

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REESE LLP

Michael R. Reese (State Bar No. 206773)
mreese@reesellp.com
Sue J. Nam (State Bar No. 206729)
snam@reesellp.com
100 West 93rd Street, 16th Floor
New York, New York 10025
Telephone: (212) 643-0500
Facsimile: (212) 253-4272

REESE LLP

George V. Granade (State Bar No. 316050)
ggranade@reesellp.com
8484 Wilshire Boulevard, Suite 515
Los Angeles, California 90211
Telephone: (310) 393-0070

SHEEHAN & ASSOCIATES, P.C.

Spencer Sheehan (Pro Hac Vice)
spencer@spencersheehan.com
60 Cuttermill Rd, Ste 409
Great Neck, NY 11021
Telephone: (516) 303-0552
Facsimile: (516) 234-7800
Counsel for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOWARD CLARK, individually, and on
behalf of those similarly situated,

Plaintiff,

v.

WESTBRAE NATURAL, INC.,

Defendant.

CASE NO. 3:20-cv-03221-JSC

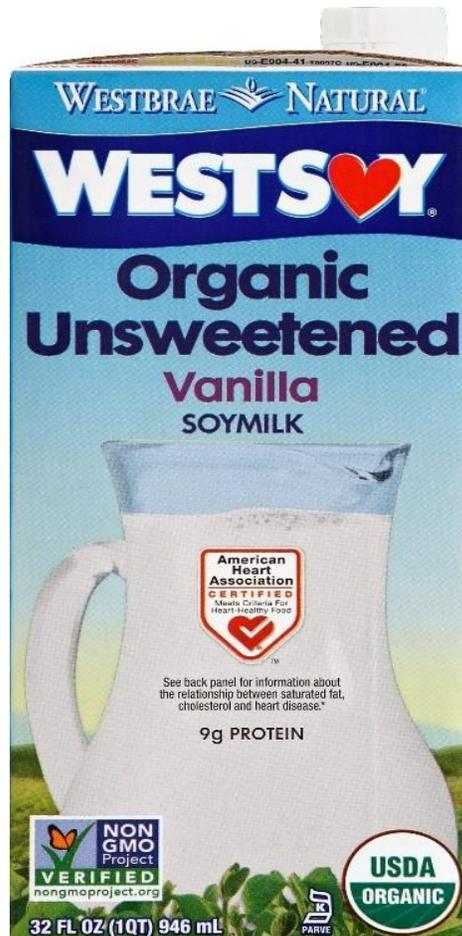
**SECOND AMENDED CLASS ACTION
COMPLAINT**

Demand for Jury Trial

1 Plaintiff Howard Clark (“Plaintiff”), on behalf of himself and others similarly situated,
2 brings this Second Amended Class Action Complaint against Westbrae Natural, Inc.
3 (“Defendant” or “Westbrae”), and on the basis of personal knowledge, information and belief,
4 and investigation of counsel, allege as follows:

5 **INTRODUCTION**

6 1. Defendant manufactures, distributes, markets, labels, and sells vanilla flavor
7 soymilk beverages under its Westsoy brand (the “Product”). As seen below, Defendant
8 prominently states, “Vanilla” on its Product’s label.



24 2. In a survey of over 400 consumers, which was conducted in December 2020, two
25 hundred or 49.6% of the consumers believed that the term “Vanilla” on the Product means that
26 that the origin of the Product’s vanilla flavor “comes exclusively from ingredients derived from
27 the vanilla plant, such as vanilla beans or vanilla extract.” See Propeller Insights, Report for
28

1 Project - 120420-2 - WestSoy Study, completed on December 11, 2020, attached as Exhibit A, at
page 5.

2 3. Unfortunately for consumers, the “Vanilla” representation is false and misleading.
3 Specifically, scientific testing in January of 2020 of the Product revealed that the vanilla flavoring
4 of the Product does not come exclusively from the vanilla plant. *See* Mass Spectrometry
5 Laboratory Analysis Report #7608, dated January 31, 2020, attached as Exhibit B. Instead, the
6 Product is spiked with vanillin and maltol, which the Food and Drug Administration (“FDA”)
7 regulates as artificial flavorings.

8 4. As detailed below, Defendant’s labeling is likely to mislead or deceive reasonable
9 consumers and, as a result, violates the unfair prong of California’s Unfair Competition Law
10 (“UCL”); California’s Consumer Legal Remedies Act (“CLRA”); and California’s False
11 Advertising Law (“FAL”).

12 5. Additionally, as detailed below, because Defendant’s labeling violates FDA
13 regulations and Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety Code § 109875 et
14 seq. (the “Sherman Law”), it also violates the unlawful prong of the UCL (which is not subject to
15 a reasonable consumer standard).

16 6. Plaintiff now brings this action to stop Defendant’s misrepresentation and recover
17 the monies he and other class members paid for the Product as a result of the misrepresentation,
18 as well as the other relief detailed below.

19 **JURISDICTION**

20 7. This Court has jurisdiction over this action under the Class Action Fairness Act,
21 28 U.S.C. § 1332(d). The amount in controversy exceeds the sum or value of \$5,000,000,
22 exclusive of interest and costs, and the parties are citizens of different states.

23 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial
24 part of the events and misrepresentations giving rise to Plaintiff’s claims occurred in this District,
25 and Defendant (1) is authorized to conduct business in this District and has intentionally availed
26 itself of the laws and markets of this District through the promotion, marketing, distribution, and
27 sale of its Product here, (2) resides in this District, and (3) is subject to personal jurisdiction in

this District.

PARTIES

9. Plaintiff is a resident of the City of San Francisco in the County of San Francisco, California. During the Class Period (as defined below), he purchased the Product in California for personal, family, or household use, including a 32-ounce container of the Product at Whole Foods Market, 2001 Market St, San Francisco, California 94114 in December 2019.

10. The front of the Product stated “Vanilla” in large letters.

11. Plaintiff relied upon the “Vanilla” representation when he purchased the Product. He believed that the vanilla flavor in the Product was exclusively from the vanilla plant. Plaintiff would not have purchased the Product at a premium price or bought the Product at all had Plaintiff known the truth – that the “Vanilla” representation on the Product, which he relied upon in making his purchase, was false, misleading, and deceptive in that the vanilla flavor was not exclusively from the vanilla plant but instead contain artificial flavorings, namely, vanillin and maltol. Plaintiff would purchase the Product again in the future if the Product were reformulated such that the vanilla flavor came exclusively from the vanilla plant or the Product was not deceptively labeled.

12. Defendant Westbrae is a Delaware corporation, with its principal place of business in New Hyde Park, New York.

BACKGROUND

13. Consumers want the vanilla flavor in food products to come “real vanilla,” i.e., from ingredients derived from the vanilla plant, such as vanilla beans or vanilla extract. Unfortunately, vanilla fraud is rampant. As in this case, companies adulterate their purported vanilla flavored products with cheap synthetics and substitutes in order to reap even larger corporate profits from consumers.

14. Section 401 of the Federal Food, Drug and Cosmetic Act (“FFDCA”) directs the FDA to establish standards and rules for food labeling where necessary to promote honesty and fair dealing in the interest of consumers. The authority granted by Congress to the FDA enables

1 the agency to combat an economic problem: the marketing of foods from which traditional
2 constituents were removed or in which new or different (often cheaper and artificial) ingredients
3 were substituted. As such, the federal food standards are not safety standards, but rather, as the
4 FDA explains, intended to “protect consumers from contaminated products and economic fraud”
5 and have served as “a trusted barrier against substandard and fraudulently packaged food since
6 their enactment in the 1938 FFDCA.”

7 15. In order to combat vanilla fraud, the FDA has strict rules regarding use of the term
8 “vanilla” on the labels of food products.

9 16. Only vanilla flavor derived from the vanilla plant is allowed to be labelled “Vanilla”
10 without any qualifiers. If the vanilla flavor comes in any part from non-vanilla plant sources, the
11 FDA mandates that the label must so inform consumers.

12 17. California has adopted all federal regulations for food labeling through its
13 Sherman Law, such that a violation of the FDA regulations also violates California’s Sherman
14 Law.

15 **DEFENDANT’S DECEPTIVE ACTS**

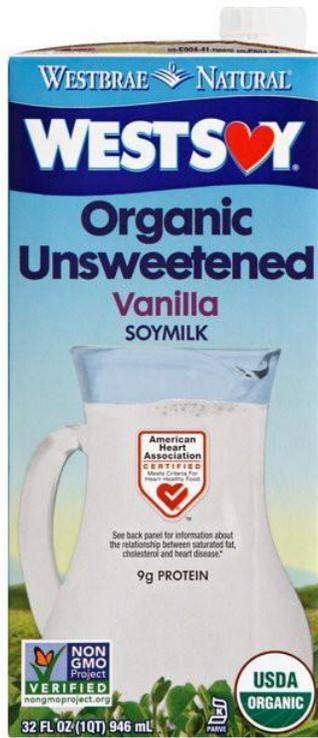
16 **Misleading and Deceptive Flavor Designation**

17 18. A food is considered misbranded if “its labeling is false or misleading in any
18 particular.” 21 U.S.C. § 343(a).

19 19. Based on the prominent use of the term “Vanilla” and the absence of any
20 qualifying terms on the front of the Product, consumers believe that the origin of the Product’s
21 vanilla flavor comes exclusively from ingredients derived from the vanilla plant.

22 20. This conclusion is consistent with a consumer survey. *See* Propeller Insights,
23 Report for Project - 120420-2 - WestSoy Study, completed on December 11, 2020, attached as
24 Exhibit A.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



21. Consumers were asked: “What does the term "Vanilla" on the above pictured product convey to you about the origin of the vanilla flavor? They responded as follows:

That it comes exclusively from ingredients derived from the vanilla plant, such as vanilla beans or vanilla extract.	49.6%	200
That it comes exclusively from artificial ingredients.	9.2%	37
That it comes exclusively from natural ingredients that are not from a vanilla plant, such as pine bark, clove oil, or rice bran.	9.4%	38
That it comes from a combination of ingredients.	18.4%	74
None of these.	13.4%	54
		Totals: 403

Id. at page 5.

22. Two hundred of the consumers surveyed, or 49.6% percent, believed that the term “Vanilla” on the Product means that that the origin of the Product’s vanilla flavor “comes exclusively from ingredients derived from the vanilla plant, such as vanilla beans or vanilla extract.” *Id.*

23. However, scientific testing of the Product on January 31, 2020 by the Mass Spectrometry Facility, Food Innovation Center North, revealed that the Product's vanilla flavor Product does not come exclusively from the vanilla plant. *See* Mass Spectrometry Laboratory Analysis Report #7608, dated January 31, 2020, attached as Exhibit B.

24. This conclusion is supported by the report's GC-MS analysis, the method laboratories typically rely on in determining the presence of vanilla flavor components, because it is capable of detecting trace levels of compounds and there is minimal to no degradation of compounds in the extraction and detection process.

Table 1

Sheehan & Associates, P.C., Project #7608
Westsoy Organic Unsweetened Vanilla Soymilk
Production Code: 10219254714:44 1229629
Methylene Chloride Extract of with 1 ppm Matrix-Spiked Int. Std. by P&T-TD-GC-MS

Data File = TSQA3762

MS Scan #	Area Integration	Peak Assignment	Conc. PPM w/w
132	1837527	diacetyl	1.18
186	110971	acetol	0.07
238	212546	acetoin	0.14
284	455852	1,2-propylene glycol (PG)	0.29
339	17449	hexanal	0.01
381	27961	methyl pyrazine	0.02
428	20701	hexyl alcohol	0.01
490	98469	gamma-butyrolactone	0.06
553	355555	hexanoic acid	0.23
559	124675	benzaldehyde	0.08
576	25500	2-pentylfuran	0.02
623	415090	cyclotene	0.27
639	362492	N-methylpyrrolidinone (NMP)	0.23
655	52342	gamma-hexalactone	0.03
661	123598	heptanoic acid	0.08
676	91395	2-acetylpyrrole	0.06
693	93935	guaiacol	0.06
700	62741	nonanal	0.04
705	296423	3-hydroxy-4,5(R)-dimethyl-2(5H)-furanone	0.19
743	45519020	maltol	29.23
761	482597	octanoic acid	0.31
769	138399	benzoic acid	0.09
800	209270	decanal	0.13
815	1557448	naphthalene-d8 (internal standard)	1.00
820	163504	2,3-dihydrobenzofuran	0.10
853	872541	nonanoic acid	0.56
890	451734	cinnamic aldehyde	0.29
941	81667	decanoic acid	0.05
955	699778	gamma-nonalactone	0.45
1018	60098160	vanillin	38.59
1110	280100	lauric acid	0.18
1187	765501	triethyl citrate	0.49
1212	141266	syringaldehyde	0.09
1269	83629	myristic acid	0.05
1459	84413	palmitic acid	0.05
Total			73.75

1 25. Approximately thirty-five (35) flavor compounds were detected. *Id.* at Table 1,
page 5.

2 26. The absence of many of the compounds associated with vanilla, such as p-
3 hydroxybenzaldehyde, p-hydroxybenzoic acid and vanillic acid, means the Product's vanilla
4 flavor is not exclusively from the vanilla plant, as reasonable consumers would expect based upon
5 the unqualified front label of "Vanilla."

6 27. The analysis also revealed the Product contains added vanillin (MS Scan # 1018,
7 38.59 PPM) and maltol (MS Scan # 743).

8 28. Vanillin and maltol are flavoring agents commonly added to food to simulate,
9 resemble or reinforce the flavor notes and aromas of vanilla from the vanilla plant.

10 29. FDA regulates the use of vanillin and maltol in food products as artificial
11 ingredients.

12 30. The FDA has implemented individual standards that describe the labelling of
13 vanillin in vanilla flavorings. *See* 21 C.F.R. § 169.180(a) ("Vanilla-vanillin extract"); 21 C.F.R. §
14 169.181(a) ("Vanilla-vanillin flavoring"); 21 C.F.R. § 169.182(a) ("Vanilla-vanillin powder").
15 These standards require that any vanilla flavorings that incorporates added vanillin must be
16 labelled **artificial**. *See* 21 C.F.R. § 169.180(b) ("The specified name of the food is 'Vanilla-
17 vanillin extract ___-fold' or '___-fold vanilla-vanillin extract', **followed immediately by the**
18 **statement 'contains vanillin, an artificial flavor (or flavoring)'**. "); 21 C.F.R. § 169.181(b)
19 ("The specified name of the food is 'Vanilla-vanillin flavoring ___-fold ' or '___-fold vanilla-
20 vanillin flavoring', **followed immediately by the statement 'contains vanillin, an artificial**
21 **flavor (or flavoring)'**."); 21 C.F.R. § 169.182(b) ("The specified name of the food is 'Vanilla-
22 vanillin powder ___-fold' or '___-fold vanilla-vanillin powder', **followed immediately by the**
23 **statement 'contains vanillin, an artificial flavor (or flavoring)'**. ") (emphasis added).

24 31. Similarly, according to the FDA, maltol is a "synthetic flavoring substance" that is
25 permitted to be used only under certain conditions. *See* 21 C.F.R. § 172.515(b).

26 32. The Product's "Vanilla" labeling is misleading to consumers because it leads them
27 to believe the Product's vanilla flavor comes exclusively from ingredients derived from the
28

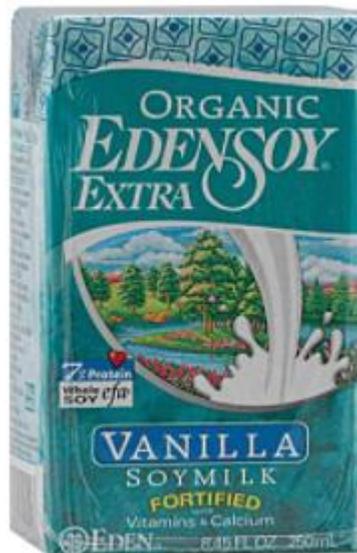
vanilla plant when that is not true.

1 33. The Product’s labeling also is false and misleading by omitting “artificial flavor”
2 or “artificially flavored” from the front label when the Product contains vanillin and maltol,
3 artificial vanilla flavor additives.

4 34. Indeed, only 18.4% of the consumers surveyed correctly surmised from the front
5 label that the Product’s vanilla flavor “comes from a combination of ingredients.” *See* Propeller
6 Insights, Report for Project - 120420-2 - WestSoy Study, completed on December 11, 2020,
7 attached as Exhibit A, at page 5.

8 35. Furthermore, adding to consumer confusion is the fact Defendant’s Product label
9 mimics that of competitors’ vanilla soymilk product where the vanilla flavor comes exclusively
10 from the vanilla plant in the form of vanilla extract.

11 36. For example, the vanilla flavoring in EdenSoy Vanilla Soymilk (pictured below)
12 comes exclusively from the vanilla plant:



22 37. Moreover, the price of EdenSoy Vanilla Soymilk (where the vanilla flavor comes
23 exclusively for the vanilla plant) and the price of the Product (where the vanilla flavor does **not**
24 come exclusively from the vanilla plant) are comparable, with EdenSoy selling for \$3.99 for 32
25 ounces (or 12.4 cents per ounce), and Westsoy selling for \$3.29 for 32 ounces (or 10.2 cents per
26 ounce). In contrast, the price of vanilla-flavored soymilk, where the vanilla flavor does not
27 exclusively from the vanilla plant, costs significantly less than EdenSoy or the Product. For
28

example, Silk vanilla soymilk costs \$3.19 per 64 ounces (or 4.9 cents per ounce).

Reliance and Economic Injury

38. Plaintiff sought a soy milk product with vanilla flavor exclusively from the vanilla plant, such as vanilla beans or vanilla extract.

39. Plaintiff read and relied on Defendant’s false and misleading “Vanilla” representation on the front of the Product label to believe that the Product’s vanilla flavor comes exclusively from ingredients derived from the vanilla plant.

40. The Product’s cost per ounce is comparable to a competitor’s vanilla soymilk, where the vanilla flavor comes exclusively from ingredients derived from the vanilla plant, but costs more than twice as much per ounce than a competitor’s vanilla soymilk, where the vanilla flavor comes from sources other than the vanilla plant. As a result, Plaintiff paid a premium for the Product.

41. Had Plaintiff known the truth – that the “Vanilla” representation Plaintiff relied upon in making the purchase was false, misleading, and deceptive, Plaintiff would not have purchased the Product at all, let alone pay a premium price for the Product.

42. By engaging in its misleading and deceptive labelling, Defendant reaped and continues to reap increased sales and profits.

CLASS ACTION ALLEGATIONS

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

All persons residing in California who have purchased Defendant’s Product from May 9, 2014 to the date of class certification. Excluded from the Class are officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, and their legal representatives, heirs, successors or assigns and any entity in which they have or have had a controlling interest.

44. This action is brought and may properly be maintained as a class action pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity, typicality, adequacy, predominance, and superiority requirements of those provisions. The Class is so numerous that the individual joinder of all of its members is impracticable. Due to the nature of the trade and

1 commerce involved, Plaintiff believes that the total number of Class members is in the tens of
2 thousands and that members of the Class are geographically dispersed across California. While
3 the exact number and identities of the Class members are unknown at this time, such information
4 can be ascertained through appropriate investigation and discovery.

5 45. Common questions of law and fact exist as to all members of the Class, and these
6 common questions predominate over any questions affecting only individual members of the
7 Class. These common legal and factual questions, which do not vary from Class member to Class
8 member, and which may be determined without reference to the individual circumstances of any
9 Class member include, but are not limited to, the following:

10 a. Whether Defendant labeled, marketed, advertised and/or sold the Product
11 to Plaintiff and those similarly situated using false, misleading and/or deceptive statements or
12 representations;

13 b. Whether Defendant misrepresented material facts in connection with the
14 sales of its Product;

15 c. Whether Defendant participated in and pursued the common course of
16 conduct complained of herein;

17 d. Whether Defendant's labeling of its Product with the representation
18 "Vanilla" constitutes an unfair or deceptive consumer sales practice; and

19 e. Whether Defendant was unjustly enriched.

20 46. Plaintiff's claims are typical of those of the Class because Plaintiff, like all
21 members of the Class, purchased the Product, bearing the "Vanilla" representation on the label, in
22 a typical consumer setting and sustained damages from Defendant's wrongful conduct.

23 47. Plaintiff will fairly and adequately protect the interests of the Class and has
24 retained counsel who are experienced in litigating complex class actions. Plaintiff has no interests
25 that conflict with those of the Class.

26 48. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy. Individual joinder of all members of the Class is impracticable.
28 Even if individual members of the Class had the resources to pursue individual litigation, it would

1 be unduly burdensome to the courts in which the individual litigation would proceed. Individual
 2 litigation magnifies the delay and expense to all parties in the court system of resolving the
 3 controversies engendered by Defendant's common course of conduct. The class action device
 4 allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair
 5 and efficient handling of all Class members' claims in a single forum. The conduct of this action
 6 as a class action conserves the resources of the parties and of the judicial system and protects the
 7 rights of the Class. Furthermore, for many, if not most, a class action is the only feasible
 8 mechanism that allows an opportunity for legal redress and justice

9 49. This action is maintainable as a class action under Federal Rule of Civil Procedure
 10 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable to the
 11 Class, thereby making appropriate final injunctive relief respecting the class as a whole.

12 50. This action is maintainable as a class action under Federal Rule of Civil Procedure
 13 23(b)(3) because the common questions of law and fact identified above, without limitation,
 14 predominate over any questions affecting only individual members, and a class action is superior
 15 to other available methods for the fair and efficient adjudication of this controversy.

16 **FIRST CLAIM**
 17 **(ON BEHALF OF THE CALIFORNIA CLASS)**
 18 **(Violation of California Business & Professions Code §§ 17200 *et seq.* –**
 19 **Unlawful Conduct Prong)**

20 51. Plaintiff repeats each and every allegation contained in the paragraphs above and
 21 incorporates such allegations by reference herein.

22 52. Plaintiff brings this claim on behalf of the Class for violation of the "unlawful"
 23 prong of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (the
 24 "UCL")

25 53. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice."
 26 Cal. Bus. & Prof. Code § 17200.

27 54. Defendant's acts, omissions, misrepresentations, practices, and/or non-disclosures
 28 concerning the Product, as alleged herein, constitute "unlawful" business acts and practices in that
 they violate the FFDCA and its implementing regulations, including, the following sections:

- a. 21 U.S.C. § 343(a), which deems food misbranded when its labeling contains a statement that is “false or misleading in any particular;”
- b. 21 C.F.R. § 101.18(b), which prohibits true statements about ingredients that are misleading in light of the presence of other ingredients;
- c. 21 C.F.R. § 102.5(c), which prohibits the naming of foods so as to create an erroneous impression about the presence or absence of ingredient(s) or component(s) therein;
- d. 21 C.F.R. § 101.22, which requires that labeling of flavors to prevent an erroneous impression about the presence of absence of characterizing ingredients;
- e. 21 C.F.R. § 160, which requires that labeling of flavors to prevent an erroneous impression about the presence of absence of characterizing ingredients;
- f. 21 U.S.C. §§ 331, which prohibits the introduction of misbranded foods into interstate commerce.

55. More specifically, the Product is unlawfully because its label violates 21 C.F.R. § 101.22(i)(2), which provides:

If the food contains any artificial flavor which simulates, resembles or reinforces the characterizing flavor, the name of the food on the principal display panel or panels of the label shall be accompanied by the common or usual name(s) of the characterizing flavor, in letters not less than one-half the height of the letters used in the name of the food and the name of the characterizing flavor shall be accompanied by the word(s) "artificial" or "artificially flavored", in letters not less than one-half the height of the letters in the name of the characterizing flavor, e.g., "artificial vanilla"

56. Defendant cannot rely upon 21 C.F.R. § 101.22(i)(1) to claim that the Product is properly labelled because the Product contains added vanillin, which must be labelled “artificial” under 21 C.F.R. § 169, and maltol, which is a “synthetic flavoring substance” under 21 C.F.R. § 172.515(b).

57. Defendant’s conduct further is “unlawful” because it violates the FAL and the CLRA, as discussed in the claims below.

58. Defendant’s conduct also violates California’s Sherman Law, including, at least, the following sections:

- a. Section 110100 (adopting all FDA regulations as state regulations);
- b. Section 110390 (“It is unlawful for any person to disseminate any false advertisement of any food. . . . An advertisement is false if it is false or misleading in any particular.”);
- c. Section 110395 (“It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food . . . that is falsely advertised.”);
- d. Section 110398 (“It is unlawful for any person to advertise any food, drug, device, or cosmetic that is adulterated or misbranded.”);
- e. Section 110660 (“Any food is misbranded if its labeling is false or misleading in any particular.”).

59. Each of the challenged advertising statements made, and actions taken, by Defendant violates the FFDCA, CLRA, FAL, and Sherman Law, and, consequently, violates the “unlawful” prong of the UCL21 U.S.C. § 321(n), which states the nature of a false and misleading advertisement.

60. Defendant’s deceptive marketing and labeling caused Plaintiff and the members of the Class to suffer injury in fact and to lose money or property. Had Plaintiff and the members of the Class been aware of the false, misleading, and unlawful labeling, they would not have purchased Product, purchased as much of the Product, or paid as much for the Product.

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

62. Plaintiff also seeks an order for the disgorgement and restitution of all monies from the sale of the Product that Defendant unjustly acquired through acts of unlawful, unfair, and/or fraudulent competition.

