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*Attorneys for Plaintiff and the Putative Class*  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

VICTORIA SIDLE, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

WAKEFERN FOOD CORP.,

Defendant.

Civil Action No.

**CLASS ACTION COMPLAINT**

**JURY DEMAND**

Plaintiff Victoria Sidle (“Plaintiff”), by and through her undersigned counsel, Shub Law Firm LLC, and Sheehan & Associates, P.C., on behalf of herself and all other persons similarly situated, brings this Class Action Complaint against Wakefern Food Corp. (“Wakefern” or “Defendant”), and alleges as follows upon personal knowledge as to herself and her own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia*, investigations conducted by her attorneys.

## NATURE OF THIS CASE

1. Wakefern Food Corp. (“Wakefern” or “Defendant”) operates over three hundred ShopRite supermarkets in Connecticut, Delaware, Maryland, New Jersey, New York, and Pennsylvania.

2. Defendant manufactures, distributes, markets, labels and sells unsweetened almondmilk under its Wholesome Pantry brand purporting to be flavored exclusively and/or predominantly from vanilla beans and taste like vanilla (“Product”).

3. Unfortunately for consumers, the Product is not flavored mainly from vanilla beans and as a result, does not taste like vanilla.

4. The relevant front label representations include “Vanilla,” “Unsweetened Vanilla,” pictures of cured vanilla beans and a vanilla flower and “Almondmilk.”



5. The representation as “Vanilla” is false, deceptive and misleading because the Product contains fake, artificial vanilla which provides the vanilla taste, and the amount of real vanilla, if any, is trace or *de minimis*.

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

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

8. The vanilla bean is not consumed by itself – it is heated in the sun for weeks until being soaked in alcohol solution and its flavor constituents extracted (vanilla extract).

9. The popularity of vanilla in the 19<sup>th</sup> century led to the isolation of the most predominant flavor component, vanillin.

10. Sensory evaluation of synthetic vanillin is mainly sweet, with a lackluster “chemical-like” taste and odor because it lacks the other molecules in vanilla.

11. This availability of low-cost vanillin resulted in foods purporting to contain vanilla, but either contained no vanilla or a trace or *de minimis* amount, boosted by synthetic vanillin.

12. Consumers would buy foods labeled as “vanilla” only to later discover they lacks the richness and layered taste provided from vanilla beans.

13. However, vanillin separated from the rest of the vanilla bean does not constitute vanilla flavor.

14. The characterizing notes of vanillin must be accompanied by other compounds to produce the familiar flavor and aroma consumers are accustomed to as vanilla.

15. Vanilla’s unique and complex flavor is due to the many odor-active compounds such as acids, ethers, alcohols, acetals, heterocyclics, phenolics, hydrocarbons, esters and carbonyls,

shown in the table below for a sample of vanilla extract.

16. which can identify the range of volatile compounds responsible for vanilla's flavor with minimal to no degradation.

