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13  
 14 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

15  
 16 **ETHEL DARNELL**, individually and on behalf  
 of all others similarly situated,

17 **Plaintiff,**

18 **vs.**

19  
 20 **ORGAIN MANAGEMENT, INC.,**

21 **Defendant.**

Case No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

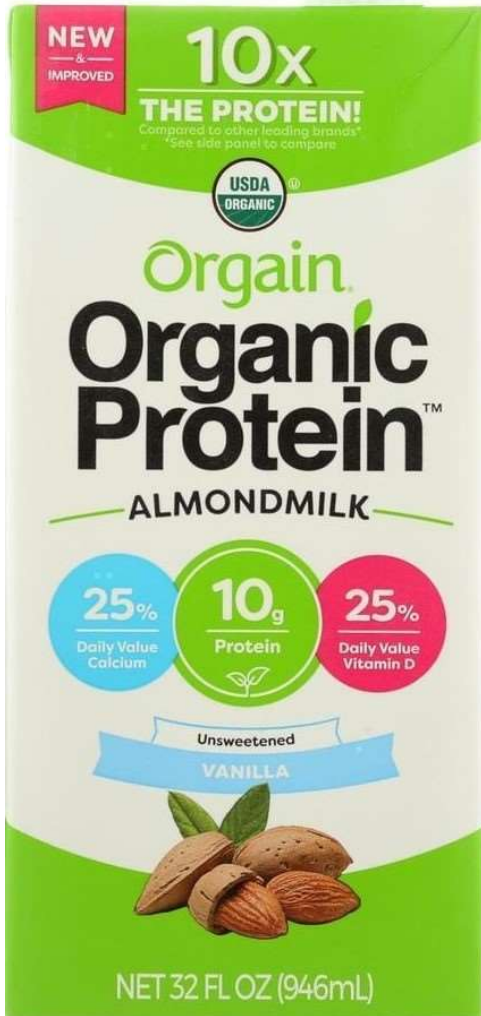
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 23  
 24 Plaintiff Ethel Darnell (“Plaintiff”), on behalf of herself and others similarly situated brings  
 25 this Class Action Complaint against Orgain Management, Inc. (“Defendant”), and on the basis of  
 26 personal knowledge, information and belief, and investigation of counsel, allege as follows:  
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**INTRODUCTION**

1  
2  
3 1. Defendant manufactures distributes, markets, labels and sells Unsweetened Vanilla  
4 Almondmilk under the Orgain brand (“Product”).

5 2. During the Class Period (as defined below), Plaintiff purchased Orgain Unsweetened  
6 Vanilla Almondmilk in California.

7 3. Defendant falsely and misleadingly markets Orgain Unsweetened Vanilla  
8 Almondmilk to consumers as having its characterizing, or main flavor, from vanilla beans.



4. The back of the Product states “Our Commitment to Clean Nutrition.”



1 of the laws and markets of this District through the promotion, marketing, distribution and sale of  
2 its products here, (2) resides in this District, and (3) is subject to personal jurisdiction in this District.

3 **PARTIES**

4 16. Plaintiff Ethel Darnell is a resident of the City of Oakland and County of Alameda,  
5 California.

6 17. During the Class Period (as defined below), in California, she purchased the Product  
7 for personal, family, or household use on occasions between April and July 2020.

8 18. Plaintiff purchased the Product at locations including Costco, 1900 Davis St, San  
9 Leandro, CA 94577.

10 19. Plaintiff would not have purchased or paid more for Product had she realized that  
11 much, if not all, of the vanilla flavor came from non-vanilla plant sources.

12 20. The front of the Product said “Vanilla.”

13 21. The back of the Product said “Our Commitment to Clean Nutrition.”

14 22. Plaintiff relied upon these representations when she purchased the Product.

15 23. She believed that the vanilla flavor in the Product was exclusively and/or  
16 predominantly from vanilla beans in addition to vanilla plant sources.

17 24. Plaintiff would not have purchased the Product had Plaintiff understood the true  
18 flavor composition of the Product.

19 25. Plaintiff would purchase the Product again in the future if the Product were remedied  
20 to reflect Defendant’s labeling and marketing claims for it.

21 26. Defendant is a California corporation with a principal place of business in Irvine,  
22 California.

23 **INTRADISTRICT ASSIGNMENT**

24 27. Pursuant to Civil Local Rule 3-2(c-d), a substantial part of the events giving rise to  
25

1 the claims herein arose in Alameda County, California and this action should be assigned to the  
2 Oakland Division.

3 **BACKGROUND**

4  
5 28. Vanilla (*Vanilla planifolia Andrews* and *Vanilla tahitenis Moore*) comes from an  
6 orchid plant that originated in Mexico where it was first cultivated.

7 29. The fruit pod of the vanilla flower is the vanilla bean, the raw material for vanilla  
8 flavorings.

9 30. The vanilla bean is heated in the sun and its flavor constituents extracted (vanilla  
10 extract).

11 31. Vanilla's unique and complex flavor is due to its many odor-active compounds  
12 including acids, ethers, alcohols, acetals, heterocyclics, phenolics, hydrocarbons, esters and  
13 carbonyls.  
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MS Scan #	Area Integration	Peak Assignment	Peak Area %
67	16132	hexanal	0.0206
71	16235	butanediol isomer	0.0207
81	57370	butanediol isomer	0.0732
103	36387	3-methylbutyric acid	0.0464
115	33053	furfural	0.0422
141	27408	butanal, diethyl acetal	0.0350
262	18390	3-methylbutanal, diethyl acetal	0.0235
281	25224	hexanoic acid	0.0322
289	2729	methyl furfural	0.0035
299	52183	phenol + trace of benzaldehyde	0.0665
349	2385	1H-pyrrole-2-carboxaldehyde	0.0030
379	47287	limonene + benzyl alcohol	0.0603
397	13835	heptanoic acid	0.0176
409	31102	gamma-hexalactone	0.0397
415	19338	p-cresol	0.0247
425	4470	hexanal, diethyl acetal	0.0057
443	287479	guaiacol	0.3666
453	5947	nonanal	0.0076
477	10000	phenylethyl alcohol	0.0128
496	112067	?	0.1429
505	44668	benzoic acid + octanoic acid	0.0570
522	4551	diethyl succinate	0.0058
536	2461	ethyl benzoate	0.0031
544	11769	1,2-benzenediol	0.0150
555	145356	2-methoxy-4-methylphenol	0.1854
567	2537	methyl salicylate	0.0032
587	8552	hydroxy methyl furfural (HMF)	0.0109
594	5555	benzeneacetic acid	0.0071
605	101562	nonanoic acid	0.1295
624	6802	hydroquinone	0.0087
631	3864	4-methoxybenzaldehyde (p-anisaldehyde)	0.0049
642	6356	ethyl nonanoate	0.0081
653	53264	4-methoxybenzyl alcohol (p-anisyl alcohol)	0.0679
676	14481	cinnamyl alcohol	0.0185
685	16094	3-hydroxybenzyl alcohol	0.0205
718	12188570	3-hydroxybenzaldehyde + 4-ethoxymethylphenol	15.5440
751	122634	methyl cinnamate	0.1564
759	60715743	vanillin	77.4301
796	90669	methyl-p-methoxybenzoate (methyl paraben)	0.1156
809	2228588	vanillyl ethyl ether + trace of 4-hydroxy-3-methoxybenzyl alcohol	2.8421
832	224829	p-hydroxybenzoic acid	0.2867
839	37335	acetovanillone	0.0476
892	950342	vanillic acid	1.2120
908	405589	3,4-dihydroxybenzaldehyde	0.5172
935	82429	3,4-dihydroxy-5-methoxybenzaldehyde	0.1051
954	6212	ethyl homovanillate	0.0079
975	78148	syringaldehyde	0.0997
1266	14130	ethyl palmitate	0.0180
1518	21477	ethyl linoleate	0.0274
<b>78413588 Total</b>			<b>100.0000</b>

32. While vanillin plays a significant role, it contributes less than one-third of the overall flavor/aroma impact of vanilla.

