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9 Rebecca Padilla and Kimberly Owens

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

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

15 Plaintiffs,

16 v.

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

20 Defendants.
21
22

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

Hon. John A. Kronstadt

**SECOND AMENDED CLASS
ACTION COMPLAINT FOR:**

- 1) Violations of California's
Consumers Legal Remedies Act,
Cal Civ. Code 1750 *et seq.*
- 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

INTRODUCTION

1
2 1. Plaintiffs Rebecca Padilla and Kimberly Owens (“Plaintiffs”) bring
3 this action on behalf of themselves and on behalf of all others similarly situated,
4 against Defendants Sequel Naturals ULC and Vega US LLC (“Defendants”),
5 based on Defendants’ misleading business practices with respect to the packaging
6 and sale of Vega Protein & Greens, Vega One Organic All-in-One Shake, and
7 Vega One All-in-One Shake (hereafter, at times collectively referred to as “Vega
8 Food and Protein Powders”).

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

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

24 4. Plaintiffs and other consumers have reasonably relied on
25 Defendants’ deceptive packaging in purchasing the Vega Food and Protein
26 Powders. If Plaintiffs and other consumers had known the actual amount of
27 protein or meal replacement powder contained in the packaging, they would not
28 have purchased the Vega Food and Protein Powders or would have paid less for

1 them. Therefore, Plaintiffs and other consumers have suffered injury-in-fact as a
2 result of Defendants' deceptive practices, including, but not limited to, out-of-
3 pocket costs incurred in purchasing the overvalued Vega Food and Protein
4 Powders.

5 **PARTIES**

6 **Plaintiff Rebecca Padilla**

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

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

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

24 8. If Plaintiff had known at the time of purchase that the Vega Protein
25 & Greens container largely contained empty space and was less than halfway
26 filled with the actual powder, she would not have purchased it or would have
27 paid less for the product. Plaintiff continues to visit stores that sell Vega Food
28 and Protein Powders, but she cannot determine if they are still substantially

1 under-filled. She would purchase a Vega Food and Protein Powder in the future
2 if the labeling and packaging was no longer misleading and deceptive, such that
3 she could determine prior to purchase, the level to which the containers are
4 actually filled with protein powder as opposed to empty space.

5 **Plaintiff Kimberly Owens**

6 9. Plaintiff Kimberly Owens is a California citizen who resides in Pico
7 Rivera, California. In or around August 2018, Plaintiff Owens purchased three
8 containers (medium) of chocolate-flavored Vega Protein & Greens powder from
9 GNC, a Vega authorized retailer, within Los Angeles County.

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

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

28 12. If Plaintiff had known at the time of purchase that the Vega Protein

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

9 **DEFENDANTS**

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

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

22 15. At all relevant times, Defendants were, and are, engaged in the
23 business of designing, testing, manufacturing, marketing, distributing, and
24 selling the Vega Food and Protein Powders in Los Angeles County and
25 throughout the United States of America.

26 **JURISDICTION**

27 16. This is a class action.

28 17. This Court has subject matter jurisdiction over this matter pursuant

1 to 28 U.S.C. § 1331 because this action arises under the Constitution or laws of
 2 the United States and the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) and
 3 (6), in that, as to each Class defined herein:

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

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

15 VENUE

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

20 20. In addition, a substantial part of the events or omissions giving rise
 21 to these claims, and a substantial part of the property that is the subject of this
 22 action, are in this district. Plaintiff Padilla's Declaration, as required under
 23 California Civil Code § 1780(d) (but not pursuant to *Erie* and federal procedural
 24 rules), reflects that a substantial part of the events or omissions giving rise to the
 25 claims alleged herein occurred, or a substantial part of property that is the subject
 26 of this action, is situated in Los Angeles County, California. It is attached as
 27 **Exhibit 1.**