17. The benefit of such an approach is the focus on signals generated and comparison with a known authentic sample.

MS Scan #	Area Integration	Peak Assignment	Peak Area %
67	16132	hexanal	0.0206
71	16235	butanediol isomer	0.0207
81	57370	butanediol isomer	0.0732
103	36387	3-methylbutyric acid	0.0464
115	33053	furfural	0.0422
141	27408	butanal, diethyl acetal	0.0350
262	18390	3-methylbutanal, diethyl acetal	0.0235
281	25224	hexanoic acid	0.0322
289	2729	methyl furfural	0.0035
299	52183	phenol + trace of benzaldehyde	0.0665
349	2385	1H-pyrrole-2-carboxaldehyde	0.0030
379	47287	limonene + benzyl alcohol	0.0603
397	13835	heptanoic acid	0.0176
409	31102	gamma-hexalactone	0.0397
415	19338	p-cresol	0.0247
425	4470	hexanal, diethyl acetal	0.0057
443	287479	guaiacol	0.3666
453	5947	nonanal	0.0076
477	10000	phenylethyl alcohol	0.0128
496	112067	?	0.1429
505	44668	benzoic acid + octanoic acid	0.0570
522	4551	diethyl succinate	0.0058
536	2461	ethyl benzoate	0.0031
544	11769	1,2-benzenediol	0.0150
555	145356	2-methoxy-4-methylphenol	0.1854
567	2537	methyl salicylate	0.0032
587	8552	hydroxy methyl furfural (HMF)	0.0109
594	5555	benzeneacetic acid	0.0071
605	101562	nonanoic acid	0.1295
624	6802	hydroquinone	0.0087
631	3864	4-methoxybenzaldehyde (p-anisaldehyde)	0.0049
642	6356	ethyl nonanoate	0.0081
653	53264	4-methoxybenzyl alcohol (p-anisyl alcohol)	0.0679
676	14481	cinnamyl alcohol	0.0185
685	16094	3-hydroxybenzyl alcohol	0.0205
718	12188570	3-hydroxybenzaldehyde + 4-ethoxymethylphenol	15.5440
751	122634	methyl cinnamate	0.1564
759	60715743	vanillin	77.4301
796	90669	methyl-p-methoxybenzoate (methyl paraben)	0.1156
809	2228588	vanillyl ethyl ether + trace of 4-hydroxy-3-methoxybenzyl alcohol	2.8421
832	224829	p-hydroxybenzoic acid	0.2867
839	37335	acetovanillone	0.0476
892	950342	vanillic acid	1.2120
908	405589	3,4-dihydroxybenzaldehyde	0.5172
935	82429	3,4-dihydroxy-5-methoxybenzaldehyde	0.1051
954	6212	ethyl homovanillate	0.0079
975	78148	syringaldehyde	0.0997
1266	14130	ethyl palmitate	0.0180
1518	21477	ethyl linoleate	0.0274
<b>78413588 Total</b>			<b>100.0000</b>

18. While vanillin (MS Scan # 759, 77.4301 Peak Area %) plays a significant role, it contributes less than one-third of the overall flavor/aroma impact of vanilla.

19. Methyl cinnamate (MS Scan # 751) and cinnamyl alcohol (MS Scan # 676, 0.0185)

provide distinct cinnamon and creamy notes to vanilla.

20. P-cresol (MS Scan # 415, 0.0247) contributes flavor notes described as woody and spicy.

21. Acetovanillone (MS Scan # 839, 0.0476) provides a sweet, honey note.

22. P-hydroxybenzoic acid (MS Scan # 832, 0.2867) and vanillic acid (MS Scan # 892, 1.2120) are significant phenolic compounds which contribute to vanilla's aroma.

23. 4-methoxybenzaldehyde (p-anisaldehyde) (MS Scan # 631, 0.0049) provides creamy flavor notes to vanilla.

24. 4-methoxybenzyl alcohol (p-anisyl alcohol) (MS Scan # 653, 0.0679) provides floral notes.

25. Consumer and industry groups have long sought to prevent the deceptive practice where consumers are sold a food flavored as "vanilla" only to discover too late it lacks the richness and layered taste only provided by flavor from vanilla beans.

26. The earliest efforts to prevent fraud in vanilla products was the U.S. Pharmacopeia standard, which required a specific weight of vanilla beans as the source for vanilla extract.

27. The focus was on the weight of actual vanilla beans, because this would prevent companies from adding vanillin to a small amount of vanilla beans.

28. Consumer deception continued into the 20<sup>th</sup> century, and companies regularly deceived consumers by labeling their foods as flavored with "vanilla" despite containing only vanillin with caramel coloring.

29. Congress, with the aid of the vanilla industry, authorized regulations to prevent this deceptive labeling of vanilla flavored foods.

30. For over fifty (50) years, companies adhered to these industry standards.

31. This meant consumers were informed about foods that purported to be flavored as “vanilla” because they were identified as imitation or artificially flavored.

32. When a food was labeled as “vanilla” without qualification, consumers understood that the flavoring was only from the ingredient of vanilla beans.

33. These regulations effectively established custom and practice so that consumers’ experience has primed them to infer from a product’s labeling whether the flavor source was entirely from the characterizing vanilla bean ingredient or not.

34. In early 2018, in response to reports of a surge in fraudulent vanilla flavored foods, the flavor industry – The Flavor and Extract Manufacturers Association of the United States or “FEMA” – urged companies to return to truthfully labeling vanilla foods so consumers would not be misled by artificial vanilla flavors where foods were labeled only with “vanilla.” *See* John B. Hallagan and Joanna Drake, FEMA, “[Labeling Vanilla Flavorings and Vanilla-Flavored Foods in the U.S.](#),” *Perfumer & Flavorist*, Vol. 43 at p. 46, Apr. 25, 2018 (“Hallagan & Drake”).

35. Based on the term “Vanilla” and the absence of any qualifying terms, reasonable consumers, and Plaintiffs, expected the Product’s vanilla taste to be only from vanilla beans.

36. Though the Product’s front label only references “Vanilla,” the ingredient list does not clarify and disclose to consumers that its “vanilla” taste comes predominantly from non-vanilla sources, since the flavoring is declared as “Natural Flavor.”



**INGREDIENTS:** ALMONDMILK (FILTERED WATER, ALMONDS), **NATURAL FLAVOR**, SEA SALT, GELLAN GUM, XANTHAN GUM, SUNFLOWER LECITHIN, CALCIUM CARBONATE, VITAMIN E ACETATE, ZINC GLUCONATE, VITAMIN A PALMITATE, VITAMIN B12, VITAMIN D2.

37. Analysis of the Product reveals an abnormal excess of vanillin (MS Scan # 998, 67.074 PPM) relative to the amount and presence of the key odor-active compounds in authentic vanilla, which is a strong indicator it contains vanillin from non-vanilla sources.

MS Scan #	Area Integration	Peak Assignment	Conc. PPM w/w
140	6787	1-butanol	0.024
272	14332	acetic acid	0.051
426	2924795	1,2-propylene glycol	10.310
549	2343	benzaldehyde	0.008
569	10120	hexanoic acid	0.036
579	2858	octanal	0.010
589	2473	2-ethyl-6-methylpyrazine	0.009
674	1711	2-acetyl pyrrole	0.006
685	6197	guaiacol	0.022
689	11025	nonanal	0.039
707	2479	ethyl heptanoate	0.009
729	4964123	maltol	17.499
747	48454	octanoic acid	0.171
754	54573	benzoic acid	0.192
792	4361	decanal	0.015
803	283680	naphthalene-d8 (internal standard)	1.000
826	8445	hydroxy methyl furfural (HMF)	0.030
839	209575	nonanoic acid	0.739
883	13564	2,4-decadienal	0.048
900	3343	glyceryl triacetate (Triacetin)	0.012
906	22914	2,4-decadienal	0.081
927	29621	decanoic acid	0.104
944	319009	piperonal	1.125
998	19027486	vanillin	67.074
1013	38163	undecanoic acid	0.135
1034	18520	vanillyl ethyl ether	0.065
1087	5468	vanillyl acetate	0.019
1096	142702	lauric acid	0.503
1125	2579	dihydroactinolide	0.009
1185	13251	piperonal, propylene glycol cyclic acetal	0.047
1213	101427	a thiamine type vitamin	0.358
1440	66231	palmitic acid	0.233
Total (excluding internal standard)			98.981

38. For instance, the Product's flavoring fails to reveal detectable levels of methyl cinnamate, cinnamyl alcohol, p-cresol, acetovanillone, p-hydroxybenzoic acid, 4-methoxybenzaldehyde (p-anisaldehyde), 4-methoxybenzyl alcohol (p-anisyl alcohol) and vanillic acid, even though these compounds were analyzed for.

39. This means that the Product *may* contain a trace or de minimis amount of vanilla, but this is boosted by synthetic vanillin from wood pulp or petroleum derivatives.

40. Therefore, the representation "Vanilla" is false, deceptive and misleading.

41. First, consumers expect the designation of vanilla without qualifying terms – "flavored," "other natural flavors" – to mean the flavor source is exclusively and/or predominantly from vanilla beans.

42. Most products sold today contain such statements, so their absence is notable to consumers.

43. Second, because vanillin is responsible for less than one-third of the overall flavor/aroma impact of vanilla, it is false and misleading to describe the Product's taste as "vanilla" because it lacks detectable level of the odor-active compounds that are critical to the expected vanilla taste.

44. Third, the representation of "vanilla" is misleading because the Product contains added vanillin from non-vanilla sources.

45. Natural vanillin is only from vanilla beans, which means vanillin from non-vanilla sources is artificial.

46. According to the legal counsel for FEMA, John Hallagan, a food such as almondmilk that purports to taste like vanilla must disclose the presence of the artificial flavor, vanillin.

47. Hallagan provides an example of a "vanilla-tasting cookie (vanilla is the



characterizing flavor)” which contains some vanilla and added vanillin.

48. Since vanillin is characterizing for vanilla, “the labeling for the cookie on the principal display panel must indicate” it is artificially flavored because it contains vanillin not from vanilla beans.<sup>1</sup>

49. Likewise, Defendant’s Unsweetened Almondmilk is labeled as vanilla even though it contains vanillin not from vanilla beans, which means it should be labeled as “artificially flavored.”

50. Consumers expect to be told the Product is artificially flavored because vanilla’s taste is not synonymous with vanillin.

51. Vanillin is also much cheaper than vanilla, and it is highly processed using chemicals.

52. By omitting “artificially flavored” from the front label, consumers are not told that the (1) taste is not provided exclusively or predominantly from vanilla beans and (2) that the Product fails to taste like vanilla because it lacks the above-described odor-active compounds.

53. Fourth, the Product’s ingredient list prevents consumers from learning the truth about the “vanilla” taste.

54. Because the Product contains added vanillin, the ingredient list should indicate “natural and artificial flavors.”

55. Consumers who read the ingredient listing of “natural flavor” will not be told that “vanilla” on the front label does not mean the Product is flavored with artificial flavor ingredients other than vanilla beans.

56. Consumers are entitled to know “whether the product [they are buying] is flavored with a vanilla flavoring derived from vanilla beans, in whole or in part, or whether the food’s

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<sup>1</sup> Hallagan and Drake, p. 52.

vanilla flavor is provided by flavorings not derived from vanilla beans.”<sup>2</sup>

57. Where a product is flavored from sources other than vanilla beans, it will not taste like vanilla.

58. Defendant knows consumers will pay more for the Product because the front label only states “vanilla” and not “artificially flavored” and “does not taste like real vanilla.”

59. Defendant’s omission and failure to disclose these facts is deceptive and misleading to consumers who want a vanilla flavored product that contains flavoring mainly from vanilla beans and tastes like vanilla.

60. Vanillin is found by plaintiffs and consumers to taste harsh and lack the depth of real vanilla extract.

61. Defendant’s branding and packaging of the Product is designed to – and does – deceive, mislead, and defraud plaintiff and consumers.

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

63. The value of the Product that plaintiff purchased and consumed was materially less than its value as represented by defendant.

64. Had plaintiff and class members known the truth, they would not have bought the Product or would have paid less for them.

65. As a result of the false and misleading labeling, the Product is an sold at a premium price, approximately no less than \$ 3.99 per 64 OZ, excluding tax, compared to other similar products represented in a non-misleading way, and higher than the price of the Product if it were represented in a non-misleading way.

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<sup>2</sup> *Id.*

### **JURISDICTION AND VENUE**

66. Jurisdiction is proper pursuant to Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C. § 1332(d)(2)

67. Under CAFA, district courts have “original federal jurisdiction over class actions involving (1) an aggregate amount in controversy of at least \$5,000,000; and (2) minimal diversity[.]” *Gold v. New York Life Ins. Co.*, 730 F.3d 137, 141 (2d Cir. 2013).

68. Plaintiff Victoria Sidle is a citizen of New Jersey.

69. Defendant Wakefern Food Corp., is a New Jersey corporation with a principal place of business in Keasbey, Middlesex County, New York and is a citizen of New Jersey.

70. “Minimal diversity” exists because plaintiff Victoria Sidle and defendant are citizens of different states.

71. Upon information and belief, sales of the Product in New Jersey exceed \$5 million per year, exclusive of interest and costs, and the aggregate amount in controversy exceeds \$5 million per year.

72. Venue is proper in this judicial district because Plaintiff resides in this District and defendant is an entity with the capacity to sue and be sued in its common name under applicable law and is deemed to reside in this judicial district because defendant is subject to the court’s personal jurisdiction in this State with respect to this action. *See* 28 U.S.C. § 1391(b)(1); *see also* 28 U.S.C. § 1391(c)(2).

73. Venue is further supported because many class members reside in this District.

### **PARTIES**

74. Plaintiff Victoria Sidle is a citizen of New Jersey, Maywood, Bergen County.

75. Defendant Wakefern Food Corp. is a New Jersey corporation with a principal place

of business in Keasbey, New York, Middlesex County and is a citizen of New York.

76. During the relevant statutes of limitations for each cause of action alleged, plaintiff purchased the Product within her district and/or State for personal and household consumption and/or use in reliance on the representations of the Product.

77. Plaintiff Sidle purchased the Product on a weekly basis for no less than the past two years, at defendant's ShopRite store at 220 W Passaic St, Rochelle Park, NJ 07662.

78. Plaintiff bought the Product at or exceeding the above-referenced price because she liked the product for its intended use and relied upon the front label claims, expected a vanilla taste, and that such taste would come exclusively and/or predominantly from vanilla beans and did not expect a taste of vanillin, provided by artificial vanilla flavors.

79. Plaintiff was deceived by and relied upon the Product's deceptive labeling.

80. Plaintiff would not have purchased the Product in the absence of Defendant's misrepresentations and omissions.

81. The Product was worth less than what Plaintiff paid for it and she would not have paid as much absent Defendant's false and misleading statements and omissions.

82. Plaintiff intends to, seeks to, and will purchase the Product again when she can do so with the assurance that Product's labels are consistent with the Product's components.

### **CLASS ALLEGATIONS**

83. The class will consist of all purchasers of the Product who reside in New Jersey and Pennsylvania during the applicable statutes of limitations.

84. Plaintiff seek class-wide injunctive relief based on Rule 23(b) in addition to a monetary relief class.

85. Common questions of law or fact predominate and include whether defendant's

representations were and are misleading and if plaintiff and class members are entitled to damages.

86. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair and deceptive representations and actions.

87. Plaintiff is an adequate representatives because her interests do not conflict with other members.

88. No individual inquiry is necessary since the focus is only on defendant's practices and the class is definable and ascertainable.

89. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

90. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to protect class members' interests adequately and fairly.

91. Plaintiff seeks class-wide injunctive relief because the practices continue.

### **COUNT I**

#### **Violation of New Jersey Consumer Fraud Act ("CFA") NJSA § 56:8-1, et seq.**

92. Plaintiff incorporates by reference all preceding paragraphs.

93. Plaintiff and class members desired to purchase and consume products which were as described and marketed by defendant and expected by reasonable consumers, given the product type.

94. Defendant's acts and omissions are not unique to the parties and have a broader impact on the public.

95. Defendant misrepresented the substantive, quantitative, qualitative, compositional and/or organoleptic attributes of the Product.

96. The amount and proportion of the characterizing component, vanilla, has a material bearing on price and consumer acceptance of the Product and consumers do not expect the Product

to be flavored by sources which were not predominantly vanilla beans and expect a Product that tastes like vanilla, because that is what the front label said – “Vanilla.”

97. Plaintiff relied on the statements, omissions and representations of defendant, and defendant knew or should have known the falsity of same.

98. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

**COUNT II**  
**Negligent Misrepresentation**

99. Plaintiff incorporates by reference all preceding paragraphs.

100. Defendant misrepresented the substantive, quantitative, qualitative, compositional and/or organoleptic attributes of the Product.

101. The amount and proportion of the characterizing component, vanilla, has a material bearing on price and consumer acceptance of the Product and consumers do not expect artificial vanilla because it was not stated on the front label or ingredient list, where consumers are accustomed to looking and seeing this information.

102. Defendant had a duty to disclose the non-vanilla, artificial flavors and tell consumers the Product did not taste like vanilla because it lacked sufficient amounts of the compounds which provide the characteristic vanilla taste.

