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**CV 14 - 1515**

**DEARIE, J.**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**SCANLON, M.J.**

2014 MAR -6 PM 4:12  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
CLERK

ALLAN CHANG, on behalf of himself  
and others similarly situated,

Plaintiff,

Case No.:

**CLASS ACTION COMPLAINT**

v.

ORGAIN, INC.  
d/b/a ORGAIN,  
a California corporation,

Defendant.

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Plaintiff, Allan Chang (“Plaintiff”), on behalf of himself and others similarly situated, by and through his undersigned attorneys, hereby files this Class Action Complaint against Defendant, ORGAIN, INC. d/b/a ORGAIN (“Orgain” or “Defendant”), and states as follows based upon his own personal knowledge and the investigation of his counsel:

### **NATURE OF THE ACTION**

1. Drinking beverages containing too much sugar has become a major health problem -- so much so that the New York Department of Health and Mental Hygiene has launched a campaign warning against consuming sugary drinks as they can lead to diabetes, obesity and other chronic diseases. *See* [http://www.nyc.gov/html/doh/html/living/cdp\\_pan\\_pop.shtml](http://www.nyc.gov/html/doh/html/living/cdp_pan_pop.shtml)

2. Consumers undoubtedly have a choice as to whether to drink sugary beverages. But when the sugar in the drink is disguised as something else, that is unfair and dangerous to the consumer.

3. Against this backdrop, with consumers demanding beverages that fit their diet and nutritional needs, in 2008, Defendant Orgain, Inc. began marketing itself as provider of “the world’s first ready-to-drink, certified organic nutritional shake.”

4. Defendant engaged in and continues to engage in a widespread, uniform marketing campaign using the product packaging, the websites [www.orgain.com](http://www.orgain.com) and [www.drinkorgain.com](http://www.drinkorgain.com), and social media outlets such as Facebook and Twitter to mislead consumers about the ingredients in its nutritional shakes. Specifically, Defendant lists “evaporated cane juice” on its products’ packaging, even though Defendant knows that the term is false and misleading. Defendant also places a label on its packaging that states its product is “rich in antioxidants” and provides an “antioxidant boost.” Such terms are also similarly false and misleading.

5. Plaintiff brings this proposed consumer class action on behalf of himself and all other persons nationwide, who, from the applicable limitations period up to and including the present (the “Class Period”), purchased for consumption and not resale any of Orgain’s shakes listing evaporated cane juice (“ECJ”) in the ingredients and/or making unlawful nutrient content claims as to antioxidants.

6. During the Class Period, Orgain purposefully misrepresented and continues to purposefully misrepresent to consumers, including children, that its nutritional shakes contain evaporated cane juice even though “evaporated cane juice” is not “juice” at all—it is nothing more than sugar, dressed up to sound like something healthier than it is. Further, ECJ is not the common or usual name of any type of sweetener, or even any type of juice, and the use of such a name is false and misleading. Orgain uniformly lists ECJ as an ingredient on its nutritional shakes, as well as on its website located at <http://www.drinkorgain.com/>.

7. During the Class Period, Orgain also made and continues to make improper nutrient content claims. Orgain nutritional shakes state that the products are “rich in antioxidants” without any further description of the particular antioxidants present. Federal regulations require that nutrient claims that use the term “antioxidant” disclose the name of the specific nutrient that is an antioxidant. Orgain shakes do not specify any of the names of the antioxidants its shakes are purportedly “rich in.”

8. Orgain’s actions constitute violations of the federal Food Drug & Cosmetic Act (“FDCA”) Section 403(a)(1) (21 U.S.C. 343(a)(1)) and New York’s Deceptive Acts or Practices Law, Gen. Bus. Law § 349, as well those similar deceptive and unfair practices and/or consumer protection laws in other states.