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

FACTUAL ALLEGATIONS

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

23. Pursuant to California Business and Professions Code §12606.2(c):
A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack fill. Slack fill is the difference between the actual capacity of a container and 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:

- (1) Protection of the contents of the package.
- (2) The requirements of machines used for enclosing the contents of the package.
- (3) Unavoidable product settling during shipping and handling.
- (4) The need for the package to perform a specific function, such as where packaging plays a role in the preparation or consumption of a food, if that function is inherent to the nature of the food and is clearly communicated to consumers.
- (5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value that is both significant in proportion to the value of the product and independent of its function to hold the food, such as a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed or durable commemorative or promotional packages.
- (6) 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 food labeling exclusive of any vignettes or other nonmandatory designs or

label information, discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.

(7) One or more of the following:¹

(A) The dimensions of the product or immediate product container are visible through the exterior packaging.

(B) 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 depiction is the “actual size” of the product or immediate product container. If there are multiple units of the same product in a package, only one “actual size” depiction is required per same size product or immediate product container.

(C) A line or a graphic that represents the product or product fill and a statement communicating that the line or graphic represents the product or product fill such as “Fill Line,” both of which are clearly and conspicuously depicted on exterior packaging or the immediate product container if visible at point of sale. If the product is subject to settling, the line shall represent the minimum amount of product after settling.

(8) The mode of commerce does not allow the consumer to view or handle the physical container or product.

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

A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein.

¹ After Plaintiffs filed their initial complaint, the California legislature enacted Assembly Bill 2632, which became effective January 1, 2019, amending the safe harbor provisions to include §§12606.2(c)7-8.

1 Nonfunctional slack-fill is the empty space in a package that is filled to
2 less than its capacity for reasons other than:

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

4 (2) The requirements of the machines used for enclosing the contents in
5 such package;

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

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

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

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

23 25. Defendants' Vega Food and Protein Powders' packaging fits
24 squarely within the foregoing definition of non-functional slack fill under both
25 California and federal law and does not meet any of the requirements under Cal.
26 Bus. & Prof. Code § 12606.2(c)(1)-(8) or 21 C.F.R. § 100.100(a)(1)-(6).

27 26. As depicted in the photos below from the Vega official website²,
28 every flavor and size of the Vega Food and Protein Powders are sold in a fully-
enclosed opaque container that does not allow consumers to even partially view
the contents inside. Therefore, the packaging "does not allow the consumer to
fully view its contents." 21 C.F.R. § 100.100(a).

² <https://myvega.com/>

Vega Protein & Greens



Vega One



1 27. Vega Food and Protein Powders' packaging is "filled to be
2 misleading" due to the amount of slack fill it employs that is non-functional.
3 The Vega Food and Protein Powders' packaging is only filled to approximately
4 50-60% of the container, including the space taken by the internally packaged
5 plastic scoop, and the packaging does not indicate the capacity of the container
6 as it relates to the amount of product contained therein, thus preventing a
7 reasonable consumer from determining the striking difference in volume
8 between the capacity of the container and the fill amount.

9 28. The Vega Food and Protein Powders contain "slack fill," as defined
10 in Cal. Bus. & Prof. Code § 12606.2(c) and 21 C.F.R. 100.100(a), because the
11 empty space in the packaging is filled to substantially less than its capacity. On
12 information and belief, each of the Vega products encompassed in what has been
13 defined herein as Vega Food and Protein Powders, have substantially similar
14 *ingredients, density, and fill levels*; and thus, contain substantially similar non-
15 functional slack fill based on the following facts.