63. Therefore, Plaintiff prays for relief as set forth below.

SECOND CLAIM
(ON BEHALF OF THE CALIFORNIA CLASS)
**(Violation of California Business & Professions Code §§ 17200, *et seq.* –
Unfair and Fraudulent Conduct Prongs)**

1
2
3 64. Plaintiff repeats each and every allegation contained in the paragraphs above and
4 incorporates such allegations by reference herein.

5 65. As set forth above, the Product’s “Vanilla” labeling is misleading to consumers
6 because it leads them to believe the Product’s vanilla flavor comes exclusively from ingredients
7 derived from the vanilla plant when that is not true.

8 66. The Product’s labeling also is false and misleading by omitting “artificial flavor”
9 or “artificially flavored” from the front label when the Product contains vanillin and maltol,
10 artificial vanilla flavor additives.

11 67. Defendant designed the false, misleading and deceptive “Vanilla” label with the
12 intent to sell, distribute and increase the consumption of its Product.

13 68. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.”
14 Cal. Bus. & Prof. Code § 17200.

15 69. Defendant’s violation constitutes unfair, and/or fraudulent business acts and
16 practices, which caused Plaintiff and Class members to suffer pecuniary loss. Specifically,
17 Defendant’s false, deceptive and misleading “Vanilla” label caused consumers to purchase
18 Defendant’s Product, believing the vanilla flavoring came exclusively from the vanilla plant,
19 when in fact it did not.

20 70. In this regard, Defendant’s manufacturing, marketing, advertising, packaging,
21 labeling, distributing, and selling the Product violates California’s Business and Professions
22 Code.

23 71. As a result of the business acts practices described above, Plaintiff and the Class,
24 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future
25 conduct on the part of the Defendant and such other orders and judgments which may be
26 necessary to disgorge Defendant’s ill-gotten gains and to restore to any person in interest any
27 money paid for the Product as a result of the wrongful conduct of the Defendant.

1 72. The above-described business acts and practices of the Defendant present a threat
2 and reasonable likelihood of deception to Plaintiff and members of the Class in that Defendant
3 has systematically perpetrated and continues to perpetrate such acts or practices upon members of
4 the Class by means of its misleading manufacturing, marketing, advertising, packaging, labeling,
distributing and selling of Product, bearing the “Vanilla” label.

5 73. Therefore, Plaintiff prays for relief as set forth below.

6 **THIRD CLAIM**
7 **(ON BEHALF OF THE CALIFORNIA CLASS)**
8 **(Violation of California Business & Professions Code §§ 17500, *et seq.* –**
9 **False and Misleading Advertising)**

10 74. Plaintiff repeats each and every allegation contained in the paragraphs above and
incorporates such allegations by reference herein.

11 75. Plaintiff asserts this cause of action against Defendant for violations of California
12 Business and Professions Code §17500, *et seq.* for misleading, deceptive and untrue advertising.

13 76. At all material times, the Defendant engaged in a scheme of offering its Product,
14 bearing the “Vanilla” label, for sale to Plaintiff and other members of the Class by way of, *inter*
15 *alia*, commercial marketing and advertising, product packaging and labeling and other
16 promotional materials. These materials misrepresented and/or omitted the true nature and quality
17 of the Product. Said advertisements and inducements were made within the State of California
18 and come within the definition of advertising as contained in Business and Professions Code
19 §17500, *et seq.*, in that such promotional materials were intended as inducements to purchase the
20 Product, bearing the “Vanilla” labels, are statements disseminated by the Defendant to Plaintiff
21 and the Class, and were intended to reach members of the Class. Defendant knew, or in the
22 exercise of reasonable care should have known, that these statements were misleading and
23 deceptive.

24 77. In furtherance of said plan and scheme, Defendant prepared and distributed within
25 the State of California via commercial marketing and advertising, product packaging, labeling,
26 and other promotional materials and statements that misleadingly and deceptively represent that
27 the origin of the Product’s vanilla flavor comes exclusively from ingredients derived from the
28

1 vanilla plant, when, in fact, that was not true. Consumers, including Plaintiff, necessarily and
2 reasonably relied on these materials, believing the origin of the Product's vanilla flavor comes
3 exclusively from ingredients derived from the vanilla plant. Consumers, including Plaintiff and
4 the Class, were among the intended targets of such representations.

5 78. The above acts of Defendant, in disseminating said misleading and deceptive
6 statements throughout the State of California to consumers, including Plaintiff and members of
7 the Class, were and are likely to deceive reasonable consumers, including Plaintiff and other
8 members of the Class, by obfuscating the true nature and quality of the Product, all in violation of
9 the "misleading prong" and "untrue prong" of California Business and Professions Code § 17500.

10 79. As a result of the above violations of the "misleading prong" and "untrue prong"
11 of Business and Professions Code § 17500, et seq., Defendant has been unjustly enriched at the
12 expense of Plaintiff and the other members of the Class. Plaintiff and the Class, pursuant to
13 Business and Professions Code § 17535, are entitled to an order of this Court enjoining such
14 future conduct on the part of Defendant, and such other orders and judgments which may be
15 necessary to disgorge Defendant's ill-gotten gains and restore to any person in interest any money
16 paid for the Product, bearing the "Vanilla" label, as a result of the wrongful conduct of
17 Defendant.

18 80. Therefore, Plaintiff prays for relief as set forth below.

19 **FOURTH CLAIM**
20 **(ON BEHALF OF THE CALIFORNIA CLASS)**
21 **(Violation of California Civil Code §§ 1750, et seq. –**
22 **Consumers Legal Remedies Act)**

23 81. Plaintiff realleges and incorporates by reference the paragraphs stated above in this
24 Class Action Complaint as set forth herein.

25 82. This cause of action is brought pursuant to the CLRA, Cal. Civ. Code § 1750, et
26 seq.

27 83. Defendant's actions, representations and conduct have violated and continue to
28 violate the CLRA, as they extend to transactions that are intended to result, or which have
resulted, in the sale of lease of goods or services to consumers.

1 84. Plaintiff and other Class Members are “consumers” as that term is defined by the
2 CLRA in Cal. Civ. Code §1761(d).

3 85. The Product, bearing the “Vanilla” label, that Plaintiff and other members of the
4 Class purchased from Defendant, were “goods” within the meaning of Cal. Civ. Code §1761(a).

5 86. By engaging in the actions, misrepresentations and misconduct set forth in this
6 Class Action Complaint, Defendant has violated, and continues to violate, §1770(a)(5) of the
7 CLRA. Specifically, in violation of Cal. Civ. Code § 1770(a)(5), Defendant’s acts and practices
8 misrepresented that ingredients of the Product.

9 87. By engaging in the actions, misrepresentations and misconduct set forth in this
10 Class Action Complaint, Defendant has violated, and continues to violate, §1770(a)(7) of the
11 CLRA. Specifically, in violation of Cal. Civ. Code § 1770(a)(7), Defendant’s acts and practices
12 constitute unfair methods of competition and unfair or fraudulent acts or practices in that they
13 misrepresent the particular standard, quality or grade of the goods.

14 88. By engaging in the actions, misrepresentations and misconduct set forth in this
15 Class Action Complaint, Defendant has violated, and continues to violate, §1770(a)(9) of the
16 CLRA. Specifically, in violation of Cal. Civ. Code § 1770(a)(9), Defendant advertised goods with
17 the intent not to sell them as advertised.

18 89. By engaging in the actions, misrepresentations and misconduct set forth in this
19 Class Action Complaint, Defendant has violated, and continues to violate, §1770(a)(16) of the
20 CLRA. Specifically, in violation of Cal. Civ. Code §1770(a)(16), Defendant’s acts and practices
21 constitute unfair methods of competition and unfair or fraudulent acts or practices in that they
22 represent that a subject of a transaction has been supplied in accordance with a previous
23 representation when they have not.

24 90. Plaintiff requests that this Court enjoin the Defendant from continuing to employ
25 the unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code §1780. If
26 Defendant is not restrained from engaging in these types of practices in the future, Plaintiff and
27 other members of the Class will continue to suffer harm.

28 91. On May 24, 2020, Plaintiff sent CLRA Notices via certified mail, return receipt

1 requested, from Plaintiff's Counsel pursuant to Cal. Civ. Code § 1782, to Defendant's registered
2 agent within the state of California and to Defendant's headquarters.

3 92. Defendant received the CLRA Notices on May 29, 2020 (registered agent) and
4 June 1, 2020 (headquarters).

5 93. The CLRA Notices provided Defendant notice of the misconduct and requested
6 that Defendant cure its misconduct pursuant to Cal. Civ. Code. § 1782 within 30 days. Defendant
7 has failed to do so.