33. Methyl cinnamate and cinnamyl alcohol provide distinct cinnamon and creamy notes to vanilla.

34. P-cresol contributes flavor notes described as woody and spicy.

35. Acetovanillone provides a sweet, honey note.

36. P-hydroxybenzoic acid and vanillic acid are significant phenolic compounds which

1 contribute to vanilla's aroma.

2 37. 4-methoxybenzaldehyde (p-anisaldehyde) provides creamy flavor notes to vanilla.

3 38. 4-methoxybenzyl alcohol (p-anisyl alcohol) provides floral notes.

4 39. The popularity of vanilla in the 19th century led to the isolation of the most  
5 predominant flavor component, vanillin.

6 40. However, vanillin separated from the other compounds cannot produce the flavor  
7 and taste consumers know as vanilla.

8 41. Sensory evaluation of vanillin is mainly sweet, with a chemical-like taste.

9 42. The availability of low-cost vanillin resulted in foods purporting to contain vanilla,  
10 which either contained no vanilla or a trace or de minimis amount, boosted by synthetic vanillin.

11 43. Consumers, industry and government have long sought to prevent the deceptive  
12 practice where consumers are sold a food labeled as "vanilla" only to discover too late it lacks the  
13 richness and layered taste only provided by vanilla beans.

#### 14 **SPECIFIC MISREPRESENTATIONS AND DECEPTIVE ACTS**

15 44. California has enacted regulations identical to those of the FDA for labeling foods,  
16 which prohibit misbranding. 21 U.S.C. § 343(a).

17 45. These regulations require a food's front label to disclose the source of its  
18 characterizing, or main, flavor, and whether it is natural or artificial.

19 46. Artificial flavors are defined by the FDA as any flavoring from a synthetic source or  
20 made through an artificial process. 21 C.F.R. § 101.22(a)(1).

21 47. Where a food contains any artificial flavor that simulates the characterizing flavor,  
22 the front label is required to disclose this fact through the statement, "Artificially Flavored." 21  
23 C.F.R. § 101.22(i)(2).

24 48. Natural flavors are flavors from natural sources made through natural processes. 21  
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1 C.F.R. § 101.22(a)(3).

2 49. These natural processes include roasting, heating, enzymolysis and fermentation.

3 50. There are two types of natural flavors: (1) “from the named fruit” (“FTNF”), like  
4 strawberry flavor from strawberries and (2) “other natural flavors” – sources other than the named  
5 fruit which provide the *flavor* of the named fruit.

6 51. If all of a food’s characterizing flavor is from its characterizing ingredient, the front  
7 label is only required to state the name of the ingredient, i.e., vanilla or strawberry. 21 C.F.R. §  
8 101.22(i)(1).

9 52. Surveys have consistently found that at least seven out of ten consumers avoid  
10 artificial flavors.<sup>1</sup>

11 53. “All demographics [of consumers] from Generation Z to Baby Boomers – say they  
12 would pay more” for foods with no artificial flavors.”<sup>2</sup>

13 54. Reasons for eschewing artificial flavors include a desire to avoid synthetic  
14 ingredients and unnatural, harsh processing of ingredients.

15 55. Consumer demand for “natural foods that are free of artificial ingredients” has  
16 resulted in increased demand for real vanilla.<sup>3</sup>

17 56. In 2018, in response to a surge in fraudulently labeled vanilla flavored foods, the  
18 flavor industry trade group, The Flavor and Extract Manufacturers Association of the United States  
19 (“FEMA”), urged companies to return to truthfully labeling vanilla foods so consumers would not  
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25 <sup>1</sup> Alex Smolokoff, [Natural color and flavor trends in food and beverage](#), Natural Products Insider, Oct. 11, 2019; Thea Bourianne, [Exploring today’s top ingredient trends and how they fit into our health-conscious world](#), March 26-28, 2018.

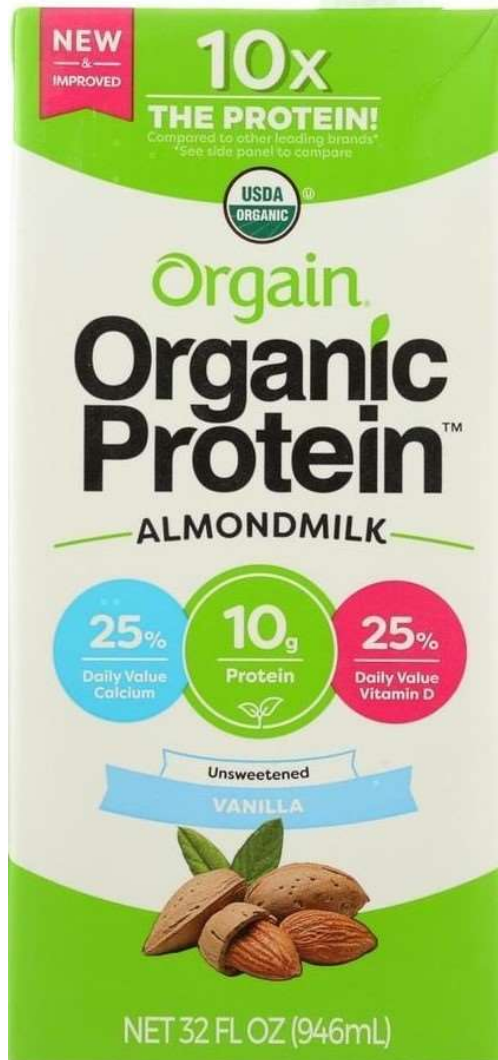
26 <sup>2</sup> Nancy Gagliardi, *Consumers Want Healthy Foods – And Will Pay More For Them*, Forbes, <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#37ec75ca75c5> (last visited September 28, 2020)

27 <sup>3</sup> Chagrin Valley Soap & Salve Company, FAQs, [Why Are The Prices of Vanilla Bean Products Always Increasing?](#)



1 be misled by artificial vanilla flavors.<sup>4</sup>

2 57. Based on the front label statement of “Vanilla” without qualifying terms – i.e.,  
3 naturally flavored, artificially flavored, other natural flavors – and back label statement of “Clean  
4 Nutrition,” consumers and Plaintiff expected the Product to be flavored only or predominantly from  
5 vanilla beans, not contain artificial flavors and have a vanilla taste.  
6



24

25 58. The ingredient list identifies the flavoring as “ORGANIC NATURAL FLAVORS”

26

27 <sup>4</sup> John B. Hallagan and Joanna Drake, FEMA, “[Labeling Vanilla Flavorings and Vanilla-Flavored Foods in the U.S.](#),”  
28 *Perfumer & Flavorist*, Vol. 43 at p. 46, Apr. 25, 2018 (“Hallagan & Drake”); FEMA is the trade group for the flavor industry.