16 29. First, according to their labels, all Vega Food and Protein Powders
17 contain at least 20 grams of protein per serving, 5 grams of fat per serving, and
18 each of the following main ingredients: pea protein, pea starch, spinach powder,
19 kale powder, stevia leaf extract, xanthum gum, and sachal inchi powder.
20 Moreover, each flavor contains additional substantially similar ingredients. For
21 example, Vega Protein & Greens (Chocolate), Vega One All-in-One Organic
22 (Chocolate), and Vega One All-in-One (Chocolate) contain the following
23 ingredients, respectively:

24 **INGREDIENTS:** PEA PROTEIN, COCOA POWDER
25 (PROCESSED WITH ALKALI), PEA STARCH, NATURAL
26 FLAVORS, SPINACH POWDER, BROWN RICE PROTEIN,
27 ORGANIC KALE POWDER, STEVIA LEAF EXTRACT, PAPAIN
28 POWDER, XANTHAN GUM, SACHA INCHI POWDER,
ORGANIC ALFALFA GRASS POWDER, BROCCOLI
POWDER. MANUFACTURED IN A FACILITY THAT ALSO
PROCESSES PEANUTS, DAIRY, SOY, EGG, AND TREE NUTS.

INGREDIENTS: PEA PROTEIN†, COCOA POWDER† (PROCESSED WITH ALKALI), VEGA ONE VEGGIES AND FRUITS BLEND† (CARROT JUICE POWDER†, SPINACH POWDER†, ACEROLA CHERRY JUICE POWDER†, CHARD POWDER†, KALE POWDER†, LETTUCE POWDER†, POMEGRANATE JUICE POWDER†, BLUEBERRY JUICE POWDER†, ACAI POWDER†), GOLDEN FLAXSEED†, PEA STARCH†, NATURAL FLAVORS, AGAVE INULIN POWDER†, QUINOA SPROUTS† (SPROUTED IN WATER WITH VITAMINS B1, B2, B3, B5, B6, AND B7), CHIA SEED POWDER†, MACA ROOT POWDER†, SUNFLOWER SEED PROTEIN†, PUMPKIN SEED PROTEIN†, SPIRULINA†, SACHA INCHI POWDER†, STEVIA EXTRACT†, PROBIOTICS (BACILLUS COAGULANS), SEA SALT, XANTHAN GUM, BROMELAIN, MUSHROOM POWDER†. †ORGANIC MANUFACTURED IN A FACILITY THAT ALSO PROCESSES PEANUTS, DAIRY, SOY, EGG, AND TREE NUTS.

INGREDIENTS: PEA PROTEIN, FLAXSEED, COCOA POWDER (PROCESSED WITH ALKALI), PEA STARCH, ORGANIC ACACIA GUM, NATURAL FLAVOR, HEMP PROTEIN, SACHA INCHI PROTEIN, ORGANIC GELATINIZED MACA ROOT, ORGANIC BROCCOLI, ORGANIC SPIRULINA, ORGANIC KALE, ORGANIC MARINE ALGAE, DRIED FRUIT & VEGETABLE BLEND (SPINACH, BROCCOLI, CARROT, BEET, TOMATO, APPLE, CRANBERRY, ORANGE, CHERRY, BLUEBERRY, STRAWBERRY, MUSHROOM), CHLORELLA VULGARIS, PAPAIN, CITRIC ACID, BEET ROOT (FOR COLOR), STEVIA LEAF EXTRACT, PROBIOTICS (BACILLUS COAGULANS), DRIED ANTIOXIDANT FRUIT BLEND (GRAPE SEED EXTRACT, ORGANIC POMEGRANATE, ACAI, MANGOSTEEN, ORGANIC GOJI, ORGANIC MAQUI). MANUFACTURED IN A FACILITY THAT ALSO PROCESSES PEANUTS, DAIRY, SOY, EGG, AND TREE NUTS.

30. Second, all Vega Food and Protein Powders are sold in identical small, medium, and large containers, based on their measured height and widths.³ Each small container has a capacity, or volume, of approximately 1,850 cubic centimeters (cc), not including the lid space, and is engraved with a large number 4 on the bottom. Each medium container has a capacity, or volume, of approximately 2,080 cc, and is engraved with “P19010” on the bottom. Each large container has a capacity, or volume, of approximately 2,832 cc, and is engraved with “P19011” on the bottom.