8 94. Plaintiff seeks injunctive relief, restitution and damages for Defendant's violation
9 of the CLRA.

10 95. Therefore, Plaintiff prays for relief as set forth below.

11 **PRAYER FOR RELIEF**

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

- 14 A. Certification of the Class, certifying Plaintiff as representative of the Class, and
15 designating Plaintiff's counsel for the Class;
- 16 B. A declaration that Defendant has committed the violations alleged herein;
- 17 C. For restitution and disgorgement pursuant to, without limitation, the California
18 Business & Professions Code §§ 17200, *et seq.* and Cal Civ. Code § 1780;
- 19 D. For declaratory and injunctive relief pursuant to, without limitation, the California
20 Business & Professions Code §§ 17200, *et seq.* and 17500, *et seq.*;
- 21 E. For damages, declaratory and injunctive relief pursuant to California Civil Code §
22 1780;
- 23 F. An award of compensatory damages, the amount of which is to be determined at
24 trial;
- 25 G. For punitive damages;
- 26 H. For interest at the legal rate on the foregoing sums;
- 27 I. For attorneys' fees;
- 28 J. For costs of suit incurred; and

K. For such further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

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

Dated: December 18, 2020

REESE LLP

/s/ Sue J. Nam

Sue J. Nam (State Bar No. 206729)

snam@reesellp.com

Michael R. Reese (SBN 206773)

mreese@reesellp.com

100 West 93rd Street, 16th Floor

New York, New York 10025

Telephone: (212) 643-0500

Facsimile: (212) 253-4272

George V. Granade (State Bar No. 316050)

ggranade@reesellp.com

8484 Wilshire Boulevard, Suite 515

Los Angeles, California 90211

100 West 93rd Street, 16th Floor

Telephone: (310) 393-0070

SHEEHAN & ASSOCIATES, P.C.

Spencer Sheehan (*Pro hac vice*)

60 Cuttermill Road Ste 409

Great Neck NY 11021

Tel: (516) 303-0552

Fax: (516) 234-7800

spencer@spencersheehan.com

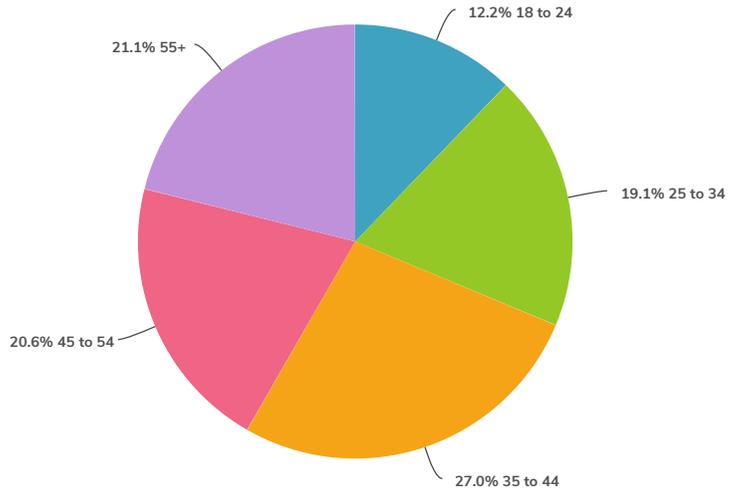
Counsel for Plaintiff and the Proposed Class

EXHIBIT A

Response Counts

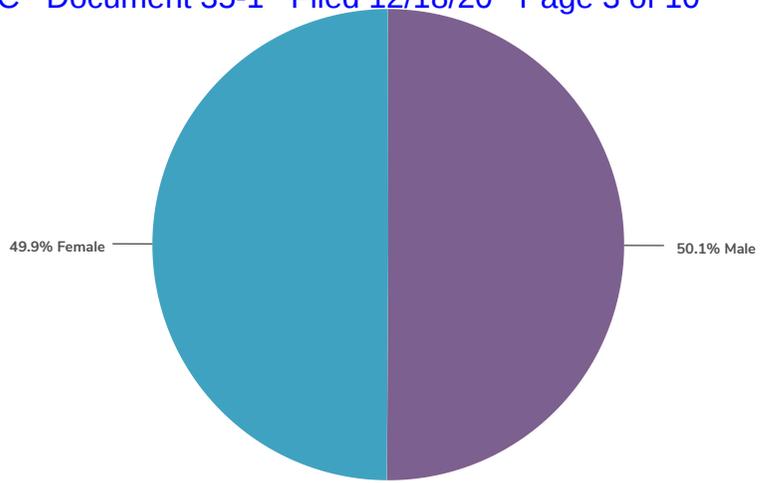
Completion Rate:	100%	
	Complete	403
		Totals: 403

1. What is your age?



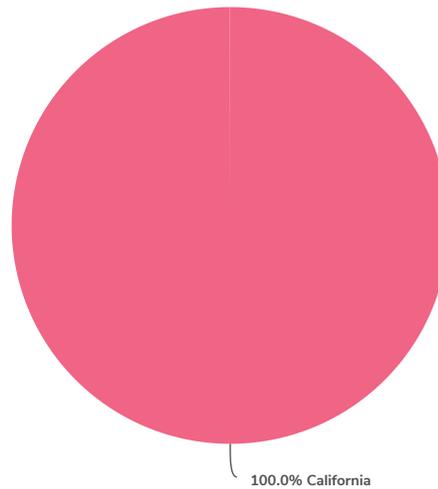
Value	Percent	Responses
18 to 24	12.2%	49
25 to 34	19.1%	77
35 to 44	27.0%	109
45 to 54	20.6%	83
55+	21.1%	85
		Totals: 403

2. What is your gender?



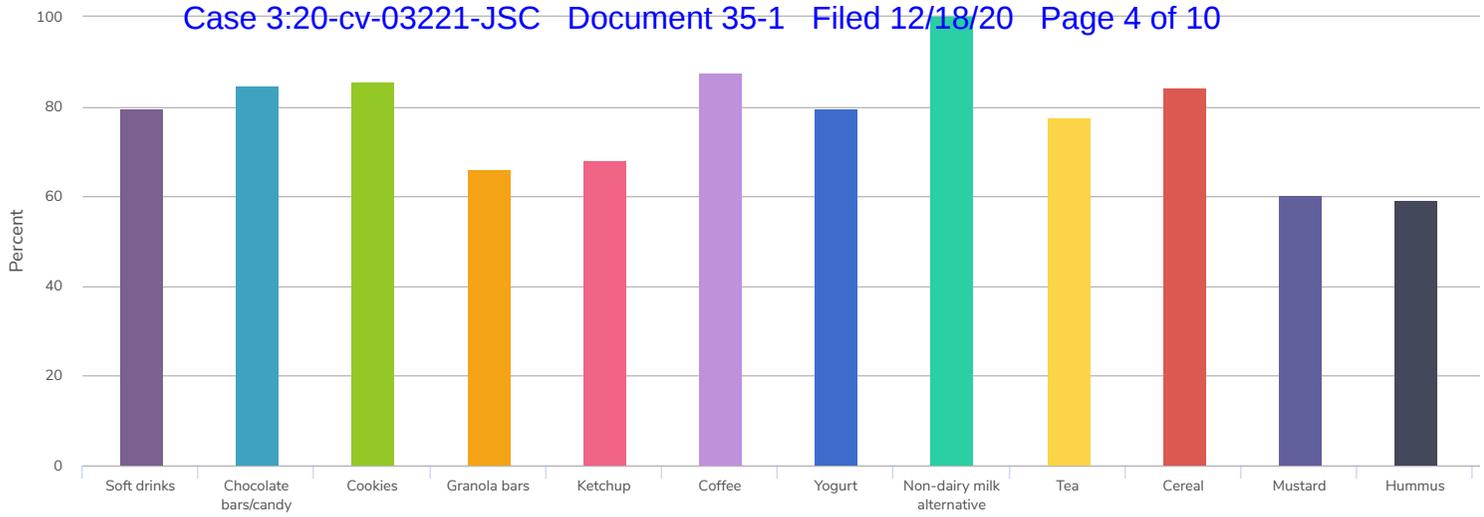
Value	Percent	Responses
Male	50.1%	202
Female	49.9%	201
		Totals: 403