9. Defendant violated statutes enacted in each of the fifty states and the District of Columbia, that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

- 1) Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.*;
- 2) Alaska Unfair Trade Practices and Consumer Protection Act, Ak\_ Code § 45.50.471, *et seq.*;
- 3) Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
- 4) Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- 5) California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- 6) Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 - 1-101, *et seq.*;
- 7) Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- 8) Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- 9) District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
- 10) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- 11) Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
- 12) Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statues § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
- 13) Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- 14) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
- 15) Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
- 16) Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
- 17) Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
- 18) Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;
- 19) Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. § § 51:1401, *et seq.*;
- 20) Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
- 21) Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- 22) Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- 23) Michigan Consumer Protection Act, § § 445.901, *et seq.*;
- 24) Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- 25) Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;
- 26) Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- 27) Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.*;
- 28) Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- 29) Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- 30) New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*;
- 31) New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et seq.*;
- 32) New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 1, *et seq.*;
- 33) New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.*;

- 34) North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;
- 35) North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
- 36) Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
- 37) Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- 38) Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- 39) Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. § § 201-1, *et seq.*;
- 40) Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- 41) South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.* ;
- 42) South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;
- 43) Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
- 44) Texas Stat. Ann. §§ 17.41, *et seq.*, Texas Deceptive Trade Practices Act
- 45) Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
- 46) Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451, *et seq.*;
- 47) Virginia Consumer Protection Act, Virginia Code Ann. §§59.1-196, *et seq.*;
- 48) Washington Consumer Fraud Act, Wash. Rev, Code § 19.86.010, *et seq.*;
- 49) West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
- 50) Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100. 18, *et seq.*;
- 51) Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§40-12-101, *et seq.*

10. Orgain has also been unjustly enriched as a result of its conduct. As a result of these unfair and deceptive practices (including marketing itself as “Doctor Developed Organic Nutrition”), Orgain has collected millions of dollars from the sale of its nutritional shakes with ECJ that it would not have otherwise earned. While simultaneously marketing its product as a healthy alternative, Orgain deceived the Plaintiff and other consumers nationwide by mischaracterizing the sugar and anti-oxidants comprising its nutritional shakes.

#### **JURISDICTION AND VENUE**

11. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than Defendant, and the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

12. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C § 1331 because it arises under the laws of the United States.

13. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

14. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

15. The Court has personal jurisdiction over Orgain because its nutritional shakes with ECJ are advertised, marketed, distributed, and sold throughout New York State; Orgain engaged in the wrongdoing alleged in this Complaint throughout the United States, including in New York State; Orgain is authorized to do business in New York State; and Orgain has sufficient minimum contacts with New York and/or otherwise has intentionally availed itself of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Orgain is engaged in substantial and not isolated activity within New York State.

16. Venue is proper in this district pursuant to 28 U.S.C § 1391(a) and (b), because a substantial part of the events giving rise to Plaintiff's claims occurred in this District, and Orgain is subject to personal jurisdiction in this District. Plaintiff purchased and consumed Defendant's nutritional shakes in Queens County.

#### **PARTIES**

17. Plaintiff is a citizen of the State of New York and resides in Queens county. For the past six months, Plaintiff has purchased different Orgain nutritional shakes with evaporated cane juice as an ingredient for personal consumption within the State of New York. Plaintiff has

purchased Orgain nutritional shakes with ECJ, including Orgain Organic Nutritional Shake – Creamy Chocolate Fudge, Iced Café Mocha, Strawberries and Cream, and Healthy Kids Chocolate. Plaintiff purchased shakes from stores located in New York City and from the website Luckyvitamin.com, which shipped Orgain nutritional shakes directly to his home in Queens. The purchase price was \$4.34 for an individual shake and approximately \$42 for a 12 pack of Orgain shakes.

18. Defendant Orgain is a Company organized and existing under the laws of the state of California. Orgain's headquarters is at 8122 Scholarship, Irvine, CA 92612. Orgain manufactured, advertised, marketed, and sold nutritional shakes containing ECJ to tens of thousands of consumers nationwide, including New York. It is the 121<sup>st</sup> fastest growing company in the United States according to Inc. Magazine, logging an explosive three year growth rate of 2,971%. See <http://www.inc.com/inc5000/list/2013>.

### **FACTUAL ALLEGATIONS**

19. Defendant manufactures, markets and sells Orgain shakes throughout the United States, and proclaims them to be a “ready-to-drink nutritional shake.”

20. Orgain nutritional shakes are available at most supermarket chains and major retail outlets throughout the United States, including but not limited to Whole Foods, Costco, Foodtown, Wegmans, The Food Emporium, The Vitamin Shoppe, Walgreens and Rite Aid.