1 and “NATURAL FLAVOR.”

2 **INGREDIENTS: ORGANIC ALMONDMILK (FILTERED**  
3 **WATER, ORGANIC ALMONDS), ORGANIC PEA**  
4 **PROTEIN, ORGANIC NATURAL FLAVORS, CONTAINS**  
5 **1% OR LESS OF THE FOLLOWING: TRICALCIUM**  
6 **PHOSPHATE, ORGANIC RICE BRAN EXTRACT,**  
7 **TRIPOTASSIUM CITRATE, GELLAN GUM, SEA SALT,**  
8 **ORGANIC LOCUST BEAN GUM, NATURAL FLAVOR,**  
9 **ERGOCALCIFEROL (VITAMIN D2)**

10 **INGREDIENTS: ORGANIC ALMONDMILK (FILTERED**  
11 **WATER, ORGANIC ALMONDS), ORGANIC PEA PROTEIN,**  
12 **ORGANIC NATURAL FLAVORS, CONTAINS 1% OR LESS OF**  
13 **THE FOLLOWING: TRICALCIUM PHOSPHATE, ORGANIC RICE**  
14 **BRAN EXTRACT, TRIPOTASSIUM CITRATE, GELLAN GUM,**  
15 **SEA SALT, ORGANIC LOCUST BEAN GUM, NATURAL**  
16 **FLAVOR, ERGOCALCIFEROL (VITAMIN D2)**

17 59. Based on laboratory analysis, the Product contains an abnormal excess of vanillin.

18 60. Further, the analysis did not reveal detectable levels of methyl cinnamate, cinnamyl  
19 alcohol, p-cresol, acetovanillone, p-hydroxybenzoic acid, 4-methoxybenzaldehyde (p-  
20 anisaldehyde), 4-methoxybenzyl alcohol (p-anisyl alcohol) and vanillic acid, even though these  
21 compounds were analyzed for.  
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	Integration	Peak Assignment	PPM w/w
1	175287	formic acid	0.0762
	132501	acetic acid	0.0576
2	7927	diacetyl	0.0034
	49804	1-butanol	0.0217
	61783	acetol	0.0269
3	95868	acetoin	0.0417
	65338	1,2-propylene glycol	0.0284
	94987	isopentyl alcohol	0.0413
4	650898	hexanal	0.2830
	206123	1,3-butanediol	0.0896
	21743	3-methylbutyric acid + methyl pyrazine	0.0095
5	7141	furfural	0.0031
	5533	furfuryl alcohol	0.0024
	370231	lactic acid	0.1610
6	128415	pentanoic acid	0.0558
	99568	2-heptanone	0.0433
	12183	heptanal	0.0053
7	22075	2,5-dimethylpyrazine	0.0096
	268303	hexanoic acid	0.1166
	521071	benzaldehyde	0.2265
8	28160	6-methyl-5-hepten-2-one	0.0122
	149732	2-pentylfuran	0.0651
	25862	octanal	0.0112
9	94232	trimethylpyrazine	0.0410
	26125	2,4-heptadienal + 1H-pyrrole-2-carboxaldehyde	0.0114
	5314928	cyclotene	2.3107
10	175828	benzyl alcohol	0.0764
	502382	heptanoic acid	0.2184
	39915	2-nonanone	0.0174
11	384158	guaiacol	0.1670
	70844	nonanal	0.0308
	1860326	maltol	8.0879
12	19860386	octanoic acid + benzoic acid	8.6344
	238681	gamma-heptalactone	0.1038
	30717	decanal	0.0134
13	2300149	naphthalene-d8 (internal standard)	1.0000
	674335	nonanoic acid	0.2932
	32041	2,4-decadienal	0.0139
14	141637	2,4-decadienal	0.0616
	108778	butyl, butyrolactate	0.0473
	308702	decanoic acid	0.1342
15	123102	piperonal	0.0535
	42375	gamma-nonalactone	0.0184
	328979953	vanillin	143.0255
16	192024	4-hydroxy-3-methoxybenzotrile	0.0835
	246175	gamma-decalactone	0.1070
	109052	4-hydroxy-3-methoxyacetophenone	0.0474
17	84470	lauric acid	0.0367
	58677	vanillyl methyl ketone	0.0255
	677224	triethyl citrate	0.2944
18	91326	4-hydroxy-3,5-dimethoxybenzaldehyde (syringaldehyde)	0.0397
	316266	myristic acid	0.1375
	2270125	palmitic acid	0.9869
19	313900	ethyl palmitate	0.1365
	114848	ethyl linoleate	0.0499
20	824211	ethyl oleate	0.3583

21  
22 61. This means the “organic natural flavors” and “natural flavor” contain at most *de*  
23 *minimis* vanilla and lacks the key odor-active compounds in authentic vanilla which provide a  
24 vanilla taste.

25 62. The analysis reveals that the Product contains undisclosed artificial flavors – vanillin,  
26 maltol and piperonal. 21 C.F.R. § 172.515(b), § 182.60 (“Synthetic flavoring substances and  
27 adjuvants.”).  
28

1 63. Vanillin is the primary flavor compound in vanilla.

2 64. “Vanillin may be produced through processes recognized as yielding an artificial  
3 flavor consistent with the FDA definition of ‘artificial flavor’ such as the production of vanillin from  
4 lignin. Vanillin may also be produced through processes that yield a natural flavor consistent with  
5 the FDA definition of ‘natural flavor.’” *See* Hallagan and Drake at p. 48.

6 65. The naturally produced vanillin begins with eugenol, and through natural enzymatic  
7 reactions, is converted to vanillin.

8 66. However, Defendant does not use this version of vanillin because the process is  
9 exceedingly slow and non-economical.

10 67. The artificially produced vanillin also begins with eugenol but involves multiple  
11 chemical reactions.

12 68. The first step is the isomerization of eugenol to isoeugenol under alkaline conditions.

13 69. This leads to conversion into coniferal alcohol, then to ferulic acid.

14 70. The second step involves oxidizing the ferulic acid, which is broken down into  
15 vanillin, under high pressure, high heat and alkaline conditions.

16 71. High pressure and high heat are not considered “natural” processes for the purposes  
17 of producing a “natural flavor,” which means this vanillin is required to be designated as an artificial  
18 flavor. 21 C.F.R. § 101.22(a)(1).

19 72. Assuming Defendant uses vanillin produced through the artificial process described,  
20 the Product is falsely labeled because it does not disclose “artificial flavor” on the front label and  
21 ingredient list, as required by law. 21 C.F.R. § 101.22(i)(2) (requiring front label statement of  
22 “artificially flavored” where a food contains any artificial flavor which simulates the characterizing  
23 flavor).

24 73. When used in foods labeled as “vanilla,” vanillin is considered an artificial flavor  
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28

1 because the only “natural vanillin” is from vanilla beans.

2 74. Even if Defendant uses vanillin produced through the natural process described, the  
3 Product is falsely labeled for the same reasons.

4 75. FDA has issued regulatory correspondence in recent years on the proper labeling of  
5 vanillin that is produced consistently with processes described in the definition of “natural flavor.”  
6

7 76. Regarding vanillin produced using a natural process, FDA stated that the common or  
8 usual name for this material is “vanillin” and could be labeled as “vanillin derived naturally through  
9 fermentation.”

10 77. According to legal counsel for FEMA, John Hallagan and Joanna Drake, the labeling  
11 of a “food not subject to a standard of identity,” like Defendant’s almond milk, that has a  
12 characterizing flavor of vanilla, must disclose vanillin from non-vanilla sources, even if it is  
13 produced via a natural process. *See* Hallagan and Drake, *The Flavor and Extract Manufacturers*  
14 *Association of the United States*, “[Labeling Vanilla Flavorings and Vanilla-Flavored Foods in the](#)  
15 [U.S.](#),” *Perfumer & Flavorist*, Vol. 43 at 48, Apr. 25, 2018.  
16

17 78. The FDA has stated that it is misleading to identify vanillin as a natural flavor in a  
18 food labeled as “vanilla,” because this implies it is a natural vanilla flavor.

19 79. Moreover, “if the [vanillin] flavoring ingredient is being used in another food as  
20 ‘vanilla flavoring’ and the flavoring was not derived from vanilla, and if the characterizing flavor  
21 of the food is vanilla, then the food must be identified as ‘artificially flavored.’”  
22

23 80. Since vanillin is responsible for between one-quarter (25%) and one-third (33%) of  
24 the overall flavor and aroma impact of vanilla, it is false and misleading to describe the Product’s  
25 taste as “vanilla,” because it lacks detectable level of the odor-active compounds that are critical to  
26 the expected vanilla taste.

27 81. The added vanillin skews the balance of flavor compounds, and the result is  
28

1 dissimilar to what consumers expect from vanilla beans.

2 82. Vanillin from non-vanilla sources is much cheaper than vanilla, which is an  
3 economic deception.

4 83. Consumers are entitled to know “whether the product [they are buying] is flavored  
5 with a vanilla flavoring derived from vanilla beans, in whole or in part, or whether the food’s vanilla  
6 flavor is provided by flavorings not derived from vanilla beans.”<sup>5</sup>

7  
8 84. Maltol is another artificial flavor used in the Product.

9 85. Though maltol is sometimes detected in vanilla at levels between 0.004 and 0.01  
10 PPM, its presence in the Product at 8.0879 PPM means it was added to the Product as a component  
11 of the “Natural Flavor” when it actually is an artificial flavor – from artificial sources.

12 86. Maltol increases the sweetness of a food, yet vanilla’s sweetness is appreciated on  
13 its own and added sweetness detracts from the vanilla taste desired by consumers.

14 87. Though maltol can be a “natural flavor,” it is economically prohibitive to use the  
15 naturally derived version due to its price.

16 88. If the naturally derived version of maltol were used, it would be present in an amount  
17 several times greater than it is, because the artificial version is much more potent.

18 89. Piperonal (heliotropine) (0.0535 PPM) is another artificial flavor in the Product,  
19 which contributes a powdery flavor not associated with vanilla.

20 90. Piperonal can be obtained naturally, but the natural version is cost-prohibitive, which  
21 reduces its use.

22 91. Had “natural” piperonal been used, its concentration in the Product would exceed 20  
23 PPM, since this is the typical usage level for the natural version.

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28 <sup>5</sup> Hallagan article.

1           92.     The presence of added vanillin, artificial maltol and artificial piperonal renders the  
2 front label representation of “Vanilla” false, deceptive and misleading because it is required to state  
3 “artificially flavored.” 21 C.F.R. § 101.22(i)(2).

4           93.     Because Defendant’s ingredient list designates “Organic Natural Flavors” and  
5 “Natural Flavor,” it gives consumers the impression these are natural vanilla flavors, which is  
6 misleading because these contain artificial flavors.

7  
8           94.     The correct labeling of these flavor ingredients should be “Natural and Artificial  
9 Flavors” or “Organic Natural Flavors, Artificial Flavors.”

10           95.     Defendant’s listing of “Organic Natural Flavors” and “Natural Flavor” makes it  
11 inconceivable for consumers without chromatography equipment at the checkout line to ascertain  
12 the Product contains high levels of vanillin (and maltol and piperonal) even though they were not  
13 required to scrutinize the ingredient list.

14  
15           96.     In the alternative, Defendant’s front label fails to disclose “with other natural flavors”  
16 (“WONF”).

17           97.     Federal regulations require that where a food is flavored from a characterizing flavor  
18 *and* other natural flavors from sources other than the characterizing flavor, which enhance, resemble  
19 or simulate the characterizing flavor, the front label is required to state “With Other Natural Flavor.”  
20 21 C.F.R. § 101.22(i)(1)(iii).

21  
22           98.     Defendant’s front label only discloses “vanilla” when it is required to state “With  
23 Other Natural Flavor.”

24           99.     Reasonable consumers will be misled to expect the Product contains flavoring  
25 mainly from vanilla beans, does not contain artificial flavors and has a taste like vanilla because the  
26 front label only declares “Vanilla.”

27           100.    Defendant intended that Plaintiff and the proposed Class rely on those omissions and  
28



1 affirmative misrepresentations.

2 101. Plaintiff was unaware that the Product contained artificial flavors when she  
3 purchased them.

4  
5 **The Product is not “Clean” as this term is Understood by Consumers**

6 102. The back of the Product states “Our Commitment to Clean Nutrition.”



10 103. According to CR Research and Ingredion Europe, consumers understand the term  
11 “clean” to refer to products that are (1) free from additives and artificial ingredients, (2) have a short  
12 list of simple, recognizable ingredients and are (3) minimally processed using traditional techniques  
13 that are understood by consumers.<sup>6</sup>

14  
15 104. Nielsen describes “clean” claims as being understood by consumers to refer to foods  
16 that are free from artificial ingredients and other ingredients consumers find undesirable.

17 105. Though the Product is touted as providing “Clean Nutrition,” it contains numerous  
18 ingredients consumers do not associate with “clean” products, because they are artificial, highly  
19 processed and have negative health effects.  
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28 <sup>6</sup> [https://dawnfoods.com/docs/default-source/consumer-trends/2018\\_cleanlabel\\_\\_infographic.pdf?sfvrsn=ce8f859c\\_0](https://dawnfoods.com/docs/default-source/consumer-trends/2018_cleanlabel__infographic.pdf?sfvrsn=ce8f859c_0)



1 **INGREDIENTS: ORGANIC ALMONDMILK (FILTERED**  
2 **WATER, ORGANIC ALMONDS), ORGANIC PEA**  
3 **PROTEIN, ORGANIC NATURAL FLAVORS, CONTAINS**  
4 **1% OR LESS OF THE FOLLOWING: TRICALCIUM**  
5 **PHOSPHATE, ORGANIC RICE BRAN EXTRACT,**  
6 **TRIPOTASSIUM CITRATE, GELLAN GUM, SEA SALT,**  
7 **ORGANIC LOCUST BEAN GUM, NATURAL FLAVOR,**  
8 **ERGOCALCIFEROL (VITAMIN D2)**

9 **INGREDIENTS: ORGANIC ALMONDMILK (FILTERED**  
10 **WATER, ORGANIC ALMONDS), ORGANIC PEA PROTEIN,**  
11 **ORGANIC NATURAL FLAVORS, CONTAINS 1% OR LESS OF**  
12 **THE FOLLOWING: TRICALCIUM PHOSPHATE, ORGANIC RICE**  
13 **BRAN EXTRACT, TRIPOTASSIUM CITRATE, GELLAN GUM,**  
14 **SEA SALT, ORGANIC LOCUST BEAN GUM, NATURAL**  
15 **FLAVOR, ERGOCALCIFEROL (VITAMIN D2)**

16 106. The product contains tricalcium phosphate, reported by the Environmental Working  
17 Group to have numerous harmful effects.

18 107. For instance, studies have shown that added phosphates are associated with increased  
19 risk of cardiovascular disease, coronary artery disease and kidney disease.<sup>7</sup>

20 108. Phosphates are an artificial ingredient manufactured through a fusion process.

21 109. Their purpose is to prevent “off” flavors due to the presence of metal ions.

22 110. Phosphate additives like those in the Product are inconsistent with the representation  
23 of “Clean Nutrition.”<sup>8</sup>

24 111. Potassium citrate is another artificial and synthetic ingredient.

25 112. It is prepared by neutralizing citric acid with potassium hydroxide or potassium

26 \_\_\_\_\_  
27 <sup>7</sup> Ritz, E., Hahn, K., Ketteler, M., Kuhlmann, M. K., & Mann, J. (2012). Phosphate additives in food—a health  
28 risk. *Deutsches Ärzteblatt International*, 109(4), 49.

<sup>8</sup> <http://www.stmichaelshospital.com/pdf/programs/hemodialysis/hidden-phosphorus-in-your-diet.pdf>

1 carbonate.

2 113. The citric acid used to make potassium citrate is manufactured from synthetic  
3 ingredients in a process that is not natural.

4 114. Therefore, potassium citrate is an artificial ingredient and synthetic substance.

5 115. Gellan gum is artificially produced by fermenting sugar with specific strains of  
6 bacteria.

7 116. These ingredients are inconsistent with a product identified as providing “Clean  
8 Nutrition” as they are all artificial/synthetic with potential harmful health effects.

9 117. The description of the Product as providing “Clean Nutrition” is especially  
10 misleading because the back of the Product contains a medical endorsement.



20 118. Defendant’s conduct violated California’s consumer protection statutes, including  
21 the Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750 et seq.; the False  
22 Advertising Law, Cal. Bus. & Prof. Code §§ 17500, et seq.; and the Unfair Competition Law, Cal.  
23 Bus. & Prof. Code §§ 17500, et seq.

24 119. Defendant was aware that consumers, like Plaintiff and the Class, prefer natural  
25 products to those that are artificially flavored.

26 120. Defendant intended for Plaintiff and the Class to be deceived, and Plaintiff and the  
27  
28

1 Class actually were deceived by the unlawful labeling.

2 121. Defendant deceived Plaintiff and the Class into purchasing the Products by  
3 unlawfully concealing that they are artificially flavored.

4 122. Plaintiff and the Class lost money as a result of Defendant's conduct because they  
5 would not have purchased the Product or would not have paid as much as they did in the absence of  
6 Defendant's misrepresentations and omissions.

7 123. Plaintiff, as a reasonable consumer, is not required to subject consumer food products  
8 to laboratory analysis, to scrutinize the labels on the back of products to discover that a front label  
9 is false and misleading, or to search the labels for information that federal regulations require be  
10 displayed prominently on the front – and, in fact, under state law is entitled to rely on statements  
11 that Defendant deliberately places on the Products' labeling.

12 124. Defendant, but not Plaintiff, knew or should have known that the Products' labeling  
13 was in violation of federal regulations and state law.

14 125. Because Plaintiff reasonably assumed the Products were free of artificial flavoring  
15 based on the Products' labels when they were not, Plaintiff did not receive the benefit of her  
16 purchases.

17 126. Instead of receiving the benefit of a product free of artificial flavoring and flavored  
18 mainly by vanilla, Plaintiff received a Product that was unlawfully labeled to deceive consumers  
19 into believing that it was naturally vanilla flavored and contained no artificial flavoring, in violation  
20 of federal and state labeling regulations.

21 127. Defendant knows consumers will pay more for the Product because the front label  
22 only states "vanilla" and not "artificially flavored" and "does not taste like real vanilla."

23 128. Defendant sold more of the Product and at higher prices than it would have in the  
24 absence of this misconduct, resulting in additional profits at the expense of consumers.

1 129. The value of the Product that plaintiff purchased and consumed was materially less  
2 than its value as represented by defendant.

3 130. Had plaintiff and class members known the truth, they would not have bought the  
4 Products or would have paid less for it.

5 131. As a result of the false and misleading labeling, the Product is sold at a premium  
6 price, approximately no less \$3.98 for boxes of cartons of 32 OZ, excluding tax, compared to other  
7 similar products represented in a non-misleading way, and higher than the price of the Product if  
8 represented in a non-misleading way.  
9

10 **Reliance and Economic Injury**

11 132. When purchasing the Product, Plaintiff sought a product with a materially greater  
12 amount of vanilla than it actually contained.

13 133. When purchasing the Product, Plaintiff sought a product that was natural in that its  
14 vanilla flavor was provided exclusively by vanilla beans.  
15

16 134. Plaintiff read and relied on Defendant's false and misleading product name,  
17 statements, statement of identity and misleading claims in its labeling and advertising of the product.

18 135. Plaintiff also saw and relied on statements on the Product, which misleadingly  
19 reference only "vanilla" even though much, if not all, of the vanilla flavoring comes from non-  
20 vanilla sources.  
21

22 136. Plaintiff purchased the Product, and paid more for it than she would have paid  
23 believing the product had qualities she sought (e.g., only vanilla flavor from vanilla beans from the  
24 vanilla plant) based on the misleading labeling and marketing; but the product was unsatisfactory to  
25 her because those representations were false and misleading.

26 137. The Product costs significantly more per ounce compared to other similar products  
27 which lack prominent and unqualified front label claims of "Vanilla."  
28

1 138. Plaintiff paid more for the Product than she would have had she not been misled by  
2 the false and misleading labeling and advertising complained of herein.

