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13 *and the Proposed Class*

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION
17

18 STEVE NUNEZ, *individually and on*
19 *behalf of all others similarly*
situated,

20 Plaintiff,

21 v.

22 UNILEVER UNITED STATES,
23 INC.,

24 Defendant.

Case No. 2:20-cv-03846

CLASS ACTION COMPLAINT

Demand for Jury Trial

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1 Plaintiff Steve Nuñez (“Plaintiff”), on behalf of himself and all others
2 similarly situated, brings this Class Action Complaint against Unilever United
3 States, Inc. (“Defendant” or “Unilever”), pursuant to the Class Action Fairness Act
4 of 2005, 28 U.S.C. § 1332(d), and on the basis of personal knowledge, information
5 and belief, and investigation of counsel, alleges as follows:

6 **INTRODUCTION**

7 1. Breyers Natural Vanilla Ice Cream is an ice cream manufactured, sold,
8 and marketed by Unilever.

9 2. During the period from April 27, 2016, to the present, Plaintiff
10 purchased Breyers Natural Vanilla Ice Cream in California.

11 3. Unilever falsely and misleadingly markets Breyers Natural Vanilla Ice
12 Cream to consumers as containing only vanilla flavor from vanilla (i.e., the vanilla
13 plant) and not from non-vanilla sources. Unfortunately for consumers, this is
14 untrue, as much of the vanilla flavor comes from non-vanilla plant sources.

15 4. In fact, Breyers Natural Vanilla Ice Cream has, at most, only a trace of
16 real vanilla, and what consumers taste is vanilla flavor provided by non-vanilla
17 sources.

18 5. Rather than only containing real vanilla, Breyers Natural Vanilla Ice
19 Cream contains non-vanilla flavors and vanilla enhancers which are not disclosed,
20 contrary to the legal requirements and expectations of reasonable consumers.

21 6. Unilever charges a price premium for Breyers Natural Vanilla Ice
22 Cream.

23 7. Plaintiff would not have purchased or paid more for Breyers Natural
24 Vanilla Ice Cream had Plaintiff realized that much, if not all, of the vanilla flavor
25 came from non-vanilla plant sources.

26 8. Plaintiff would not have purchased or paid more for Breyers Natural
27 Vanilla Ice Cream had Plaintiff known that it does not exclusively contain flavor
28 derived from vanilla beans.

1 Cream had Plaintiff understood the true flavor composition of the product.

2 15. Plaintiff would purchase Breyers Natural Vanilla Ice Cream again in
3 the future if the product were remedied to reflect Defendant’s labeling and
4 marketing claims for it.

5 16. Defendant Unilever United States, Inc., is incorporated in Delaware,
6 with its principal place of business in Englewood Cliffs, New Jersey.

7 17. Unilever is one of the world’s largest food and consumer packaged
8 goods companies, and it produces and markets ice cream products in the United
9 States and throughout the world. Unilever sells ice cream under the “Breyers” brand
10 name throughout California.

11 **FACTUAL ALLEGATIONS**

12 18. As “natural, organic and better-for-you trends proliferate, demand has
13 flourished for naturally sourced vanilla.”¹

14 19. Manufacturers have responded “by transitioning from artificial to
15 natural ingredients,” including “natural vanilla ingredients.”²

16 20. However, global climate disruptions resulting in natural disasters
17 befalling the primary vanilla producing country of Madagascar, have caused global
18 vanilla shortages.

19 21. This disruption in available vanilla has caused companies to cut
20 corners when it comes to their premium vanilla ice cream products.

21 22. According to John B. Hallagan and Joanna Drake, the former and
22 current legal advisors for The Flavor and Extract Manufacturers Association of the
23 United States (“FEMA”):

24 When consumers purchase ice cream labeled as “vanilla ice cream” they
25 expect it to be flavored with vanilla flavoring derived from vanilla beans
26 *unless labeled otherwise*. As we shall see, this expectation is codified in

27 ¹ Amanda Del Buono, [Suppliers utilize cost-effective vanilla ingredient solutions](#),
28 Beverage Industry (last updated Oct. 14, 2016).

² *Id.*

1 two U.S. federal standards of identity, one for vanilla flavorings and one
2 for ice cream.³ (emphasis added).

3 23. 21 C.F.R. § 135.110(f)(2)(i), referred to as “Category 1,” states:
4 If the food contains no artificial flavor, the name on the principal display
5 panel or panels of the label shall be accompanied by the common or
6 usual name of the characterizing flavor, e.g., “vanilla”, in letters not less
7 than one-half the height of the letters used in the words “ice cream”.

8 24. That the ice cream regulations are meant to be read “together with the
9 vanilla standard of identity means that the characterizing flavor for this [Category
10 1] ice cream must be provided only by vanilla extract complying with the standard
11 at 21 CFR Section 169.175, or another standardized vanilla flavoring derived solely
12 from vanilla beans.”⁴

13 25. The International Dairy Foods Association summarized the unique
14 distinction between natural and artificial flavors in the context of ice cream as
15 follows:

16 Flavors which are derived from natural sources other than the
17 characterizing flavor and simulate, resemble or reinforce the
18 characterizing flavor, are considered artificial flavors. Products flavored
19 in such a manner must be labeled according to either flavor labeling
20 requirements of Category II or III products.⁵

21 26. Though the text of 21 C.F.R. § 135.110(f)(2)(i) does not distinguish
22 between flavor from the natural characterizing flavor and natural flavors from
23 sources other than the characterizing flavor, the regulations for vanilla and ice
24 cream products “are supplemented by a formal [Food and Drug Administration
25 (‘FDA’)] Advisory Opinion, and a collection of FDA-issued regulatory

26 ³ John B. Hallagan and Joanna Drake, The Flavor and Extract Manufacturers
27 Association of the United States, [“Labeling Vanilla Flavorings and Vanilla-
Flavored Foods in the U.S.”](#) Perfumer & Flavorist, Apr. 25, 2018.

