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Attorneys for Plaintiff HARLAN ZABACK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN DIEGO**

Harlan Zaback, individually and on behalf of  
all others similarly situated,

Plaintiff,

vs.

KELLOGG SALES COMPANY; and DOES  
1 through 10, inclusive,

Defendants.

Case No.: 37-2019-00067808-CU-BT-CTL

**CLASS ACTION COMPLAINT FOR:**

- (1) **Violations of the California Consumers Legal Remedies Act, Civil Code § 1750, *et seq.***
- (2) **Unfair Business Practices, California Business & Professions Code §§ 17200, *et seq.***
- (3) **Violation of the California False Advertising Law, California Business & Professions Code §§ 17500, *et seq.***
- (4) **Quasi Contract (Unjust Enrichment) Seeking Restitution**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Harlan Zaback ("Plaintiff") brings this action on behalf of himself and all others  
2 similarly-situated against Kellogg Sales Company ("Kellogg") and alleges, on information and  
3 belief, except for information based on personal knowledge, as follows:

#### 4 INTRODUCTION

5 1. Through false and deceptive packaging and advertising, Defendant intentionally  
6 misleads consumers into believing that its product "Bear Naked Granola Fit V'nilla Almond" is  
7 made with vanilla flavoring derived exclusively from vanilla beans when the ingredient list reveals  
8 otherwise.

9 2. At all relevant times, Defendant has packaged, advertised, marketed, distributed,  
10 and sold "Bear Naked Granola Fit V'nilla Almond" to consumers via retail stores and online retail  
11 platforms throughout the state of California with the misrepresentation that "Bear Naked Granola  
12 Fit V'nilla Almond" is made with vanilla flavoring derived exclusively from vanilla beans when  
13 the ingredient list reveals otherwise.

14 3. Plaintiff and other consumers purchased "Bear Naked Granola Fit V'nilla Almond"  
15 because they reasonably believed, based on Defendant's packaging and advertising that "Bear  
16 Naked Granola Fit V'nilla Almond" is made with vanilla flavoring derived exclusively from  
17 vanilla beans. Had Plaintiff and other consumers known that "Bear Naked Granola Fit V'nilla  
18 Almond" is not flavored with flavoring derived exclusively from vanilla beans, they would not  
19 have purchased the "Bear Naked Granola Fit V'nilla Almond" or would have paid significantly  
20 less for it. As a result, Plaintiff and other consumers have been deceived and have suffered  
21 economic injury.

22 4. Plaintiff seeks relief in this action individually, and on behalf of all other similarly  
23 situated individuals who purchased "Bear Naked Granola Fit V'nilla Almond" during the relevant  
24 statute of limitations period, for violations of California's Consumer Legal Remedies Act  
25 ("CLRA"), California Civil Code section 1750, *et seq.*, California's Unfair Competition Law  
26 ("UCL"), California Business & Professions Code section 17200, *et seq.*, California's False  
27 Advertising Law ("FAL"), California Business & Professions Code section 17500, *et seq.*, and for  
28 common law fraud, intentional misrepresentation, negligent misrepresentation, and unjust

1 enrichment.

2 5. Plaintiff seeks to represent a Class (defined *infra* in paragraph 49) (hereinafter,  
3 referred to as the "Class").

4 6. As a result of the unlawful scheme alleged herein, Defendant has been able to  
5 overcharge Plaintiff and other consumers for its product, induce purchases that would otherwise  
6 not have occurred, and/or obtain wrongful profits. Defendant's misconduct has caused Plaintiff  
7 and other consumers to suffer monetary damages. Plaintiff, on behalf himself and other similarly  
8 situated consumers, seek damages, restitution, declaratory and injunctive relief, and all other  
9 remedies provided by applicable law or this Court deems appropriate.

#### 10 **JURISDICTION AND VENUE**

11 7. The amount in controversy is sufficient to implicate the general jurisdiction of the  
12 Superior Court of San Diego.

13 8. This Court has subject matter jurisdiction pursuant to California Business and  
14 Professions Code, Sections 17203, 17204 and Civil Code, Section 1750.

15 9. This Court has personal jurisdiction over Defendant because it has continuous and  
16 systematic contacts with the state of California, County of San Diego. Plaintiff's claims arise out  
17 of Defendant's forum related activities.

18 10. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
19 Sections 395 and 395.5, Business and Professions Code, Sections 17203, 17204, and Civil Code  
20 Section 1750 because Defendant conducts substantial business in this County. Venue is also  
21 proper because a substantial portion of the misconduct alleged herein occurred in the County of  
22 San Diego.

#### 23 **THE PARTIES**

24 11. Plaintiff Harlan Zaback is an individual that resides in the County of San Diego,  
25 California. Mr. Zaback purchased "Bear Naked Granola Fit V'nilla Almond" and in doing so saw  
26 and relied upon the representations on the packaging. Specifically, Mr. Zaback saw and relied on  
27 the following illustrations and representations on the packaging: use of the word "V'nilla" in the  
28 product's name on the front and back of the package; the words "naturally flavored" on front of

1 package immediately below the words "V'nilla Almond"; a vignette of vanilla beans with only the  
2 word "Vanilla" below it on the back of package; and the words "natural flavors" in package's  
3 ingredient list. Based on these representations, Mr. Zaback believed he was purchasing granola  
4 with vanilla flavoring derived exclusively from vanilla beans.