3. Which State do you live in?



Value	Percent	Responses
California	100.0%	403
		Totals: 403

4. Which of the following items, if any, have you purchased in the last 6 months? Select all that apply.



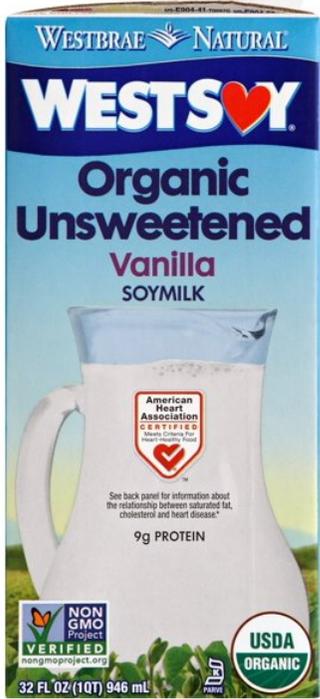
Value	Percent	Responses
Soft drinks	79.7%	321
Chocolate bars/candy	84.6%	341
Cookies	85.4%	344
Granola bars	66.0%	266
Ketchup	68.0%	274
Coffee	87.6%	353
Yogurt	79.7%	321
Non-dairy milk alternative	100.0%	403
Tea	77.4%	312
Cereal	84.4%	340
Mustard	60.3%	243
Hummus	59.1%	238
Milk	82.4%	332
Vegetable oil	71.2%	287
All of the above	30.3%	122

5. Which of the following items, if any, have you purchased in the last 6 months? Select all that apply.

	Yes	No	Responses
Silk			
Count	305	98	403
Row %	75.7%	24.3%	
ZenSoy			
Count	77	326	403
Row %	19.1%	80.9%	
Vitasoy			
Count	102	301	403
Row %	25.3%	74.7%	

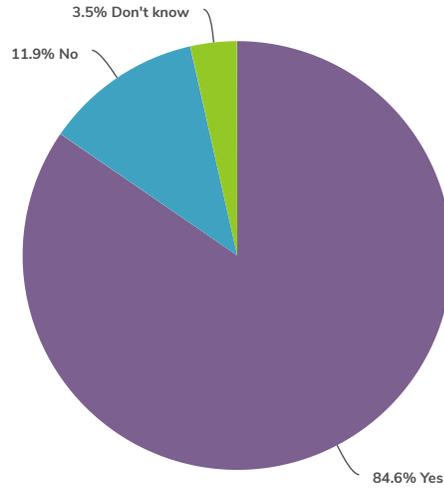
	Yes	No	Responses
Soy Dream			
Count	116	287	403
Row %	28.8%	71.2%	
EdenSoy			
Count	82	321	403
Row %	20.3%	79.7%	
Kirkland			
Count	237	166	403
Row %	58.8%	41.2%	
Blue Diamond			
Count	266	137	403
Row %	66.0%	34.0%	
Wholesome Pantry			
Count	106	297	403
Row %	26.3%	73.7%	
WestSoy			
Count	87	316	403
Row %	21.6%	78.4%	
Click 'yes' to continue			
Count	403	0	403
Row %	100.0%	0.0%	
Dollar Tree Almond Milk			
Count	119	284	403
Row %	29.5%	70.5%	
SoDelicious			
Count	176	227	403
Row %	43.7%	56.3%	
365 Everyday Value			
Count	163	240	403
Row %	40.4%	59.6%	
Totals			
Total Responses			403

6.

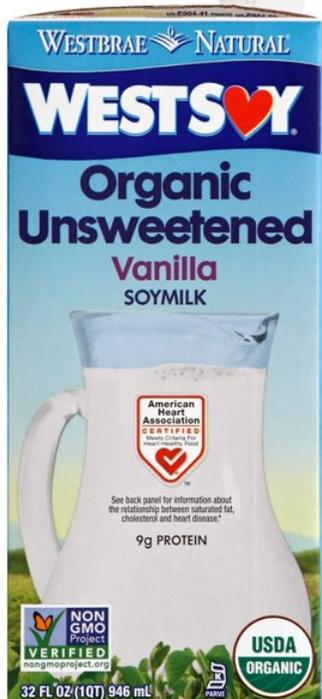


Does the term "Vanilla" on the above pictured product convey

to you that there are one or more added ingredients in the product that give it vanilla flavor?



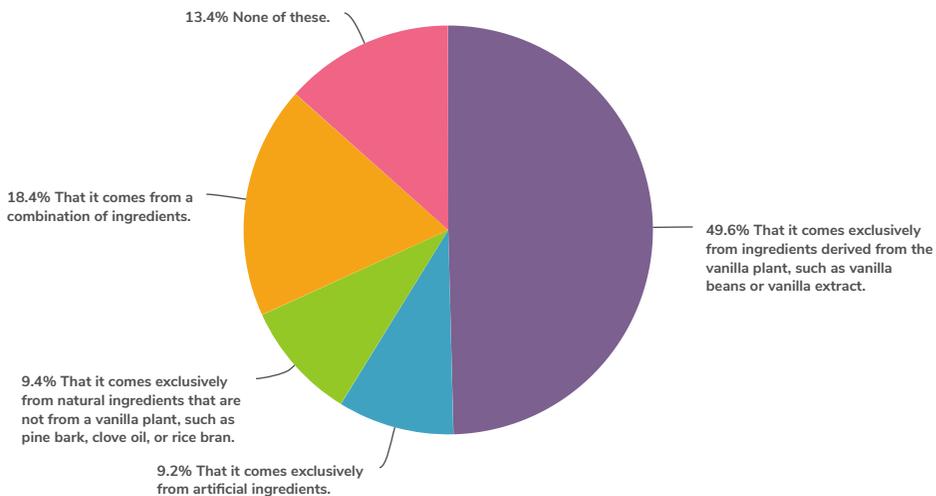
Value	Percent	Responses
Yes	84.6%	341
No	11.9%	48
Don't know	3.5%	14
		Totals: 403



7.

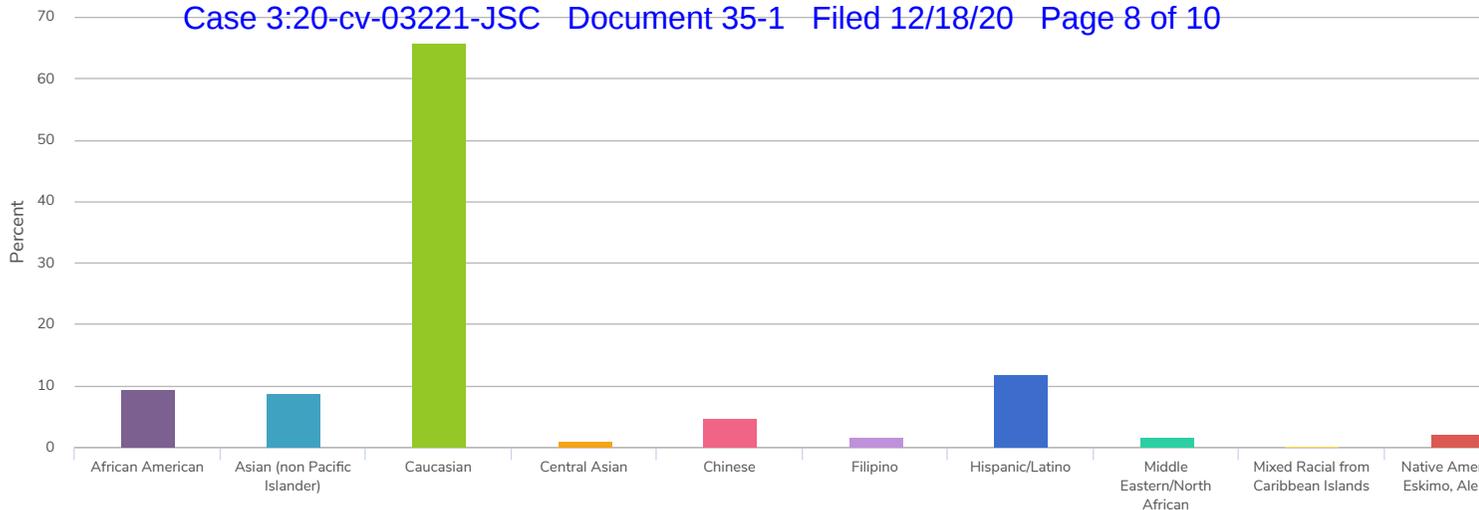
What does the term "Vanilla" on the above pictured product

convey to you about the origin of the vanilla flavor?



