 72. As a direct and proximate result of Defendants' wrongful conduct and unjust
15 enrichment, Plaintiff and the Class are entitled to restitution from and institution of a
16 constructive trust disgorging all profits, benefits, and other compensation obtained by
17 Defendants.

18 **THIRD CAUSE OF ACTION**
19 **Declaratory and Injunctive Relief**
20 **(On Behalf of the National Class and the Subclass)**

21 73. Plaintiff re-alleges and incorporates by reference all factual allegations
22 contained in this Class Action Complaint as though set forth fully herein.

23 74. Defendants acted or refused to act on grounds that apply generally to the Class,
24 so that final injunctive relief or corresponding declaratory relief is appropriate respecting the
25 Class as a whole within the meaning of Fed. R. Civ. P. 23.

26 75. Plaintiff, on behalf of herself and putative Class members, seek a Court
27 declaration of the following:

- 28 a) The Yogurt developed, manufactured, marketed, tested and sold by
Defendants on or after October 6, 2010 contained false and misleading

1 nutritional information;

2 b) Defendants knew or should have known of the false information they
3 provided to Plaintiff and Class members and thereby breached their
4 warranties to Plaintiff and the Class;

5 c) Defendants shall remove all falsely labeled Yogurt from their shelves,
6 or re-label with accurate nutritional information; and

7 d) Defendants shall institute a corrective advertising campaign to educate
8 consumers about the fact that the Yogurt was falsely labeled and to
9 inform them about the true sugar content of the Yogurt.

10 **FOURTH CAUSE OF ACTION**
11 **Violation of the Arizona Consumer Fraud Act, A.R.S. §§44-1522 *et seq.***
(Brought on behalf of the Subclass)

12 76. Plaintiff and the Subclass incorporate by reference all preceding paragraphs of
13 this Complaint as though fully stated herein.

14 77. Plaintiff Richards brings this action on behalf of herself and on behalf of the
15 Arizona State Subclass against Defendants for violations of the Arizona Consumer Fraud
16 Act - A.R.S. §44-1522 (“ACFA”).

17 78. This claim is based on Defendants’ deceptive and misleading conduct and
18 common omissions of material fact.

19 79. Plaintiff Richards and each member of the Subclass is a “person” as defined in
20 section 44-1521 of the ACFA.

21 80. Defendants engaged in unfair or deceptive acts or practices that violated
22 ACFA.

23 81. By advertising, marketing, distributing, and/or selling the Yogurt, Defendants
24 engaged in trade or commerce, the sale of goods, and/or practices affecting commerce
25 within the meaning of the ACFA

26 82. As fully alleged above, by advertising, marketing, distributing, and/or selling
27 the Yogurt with a label that falsely stated that a 170 gram serving contained 2 grams of
28 sugar, to Plaintiff Richards and members of the Subclass, Defendants engaged in, and

1 continue to engage in, deceptive acts and practices because the actual sugar content of the
2 170 gram serving of Defendants' Yogurt is over 11 grams.

3 83. By failing to accurately disclose and concealing the true sugar content of the
4 Yogurt from Plaintiff Richards and Subclass members, Defendants have engaged in
5 deceptive, unfair, fraudulent, and misleading acts and practices in connection with consumer
6 transactions, as Defendants has represented that its Yogurt has characteristics and benefits
7 that they do not have, and represented that its Yogurt was of a particular standard, quality or
8 grade when they were of another.

9 84. The deceptive and misleading acts have a broad, public impact on consumers
10 at large and does harm to the public interest.

11 85. Unless the Court enjoins Defendants' unlawful, deceptive actions, Defendants
12 will continue to falsely and misleadingly list the sugar content on its Yogurt as 2 grams per
13 serving, causing injury to future class members who are unaware of the false nature of this
14 representation.

15 86. Defendants, at all times up to the filing of this Complaint, have engaged in
16 misrepresentation which mislead Plaintiff and all members of the Subclass into believing
17 that the Yogurt has 2 grams of sugar per serving. As a result of Defendants'
18 misrepresentation, Plaintiff did not know, and could not through the exercise of reasonable
19 diligence be expected to know, that Defendants' Yogurt actually contained over 11 grams of
20 sugar per serving.

21 87. Despite reasonable diligence, neither Plaintiff Richards, nor any reasonable
22 consumer acting in the ordinary course of use, including Class members, could learn the
23 facts Defendants knowingly concealed from the general public.