5 12. Mr. Zaback would not have purchased "Bear Naked Granola Fit V'nilla Almond"  
6 or would have paid significantly less for it had he known that it was not flavored with vanilla  
7 flavoring derived exclusively from vanilla beans. Therefore, Mr. Zaback suffered injury in fact  
8 and lost money as a result of Defendant's misleading, false, unfair, and fraudulent practices, as  
9 described herein. Despite being misled by Defendant, Mr. Zaback wishes to and is likely to  
10 continue purchasing "Bear Naked Granola Fit V'nilla Almond" in the future if it is flavored with  
11 vanilla flavoring derived exclusively from vanilla beans. To this day, Mr. Zaback regularly shops  
12 at stores where "Bear Naked Granola Fit V'nilla Almond" is sold. On some of these occasions,  
13 Mr. Zaback would like to buy the "Bear Naked Granola Fit V'nilla Almond," but has refrained  
14 from doing so because he cannot rely with any confidence on Defendant's representations  
15 regarding the vanilla flavor of the granola, especially since he was deceived in the past by  
16 Defendant. While Mr. Zaback currently believes that "Bear Naked Granola Fit V'nilla Almond,"  
17 is not flavored with vanilla flavoring derived exclusively from vanilla beans, he lacks personal  
18 knowledge as to Defendant's food production practices, which may change over time, leaving  
19 room for doubt in his mind as to whether "Bear Naked Granola Fit V'nilla Almond" is flavored  
20 with vanilla flavoring derived exclusively from vanilla beans. This uncertainty, coupled with his  
21 desire to purchase "Bear Naked Granola Fit V'nilla Almond," is an ongoing injury that can and  
22 would be rectified by an injunction enjoining Defendant from making the false and/or misleading  
23 representations alleged herein.

24 13. Defendant Kellogg Sales Company is a Delaware corporation with its principal  
25 place of business at One Kellogg Square, Battle Creek, Michigan 49016. Defendant is responsible  
26 for the production, marketing, and sales of "Bear Naked Granola Fit V'nilla Almond." Kellogg  
27 was founded in 1906 and is headquartered in Battle Creek, Michigan. Kellogg is a multi-billion-  
28 dollar food company that manufactures, markets, and sells a wide variety of cereals and snack

bars, among other foods. Among these food products, Kellogg distributes, markets, labels, and sells a variety of granola products in various flavors under its “Bare Naked” brand, including “Bear Naked Granola Fit V’nilla Almond” purchased by Plaintiff.

14. Plaintiff is unaware of the names of, and capacities of the defendants sued herein as DOES 1 through 10, inclusive. Plaintiff is informed and believes and upon that basis alleges that each of the defendants sued herein as DOES 1 through 10, inclusive, is responsible in some manner for the wrongs alleged herein and is legally liable to the Plaintiff. Plaintiff will amend this complaint to allege their true names and capacities when such information is ascertained.

### **FACTUAL ALLEGATIONS**

#### **A. Background**

15. Vanilla is one of the most popular and common ingredients in the world – whether as a primary flavor, a component of another flavor, or for its aroma.<sup>1</sup>

16. Vanilla is also the second most expensive flavoring ingredient after saffron.<sup>2</sup>

17. Because of its versatility, high demand, high value, and the relatively limited supply of vanilla bean crops, vanilla is constantly subject to adulteration, extension, and imitation efforts. For the same reasons, there is strong incentive for bad actors to pass off less expensive and lower quality components as natural *vanillin*<sup>3</sup> derived from the vanilla bean.

18. Tactics used to make consumers believe they are getting a product with only real vanilla include: adding synthetically produced *vanillin* derived from wood pulp, tree bark, coal tar,

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<sup>1</sup> In 1908, E. M. Chace, Assistant Chief of the Foods Division of the U.S. Department of Agriculture’s Bureau of Chemistry, noted “There is at least three times as much vanilla consumed [in the United States] as all other flavors together. See “The Manufacture of Flavoring Extracts,” Yearbook of the United States Department of Agriculture 1908 (Washington, DC: Government Printing Office, 1909) pp.333–42, 333; see also “Vanilla: The Cultural History of the World’s Most Popular Flavor and Fragrance” Rain, Patricia (2004).

<sup>2</sup> “Chemistry of Spices” Parthasarathy, V. A.; Chempakam, Bhageerathy; Zachariah, T. John (2008), p. 2.

<sup>3</sup> “Vanillin” is the primary component of the extract of the vanilla bean but does not have quite the same taste as the much more complex mixture of compounds found in natural vanilla extract.

1 or anal secretions from beaver castor sacs<sup>4</sup>; “extending” vanilla with various flavoring substances  
2 with no connection or resemblance to real vanilla beans; and utilizing Tonka bean extract which is  
3 a source of coumarin, a substance banned for use in food in the US since 1954 based on possible  
4 safety concerns<sup>5</sup>, among others.

5 19. Section 341 of the Federal Food, Drug, and Cosmetic Act (FFDCA) directs the  
6 Food and Drug Administration (FDA) to establish standards for food where necessary to promote  
7 honesty and fair dealing in the interest of consumers.<sup>6</sup>

8 20. The federal food standards, as FDA explains, are intended to “protect consumers  
9 from contaminated products and economic fraud” and have served as “a trusted barrier against  
10 substandard and fraudulently packaged food since their enactment in the 1938  
11 FFDCA.” Additionally, the federal food standards help create a “level playing field” environment  
12 where competitors cannot cut prices by selling inferior products.<sup>7</sup>

13 21. Federal food standards allow consumers to trust that a standardized food is actually  
14 what it purports to be by establishing explicit specifications for the standardized food. Another  
15 important part of a food standard is its assigned common or usual name under which only  
16 conforming products may be sold. Once a food has a promulgated standard, only products that  
17 comply with the compositional and applicable production requirements of the standard may be  
18 marketed under the food standard name. Put differently, a food labeled with the name of the food  
19 that is subject to the standard must be composed of the ingredients specified in the applicable  
20 standard.

21 22. FDA established a series of standards of identity specifically for vanilla products  
22 promulgated at 21 CFR 169.175 – 169.182 intended to alleviate potential consumer fraud by  
23 establishing specific requirements for vanilla extract and other standardized vanilla products. The  
24

25 <sup>4</sup> Mollie Bloudoff-Indelicato “Beaver Butts Emit Goo Used for Vanilla Flavoring”,  
26 October 1, 2013, <https://www.nationalgeographic.com/news/2013/10/beaver-butt-goo-vanilla-flavoring/#close>

27 <sup>5</sup> FDA, 2008. Mexican “vanilla” with coumarin: no bargain. FDA Consumer Health  
28 Information at [www.fda.gov/consumer](http://www.fda.gov/consumer).

<sup>6</sup> 21 U.S.C.A. § 341.

<sup>7</sup> FDA, 2007. FDA Consumer Update, “FDA’s Standards for High Quality Foods.”



1 need for consumers to be protected from fraudulent vanilla flavoring representations is reflected in  
2 the fact that vanilla flavorings are the only flavoring materials subject to a federal standard of  
3 identity.

4 23. FDA defines vanilla beans at 21 CFR 169.3(a): “The term vanilla beans means the  
5 properly cured and dried fruit pods of *Vanilla planifolia Andrews* and of *Vanilla tahitensis*  
6 *Moore*.”

7 24. The standards of identity set out by 21 CFR 169 for identifying vanilla extract and  
8 the other standardized vanilla products require standardized vanilla products be derived from  
9 “vanilla beans” as defined above under 21 CFR 169.3(a).

10 25. In addition to Section 341, Section 343 of the FFDCA dictates that a food shall be  
11 deemed to be misbranded “[i]f it purports to be or is represented as a food for which a definition  
12 and standard of identity has been prescribed by regulations as provided by section 341 of this title,  
13 unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food  
14 specified in the definition and standard, and, insofar as may be required by such regulations, the  
15 common names of optional ingredients (other than spices, flavoring, and coloring) present in such  
16 food.”<sup>8</sup>

17 26. Taken together, Sections 341 and 343 dictate where a flavor is represented as  
18 “vanilla” and/or tastes like vanilla it is subject to the standards of identity for vanilla flavorings set  
19 out by 21 CFR 169.175 – 169.182 and must comply with the labeling requirements for the  
20 standards. FDA’s implementing regulations follow the legal principle that standards of identity  
21 supersede the general flavor labeling regulations because where there “is a flavor for which a  
22 standard of identity has been promulgated,” then “it shall be labeled as provided in the standard.”<sup>9</sup>

23 27. If a food contains any artificial flavor which resembles or reinforces the characte-  
24 rizing flavor, the name of the food on the label should be accompanied by the common or usual  
25 name of the characterizing flavor and the word(s) ‘artificial’ or ‘artificially flavored’ e.g. ‘artificial  
26 vanilla,’ ‘artificially flavored vanilla’ or ‘vanilla artificially flavored.’

27  
28 <sup>8</sup> 21 U.S.C.A. § 343.

<sup>9</sup> 21 C.F.R. § 101.22(g)

28. Even if, for example, Defendant's "Bear Naked Granola Fit V'nilla Almond" (where vanilla is a characterizing flavor) is flavored with a combination that is part vanilla flavor derived exclusively from vanilla beans (like vanilla-extract) along with *vanillin* derived from some other "natural" but non-vanilla bean *vanillin* source (like tree bark), the proper labeling would be the general flavor and food labeling regulations at 21 CFR Section 101.22. In this example, though, the *vanillin* derived from tree bark is characterizing for vanilla and even though it qualifies as "natural flavor" under 21 CFR Section 101.22(a)(3) the labeling for the "Bear Naked Granola Fit V'nilla Almond" on the principal display panel must indicate that its granola contains an "artificial" flavor – the *vanillin* not from vanilla beans; and in such an example the ingredient statement could contain a statement of "natural and artificial flavors."<sup>10</sup> But even if this *is* the case with the vanilla flavor in "Bear Naked Granola Fit V'nilla Almond," Defendant's packaging for "Bear Naked Granola Fit V'nilla Almond" does neither.

**B. Defendant's Packaging and Marketing Are Misleading**

29. Defendant's "Bear Naked Granola Fit V'nilla Almond," along with the other Bare Naked granola products, is available to consumers nationwide from third-party retailers, including brick and mortar and online stores.

30. Defendant's packaging and marketing of "Bear Naked Granola Fit V'nilla Almond" is misleading to reasonable consumers, including Plaintiff and other Class members.

31. Plaintiff purchased "Bear Naked Granola Fit V'nilla Almond" with the belief, based on Defendant's misleading packaging, that it is flavored with vanilla flavoring derived exclusively from vanilla beans when close inspection of the ingredient list reveals otherwise.

