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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 REBECCA PADILLA and  
13 KIMBERLY OWENS, individually,  
and on behalf of a class of similarly  
14 situated individuals,

15 Plaintiffs,

16 v.

17 SEQUEL NATURALS ULC, a  
Canadian company, and VEGA US  
18 LLC, a Delaware limited liability  
company,

19 Defendants.  
20

Case No.: 2:18-cv-09327-JAK-JC

Hon. John A. Kronstadt

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

- 1) Violations of California’s  
Consumers Legal Remedies Act
- 2) Violations of Unfair Competition  
Law, California Business &  
Professions Code § 17500 *et seq.*
- 3) Violations of Unfair Competition  
Law, California Business &  
Professions Code § 17200 *et seq.*
- 4) Unjust Enrichment

**DEMAND FOR JURY TRIAL**

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**INTRODUCTION**

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1. Plaintiffs Rebecca Padilla and Kimberly Owens (“Plaintiffs”) bring this action on behalf of themselves and on behalf of all others similarly situated, against Defendants Sequel Naturals ULC and Vega US LLC (“Defendants”), based on Defendants’ misleading business practices with respect to the packaging and sale of Vega protein and meal replacement powders<sup>1</sup> (“Vega Food and Protein Powders”).

2. At all relevant times, and as depicted in the photographs below, Defendants have packaged and sold the Vega Food and Protein Powders in opaque packaging that conceals from consumers the amount of product actually contained therein. The Vega Food and Protein Powders are advertised and sold in sealed, opaque plastic containers significantly comprised of non-functional empty space, as detailed below. This packaging prevents the consumer from directly seeing or handling the product and leads reasonable consumers to believe that the package contains significantly more product than it actually does.

3. Defendants’ practice of substantially under-filling its Vega Food and Protein Powders’ opaque containers with powder creates non-functional slack fill, in violation of state and federal laws. The use of non-functional slack fill allows Defendants to lower their costs by deceiving customers into paying a higher price for more product than they truly receive. As a result, Defendants have realized sizable profits to the detriment of consumers.

4. Plaintiffs and other consumers have reasonably relied on Defendants’ deceptive packaging in purchasing the Vega Food and Protein

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<sup>1</sup> On information and belief, the Vega Food and Protein Powders include, without limitation: Vega One Organic All-in-One Shake, Vega Sport Premium Protein, Vega Protein & Greens, Vega One All-in-One Shake, Vega Clean Protein, Vega Sport Protein, and Vega Essentials Shake.

1 Powders. If Plaintiffs and other consumers had known the actual amount of  
2 protein or meal replacement powder contained in the packaging, they would not  
3 have purchased the Vega Food and Protein Powders or would have paid less for  
4 them. Therefore, Plaintiffs and other consumers have suffered injury-in-fact as a  
5 result of Defendants' deceptive practices, including, but not limited to, out-of-  
6 pocket costs incurred in purchasing the overvalued Vega Food and Protein  
7 Powders.

## 8 PARTIES

### 9 Plaintiff Rebecca Padilla

10 5. Plaintiff Rebecca Padilla is a California citizen who resides in Long  
11 Beach, California. In or around late-July 2018, Plaintiff Padilla purchased a  
12 container of chocolate-flavored Vega Protein & Greens powder from a Target  
13 store, a Vega authorized retailer, located in Long Beach, California, within Los  
14 Angeles County.

15 6. Plaintiff Padilla purchased the Vega Protein & Greens powder in  
16 reliance on the product's packaging, which made it appear that she was  
17 purchasing a substantially-filled container of protein powder, as indicated by the  
18 size of the container. Because of its opaque packaging, the contents of the  
19 container were not visible to Plaintiff at the time of purchase and Plaintiff had no  
20 reason to believe that the container was not entirely full, or at least substantially  
21 full, of the Vega powder. However, upon opening the container after purchase,  
22 Plaintiff was shocked and upset to find that the Vega container was  
23 predominantly comprised of empty space and the Vega powder, including the  
24 serving scooper, only filled approximately one-third of the container's capacity.

25 7. Plaintiff Padilla purchased the Vega Protein & Greens powder  
26 primarily for personal, family, or household use.

27 8. If Plaintiff had known at the time of purchase that the Vega Protein  
28 & Greens container largely contained empty space and only a third filled with

1 the actual powder, she would not have purchased it or would have paid less for  
2 it. Plaintiff continues to visit stores that sell Vega Food and Protein Powders but  
3 she cannot determine if they are still substantially under-filled. She would  
4 purchase a Vega Food and Protein Powder in the future if the labeling and  
5 packaging was no longer misleading and deceptive such that she could determine  
6 prior to purchase the level to which the containers are actually filled with protein  
7 powder as opposed to empty space.

