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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ELENA NACARINO, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

CHOBANI LLC,

Defendant.

Case No. 20-cv-7437-EMC

**THIRD AMENDED CLASS ACTION  
COMPLAINT**

Plaintiff Elena Nacarino (“Plaintiff”), on behalf of herself and others similarly situated, bring this Class Action Complaint against Chobani, LLC (“Defendant” or “Chobani”). On the basis of personal knowledge, information and belief, and investigation of counsel, Plaintiff alleges as follows:

### **INTRODUCTION**

1. Defendant manufactures, distributes, markets, labels, and sells “Greek Yogurt Vanilla Blended” under the Chobani brand (“Product” or “Products”).

2. The Product was and is sold to consumers by third parties in different sizes including the 32 oz and 5.3 oz containers shown below.



3. The Product, regardless of size or distribution channel, bears a common, uniform label that states “Vanilla” on the front of the packaging.

4. The Product is marketed as a premium yogurt. According to one online grocery, <https://www.freshdirect.com/>, the Product costs \$1.49 for its 5.3 oz single serving size.

5. Defendant does not comply with FDA labeling requirements because it displays the “Vanilla” representation on the front of its package with no qualifiers, yet the Product has added

1 vanillin, not from the vanilla plant, that simulates, resembles, or reinforces the characterizing  
2 vanilla flavor of the Product. By mislabeling its Product in violation of federal and state regulation,  
3 Defendant induced Plaintiff and members of the Class to purchase Products that were of lesser  
4 value and quality than advertised thereby enriching itself at consumers' expense. Plaintiff seeks  
5 an order for the restitution and disgorgement of all monies from the sale of Defendant's Products  
6 that were unjustly acquired through unlawful acts and seeks an order enjoining Defendant from  
7 continuing to conduct business through unlawful acts and to commence corrective action.

8 **PARTIES**

9 6. Plaintiff Nacarino is a citizen of San Francisco, California.

10 7. Plaintiff Nacarino purchased the Product on several occasions including a 32 oz  
11 container of the Product in 2020 from a Whole Foods in San Francisco. Plaintiff saw the  
12 unqualified "Vanilla" representation on the front of the packaging. She would not have purchased  
13 the Product at a premium price or bought the Product at all had Plaintiff known the truth – that the  
14 unqualified "Vanilla" representation on the front of the packaging, which she relied upon in  
15 making her purchase, violated FDA regulations in that the vanilla flavor of the Product is not  
16 independently derived from the vanilla plant but rather contains other non-vanilla plant flavoring  
17 that simulates, resembles, or reinforces the characterizing vanilla flavor of the Product.

18 8. Plaintiff Nacarino would purchase the Product again in the future if the Product  
19 were reformulated such that the characterizing vanilla flavor of the Product is independently  
20 derived from the vanilla plant or if the labelling complied with federal and state regulations. She  
21 currently cannot rely on the Product's labeling because nothing on the label discloses that the  
22 Product has added vanilla flavorings, not from the vanilla plant, that simulate, resemble or  
23 reinforce the characterizing vanilla flavor of the Product.

24 9. Defendant Chobani, LLC is a Delaware limited liability company with a principal  
25 place of business in Norwich, New York, Chenango County.

1 **JURISDICTION**

2 10. This Court has jurisdiction over this action under the Class Action Fairness Act,  
3 28 U.S.C. § 1332(d). The amount in controversy exceeds the sum or value of \$5,000,000, exclusive  
4 of interest and costs, and the parties are citizens of different states.

5 11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial  
6 part of the events giving rise to Plaintiff's claims occurred in this District and Defendant has  
7 intentionally availed itself of the laws and markets of this District through the promotion,  
8 marketing, distribution, and sale of its Products here.

9 **BACKGROUND AND FACTUAL ALLEGATIONS**

10 12. Vanilla comes from an orchid plant that originated in Mexico where it was first  
11 cultivated. The vanilla flower produces a fruit pod, the vanilla bean, which is the raw material for  
12 true vanilla flavor.

13 13. Consumers want the vanilla flavor in food products to come from "real vanilla,"  
14 *i.e.*, from ingredients derived from the vanilla plant, such as vanilla beans or vanilla extract.  
15 Unfortunately, vanilla fraud is rampant. As in this case, companies – without properly labelling its  
16 products in accordance with federal and state food regulations – adulterate their purported vanilla  
17 flavored products with vanillin, a cheaper vanilla flavoring, in order to reap even larger corporate  
18 profits from consumers. This conduct is particularly harmful in the marketplace because other  
19 companies properly label their competing vanilla-flavored products.