28 ⁴ Hallagan, *supra* note 3, at p. 11.

⁵ IDFA, Ice Cream & Frozen Desserts Labeling Manual, 2019 Ed.

1 correspondence.”⁶

2 27. The 1983 Advisory Opinion cited by Hallagan and Drake states that 21
3 C.F.R. § 135.110(f) “makes no provision for any natural flavors other than natural
4 characterizing flavors,” which means the “FDA must treat all natural flavors that
5 simulate the characterizing flavor as artificial flavors when deciding what name
6 should appear on the principal display panel.”⁷

7 **SPECIFIC MISREPRESENTATIONS,**
8 **MATERIAL OMISSIONS, AND DECEPTIVE ACTS**

9 **Misleading and Deceptive Name**

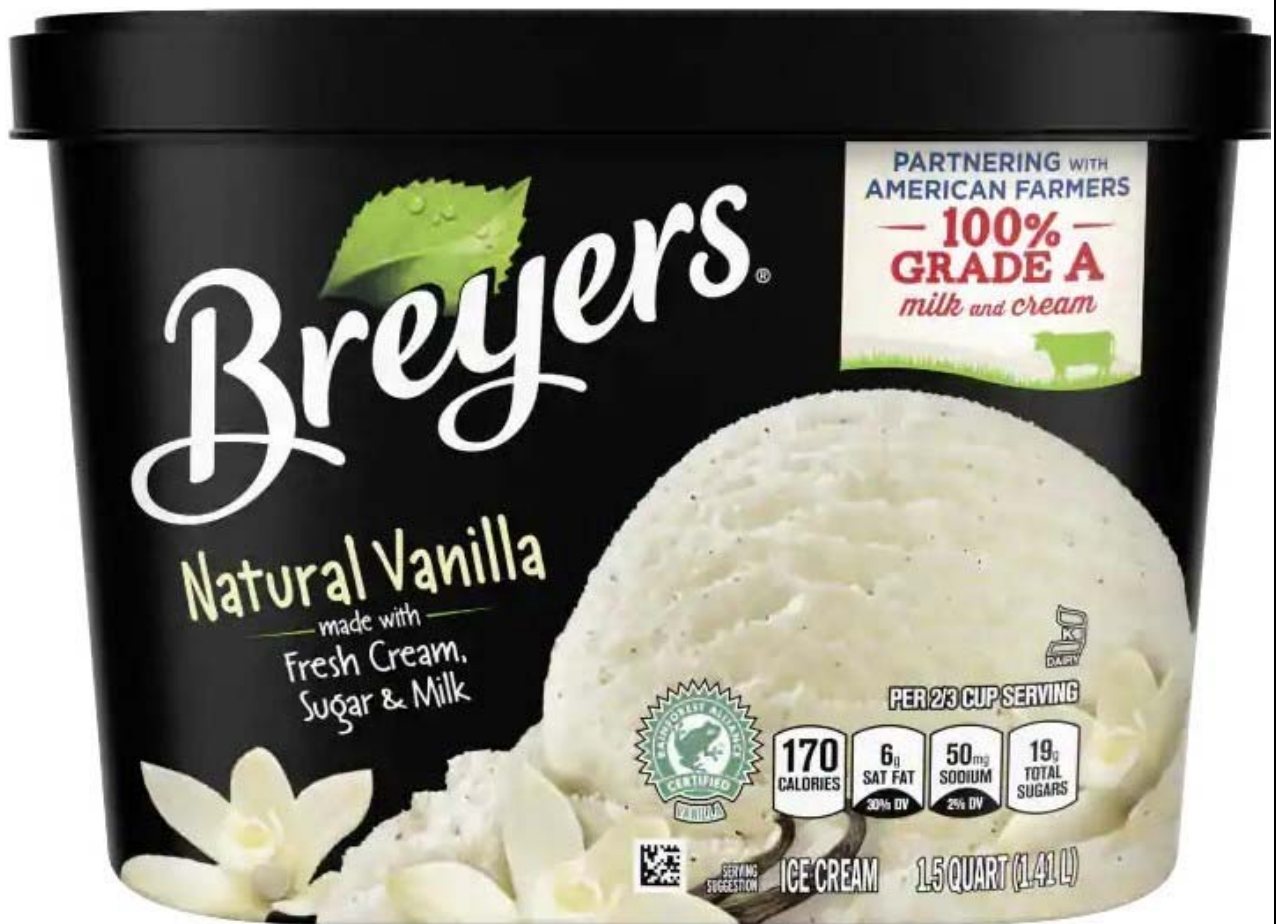
10 28. The Breyers Natural Vanilla Ice Cream product name is false,
11 misleading, and unlawful because Breyers Natural Vanilla Ice Cream does not get
12 its flavoring only from vanilla beans, but the product name implies otherwise.

13 29. The front label of Breyers Natural Vanilla Ice Cream is represented as
14 complying with 21 C.F.R. § 135.110(f)(2)(i) (“Category 1”) because the front label
15 only mentions the “Natural Vanilla” flavoring through the name, “Natural Vanilla,”
16 pictures of vanilla beans and vanilla flowers, “Rainforest Alliance Certified
17 Vanilla” seal, and picture of the ice cream containing what appear to be vanilla
18 bean specks, as the image below shows:

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28 ⁶ Hallagan, *supra* note 3, at p. 1.