8 **Plaintiff Kimberly Owens**

9 9. Plaintiff Kimberly Owens is a California citizen who resides in Pico  
10 Rivera, California. In or around August 2018, Plaintiff Owens purchased three  
11 containers (medium) of chocolate-flavored Vega Protein & Greens powder from  
12 the GNC online store, a Vega authorized retailer, and delivered to her residence  
13 located within Los Angeles County.

14 10. Plaintiff Owens purchased the Vega Protein & Greens powder in  
15 reliance on the product's packaging, which made it appear that she was  
16 purchasing a substantially-filled container of protein powder, as indicated by the  
17 size of the container. Because of its opaque packaging, the contents of the  
18 container were not visible to Plaintiff at the time of purchase and Plaintiff had no  
19 reason to believe that the container was not entirely full, or at least substantially  
20 full, of the Vega powder. However, upon opening one of the containers after  
21 purchase, Plaintiff was shocked and upset to find that the Vega container was  
22 predominantly comprised of empty space and the Vega powder only filled  
23 approximately one-third of the container's capacity. Plaintiff opened the second  
24 Vega container purchased in the same transaction and discovered it was similarly  
25 under-filled as the first one. Plaintiff then opened the third Vega container  
26 purchased in the same transaction and discovered, it too was similarly under-  
27 filled as the first two. Plaintiff has not purchased any Vega Food and Protein  
28 Powders since her August 2018 purchase because she felt she overpaid for the

1 under-filled Vega products.

2 11. Plaintiff Owens purchased the Vega Protein & Greens powder  
3 primarily for personal, family, or household use.

4 12. If Plaintiff had known at the time of purchase that the Vega Protein  
5 & Greens containers were substantially under-filled and largely contained empty  
6 space, she would not have purchased them or would have paid less for them.  
7 Plaintiff continues to visit stores that sell Vega Food and Protein Powders, but  
8 she cannot determine if they are still substantially under-filled. She would  
9 purchase a Vega Food and Protein Powder in the future if the labeling and  
10 packaging was no longer misleading and deceptive such that she could determine  
11 prior to purchase the level to which the containers are actually filled with protein  
12 powder as opposed to empty space.

13 **DEFENDANTS**

14 13. Defendant Sequel Naturals ULC is a foreign corporation organized  
15 and in existence under the laws of Canada and conducts business throughout the  
16 State of California. Sequel Naturals ULC's corporate headquarters and principal  
17 place of business are located at 101-3001 Wayburne Drive, Burnaby, BC Canada  
18 V5G 4W3. Sequel Naturals formulates, tests, manufactures, markets, distributes,  
19 and sells Vega Food and Protein Powders nationwide and in California.

20 14. Defendant Vega US, LLC is a limited liability company organized  
21 and in existence under the laws of the State of Delaware and conducts business  
22 throughout the State of California. Vega US, LLC's corporate headquarters are  
23 located at 1225 17th Street, Suite 1000, Denver, Colorado 80202. Vega US LLC  
24 tests manufactures, markets, distributes, and sells Vega Food and Protein  
25 Powders nationwide and in California.

26 15. At all relevant times, Defendants were and are engaged in the  
27 business of designing, testing, manufacturing, marketing, distributing, and  
28 selling products in Los Angeles County and throughout the United States of

1 America.

2 **JURISDICTION**

3 16. This is a class action.

4 17. This Court has subject matter jurisdiction over this matter pursuant  
5 to 28 U.S.C. § 1331 because this action arises under the Constitution or laws of  
6 the United States and the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) and  
7 (6), in that, as to each Class defined herein:

- 8 a. the matter in controversy exceeds \$5,000,000.00, exclusive of  
9 interest and costs;
- 10 b. this is a class action involving 100 or more class members;  
11 and
- 12 c. this is a class action in which at least one member of the  
13 Plaintiff class is a citizen of a State different from at least one  
14 Defendant.

15 18. The Court has personal jurisdiction over Defendants, which have at  
16 least minimum contacts with the State of California because it has conducted  
17 business there and have availed itself of California's markets through the  
18 marketing, distributing, and selling of Vega Food and Protein Powders.

19 **VENUE**

20 19. Defendants, through their business of advertising, distributing, and  
21 selling Vega Food and Protein Powders, have established sufficient contacts in  
22 this district such that personal jurisdiction is appropriate. Defendants are  
23 deemed to reside in this district pursuant to 28 U.S.C. § 1391(a).