32. A reasonable consumer is misled to believe "Bear Naked Granola Fit V'nilla Almond" is flavored with vanilla flavoring derived exclusively from vanilla beans based on the

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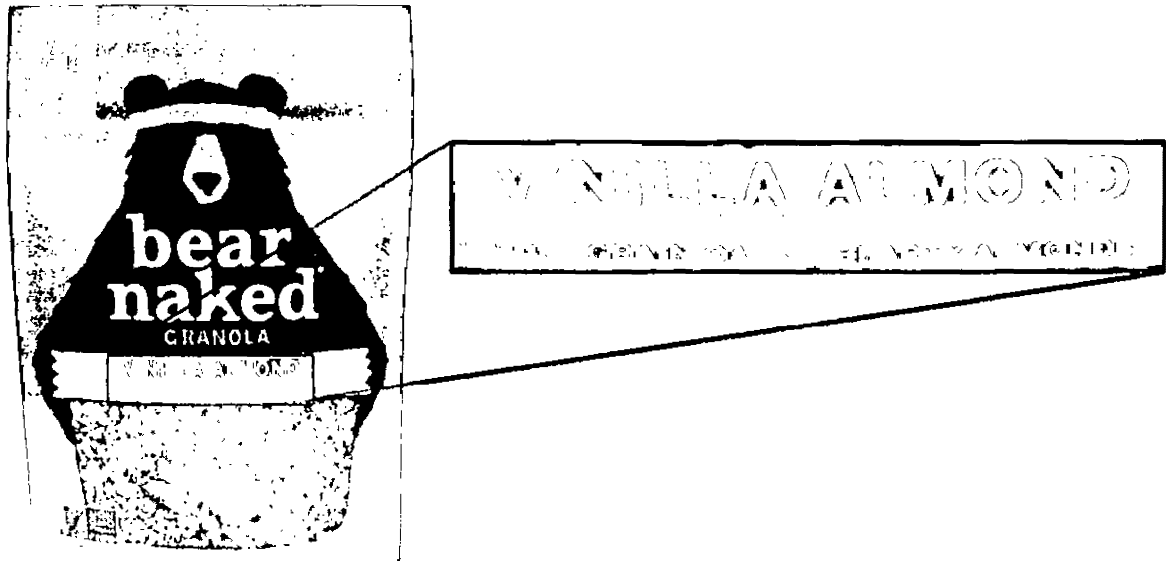
<sup>10</sup> The FDA has weighed in on this point, specifically, stating that a food containing *vanillin* even produced consistent with the FDA definition of natural flavor "can bear the term 'vanillin,' 'natural flavor,' or 'contains natural flavor' but the term natural flavor must not be used in such a way to imply that it is 'natural vanilla flavor' because it is not derived from vanilla beans." See: "Labeling Vanilla Flavorings and Vanilla-Flavored Foods in the U.S.," John B. Hallagan and Joanna Drake, The Flavor and Extract Manufacturers Association of the United States, April 25, 2018 article quoting May 6, 2009 Letter from FDA to a flavor industry member regarding "natural vanillin." (Emphasis added).



following illustrations and representations on Defendant's relevant packaging and advertising:

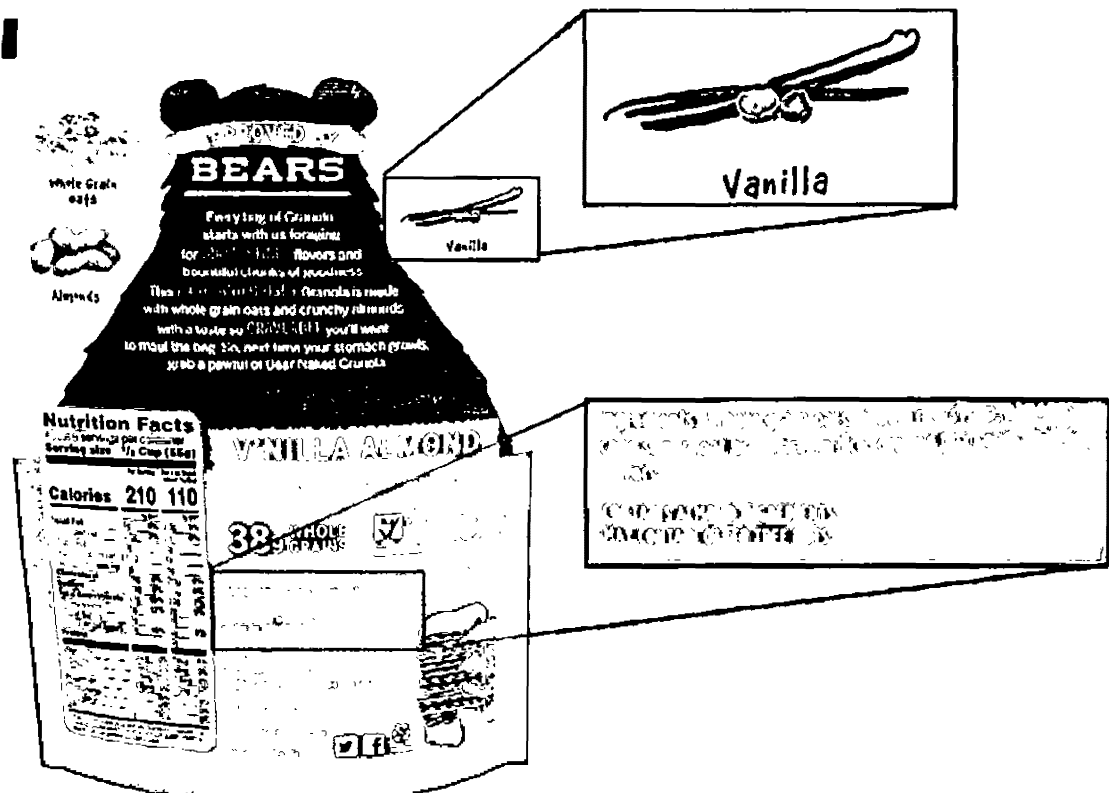
(1) use of the word "V'nilla" in the product's name;

(2) the words "naturally flavored" on front of package immediately below the words "V'nilla Almond";



(3) a vignette of vanilla beans with only the word "Vanilla" below it on the back of package;

(4) the words "natural flavors" in package's ingredient list;



**Bear Naked Granola Fit Vnilla Almond.** Not all bears hibernate for the winter. Some like to keep active all year round. These are the fit-minded bears behind V'nilla Almond Fit Granola, with Non-GMO project verified whole grain oats, almonds, and natural vanilla flavor. Perfect for the bear on the go.