3 139. For these reasons, the Product was worth less than what plaintiff paid for them.

4 140. Plaintiff lost money as a result of Defendant's deception in that Plaintiff did not  
5 receive what she paid for.

6 141. Plaintiff altered her position to her detriment and suffered damages in an amount  
7 equal to the amount she paid for the Product.

8 142. By engaging in its misleading and deceptive marketing, sales and pricing scheme,  
9 Defendant reaped and continues to reap increased sales and profits.

10  
11 **CLASS ACTION ALLEGATIONS**

12  
13 143. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules  
14 of Civil Procedure.

15 144. The class that Plaintiff seeks to represent (the "Class") is composed of and defined  
16 as follows:

17 All persons residing in California and Oregon who have purchased the Product for  
18 their own use (which includes feeding their families), and not for resale, since  
19 December 3, 2014.

20 145. Excluded from the Class are: governmental entities; Defendant; any entity in which  
21 Defendant has a controlling interest; Defendant's officers, directors, affiliates, legal representatives,  
22 employees, co-conspirators, successors, subsidiaries, and assigns; and, any judge, justice, or judicial  
23 officer presiding over this matter and the members of their immediate families and judicial staff.

24 146. For the purposes of this Complaint, the term "Class Members" refers to all members  
25 of the Class, including the Plaintiff.

26 147. This action is maintainable as a class action under Federal Rules of Civil Procedure  
27 Rule 23(a), and (b)(2) and (b)(3).  
28

1 148. Numerosity. The Class consists of thousands of persons throughout the States of  
2 California and Oregon. The Class is so numerous that joinder of all members is impracticable, and  
3 the disposition of their claims in a class action will benefit the parties and the Court.

4 149. Commonality and Predominance. The questions of law and fact common to the Class  
5 has the capacity to generate common answers that will drive resolution of this action. They  
6 predominate over any questions affecting only individual class members. Common questions of  
7 law and fact include, but are not limited to, the following:  
8

- 9 i. Whether Defendant contributed to, committed, or is responsible for the conduct  
10 alleged herein;
- 11 ii. Whether Defendant's conduct constitutes the violations of law alleged herein;
- 12 iii. Whether Defendant acted willfully, recklessly, negligently, or with gross  
13 negligence in the violations of laws alleged herein;
- 14 iv. Whether Class Members are entitled to injunctive relief; and
- 15 v. Whether Class Members are entitled to restitution and damages.  
16

17 150. By seeing the name, labeling, display and marketing of the Product, and by  
18 purchasing the Product, all Class Members were subject to the same wrongful conduct.

19 151. Absent Defendant's material deceptions, misstatements and omissions, Plaintiff and  
20 other Class Members would not have purchased the Product.

21 152. Typicality. Plaintiff's claims are typical of the claims of the Class, respectively,  
22 because she purchased the Product and was injured thereby. The claims of Plaintiff and other Class  
23 Members are based on the same legal theories and arise from the same false, misleading and  
24 unlawful conduct.  
25

26 153. Adequacy. Plaintiff is an adequate representative of the Class because her interests  
27 do not conflict with those of other Class Members. Each Class Member is entitled to damages  
28



- 1 i. 21 U.S.C. § 343, which deems food misbranded when the label contains a  
2 statement that is “false or misleading in any particular,” with “misleading”  
3 defined to “take[] into account (among other things) not only representations  
4 made or suggested by statement, word, design, device, or any combination  
5 thereof, but also the extent to which the labeling or advertising fails to reveal  
6 facts material”;
- 7 ii. 21 U.S.C. § 321(n), which states the nature of a false and misleading  
8 advertisement;
- 9 iii. 21 C.F.R. § 101.18(b), which prohibits true statements about ingredients that are  
10 misleading in light of the presence of other ingredients;
- 11 iv. 21 C.F.R. § 101.22, Foods; labeling of spices, flavorings, colorings and chemical  
12 preservatives.;

13 159. Defendant's conduct is further “unlawful” because it violates the California False  
14 Advertising Law (“FAL”) and the Consumer Legal Remedies Act (“CLRA”), as discussed in the  
15 claims below.

16 160. Defendant's conduct also violates the California Sherman Food, Drug, and Cosmetic  
17 Law, Cal. Health & Saf. Code section 109875, et seq. (“Sherman Law”), including, at least, the  
18 following sections:

- 19 i. Section 110100 (adopting all FDA regulations as state regulations);
- 20 ii. Section 110290 (“In determining whether the labeling or advertisement of a food  
21 ... is misleading, all representations made or suggested by statement, word,  
22 design, device, sound, or any combination of these, shall be taken into account.  
23 The extent that the labeling or advertising fails to reveal facts concerning the food  
24 ... or consequences of customary use of the food ... shall also be considered.”);
- 25 iii. Section 110390 (“It is unlawful for any person to disseminate any false  
26 advertisement of any food.... An advertisement is false if it is false or misleading  
27 in any particular.”);
- 28 iv. Section 110395 (“It is unlawful for any person to manufacture, sell, deliver, hold,  
or offer for sale any food ... that is falsely advertised.”);
- v. Section 110398 (“It is unlawful for any person to advertise any food, drug,  
device, or cosmetic that is adulterated or misbranded.”);
- vi. Section 110400 (“It is unlawful for any person to receive in commerce any food



1 ... that is falsely advertised or to deliver or proffer for delivery any such  
2 food....”); and

3 vii. Section 110660 (“Any food is misbranded if its labeling is false or misleading in  
4 any particular.”).

5 161. Each of the challenged statements made and actions taken by Whole Foods violates  
6 the FFDCFA, the CLRA, the FAL, and the Sherman Law, and therefore violates the “unlawful” prong  
7 of the UCL.

8 162. Defendant leveraged its deception to induce Plaintiff and members of the Class to  
9 purchase products that were of lesser value and quality than advertised. Defendant's deceptive  
10 advertising caused Plaintiff and members of the Class to suffer injury in fact and to lose money or  
11 property, as it denied them the benefit of the bargain when they decided to purchase the Product  
12 over other products that are less expensive, and contain virtually the same or immaterially different  
13 amounts of vanilla.

14 163. Had Plaintiff and the members of the Class been aware of Defendant's false and  
15 misleading advertising tactics, they would not have purchased the Product at all or would have paid  
16 less than what they did for it.

17 164. In accordance with California Business & Professions Code section 17203, Plaintiff  
18 seeks an order enjoining Defendant from continuing to conduct business through unlawful, unfair,  
19 and/or fraudulent acts and practices and to commence a corrective advertising campaign.

20 165. Plaintiff also seeks an order for the disgorgement and restitution of all monies from  
21 the sale of the Product that was unjustly acquired through acts of unlawful, unfair and/or fraudulent  
22 competition.  
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**SECOND CLAIM**  
**(Violation of California Business & Professions Code §§ 17200, *et seq.* –  
Unfair and Fraudulent Conduct Prong of the “UCL”)**  
**(ON BEHALF OF PLAINTIFF AND THE CALIFORNIA CLASS)**

166. Plaintiff incorporates by reference all of the allegations of the preceding paragraphs as if fully set forth herein.

167. California Business & Professions Code section 17200 prohibits any “unlawful, unfair or fraudulent business act or practice.”

168. The false and misleading labeling of the Product, as alleged herein, constitutes “unfair” business acts and practices because such conduct is immoral, unscrupulous, and offends public policy. Further, the gravity of Defendant's conduct outweighs any conceivable benefit of such conduct.

169. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant as alleged herein constitute “fraudulent” business acts and practices, because Defendant's conduct is false and misleading to Plaintiff and members of the Class.

170. Defendant's labeling and marketing of the Product is likely to deceive Class Members about the flavoring source and amount of vanilla in the Product.

171. Defendant either knew or reasonably should have known that the claims and statements on the labels of the Product were likely to deceive consumers.

172. In accordance with California Business & Professions Code section 17203, Plaintiff seeks an order enjoining Defendant from continuing to conduct business through unlawful, unfair, and/or fraudulent acts and practices and to commence a corrective advertising campaign.

173. Plaintiff also seeks an order for the disgorgement and restitution of all monies from the sale of the Product that were unjustly acquired through acts of unlawful, unfair and/or fraudulent competition.

**THIRD CLAIM**

**(Violation of California Business & Professions Code §§ 17500, *et seq.* –  
False and Misleading Advertising (“FAL”))  
(ON BEHALF OF PLAINTIFF AND THE CALIFORNIA CLASS)**

174. Plaintiff incorporates by reference all allegations contained in the complaint as if fully set forth herein.

175. California False Advertising Law (Cal. Business & Professions Code sections 17500 and 17508) prohibits “mak[ing] any false or misleading advertising claim.”

176. As alleged herein, Defendant, in its labeling of the Product, makes “false [and] misleading advertising claim[s],” as it deceives consumers as to the flavor composition and amount of vanilla in the Product.

177. In reliance on these false and misleading advertising claims, Plaintiff and members of the Class purchased and used the Product without the knowledge that the Product did not get its vanilla taste from vanilla beans.

178. Defendant knew or should have known that its labeling and marketing was likely to deceive consumers.

179. As a result, Plaintiff and the Class are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of the funds by which Defendant was unjustly enriched.

**FOURTH CLAIM**

**Violation of California’s Consumer Legal Remedies Act  
Cal. Civ. Code § 1750 *et seq.* (“CLRA”)  
(ON BEHALF OF PLAINTIFF AND THE CALIFORNIA CLASS)**

180. Plaintiff incorporates by reference all allegations contained in the complaint as if fully set forth herein.

181. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.

1 182. Defendant's false and misleading labeling and other policies, acts, and practices were  
2 designed to, and did, induce the purchase and use of the Product for personal, family, or household  
3 purposes by Plaintiff and Class Members, and violated and continues to violate the following  
4 sections of the CLRA:

- 5 1. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which  
6 they do not have;
- 7 2. § 1770(a)(7): representing that goods are of a particular standard, quality, or  
8 grade if they are of another;
- 9 3. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and
- 10 4. § 1770(a)(16): representing the subject of a transaction has been supplied in  
11 accordance with a previous representation when it has not.  
12

13 183. Defendant profited from the sale of the falsely, deceptively, and unlawfully  
14 advertised Product to unwary consumers.  
15

16 184. Defendant's wrongful business practices constituted, and constitute, a continuing  
17 course of conduct in violation of the CLRA.

18 185. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff will provide a letter  
19 to Defendant concurrently with the filing of this Complaint or shortly thereafter with notice of its  
20 alleged violations of the CLRA, demanding that Defendant correct such violations, and providing it  
21 with the opportunity to correct its business practices. If Defendant does not thereafter correct its  
22 business practices, Plaintiff will amend (or seek leave to amend) the complaint to add claims for  
23 monetary relief, including restitution and actual damages under the Consumers Legal Remedies Act.  
24

25 186. Pursuant to California Civil Code § 1780, Plaintiff seeks injunctive relief, her  
26 reasonable attorney fees and costs, and any other relief that the Court deems proper.  
27  
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**FIFTH CLAIM**  
**Breach of Express Warranties**  
**Cal. Com. Code § 2313(1)**  
**(ON BEHALF OF PLAINTIFF AND THE CALIFORNIA AND OREGON CLASS)**

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4       187. Plaintiff incorporates by reference all allegations contained in the complaint as if  
5 fully set forth herein.

6       188. The Product was manufactured, labeled and sold by Defendant or at its express  
7 directions and instructions, and warranted to Plaintiff and proposed Class Members that it possessed  
8 substantive, quality, compositional and/or environmental which it did not.

9  
10       189. Through the Product’s labels and advertising, Defendant made affirmations of fact  
11 or promises, or description of goods, described above, which were “part of the basis of the bargain,”  
12 in that Plaintiff and the Class purchased the Product in reasonable reliance on those statements. Cal.  
13 Com. Code § 2313(1).

14       190. Defendant had a duty to disclose and/or provide non-deceptive descriptions and  
15 marketing of the Product.

16  
17       191. Defendant breached the express warranties by selling a Product that does not and  
18 cannot provide the promised benefits and moreover by selling a Product that is misrepresented  
19 because not only does it contain undisclosed artificial vanilla flavors, but it contains less vanilla than  
20 what consumers expect, including a taste dissimilar to vanilla.

21       192. Plaintiff and the Class Members would not have purchased the Product had they  
22 known the true nature of the Product’s ingredients and that the Product contains non-vanilla flavors  
23 and vanilla enhancers rather than real vanilla.

24  
25       193. That breach actually and proximately caused injury in the form of the lost purchase  
26 price that Plaintiff and Class members paid for the Product.

27       194. Concurrently with the filing of this Complaint, Plaintiff Brown mailed a notice letter  
28

1 to Orgain Management, Inc. The letter was sent on behalf of Plaintiff and all other persons similarly  
2 situated.

3 195. As a result of Defendant's breach of warranty, Plaintiff and Class Members have  
4 been damaged in the amount of the purchase price of the Product and any consequential damages  
5 resulting from the purchases.

6 196. Plaintiff and proposed Class Members would not have purchased the Product or paid  
7 as much as they did if the true facts had been known, suffering damages.

8  
9 **SIXTH CLAIM**  
10 **Breach of Implied Warranty of Merchantability**  
11 **Cal. Com. Code § 2314**  
12 **(ON BEHALF OF PLAINTIFF AND THE CALIFORNIA AND OREGON CLASS)**

13 197. Plaintiff incorporates by reference all allegations contained in the complaint  
14 incorporates by reference all allegations contained in the complaint as if fully set forth herein.

15 198. Defendant, through its acts and omissions set forth herein, in the sale, marketing, and  
16 promotion of the Product, made representations to Plaintiff and the Class that, among other things,  
17 has a primary characterizing flavor of "Vanilla" that comes from vanilla beans, from the vanilla  
18 plant and tastes like vanilla.