24 20. In addition, a substantial part of the events or omissions giving rise  
25 to these claims and a substantial part of the property that is the subject of this  
26 action are in this district. In addition, Plaintiff Padilla's Declaration, as required  
27 under California Civil Code § 1780(d) (but not pursuant to *Erie* and federal  
28 procedural rules), reflects that a substantial part of the events or omissions giving

1 rise to the claims alleged herein occurred, or a substantial part of property that is  
2 the subject of this action, is situated in Los Angeles County, California. It is  
3 attached as **Exhibit 1**.

4 21. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

5 **FACTUAL ALLEGATIONS**

6 22. At all relevant times, Defendants have distributed, marketed,  
7 advertised, and sold Vega Food and Protein Powders across California and the  
8 United States. Defendants sell Vega Food and Protein Powders at major retail  
9 and online outlets including, without limitation, the Vega website, Target,  
10 Amazon.com, and various retailers including Vons, Ralphs, CVS Pharmacy,  
11 Walgreens, Whole Foods, and Vitamin Shoppe.

12 23. Pursuant to California Business and Professions Code §12606(b):

13 A container that does not allow the consumer to fully view its contents shall be  
14 considered to be filled as to be misleading if it contains nonfunctional slack  
15 fill. Slack fill is the difference between the actual capacity of a container and  
16 the volume of product contained therein. Nonfunctional slack fill is the empty  
space in a package that is filled to substantially less than its capacity for  
reasons other than any one or more of the following:

- 17 (1) Protection of the contents of the package.
- 18 (2) The requirements of machines used for enclosing the  
19 contents of the package.
- 20 (3) Unavoidable product settling during shipping and handling.
- 21 (4) The need to utilize a larger than required package or  
22 container to provide adequate space for the legible  
23 presentation of mandatory and necessary labeling  
24 information, such as those based on the regulations adopted  
25 by the United States Food and Drug Administration or state  
or federal agencies under federal or state law, laws or  
regulations adopted by foreign governments, or under an  
industrywide voluntary labeling program.
- 26 (5) The fact that the product consists of a commodity that is  
27 packaged in a decorative or representational container where  
28 the container is part of the presentation of the product and

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has value that is both significant in proportion to the value of the product and independent of its function to hold the product, such as a gift combined with a container that is intended for further use after the product is consumed, or durable commemorative or promotional packages.

- (6) An inability to increase the level of fill or to further reduce the size of the package, such as where some minimum package size is necessary to accommodate required labeling, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.
- (7) The product container bears a reasonable relationship to the actual amount of product contained inside, and the dimensions of the actual product container, the product, or the amount of product therein is visible to the consumer at the point of sale, or where obvious secondary use packaging is involved.
- (8) The dimensions of the product or immediate product container are visible through the exterior packaging, or where the actual size of the product or immediate product container is clearly and conspicuously depicted on any side of the exterior packaging excluding the bottom, accompanied by a clear and conspicuous disclosure that the representation is the actual size of the product or the immediate product container.
- (9) The presence of any headspace within an immediate product container necessary to facilitate the mixing, adding, shaking, or dispensing of liquids or powders by consumers prior to use.
- (10) The exterior packaging contains a product delivery or dosing device if the device is visible, or a clear and conspicuous depiction of the device appears on the exterior packaging, or it is readily apparent from the conspicuous exterior disclosures or the nature and name of the product that a delivery or dosing device is contained in the package.
- (11) The exterior packaging or immediate product container is a kit that consists of a system, or multiple components, designed to produce a particular result that is not dependent upon the quantity of the contents, if the purpose of the kit is clearly and conspicuously disclosed on the exterior



1 packaging.

2 (12) The exterior packaging of the product is routinely displayed  
3 using tester units or demonstrations to consumers in retail  
4 stores, so that customers can see the actual, immediate  
5 container of the product being sold, or a depiction of the  
6 actual size thereof prior to purchase.

7 (13) The exterior packaging consists of single or multiunit  
8 presentation boxes of holiday or gift packages if the  
9 purchaser can adequately determine the quantity and sizes of  
10 the immediate product container at the point of sale.

11 (14) The exterior packaging is for a combination of one  
12 purchased product, together with a free sample or gift,  
13 wherein the exterior packaging is necessarily larger than it  
14 would otherwise be due to the inclusion of the sample or gift,  
15 if the presence of both products and the quantity of each  
16 product are clearly and conspicuously disclosed on the  
17 exterior packaging.

18 (15) The exterior packaging or immediate product container  
19 encloses computer hardware or software designed to serve a  
20 particular computer function, if the particular computer  
21 function to be performed by the computer hardware or  
22 software is clearly and conspicuously disclosed on the  
23 exterior packaging.

24 24. Further, the Federal Food, Drug, and Cosmetic Act (FDCA)  
25 prohibits the introduction of food products into interstate commerce that are  
26 misbranded. *See* 21 U.S.C. § 331(a). Relevant here, “a food shall be deemed to  
27 be misbranded if its container is so made, formed, or filled as to be misleading.”  
28 21 C.F.R. § 100.100. Pursuant to 21 C.F.R. § 100.100(a):

29 A container that does not allow the consumer to fully view its contents  
30 shall be considered to be filled as to be misleading if it contains  
31 nonfunctional slack-fill. Slack-fill is the difference between the actual  
32 capacity of a container and the volume of product contained therein.  
33 Nonfunctional slack-fill is the empty space in a package that is filled to  
34 less than its capacity for reasons other than:

35 (1) Protection of the contents of the package;

36 (2) The requirements of the machines used for enclosing the contents in

1 such package;

2 (3) Unavoidable product settling during shipping and handling;

3 (4) The need for the package to perform a specific function (e.g., where  
4 packaging plays a role in the preparation or consumption of a food), where  
5 such function is inherent to the nature of the food and is clearly  
6 communicated to consumers;

7 (5) The fact that the product consists of a food packaged in a reusable  
8 container where the container is part of the presentation of the food and  
9 has value which is both significant in proportion to the value of the  
10 product and independent of its function to hold the food, e.g., a gift  
11 product consisting of a food or foods combined with a container that is  
12 intended for further use after the food is consumed; or durable  
13 commemorative or promotional packages; or

14 (6) Inability to increase level of fill or to further reduce the size of the  
15 package (e.g., where some minimum package size is necessary to  
16 accommodate required food labeling (excluding any vignettes or other  
17 nonmandatory designs or label information), discourage pilfering,  
18 facilitate handling, or accommodate tamper-resistant devices).

19 25. Defendant's Vega Food and Protein Powders' packaging fits  
20 squarely within the foregoing definition of non-functional slack fill under both  
21 California and federal law.

22 26. As depicted in the photos below from the Vega official website<sup>2</sup>, the  
23 Vega Food and Protein Powders are sold in a fully-enclosed opaque container  
24 that does not allow consumers to even partially view the contents inside.  
25 Therefore, the packaging "does not allow the consumer to fully view its  
26 contents." 21 C.F.R. § 100.100(a).

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28 <sup>2</sup> <https://myvega.com/>

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27. Vega Food and Protein Powders’ packaging is “filled to be

1 misleading” due to the amount of slack fill it employs that is non-functional. For  
2 example, the Vega One All-in-One Shake contains approximately 50% empty  
3 space, including the space taken by the internally packaged scoop, and the  
4 packaging does not indicate the capacity of the container as it relates to the  
5 amount of product contained therein, thus preventing a reasonable consumer  
6 from determining the striking difference in volume between the capacity of the  
7 container and the fill amount.<sup>3</sup>

8 28. As set out in 21 C.F.R. 100.100, non-functional slack fill is defined  
9 as “the empty space in a package that is filled to substantially less than its  
10 capacity for reasons other than” one of six enumerated safe harbor provisions.  
11 The amount of product that a consumer receives when purchasing Vega Food  
12 and Protein Powders is clearly filled substantially less than its capacity because it  
13 fills less than half the capacity of the container in which it is packaged.

14 29. Furthermore, the packaging does not fit within any of the safe  
15 harbor provisions listed in 21 C.F.R. § 100.100(a):

- 16 (1) Pursuant to § 100.100(a)(1), the slack fill does not protect the  
17 contents of the packaging, as the product is not fragile or  
18 breakable;
- 19 (2) Pursuant to § 100.100(a)(2), there is no reason that machines used  
20 for enclosing the contents of the package would require an outer  
21 container which can hold significantly more product than it  
22 actually does, especially when the machines used by Defendants  
23 are capable of producing several sizes of containers, as evidenced  
24 by the various-sized containers of the Vega Food and Protein  
25 Powders ranging from small to large;

26 \_\_\_\_\_  
27 <sup>3</sup> On information and belief, all Vega Food and Protein Powders contain  
28 substantially similar fill levels and thus, substantially similar non-functional  
slack fill, approximately 50%.

- 1 (3) Pursuant to § 100.100(a)(3), the slack fill is not necessary to  
2 accommodate product settling, as fine powder is not the sort of  
3 product that “settles” significantly enough to require double the  
4 amount of space; in fact, fine powders are the least likely to  
5 “settle” because they fill every space of their containers, similar  
6 to sand, such that if there is any settling, it is negligible and would  
7 not result in 50% of the container being empty.
- 8 (4) Pursuant to § 100.100(a)(4), the packaging does not perform a  
9 specific function other than containing the powder and is not used  
10 during the preparation of the food or protein shakes;
- 11 (5) Pursuant to § 100.100(a)(5), the packaging is not decorative or  
12 commemorative, does not state or suggest that it is intended to be  
13 reused, and does not have “value which is significant in  
14 proportion to the value of the product” independent of containing  
15 the food; and
- 16 (6) Pursuant to § 100.100(a)(6), the container does not need to be  
17 significantly larger than its fill to accommodate necessary  
18 labeling information, as there are several sized containers  
19 available for the Vega Products, as well as comparable products  
20 in various, smaller containers produced by competitors.

21 30. Defendant’s packaging is misleading to reasonable consumers,  
22 including Plaintiffs and potential class members, and serves only to maximize  
23 Defendant’s profits.

24 31. Defendant knows, or should know, that consumers, like Plaintiffs  
25 and other Class Members, reasonably rely on the size and style of their  
26 packaging in purchasing Vega Food and Protein Powders and would reasonably  
27 believe that the packaging contains much more powder than it actually does.

28 32. In reasonable reliance on the size and style of their packaging,

1 Plaintiffs and Class Members purchased Vega Food and Protein Powders.

2 33. Plaintiffs and Class Members do not know, did not know, and have  
3 no reason to know, that the Vega Food and Protein Powders' packaging contains  
4 a significant amount of empty space, because the containers are opaque with no  
5 view of the contents inside, at the time of purchase. A reasonable consumer  
6 cannot accurately determine the fill of the Vega Food and Protein Powders by  
7 shaking or squeezing the packaging, and is certainly not expected to do so prior  
8 to purchasing them.

9 34. To this day, Defendant continues to sell Vega Food and Protein  
10 Powders in deceptive packaging, without disclosing the true nature of the  
11 contents therein. Because the Vega Food and Protein Powders' packaging does  
12 not contain the amount of product reasonably expected by Plaintiffs and Class  
13 Members, Defendant's uniform practice of filling and packaging Vega Food and  
14 Protein Powders in the foregoing manner was and continues to be misleading and  
15 deceptive, and cheats consumers.

16 35. Each consumer has been exposed to the same or substantially  
17 similar deceptive practice, with the same misleading size and style of packaging,  
18 containing approximately 50% or more non-functional slack fill.

19 36. Plaintiffs and other consumers have paid an unlawful premium for  
20 the Vega Food and Protein Powders. If Plaintiffs and Class Members knew how  
21 little product they were getting and how significantly underfilled the containers  
22 were, Plaintiffs and Class Members would not have purchased Vega Food and  
23 Protein Powders or would have paid less for them. Therefore, Plaintiffs and  
24 other consumers purchasing the Vega Food and Protein Powders suffered injury  
25 in fact and lost money as a result of Defendant's false, unfair, and fraudulent  
26 practices, as described herein.

27 37. As a result of their reliance on Defendant's representations,  
28 consumers have suffered an ascertainable loss of money, including, but not

1 limited to, out of pocket costs incurred in purchasing Vega Food and Protein  
2 Powders, for which Plaintiffs and other consumers have paid an unlawful  
3 premium. Specifically, they have paid for an amount of product that they  
4 expected to but never received. Plaintiffs and other consumers would have paid  
5 significantly less for Vega Food and Protein Powders had they known that the  
6 package only contained 50% or less of the product that it had the capacity to  
7 hold. Alternatively, Plaintiffs and other consumers would not have purchased  
8 Vega Food and Protein Powders at all had they known that the package only  
9 contained 50% or less of the product that it had the capacity to hold. Therefore,  
10 Plaintiff and Class Members suffered injury-in-fact and lost money as a result of  
11 Defendant's false, unfair, and fraudulent practices, as described herein.

12 38. Further, as a result of its deceptive marketing and unfair competition  
13 with other similar manufacturers and brands, Defendant realized sizable profits.

14 39. As a result of its misleading business practice, and the harm caused  
15 to Plaintiffs and Class Members, Defendant should be enjoined from using this  
16 deceptive packaging, and should be required to pay for all damages caused to  
17 Plaintiffs and Class Members.

### 18 **CLASS ALLEGATIONS**

19 40. Plaintiffs bring this lawsuit as a class action on behalf of themselves  
20 and all others similarly situated as members of the proposed Class pursuant to  
21 pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), 23(b)(3), and  
22 23(c)(4). This action satisfies the numerosity, commonality, typicality, adequacy,  
23 predominance, and superiority requirements of those provisions.

24 41. Plaintiffs' proposed Class and Sub Class(es) are defined as:

25 **Class:** All individuals who purchased one or more containers of  
26 Vega Food and Protein Powders in the United States from four years  
27 prior to the filing of the complaint to the time of class certification.

28 **California Class:** All individuals who purchased one or more

1 containers of Vega Food and Protein Powders in California from  
2 four years prior to the filing of the complaint to the time of class  
certification.

3 **CLRA Sub-Class:** All members of the California Sub-Class who  
4 are “consumers” within the meaning of California Civil Code §  
5 1761(d).

6 42. Members of the Class(es) will collectively be referred to as “Class  
7 Members.”

8 43. Excluded from the Class and Sub-Classes are: (1) Defendant, any  
9 entity or division in which Defendant has a controlling interest, and its legal  
10 representatives, officers, directors, assigns, and successors; (2) the Judge to  
11 whom this case is assigned and the Judge’s staff; (3) any Judge sitting in the  
12 presiding state and/or federal court system who may hear an appeal of any  
13 judgment entered; and (4) those persons who have suffered personal injuries as a  
14 result of the facts alleged herein. Plaintiffs reserve the right to amend the Class  
15 and Sub-Class definitions if discovery and further investigation reveal that the  
16 Class and Sub-Class should be expanded or otherwise modified. There is a well-  
17 defined community of interest in the litigation and the class is readily  
18 ascertainable.

19 44. Numerosity: Although the exact number of Class Members is  
20 uncertain and can only be ascertained through appropriate discovery, the number  
21 is great enough such that joinder is impracticable. The disposition of the claims  
22 of these Class Members in a single action will provide substantial benefits to all  
23 parties and to the Court. The Class Members are readily identifiable from  
24 information and records in Defendant’s possession, custody, or control.

25 45. Typicality: Plaintiffs’ claims are typical of the claims of the Class  
26 in that Plaintiffs, like all Class Members, were exposed to Defendant’s  
27 misleading packaging, purchased a Vega Food and Protein Powder in reliance on  
28 the misleading packaging, and suffered losses as a result of such purchases. The



1 representative Plaintiffs, like all Class Members, have been damaged by  
2 Defendant's misconduct in that they incurred expenses due to their reliance on  
3 Defendant's deceptive packaging, as described throughout this complaint.  
4 Furthermore, the factual bases of Defendant's misconduct are common to all  
5 Class Members and represent a common thread resulting in injury to all Class  
6 Members.

7 46. Adequacy: Plaintiffs are adequate representatives of the Classes  
8 because their interests do not conflict with the interests of the members of the  
9 Classes they seek to represent, they have retained competent counsel experienced  
10 in prosecuting class actions, and they intend to prosecute this action vigorously.  
11 The interests of the members of the Classes will be fairly and adequately  
12 protected by Plaintiffs and their counsel.

13 47. Commonality: Numerous questions of law and fact are common to  
14 Plaintiffs and the Class Members that predominate over any question affecting  
15 only individual Class Members. These common legal and factual issues include  
16 the following:

- 17 a. Whether Vega Food and Protein Powders' packaging contains non-  
18 functional slack fill;
- 19 b. Whether Defendant's conduct was unlawful, unfair, and/or  
20 deceptive;
- 21 c. Whether Defendant's conduct violates federal and/or state consumer  
22 protection laws;
- 23 d. Whether Plaintiffs and other Class Members are entitled to equitable  
24 relief, including, without limitation, a preliminary and/or permanent  
25 injunction;
- 26 e. Whether Plaintiffs and other Class Members are entitled to  
27 damages;
- 28 f. Whether Defendant knew or reasonably should have known of their



1           51. Defendants are “person(s)” as defined by California Civil Code §  
2 1761(c).

3           52. Plaintiffs and CLRA Sub-Class Members are “consumers” within  
4 the meaning of California Civil Code § 1761(d) because they bought Vega Food  
5 and Protein Powders for personal, family, or household purposes.

6           53. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or  
7 services have sponsorship, approval, characteristics, ingredients, uses, benefits,  
8 or quantities which they do not have . . . .” By packaging Vega Food and Protein  
9 Powders in its current misleading packages, Defendants have represented and  
10 continues to represent that the Product has quantities which it does not have.  
11 Therefore, Defendants violate § 1770(a)(5) of the CLRA.