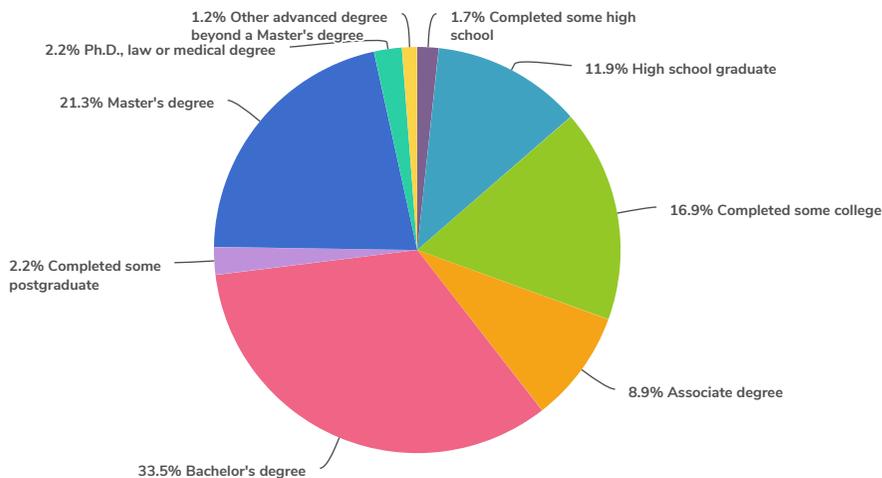
Value	Percent	Responses
That it comes exclusively from ingredients derived from the vanilla plant, such as vanilla beans or vanilla extract.	49.6%	200
That it comes exclusively from artificial ingredients.	9.2%	37
That it comes exclusively from natural ingredients that are not from a vanilla plant, such as pine bark, clove oil, or rice bran.	9.4%	38
That it comes from a combination of ingredients.	18.4%	74
None of these.	13.4%	54
		Totals: 403

8. What is your ethnicity? Select all that apply.



Value	Percent	Responses
African American	9.4%	38
Asian (non Pacific Islander)	8.9%	36
Caucasian	66.0%	266
Central Asian	1.0%	4
Chinese	4.7%	19
Filipino	1.7%	7
Hispanic/Latino	11.9%	48
Middle Eastern/North African	1.7%	7
Mixed Racial from Caribbean Islands	0.2%	1
Native American, Eskimo, Aleutian	2.2%	9
Native Hawaiian/Pacific Islander	0.2%	1
Other Ethnicity	2.7%	11

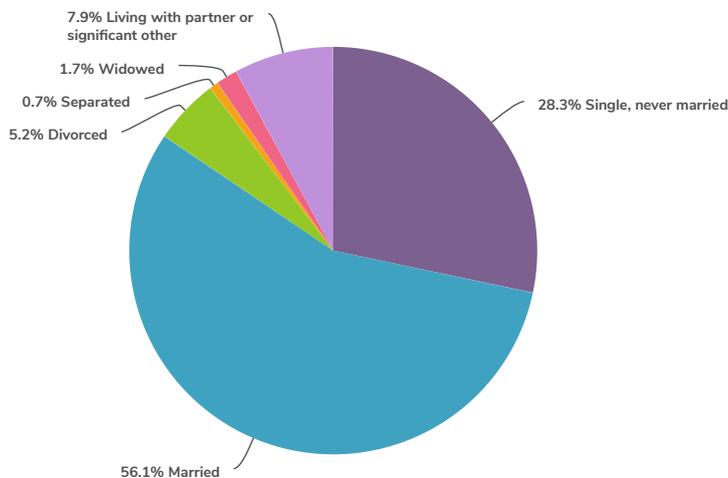
9. What is the highest level of education which you have completed?



Value	Percent	Responses
7	Completed December 11, 2020	Totals: 403

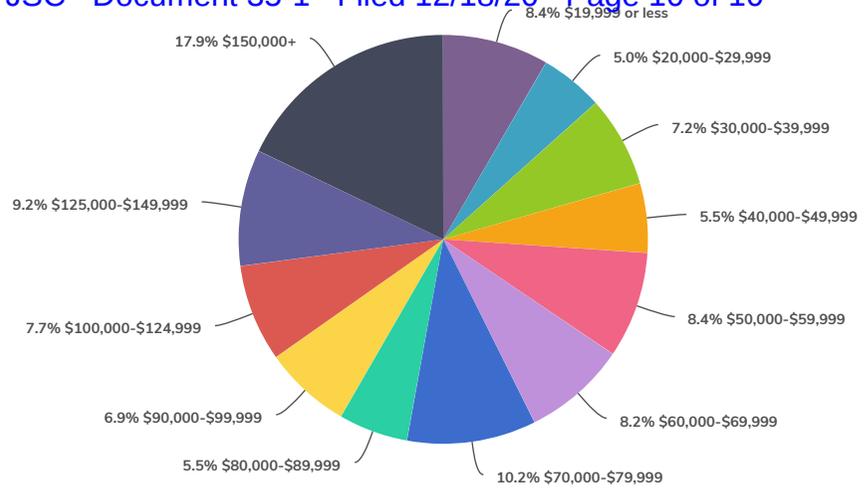
Value	Percent	Responses
Completed some high school	1.7%	7
High school graduate	11.9%	48
Completed some college	16.9%	68
Associate degree	8.9%	36
Bachelor's degree	33.5%	135
Completed some postgraduate	2.2%	9
Master's degree	21.3%	86
Ph.D., law or medical degree	2.2%	9
Other advanced degree beyond a Master's degree	1.2%	5
		Totals: 403

10. What is your current marital status?



Value	Percent	Responses
Single, never married	28.3%	114
Married	56.1%	226
Divorced	5.2%	21
Separated	0.7%	3
Widowed	1.7%	7
Living with partner or significant other	7.9%	32
		Totals: 403

11. What is your annual household income?



Value	Percent	Responses
\$19,999 or less	8.4%	34
\$20,000-\$29,999	5.0%	20
\$30,000-\$39,999	7.2%	29
\$40,000-\$49,999	5.5%	22
\$50,000-\$59,999	8.4%	34
\$60,000-\$69,999	8.2%	33
\$70,000-\$79,999	10.2%	41
\$80,000-\$89,999	5.5%	22
\$90,000-\$99,999	6.9%	28
\$100,000-\$124,999	7.7%	31
\$125,000-\$149,999	9.2%	37
\$150,000+	17.9%	72

Totals: 403

This is a report for "120420-2" (Survey #6078145)

EXHIBIT B

RUTGERS
New Jersey Agricultural
Experiment Station

Mass Spectrometry Facility
Food Innovation Center North
Rutgers, The State University of NJ
63 Dudley Road
New Brunswick, NJ 08901-8520

Thomas G. Hartman, Ph.D.
Laboratory Director
hartmantg@aol.com
Phone: 848-932-5543
Fax: 732-932-6776

January 31, 2020

Spencer Sheehan, Esq.
Sheehan & Associates, P.C.
505 Northern Blvd
Suite 311
Great Neck, NY 11021

spencer@spencersheehan.com

CONFIDENTIAL

Mass Spectrometry Laboratory Analysis Report #7608

Flavor Analysis of Westsoy Organic Unsweetened Vanilla Soymilk

Dear Mr. Sheehan:

This is the report pertaining to the above-captioned samples that you submitted for flavor analysis.

I Sample Log

The following samples were received for analysis:

1. Westsoy Organic Unsweetened Vanilla Soymilk
Production Code: 10219254714:44 1229629

II Analysis Request

The analysis request was to extract and analyze the flavors from the product.

III Analysis Methodology

The product (10 g) was transferred to a borosilicate glass test tube sealed with Teflon-lined, screw cap closure, matrix-spiked with 10 µg of naphthalene-*d*₈ internal standard (1.0 ppm w/v) and mixed thoroughly using a lab vortexor. The sample was then divided into 4 equal portions, transferred to glass vials and extracted with equal volumes (1:1) of methylene chloride. The layers were allowed to separate and then the methylene chloride extracts isolated and pooled together. The pooled extracts were centrifuged 30 minutes at 2500 rpm to clarify (separate any water or emulsion) then dried with anhydrous sodium sulfate. The dried extract was concentrated under a gentle stream of nitrogen to a final volume of approximately 0.5 mL then transferred to a Purge & Trap apparatus (Scientific Instrument Services, Solid Sample P&T system) and subjected to Purge & Trap-Thermal Desorption-GC-MS analysis as follows:

Purge & Trap-Thermal Desorption-GC-MS

Concentrated methylene chloride extract prepared as described above was evaporated to dryness in a stream of nitrogen gas inside the glass tubing of the purge & trap apparatus (SIS Solid Sample Purge & Trap Oven). Immediately upon reaching dryness the sample was subjected to P&T analysis by purging with nitrogen at 50 ml per minute for 30 minutes at 150°C. The exhaust of the P&T apparatus was fitted with a Tenax-TA adsorbent trap. The traps were then connected to the Short Path Thermal Desorption system and thermally desorbed directly into the GC-MS system for final analysis (SIS Model TD-4 Short Path Thermal Desorber). The thermal desorption conditions were 250°C for 5 minutes.

GC-MS Analysis Methodology

Analyses of Tenax traps prepared as described above were conducted using a Scientific Instrument Services (SIS) model TD4 Short Path Thermal Desorber interfaced to the Varian 3400 GC directly coupled to a Finnigan TSQ-7000 triple stage quadrupole tandem mass spectrometer equipped with an Xcaliber data system. Thermal desorption conditions were 250°C for 5 minutes using sub-

ambient, cryogenic GC column temperature programming. The GC was equipped with a 60 meter x 0.32 mm i.d. Guardian-ZB-5MS capillary column with a 1.0 μm film thickness (Phenomenex). The mass spectrometer was operated in electron ionization mode (70 eV) scanning masses 35-350 once each second.

Materials

Naphthalene- d_8 used as internal standard for the study was purchased from Sigma-Aldrich Chemical Co, St. Louis MO. Methylene chloride was purchased from Thermo Fisher Scientific. All thermal desorption supplies were purchased from Scientific Instrument Services, Inc., Ringoes, NJ.

IV Results

The GC-MS analysis data for the vanilla soymilk product is summarized in Table 1. The GC-MS chromatogram corresponding to the Table is presented in Figure 1. From left to right, the Table lists the MS scan number (from centroid of peak), peak area integration, peak identification and then concentration data expressed in parts per million (ppm w/v). The data is semi-quantitative and based on peak area ratio to the matrix-spiked internal standard (naphthalene- d_8) assuming a detector response factor of 1.0 with no correction for extraction efficiency.

If you have any questions or if I can be of further assistance to you then please don't hesitate to contact me.

Respectfully Submitted,



Thomas G. Hartman, Ph.D.
Mass Spectrometry Lab Director
& Research Professor

Attachments

- ▶ Table 1, Analysis Results Summary
- ▶ Figure 1, GC-MS Chromatogram
- ▶ Analysis Data Forms
- ▶ Photo of Test Sample

Table 1

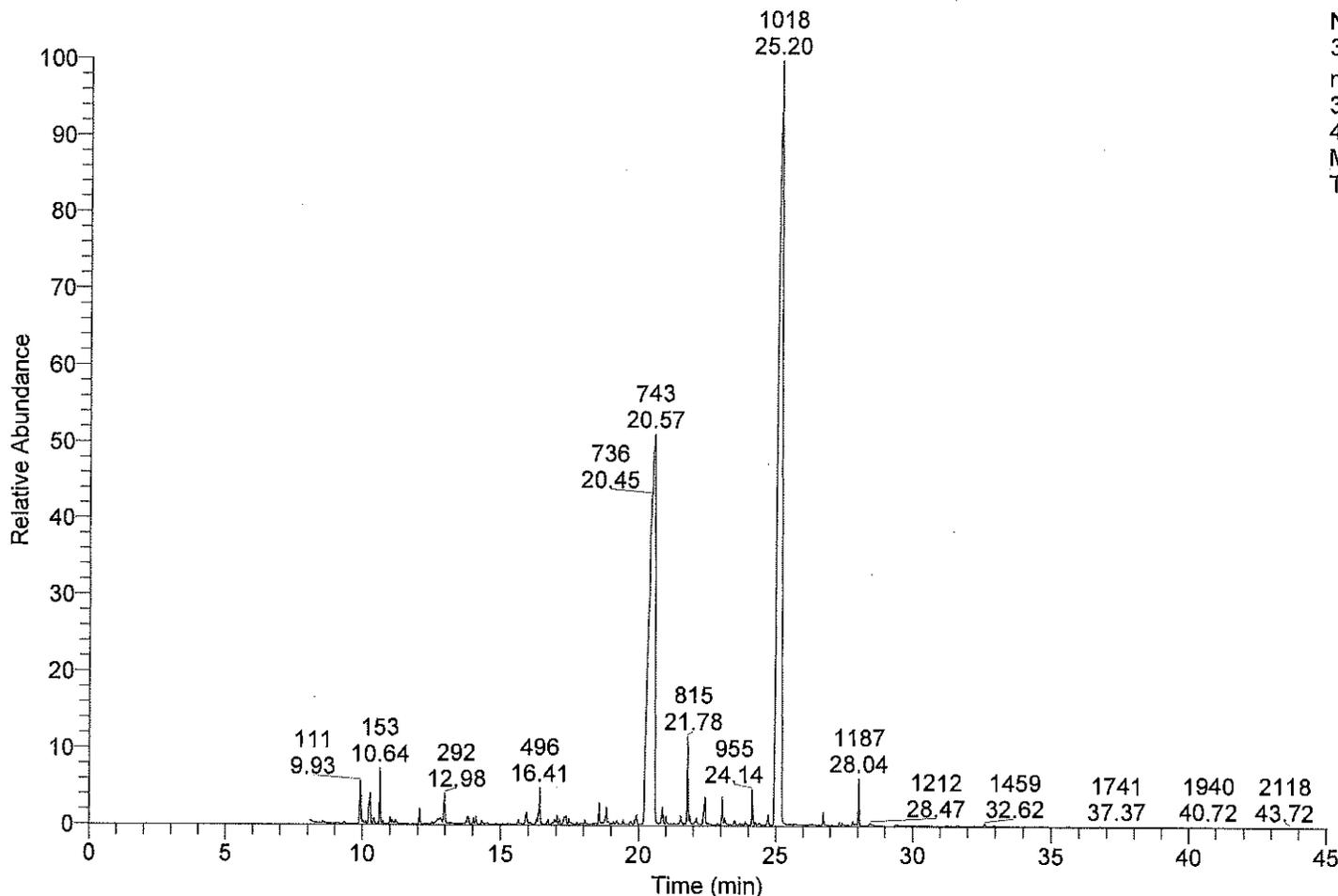
Sheehan & Associates, P.C., Project #7608
Westsoy Organic Unsweetened Vanilla Soymilk
Production Code: 10219254714:44 1229629

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

Data File = TSQA3762

MS Scan #	Area Integration	Peak Assignment	Conc. PPM w/w
132	1837527	diacetyl	1.18
186	110971	acetol	0.07
238	212546	acetoin	0.14
284	455852	1,2-propylene glycol (PG)	0.29
339	17449	hexanal	0.01
381	27961	methyl pyrazine	0.02
428	20701	hexyl alcohol	0.01
490	98469	gamma-butyrolactone	0.06
553	355555	hexanoic acid	0.23
559	124675	benzaldehyde	0.08
576	25500	2-pentylfuran	0.02
623	415090	cyclotene	0.27
639	362492	N-methylpyrrolidinone (NMP)	0.23
655	52342	gamma-hexalactone	0.03
661	123598	heptanoic acid	0.08
676	91395	2-acetylpyrrole	0.06
693	93935	guaiacol	0.06
700	62741	nonanal	0.04
705	296423	3-hydroxy-4,5(R)-dimethyl-2(5H)-furanone	0.19
743	45519020	maltol	29.23
761	482597	octanoic acid	0.31
769	138399	benzoic acid	0.09
800	209270	decanal	0.13
815	1557448	naphthalene-d8 (internal standard)	1.00
820	163504	2,3-dihydrobenzofuran	0.10
853	872541	nonanoic acid	0.56
890	451734	cinnamic aldehyde	0.29
941	81667	decanoic acid	0.05
955	699778	gamma-nonalactone	0.45
1018	60098160	vanillin	38.59
1110	280100	lauric acid	0.18
1187	765501	triethyl citrate	0.49
1212	141266	syringaldehyde	0.09
1269	83629	myristic acid	0.05
1459	84413	palmitic acid	0.05
Total			73.75

RT: 0.00 - 45.02



NL:
3.40E8
m/z=
35.0-43.0+
45.0-350.0
MS
TSQA3762

TSQA3762

Type: Unknown ID: 1 Row: 1

Sample Name: Westsoy Organic Unsweetened Vanilla Soymilk (Production Code: 10219254714:44 1229629), DCM Extract, 150C/30min, matrix spiked with w/w 1.0ppm Int. Std. by P&T-TD-GC-MS

Study:
Client: Sheehan & Associates, P.C., LLN7608
Laboratory: Mass Spectrometry - Dr. Tom Hartman

Company:
Phone:
Instrument Method: C:\Xcalibur\methods\voc45solventdelay8min.meth
Processing Method:

Vial: 1
Injection Volume (µl): 10.00
Sample Weight: 0.00
Sample Volume (µl): 0.00
ISTD Amount: 0.00
Dil Factor: 1.00