24 88. As described herein, Defendants have engaged in consumer-oriented conduct
25 that was materially misleading and generally directed at the consuming public.

26 89. Proof of individual reliance or individual injury on the part of absent Class
27 members is not required to establish a basis for relief under ACFA.
28

1 90. Plaintiff and each class member were intended victims of the deceptive
2 conduct alleged herein.

3 91. Here, the false statement of sugar content was on the label of the product itself
4 and the Court can presume that there was a causal connection between the deceptive
5 conduct and the injuries alleged herein.

6 92. Plaintiff and the class and subclass members were injured in fact and lost
7 money as a result of Defendants' deceptive conduct.

8 93. Plaintiff and the class have been deprived of the benefit of their bargain in
9 that Plaintiff and the class received something less than what was represented on
10 Defendants' label: a Greek yogurt with 2 grams of sugar per serving.

11 94. Indeed, Defendants' written false claim on its label that its Yogurt had only 2
12 grams of sugar per serving – which, if true, would have made it the lowest sugar content of
13 any Greek yogurt on the market – induced Plaintiff and the class to pay a higher price for
14 this yogurt than cheaper yogurts sold by Defendants' competitors which had far less sugar
15 than what was actually contained in the Yogurt.

16 95. By reason of the foregoing, Defendants' conduct, as alleged herein,
17 constitutes deceptive acts and practices in violation of the ACFA.

18 96. Plaintiff Richards and the Arizona Subclass members are entitled to legal and
19 equitable relief against Defendants, including injunctions, consequential damages,
20 rescission, restitution, attorneys' fees, costs of suit, prejudgment interest and other relief as
21 appropriate.

22 **JURY TRIAL DEMANDED**

23 WHEREFORE, Plaintiff prays that this case be certified and maintained as a Class
24 action and for judgment to be entered in favor of Plaintiff and the Class against Defendants
25 as follows:

- 26 A. Enter an order certifying the proposed Class, designating Plaintiff as the Class
27 representative, and designating the undersigned as Class counsel;
- 28 B. Declare that Defendants are financially responsible for notifying all Class

1 members of the problems with the labeling of the Yogurt;

2 C. Declare that Defendants must disgorge, for the benefit of the Class, all or part
3 of the ill-gotten profits they received from the sale of the Yogurt, or order
4 Defendants to make full restitution to Plaintiff and the members of the Class;

5 D. For economic and compensatory damages on behalf of Plaintiff and all
6 members of the Class;

7 E. For punitive or exemplary damages;

8 F. For injunctive and declaratory relief;

9 G. For reasonable attorneys' fees and reimbursement of all costs for the
10 prosecution of this action; and

11 H. For such other and further relief as this Court deems just and appropriate.

12 Plaintiff seeks a trial by jury for all appropriate issues on each and every cause of
13 action in this Complaint.

14 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

15 **FOR THE PLAINTIFF AND ALL CLASS AND SUBCLASS MEMBERS:**

16 1) For actual, compensatory and statutory damages/penalties, according to proof;

17 2) For restitution, disgorgement and/or other equitable relief as the Court deems
18 proper;

19 3) For an order that Defendants be permanently enjoined from performing or
20 proposing to perform any of the aforementioned acts of unfair, unlawful,
21 deceptive and/or fraudulent business practices;

22 4) For an order certifying the proposed Class and each Subclass, designating
23 Plaintiff as named representative of the Class, and designating the
24 undersigned as Class Counsel;

25 5) For pre-judgment and post-judgment interest according to proof;

26 6) For reasonable attorney's fees and costs of suit;

27 7) For any and all such other and further relief as may be available in law or
28 equity;

8) For any and all such other and further relief as the Court may deem proper.