31. Lastly, as depicted in the charts below, every Vega Food and Protein

³ Vega One is not available in the medium container but the small and large options are identical in size to Vega Protein & Greens small and large options.

Powder sold in the small, medium, and large containers is filled to approximately 50-60% of its capacity, *regardless of the container size and slight variations in density*. Thus, each container contains substantially similar non-functional and *significant* slack-fill, which is unlawful under both state and federal laws. The columns identified below are based on the container volumes identified above, the volume of the scoops contained therein, and weights per the respective products' packaging including the net weight and weight per scoop.

Small Container

		Net Wt. (actual)*	Density**	Net Wt. (capacity)***	Fill Level (actual)
Vega Protein & Greens	Chocolate	521g	0.524	969.4g	53%
	Vanilla	526g	0.476	880.6g	59%
	Berry	522g	0.46	851g	61%
	Coconut Almond	518g	0.476	880.6g	58%
	Salted Caramel	510g	0.476	880.6g	57%
Vega One Organic	Chocolate	375g	0.446	825.1g	45%
	French Vanilla	344g	0.404	747.4g	46%
	Berry	344g	0.404	747.4g	46%
	Coconut Almond	344g	0.404	747.4g	46%
	Plain	382g	0.404	747.4g	51%
	Mocha	359g	0.425	786.25g	45%
	Chocolate Mint	359g	0.425	786.25g	45%
Vega One	Chocolate	461g	0.489	904.65g	51%
	French Vanilla	414g	0.436	806.6g	51%
	Berry	425g	0.446	825.1g	51%
	Coconut Almond	417g	0.446	825.1g	50%
	Natural	431g	0.414	765.9g	56%
	Vanilla Chai	437g	0.468	865.8g	50%
	Mocha	418g	0.446	825.1g	50%

*in grams, based on packaging as labeled by Vega

**in cc per gram, based on scoop volume (cc) and weight (as labeled on packaging)

***in grams, based on container volume and powder density

Medium Container

		Net Wt. (actual)*	Density**	Net Wt. (capacity)***	Fill Level (actual)
Vega Protein & Greens	Chocolate	618g	0.524	1090g	56%
	Vanilla	614g	0.476	990g	61%
	Berry	609g	0.46	957g	63%
	Plain	586g	0.444	923.5g	63%
	Tropical	590g	0.492	1023.4g	57%

*in grams, based on packaging as labeled by Vega

**in cc per gram, based on scoop volume (cc) and weight (as labeled on packaging)

***in grams, based on container volume and powder density

Large Container

		Net Wt. (actual)*	Density**	Net Wt. (capacity)***	Fill Level (actual)
Vega Protein & Greens	Chocolate	814g	0.524	1484g	55%
	Vanilla	760g	0.476	1348g	56%
	Berry	754g	0.46	1302.7g	58%
	Coconut Almond	750g	0.476	1348g	55%
	Salted Caramel	750g	0.476	1348g	55%
Vega One Organic	Chocolate	708g	0.446	1263g	56%
	French Vanilla	689g	0.404	1144g	60%
	Berry	688g	0.404	1144g	60%
	Coconut Almond	687g	0.404	1144.g	60%
	Plain	763g	0.404	1144g	66%
	Mocha	718g	0.425	1203.6g	59%
Vega One	Chocolate Mint	678g	0.425	1203.6g	56%
	Chocolate	876g	0.489	1385g	63%
	French Vanilla	827g	0.436	1235g	67%
	Berry	850g	0.446	1263g	67%
	Coconut Almond	834g	0.446	1263g	66%
	Natural	862g	0.414	1172.4g	73%
	Vanilla Chai	874g	0.468	1325g	66%
	Mocha	836g	0.446	1263g	66%

*in grams, based on packaging as labeled by Vega

**in cc per gram, based on scoop volume (cc) and weight (as labeled on packaging)

***in grams, based on container volume and powder density

1 32. Based on the similar weight, density, capacity and fill levels,
2 ingredients, package sizes and engravings on the packages of the Vega Protein
3 Powders, Plaintiff is informed and believes that all flavors and sizes of the Vega
4 Protein and Greens, Vega One and Vega One Organic powders were produced in
5 the same or similar facilities using the same or similar equipment and
6 methodology.

7 33. The substantial slack fill contained in the Vega Food and Protein
8 Powders, as it appears to consumers after purchase, is further exemplified in the
9 photos below, depicting the unaltered contents of each container size and
10 revealing the substantial empty space contained therein.





34. The amount of product that a consumer receives when purchasing Vega Food and Protein Powders is clearly filled substantially less than its capacity because it only fills approximately 50-60% of the capacity of the container in which it is packaged.

35. Moreover, the Vega Food and Protein Powders' slack fill is non-functional, and thus, unlawful, because it does not fit within any of the exclusive, enumerated safe harbor provisions set forth in 21 C.F.R. 100.100(a) and Cal. Bus. & Prof. Code § 12606.2(c):

- a. the slack fill does not protect the contents of the packaging, as the product is not fragile or breakable (*see* 100.100(a)(1) and 12606.2(c)(1));
- b. there is no reason that machines used for enclosing the contents of the package would require an outer container which can hold significantly more product than it actually does, especially when

1 the machines used by Defendants are capable of producing
2 several sizes of containers, as evidenced by the various-sized
3 containers of the Vega Food and Protein Powders ranging from
4 small to large and the fact that other powders sold by Vega in
5 identical containers do not contain substantial slack fill (*see*
6 100.100(a)(2) and 12606.2(c)(2));

7 c. the slack fill is not necessary to accommodate product settling, as
8 fine powder is not the sort of product that “settles” significantly
9 enough to require double the amount of space; in fact, fine
10 powders are the least likely to “settle” because they fill every
11 space of their containers, similar to sand, such that if there is any
12 settling, it is negligible and would not result in 50% of the
13 container being empty (*see* 100.100(a)(3) and 12606.2(c)(3));

14 d. the packaging does not perform a specific function other than
15 containing the powder and is not used during the preparation of
16 the food or protein shakes, as the slack fill is not necessary to
17 facilitate mixing, shaking, or dispensing the products because the
18 product is not intended for mixing or shaking within the container
19 and does not dispense the product nor is such function inherent to
20 the nature of the food or communicated to consumers (*see*
21 100.100(a)(4) and 12606.2(c)(4);

22 e. the packaging is not decorative or commemorative, does not state
23 or suggest that it is intended to be reused, and does not have value
24 which is significant in proportion to the value of the product
25 independent of containing the food (*see* 100.100(a)(5) and
26 12606.2(c)(5));

27 f. the container does not need to be significantly larger than its fill
28 to accommodate necessary labeling information, as there are

1 several sized containers available for the Vega Products, as well
2 as comparable products in various, smaller containers produced
3 by competitors (*see* 100.100(a)(6) and 12606.2(c)(6));

4 g. the dimensions of the product are not visible through the exterior
5 packaging, as evidenced in ¶ 26 (*see* 12606.2(c)(7)(A));

6 h. the actual size of the product is not depicted on any side of the
7 exterior packaging as evidenced in ¶ 26 (*see* 12606.2(c)(7)(B));

8 i. the exterior packaging does not have a line or a graphic that
9 represents the product or product fill and a statement
10 communicating that the line or graphic represents the product or
11 product fill such as “Fill Line” as evidenced in ¶ 26 (*see*
12 12606.2(c)(7)(C)); and

13 j. the product is sold in a manner that allows consumers to view or
14 handle the outer container of the product prior to purchase
15 because it is sold in numerous brick-and-mortar retail locations
16 (*see* 12606.2(c)(8)).

17 36. Defendants’ packaging is misleading to reasonable consumers,
18 including Plaintiffs and potential class members, and serves only to maximize
19 Defendants’ profits by forcing consumers to unknowingly pay more than they
20 otherwise would have had they known the Powders contained substantial non-
21 functional slack fill.

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

27 38. In reasonable reliance on the size and style of their packaging,
28 Plaintiffs and Class Members purchased Vega Food and Protein Powders.

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

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

15 41. Each consumer has been exposed to the same or substantially
16 similar deceptive practice, with the same misleading size and style of packaging,
17 containing only approximately 50-60% of the container's capacity with powder
18 and the rest with empty space (non-functional slack fill).

19 42. 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 43. As a result of their reliance on Defendants' 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 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 packaging only contained 50-60% of the product that they 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 packaging only
 9 contained approximately 50-60% of the product that they had the capacity to
 10 hold. Therefore, Plaintiffs and Class Members suffered injury-in-fact and lost
 11 money as a result of Defendants' false, unfair, and fraudulent practices, as
 12 described herein.

13 44. Further, as a result of its deceptive marketing and unfair competition
 14 with other similar manufacturers and brands, Defendants realized sizable profits.

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

19 **CLASS ALLEGATIONS**

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

25 47. Plaintiffs' proposed Class and Sub Class(es) are defined as:

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

California Sub-Class: All individuals who purchased one or more containers of Vega Food and Protein Powders in California from four years prior to the filing of the complaint to the time of class certification.

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

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

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

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

51. **Typicality:** Plaintiffs’ claims are typical of the claims of the Class in that Plaintiffs, like all Class Members, were exposed to Defendant’s misleading packaging, purchased a Vega Food and Protein Powder in reliance on

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

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

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

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

1 f. Whether Defendants knew or reasonably should have known of their
 2 deceptive representations and omissions relating to its Vega Food
 3 and Protein Powders' packaging; and,

4 g. Whether Defendants are obligated to inform Class Members of their
 5 right to seek reimbursement for having paid a premium for Vega
 6 Food and Protein Powders in reliance on Defendant's
 7 misrepresentations.

8 54. Predominance and Superiority: Plaintiffs and Class Members have
 9 all suffered and will continue to suffer harm and damages as a result of
 10 Defendants' unlawful and wrongful conduct. A class action is superior to other
 11 available methods for the fair and efficient adjudication of the controversy.
 12 Absent a class action, most Class Members would likely find the cost of
 13 litigating their claims prohibitively high and would therefore have no effective
 14 remedy at law. Because of the relatively small size of the individual Class
 15 Members' claims, it is likely that only a few Class Members could afford to seek
 16 legal redress for Defendants' misconduct. Absent a class action, Class Members
 17 will continue to incur damages, and Defendants' misconduct will continue
 18 without remedy. Class treatment of common questions of law and fact would
 19 also be a superior method to multiple individual actions or piecemeal litigation in
 20 that class treatment will conserve the resources of the courts and the litigants and
 21 will promote consistency and efficiency of adjudication.

22 **FIRST CAUSE OF ACTION**

23 **(Violation of California's Consumers Legal Remedies Act, California** 24 **Civil Code § 1750, *et seq.*)**

25 55. Plaintiffs re-allege and incorporate by reference each and every
 26 allegation contained in the preceding paragraphs of this Complaint as though
 27 fully set forth herein.

28 56. Plaintiffs brings this cause of action on behalf of themselves and on

1 behalf of the members of the CLRA Sub-Class.

2 57. Defendants are “person(s)” as defined by California Civil Code §
3 1761(c).

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

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

13 60. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or
14 services with intent not to sell them as advertised.” By deceitfully packaging
15 Vega Food and Protein Powders in a container with significantly greater volume
16 than the product contained therein, and then intentionally selling Vega Food and
17 Protein Powders in a manner that does not meet consumer expectations as to the
18 quantity of powder contained in the packaging, Defendants have violated section
19 1770(a)(9) of the CLRA.