#### **Defendant Makes Unlawful ECJ Claims**

21. Defendant deceptively advertises and markets all of its nutritional shakes using the term “evaporated cane juice” (herein “ECJ”), a term that is a false and misleading name for

another less healthy food or ingredient that has a common or usual name, namely sugar or dried cane syrup.

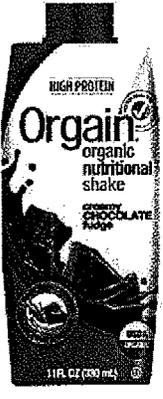
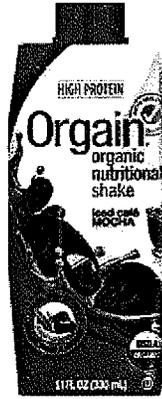
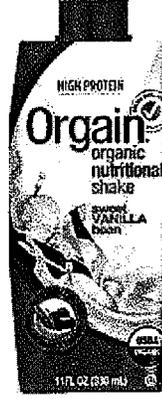
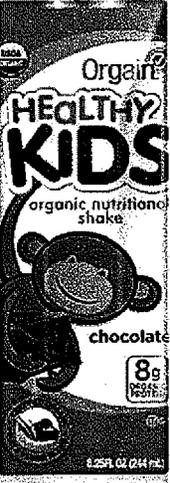
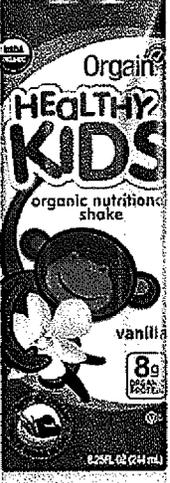
22. Orgain uses the term “Organic Evaporated Cane Juice” on all its packaging. Orgain uses the term ECJ to make its shake appear healthier than a product that contains “sugar” as an ingredient and to increase sales and to charge a premium.

23. Plaintiff and nationwide consumers were misled when they relied upon the use of ECJ on Defendant's packaging, assuming it was more natural and healthier than regular sugar.

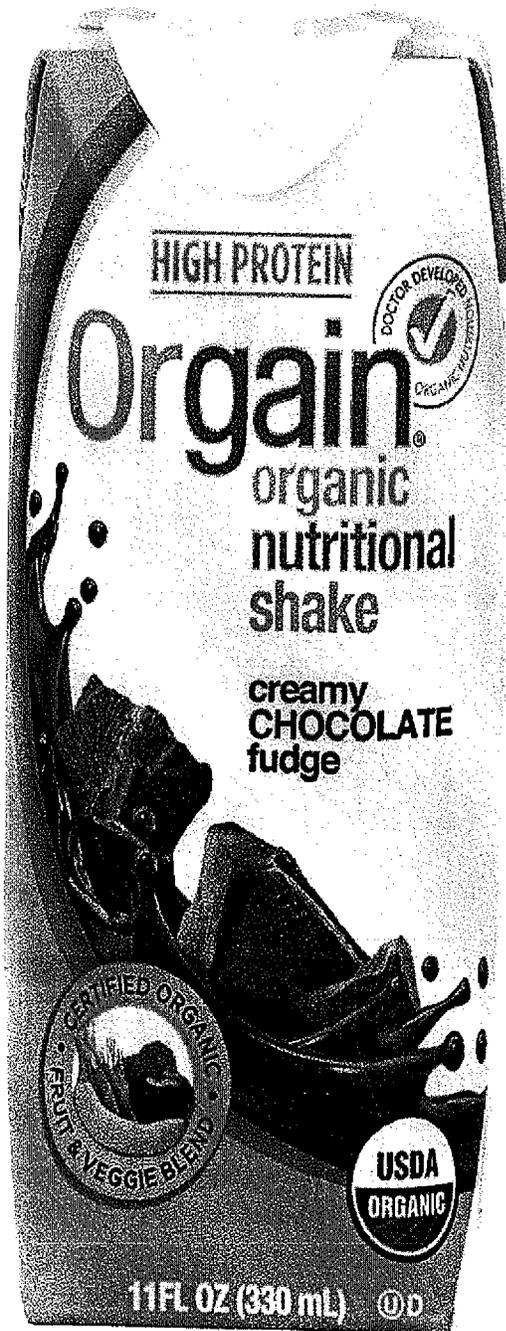
24. Sugar cane products exist in many different forms, ranging from raw sugars and syrups to refined sugar and molasses. These products are differentiated by their moisture, molasses, and sucrose content as well as by crystal size and any special treatments. Sugar cane products are required by regulation (21 C.F.R. § 101.4) to be described by their common or usual names, "sugar" (21 C.F.R. § 101.4(b)(20) and 21 C.F.R. § 184.1854) or "cane syrup" (21 C.F.R. § 168.130). Other sugar cane products have common or usual names established by common usage such as molasses, raw sugar, brown sugar, turbinado sugar, muscovado sugar and demerara sugar.

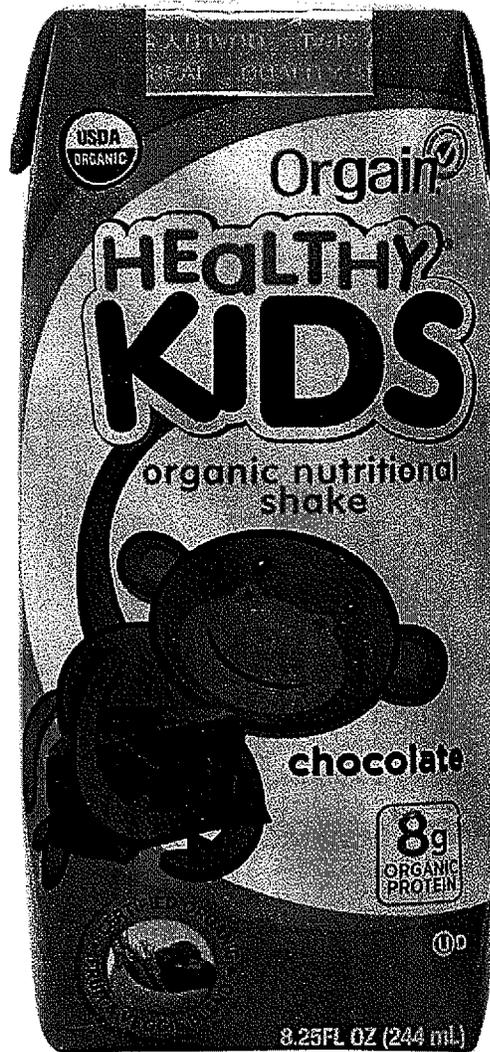
25. The FDA has instructed that sweeteners derived from sugar cane syrup should not be listed in the ingredient declaration by names which suggest that the ingredients are juice, such as “dehydrated cane juice” or “evaporated cane juice.” In fact, the FDA’s published policy states that “evaporated cane juice” is simply a deceptive way of describing sugar, and therefore, it is false and misleading to dress up sugar as a type of “juice”. See <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm181491.html>.

26. Orgain sells all its shakes using the deceptive ingredient name “evaporated cane juice”, including but not limited to the following products:

<p><b>Orgain Creamy</b> <b>Chocolate Fudge</b></p> 	<p><b>Orgain Iced Café</b> <b>Mocha</b></p> 	<p><b>Orgain</b> <b>Strawberries and Cream</b></p> 	<p><b>Orgain Sweet</b> <b>Vanilla Bean</b></p> 
<p><b>Orgain Healthy Kids</b> <b>Chocolate</b></p> 	<p><b>Orgain Healthy Kids</b> <b>Strawberry</b></p> 	<p><b>Orgain Healthy Kids</b> <b>Vanilla</b></p> 	

27. Sample labels are provided below:





**INGREDIENTS:** Filtered Water, Organic Evaporated Cane Juice, Orgain Organic Protein Blend (Organic Whey Protein Concentrate, Organic Grass Fed Milk Protein Concentrate), Organic High Oleic Sunflower Oil, Organic Rice Syrup Solids, Organic Brown Rice Syrup, Organic Inulin, Organic Cocoa Powder, Organic Natural Flavors, Organic Guar Gum, Organic Arabic Gum, Xanthan Gum, Organic Rice Bran Extract, Tricalcium Phosphate, Potassium Chloride, Sodium Phosphate, Carrageenan Gum, Sea Salt, Organic Stevia.

**Orgain Vitamin Blend**  
Tocopherol Acetate, Sodium Ascorbate, Magnesium Sulfate, Zinc Gluconate, Niacinamide, Calcium Pantothenate, Copper Gluconate, Vitamin A Palmitate, Thiamine Hydrochloride, Pyridoxine Hydrochloride, Riboflavin, Folic Acid, Biotin, Potassium Iodide, Cholecalciferol, Cyanocobalamin

**Orgain Organic Veggie Blend**  
(Organic Kale, Organic Beet, Organic Spinach, Organic Carrot, Organic Tomato) 50mg

**Orgain Organic Fruit Blend**  
(Organic Blueberry, Organic Banana, Organic Acai, Organic Apple, Organic Raspberry) 50mg

**ALLERGEN STATEMENT:**  
Contains Milk.

28. The ingredients in Orgain's regular shakes are identical to Orgain's Healthy Kids shakes with the exception that the regular shakes also contain potassium citrate, a flavor enhancer, and the Healthy Kids shakes have an additional gram of sugar.

29. Unfortunately for consumers and their children, Orgain nutritional shakes are not as healthy and nutritious as they purport to be. Orgain willfully and purposefully seeks to conceal the added sugar in its products from nationwide consumers.

30. On Defendant's website, drinkorgain.com, they state that the Founder of Orgain, Inc., Dr. Andrew Abraham, was a cancer survivor frustrated with the lack of healthy beverage alternatives and who set out to produce the most healthful beverage possible. Dr. Abraham states under the heading "Founder" that his mission is to "produce the healthiest drink in the world ... The truth is, a majority of drinks offered today are filled with sugar, corn syrup, .... " Defendant's website continues to state that that Dr. Abraham spent years formulating a drink to meet his "strict standards" that had to be "low in sugar ... have complex carbs, fruit, veggies [and] free from artificial sweeteners." Such narrative sells and misrepresents as truth that Orgain's products are healthier than other products sweetened with "sugar." However, Orgain's shakes are sweetened with regular sugar just as any other non-healthy beverage.

31. On Defendant's website, drinkorgain.com, under FAQ, they further mislead nationwide consumers with purposeful misrepresentations as to their products' health benefits when the Orgain shakes contain significant amounts of sugar and negligible amounts of fruits and vegetables:

- Under "I Need to gain healthy weight, is Orgain right for me?", Defendant states that 2 - 3 servings can help a person increase their weight. This is a certainty as each 11 ounce serving of Orgain packs 255 calories (including 12 grams of sugar), more calories than a McDonald's hamburger (250 calories), Chipotle BBQ Snack Wrap Grilled (250 calories) or 5 piece Chicken McNuggets (237 calories) or 8 ounces of Coca Cola (95 calories). Defendant's shake is a recipe for obesity, not healthy weight.
- Under "Can I lose weight with Orgain?" Defendant states that consumers can lose weight if they drink Orgain if they replaced "a meal or two with a serving of

Orgain." Such suggestion asks consumers to replace two filling meals with an unsatisfying liquid calorie and sugar packed Orgain drink, which will only result in binge eating and further obesity.

- Under "I need energy, can Orgain help?", Defendant contends that Orgain can provide "sustained energy without the sugar crash associated with energy drinks." Such statement is simply misleading as Orgain also contains significant amounts of sugar.
- Under "Can children drink Orgain?" Defendant touts the healthy benefits of its kid specific formula. In fact, its kid specific formula only increases the amount of sugar (13 grams) compared to its regular brand (12 grams).
- Under "What's in Orgain?" Defendant cryptically states that its shakes are "lightly sweetened with organic brown rice syrup and organic evaporated cane juice." Such description is misleading. Defendant should just say it sweetens its products with plain old sugar, like other unhealthy drinks. Defendant also touts its blend of vegetables (organic kale, beets, spinach, carrots and tomatoes) and fruits (organic blueberries, bananas, acai berry, apple and raspberries). However, each 11 ounce drink only contains 50 milligrams of each of its blend of vegetables and fruits.  
**Thus, applying Orgain's 12 grams of sugar per 11 ounce serving to the 50 milligrams of each veggie blend and fruit blend means that Orgain's sugar content is 240x its actual fruit or vegetable content.**
- Under "With all the healthy stuff, how does it taste so good?", Defendant only states that it uses "organic cocoa and real organic vanilla". In fact, Defendant should say that it uses sugar to sweeten its drinks. It is further deceptive because

Defendant touts the use of "5 different organic fruits in every package" implying that its products are naturally sweetened, when they are just sweetened with sugar.

- Under "Are their[sic] preservatives, colorings, artificial flavors, artificial sweeteners?" Defendant emphatically denies using artificial sweeteners. However, this statement is misleading by omission because they should instead disclose that the drinks are flavored instead with sugar.

32. As detailed above, Orgain's nutritional shakes are not low in sugar and are no different from other drinks that are artificially sweetened with sugar. The Nutrition Facts for Orgain's Creamy Chocolate Fudge nutritional shakes purchased by Plaintiff state that it has twelve (12) grams of sugar, but the ingredient section fails to list "sugar" or "dried cane syrup" as an ingredient. Similarly, Orgain's Healthy Kids chocolate nutritional shakes purchased by Plaintiff state that it has thirteen (13) grams of sugar, but the ingredient section fails to list "sugar" or "dried cane syrup" as an ingredient.

33. Rather, Defendant identifies "Organic Evaporated Cane Juice" as an ingredient in its product labels, despite the fact that the U.S. Food and Drug Administration (herein "FDA") has specifically warned companies not to use the term "Evaporated Cane Juice" because (1) it is "false and misleading;" (2) its use is in violation of a number of labeling regulations designed to ensure that manufacturers label their products with the common and usual names of the ingredients they use and accurately describe the ingredients they utilize; and (3) the ingredient in question is not a juice.

34. In October of 2009, the FDA issued Guidance for Industry: Ingredients Declared as Evaporated Cane Juice, which advised industry as follows:

[T]he term “evaporated cane juice” has started to appear as an ingredient on food labels, most commonly to declare the presence of sweeteners derived from sugar cane syrup. **However, FDA’s current policy is that sweeteners derived from sugar cane syrup should not be declared as “evaporated cane juice” because that term falsely suggests that the sweeteners are juice...**

“Juice” is defined by 21 CFR 120.1(a) as “the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree.”...

As provided in 21 CFR 101.4(a)(1), “Ingredients required to be declared on the label or labeling of a food... shall be listed by common or usual name....” The common or usual name for an ingredient is the name established by common usage or by regulation (21 CFR 102.5(d)). The common or usual name must accurately describe the basic nature of the food or its characterizing properties or ingredients, and may not be “confusingly similar to the name of any other food that is not reasonably encompassed within the same name” (21 CFR 102.5(a))...

Sugar cane products with common or usual names defined by regulation are sugar (21 CFR 101.4(b)(20)) and cane sirup (alternatively spelled “syrup”) (21 CFR 168.130). Other sugar cane products have common or usual names established by common usage (e.g., molasses, raw sugar, brown sugar, turbinado sugar, muscovado sugar, and demerara sugar)...

**The intent of this draft guidance is to advise the regulated industry of FDA’s view that the term “evaporated cane juice” is not the common or usual name of any type of sweetener, including dried cane syrup. Because cane syrup has a standard of identity defined by regulation in 21 CFR 168.130, the common or usual name for the solid or dried form of cane syrup is “dried cane syrup.”...**

**Sweeteners derived from sugar cane syrup should not be listed in the ingredient declaration by names which suggest that the ingredients are juice, such as “evaporated cane juice.” FDA considers such representations to be false and misleading under section 403(a)(1) of the Act (21 U.S.C. 343(a)(1)) because they fail to reveal the basic nature of the food and its characterizing properties (i.e., that the ingredients are sugars or syrups) as required by 21 CFR 102.5. Furthermore, sweeteners derived from sugar cane syrup are not juice and should not be included in the percentage juice declaration on the labels of beverages that are represented to contain fruit or vegetable juice (see 21 CFR 101.30).**

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm181491.html> (emphasis added)

35. The FDA's position is thus clear that "evaporated cane juice" labels are "false and misleading." Despite the issuance of the 2009 FDA Guidance, Orgain did not remove the unlawful and misleading food labeling ingredient from their misbranded nutritional shakes.

36. Under the Federal Food Drug and Cosmetic Act (herein "FDCA"), the term "false" has its usual meaning of "untruthful," while the term "misleading" is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, but still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. "Misleading" is judged in reference to "the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze." *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9<sup>th</sup> Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled.

37. