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

15 LISA ROBIE, individually and on behalf of all
16 others similarly situated,
17 Plaintiff,
18 vs.
19 TRADER JOE’S COMPANY,
20 Defendant.

Case No.:

CLASS ACTION COMPLAINT

Demand for Jury Trial

21 Plaintiff Lisa Robie (“Plaintiff”), on behalf of herself and others similarly situated brings
22 this Class Action Complaint against Trader Joe's Company (“Defendant”), and on the basis of
23 personal knowledge, information and belief, and investigation of counsel, alleges as follows:
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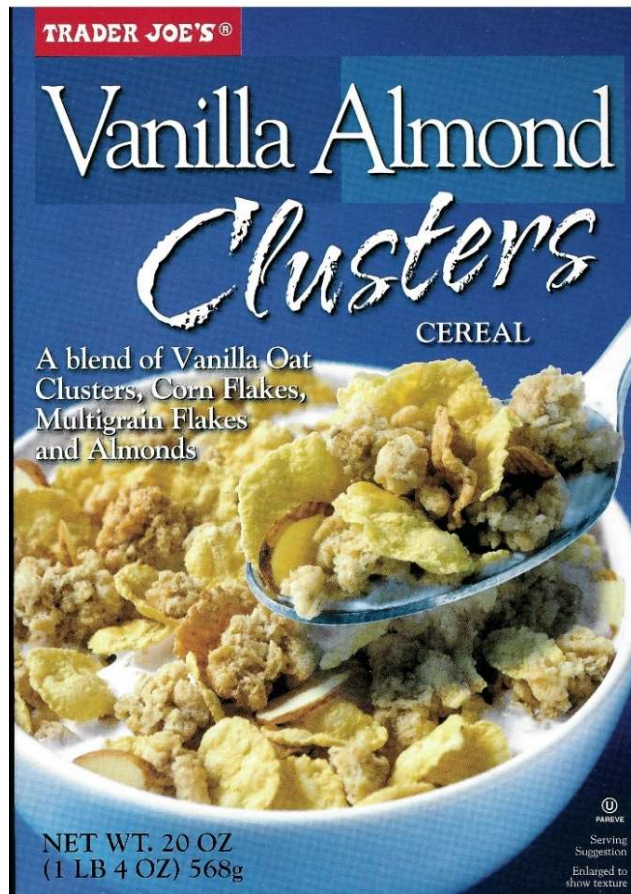
INTRODUCTION

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2
3 1. Defendant manufactures distributes, markets, labels and sells breakfast cereal labeled
4 as “Vanilla Almond Clusters – A blend of Vanilla Oat Clusters, Corn Flakes, Multigrain Flakes and
5 Almonds” under their Trader Joe’s brand (“Product”).

6 2. The Product is available to consumers from defendant’s over five hundred (500)
7 retail stores in the United States and website and is sold in boxes of 20 OZ (568g).

8 3. During the Class Period (as defined below), Plaintiff purchased the Product in
9 California.

10 4. Defendant falsely and misleadingly markets the Product to consumers as having a
11 primary characterizing flavor of “Vanilla” that comes from vanilla beans, from the vanilla plant.
12



1 14. During the Class Period (as defined below), in California, she purchased the Product
2 for personal, family, or household use on occasions during 2019 and 2020 and on or around February
3 15, 2020.

4 15. Plaintiff purchased the Product at defendant's store locations, including 22224
5 Redwood Rd, Castro Valley, CA 94546.

6 16. Plaintiff would not have purchased or paid more for Product had she realized that
7
8 much, if not all, of the vanilla flavor came from non-vanilla plant sources.

9 17. The front of the Product said "Vanilla" in large letters.

10 18. Plaintiff relied upon this representation when she purchased the Product.

11 19. She believed that the vanilla flavor in the Product was only from vanilla beans and
12 would come only from the vanilla plant and not from artificial flavors.

13 20. Plaintiff would not have purchased the Product had Plaintiff understood the true
14 flavor composition of the Product.

15 21. Plaintiff would purchase the Product again in the future if the Product were remedied
16 to reflect Defendant's labeling and marketing claims for it.

17 22. Defendant Trader Joe's Company is a California corporation, with its principal place
18 of business in Monrovia, California.
19

20
21 **BACKGROUND**

22 23. The main flavor of the Product is designated as "Vanilla," understood by consumers
23 to mean the vanilla flavor comes exclusively (if not predominantly) from the vanilla plant.

24 24. Unfortunately for consumers, the "Vanilla" representation is false and misleading
25 because the Product's vanilla taste is provided predominantly, if not exclusively, from sources other
26 than vanilla beans from the vanilla plant and contains less vanilla than consumers expect.
27

1 25. In fact, the predominant source of the Product's vanilla flavor is from ethyl vanillin.

2 26. Ethyl vanillin does not come from the vanilla plant at all – it is an artificial, synthetic
3 ingredient that is used as a cheap, inferior substitute for vanilla. *See* 21 C.F.R. § 182.60 (listing ethyl
4 vanillin as a one of several “[s]ynthetic flavoring substances and adjuvants”).

5 **CONSUMERS’ PREFERENCE FOR NON-ARTIFICIAL FLAVORS**

6
7 27. According to recent industry reports, “Food companies are dropping artificial
8 flavors, coloring, preservatives and other additives with scary names and focusing more on natural,
9 wholesome and fresh ingredients.”¹

10
11 28. Nielsen has reported that 62% of consumers say they try to avoid artificial flavors.²

12 29. New Hope Network concluded that “71% of consumers today are avoiding artificial
13 flavors.”³

14 30. Label Insight determined that 76% of consumers avoid artificial flavors.⁴

15 31. Consumers are seeking products which obtain their flavor from their characterizing
16 food ingredients, i.e., strawberry shortcake which gets its flavor from actual strawberries as
17 opposed to strawberry flavor synthesized from cherries.⁵

18
19 32. As “natural, organic and better-for-you trends proliferate, demand has flourished for
20 naturally sourced vanilla.”⁶

21
22
23 ¹ Jeff Daniels, [Why your favorite foods may be getting new recipes](#), CNBC, September 19, 2016

24 ² Nielsen, [Reaching For Real Ingredients: Avoiding The Artificial](#), Sept. 6, 2016.

25 ³ Alex Smolokoff, [Natural color and flavor trends in food and beverage](#), Natural Products Insider, Oct. 11, 2019.

26 ⁴ Thea Bourianne, [Exploring today’s top ingredient trends and how they fit into our health-conscious world](#), March 26-
27 28, 2018.

28 ⁵ David Andrews, [Synthetic ingredients in Natural Flavors and Natural Flavors in Artificial flavors](#), Environmental Working Group (EWG).

⁶ Amanda Del Buono, [Suppliers utilize cost-effective vanilla ingredient solutions](#), Beverage Industry (last updated Oct. 14, 2016).

1 33. Manufacturers have responded, “by transitioning from artificial to natural
2 ingredients,” including “natural vanilla ingredients.”

3 34. Global climate disruptions resulting in natural disasters befalling the primary vanilla
4 producing country of Madagascar, have caused vanilla shortages.

5 35. This disruption in available vanilla has caused companies to cut corners when it
6 comes to using vanilla in their products.

7 36. Vanilla (*Vanilla planifolia Andrews* and *Vanilla tahitensis Moore*) comes from an
8 orchid plant that originated in Mexico where it was first cultivated.

9 37. The vanilla orchid produces a fruit pod, the vanilla bean, which is the raw material
10 for true vanilla flavorings.

11 38. The vanilla bean is not consumed by itself – it is heated in the sun for weeks until it
12 is placed in ethyl alcohol, where its flavor constituents are extracted in the solution (“vanilla
13 extract”). 21 C.F.R. § 169.175 (“Vanilla extract.”).

14
15
16 **DEFENDANT’S MISLEADING “VANILLA” REPRESENTATIONS**

17 39. Section 401 of the Federal Food, Drug and Cosmetic Act (“FFDCA”) directs the
18 Food and Drug Administration (“FDA”) to establish standards and rules for food labeling where
19 necessary to promote honesty and fair dealing in the interest of consumers.

20 40. The authority granted by Congress to the FDA enables the agency to combat an
21 economic problem: the marketing of foods from which traditional constituents are removed or new
22 or different (often cheaper and artificial) ingredients are substituted.

23 41. As such, the federal food standards are, according to the FDA, intended to protect
24 consumers from economic fraud and have served as “a trusted barrier against substandard and
25 fraudulently packaged food since their enactment in the 1938 FFDCA.”
26
27

1 42. Consumers want the vanilla in vanilla flavored products to come from a real source,
2 i.e., from vanilla beans from the vanilla plant.

3 43. Unfortunately, companies adulterate their purported vanilla flavored products with
4 cheap synthetics and substitutes such as ethyl vanillin – a substance manufactured in factories from
5 synthetics and not from vanilla beans – and non-vanilla vanillin, in order to reap even larger
6 corporate profits from consumers.

7
8 44. To combat this vanilla fraud, the FDA has strict rules regarding use of the term
9 “vanilla” on the labels of food products.

10 45. According to the flavor industry trade group, FEMA, where a product’s front label
11 representation is “Vanilla” without qualification, it “lead[s] consumers to believe that it is flavored
12 with vanilla extract, or another vanilla flavoring derived solely from vanilla beans, as defined in the
13 federal standard of identity when in fact it is not.”⁷

14
15 46. Relevant regulations “require that food products be labeled accurately so that
16 consumers can determine whether the product is flavored with a vanilla flavoring derived from
17 vanilla beans, in whole or in part, or whether the food’s vanilla flavor is provided by flavorings not
18 derived from vanilla beans.”⁸

19 47. There are specific vanilla labeling requirements for foods characterized as vanilla
20 because vanilla is uniquely vulnerable to being adulterated, which take precedence over the general
21 flavor labeling requirements when they otherwise conflict.

22
23 48. The vanilla standards have been in place for over fifty (50) years, and companies’
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25
26 ⁷ John B. Hallagan and Joanna Drake, The Flavor and Extract Manufacturers Association of the United States
27 (“FEMA”), [“Labeling Vanilla Flavorings and Vanilla-Flavored Foods in the U.S.”](#), *Perfumer & Flavorist*, Vol. 43 at 46,
54, Apr. 25, 2018 (“Hallagan & Drake”).

28 ⁸ *Id.*

1 adherence to these regulations have benefitted consumers who otherwise would not be able to rely
2 on a product's representations.

3 49. The FDA regulations regarding vanilla effectively establish custom and practice in
4 the industry so that consumers' experience with that custom and practice primes them to infer from
5 the Products' labeling that the Products gets its vanilla flavor from the vanilla plant.

6 50. For instance, vanillin not from vanilla beans has always been an artificial flavor when
7 used with vanilla.

8 51. Consumers are accustomed to products labeled "vanilla," without any qualifiers such
9 as "flavored," "artificial flavors" or "with other natural flavors," to mean that the vanilla flavor
10 comes only from the ingredient of vanilla beans.

11 52. Unfortunately for consumers, scientific testing shows the Product is not flavored only
12 through use of vanilla beans, but from ethyl vanillin and the amount of real vanilla is *de minimis*.
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Vanilla Almond Clusters Cereal

Trader Joe's Vanilla Almond Clusters Cereal

Production Code: 2516081

5.25g, 1 ug Int. Std., 100C/30 Min. by Purge & Trap-Thermal Desorption-GC-MS

Data File = TSQA4234

MS Scan #	Area Integration	Peak Assignment	Conc. PPB w/w
761	7487951	toluene-d8 (internal standard)	190.48
764	1378518	isopentyl alcohol	32.70
788	228357	butyric acid	5.42
795	436733	ethyl butyrate	10.36
811	9588415	hexanal	227.46
836	3724	2-methyl-2-pentenal	0.09
844	38482	pentyl alcohol	0.91
848	226023	methyl pyrazine	5.36
856	498835	furfural	11.83
864	30352	2-methylbutyric acid	0.72
883	343096	trans-2-hexenal	8.14
898	647130	hexyl alcohol	15.35
906	389669	isopentyl acetate	9.24
926	74223	2-heptanone	1.76
931	75184	2-butyl furan	1.78
943	342890	heptanal	8.13
954	45074	methional	1.07
963	203971	2,6-dimethylpyrazine	4.84
977	94535	? 124 mw	2.24
990	1892169	? 124 mw	44.89
994	285161	? 124 mw	6.76
1003	1028588	isobutyl butyrate	24.40
1013	719430	trans-2-heptenal	17.07
1023	1102222	hexanoic acid	26.15
1031	1839086	benzaldehyde	43.63
1041	106895	6-methyl-5-hepten-2-one	2.54
1050	538615	2-pentyl furan + trace of dimethyl trisulfide	12.78
1060	2381459	2,4-heptadienal	56.49
1064	751468	octanal	17.83
1071	62334	C3 alkyl pyrazine isomer	1.48
1079	2094107	2,4-heptadienal	49.68
1095	161726	cyclotene	3.84
1104	1523535	3-octene-2-one	36.14
1106	986805	limonene	23.41
1118	140162	3-methylbutyl butyrate	3.32
1124	1175622	phenyl acetaldehyde	27.89
1129	840146	trans-2-octenal	19.93
1132	331241	octyl alcohol	7.86
1142	11777475	3,5-octadien-2-one	279.38
1151	374196	3-ethyl-2,5-dimethylpyrazine	8.88
1168	3077188	3,5-octadien-2-one	73.00
1177	7302529	nonanal	173.23
1190	236113	methyl octanoate	5.80
1228	345063	octanoic acid	8.19
1237	712956	trans-2-nonenal	16.91
1243	393765	benzyl acetate	9.34
1280	429813	decanal	10.20
1291	8029549	naphthalene-d8 (internal standard)	190.48
1324	580085	nonanoic acid	13.76
1338	485338	trans-2-decenal	11.51
1348	417348	p-anisaldehyde	9.90
1353	3250265	possibly butenyl cyclohexene (cis)	77.10
1363	1770026	possibly butenyl cyclohexene (trans)	41.99
1370	233351	2,4-decadienal	5.54
1377	191902	undecanal	4.55
1394	798296	2,4-decadienal	18.94
1414	438376	decanoic acid	10.40
1431	722170	piperonal	17.13
1468	159617	trans-2-undecenal	3.79
1477	1068581	vanillin	25.35
1487	89226	methyl udecanoate	2.12
1506	532810	geranyl acetone	12.64
1524	275260	ethyl vanillin	6.53
1530	241398	gamma-decalactone	5.73
1557	173195	delta-decalactone	4.11
1661	166271	triethyl citrate	3.94
1715	63813	methyl myristate	1.51
1896	69343	methyl palmitate	1.64

Peak Assignment Conc. PPB w/w

Piperonal 17.13

trans-2 undecenal 3.79

vanillin 25.35

methyl udecanoate 2.12

geranyl acetone 12.64

ethyl vanillin 6.53

Total Out-Gas Products @100C/30 Min. 1636.38
(excluding internal standards)

1 53. The analysis reveals that the Product is not flavored exclusively, or even
2 predominantly, with vanilla from vanilla beans from the vanilla plant.

3 54. Rather, the opposite is true – the vanilla flavoring is provided through synthetic
4 vanilla substitutes, and has *less* real vanilla, not disclosed to consumers.

5 55. The Product contains ethyl vanillin, an artificial, synthetic ingredient that is used as
6 a cheap, inferior substitute for vanilla. See 21 C.F.R. § 182.60 (listing ethyl vanillin as a one of
7 several “[s]ynthetic flavoring substances and adjuvants”).
8

9 56. Ethyl vanillin is at least four times more potent than vanillin derived from vanilla
10 beans.

11 57. The Product contains vanillin from non-vanilla sources, an artificial flavor.

12 58. The Product contains an abnormal excess of vanillin relative to the profile of minor
13 components in a vanilla preparation, which is a strong indicator it contains vanillin from non-vanilla
14 sources, an artificial flavor.
15

16 59. The Product also contains high levels of piperonal (heliotropine), an artificial flavor
17 not found in vanilla. See 21 C.F.R. § 172.515(b) (“Synthetic flavoring substances and adjuvants.”).⁹

18 60. Piperonal contributes “a sweet vanilla olfactory note as well as a sweet, aromatic,
19 vanilla, and benzaldehyde taste” and imparts “vanilla flavors to food and beverage products.”¹⁰

20 61. Consumers will not feel they need to turn over the box to double check the ingredient
21 list because the lack of any qualifying terms, i.e., “flavored,” or “natural flavors,” on the front label
22 gives them the impression that the flavor is only from the characterizing ingredient, vanilla beans.
23

24 62. Nevertheless, the fine print ingredient listing of “Natural Flavor,” will not disclose
25

26
27 ⁹ C. B. Gnadinger, "Piperonal in Vanilla Extract." *Industrial & Engineering Chemistry* 18.6 (1926): 588-589.

¹⁰ Piperonal, [Moellhausen S.p.A.](#), UL Prospector.

1 to consumers that (1) the amount of real vanilla in the Products is at most, *de minimis* and (2) the
2 Product contains artificial vanilla, *viz*, vanillin and ethyl vanillin.

3 Vanilla Almond Clusters Cereal

4 **INGREDIENTS: WHOLE ROLLED OATS,
5 MILLED CANE SUGAR, VEGETABLE OIL
6 (CANOLA AND/OR SAFFLOWER AND/OR
7 SUNFLOWER OIL), RICE FLOUR, ALMONDS,
8 CORNSTARCH, HONEY, NATURAL FLAVOR,
9 SALT, BARLEY MALT SYRUP.**

10 **INGREDIENTS: WHOLE ROLLED OATS.
11 MILLED CANE SUGAR, VEGETABLE OIL
12 (CANOLA AND/OR SAFFLOWER AND/OR
13 SUNFLOWER OIL), RICE FLOUR,
14 ALMONDS, CORNSTARCH, HONEY,
15 NATURAL FLAVOR, SALT, BARLEY MALT
16 SYRUP.**

17 63. The ingredient of “Natural Flavor” may include a small amount of real vanilla, but it
18 also contains ethyl vanillin which provides most of the Product's vanilla taste.

19 64. These other flavors include vanillin, ethyl vanillin and piperonal.

20 65. There are special restrictions placed on the use of vanillin when paired with vanilla,
21 because of the potency of the former compared to the latter, i.e., one ounce of vanillin is equivalent
22 in strength to the vanillin from one pound of vanilla beans.

23 66. The Product's ingredient list is misleading because “Natural Flavor” fails to disclose
24 the presence of ethyl vanillin and vanillin.

25 67. Because the Product contains vanillin and ethyl vanillin, it is required to state
26 “artificially flavored” on the front label. FDA Letter, Margaret-Hanna Emerick, FDA, to Richard
27 Brownell, February 25, 2016; See 21 C.F.R.101.22(i)(2);

28 68. Defendant’s marketing and promotion of the Product is designed to – and does –
deceive, mislead, and defraud plaintiff and consumers.

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

1 other similar products which lack prominent and unqualified front label claims of “Vanilla.”

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

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

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

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

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

11
12 **CLASS ACTION ALLEGATIONS**

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

16 85. The class that Plaintiff seeks to represent (the “Class”) is composed of and defined
17 as follows:

18
19 All persons residing in California and Oregon who have purchased the Product for their own
20 use (which includes feeding their families), and not for resale, since May 9, 2014. Excluded
21 from the Class are: governmental entities; Defendant; any entity in which Defendant has a
22 controlling interest; Defendant’s officers, directors, affiliates, legal representatives,
23 employees, co-conspirators, successors, subsidiaries, and assigns; and, any judge, justice, or
24 judicial officer presiding over this matter and the members of their immediate families and
25 judicial staff.

26 86. For the purposes of this Complaint, the term “Class Members” refers to all members
27 of the Class, including the Plaintiff.

28 87. Plaintiff reserves the right to redefine the Class, and/or requests for relief.

88. This action is maintainable as a class action under Federal Rules of Civil Procedure

1 Rule 23(a), and (b)(2) and (b)(3).

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

5 90. Commonality and Predominance. The questions of law and fact common to the Class
6 has the capacity to generate common answers that will drive resolution of this action. They
7 predominate over any questions affecting only individual class members. Common questions of
8 law and fact include, but are not limited to, the following:
9

10 91. Whether Defendant contributed to, committed, or is responsible for the conduct
11 alleged herein;

12 92. Whether Defendant's conduct constitutes the violations of law alleged herein;

13 93. Whether Defendant acted willfully, recklessly, negligently, or with gross negligence
14 in the violations of laws alleged herein;
15

16 94. Whether Class Members are entitled to injunctive relief; and

17 95. Whether Class Members are entitled to restitution and damages.

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

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

22 98. Typicality. Plaintiff's claims are typical of the claims of the Class, respectively,
23 because she purchased the Product and was injured thereby. The claims of Plaintiff and other Class
24 Members are based on the same legal theories and arise from the same false, misleading and
25 unlawful conduct.
26

1 the Federal Food, Drug, and Cosmetic Act (“FFDCA”) and its implementing regulations, including,
2 at least, the following sections:

3 105. 21 U.S.C. § 343, which deems food misbranded when the label contains a statement
4 that is “false or misleading in any particular,” with “misleading” defined to “take[] into account
5 (among other things) not only representations made or suggested by statement, word, design, device,
6 or any combination thereof, but also the extent to which the labeling or advertising fails to reveal
7 facts material”;

9 106. 21 U.S.C. § 321(n), which states the nature of a false and misleading advertisement;

10 107. 21 C.F.R. § 101.18(b), which prohibits true statements about ingredients that are
11 misleading in light of the presence of other ingredients;

12 108. 21 C.F.R. Part 169, Food Dressings and Flavorings;

13 109. 21 C.F.R. § 101.22(i), which sets forth a framework to truthfully identify the source
14 of a product’s flavor; and
15

16 110. 21 C.F.R. § 102.5 which prohibits misleading common or usual names.

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

20 112. Defendant's conduct also violates the California Sherman Food, Drug, and Cosmetic
21 Law, Cal. Health & Saf. Code section 109875, et seq. (“Sherman Law”), including, at least, the
22 following sections:
23

24 113. Section 110100 (adopting all FDA regulations as state regulations);

25 114. Section 110290 (“In determining whether the labeling or advertisement of a food ...
26 is misleading, all representations made or suggested by statement, word, design, device, sound, or
27

1 any combination of these, shall be taken into account. The extent that the labeling or advertising
2 fails to reveal facts concerning the food ... or consequences of customary use of the food ... shall
3 also be considered.”);

4 115. Section 110390 (“It is unlawful for any person to disseminate any false advertisement
5 of any food.... An advertisement is false if it is false or misleading in any particular.”);

6 116. Section 110395 (“It is unlawful for any person to manufacture, sell, deliver, hold, or
7 offer for sale any food ... that is falsely advertised.”);

8 117. Section 110398 (“It is unlawful for any person to advertise any food, drug, device,
9 or cosmetic that is adulterated or misbranded.”);

10 118. Section 110400 (“It is unlawful for any person to receive in commerce any food ...
11 that is falsely advertised or to deliver or proffer for delivery any such food....”); and

12 119. Section 110660 (“Any food is misbranded if its labeling is false or misleading in any
13 particular.”).

14 120. Each of the challenged statements made and actions taken by Defendant violates the
15 FFDCFA, the CLRA, the FAL, and the Sherman Law, and therefore violates the “unlawful” prong of
16 the UCL.

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

23 122. Had Plaintiff and the members of the Class been aware of Defendant's false and
24

1 misleading advertising tactics, they would not have purchased the Product at all or would have paid
2 less than what they did for it.

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

6 124. Plaintiff also seeks an order for the disgorgement and restitution of all monies from
7 the sale of the Product that was unjustly acquired through acts of unlawful, unfair and/or fraudulent
8 competition.
9

10
11 **SECOND CLAIM**
12 **(ON BEHALF OF THE CALIFORNIA CLASS)**
13 **(Violation of California Business & Professions Code §§ 17200, et seq. –**
14 **Unfair and Fraudulent Conduct Prong of the UCL)**

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

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

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

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

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

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

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

6 132. Plaintiff also seeks an order for the disgorgement and restitution of all monies from
7 the sale of the Product that were unjustly acquired through acts of unlawful, unfair and/or fraudulent
8 competition.
9

10 **THIRD CLAIM**
11 **(ON BEHALF OF THE CALIFORNIA CLASS)**
12 **(Violation of California Business & Professions Code §§ 17500, *et seq.* –**
13 **False and Misleading Advertising)**

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

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

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

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

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

26 138. As a result, Plaintiff and the Class are entitled to injunctive and equitable relief,
27

1 restitution, and an order for the disgorgement of the funds by which Defendant was unjustly
2 enriched.

3 **FOURTH CLAIM**
4 **(ON BEHALF OF THE CALIFORNIA CLASS)**
5 **(Violation of Cal. Civ. Code § 1750 *et seq.* –**
6 **California’s Consumer Legal Remedies Act “CLRA”)**

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

9 140. Plaintiff brings this claim individually and on behalf of the members of the California
10 Class against Defendant.

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

13 142. Defendant’s false and misleading labeling and other policies, acts, and practices were
14 designed to, and did, induce the purchase and use of the Product for personal, family, or household
15 purposes by Plaintiff and Class Members, and violated and continue to violate the following sections
16 of the CLRA:

- 17
- 18 a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which
19 they do not have;
 - 20 b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if
21 they are of another;
 - 22 c. § 1770(a)(9): advertising goods with intent not to sell them as advertised; and
 - 23 d. § 1770(a)(16): representing the subject of a transaction has been supplied in
24 accordance with a previous representation when it has not.

25 143. Defendant profited from the sale of the falsely, deceptively, and unlawfully
26 advertised Product to unwary consumers.

27 144. Defendant’s wrongful business practices constituted, and constitute, a continuing
28

1 course of conduct in violation of the CLRA.

2 145. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff will provide a letter
3 to Defendant concurrently with the filing of this Class Action Complaint with notice of its alleged
4 violations of the CLRA, demanding that Defendant correct such violations, and providing it with
5 the opportunity to correct its business practices. If Defendant does not thereafter correct its business
6 practices, Plaintiff will amend (or seek leave to amend) the complaint to add claims for monetary
7 relief, including restitution and actual damages under the Consumers Legal Remedies Act.
8

9 146. Pursuant to California Civil Code § 1780, Plaintiff seeks injunctive relief, her
10 reasonable attorney fees and costs, and any other relief that the Court deems proper.
11

12
13 **FIFTH CLAIM**
14 **(ON BEHALF OF THE CALIFORNIA AND OREGON CLASS)**
15 **(Breach of Express Warranty, Implied Warranty, and Magnuson-Moss Warranty)**

16 147. Plaintiff incorporates by reference all preceding paragraphs.

17 148. The Product was manufactured, labeled and sold by defendant or at its express
18 directions and instructions, and warranted to plaintiff and class members that it possessed
19 substantive, quality, compositional and/or environmental which they did not.

20 149. Defendant had a duty to disclose and/or provide non-deceptive descriptions and
21 marketing of the Product.

22 150. The amount and proportion of the characterizing component, vanilla, has a material
23 bearing on price and consumer acceptance of the Product and consumers do not expect non-vanilla,
24 flavors where a product's characterizing flavor is labeled "vanilla."

25 151. This duty is based, in part, on defendant's position as one of the most recognized
26 companies in the nation in this sector.
27

1 152. Plaintiff provided or will provide notice to defendant, its agents, representatives,
2 retailers and their employees.

3 153. Defendant received notice and should have been aware of these misrepresentations
4 due to numerous complaints by consumers to its main office over the past several years regarding
5 the Products, of the type described here.

6 154. The Products did not conform to their affirmations of fact and promises due to
7 defendant's actions and were not merchantable.

8 155. Plaintiff and class members would not have purchased the Products or paid as much
9 if the true facts had been known, suffering damages.
10

11 **PRAYER FOR RELIEF**

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

- 14 A. Certification of the Class, certifying Plaintiff as representative of the Class, and
15 designating Plaintiff's counsel for the Class;
16 B. A declaration that Defendant has committed the violations alleged herein;
17 C. For restitution and disgorgement pursuant to, without limitation, the California
18 Business & Professions Code §§ 17200, *et seq.*, Cal Civ. Code § 1780, and Cal.
19 Civ. Code § 1750 *et seq.* except that no monetary relief is presently sought for
20 violations of the Consumers Legal Remedies Act;
21 D. For declaratory and injunctive relief pursuant to, without limitation, the California
22 Business & Professions Code §§ 17200, *et seq.*, 17500, *et seq.*, and Cal. Civ. Code
23 § 1750 *et seq.*;
24 E. For damages, declaratory and injunctive relief pursuant to California Civil Code §
25 1780 and 1750 except that no monetary relief is presently sought for violations of
26 the Consumers Legal Remedies Act;
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- F. An award of compensatory damages, the amount of which is to be determined at trial except that no monetary relief is presently sought for violations of the Consumers Legal Remedies Act ;
- G. For punitive damages;
- H. For interest at the legal rate on the foregoing sums;
- I. For attorneys' fees;
- J. For costs of suit incurred; and
- K. For such further relief as this Court may deem just and proper.

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JURY TRIAL DEMAND

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

Dated: October 20, 2020

SHUB LAW FIRM LLC

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

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LISA ROBIE, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jonathan Shub, Esq., SHUB LAW FIRM, 134 Kings Highway East, 2nd Fl, Haddonfield, NJ 08033, (856) 772-7200

DEFENDANTS

TRADER JOE'S COMPANY

County of Residence of First Listed Defendant LOS ANGELES (IN U.S. PLAINTIFF CASES ONLY)

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 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes rows for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, and Incorporated or Principal Place of Business.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns for CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, and OTHER STATUTES. Includes various legal categories and codes.

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

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

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 - Diversity of Citizenship

Brief description of cause: Consumer Class Action for mislabeling of Vanilla content

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 10/20/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jonathan Shub

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Trader Joe's Vanilla Almond Clusters Cereal Box Fails to Disclose Artificial Vanilla Flavor, Class Action Claims](#)
