

Sheehan & Associates, P.C.  
Spencer Sheehan  
60 Cuttermill Rd Ste 409  
Great Neck, NY 11021-3104  
Telephone: (516) 268-7080  
*spencer@spencersheehan.com*

United States District Court  
Eastern District of New York

1:21-cv-00062

Dana Newton, individually and on behalf of  
all others similarly situated,

Plaintiff,

- against -

Orgain Management, Inc.,

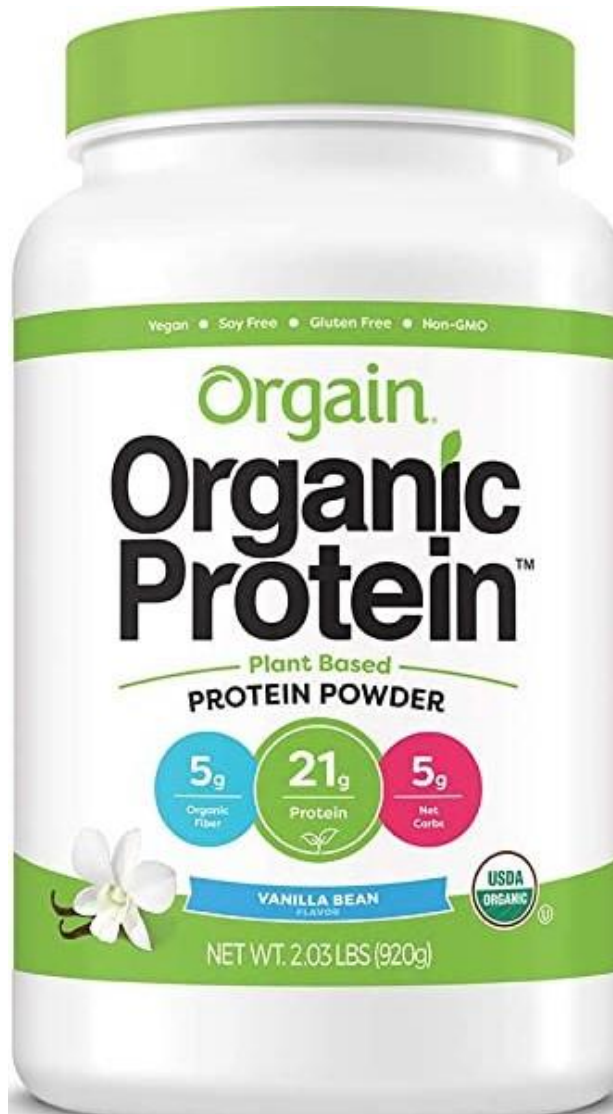
Defendant

Complaint

Plaintiff alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Orgain Management, Inc. (“defendant”) manufactures, labels, markets and sells non-dairy protein powder purporting to be flavored by vanilla beans. under the Orgain brand (“Product”).

2. The relevant front label representations “Plant Based Protein Powder,” “Vanilla Bean Flavor” and an image of a vanilla flower and vanilla beans.



3. In contrast to the representation as “Vanilla Bean Flavor” and picture of vanilla beans and vanilla flower, the Product does not contain any appreciable amount of flavoring from vanilla beans, such that the taste is dissimilar to what consumers expect from a product labeled as “vanilla bean flavor.”

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

5. The fruit pod of the vanilla flower is the vanilla bean, the raw material for vanilla flavorings.

6. The vanilla bean is heated in the sun and its flavor constituents extracted (vanilla extract).

7. Vanilla's unique and complex flavor is due to its many odor-active compounds including acids, ethers, alcohols, acetals, heterocyclics, phenolics, hydrocarbons, esters and carbonyls.

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>

8. While vanillin plays a significant role, it contributes less than one-third of the overall flavor/aroma impact of vanilla.