12           54. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or  
13 services with intent not to sell them as advertised.” By deceitfully packaging  
14 Vega Food and Protein Powders in a container with significantly greater volume  
15 than the product contained therein, and then intentionally selling Vega Food and  
16 Protein Powders in a manner that does not meet consumer expectations as to the  
17 quantity of powder contained in the packaging, Defendants have violated section  
18 1770(a)(9) of the CLRA.

19           55. At all relevant times, Defendants knew or reasonably should have  
20 known that the Vega Food and Protein Powders packaging contained a  
21 significant amount of non-functional slack fill, and that Plaintiffs and other  
22 members of the CLRA Sub-Class would reasonably and justifiably rely on the  
23 size and style of the package in purchasing Vega Food and Protein Powders.

24           56. Plaintiffs and members of the CLRA Sub-Class have reasonably and  
25 justifiably relied on Defendants’ misleading and fraudulent conduct when  
26 purchasing Vega Food and Protein Powders. Moreover, Defendants’ fraudulent  
27 and misleading conduct is material in that a reasonable consumer would have  
28 considered the amount of product contained in the packaging to be important in

1 deciding whether to purchase Vega Food and Protein Powders or pay less.  
2 Therefore, reliance on such conduct as a material reason for the decision to  
3 purchase the Product may be presumed or inferred for Plaintiffs and members of  
4 the CLRA Sub-Class.

5 57. Plaintiffs and members of the CLRA Sub-Class have suffered and  
6 continue to suffer injuries caused by Defendants, because they would not have  
7 purchased Vega Food and Protein Powders, or would have paid significantly less  
8 for it, had they known that Defendants' conduct was misleading and fraudulent.

9 58. As a direct and proximate result of Defendants' unfair methods of  
10 competition and/or unfair and deceptive practices, Plaintiffs and the Class have  
11 suffered and will continue to suffer actual damages.

12 59. Under Cal. Civ. Code § 1780(a), Plaintiffs and members of the  
13 CLRA Sub-Class seek damages, restitution, declaratory and injunctive relief, and  
14 all other remedies the Court deems appropriate for Defendants' violations of the  
15 CLRA. Plaintiffs seeks to enjoin Defendants from use of deceptive non-  
16 functional slack fill in its products.

17 60. On September 13, 2018, Plaintiff Padilla provided Defendants with  
18 notice of its violations of the CLRA pursuant to California Civil Code § 1782(a).  
19 Defendant failed to provide appropriate relief for its violations of the CLRA  
20 within 30 days. Therefore, Plaintiff Padilla now seeks monetary, compensatory,  
21 and punitive damages, in addition to injunctive and equitable relief.

22 **SECOND CAUSE OF ACTION**

23 **(Violation of California Business & Professions Code § 17500 *et seq.*)**

24 61. Plaintiffs incorporate by reference the allegations contained in each  
25 and every paragraph of this Complaint.

26 62. Plaintiffs bring this cause of action on behalf of themselves and on  
27 behalf of the Class, or in the alternative, on behalf of the California Class.

28 63. California Business & Professions Code § 17500 prohibits unfair,

1 deceptive, untrue, and misleading advertising in connection with the disposal of  
2 personal property (among other things), including, without limitation, false  
3 statements as to the use, worth, benefits, or characteristics of the property.

4 64. Defendants have represented and continues to represent to the  
5 public, including Plaintiffs and Class Members, through its deceptive packaging,  
6 that more product is contained within the Vega Food and Protein Powders than is  
7 actually contained. Defendants' representation is misleading because the  
8 packaging only contains 50% or less of the amount of product compared to what  
9 the packaging could potentially hold. Defendants made such untrue or  
10 misleading advertisements with the intent to dispose of said merchandise.

11 65. Defendants knew, or in the exercise of reasonable care should have  
12 known, that these representations were misleading and deceptive, and that such  
13 representations continue to be misleading.

14 66. As a result of their reliance on Defendants' misrepresentations,  
15 Class Members suffered an ascertainable loss of money, property, and/or value  
16 of the product.

17 67. As a direct and proximate result of Defendants' unfair and deceptive  
18 practices, Plaintiffs and Class Members have suffered and will continue to suffer  
19 actual damages.

20 68. Defendants have been unjustly enriched and should be required to  
21 make restitution to Plaintiffs and the Class. Pursuant to § 17535 of the Business  
22 & Professions Code, Plaintiffs and Class Members are entitled to an order of this  
23 Court enjoining such future conduct on the part of Defendants, and such other  
24 orders and judgments which may be necessary to disgorge Defendants' ill-gotten  
25 gains and restore to any person in interest any money paid for Vega Food and  
26 Protein Powders as a result of the wrongful conduct of Defendants.