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

25 62. Plaintiffs and members of the CLRA Sub-Class have reasonably and
26 justifiably relied on Defendants’ misleading and fraudulent conduct when
27 purchasing Vega Food and Protein Powders. Moreover, Defendants’ fraudulent
28 and misleading conduct is material in that a reasonable consumer would have

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

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

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

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

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

23 **SECOND CAUSE OF ACTION**

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

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

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

1 69. California Business & Professions Code § 17500 prohibits unfair,
2 deceptive, untrue, and misleading advertising in connection with the disposal of
3 personal property (among other things), including, without limitation, false
4 statements as to the use, worth, benefits, or characteristics of the property.

5 70. Defendants have represented and continues to represent to the
6 public, including Plaintiffs and Class Members, through its deceptive packaging,
7 that more product is contained within the Vega Food and Protein Powders than is
8 actually contained. Defendants' representation is misleading because the
9 packaging contains 50-60% of the amount of product compared to what the
10 packaging could potentially hold, and fill level that reasonable consumers
11 expect. Defendants made such untrue or misleading advertisements with the
12 intent to dispose of said merchandise.

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

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

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

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

THIRD CAUSE OF ACTION

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

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

76. 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.

77. 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.

78. 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."

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

80. 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.

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

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

83. 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.

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

8 86. 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 87. 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 88. 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 89. As a result of the Defendants' unjust enrichment, Plaintiffs and
21 Class Members have suffered damages.

22 **PRAYER FOR RELIEF**

23 90. 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.
26
27
28

1 Dated: August 16, 2019

Respectfully submitted,

2 Capstone Law APC

3
4 By: /s/ Mark A. Ozzello

Mark A. Ozzello

Tarek H. Zohdy

Cody R. Padgett

Trisha K. Monesi

7 Attorneys for Plaintiffs Rebecca Padilla
8 and Kimberly Owens

DECLARATION OF REBECCA PADILLA

I, REBECCA PADILLA, declare under penalty of perjury as follows:

1. I make this declaration based upon my personal knowledge except as to those matters stated herein that are based upon information and belief, and as to those matters I believe them to be true. I am over the age of eighteen, a citizen of the State of California, and a Plaintiff in this action.

2. Pursuant to California Civil Code § 1780(d), this Declaration is submitted in support of Plaintiff's Selection of Venue for the Trial of Plaintiffs' Cause of Action alleging violation of California's Consumers Legal Remedies Act.

3. I reside in Long Beach, California, which is in the County of Los Angeles. I purchased the Vega Protein & Greens powder that is the subject of this lawsuit in the County of Los Angeles.

4. I am informed and believe that Defendant WhiteWave is a corporation organized and in existence under the laws of the State of Delaware and conducts business throughout the State of California. I am informed and believe that Defendant Danone US, LLC is a limited liability company organized and in existence under the laws of the State of Delaware and is registered to conduct business throughout the State of California. I am informed and believe that Defendant Danone North America, LLC ("Danone NA") is a limited liability company organized and in existence under the laws of the State of Delaware and conducts business throughout the State of California. On information and belief, all Defendants conduct business in Los Angeles County.

5. Based on the facts set forth herein, this Court is a proper venue for the prosecution of Plaintiffs' Cause of Action alleging violation of California's Consumers Legal Remedies Act because the Vega Food and Protein Powders that are the subject of this lawsuit are situated here, and a substantial portion of the events giving rise to the claims occurred here.

1 6. I declare under penalty of perjury under the laws of California and
2 the United States of America that the foregoing is true and correct.

3 Executed on October 30, 2018, in Long Beach, California.

4 DocuSigned by:

5 *Rebecca Padilla*

6 320A912213914EF...

7 Rebecca Padilla