9. Methyl cinnamate and cinnamyl alcohol provide distinct cinnamon and creamy notes to vanilla.
10. P-cresol contributes flavor notes described as woody and spicy.
11. Acetovanillone provides a sweet, honey note.
12. P-hydroxybenzoic acid and vanillic acid are significant phenolic compounds which contribute to vanilla's aroma.
13. 4-methoxybenzaldehyde (p-anisaldehyde) provides creamy flavor notes to vanilla.
14. 4-methoxybenzyl alcohol (p-anisyl alcohol) provides floral notes.
15. The popularity of vanilla in the 19th century led to the isolation of the most predominant flavor component, vanillin.
16. However, vanillin separated from the other compounds cannot produce the flavor and taste consumers know as vanilla.
17. Sensory evaluation of vanillin is mainly sweet, with a chemical-like taste.
18. The availability of low-cost vanillin resulted in consumers buying foods purporting to contain vanilla, which either contained no vanilla or a trace or de minimis amount, boosted by synthetic vanillin.
19. Deception about the source of a product's flavor resulted in regulations which require a food to disclose the source of its main flavor and whether it is natural or artificial.
20. Surveys have consistently found that at least seven out of ten consumers avoid artificial flavors.<sup>1</sup>
21. Reasons for eschewing artificial flavors include a desire to avoid synthetic

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<sup>1</sup> Alex Smolokoff, [Natural color and flavor trends in food and beverage](#), Natural Products Insider, Oct. 11, 2019; Thea Bourianne, [Exploring today's top ingredient trends and how they fit into our health-conscious world](#), March 26-28, 2018.

ingredients with possible detrimental health effects.

22. “All demographics [of consumers] from Generation Z to Baby Boomers – say they would pay more” for foods with no artificial flavors.”<sup>2</sup>

23. 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 vanilla flavor is provided by flavorings not derived from vanilla beans.”<sup>3</sup>

24. Natural flavors are flavors from natural sources made through natural processes. 21 C.F.R. § 101.22(a)(3).

25. These natural processes include roasting, heating, enzymolysis and fermentation.

26. There are two types of natural flavors: (1) “from the named fruit” (“FTNF”), like strawberry flavor from strawberries and (2) “other natural flavors” – sources other than the named fruit which provide the *flavor* of the named fruit.

27. If all of a food’s characterizing flavor is from its characterizing ingredient, the front label is only required to state the name of the ingredient, i.e., vanilla or strawberry. 21 C.F.R. § 101.22(i)(1).

28. Artificial flavors are defined by the FDA as any flavoring from a synthetic source or made through an artificial process. 21 C.F.R. § 101.22(a)(1).

29. Where a food contains any artificial flavor that simulates the characterizing flavor, the front label is required to disclose this fact through the statement, “Artificially Flavored.” 21 C.F.R. § 101.22(i)(2).

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<sup>2</sup> Nancy Gagliardi, *Consumers Want Healthy Foods – And Will Pay More For Them*, Forbes, <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#37ec75ca75c5> (last visited September 28, 2020)

<sup>3</sup> Hallagan article.

30. In 2018, in response to a surge in fraudulently labeled vanilla flavored foods, the flavor industry trade group, The Flavor and Extract Manufacturers Association of the United States (“FEMA”), urged companies to return to truthfully labeling vanilla foods so consumers would not be misled by artificial vanilla flavors.<sup>4</sup>

31. The Product’s front label is misleading because even though it states, “Vanilla Bean Flavor” with a picture of a vanilla bean and a vanilla flower, its ingredient list only identifies “ORGANIC NATURAL FLAVORS” and “NATURAL FLAVOR.”

**INGREDIENTS: ORGAIN ORGANIC PROTEIN BLEND™** (ORGANIC PEA PROTEIN, ORGANIC BROWN RICE PROTEIN, ORGANIC CHIA SEED), **ORGAIN ORGANIC CREAMER BASE™** (ORGANIC ACACIA GUM, ORGANIC HIGH OLEIC SUNFLOWER OIL, ORGANIC RICE DEXTRIN, ORGANIC RICE BRAN EXTRACT, ORGANIC ROSEMARY EXTRACT), ORGANIC NATURAL FLAVORS, ORGANIC ERYTHRITOL, NATURAL FLAVOR, SEA SALT, ORGANIC ACACIA GUM, ORGANIC GUAR GUM, ORGANIC STEVIA, XANTHAN GUM

**INGREDIENTS: ORGAIN ORGANIC PROTEIN BLEND™** (ORGANIC PEA PROTEIN, ORGANIC BROWN RICE PROTEIN, ORGANIC CHIA SEED), **ORGAIN ORGANIC CREAMER BASE™** (ORGANIC ACACIA GUM, ORGANIC HIGH OLEIC SUNFLOWER OIL, ORGANIC RICE DEXTRIN, ORGANIC RICE BRAN EXTRACT, ORGANIC ROSEMARY EXTRACT), **ORGANIC NATURAL FLAVORS**, ORGANIC ERYTHRITOL, **NATURAL FLAVOR**, SEA SALT, ORGANIC ACACIA GUM, ORGANIC GUAR GUM, ORGANIC STEVIA, XANTHAN GUM

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<sup>4</sup> 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”); FEMA is the trade group for the flavor industry.