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**THIRD CAUSE OF ACTION**

**(Violation of California Business & Professions Code § 17200 *et seq.*)**

69. Plaintiffs incorporate by reference the allegations contained in each and every paragraph of this Complaint.

70. Plaintiffs bring this cause of action on behalf of themselves and on behalf of the Class, or in the alternative, on behalf of the California Class.

71. As a result of their reliance on Defendants’ misrepresentations and omissions, Class Members suffered an ascertainable loss of money, property, and/or value of their Vega Food and Protein Powders.

72. California Business & Professions Code § 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or misleading advertising.”

73. Under the UCL, a business act or practice is “unlawful” if it violates any established state or federal law.

74. Defendants’ false and misleading advertising of Vega Food and Protein Powders therefore was and continues to be “unlawful” because it contains unlawful non-functional slack fill as detailed herein in violation of 21 C.F.R. § 100.100.

75. Furthermore, Defendants’ acts, conduct and practices also constituted violations of California’s Consumers Legal Remedies Act; and violations of California’s False Advertising Law.

76. By its conduct, Defendants have engaged in unfair competition and unlawful, unfair, and fraudulent business practices.

77. Defendants’ unfair or deceptive acts or practices occurred repeatedly in Defendants’ trade or business and were capable of deceiving a substantial portion of the purchasing public.

78. As a direct and proximate result of Defendants’ unfair and deceptive practices, Plaintiffs and Class Members have suffered and will continue to suffer

1 actual damages. Defendants have been unjustly enriched and should be required  
2 to make restitution to Plaintiffs and the Class pursuant to §§ 17203 and 17204 of  
3 the Business & Professions Code.

4 **FOURTH CAUSE OF ACTION**  
5 **(For Unjust Enrichment)**

6 79. Plaintiffs incorporate by reference the allegations contained in each  
7 and every paragraph of this Complaint.

8 80. Plaintiffs bring this cause of action on behalf of themselves and on  
9 behalf of the Class, or, in the alternative, on behalf of the California Class,  
10 against Defendants.

11 81. As a direct and proximate result of Defendants' misrepresentations,  
12 Defendants have profited through the sale of Vega Food and Protein Powders.  
13 Although some of the powders can be purchased through Defendants' agents, the  
14 money from the products' sales flows directly back to Defendants.

15 82. Defendants have therefore been unjustly enriched as a result of  
16 Defendants' deceptive business practices in advertising, marketing, and selling  
17 the Vega Food and Protein Powders through the use of funds that earned interest  
18 or otherwise added to Defendants' profits when said money should have  
19 remained with Plaintiffs and Class Members.

20 83. As a result of the Defendants' unjust enrichment, Plaintiffs and  
21 Class Members have suffered damages.

22 **PRAYER FOR RELIEF**

23 84. Plaintiffs, on behalf of themselves, and all others similarly situated,  
24 requests the Court to enter judgment against Defendants, as follows:

- 25 a. An order certifying the proposed Class and Sub-Class,  
26 designating Plaintiffs as named representatives of the Class,  
27 and designating the undersigned as Class Counsel;  
28 b. An order enjoining Defendants from further deceptive

- 1 advertising, sales, and other business practices with respect to
- 2 its Vega Food and Protein Powders;
- 3 c. A declaration requiring Defendants to comply with the
- 4 various provisions of California’s False Advertising Law and
- 5 CLRA alleged herein and to make all the required
- 6 representations;
- 7 d. An award to Plaintiffs and the Class for compensatory,
- 8 exemplary, and statutory damages, including interest, in an
- 9 amount to be proven at trial;
- 10 e. A declaration that Defendants must disgorge, for the benefit
- 11 of the Class, all or part of the ill-gotten profits it received
- 12 from the sale of Vega Food and Protein Powders, or make full
- 13 restitution to Plaintiffs and Class Members;
- 14 f. An award of attorneys’ fees and costs, as allowed by law;
- 15 g. An award of attorneys’ fees and costs pursuant to California
- 16 Code of Civil Procedure § 1021.5;
- 17 h. An award of pre-judgment and post-judgment interest, as
- 18 provided by law;
- 19 i. Leave to amend the Complaint to conform to the evidence
- 20 produced at trial; and
- 21 j. Such other relief as may be appropriate under the
- 22 circumstances.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiffs hereby demand a trial by jury of any and all issues in this action so  
25 triable.

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Dated: January 30, 2019

Respectfully submitted,  
Capstone Law APC

By: /s/ Tarek H. Zohdy  
Tarek H. Zohdy  
Cody R. Padgett  
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