⁷ Hallagan, endnote 7, FDA, 1983. Letter dated 9 February 1983 from FDA to FEMA constituting an FDA Advisory Opinion.

1 **Breyers Natural Vanilla Ice Cream Front Label**



17 30. These representations are misleading and unlawful because Breyers
18 Natural Vanilla Ice Cream contains flavors not derived from the vanilla bean from
19 the vanilla plant.

20 **BREYERS VANILLA FLAVORING COMES FROM SOURCES**
21 **OTHER THAN THE VANILLA PLANT**

22 31. Laboratory analysis of Breyers Natural Vanilla Ice Cream evidences
23 that most of the vanilla flavor comes from non-vanilla plant sources.

24 32. Specifically, in November of 2019, the Center for Advanced Food
25 Technology at Rutgers University conducted laboratory analysis on Breyers Natural
26 Vanilla Ice Cream that determined that most of the vanilla flavoring comes from
27 non-vanilla bean sources.

28 33. Distinguishing real vanilla from artificial vanilla is a challenging task

1 because every time a new high tech authentication method is adopted, “bad actors”
2 find ways to “beat the test,” such as artificial vanillin designed to contain isotopes
3 present in real vanilla.

4 34. This is why identifying the presence and amount of the following four
5 vanilla marker compounds is valuable:

<u>Compounds</u>	<u>Percent Present in Vanilla Beans</u>
vanillin	1.3-1.7 %
p-hydroxybenzaldehyde	0.1%
vanillic acid	0.05%
p-hydroxybenzoic acid	0.03%

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11 35. The testing of Defendant’s Breyers Natural Vanilla Ice Cream did not
12 detect p-hydroxybenzaldehyde, vanillic acid, or p-hydroxybenzoic acid, which
13 means the Breyers Natural Vanilla Ice Cream has, at most, a small amount of
14 vanilla from vanilla beans, in accordance with the following chart:
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Breyer's Natural Vanilla Ice Cream

Production Code: 29230 A 07:58

Methylene Chloride Extract of 10.0 g with 1 ppm Matrix-Spiked Int. Std. by P&T-TD-GC-MS

Data File = TSQA3571

MS Scan #	Area Integration	Peak Assignment	Conc. PPM w/w
205	99298	acetic acid	0.022
250	3625596	diacetyl	0.797
342	268657	acetoin	0.059
447	440003	butyric acid	0.097
474	2288379	ethyl lactate	0.503
510	679180	dimethylsulfoxide (DMSO)	0.149
632	14688936	dimethyl sulfone	3.230
684	5573689	hexanoic acid	1.226
750	115042	benzyl alcohol	0.025
769	568416	heptanoic acid	0.125
806	540814	guaiacol	0.119
813	465017	nonanal	0.102
836	139435	maltol	0.031
885	12067851	octanoic acid	2.654
890	77124	benzoic acid	0.017
912	315936	2-methoxy-4-methylphenol	0.069
928	4547572	naphthalene-d8 (internal standard)	1.000
971	3843797	nonanoic acid	0.845
1007	187607	delta-nonolactone	0.041
1030	148583	2,4-decadienal	0.033
1065	7005324	decanoic acid	1.540
1121	25782638	vanillin	5.670
1140	125485	undecanoic acid	0.028
1158	376018	vanillyl ethyl ether	0.083
1195	335836	delta-decalactone	0.074
1225	1486537	lauric acid	0.327
1338	81955	gamma-dodecalactone	0.018
1365	268239	delta-dodecalactone	0.059
1381	405333	myristic acid	0.089
Total (excluding internal standard)			18.03
1365	268239	delta-dodecalactone	0.059
1381	405333	myristic acid	0.089
Total (excluding internal standard)			18.03

37. Moreover, the fact that Breyers Natural Vanilla Ice Cream has elevated levels of vanillin evidences that the vanillin is from non-vanilla bean sources, which can include ferulic acid or wood pulp (referred to as lignin).

38. The absence of detectable levels of p-hydroxybenzaldehyde, p-hydroxybenzoic acid, and vanillic acid, coupled with vanillin levels, indicates this vanillin is not real vanilla from the vanilla plant, which deceives consumers.

39. The Breyers Natural Vanilla Ice Cream also contains maltol, a

1 compound not found in vanilla beans, but which is “used to enhance the flavor and
2 aroma of fruit, vanilla, and chocolate flavored foods and beverages.”⁸

3 40. That Breyers Natural Vanilla Ice Cream contains non-vanilla flavors
4 can also be concluded by experts in the field of food labeling (but not the
5 reasonable consumer) from the side panel of the Breyers Natural Vanilla Ice Cream
6 packaging, which states as follows:

7 Information Panel

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Nutrition Facts	
Serving Size 1/2 cup (66g)	
Servings Per Container 12	
Amount Per Serving	
Calories 130	Calories from Fat 60
% Daily Value*	
Total Fat 7g	11%
Saturated Fat 4g	20%
Trans Fat 0g	
Cholesterol 20mg	7%
Sodium 35mg	1%
Total Carbohydrate 14g	5%
Dietary Fiber 0g	0%
Sugars 14g	
Protein 2g	
Vitamin A 4% • Vitamin C 0%	
Calcium 8% • Iron 0%	
*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:	
Calories: 2,000 2,500	
Total Fat	Less than 65g 80g
Saturated Fat	Less than 20g 25g
Cholesterol	Less than 300mg 300mg
Sodium	Less than 2,400mg 2,400mg
Total Carbohydrate	300g 375g
Dietary Fiber	25g 30g

INGREDIENTS: MILK, CREAM, SUGAR, VEGETABLE GUM (TARA), NATURAL FLAVOR.

