

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

<p>RICHARD STEELEY, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>WHOLE FOODS MARKET ROCKY MOUNTAIN/SOUTHWEST, L.P., and WFM PRIVATE LABEL, L.P</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. 14-932</p> <p>CLASS ACTION COMPLAINT</p>
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INTRODUCTION

1. This is a class action, brought under Texas law, against Texas defendants, on behalf of a class of all citizens who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt,” in a Whole Foods Market store located in the United States, between October 10, 2012 and the present (“the Nationwide Class”).

2. This action also seeks certification of a sub-class of Texas citizens who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” in a Whole Foods Market store located in Texas, between October 10, 2012 and the present (“the Texas Sub-class”).

3. The “Nutrition Facts” label on each and every container of “Whole Foods 365 Everyday Value Plain Greek Yogurt” states in uniform language that this product contains 2 grams of sugar per 170 gram serving.

4. This written, uniform statement of fact on each such “Nutrition Facts” label is false.

5. In actuality, as confirmed in six recent tests conducted by the noted consumer publication “Consumer Reports,” “Whole Foods 365 Everyday Value Plain Greek Yogurt” contains at least 11.4 grams of sugar per 170 gram serving – nearly six times the stated on the product’s label. See Attachment A, Consumer Report article dated July 17, 2014.

6. Whole Foods Market's website brags to consumers about how thoroughly Whole Foods Market checks the accuracy of the labels of its store brands, telling consumers:

“Our Private Label registered dietician reviews each nutrition label for accuracy and completeness before the label is printed. All attempts are made to review nutrition labels on a regular basis to ensure accuracy.”

7. Unless this statement on Defendants' website is false, then Whole Foods Market was fully aware of the contents of its store brand Greek yogurt and of the fact that the yogurt's sugar content does not match what is stated on the label.

8. Upon information and belief, Defendants have been fully aware that they were drastically understating the amount of sugar on the “Whole Foods 365 Everyday Value Plain Greek Yogurt” label and that the actual sugar content of the product was many times higher than the 2 grams per serving falsely stated on the label.

9. The Greek yogurt offered by Defendants' competitors generally have a listed sugar content of between 5 and 10 grams of sugar per serving.

10. No yogurt on the market actually has only 2 grams of sugar per serving.

11. Indeed, all Greek yogurt – even yogurt to which no sugar is added and/or which is artificially “sweetened” – naturally contains more than 2 grams of sugar lactose.

12. The Greek yogurt with the lowest actual sugar content on the market has 5 grams of sugar per 170 gram serving; more than twice as much as what the label “Whole Foods 365 Everyday Value Plain Greek Yogurt” claims.

13. By falsely claiming a sugar content of only 2 grams per serving, Defendants sought to give themselves a competitive advantage and to use this false statement of contents to induce consumers to purchase “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

14. Despite the test results published by Consumer Reports, Whole Foods Market has not pulled all the mislabeled yogurt off its shelves and continues to sell the mislabeled 2% milk fat variety of “Whole Foods 365 Everyday Value Plain Greek Yogurt” to consumers in all its stores in Texas and throughout the United States every day.

15. Upon information and belief, the false statement on these labels described herein originated in Texas, at the Austin, Texas headquarters of the Texas defendants named herein.

16. Moreover, both the product and label bearing the false statement described herein originated in Austin, Texas and were placed into the stream of commerce by the Texas defendants from Texas.

17. Because of the foregoing, it is submitted that Texas law can and should be applied to the claims of all claims of both the Nationwide Class and the Texas Sub-class.

18. Accordingly, this complaint seeks injunctive, declaratory and monetary relief for Plaintiff and the proposed Nationwide class and Texas Sub-class, under Texas law

JURISDICTION AND VENUE

19. All claims in this matter arise exclusively under Texas law.

20. This matter is properly venued in the United States District Court for the Western District of Texas, Austin Division, in that all defendants have their headquarters and principal place of business at 550 Bowie Street in Austin, Texas, the product, the label and the false statement on the label described herein all originated from actions and decisions taken by defendants in Austin, Texas, Plaintiff purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” at the Whole Foods Market located at 11920 Domain Drive, Austin, Texas, 78758 and Plaintiff resides in Round Rock, Texas.

21. There is original federal subject matter jurisdiction over this matter pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb. 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the original jurisdiction of federal courts in any class action in which at least 100 members are in the proposed plaintiff class, any member of the plaintiff class is a citizen of a State different from the State of citizenship of any defendant, and the matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and costs.

22. In this case, there are at least 100 members in the proposed Nationwide Class, the total claims of the proposed class members are in excess of \$5,000,000.00 in the aggregate, exclusive of interests and costs, and at least some class members and defendants are residents of different states.

THE PARTIES

23. Plaintiff Steeley resides in Round Rock, Texas.

24. Like all members of the proposed Nationwide Class, Plaintiff purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in the United States between October 10, 2012 and the present, which stated on the “Nutritional Facts” label that the yogurt contained “**Sugars 2g**” per 170 gram serving.

25. Like all members of the proposed Texas Sub-class, Plaintiff is a Texas citizen who purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in Texas between October 10, 2012 and the present, which stated on the “Nutritional Facts” label that the yogurt contained “**Sugars 2g**” per 170 gram serving.

26. Specifically, Plaintiff purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from Whole Foods Market stores in Texas on various dates between October 10, 2012 and the present, including on June 21, 2014 when he purchased a container of “Whole Foods 365 Everyday Value Plain Greek Yogurt” for \$1.29 from Whole Foods Market located on 11920 Domain Drive, Austin, Texas, 78758.

27. Defendant Whole Foods Market Rocky Mountain/Southwest L.P. maintains its headquarters and principal executive offices at 550 Bowie Street in Austin, Texas. Defendant Whole Foods Market Rocky Mountain/Southwest L.P. owns and operates Whole Foods Market stores in Texas and other states.

28. Defendant WFM Private Label, L.P. maintains its headquarters and principal offices at 550 Bowie Street in Austin, Texas. WFM Private Label, L.P. manufactures, distributes, markets and labels Whole Foods' store brand products for the entire United States, including "Whole Foods 365 Everyday Value Plain Greek Yogurt."

29. Together, Defendants Whole Foods Market Rocky Mountain/Southwest L.P. and WFM Private Label, L.P. jointly manufactured, distributed, advertised, labeled and sold "Whole Foods 365 Everyday Value Plain Greek Yogurt," with each defendant jointly determining that each such container would state that the product contained "Sugars 2g" per serving on the product's label.

30. Upon information and belief, many, if not all, of the actions described in Paragraph 29 – including the decision to place this false statement on the label of the product – occurred in Texas at defendants' headquarters located at 550 Bowie Street in Austin, Texas.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action as a class action pursuant to FED.R.CIV.P. 23, on behalf of a class defined as:

All consumers who, between October 10, 2012 and the present, purchased "Whole Foods 365 Everyday Value Plain Greek Yogurt" from a Whole Foods Market located in the United States.

32. Plaintiff also brings this action as a class action pursuant to FED.R.CIV.P. 23, on behalf of a sub-class defined as:

All Texas citizens who, between October 10, 2012 and the present, purchased “Whole Foods 365 Everyday Value Plain Greek Yogurt” from a Whole Foods Market located in the State of Texas.

33. The class and sub-class for whose benefit this action is brought are so numerous that joinder of all members is impracticable.

34. Upon information and belief, the proposed class is composed of over 100,000 persons and the proposed sub-class is composed of at least 10,000 persons.

35. No violations alleged in this complaint are a result of any oral communications or individualized interaction of any kind between class members and Defendants.

36. Rather, all claims in this matter arise from the identical, false, written affirmative statements on the “Nutrition Facts” label on “Whole Foods 365 Everyday Value Plain Greek Yogurt,” which states in uniform language that the product contains “Sugars 2g” per 170 gram serving.