32. Laboratory analysis reveals the Product contains undisclosed artificial flavors – vanillin, maltol and piperonal. 21 C.F.R. § 172.515(b), § 182.60 (“Synthetic flavoring substances and adjuvants.”).

33. The level of vanillin was numerous times higher than the amount present in vanilla beans.

34. Coupled with the absence of detectable levels of methyl cinnamate, cinnamyl alcohol, p-cresol, acetovanillone, p-hydroxybenzoic acid, 4-methoxybenzaldehyde (p-anisaldehyde), 4-methoxybenzyl alcohol (p-anisyl alcohol) and/or vanillic acid, this is indicative of a food with added vanillin from non-vanilla sources.

35. The Product contains at most *de minimis* vanilla and lacks the key odor-active compounds in authentic vanilla beans which provide a vanilla taste.

36. “Vanillin may be produced through processes recognized as yielding an artificial flavor consistent with the FDA definition of ‘artificial flavor’ such as the production of vanillin from lignin. Vanillin may also be produced through processes that yield a natural flavor consistent with the FDA definition of ‘natural flavor.’” *See* Hallagan and Drake at p. 48.

37. Naturally produced vanillin is derived from eugenol through natural enzymatic reactions.

38. Assuming the added vanillin is produced through a natural process described, the Product is falsely labeled because it omits “artificially flavored.”

39. Regarding vanillin produced using a natural process, FDA stated that the common or usual name for this material is “vanillin” and could be labeled as “vanillin derived naturally through fermentation.”

40. According to legal counsel for the flavor industry, the labeling of a “food not subject

to a standard of identity,” like Defendant’s plant based protein powder, that has a characterizing flavor of vanilla, must disclose vanillin from non-vanilla sources, even if it is produced via a natural process. *See* Hallagan and Drake, The Flavor and Extract Manufacturers Association of the United States, “[Labeling Vanilla Flavorings and Vanilla-Flavored Foods in the U.S.](#),” *Perfumer & Flavorist*, Vol. 43 at 48, Apr. 25, 2018.

41. The FDA has stated that it is misleading to identify vanillin as a natural flavor in a food labeled as “vanilla” or “vanilla bean” because the only natural vanillin is from vanilla beans.

42. Moreover, “if the [vanillin] flavoring ingredient is being used in another food as ‘vanilla flavoring’ and the flavoring was not derived from vanilla, and if the characterizing flavor of the food is vanilla, then the food must be identified as ‘artificially flavored.’”

43. However, Defendant does not use a naturally produced version of vanillin because the process is slow and non-economical.

44. The vanillin used in the Product is marketed as derived through a natural process when this process is artificial.

45. It begins with the isomerization of eugenol to isoeugenol under alkaline conditions.

46. It is converted into coniferal alcohol, then to ferulic acid.

47. Then the ferulic acid is oxidized, which is broken down into vanillin, under high pressure, high heat and alkaline conditions.

48. High pressure and high heat are not considered “natural” processes for the purposes of producing a “natural flavor,” which means this vanillin is required to be designated as an artificial flavor. 21 C.F.R. § 101.22(a)(1).

49. Assuming the artificial process for vanillin is used, the Product is falsely labeled because it omits “artificial flavor” on the front label and ingredient list. 21 C.F.R. § 101.22(i)(2)



(requiring front label statement of “artificially flavored” where a food contains any artificial flavor which simulates the characterizing flavor).

50. Since vanillin is responsible for between one-quarter (25%) and one-third (33%) of the overall flavor and 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.

51. The added vanillin skews the balance of flavor compounds, and the result is dissimilar to what consumers expect from vanilla beans.

52. Maltol is another artificial flavor detected in the Product.

53. Though maltol is sometimes detected in vanilla at levels between 0.004 and 0.01 PPM, it is present at over 100 times this level.

54. This means it was added to the Product as a component of the “Organic Natural Flavor” and “Natural Flavor.”

55. Maltol increases the sweetness of a food, yet vanilla’s sweetness is appreciated on its own and added sweetness detracts from the vanilla taste desired by consumers.

56. Though maltol can be a “natural flavor,” it is economically prohibitive to use the naturally derived version due to its price.