**Ingredients:** Whole grain oats, brown rice syrup, almonds, cane sugar, oat bran, brown rice, ground flax seeds, natural flavors.

## WHERE TO BUY

[illegible]

-10-

1           33.     Ingredients: Whole grain oats, brown rice syrup, almonds, dried cane syrup, oat  
2     bran, brown rice, natural flavors, ground flax seeds. (Emphasis added).

3           34.     “Bear Naked Granola Fit V’nilla Almond” does not identify vanilla extract or  
4     vanilla flavoring as the flavoring source for its vanilla flavor, despite vanilla constituting a  
5     “characterizing flavor” based on its packaging, along with “almond.”

6           35.     As explained above, when faced with general and specific regulations, the general  
7     rule is to use the specific ones, in this case the specific regulations for vanilla as opposed to  
8     general flavoring.

9           36.     Defendant’s listing of “natural flavors” as opposed to vanilla flavor or vanilla  
10    extract is tacit acknowledgement that the “natural flavors” is not a synonym for the required  
11    vanilla ingredients. *Compare* 21 C.F.R. § 101.22 (natural flavor) *with* 21 C.F.R. § 169.175  
12    (Vanilla extract.) and § 169.177 (Vanilla flavoring.).

13          37.     Additionally, it would make no sense to use a more expensive and higher quality  
14    ingredient (vanilla extract or vanilla flavor) but designate it with a general term that could be  
15    perceived by some consumers to cost less money and appearing on most foods in existence  
16    (“natural flavors”).

17          38.     In short, the vanilla flavor in “Bear Naked Granola Fit V’nilla Almond” derived  
18    from any source other than the vanilla bean must be labeled as an artificial flavor, but it is not.

19          39.     Nowhere on the packaging does it disclose that the “Bear Naked Granola Fit  
20    V’nilla Almond” is flavored with anything other than vanilla flavoring derived exclusively from  
21    vanilla beans. Rather, as described above, the packaging uses words and even a picture of vanilla  
22    beans to misrepresent to Plaintiff and reasonable consumers that it *is* flavored with vanilla  
23    flavoring derived exclusively from vanilla beans.

24          40.     Through Defendant’s packaging and advertising as described herein, Defendant has  
25    acknowledged its intent to create the impression that its “Bear Naked Granola Fit V’nilla Almond”  
26    is flavored with vanilla flavoring derived exclusively from vanilla beans.

27          41.     “Bear Naked Granola Fit V’nilla Almond” is misleading because it is marketed as  
28    if it is flavored with vanilla flavoring derived exclusively from vanilla beans (when it is not) next

1 to other granola products marketed similarly but that actually are flavored with vanilla flavoring  
2 derived exclusively from vanilla beans.

3 42. Where two similarly labeled products are situated in the same category or section  
4 of a store and their representations as to quality are identical, yet one is lacking the quantity of the  
5 characterizing ingredient (vanilla) or qualities, the reasonable consumer will be deceived.

6 43. Accordingly, a reasonable consumer will and does pay more money for the  
7 misleading labeled product under the false impression that it contains the equivalent amount  
8 and/or type of the characterizing ingredients and possesses such qualities.

9 44. The proportion of this characterizing component, vanilla, has a material bearing on  
10 price or consumer acceptance of the product because it is more expensive and desired by  
11 consumers.

12 45. Had Plaintiff and Class members known the truth about "Bear Naked Granola Fit  
13 V'nilla Almond," they would not have purchased it or would have paid less for it.

14 46. As a result of its misleading business practice, and the harm caused to Plaintiff and  
15 other consumers, Defendant should be enjoined from deceptively representing that "Bear Naked  
16 Granola Fit V'nilla Almond" is made with vanilla flavoring derived exclusively from vanilla  
17 beans. Furthermore, Defendant should be required to pay for all damages caused to misled  
18 consumers, including Plaintiff.

19 47. Despite being misled by Defendant, Plaintiff wishes to and is likely to continue  
20 purchasing "Bear Naked Granola Fit V'nilla Almond" in the future if it is made with vanilla  
21 flavoring derived exclusively from vanilla beans. To this day, Plaintiff regularly shops at stores  
22 where "Bear Naked Granola Fit V'nilla Almond" is sold. On some of these occasions, Plaintiff  
23 would like to buy the "Bear Naked Granola Fit V'nilla Almond," but refrains from doing so  
24 because he cannot rely with any confidence on Defendant's representations regarding the  
25 ingredients, especially since he was deceived by Defendant in the past. While Mr. Zaback  
26 currently believes that "Bear Naked Granola Fit V'nilla Almond," is not flavored with vanilla  
27 flavoring derived exclusively from vanilla beans, he lacks personal knowledge as to Defendant's  
28 food production practices, which may change over time, leaving room for doubt in his mind as to

1 whether “Bear Naked Granola Fit V’nilla Almond” is flavored with vanilla flavoring derived  
2 exclusively from vanilla beans. This uncertainty, coupled with his desire to purchase “Bear Naked  
3 Granola Fit V’nilla Almond,” is an ongoing injury that can and would be rectified by an injunction  
4 enjoining Defendant from making the false and/or misleading representations alleged herein.

5 **CLASS ACTION ALLEGATIONS**

6 48. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

7 49. Plaintiff brings this action on behalf of himself and the following ascertainable  
8 class of similarly situated persons pursuant to California Civil Code of Procedure section 382:

9 All persons, who are California residents who purchased “Bear Naked Granola Fit V’nilla  
10 Almond,” or who purchased “Bear Naked Granola Fit V’nilla Almond” within the State of  
11 California, for personal, family, or household purposes during the relevant statute of  
12 limitations periods.

13 50. Excluded from the Class is the following individuals and/or entities: Defendant and  
14 its parents, subsidiaries, affiliates, officers and directors, current or former employees, and any  
15 entity in which Defendant has a controlling interest; all individuals who make a timely election to  
16 be excluded from this proceeding using the correct protocol for opting out; and all judges assigned  
17 to hear any aspect of this litigation, as well as their staff.

18 51. Plaintiff reserves the right to amend the above class and to add additional classes  
19 and subclasses as appropriate based on investigation, discovery, and the specific theories of  
20 liability.

21 52. Plaintiff is a member of the Class.

22 53. Members of the Class are so numerous that their individual joinder herein is  
23 impracticable. On information and belief, members of the Class number in at least the thousands.  
24 The precise number of Class members and their identities is unknown to Plaintiff at this time but  
25 will be determined through discovery. Class members may be notified of the pendency of this  
26 action by mail and/or publication through the distribution records of Defendant and third party  
27 retailers and vendors.

28 54. Defendant’s conduct has imposed a common injury on the members of the Class.  
Defendant has acted, and refused to act, on ground generally applicable to the Class, which makes

1 final injunctive relief with respect to each claim as a whole appropriate.

2 55. The representative Plaintiff will faithfully represent the class and the claims of  
3 Plaintiff is typical of the claims of the Class, because Plaintiff and all members of the Class  
4 sustained damages that arise out of the same pattern and practice of wrongful conduct by the  
5 Defendant, in violation of law as alleged herein.

6 56. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiff has  
7 retained counsel highly experienced in handling class action litigation, including that which  
8 involves consumer protection from unfair business practices, and Plaintiff intends to prosecute this  
9 action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

10 57. The class mechanism is superior to other available means for the fair and efficient  
11 adjudication of the claims of Plaintiff and Class members. Each individual Class member may  
12 lack the resources to undergo the burden and expense of individual prosecution of the complex  
13 and extensive litigation necessary to establish Defendant's liability. Individualized litigation  
14 increases the delay and expense to all parties and multiplies the burden on the judicial system  
15 presented by the complex legal and factual issues of this case. Individualized litigation also  
16 presents a potential for inconsistent or contradictory judgments. In contrast, the class action device  
17 presents far fewer management difficulties and provides the benefits of single adjudication,  
18 economy of scale, and comprehensive supervision by a single court on the issue of Defendant's  
19 liability. Class treatment of the liability issues will ensure that all claims and claimants are before  
20 this Court for consistent adjudication of the liability issues.

21 58. There is a well-defined community of interest in the questions and answers of law  
22 and fact involved affecting the members of the Class. The questions and answers of law and fact  
23 common to the Class predominate over questions and answers affecting only individual class  
24 members, and include, but are not limited to, the following:

- 25 a. Whether Defendant misrepresented material facts and/or failed to disclose material  
26 facts in connection with the packaging, marketing, distribution, and sale of "Bear  
27 Naked Granola Fit V'nilla Almond";  
28 b. Whether Defendant's use of false or deceptive packaging and advertising



1 constituted false or deceptive advertising;

2 c. Whether Defendant engaged in unfair, unlawful and/or fraudulent business  
3 practices;

4 d. Whether Defendant's unlawful conduct, as alleged herein, was intentional and  
5 knowing;

6 e. Whether Plaintiff and the Class are entitled to damages and/or restitution, and in  
7 what amount;

8 f. Whether Defendant is likely to continue using false, misleading or unlawful  
9 conduct such that an injunction is necessary; and

10 g. Whether Plaintiff and the Class are entitled to an award of reasonable attorneys'  
11 fees, interest, and costs of suit.

12 59. Plaintiff knows of no difficulty likely to be encountered in the management of this  
13 litigation that would preclude its maintenance as a class action. Because the action is brought as a  
14 California class action, the court need only apply a single set of California laws as they relate to  
15 Defendant's contract, practices, and conduct.

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 Violation of California's Consumers Legal Remedies Act ("CLRA"),  
19 California Civil Code §§ 1750, *et seq.*

20 60. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

21 61. Plaintiff brings this claim individually and on behalf of the members of the  
22 proposed Class against Defendant.

23 62. "Bear Naked Granola Fit V'nilla Almond" is a "good" within the meaning of  
24 California Civil Code section 1761(a), and the purchases of such "Bear Naked Granola Fit V'nilla  
25 Almond" by Plaintiff and members of the Class constitute "transactions" within the meaning of  
26 California Civil Code section 1761(e).

27 63. California Civil Code section 1770(a)(5) prohibits "[r]epresenting that goods or  
28 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities

1 which they do not have . . . .” By marketing “Bear Naked Granola Fit V’nilla Almond” with its  
2 current packaging and advertisements, Defendant has represented and continues to represent that  
3 the granola has characteristics (that it is flavored with vanilla flavoring derived exclusively from  
4 vanilla beans) which it is not. Therefore, Defendant has violated section 1770(a)(5) of the CLRA.

5 64. California Civil Code section 1770(a)(7) prohibits “[r]espresenting that goods or  
6 services are of a particular standard, quality, or grade, or that goods are of a particular style or  
7 model, if they are of another.” By marketing “Bear Naked Granola Fit V’nilla Almond” with its  
8 current packaging and advertisements, Defendant has represented and continues to represent that  
9 the granola is of a particular standard, quality, or grade (that it is flavored with vanilla flavoring  
10 derived exclusively from vanilla beans) when it is of another (flavored with vanilla flavoring that  
11 is not derived exclusively from vanilla beans). Therefore, Defendant has violated section  
12 1770(a)(7) of the CLRA.

13 65. California Civil Code section 1770(a)(9) prohibits “[a]dvertising goods or services  
14 with intent not to sell them as advertised.” By packaging and marketing “Bear Naked Granola Fit  
15 V’nilla Almond” with words, statements, and pictures so that a reasonable consumer would  
16 believe that the granola is flavored with vanilla flavoring derived exclusively from vanilla beans,  
17 and then intentionally not selling the granola as granola flavored with something other than vanilla  
18 flavoring derived exclusively from vanilla beans, Defendant has violated section 1770(a)(9) of the  
19 CLRA.

20 66. At all relevant times, Defendant has known or reasonably should have known that  
21 “Bear Naked Granola Fit V’nilla Almond” was not flavored with vanilla flavoring derived  
22 exclusively from vanilla beans, but instead flavored with something other than vanilla flavoring  
23 derived exclusively from vanilla beans, and that Plaintiff and other members of the Class would  
24 reasonably and justifiably rely on the packaging and other advertisements in purchasing the  
25 granola.

26 67. Plaintiff and members of the Class have reasonably and justifiably relied on  
27 Defendant’s misleading, and fraudulent conduct when purchasing “Bear Naked Granola Fit  
28 V’nilla Almond.” Moreover, based on the materiality of Defendant’s fraudulent and misleading

1 conduct, reliance on such conduct as a material reason for the decision to purchase the granola  
2 may be presumed or inferred for Plaintiff and members of the Class.

3 68. Plaintiff and members of the Class have suffered and continue to suffer injuries  
4 caused by Defendant because they would not have purchased “Bear Naked Granola Fit V’nilla  
5 Almond” or would have paid significantly less for “Bear Naked Granola Fit V’nilla Almond” had  
6 they known that Defendant’s conduct was misleading and fraudulent.

7 69. Under California Civil Code section 1780(a), Plaintiff and members of the Class  
8 are seeking injunctive relief pursuant to the CLRA, preventing Defendant from further wrongful  
9 acts and unfair and unlawful business practices, as well as restitution, disgorgement of profits, and  
10 any other relief this Court deems proper.

11 70. Pursuant to California Civil Code section 1782, on December 5, 2019 Plaintiff  
12 notified Defendant in writing by certified mail of the violations of Section 1770 of the Act and  
13 demanded that Defendant rectify the problems associated with the actions detailed above and to  
14 give notice to all affected consumers of its intent to so act. Plaintiff sent this notice by certified  
15 mail, return receipt requested, to Defendant’s principal place of business.

16 71. Pursuant to California Civil Code section 1782(d), Plaintiff and the Class seek a  
17 Court order enjoining the above-described wrongful acts and practices.

18 72. Plaintiff has incurred attorneys’ fees and costs in connection with the investigation  
19 and filing of this complaint and anticipates incurring additional attorneys’ fees and costs in  
20 connection with the prosecution of this action. An award of attorneys’ fees is, therefore,  
21 appropriate pursuant to, among other grounds, California Civil Code section 1780(d):

22 73. Plaintiff has suffered and will continue to suffer damages because of the violations  
23 discussed herein. The time for Defendant to respond to the letter referred to in the preceding  
24 paragraphs has not yet passed. When it does, Plaintiff will amend this complaint to seek, on behalf  
25 of himself and the Class, compensatory, punitive, and all other available damages.

26 74. In all, the injuries suffered by Plaintiff and/or members of the Class as a direct  
27 result of Defendant’s acts include:

28 a. Purchases made in reliance on the false representations made by Defendant; and

- b. Money spent, that would otherwise not have been spent, had Plaintiff and the California Class known of the actual quality of the goods they were purchasing.

## SECOND CAUSE OF ACTION

Violation of California's Unfair Competition Law ("UCL"),  
California Business & Professions Code §§ 17200, *et seq.*

75. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

76. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendant. Business and Professions Code section 17200 provides in pertinent part that "unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising . . . ."

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

78. Defendant's false and misleading advertising of "Bear Naked Granola Fit V'nilla Almond" therefore was and continues to be "unlawful" because it violates the CLRA, California's False Advertising Law ("FAL"), and other applicable laws as described herein.

79. As a result of Defendant's unlawful business acts and practices, Defendant has unlawfully obtained money from Plaintiff, and members of the Class.

80. Under the UCL, a business act or practice is "unfair" if the defendant's conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the benefits for committing such acts or practices are outweighed by the gravity of the harm to the alleged victims.

81. Defendant's conduct was and continues to be of no benefit to purchasers of "Bear Naked Granola Fit V'nilla Almond," as it is misleading, unfair, unlawful, and is injurious to consumers who rely on the granola's packaging and marketing. Creating consumer confusion as to the actual ingredients and the characteristics of the granola is of no benefit to consumers. Therefore, Defendant's conduct was and continues to be "unfair."