19 199. Plaintiff and the Class bought the Product manufactured, advertised, and sold by  
20 Defendant, as described herein.

21 200. Defendant is a merchant with respect to the goods of this kind which were sold to  
22 Plaintiff and the Class, and there was, in the sale to Plaintiff and other consumers, an implied  
23 warranty that those goods were merchantable.

24 201. However, Defendant breached that implied warranty in that the Product does not  
25 provide the benefits represented by Defendant, as set forth in detail herein, and in reality, contains  
26 non-vanilla flavors and vanilla enhancers rather than real vanilla.

27  
28 202. Concurrently with the filing of this Complaint, Plaintiff Brown mailed a notice letter

1 to Defendant Orgain Management, Inc. The letter was sent on behalf of Plaintiff and all other  
2 persons similarly situated.

3 203. As an actual and proximate result of Defendant's conduct, Plaintiff and the Class did  
4 not receive goods as impliedly warranted by Defendant to be merchantable in that they did not  
5 conform to promises and affirmations made on the container or label of the goods nor are they fit  
6 for their ordinary purpose of providing the benefits as promised.  
7

8 204. Plaintiff and the Class have sustained damages as a proximate result of the foregoing  
9 breach of implied warranty in the amount of the Product's purchase price.

10 **SEVENTH CLAIM**

11 **Fraud**

12 **(ON BEHALF OF PLAINTIFF AND THE CALIFORNIA AND OREGON CLASS)**

13 205. Plaintiff incorporates by reference all allegations contained in the complaint  
14 incorporates by reference all allegations contained in the complaint as if fully set forth herein.

15 206. As alleged herein, Defendant knowingly made material misrepresentations and  
16 omissions regarding the Product on the Product's labeling and packaging in the Product's  
17 advertisements, and/or on its website.

18 207. Defendant made these material misrepresentations and omissions in order to induce  
19 Plaintiff and putative Class Members to purchase the Product. Specifically, the amount and  
20 proportion of the characterizing component, vanilla, has a material bearing on price and consumer  
21 acceptance of the Product. Therefore, consumers do not expect non-vanilla flavors where/when a  
22 product's characterizing flavor is blatantly labeled "vanilla."  
23

24 208. Defendant's fraudulent intent is evinced by its failure to accurately identify the  
25 Product on front label and/or the ingredient list, when it knew its statements were neither true nor  
26 accurate and misled consumers.

27 209. Rather than inform consumers that the Product contained artificial vanilla flavors and  
28





1 particular purpose for which it was intended, Defendant was unjustly enriched at the expense of  
2 Plaintiff and putative Class Members.

3         216. Plaintiff's detriment and Defendant's enrichment were related to and flowed from  
4 the wrongful conduct challenged in this Complaint.

5         217. Defendant has profited from its unlawful, unfair, misleading, and deceptive practices  
6 at the expense of Plaintiff and putative Class Members under circumstances in which it would be  
7 unjust for Defendant to be permitted to retain the benefit. It would be inequitable for Defendant to  
8 retain the profits, benefits, and other compensation obtained from their wrongful conduct as  
9 described herein in connection with selling the misrepresented Product.  
10

11         218. Defendant has been unjustly enriched in retaining the revenues derived from Class  
12 Members' purchases of the Product, which retention of such revenues under these circumstances is  
13 unjust and inequitable because Defendant manufactured, sold, misrepresented the nature of the  
14 Product, misrepresented its ingredients, and knowingly marketed and promoted a Product with a  
15 false, misleading, and deceptive Product label, which caused injuries to Plaintiff and the putative  
16 Class Members because they would not have purchased the Product based on the same  
17 representations if the true facts concerning the Product had been known.  
18

19         219. Plaintiff and putative Class Members have been damaged as a direct and proximate  
20 result of Defendant's unjust enrichment because they would not have purchased the Product on the  
21 same terms or for the same price had they known the true nature of the Product and the mis-  
22 statements regarding what the Product was and what it contained.  
23

24         220. Defendant either knew or should have known that payments rendered by Plaintiff  
25 and putative Class Members were given and received with the expectation that the Product actually  
26 contained vanilla as represented by Defendant in advertising and on the Product's labels and  
27 packaging. It is inequitable for Defendant to retain the benefit of payments under these  
28

1 circumstances.

2 221. Plaintiff and putative Class Members are entitled to recover from Defendant all  
3 amounts wrongfully collected and improperly retained by Defendant.

4 222. When required, Plaintiff and putative Class Members are in privity with Defendant  
5 because Defendant's sale of the Product was either direct or through authorized sellers. Purchase  
6 through authorized sellers is sufficient to create such privity because such authorized sellers are  
7 Defendant's agents for the purpose of the sale of the Product.  
8

9 223. As a direct and proximate result of Defendant's wrongful conduct and unjust  
10 enrichment, Plaintiff and putative Class Members are entitled to restitution of, disgorgement of,  
11 and/or imposition of a constructive trust upon all profits, benefits, and other compensation obtained  
12 by Defendant for its inequitable and unlawful conduct.  
13

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on behalf of herself and other members of the proposed Class  
16 herein, prays for judgment and relief on all of the legal claims as follows:

- 17 A. Certification of the Class, certifying Plaintiff as representative of the Class, and  
18 appointing Plaintiff's counsel for the Class;
- 19 B. A declaration that Defendant has committed the violations alleged herein;
- 20 C. For restitution and disgorgement pursuant to, without limitation, the California  
21 Business & Professions Code §§ 17200, *et seq.* and Cal Civ. Code § 1780; except  
22 for no monetary damages under the CLRA;
- 23 D. For declaratory and injunctive relief pursuant to, without limitation, the California  
24 Business & Professions Code §§ 17200, *et seq.* and 17500, *et seq.*;
- 25 E. For damages, declaratory and injunctive relief pursuant to California Civil Code §  
26 1780; except for no monetary damages under the CLRA;
- 27 F. An award of compensatory damages, the amount of which is to be determined at  
28 trial, except for no monetary damages under the CLRA;

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- G. For punitive damages;
- H. For interest at the legal rate on the foregoing sums;
- I. For attorneys’ fees;
- J. For an Order directing that Defendant bear the costs of any notice sent to the Class;
- K. For costs of suit incurred; and
- L. For such further relief as this Court may deem just and proper.

**JURY TRIAL DEMAND**

Plaintiff demands a jury trial on all causes of action so triable.

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Dated: January 4, 2021

Respectfully submitted,

**SHUB LAW FIRM LLC**

/s/ Jonathan Shub  
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*Counsel for Plaintiff and the Proposed Class*

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**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, Jonathan Shub, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and a member of the bar of this Court. I am an attorney at Shub Law Firm LLC, counsel of record for Plaintiff in this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. The Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the events alleged in the Complaint occurred in the Northern District of California. I declare under the penalty of perjury under the laws of the State of New Jersey and/or California and the United States that the foregoing is true and correct and that this declaration was executed in Haddonfield, New Jersey this 4th day of January, 2021.

/s/ Jonathan Shub  
Jonathan Shub

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