57. If a naturally derived and naturally sourced version of maltol were used, it would be present in an amount several times greater than it is, because the artificial version is much more potent.

58. Piperonal (heliotropine) is another artificial flavor in the Product, which contributes a powdery flavor not associated with vanilla.

59. Piperonal can be obtained naturally, but the natural version is cost-prohibitive, which

reduces its use.

60. Had “natural” piperonal been used, its concentration would exceed 20 PPM, since this is the typical usage level for the natural version.

61. Its presence in an amount less than 20 PPM supports the conclusion it is from an artificial source and/or made through an artificial process.

62. The presence of added vanillin, artificial maltol and artificial piperonal renders the front label representation of “Vanilla” false, deceptive and misleading because it omits the required statement of “artificially flavored.” 21 C.F.R. § 101.22(i)(2).

63. Because Defendant’s ingredient list designates “Organic Natural Flavors” and “Natural Flavor,” it gives consumers the impression these are natural vanilla flavors, which is misleading because these contain artificial flavors.

64. The correct labeling of these flavor ingredients should be: “Organic Natural Flavors” and “Natural and Artificial Flavors.”

65. Defendant’s listing of “Organic Natural Flavors” and “Natural Flavor” makes it inconceivable for consumers without chromatography equipment at the checkout line to ascertain the Product contains artificial flavors.

66. In the alternative, Defendant’s front label fails to disclose “with other natural flavors” (“WONF”).

67. Where some flavor is from the named food with other natural flavors from sources other than the characterizing flavor which enhance, resemble or simulate the characterizing flavor, the front label is required to state, “With Other Natural Flavor.” 21 C.F.R. § 101.22(i)(1)(iii).

68. Based on the front label statement of “Vanilla” without qualifying terms – i.e., naturally flavored, artificially flavored, other natural flavors – and back label statement of “Clean

Nutrition,” consumers and Plaintiff expected the Product to be flavored only or predominantly from vanilla beans, not contain artificial flavors and have a vanilla taste.

69. Defendant’s front label only discloses “vanilla bean flavor” when at a minimum it would be required to state “With Other Natural Flavor.”

70. The representations are misleading because despite the side panel statement, “Our Commitment to Clean Nutrition,” the Product contains several ingredients which consumers do not consider “clean.”



71. According to CR Research and Ingredion Europe, consumers understand the term “clean” to refer to products that are (1) free from additives and artificial ingredients, (2) have a short list of simple, recognizable ingredients and are (3) minimally processed using traditional techniques that are understood by consumers.

72. The Product contains numerous ingredients consumers do not associate with “clean” products, because they are artificial, highly processed and have negative health effects.

73. Erythritol is an artificial sweetener used in low-sugar and sugar-free foods.

74. Though erythritol is found in plants, the type used in the Product does not occur in plants and is synthetic.

75. Erythritol is produced on a commercial scale through an electrochemical process which breaks down its starting material, sugar.

76. The Product contains xanthan gum, which is produced “on a commercial scale via the fermentation of sugars with the bacterium *Xanthomonas campestris*, and then harvested via

precipitation with isopropyl alcohol (rubbing alcohol).”<sup>5</sup>

77. The USDA considers xantham gum a synthetic ingredient. 7 C.F.R. § 205.605(b).

78. The Product contains other artificial and synthetic ingredients that are inconsistent with a product identified as providing “Clean Nutrition.”

79. The description of the Product as providing “Clean Nutrition” is especially misleading because the back of the Product contains a medical endorsement.

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

81. The Product is sold for a price premium compared to other similar products, no less than \$18.99 for 1.02 lbs (462g), higher than it would otherwise be sold for absent the misleading representations.

#### Jurisdiction and Venue

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

83. 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).

84. Plaintiff Dana Newton is a citizen of New York.

85. Defendant Orgain Management, Inc. is a California corporation with a principal place of business in Irvine, Orange County, California and though at least one member of Defendant is a citizen of New York, upon information and belief, at least one member of defendant

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<sup>5</sup> <https://www.foodnavigator-usa.com/Article/2017/08/31/General-Mills-hit-with-new-natural-lawsuit-over-xanthan-gum>

is not a citizen of New York.

86. “Minimal diversity” exists because plaintiff Dana Newton and defendant are citizens of different states.

87. Upon information and belief, sales of the Product and statutory and other monetary damages, exceed \$5 million during the applicable statutes of limitations, exclusive of interest and costs.