37. There are common questions of law and fact affecting the rights of the class and subclass members, including, inter alia, the following:

- **Whether “Whole Foods 365 Everyday Value Plain Greek Yogurt” contains more than “Sugars 2g” per 170 gram serving;**
- **Whether Defendants were aware that “Whole Foods 365 Everyday Value Plain Greek Yogurt,” contained at least 11 grams of sugar per 170 gram serving;**
- **The date Defendants first became aware that “Whole Foods 365 Everyday Value Plain Greek Yogurt,” contained at least 11 grams of sugar per 170 gram serving;**
- **Whether the written description by Defendants on the label of “Whole Foods 365 Everyday Value Plain Greek Yogurt,” that the product contained “Sugars 2 g” per 170 gram serving – was an “affirmation of fact” within the meaning of TEX. BUS. & COM. CODE § 2.313(a)(1) and/or a “description of the goods” within the meaning of TEX. BUS. & COM. CODE § 2.313(a)(2);**
- **Whether Defendants breached an express warranty under Texas law because, in reality, the product contained over 11 grams of sugar per 170 gram serving;**

- **Whether the sale of the product in question was subject to an implied warranty under TEX. BUS. & COM. CODE § 2.314;**
- **Whether Defendants breached that implied warranty under Texas law in that the product did not “conform to the promises or affirmations of fact made on the container or label” as required by TEX. BUS. & COM. CODE § 2.314(b)(6);**
- **Whether Defendants’ conduct violated the Texas Deceptive Trade Practices Act, including TEX. BUS. & COM. CODE §17.50 (a)(2), §17.50 (a)(3), §17.46 (b)(5), and/or §17.46 (b)(7);**
- **Whether Defendants’ conduct was willful or intentional within the meaning of TEX. BUS. & COM. CODE §17.50 (b)(1) , so as to entitled Plaintiff and the class and/or sub-class to treble their actual economic losses; and**
- **Whether Plaintiff and the class and/or sub-class are entitled to an order for declaratory, injunctive and/or monetary relief, directing Defendants to cease the practice of mislabeling “Whole Foods 365 Everyday Value Plain Greek Yogurt” as containing “Sugars 2g,” and directing Defendants to cease selling this mislabeled product – including the 2% milk fat variety of “Whole Foods 365 Everyday Value Plain Greek Yogurt,” and other injunctive and equitable relief as described herein.**

38. Plaintiff is a member of the class and sub-class he seeks to represent.

39. The claims of plaintiff are not only typical of all class and sub-class members, they are identical.

40. All claims of plaintiff and the class and sub-class arise from the same identical, false, written statement of affirmative fact on the “Nutrition Facts” label for “Whole Foods 365 Everyday Value Plain Greek Yogurt” which stated that the product contained “**Sugars 2g**” per 170 gram serving.

41. All claims of plaintiff and the class and sub-class are based on the exact same legal theories.

42. Plaintiff has no interest antagonistic to, or in conflict with, the class or sub-class.

43. Plaintiff will thoroughly and adequately protect the interests of the class and sub-class, having retained qualified and competent legal counsel to represent himself and the class and sub-class.

44. Defendants have acted and refused to act on grounds generally applicable to the class and sub-class, thereby making appropriate injunctive and declaratory relief for the class as a whole.

45. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

46. A class action is the only practical, available method for the fair and efficient adjudication of the controversy since, inter alia, the damages suffered by each class member were less than \$10 per container purchased and, as such, individual actions are not economically feasible.

47. Common questions will predominate, and there will be no unusual manageability issues.

FACTS GIVING RISE TO THE CAUSE OF ACTION

48. Defendants are in the business of manufacturing, distributing, marketing, and selling, inter alia, “Whole Foods 365 Everyday Value Plain Greek Yogurt.”

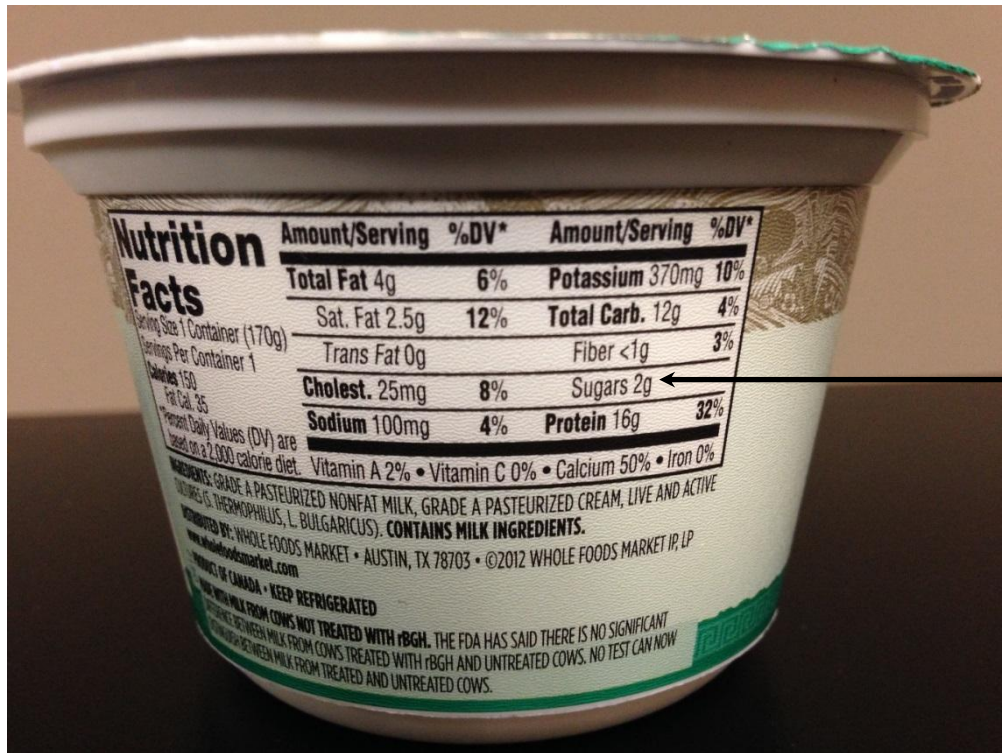
49. The “Whole Foods 365 Everyday Value Plain Greek Yogurt” is a an exclusive Whole Foods Market store brand, which, as with Defendants’ other products, Defendants sell under the store motto “Health Starts Here.”

50. Whole Foods Market’s website touts the high nutritional value of its products, stating:

“Healthy eating is a basic foundation for optimum health and well-being. By supporting healthy eating education we inspire and empower our stakeholders to make the best health-supportive, delicious foods choices to maximize personal health and vitality.”

51. Defendants maintain 25 Whole Foods Market stores in Texas and 381 throughout the United States.

52. Since the initial offering of “Whole Foods 365 Everyday Value Plain Greek Yogurt,” each and every “Nutrition Facts” label on each container of “Whole Foods 365 Everyday Value Plain Greek Yogurt” sold by Defendants has falsely stated that this yogurt contains “Sugars 2g” per serving.



53. In July of 2014, the noted consumer publication “Consumer Reports” published the results of six recent tests conducted by Consumer Reports on “Whole Foods 365 Everyday Value Plain Greek Yogurt,” which revealed that “Whole Foods 365 Everyday Value Plain Greek Yogurt” contains at least 11.4 grams of sugar per 170 gram serving – nearly six times the stated on the product’s label. See Attachment A, Consumer Report article dated July 17, 2014.

54. Defendants, as the developers, manufacturers, and exclusive sellers and distributors of “Whole Foods 365 Everyday Value Plain Greek Yogurt” have been aware since the product’s

inception that the product contains more than 5 times the amount of sugar represented on the product's "Nutrition Facts" label.

55. Indeed, Whole Foods Market's website brags to consumers about how thoroughly Whole Foods Market checks the accuracy of the labels of its store brands, telling consumers:

"Our Private Label registered dietician reviews each nutrition label for accuracy and completeness before the label is printed. All attempts are made to review nutrition labels on a regular basis to ensure accuracy"

56. Unless such statements are false, then Whole Foods Market was fully aware of the contents of its store brand Greek yogurt.

57. Moreover, Defendants were aware that no Greek yogurt on the market has only 2 grams of sugar per 170 gram serving and that the lowest sugar content of any Greek yogurt for sale is 5 grams per serving; more than twice as much as what Defendants falsely stated on the label for "Whole Foods 365 Everyday Value Plain Greek Yogurt."

58. Indeed, as a matter of basic organic chemistry, all Greek yogurt—even yogurt to which no sugar is added and/or which is artificially "sweetened"—naturally contains more than 2 grams of sugar lactose.

59. Defendants' act in vastly understating the sugar content of "Whole Foods 365 Everyday Value Plain Greek Yogurt" is not harmless trivia. For many members of the class, sugar content is an important component of their diet.

60. Defendants were fully aware that drastically understating the sugar content on the label of its "Whole Foods 365 Everyday Value Plain Greek Yogurt" would give Defendants a competitive advantage over competitors, all of which list a sugar content at least twice as high as the 2 grams per serving falsely stated on Defendants' label.

61. Many of Defendants' competitors sell their Greek yogurt for substantially less than the price charged by Defendants for "Whole Foods 365 Everyday Value Plain Greek Yogurt."

62. Numerous internet blogs and consumer websites maintain that Whole Foods Market's prices are generally higher than those of competing grocery stores, leading some consumers to nickname it "Whole Paycheck Market."

63. These sites maintain that Whole Foods Market attempts to justify its generally higher prices by claiming that the "value" of Defendants' products derives from its high quality and the fact that it is supposedly "healthier" than other foods.

64. For example, Whole Foods Market's website states:

"Our goal is to sell the highest quality ingredients that also offer high value for our consumers. High value is a product of high quality at a competitive price. Our product quality standards focus on ingredients, freshness, taste nutritive value, safety and/or appearance."

65. It appears that Whole Foods Market attempts to convey the idea to its customers that its higher prices are "worth it" because it has higher quality and healthier products.

66. By falsely understating the sugar content of "Whole Foods 365 Everyday Value Plain Greek Yogurt," Defendants made it seem as if the higher price of this product was justified because it had only 2 grams of sugar per serving; which – if true – would have made it the Greek yogurt with the lowest sugar content on the market.

67. Thus, it was Defendants' conscious intent to induce consumers to purchase "Whole Foods 365 Everyday Value Plain Greek Yogurt" by falsely stating that the sugar content per serving was only 2 grams, when, in fact, the actual sugar content was over 11 grams per serving; higher than the cheaper Greek yogurts being sold by Defendants' competitors.

COUNT I

BREACH OF EXPRESS WARRANTY TEX. BUS. & COM. CODE § 2.313

68. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

69. By operation of Texas law, the label on Defendants' yogurt constitute an express warranty under Texas law.

70. TEX. BUS. & COM. CODE § 2.313 provides in relevant part:

“EXPRESS WARRANTIES BY AFFIRMATION, PROMISE, DESCRIPTION, SAMPLE.

(a) Express warranties by the seller are created as follows:

(1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty... (emphasis added)

71. The description by Defendants of the contents of “Whole Foods 365 Everyday Value Plain Greek Yogurt,” as listed on the product’s label, stated that the product contained 2 grams of sugar per 170 gram serving. This was both an **“affirmation of fact”** within the meaning of TEX. BUS. & COM. CODE § 2.313(a)(1) and a **“description of the goods”** within the meaning of TEX. BUS. & COM. CODE § 2.313(a)(2), and gave rise to an express warranty under Texas law.

72. That express warranty was breached by the falsity of that affirmation of fact and description of the goods, as outlined in detail previously.

73. The relevant terms and language of that express warranty between Defendants and each member of the class are identical.

74. Defendants have breached the terms of this warranty in an identical manner for each class member because “Whole Foods 365 Everyday Value Plain Greek Yogurt” did not and could not conform to the affirmation, promise and description on this label because, in fact, the product actually contained over 11 grams of sugar per serving.

75. As a direct and proximate result of this breach of express implied warranty by Defendants, Plaintiffs and each member of the class has suffered economic loss.

COUNT II

BREACH OF IMPLIED WARRANTY

TEX. BUS. & COM. CODE § 2.314

76. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

77. By operation of Texas law, the label on Defendants' yogurt are subject to, and constitute, an implied warranty under Texas law.

78. TEX. BUS. & COM. CODE § 2.314 provides that every sale in subject to an implied warranty of merchantability, which specifically includes an implied warranty that the goods “conform to the promises or affirmations of fact made on the container or label”. See TEX. BUS. & COM. CODE § 2.314:

“IMPLIED WARRANTY: MERCHANTABILITY; USAGE OF TRADE.

(a) Unless excluded or modified (Section 2.316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(b) Goods to be merchantable must be at least such as

(1) pass without objection in the trade under the contract description; and

(2) in the case of fungible goods, are of fair average quality within the description; and

(3) are fit for the ordinary purposes for which such goods are used; and

(4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(5) are adequately contained, packaged, and labeled as the agreement may require; and

(6) conform to the promises or affirmations of fact made on the container or label if any.” (emphasis added)

79. In order to meet the statutory definition of merchantability, the goods must meet each of the six requirements spelled out in TEX. BUS. & COM. CODE § 2.314(b).

80. The description by Defendants of the contents of “Whole Foods 365 Everyday Value Plain Greek Yogurt,” as made in writing on the “Nutrition Facts” label, stated that the good contained 2 grams of sugar per 170 gram serving.

81. Under TEX. BUS. & COM. CODE § 2.314(b)(6), the goods at issue were not merchantable in that the product did not conform to the affirmations of fact made on the label, for the reasons outlined herein

82. As such, defendants have violated the implied warranty created by TEX. BUS. & COM. CODE § 2.314 and Plaintiff and the Nationwide Class and Texas Sub-class have been deprived of the benefit of their bargain.

83. The relevant terms of that implied warranty between Defendants and each member of the class are identical.

84. Defendants have breached the terms of this implied warranty in an identical manner for each class member because “Whole Foods 365 Everyday Value Plain Greek Yogurt” did not and could not conform to the affirmation, promise and description on this label because, in fact, the product actually contained over 11 grams of sugar per serving.

85. As a direct and proximate result of this breach of implied warranty by Defendants, Plaintiff and each member of the class has suffered economic loss.

COUNT III

TEXAS DECEPTIVE TRADE PRACTICES ACT TEX. BUS. & COM. CODE § 17.41 et seq

86. Plaintiff incorporates all preceding paragraphs of this complaint as if set forth fully herein.

87. In addition, by the actions and omission detailed herein, Defendants have violated the Texas Deceptive Trade Practices Act, TEX. BUS. & COM. CODE §17.41 et seq.

88. Plaintiff and the proposed Nationwide Class and Texas Sub-class were consumers with respect to the purchases at issue.

89. Defendants engaged in affirmative false and misleading statements, omissions of material fact and deceptive acts, as described in detail herein, upon which Plaintiff and the Nationwide Class and Texas Sub-class relied upon to their detriment.

90. Defendants' acts were a producing cause of the damages suffered by Plaintiff and the Nationwide Class and Texas Sub-class.

91. Specifically, by the facts set forth previously, Whole foods Market Rocky Mountain/Southwest L.P. and WFM Private Label, L.P. have made identical, written, false affirmative representations of fact to Richard Steeley and the proposed Nationwide Class and Texas Sub-class class on the label of "Whole Foods 365 Everyday Value Plain Greek Yogurt" in violation of TEX. BUS. & COM. CODE §17.46 (b)(5) and (7).

92. Each such label stated that the product contained "**Sugars 2g**" per 170 gram serving, when, in fact, the product contained over 11 grams of sugar – more than 5 times the represented amount – per 170 gram serving.

93. This statement on the label was a clear statement of fact, not opinion, puffery or a vague generalization.

94. Rather, the statement purported to be an exact measurement of the sugar content of this product in grams per 170 gram serving.

95. In addition, Defendants violated TEX. BUS. & COM. CODE §17.50 (a)(3), in that Whole foods Market Rocky Mountain/Southwest L.P. and WFM Private Label, L.P. have engaged in an unconscionable act or practice.

96. This practice relied upon a lack of knowledge, ability and experience on the part of Richard Steeley and the class. Whole foods Market Rocky Mountain/Southwest L.P. and WFM Private Label, L.P., by the acts described herein, took advantage of this lack of knowledge to a grossly unfair degree.

97. Moreover, Defendants violated TEX. BUS. & COM. CODE §17.50 (a)(2) in that Defendants violated both express and implied warranties as described in detail previously in Counts I and III.

98. Plaintiff seeks, on behalf of himself and the proposed Nationwide Class and Texas Sub-class, the amount of economic damages found by the trier of fact as to each class member.

99. Further, because Defendants committed these violations knowingly and/or intentionally, Plaintiff seeks, on behalf of himself and the proposed Nationwide Class and Texas Sub-class, three times the amount of their economic damages under TEX. BUS. & COM. CODE §17.50 (b)(1).

100. Finally, Plaintiff seeks, on behalf of himself and the proposed Nationwide Class and Texas Sub-class, an order enjoining such acts or failure to act, any orders necessary to restore to any party to the suit any money or property acquired in violation of this subchapter; and any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in Texas if the judgment has not been satisfied within three months of the date of the final judgment, along with an award of statutory attorney's fees and costs.

PRAYER FOR RELIEF

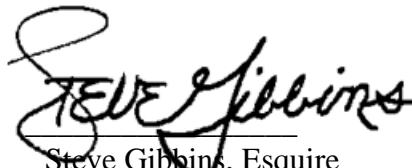
WHEREFORE, Plaintiff asks this court to:

- a. Certify the class and sub-class as a class action pursuant to FED.R.CIV.P. 23;
- b. Enter an order for injunctive, declaratory and/or compensatory relief as described herein;
- c. Enter judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest, as well as treble economic damages under TEX. BUS. & COM. CODE §17.50 (b)(1);
- d. Award plaintiff reasonable attorneys' fees and costs; and
- e. Grant such other and further legal and equitable relief as the court deems just and equitable.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

BY:



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and

Stephen P. DeNittis, Esq. (pro hac vice soon to be filed)
Joseph A. Osefchen, Esq. (pro hac vice soon to be filed)
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(856) 797-9951
Attorneys for Plaintiffs

Date: October 10, 2014

JS-44 (Rev. 12/13)

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 REVERSE SIDE OF THIS FORM.)

I. PLAINTIFFS

RICHARD STEELEY, on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff: **WILLIAMSON**
ADJUDICATED JURISDICTION

(c) Attorney: **Steve Gibbins** SEE ATTACHMENT FOR OTHERS
 Law Offices of Steve Gibbins
 1411 West Avenue - Suite 200 Austin, TX 78701

DEFENDANTS

WHOLE FOODS MARKET ROCKY MOUNTAIN/SOUTHWEST, L.P.
 and
 WFM PRIVATE LABEL, L.P.

County of Residence of First Listed Defendant: **TRAVIS**
ADJUDICATED JURISDICTION

NOTE: IN LANDOWNERS' POSSESSION USE THE COUNTY OF THE FEDERAL LANDS INVOLVED

Attorney: *[Signature]*

II. BASIS OF JURISDICTION (Check all that apply)

1. U.S. Government Plaintiff: Federal Question U.S. Government Not a Party
2. U.S. Government Defendant: Diversity (Individual Jurisdiction of Parties is Over)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Check all that apply)

- For Plaintiff (check one):
 Citizen of this State: PIF DEF
 Citizen of Another State: PIF DEF
 Citizen of Subject State (Foreign Country): PIF DEF
- For Defendant (check one):
 Law operated by Principal Place of Business in this State: PIF DEF
 Law operated and Principal Place of Business in Another State: PIF DEF
 Foreign National: PIF DEF

IV. NATURE OF SUIT (Check all that apply)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
131 Breach of Contract 132 Marine 133 Marine Air 134 Negotiable Instrument 135 Recovery of Overpayment & Enforcement of Judgment 136 Medicare Act 137 Recovery of Detached Student Loans 138 Airline Torture 139 Recovery of Overpayment of Veterans Benefits 140 Stockholder Suits 141 Other Contract 142 Contract Product Liability 143 Franchise	PERSONAL INJURY 131 Auto/Air 132 Auto/Air Product Liability 133 Assault, Libel & Slander 134 Federal Employee Liability 135 Marine 136 Marine Product Liability 137 Motor Vehicle Product Liability 138 Other Personal Injury 139 Medical Malpractice	PERSONAL INJURY 131 Personal Injury - Product Liability 132 Head/Neck 133 Pharmaceutical Personal Injury 134 Auto/Air Personal Injury Product Liability 135 OTHER PROPERTY 136 Other Personal Property Damage 137 Property Damage 138 Property Damage - Product Liability	131 Drug Related Recovery 132 Property Title/Sec. Int. 133 Other LABOR 71 Fair Labor Standards Act 72 Labor Management Relations 73 Railway Labor Act 74 Family and Medical Leave Act 75 Other Labor Litigation 76 Employee Retirement Income Security Act	131 Bankruptcy 132 Withdrawal 133 SEC Title V PROPERTY RIGHTS 81 Copyright 82 Patent 83 Trademark SOCIAL SECURITY 81 BIVENSUIT 82 Black Lung Act 83 DMCA (Digital Millennium Copyright Act) 84 SSA (Social Security Act) FEDERAL TAX MATTERS 81 Cases U.S. Plaintiff Defendant 82 IRS - Third Party 83 SEC (Securities Exchange)
REAL PROPERTY 21 Land Contamination 22 Eminent Domain 23 Rent Lease & Ejectment 24 Eminent Domain 25 Tort Product Liability 26 Other Real Property	CIVIL RIGHTS 44 Other Civil Rights 45 Voting 46 Employment 47 Housing Accommodated 48 Amer. w/ Disabilities - Gov. Assistent 49 Amer. w/ Disabilities - Other 44 Education	PRISONER PETITIONS 41 Habeas Corpus 42 Alien Detainee 43 Motions to Vacate Sentence 44 General 45 Death Penalty Other: 46 Mass/Am. & Other 47 Civil Rights 48 Prison Conditions 49 Civil Detainee - Conditions of Confinement	IMMIGRATION 41 Naturalization/Immigration 42 Other Immigration Actions	131 Case of Uninsured 132 State Reapportionment 133 Antitrust 134 Bank and Banking 135 Consumer 136 Deposition 137 Securities, Investment and Company Organization 138 Consumer Credit 139 Child Support 140 Securities Commodities Exchange 141 Other Statutory Actions 142 Agricultural Claims 143 Environmental Matters 144 Freedom of Information Act 145 Arbitration 146 Administrative Procedure Act Review of Agency or Agency Decision 147 Constitutional Quality of State Statutes

V. ORIGIN (Check all that apply)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Remanded or Reopened 5 Transferred from Another District (Specify) 6 Multi-district Litigation

VI. CAUSE OF ACTION

Check the U.S. Civil Statute under which you are filing this case. (List all causes of action in this section.)

Brief description of cause:
 Consumer Fraud & Breach of Warranty for putative class of consumers for mislabeled Yogurt

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.C.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions) JUDGE _____ DOCKET NUMBER _____

October 10, 2014
 FOR OFFICE USE ONLY

Steve Gibbins

RECEIVED: _____ AMOUNT: _____ COURT NUMBER: _____ JUDGE: _____ MAILING DATE: _____

ATTACHMENT TO CIVIL COVER SHEET

PLAINTIFF'S COUNSEL, STEVE GIBBINS anticipates that the following counsel will very soon be appearing PRO HAC VICE as additional and primary counsel for PLAINTIFFS:

Stephen P. DeNittis, Esq. (pro hac vice soon to be filed)

Joseph A. Osefchen, Esq. (pro hac vice soon to be filed)

DeNittis Osefchen, P.C.

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Attorneys for Plaintiffs