20 14. Vanillin can be produced from so-called "natural" sources that have nothing to do  
21 with the vanilla plant, such as wood pulp, clove oil, and pine bark. Vanillin is far less expensive  
22 than vanilla extract. Vanilla extract costs approximately \$5-6 dollars per ounce, whereas vanillin  
23 costs around \$0.10 to \$0.30 per ounce. Yet real vanilla is prized especially in non-baked foods  
24 such as ice cream, custards, and yogurt. *See generally* [https://www.bhg.com/recipes/how-](https://www.bhg.com/recipes/how-to/bake/when-to-use-pure-vanilla-extract-or-imitation-vanilla-in-dessert/)  
25 [to/bake/when-to-use-pure-vanilla-extract-or-imitation-vanilla-in-dessert/](https://www.bhg.com/recipes/how-to/bake/when-to-use-pure-vanilla-extract-or-imitation-vanilla-in-dessert/) ("That same vanillin  
26 flavor can be made without any real vanilla beans, so it's much more affordable (around \$0.10 to  
27 \$0.30 per ounce). Imitation vanilla (\$1, Target) can have ingredients such as lignin, clove oil, pine  
28

1 bark, fermented bran, and several others. . . . For best results, use pure vanilla extract (or paste)  
 2 for no-bake treats, simmered sauces and custards, and frozen desserts.”).

3 15. Section 401 of the Federal Food, Drug and Cosmetic Act (“FFDCA”) directs the  
 4 FDA to establish standards and rules for food labeling where necessary to promote honesty and  
 5 fair dealing in the interest of consumers. The authority granted by Congress to the FDA enables  
 6 the agency to combat an economic problem: the marketing of foods from which traditional  
 7 constituents are removed or in which new or different (often cheaper and artificial) ingredients are  
 8 substituted. As such, the federal food standards are not safety standards, but rather, as the FDA  
 9 explains, intended to “protect consumers from contaminated products and economic fraud” and  
 10 have served as “a trusted barrier against substandard and fraudulently packaged food since their  
 11 enactment in the 1938 FFDCA.”

12 16. In order to combat vanilla fraud, the FDA has strict rules regarding use of the term  
 13 “vanilla” on the labels of food products.

14 17. Only vanilla flavor independently derived from the vanilla plant is allowed to  
 15 labelled “vanilla” without any qualifiers. If the characterizing vanilla flavor comes in any part from  
 16 non-vanilla plant sources, the FDA mandates that the label must so inform consumers by including  
 17 “Natural” or “Artificial” “Flavored” or “With Other Natural Flavor,” in letters not less than one-  
 18 half the height of the letters used for “Vanilla” and immediately adjacent to “Vanilla.” 21 C.F.R.  
 19 § 101.22(i)(1).

20 18. More specifically, 21 C.F.R. § 101.22(i)(1)(iii) provides:

21 If the food contains both a characterizing flavor from the product whose flavor  
 22 is simulated and other natural flavor which simulates, resembles or reinforces  
 23 the characterizing flavor, the food shall be labeled in accordance with the  
 24 introductory text and paragraph (i)(1)(i) of this section and the name of the food  
 25 shall be immediately followed by the words “with other natural flavor” in letters  
 26 not less than one-half the height of the letters used in the name of the  
 27 characterizing flavor.

28 19. California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code  
 section 109875, et seq. (“Sherman Law”), adopts all FDA regulations as state regulations (Section  
 110100).

1           20. Scientific testing of the Product by the Mass Spectrometry Facility, Food  
2 Innovation Center North, revealed that the characterizing vanilla flavor of the Product does not  
3 come independently from vanilla extract or other ingredients derived from the vanilla plant.  
4 Instead, the Product's vanilla flavor is spiked with vanillin, a vanilla flavor ingredient not derived  
5 from the vanilla plant, which simulates, resembles, or reinforces the vanilla flavor of the Product.  
6 See Mass Spectrometry Laboratory Analysis Report #7632, dated March 11, 2020, attached as  
7 Exhibit A.

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

Table 1

Sheehan &amp; Associates, P.C., Project #7632

Chobani Vanilla Greek Yogurt

Production Code: L4 36 8216

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

Data File = TSQA3914

MS Scan #	Area Integration	Peak Assignment	Conc. PPM w/w
11	40159	diacetyl	0.030
54	59959	acetic acid	0.045
194	1543348	acetoin	1.150
296	329010	butyric acid	0.245
309	35256	hexanal	0.026
326	337712	ethyl lactate	0.252
364	9511	2-methylbutyric acid	0.007
384	1917	furfuryl alcohol	0.001
436	3048634	lactic acid + trace of dimethylsulfoxide co-eluting	2.271
464	549461	dimethyl sulfone	0.409
556	4160871	hexanoic acid + trace of benzaldehyde	3.099
565	25358	octanal	0.019
578	18546	2,4-heptadienal	0.014
614	18311	benzyl alcohol	0.014
627	37594	benzene acetaldehyde	0.028
637	293834	heptanoic acid	0.219
663	4865	2-nonanone	0.004
672	28231	guaiacol	0.021
680	386676	nonanal	0.288
698	43113	cyclohexanecarboxylic acid	0.032
707	128326	maltol	0.096
768	11589359	octanoic acid	8.633
790	23701282	benzoic acid	17.655
798	1342461	naphthalene-d8 (internal standard)	1.000
815	149763	methyl nonanoate	0.112
857	5204334	nonanoic acid	3.877
891	52126	2-undecanone	0.039
905	111828	2,4-decadienal + glyceryl triacetate (Triacetin)	0.083
955	9991798	decanoic acid	7.443
1016	109743912	vanillin	81.748
1041	806289	4-hydroxy-3-methoxybenzyl alcohol	0.601
1056	28009	2-tridecanone	0.021
1076	113684	delta-decalactone	0.085
1089	56876	?	0.042
1108	3022639	lauric acid	2.252
1129	52639	ethyl laurate	0.039
1217	27908	gamma-dodecalactone	0.021
1246	70606	delta-dodecalactone	0.053
1261	176983	myristic acid	0.132
1288	31034	ethyl myristate	0.023
1484	52017	ethyl palmitate	0.039
Total (excluding internal standard)			131.165

See Exhibit A at page 5. Testing of Defendant's Product reveals vanillin (MS Scan # 1016) at 81.748 parts per million or PPM.

22. Although vanillin is one of the many aromatic compounds found in vanilla extract, the amount of vanillin found in Defendant's Product demonstrates that the vanillin here is not from vanilla extract but is instead a flavoring agent that was added to the Product to simulate, resemble, or reinforce the Product's vanilla flavor. Moreover, the testing did not detect other aromatic compounds that would exist if vanilla extract or other ingredients derived from the vanilla was the source of the vanillin found in the Product.

23. A comparison of the Product with other competing products that comply with FDA labeling requirements is revealing.

24. As seen below, Defendant's competitor Siggi's, like Defendant, also labels its yogurt simply "Vanilla" with no qualifiers. Siggi's sells its premium vanilla yogurt at a similar price point to the Product. According to the same online grocery cited above, <https://www.freshdirect.com/>, Siggi's vanilla yogurt costs \$1.79 for its 5.3 oz single serving size (compared to \$1.49 for 5.3 oz of the Product). Siggi's, however, uses only vanilla extract to give its yogurt vanilla flavor.



25. Telling, the GC-MS analysis of Siggi's vanilla yogurt, which is flavored with "Madagascar Bourbon Vanilla," shows vastly different results on its GC-MS analysis. Testing of

Siggi's vanilla yogurt revealed vanillin (MS Scan # 999) at a mere 0.2556 PPM compared to the Product's level of vanillin at 81.748 PPM. Moreover, the GC-MS analysis of Siggi's vanilla yogurt detected the presence of aromatic compounds associated with real vanilla that are not found in Defendant's Product.

**Sheehan & Associates, P.C., Project #7632**  
**Siggi's Vanilla Yogurt**  
**Production Code: PL#36-8579**  
**Methylene Chloride Extract of 10.0 g with 1 ppm Matrix-Spiked Int. Std. by P&T-TD-GC-MS**

Data File = TSQA3922

MS Scan #	Area Integration	Peak Assignment	Conc. PPM w/w
14-38	178276	diacetyl	0.0291
231	82546	acetic acid	0.0135
310	1081254	acetoin	0.1767
333	34525	hexanal	0.0056
369	811365	butyric acid	0.1326
407	10861	3-methylbutyric acid	0.0018
418	21341	2-methylbutyric acid	0.0035
437	18973	furfuryl alcohol	0.0031
449	60333	pentanoic acid	0.0099
504-530	17661628	lactic acid + dimethyl sulfone	2.8863
600	5354788	hexanoic acid	0.8751
666	321338	heptanoic acid	0.0525
679	25642	2-nonanone	0.0042
689	55199	guaiacol	0.0090
694	945991	methyl furoate	0.1546
740	472525	maltol	0.0772
782	3810634	octanoic acid	0.6227
808	6119213	naphthalene-d8 (internal standard)	1.0000
822	29043096	benzoic acid	4.7462
834	840419	hydroxymethylfurfural (HMF) + methyl nonanoate	0.1373
857	50850	benzene acetic acid	0.0083
869	4050023	nonanoic acid	0.6619
885	138951	2-undecanone	0.0227
902	152902	propyl nonanoate	0.0250
909	61206	2,4-decadienal	0.0100
926	63657	benzene propanoic acid	0.0104
955	11695964	decanoic acid	1.9114
989	278816	propyl decanoate	0.0456
999	1564130	vanillin	0.2556
1021	207663	undecanoic acid	0.0339
1038	69185	vanillyl ethyl ether	0.0113
1053	37172	2-tridecanone	0.0061
1073	64192	delta-decalactone	0.0105
1108	4110080	lauric acid	0.6717
1126	115725	ethyl laurate	0.0189
1177	22500	tridecanoic acid	0.0037
1200	34107	gamma-dodecalactone	0.0056
1212	46089	2-pentadecanone	0.0075
1240	81361	delta-dodecalactone	0.0133
1249	32998	myristoleic acid	0.0054
1256	306075	myristic acid	0.0500
1282	10130	ethyl myristate	0.0017
1474	28477	ethyl palmitate	0.0047
<b>Total (excluding internal standard)</b>			<b>13.7359</b>

26. Another competing vanilla yogurt product that is labeled similarly to the Product is Yoplait's "Oui" brand yogurt. As seen below Yoplait labels its vanilla Oui yogurt simply "Vanilla"

with no qualifiers. Yoplait uses only “Vanilla Extract” to flavor its Oui product. According to the same online grocery cited above, <https://www.freshdirect.com/>, Yoplait’s Oui vanilla yogurt costs \$1.69 for the 5.0 oz single serving size, a similar price point as the Product (\$1.49 for 5.3 oz).



27. The GC-MS analysis of the Oui vanilla yogurt is similar to that of Siggi’s and revealed vanillin (MS Scan # 993) at 1.783 PPM, compared to the Defendant Product’s level at 81.748 PPM, and detected the presence of various aromatic compounds associated with real vanilla that are not found in Defendant’s Product.

Table 1

Sheehan &amp; Associates, P.C., Project #7632-1

Yoplait Oui French Style Vanilla Yogurt

Production Code:RCM2 26525

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

Data File = TSQA3919

MS Scan #	Area Integration	Peak Assignment	Conc. PPM w/w
26	2133371	diacetyl	0.294
173	2481795	acetic acid	0.342
254	56061668	acetoin	7.715
361	5600484	butyric acid	0.771
367	3260072	ethyl lactate	0.449
408	4212737	1,2-propylene glycol	0.580
429	88226	hexyl alcohol	0.012
442	86563	2-heptanone	0.012
459	57638	heptanal	0.008
501	4641042	lactic acid	0.639
537	2921055	dimethyl sulfone	0.402
587	7124211	hexanoic acid	0.980
593	116243	2,4-heptadienal	0.016
616	64178	3,4-dimethyl-2,5-furandione + trace of limonene	0.009
636	95767	benzene acetaldehyde	0.013
640	182736	trans-2-octenal	0.025
654	290262	heptanoic acid	0.040
670	119023	2-nonanone	0.016
680	234267	guaiacol	0.032
686	299981	nonanal	0.041
720	141094	maltol	0.019
763	6800530	octanoic acid	0.936
782	8114389	benzoic acid	1.117
789	102301	2-methoxy-4-methylphenol (p-methylguaiacol)	0.014
801	7266374	naphthalene-d8 (internal standard)	1.000
851	4470919	nonanoic acid	0.615
870	116469	2-undecanone	0.016
874	44069	nonanoc acid, propylene glycol monoester (isomer)	0.006
882	238468	delta-nonolactone	0.033
891	86335	nonanoc acid, propylene glycol monoester	0.012
902	159536	2,4-decadienal	0.022
937	3287814	decanoic acid	0.452
955	108660	ethyl decanoate	0.015
976	89589	2-hexenal propylene glycol cyclic acetal (syn)	0.012
982	38142	2-hexenal propylene glycol cyclic acetal (anti)	0.005
993	12953076	vanillin	1.783
1008	236725	decanoic acid, propylene glycol monoester	0.033
1020	64693	decanoic acid, propylene glycol monoester (isomer)	0.009
1030	25513	vanillyl ethyl ether	0.004
1038	79272	decanal, propylene glycol cyclic acetal	0.011
1047	157511	2-tridecanone	0.022
1067	896209	delta-decalactone	0.123
1094	474872	lauric acid	0.065
1121	92241	ethyl laurate	0.013
1208	89661	gamma-dodecalactone	0.012
1214	147133	vanillin, propylene glycol cyclic acetal	0.020
1235	153919	delta-dodecalactone	0.021
1250	201591	myristic acid	0.028
1277	22196	ethyl myristate	0.003
1312	84890	vanillin glyceryl acetal	0.012
1427	58550	delta-tetradecalactone	0.008
1433	24760	palmitic acid	0.003
1467	37222	ethyl palmitate	0.005
Total (excluding internal standard)			17.845

28. In other words, Defendant's Product contains vanillin in levels that are more than **45 times** that of Oui and more than **319 times** that of Siggi's. Thus, the scientific testing of the Product and other properly labeled products, demonstrates that the Product relies upon added vanillin, not from the vanilla plant, to boost its vanilla flavor. Defendant violates 21 C.F.R. § 101.22(i)(1) by using "Vanilla" alone on its front label.

29. Other competing products that add non-vanilla plant flavorings so indicate on the front of their products. The following are just a few yogurts that add the "With Other Natural Flavor" qualifier to their "Vanilla" label.



30. These products are priced materially less than Defendant's Product, which is sold at \$1.49 for 5.3 oz. According to the same online grocery cited above, <https://www.freshdirect.com/>, the vanilla "Original" Yoplait yogurt costs \$0.99 for the 6.0 oz single serving size, and Brown Cow costs \$1.19 for the 5.3 oz single serving size.

31. In sum, whereas many competing yogurt products in the marketplace comply with federal regulation, 21 C.F.R. § 101.22(i)(1), Defendant's Product does not. Defendant charges more for its Products than it otherwise could by violating FDA labeling regulations.

**Reliance and Economic Injury**

32. Plaintiff sought a yogurt product whose characterizing vanilla flavor is independently derived from the vanilla plant.

33. Plaintiff read and relied on Defendant's label on the Product to believe that the characterizing flavor of the Product was vanilla and that the vanilla flavor came independently from the vanilla plant.

34. Had Plaintiff known the truth – that the label Plaintiff relied upon in making the purchase was unlawful in that the vanilla flavor of the Product does not come independently from the vanilla plant – Plaintiff would not have purchased the Product at a premium price or bought the Product at all.

35. The Product is priced comparably to other similar premium vanilla-flavored yogurt products that are flavored with vanilla extract, but costs more than vanilla-flavored yogurt products that disclose added flavoring on the front label.

36. By engaging in its unlawful labelling, Defendant reaped and continues to reap increased sales and profits.

**CLASS ACTION ALLEGATIONS**

37. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class that Plaintiff seek to represent (the "Class") is composed of and defined as follows:

All persons in California who have purchased Defendant's Product from October 23, 2016 to the date of judgment.

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.

38. 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

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

6 39. Common questions of law and fact exist as to all members of the Class, and these  
7 common questions predominate over any questions affecting only individual members of the  
8 Class. These common legal and factual questions, which do not vary from Class member to Class  
9 member, and which may be determined without reference to the individual circumstances of any  
10 Class member include, but are not limited to, whether Defendant's labeling of its Product  
11 constitute an unlawful consumer sales practice.

12 40. Plaintiff's claims are typical of those of the Class because Plaintiff, like all  
13 members of the Class, purchased a Product bearing the unqualified "Vanilla" representation on the  
14 front of the packaging in a typical consumer setting and sustained injury from Defendant's  
15 wrongful conduct.

16 41. Plaintiff will fairly and adequately protect the interests of the Class and has retained  
17 counsel who are experienced in litigating complex class actions. Plaintiff has no interests that  
18 conflict with those of the Class.

19 42. A class action is superior to other available methods for the fair and efficient  
20 adjudication of this controversy. Individual joinder of all members of the Class is impracticable.  
21 Even if individual members of the Class had the resources to pursue individual litigation, it would  
22 be unduly burdensome to the courts in which the individual litigation would proceed. Individual  
23 litigation magnifies the delay and expense to all parties in the court system of resolving the  
24 controversies engendered by Defendant's common course of conduct. The class action device  
25 allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair  
26 and efficient handling of all Class members' claims in a single forum. The conduct of this action  
27 as a class action conserves the resources of the parties and of the judicial system and protects the  
28

rights of the Class. Furthermore, for many, if not most, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice.

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

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

### **CAUSE OF ACTION**

#### **(Violation of California Business & Professions Code §§ 17200 *et seq.* –**

#### **Unlawful Conduct Prong of the UCL)**

#### **On Behalf of Plaintiff and the Class**

45. Plaintiff incorporates by reference all allegations contained in the complaint as if fully set forth herein. California Business & Professions Code section 17200 (“UCL”) prohibits any “unlawful, unfair or fraudulent business act or practice.”

46. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant, as alleged herein, constitute “unlawful” business acts and practices in that they violate the FFDCA and its implementing regulations.

47. More specifically, the Product is unlawfully because its label violates 21 C.F.R. § 101.22(i), including subsection (iii) that provides:

If the food contains both a characterizing flavor from the product whose flavor is simulated and other natural flavor which simulates, resembles or reinforces the characterizing flavor, the food shall be labeled in accordance with the introductory text and paragraph (i)(1)(i) of this section and the name of the food shall be immediately followed by the words “with other natural flavor” in letters not less than one-half the height of the letters used in the name of the characterizing flavor.

48. Defendant’s conduct also violates the Sherman Law, which adopts all FDA regulations as state regulations (Section 110100).

1           49.     The challenged statement made and actions taken by Defendant violate the FFDCA  
2 and the Sherman Law and therefore violates the “unlawful” prong of the UCL.

3           50.     Defendant leveraged its unlawful conduct to induce Plaintiff and members of the  
4 Class to purchase Products that were of lesser value and quality than advertised. Defendant’s  
5 unlawful conduct caused Plaintiff and members of the Class to suffer injury and to lose money,  
6 as it denied them the benefit of the bargain when they decided to purchase Defendant’s Product  
7 over other products that are properly labeled and less expensive. Had Plaintiff and the members of  
8 the Class been aware of Defendant’s unlawful tactics, they would not have purchased Defendant’s  
9 Product at all or would have paid less than what they did for it.

10          51.     In accordance with California Business & Professions Code section 17203, Plaintiff  
11 seeks an order enjoining Defendant from continuing to conduct business through unlawful acts  
12 and practices and to commence corrective action.

13          52.     Plaintiff also seeks an order for the disgorgement and restitution of all monies from  
14 the sale of Defendant’s Products that were unjustly acquired through unlawful acts and practices.

15          53.     Plaintiff lacks an adequate remedy at law because the UCL, the only claim brought  
16 by Plaintiff, does not provide for damages. In addition, Plaintiff lacks an adequate remedy at law  
17 for future harm.

18          54.     THEREFORE, Plaintiff prays for relief as set forth below.  
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**PRAYER FOR RELIEF**

THEREFORE, Plaintiff prays for judgment as follows:

1. Certification of the Class, certifying Plaintiff as representative of the Class and designating her counsel as counsel for the Class;
2. Declaratory and injunctive relief pursuant California Business & Professions Code §§ 17200, *et seq.*;
3. Restitution and disgorgement pursuant California Business & Professions Code §§ 17200, *et seq.*;
4. Attorneys' fees;
5. Costs of suit incurred; and
6. Such further relief as this Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

Respectfully submitted,

Date: September 8, 2021

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