103. This duty is based on defendant’s position as an entity which has held itself out as having special knowledge and experience in the production, service and/or sale of the product type.

104. The representations took advantage of consumers’ cognitive shortcuts made at the point-of-sale and their trust in defendant, a well-known and respected brand or entity in this sector.

105. Plaintiff and class members reasonably and justifiably relied on these negligent misrepresentations and omissions, which served to induce and did induce, the purchase of the

Product.

106. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

**COUNT III**  
**Breaches of Express Warranty**

107. Plaintiff incorporates by reference all preceding paragraphs.

108. The Product was manufactured, labeled and sold by defendant or at its express directions and instructions, and warranted to plaintiff and class members that they possessed substantive, quality, organoleptic, and/or compositional attributes it did not.

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

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

111. Plaintiff provided or will provide notice to defendant, its agents, representatives, and their employees.

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

113. The Product did not conform to its affirmations of fact and promises due to defendant's actions and were not merchantable.

114. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

**COUNT IV**  
**Breaches of Implied Warranty of Merchantability**

115. Plaintiff incorporates by reference all preceding paragraphs.

116. The Product was manufactured, labeled and sold by defendant or at its express directions and instructions, and warranted to plaintiff and class members that they possessed substantive, quality, organoleptic, and/or compositional attributes it did not.

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

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

119. Plaintiff provided or will provide notice to defendant, its agents, representatives, and their employees.

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

121. The Product did not conform to its affirmations of fact and promises due to defendant's actions and were not merchantable.

122. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

**COUNT V**  
**Breaches of Magnuson Moss Warranty Act, 15 U.S.C. §§ 2301, et seq.**

123. Plaintiff incorporates by reference all preceding paragraphs.

124. The Product was manufactured, labeled and sold by defendant or at its express directions and instructions, and warranted to plaintiff and class members that they possessed substantive, quality, organoleptic, and/or compositional attributes it did not.



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

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

127. Plaintiff provided or will provide notice to defendant, its agents, representatives, and their employees.

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

129. The Product did not conform to its affirmations of fact and promises due to defendant's actions and were not merchantable.

130. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

**COUNT VI**  
**Fraud**

131. Plaintiff incorporates by reference all preceding paragraphs.

132. Defendant misrepresented the substantive, quality, compositional and/or organoleptic attributes of the Product.

133. The amount and proportion of the characterizing component, vanilla, has a material bearing on price and consumer acceptance of the Product and consumers do not expect a product labeled as "Vanilla" to be flavored mainly from artificial vanillin and therefore not taste like vanilla.

134. Defendant's fraudulent intent is evinced by its failure to accurately identify the Product on the front label and ingredient list, when it knew its statements were neither true nor

accurate and misled consumers.

135. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

**COUNT VII**  
**Unjust Enrichment**

136. Plaintiff incorporates by reference all preceding paragraphs.

137. Defendant obtained benefits and monies because the Product was not as represented and expected, to the detriment and impoverishment of plaintiff and class members, who seek restitution and disgorgement of inequitably obtained profits.

**JURY DEMAND**

Plaintiff demands a jury trial on all issues.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying plaintiff as representative and the undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct the challenged practices to comply with the law;
3. Injunctive relief to remove, correct and/or refrain from the challenged practices and representations, and restitution and disgorgement for members of the class pursuant to the applicable laws;
4. Awarding monetary damages and interest pursuant to the common law and other statutory claims;
5. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and

6. Other and further relief as the Court deems just and proper.

Dated: November 17, 2020

Respectfully submitted,

**SHUB LAW FIRM LLC**

/s/ Jonathan Shub

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*Attorneys for Plaintiff and the Proposed  
Class*

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Victoria Sidle, individually and on behalf of all others  
similarly situated

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

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

Jonathan Shub, Shub Law Firm LLC, 134 Kings Hwy. E.,  
2nd Floor, Haddonfield, NJ 08033 (856) 772-7200

## DEFENDANTS

Wakefern Food Corp.

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

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

- |                                         | PTF                                   | DEF                        |                                                               | PTF                        | DEF                                   |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC § 1332

Brief description of cause:

False advertising

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$  
5,000,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

11/17/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jonathan Shub

## FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.