88. Venue is proper because a substantial part of the events or omissions giving rise to the claim occurred here – plaintiff’s purchase of the Product.

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

#### Parties

90. Plaintiff Dana Newton is a citizen of Jamaica, Queens County, New York.

91. Defendant Orgain Management, Inc. is a California corporation with a principal place of business in Irvine, California, Orange County.

92. Defendant sells the Product through third-parties in brick-and-mortar stores like CVS and Walmart, from the websites of third-parties and directly to consumers.

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

94. Plaintiff bought the Product at one or more locations, including Amazon.com, on one or more occasions within the past two years.

95. Plaintiff bought the Product at or exceeding the above-referenced price because she liked the product for its intended use and consumption and relied upon the representations the Product contained vanilla bean flavor from the vanilla bean.

96. Plaintiff would not have purchased the Product in the absence of Defendant’s

misrepresentations and omissions.

97. 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.

98. Plaintiff intends to, seeks to, and will purchase the Product again when she can do so with the assurance that Product's labeling is consistent with its composition.

#### Class Allegations

99. The class will consist of all purchasers of the Product who reside in New York, Pennsylvania, Maryland, Florida and Texas during the applicable statutes of limitations.

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

101. 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.

102. 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.

103. Plaintiff is an adequate representative because her interests do not conflict with other members.

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

105. 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.

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

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

New York General Business Law (“GBL”) §§ 349 & 350  
(Consumer Protection Statutes)

108. Plaintiff incorporates by reference all preceding paragraphs.

109. Plaintiff and class members desired to purchase a product which contained flavor from vanilla beans and ingredients expected to be “clean.”

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

111. Defendant misrepresented the Product through its statements, omissions, ambiguities and actions.

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

Negligent Misrepresentation

113. Plaintiff incorporates by reference all preceding paragraphs.

114. Defendant misrepresented the Product.

115. This duty is based on defendant’s position, holding itself out as having special knowledge and experience in the sale of the product type.

116. 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.

117. 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.

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

Fraud

119. Plaintiff incorporates by reference all preceding paragraphs.

120. Defendant misrepresented the attributes and qualities of the Product.

121. Defendant's fraudulent intent is evinced by its failure to accurately identify the Product's addition of artificial flavors and ingredients which consumers do not expect from "clean" products, when it knew not doing so would mislead consumers.

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

Unjust Enrichment

123. Plaintiff incorporates by reference all preceding paragraphs.

124. 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 and Prayer for Relief

Plaintiff demands a jury trial on all issues.

**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, statutory damages pursuant to any statutory claims 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: January 6, 2021

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

Spencer Sheehan

60 Cuttermill Rd Ste 409

Great Neck NY 11021-3104

Tel: (516) 268-7080

Fax: (516) 234-7800

*spencer@spencersheehan.com*

E.D.N.Y. # SS-8533

S.D.N.Y. # SS-2056

1:21-cv-00062  
United States District Court  
Eastern District of New York

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Dana Newton, individually and on behalf of all others similarly situated,

Plaintiff,

- against -

Orgain Management, Inc.,

Defendant

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Complaint

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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, and belief, formed after an inquiry reasonable under the circumstances, the contentions contained in the annexed documents are not frivolous.

Dated: January 6, 2021

/s/ Spencer Sheehan  
Spencer Sheehan

## 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**

Dana Newton, individually and on behalf of all others similarly situated

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

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

Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-3104 (516) 268-7080

**DEFENDANTS**

Orgain Management, Inc.

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
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 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 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 checked="" 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)

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"/> 840 Trademark <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 SSID 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 <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

**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

1/6/2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Spencer Sheehan

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, Spencer Sheehan, counsel for plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☒  
☒  
☐

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason

### **DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

### **RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

### **NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☒ No
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☐ Yes ☒ No
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☒ Yes ☐ No
  - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☐ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

### **BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

**Signature:** /s/Spencer Sheehan

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the  
Eastern District of New York

Dana Newton, individually and on behalf of all others similarly situated,

Plaintiff(s)

V.

Orgain Management, Inc. ,

Defendant(s)

Civil Action No. 1:21-cv-00062

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Orgain Management, Inc.  
c/o C T Corporation System  
818 W 7th St Ste 930  
Los Angeles CA 90017-3476

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Sheehan & Associates, P.C., 60 Cuttermill Rd Ste 409 Great Neck NY 11021-3104 (516) 268-7080

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

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*Signature of Clerk or Deputy Clerk*