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NJ 07632 USA

Unilever

Questions or Comments
call or visit us at
1-800-931-2826
www.breyers.com

Natural flavor made with
vanilla beans from Rainforest
Alliance Certified™ farms.

See bottom panel for
Best if Used By date

GLUTEN FREE

22 41. The ingredient list identifies “MILK, CREAM, SUGAR,
23 VEGETABLE GUM (TARA), NATURAL FLAVOR.”

24 42. The flavor compound analysis indicating flavors not found in vanilla
25 and flavors used to enhance vanilla (i.e., maltol), and the ingredient list not
26 specifying “vanilla extract complying with the standard at 21 CFR Section 169.175,
27 or another standardized vanilla flavoring derived solely from vanilla beans,”

28 ⁸ Natural Maltol, Elan Chemical Company Inc., UL Prospector,
<https://www.ulprospector.com/en/na/Food/Detail/10751/327455/Natural-Maltol>.

1 support the conclusion that Breyers Natural Vanilla Ice Cream contains non-vanilla
2 artificial flavors that give the impression of more vanilla.⁹

3 43. The Breyers Natural Vanilla Ice Cream cannot be “Category 1”
4 because its side panel concedes it does not contain only vanilla flavor from the
5 vanilla plant.

6 44. Assuming the Breyers Natural Vanilla Ice Cream contains a small
7 amount of vanilla, this is its “natural characterizing flavor.”

8 45. However, the laboratory analysis shows that “the artificial flavor
9 predominates” in the Breyers Natural Vanilla Ice Cream because the vanillin levels
10 appear to be much greater than 1 ounce per unit of vanilla constituent. *See* 21
11 C.F.R. § 135.110(f)(2)(iii) (“If the food contains both a natural characterizing flavor
12 and an artificial flavor simulating it, and if the artificial flavor predominates, . . . the
13 name on the principal display panel or panels of the label shall be accompanied by
14 the common name of the characterizing flavor . . . , preceded by ‘artificial’ or
15 ‘artificially flavored’”); *see also* C.F.R. § 135.110(f)(5)(i) (“An artificial flavor
16 simulating the characterizing flavor shall be deemed to predominate: (i) In the case
17 of vanilla beans or vanilla extract used in combination with vanillin if the amount
18 of vanillin used is greater than 1 ounce per unit of vanilla constituent”).

19 46. Due to the artificial vanilla flavor predominating, the Breyers Natural
20 Vanilla Ice Cream is required to be labeled as “artificial vanilla” or “artificially
21 flavored vanilla.” *See* 21 C.F.R. § 135.110(f)(2)(iii).

22 47. Even if the amount of vanillin were not “greater than 1 ounce per unit
23 of vanilla constituent,” the Breyers Natural Vanilla Ice Cream would still be
24 required to say “artificial vanilla” because it contains maltol, a “flavor from a non-
25 vanilla bean source (which simulates, resembles, or reinforces the vanilla flavor).”¹⁰

26 48. The alternate side panel describes the Breyers Natural Vanilla Ice
27 Cream as follows:

28 ⁹ Hallagan, *supra* note 3.

¹⁰ FDA, Newberry to Thompson, October 30, 1979.

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- “Made With Non-GMO Sourced Ingredients”
- “At Breyers, We Start With Only High Quality Ingredients.”
- “Our Colors and Flavors Come From Natural Sources.”
- “Our Vanilla and Fruit Are Real and Sustainably Farmed.”



49. Unilever’s statements about its ingredients are false, deceptive, and

1 unlawful because even though its “Flavors Come From Natural Sources” and are
2 listed on the ingredient list as “Natural Flavor,” the non-vanilla flavors are deemed
3 “artificial” in the context of a Category 1 vanilla ice cream.

4 50. Reasonable consumers are not aware of the distinction between natural
5 and artificial flavors in ice cream products and are misled to expect all the flavor is
6 from vanilla beans.

7 51. Unilever intended for Plaintiff to be misled by Breyers Natural Vanilla
8 Ice Cream by highlighting the vanilla component of the natural flavor, even though
9 it knew that ice cream products which were not flavored only from vanilla cannot
10 be labeled as “vanilla ice cream.”

11 52. Breyers Natural Vanilla Ice Cream is an example of a food that is
12 labeled as “vanilla” that is clearly mislabeled and therefore in violation of FDA
13 regulations. A common violation is to label a food product such as ice cream in a
14 way that leads consumers to believe that it is flavored with vanilla extract, or
15 another vanilla flavoring derived solely from vanilla beans, as defined in the federal
16 standard of identity, when in fact it is not.¹¹

17 **Misleading and Deceptive Representation:**

18 **Vanilla Beans without Vanilla Flavor**

19 53. Unilever has created and disseminated numerous advertisements on
20 television and radio which promote Breyers Natural Vanilla Ice Cream as
21 containing only vanilla as flavoring, as discussed below.

22 54. In one commercial entitled “The Vanilla Bean,” kids are shown
23 becoming excited as they examine the vanilla bean specks in the Breyers Natural
24 Vanilla Ice Cream:

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¹¹ Hallagan, *supra* note 3, at p. 53.

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“The Vanilla Bean” Commercial



55. The Vanilla Bean commercial promotes Breyers Natural Vanilla Ice Cream as containing real vanilla bean seeds, also known as “specks.”

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Vanilla Bean Seeds



56. The commercial ends with a voiceover describing Breyers Natural Vanilla Ice Cream as “The good vanilla.”



57. Unilever’s website states:

Do you see those specks? Those are real vanilla beans. That heavenly vanilla in Natural Vanilla is also 100% sustainably sourced, so you can enjoy it even more, knowing that you’re supporting farmers and their

1 families in Madagascar through our partnership with the Rainforest
2 Alliance. We believe that the quality of our ingredients makes the most
3 delicious vanilla ice cream, and that's why even today we keep true to
4 William Breyers® pledge of purity.¹²

5
6 our most popular ice cream flavors and the taste you love. Do you see those specks? Those are real vanilla beans. That heavenly vanilla
7 in Natural Vanilla is also 100% sustainably sourced, so you can enjoy it even more, knowing that you're supporting farmers and their
8 families in Madagascar through our partnership with the Rainforest Alliance. We believe that the quality of our ingredients makes the most
9 delicious vanilla ice cream, and that's why even today we keep true to William Breyers® pledge of purity. Try Breyers® Natural Vanilla
10 yourself and see if those vanilla specks and refreshing milk and cream can scoop up some smiles in your family. Want to give your dessert

11 58. Vanilla bean specks are the:

12 tiny black seeds that line the inside of a vanilla bean.

13 When flavor houses extract vanilla beans to make vanilla extract, the
14 goal is to extract all possible flavor from the bean, including its seeds.

15 After the vanilla extract has percolated for an optimal time, the vanilla
16 bean pods and seeds sink to the bottom and are filtered from the extract.
17 As a final step, the vanilla bean seeds are sifted from the spent vanilla
18 bean pods.

19 The resulting bean pods and seeds are known as “exhausted,” because
20 all flavor has been extracted.¹³

21 59. The FDA has long prohibited adding such ingredients to food, stating:
22 Spent vanilla beans are considered an adulterant under Section 402(b)
23 of the Federal Food, Drug, and Cosmetic Act. We have consistently
24 considered spent spice ingredients adulterated because of extraction of
25 essential ingredients.¹⁴

26 60. According to the Alcohol and Tobacco Tax and Trade Bureau
27 (“TTB”), the addition of “ground vanilla beans which had been exhausted . . . do

28 ¹² <https://www.breyers.com/us/en/products/natural-vanilla.html>

¹³ Cook's Blog, [Vanilla Bean Seeds: A Troubling New Trend](#), June 13, 2019.

¹⁴ Walter Moses, Division of Industry Advice, FDA, to Alan H. Kaplan, May 10, 1965.

1 not constitute a legitimate article of commerce for food use in that the valuable
2 constituents, the flavoring principles, have been omitted or abstracted therefrom.”¹⁵
3 *See* 21 U.S.C. § 342(b)(1) (“A food shall be deemed to be adulterated – If any
4 valuable constituent has been in whole or in part omitted or abstracted therefrom.”).

5 61. The FDA and TTB are clear that “[t]his type of adulteration cannot be
6 corrected by any form of labeling.”¹⁶ *See* Moses Letter, *supra* note 14 (“We are
7 unable to suggest any way that your client might use a combination of spent vanilla
8 beans with other flavoring materials in ice cream.”).

9 62. The added exhausted vanilla beans only give the false impression that
10 Breyers Natural Vanilla Ice Cream contains a greater amount of vanilla than it
11 actually does.

12 **Misleading and Deceptive Omission**

13 **of the Key Differentiating Component: Non-Vanilla Flavors**

14 63. Unilever falsely and misleadingly markets Breyers Natural Vanilla Ice
15 Cream as having all of its flavor coming from the vanilla plant.

16 64. Unilever, in its naming and marketing of Breyers Natural Vanilla Ice
17 Cream, misleadingly, deceptively, and unlawfully omits any clear and conspicuous
18 indication that the product contains non-vanilla flavor and that the amount of
19 vanilla is not enough to provide the vanilla taste sought by consumers to the ice
20 cream.

21 65. The labeling and marketing of Breyers Natural Vanilla Ice Cream does
22 not enable consumers to understand readily the distinction between natural vanilla
23 and “natural flavors,” which is the central difference between items labeled
24 “Vanilla Ice Cream” and those with labels qualified by the terms “flavored” or
25 “artificially flavored.”

26
27 ¹⁵ Letter from Chester T. Hubble, Director of Administrative Review, Bureau of
28 Enforcement, Bureau of Alcohol, Tobacco Tax Division, U.S. Treasury to Anthony
Filandro, Virginia Dare Extract Company, Inc., August 23, 1960; TTB has
authority over extract of vanilla due to alcohol content.

¹⁶ Hubble letter, *supra* note 15.

1 the reasons described herein.

2 73. Breyers Natural Vanilla Ice Cream costs significantly more per ounce
3 at stores like Walmart and Safeway than similar products labeled as “Vanilla
4 Flavored Ice Cream.”

5 74. Plaintiff paid more for Breyers Natural Vanilla Ice Cream than
6 Plaintiff would have had Plaintiff not been misled by the false and misleading
7 labeling and advertising complained of herein. Plaintiff would not have purchased
8 Breyers Natural Vanilla Ice Cream absent these misrepresentations.

9 75. For these reasons, the Breyers Natural Vanilla Ice Cream products
10 were worth less than what Plaintiff paid for them.

11 76. Plaintiff purchased Breyers Natural Vanilla Ice Cream based on the
12 false and misleading representations described herein.

13 77. Plaintiff lost money as a result of Unilever’s deception in that Plaintiff
14 did not receive what he paid for.

15 78. Plaintiff altered Plaintiff’s position to Plaintiff’s detriment and
16 suffered damages in an amount equal to the amount Plaintiff paid for the Breyers
17 Natural Vanilla Ice Cream.

18 79. By engaging in its misleading and deceptive marketing, sales, and
19 pricing scheme, Unilever reaped and continues to reap increased sales and profits.

20 80. Unilever is familiar with marketing research and knows that many of
21 its customers purchase Breyers Natural Vanilla Ice Cream because they seek
22 indulgence – not just a product that tastes good, but that contains ingredients they
23 are familiar with and have a connection to the food they are used in.

24 81. Unilever knows that the vanilla content and flavor source of ice cream
25 is material to consumers’ decision to purchase Breyers Natural Vanilla Ice Cream
26 and is also regulated by law.

27 82. Unilever deliberately cultivates these misperceptions through its
28 marketing, sales, and pricing scheme. Indeed, Unilever relies and capitalizes on

1 consumer misconceptions about Breyers Natural Vanilla Ice Cream.

2 **CLASS ACTION ALLEGATIONS**

3 83. Plaintiff brings this action as a class action pursuant to Rule 23 of the
4 Federal Rules of Civil Procedure. The class that Plaintiff seeks to represent (the
5 “Class” or “the California Class”) is composed of and defined as follows:

6 All persons residing in California who have purchased Breyers Natural
7 Vanilla Ice Cream for their own use (which includes feeding their
8 families), and not for resale, since April 27, 2016. Excluded from the
9 Class are: governmental entities; Defendant; any entity in which
10 Defendant has a controlling interest; Defendant’s officers, directors,
11 affiliates, legal representatives, employees, co-conspirators,
12 successors, subsidiaries, and assigns; and any judge, justice, or judicial
13 officer presiding over this matter and the members of their immediate
14 families and judicial staff.

15 84. For the purposes of this Complaint, the term “Class Members” refers
16 to all members of the Class, including the named Plaintiff.

17 85. This action is maintainable as a class action under Federal Rules of
18 Civil Procedure Rule 23(a), (b)(2), and (b)(3).

19 86. **Numerosity.** The Class consists of many thousands of persons
20 throughout the State of California. The Class is so numerous that joinder of all
21 members is impracticable, and the disposition of their claims in a class action will
22 benefit the parties and the Court.

23 87. **Commonality and Predominance.** The questions of law and fact
24 common to the Class have the capacity to generate common answers that will drive
25 resolution of this action. They predominate over any questions affecting only
26 individual class members. Common questions of law and fact include, but are not
27 limited to, the following:

28 a. Whether Unilever contributed to, committed, or is responsible

1 for the conduct alleged herein;

2 b. Whether Unilever's conduct constitutes the violations of law
3 alleged herein;

4 c. Whether Unilever acted willfully, recklessly, negligently, or
5 with gross negligence in the violations of law alleged herein;

6 d. Whether Class Members are entitled to injunctive relief; and

7 e. Whether Class Members are entitled to restitution and damages.

8 88. By seeing the name, labeling, display, and marketing of Breyers
9 Natural Vanilla Ice Cream, and by purchasing Breyers Natural Vanilla Ice Cream,
10 all Class Members were subject to the same wrongful conduct.

11 89. Absent Unilever's material deceptions, misstatements, and omissions,
12 Plaintiff and other Class Members would not have purchased Breyers Natural
13 Vanilla Ice Cream.

14 90. **Typicality.** Plaintiffs' claims are typical of the claims of the Class
15 Members because Plaintiff purchased Breyers Natural Vanilla Ice Cream products
16 and was injured thereby. The claims of Plaintiff and other Class Members are based
17 on the same legal theories and arise from the same false, misleading, and unlawful
18 conduct.

19 91. **Adequacy.** Plaintiff is an adequate representative of the Class because
20 Plaintiff's interests do not conflict with those of other Class Members. Each Class
21 Member seeks damages reflecting a similar and discrete purchase or purchases that
22 each Class Member made. Plaintiff has retained competent and experienced class
23 action counsel, who intend to prosecute this action vigorously. The Class Members'
24 interests will be fairly and adequately protected by Plaintiff and Plaintiff's counsel.

25 92. **Superiority.** A class action is superior to other available methods for
26 the fair and efficient adjudication of this controversy because joinder of all Class
27 Members is impracticable. The amount at stake for each consumer, while
28 significant, is such that individual litigation would be inefficient and cost-

1 prohibitive. Plaintiff anticipates no difficulty in the management of this action as a
2 class action.

3 93. This Court should certify a class under Rule 23(b)(2) and (b)(3)
4 because Defendant has acted or refused to act on grounds that apply generally to the
5 Class, by making illegal, unfair, misleading, and deceptive representations and
6 omissions regarding Breyers Natural Vanilla Ice Cream.

7 94. **Notice to the Class.** Plaintiff anticipates that this Court can direct
8 notice to the Class, to be effectuated by publication in major media outlets and the
9 Internet.

10 **FIRST CLAIM**

11 **(ON BEHALF OF THE CALIFORNIA CLASS)**

12 **Violation of California’s Unfair Competition Law,**

13 **Cal. Bus. & Prof. Code § 17200 *et seq.***

14 **Unlawful Conduct Prong**

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

17 96. California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200
18 *et seq.* (“UCL”), prohibits any “unlawful, unfair or fraudulent business act or
19 practice.”

20 97. The acts, omissions, misrepresentations, practices, and non-disclosures
21 of Unilever, as alleged herein, constitute “unlawful” business acts and practices in
22 that they violate the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.*
23 (“FFDCA”), and its implementing regulations, including, at least, the following
24 sections:

25 a. 21 U.S.C. § 343, which deems food misbranded when the label
26 contains a statement that is “false or misleading in any particular,” with
27 “misleading” defined to “take[] into account (among other things) not only
28 representations made or suggested by statement, word, design, device, or any

1 combination thereof, but also the extent to which the labeling or advertising fails to
2 reveal facts material”;

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

5 c. 21 U.S.C. § 343(g), which deems a food misbranded if it
6 purports to be a food which is subject to a standard of identity but does not comply
7 with such standard due to not containing the ingredients required by the standard;

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

10 e. 21 C.F.R. § 135.110(f)(2)(i), which prohibits a product from
11 being labeled as “vanilla ice cream” where it contains flavor from sources other
12 than its natural characterizing flavor, which is considered to be an “artificial
13 flavor”; and

14 f. 21 C.F.R. §135.110(f)(5)(i), which states that if the amount of
15 vanillin used is greater than 1 ounce per unit of vanilla constituent it is an artificial
16 flavor.

17 98. Unilever’s conduct is further “unlawful” because it violates
18 California’s False Advertising Law, Cal Bus. & Prof. Code § 17500 *et seq.*
19 (“FAL”), and California’s Consumers Legal Remedies Act, Cal. Civ. Code § 1750
20 *et seq.* (“CLRA”), as discussed in the claims below.

21 99. Unilever’s conduct also violates California’s Sherman Food, Drug, and
22 Cosmetic Law, Cal. Health & Saf. Code § 109875 *et seq.* (“Sherman Law”),
23 including, at least, the following sections:

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

26 b. Section 110290 (“In determining whether the labeling or
27 advertisement of a food . . . is misleading, all representations made or suggested by
28 statement, word, design, device, sound, or any combination of these, shall be taken

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

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

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

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

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

14 g. Section 110660 (“Any food is misbranded if its labeling is false
15 or misleading in any particular.”).

16 100. Each of the challenged statements made and actions taken by Unilever
17 violates the FFDCA, the CLRA, the FAL, and the Sherman Law, and therefore
18 violates the “unlawful” prong of the UCL.

19 101. Unilever leveraged its deception to induce Plaintiff and members of
20 the Class to purchase products that were of lesser value and quality than advertised.

21 102. Unilever’s deceptive advertising caused Plaintiff and members of the
22 Class to suffer injury in fact and to lose money or property, as it denied them the
23 benefit of the bargain when they decided to purchase Breyers Natural Vanilla Ice
24 Cream over other products that are less expensive and contain virtually the same or
25 immaterially different amounts of vanilla. Had Plaintiff and the members of the
26 Class been aware of Unilever’s false and misleading advertising tactics, they would
27 not have purchased Breyers Natural Vanilla Ice Cream at all or would have paid
28 less than what they did for it.

1 103. In accordance with California Business and Professions Code section
2 17203, Plaintiff seeks an order enjoining Unilever from continuing to conduct
3 business through unlawful, unfair, and/or fraudulent acts and practices and to
4 commence a corrective advertising campaign.

5 104. Plaintiff also seeks an order for the disgorgement and restitution of all
6 monies from the sale of Breyers Natural Vanilla Ice Cream products that were
7 unjustly acquired through acts of unlawful, unfair, and/or fraudulent competition.

8 105. THEREFORE, Plaintiff prays for relief as set forth below.

9 **SECOND CLAIM**

10 **(ON BEHALF OF THE CALIFORNIA CLASS)**

11 **Violation of California's Unfair Competition Law,**

12 **Cal. Bus. & Prof. Code § 17200 *et seq.***

13 **Unfair and Fraudulent Conduct Prongs**

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

16 107. As set forth above, the UCL prohibits any “unlawful, unfair or
17 fraudulent business act or practice.”

18 108. The false and misleading labeling of Breyers Natural Vanilla Ice
19 Cream, as alleged herein, constitutes “unfair” business acts and practices because
20 such conduct is immoral, unscrupulous, and offends public policy. Further, the
21 gravity of Unilever’s conduct outweighs any conceivable benefit of such conduct.

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

26 110. Unilever’s labeling and marketing of Breyers Natural Vanilla Ice
27 Cream is likely to deceive Class Members about the flavoring source and amount of
28 vanilla of Breyers Natural Vanilla Ice Cream.

1 111. Unilever either knew or reasonably should have known that the claims
2 and statements on the labels of Breyers Natural Vanilla Ice Cream were likely to
3 deceive consumers.

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

8 113. Plaintiff also seeks an order for the disgorgement and restitution of all
9 monies from the sale of Breyers Natural Vanilla Ice Cream products that were
10 unjustly acquired through acts of unlawful, unfair, and/or fraudulent competition.

11 114. THEREFORE, Plaintiff prays for relief as set forth below.

12 **THIRD CLAIM**

13 **(ON BEHALF OF THE CALIFORNIA CLASS)**

14 **Violation of California's False Advertising Law,**

15 **Cal. Bus. & Prof. Code § 17500 *et seq.***

16 **False and Misleading Advertising**

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

19 116. California's FAL prohibits "mak[ing] any false or misleading
20 advertising claim."

21 117. As alleged herein, Unilever, in its labeling of Breyers Natural Vanilla
22 Ice Cream, makes "false [and] misleading advertising claim[s]," as it deceives
23 consumers as to the flavor composition and amount of vanilla of Breyers Natural
24 Vanilla Ice Cream.

25 118. In reliance on these false and misleading advertising claims, Plaintiff
26 and members of the Class purchased and used Breyers Natural Vanilla Ice Cream
27 without the knowledge that Breyers Natural Vanilla Ice Cream did not contain only
28 flavor from vanilla and its vanilla taste was provided mainly by non-vanilla,

1 artificial sources.

2 119. Unilever knew or should have known that its labeling and marketing
3 was likely to deceive consumers.

4 120. As a result, Plaintiff and the Class Members seek injunctive and
5 equitable relief, restitution, and an order for the disgorgement of the funds by which
6 Unilever was unjustly enriched.

7 121. THEREFORE, Plaintiff prays for relief as set forth below.

8 **FOURTH CLAIM**

9 **(ON BEHALF OF THE CALIFORNIA CLASS)**

10 **Violation of California's Consumers Legal Remedies Act,**

11 **Cal. Civ. Code § 1750 *et seq.***

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

14 123. The CLRA adopts a statutory scheme prohibiting various deceptive
15 practices in connection with the conduct of a business providing goods, property, or
16 services primarily for personal, family, or household purposes.

17 124. Unilever's policies, acts, and practices were designed to, and did,
18 result in the purchase and use of Breyers Natural Vanilla Ice Cream primarily for
19 personal, family, or household purposes, and violated and continue to violate the
20 following sections of the CLRA:

21 a. Section 1770(a)(2), which prohibits representing that goods
22 have a particular composition or contents that they do not have;

23 b. Section 1770(a)(5), which prohibits representing that goods
24 have characteristics, uses, benefits, or ingredients that they do not have;

25 c. Section 1770(a)(7), which prohibits representing that goods are
26 of a particular standard, quality, or grade if they are of another;

27 d. Section 1770(a)(9), which prohibits advertising goods with
28 intent not to sell them as advertised; and

1 e. Section 1770(a)(16), which prohibits representing that the
2 subject of a transaction has been supplied in accordance with a previous
3 representation when it has not.

4 125. As a result, in accordance with California Civil Code section
5 1780(a)(2), Plaintiff and members of the Class have suffered irreparable harm and
6 seek equitable relief in the form of an order:

7 a. Enjoining Unilever from continuing to engage in the deceptive
8 practices described above;

9 b. Requiring Unilever to make full restitution of all monies
10 wrongfully obtained as a result of the conduct described above;

11 c. Requiring Unilever to disgorge all ill-gotten gains flowing from
12 the conduct described above;

13 d. Requiring Unilever to provide public notice of the true nature of
14 Breyers Natural Vanilla Ice Cream; and

15 e. Enjoining Unilever from such deceptive business practices in
16 the future.

17 126. Pursuant to California Civil Code sections 1752, 1780, and 1781,
18 Plaintiff, on behalf of himself and other Class Members, seeks actual and punitive
19 damages in an amount to be determined at trial, distribution of notice to the Class,
20 an order of this Court enjoining Unilever from the unlawful practices described
21 herein and requiring Unilever to provide refunds, as well as an award of costs of
22 litigation and attorneys' fees.

23 127. Pursuant to California Civil Code section 1782, a CLRA pre-suit
24 demand was sent to Unilever in writing of the particular violations of section 1770
25 of the CLRA via certified letter sent February 13, 2020, return receipts requested, to
26 Amanda Sourry, Unilever's Chief Executive Officer, at 700 Sylvan Avenue,
27 Englewood Cliffs, New Jersey 07632, and to Unilever's registered agent in the
28 State of California.

1 128. The CLRA demand letter to Unilever included the legal basis for the
2 claim and informed Unilever that unless it complied with the demand, a Complaint
3 would be filed which would include claims for actual damages, punitive damages,
4 and all other damages permitted under the CLRA. Plaintiff's undersigned counsel
5 received electronic return receipts via U.S. Mail indicating that Plaintiff's CLRA
6 demand letters were received by Unilever on February 19, 2020. More than 30 days
7 have passed, and Unilever has failed to meaningfully respond to Plaintiff Nuñez's
8 CLRA demand letter.

9 129. THEREFORE, Plaintiff prays for relief as set forth below.

10 **PRAYER FOR RELIEF**

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

14 A. An order certifying that the action may be maintained as a class action
15 and requiring Unilever to bear the cost of class notice;

16 B. An order enjoining Unilever from pursuing the policies, acts, and
17 practices complained of herein;

18 C. An order compelling Unilever to destroy all misleading and deceptive
19 advertising materials and packaging;

20 D. An order requiring Unilever to pay restitution to Plaintiff and all
21 members of the Class;

22 E. An order requiring Unilever to pay actual damages to Plaintiff and all
23 members of the Class;

24 F. Punitive damages;

25 G. Pre-judgment interest from the date of filing suit;

26 H. Costs, expenses, and reasonable attorneys' fees; and

27 I. Such other and further relief as the Court may deem necessary or
28 appropriate.

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JURY TRIAL DEMAND

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

Date: April 27, 2020

Respectfully submitted,

REESE LLP

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*Counsel for Plaintiff Steve Nuñez
and the Proposed Class*

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AFFIDAVIT OF MICHAEL R. REESE

PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1780

Michael R. Reese declares:

1. I am an attorney duly admitted to practice before this Court. I am a partner in the law firm of Reese LLP, attorneys of record for Plaintiff Steve Nuñez.

2. I am one of the attorneys principally responsible for the handling of this matter. I am personally familiar with the facts set forth in this declaration, and if called as a witness, I could and would competently testify to the matters stated herein.

3. This action has been commenced in a county described in California Civil Code section 1780 as a proper place for the trial of the action. The transactions or a substantial portion thereof occurred in Los Angeles County, California.

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

Executed on April 27, 2020, at New York, New York.

/s/ Michael R. Reese
Michael R. Reese