82. As a result of Defendant's unfair business acts and practices, Defendant has and continues to unfairly obtain money from Plaintiff, and members of the Class.



1 “Bear Naked Granola Fit V’nilla Almond” was flavored with vanilla flavoring derived exclusively  
 2 from vanilla beans. Defendant’s representations are misleading because “Bear Naked Granola Fit  
 3 V’nilla Almond” was not flavored with vanilla flavoring derived exclusively from vanilla beans.  
 4 Because Defendant has disseminated misleading information regarding “Bear Naked Granola Fit  
 5 V’nilla Almond,” and Defendant knows, knew, or should have known through the exercise of  
 6 reasonable care that the representation was and continues to be misleading, Defendant has violated  
 7 the FAL.

8 91. Moreover, Defendant knows, knew or should have known through the exercise of  
 9 reasonable care that such representation was and continues to be unauthorized and misleading.

10 92. As a result of Defendant’s false advertising, Defendant has and continues to  
 11 fraudulently obtain money from Plaintiff and members of the Class.

12 93. Plaintiff requests that this Court cause Defendant to restore this fraudulently  
 13 obtained money to Plaintiff and members of the Class, to disgorge the profits Defendant made on  
 14 these transactions, and to enjoin Defendant from violating the FAL or violating it in the same  
 15 fashion in the future as discussed herein. Otherwise, Plaintiff and members of the Class may be  
 16 irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

#### 17 18 **FOURTH CAUSE OF ACTION** Quasi Contract/Unjust Enrichment/Restitution

19 94. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

20 95. Plaintiff brings this claim individually and on behalf of the members of the Class  
 21 against Defendant.

22 96. Where a defendant has been unjustly conferred a benefit “through mistake, fraud,  
 23 coercion, or request” the return of that benefit is a remedy sought in “a quasi-contract cause of  
 24 action.” *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015). When a plaintiff  
 25 alleges “unjust enrichment, a court may ‘construe the cause of action as a quasi-contract claim  
 26 seeking restitution.’” *Id.*

27 97. As alleged herein, Defendant has intentionally and recklessly made misleading  
 28 representations to Plaintiff and members of the Class to induce them to purchase “Bear Naked



Granola Fit V'nilla Almond." Plaintiff and members of the Class have reasonably relied on the misleading representations and have not received all of the benefits promised by Defendant. Plaintiff and members of the Class therefore have been induced by Defendant's misleading and false representations about "Bear Naked Granola Fit V'nilla Almond," and paid for it when they would and/or should not have or paid more money to Defendant for it than they otherwise would and/or should have paid.

98. Plaintiff and members of the Class have conferred a benefit upon Defendant as Defendant has retained monies paid to them by Plaintiff and members of the Class.

99. The monies received were obtained under circumstances that were at the expense of Plaintiff and members of the Class – i.e., Plaintiff and members of the Class did not receive the full value of the benefit conferred upon Defendant.

100. Accordingly, it is inequitable and unjust for Defendant to retain the profit, benefit, or compensation conferred upon them without paying Plaintiff and the members of the Class back for the difference of the full value of the benefits compared to the value actually received.

101. As a direct and proximate result of Defendant's unjust enrichment, Plaintiff and members of the Class are entitled to restitution, disgorgement, and/or the imposition of a constructive trust upon all profits, benefits, and other compensation obtained by Defendant from its deceptive, misleading, and unlawful conduct as alleged herein.

#### **PRAYER**

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, respectfully pray for following relief:

1. Certification of this case as a class action on behalf of the Class defined above, appointment of Plaintiff as Class representative, and appointment of Plaintiff's counsel as Class counsel;

2. A declaration that Defendant's actions, as described herein, constitute violations as described herein;

3. An award of injunctive and other equitable relief as is necessary to protect the interests of Plaintiff and the Class, including, *inter alia*, an order prohibiting Defendant from

1 engaging in the unlawful act described above;

2 4. An award to Plaintiff and the proposed class of restitution and/or other equitable  
3 relief, including, without limitation, restitutionary disgorgement of all profits and unjust  
4 enrichment that Defendant obtained from Plaintiff and the proposed class as a result of its  
5 unlawful, unfair and fraudulent business practices described herein;

6 5. An award of all economic, monetary, actual, consequential, and compensatory  
7 damages caused by Defendant's conduct;

8 6. An award of punitive damages;

9 7. An award to Plaintiff and his counsel of their reasonable expenses and attorneys'  
10 fees;

11 8. An award to Plaintiff and the Class of pre and post-judgment interest, to the extent  
12 allowable; and

13 9. For such further relief that the Court may deem just and proper.

14 **JURY DEMAND**

15 Plaintiff requests a jury on all triable issues.

16  
17 DATED: December 20, 2019

**LAGUARDIA LAW, APC**

18 By: 

Eric A. LaGuardia

19  
20 **LAW OFFICES OF DEVON K.  
ROEPCKE, PC**

21 Attorneys for Plaintiff  
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**Affidavit of Eric A. LaGuardia for CLRA Count**

I, Eric A. LaGuardia, am an attorney admitted to practice before this Court and I am counsel of record for Plaintiff in the above-captioned matter. I make this affidavit pursuant to California Civil Code §1780(d). Venue is proper in this District because it is within the county where Plaintiff's transaction at issue in this Complaint occurred. I declare under penalty of perjury under the laws of the United States of America the above is true and correct and of my own personal knowledge.

Dated: December 20, 2019

  
Eric A. LaGuardia