Respectfully submitted,

ZIMMERMAN REED, PLLP

Dated: October 6, 2014

By: /s/ Hart L. Robinovitch

CHARLES S. ZIMMERMAN, ESQ

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Attorneys for Plaintiff

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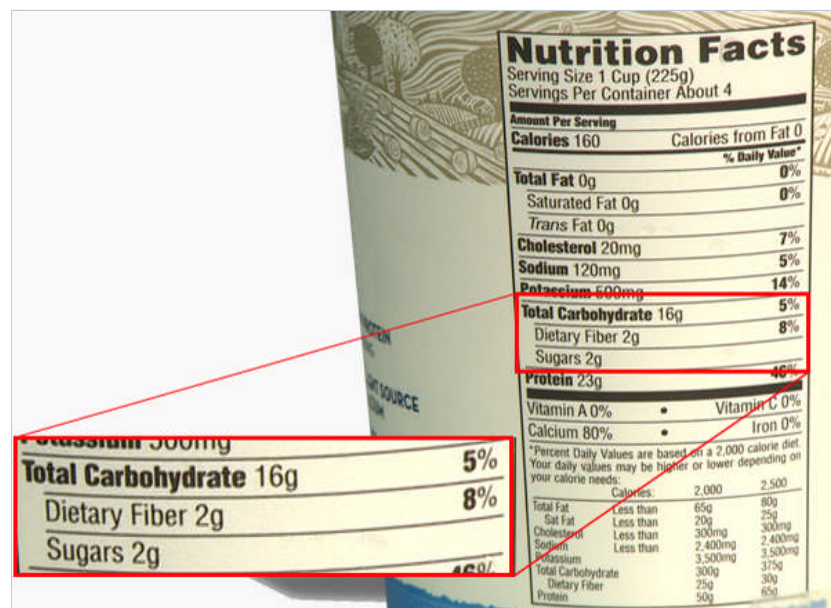
Exhibit A



A Whole Foods 365 Greek yogurt has five times more sugar than its nutrition label shows

Consumer Reports' tests reveal the plain fat-free yogurt has 11 grams of sugar per serving

Published: July 17, 2014 05:00 PM



During a recent test of plain Greek yogurts for nutrition and taste, our food experts noted something curious about Whole Foods 365 Everyday Value Nonfat Plain Greek Yogurt. While the Nutrition Facts labels on the other 12 plain yogurts we evaluated had a range of between 5 and 10 grams of sugar per 8-ounce serving, this 365 yogurt listed only 2 grams.

Too good to be true? To find out, we analyzed six samples of the yogurt from six different lots for sugar content. The results showed an average of 11.4 grams per serving—more than five times what's listed on the label.

To put this in context, bear in mind that all yogurt naturally contains the sugar lactose. That means that even plain yogurts and those made with non-nutritive sweeteners such as stevia and sucralose (not just flavored yogurts that contain added sugar) have some sugar. What's more, the label on this 365 yogurt also listed 16 grams of total carbohydrate per serving. Since lactose provides the vast majority of carbs in yogurt, the numbers just didn't add up.

One of Whole Foods Market's slogans is "Health Starts Here." On the company's website, you'll find [a list of more than 75 ingredients it deems "unacceptable"](#) for use in foods sold in its stores, including high-fructose corn syrup, partially hydrogenated oils, and artificial colors. 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.



Find out [how to make your own Greek yogurt](#). Plus learn how we rated [Greek yogurt dips](#) and [frozen Greek yogurt](#).

When we contacted Whole Foods Market, a company spokesman expressed surprise about our data. In a statement, the company said: "We are working with our vendor to understand the testing results you have provided. They are not consistent with testing results we have relied upon from reputable third-party labs. We take this issue seriously and are investigating the matter, and will of course take corrective action if any is warranted."

We'll let you know when we get an update from Whole Foods. In the meantime, know that Whole Foods 365 Everyday Value Nonfat Plain Greek Yogurt is a nutritious food to be sure. It's rich in protein and calcium and it received an Excellent score for nutrition in our tests, even when we analyzed it with 11.4 grams of sugar.

But our data show that its sugar content is in line with other plain Greek yogurts. For people with diabetes and others who watch their sugar intake carefully, every gram—whether it's added or occurs naturally in a food—counts, and consumers have the right to expect that what they read on Nutrition Facts labels is correct.

—Consumer Reports

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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
ASHLEY RICHARDS, individually, and on behalf of all others similarly situated,
(b) County of Residence of First Listed Plaintiff Maricopa County, AZ
(c) Attorneys (Firm Name, Address, and Telephone Number)
Hart L. Robinovitch, ZIMMERMAN REED PLLP
14646 N. Kierland Blvd. #145, Scottsdale, AZ 85254
(480) 348-6400

DEFENDANTS
WHOLE FOODS MARKET GROUP, INC. and WFM PRIVATE LABEL, L.P.
County of Residence of First Listed Defendant Travis County, TX
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
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State X 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 X 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
X 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 USC 1332 and 28 USC 1367
Brief description of cause:
consumer fraud relating to sugar content represented in Defendants' product

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00
CHECK YES only if demanded in complaint: JURY DEMAND: X Yes 0 No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 10/06/2014 SIGNATURE OF ATTORNEY OF RECORD /s/ Hart L. Robinovitch

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE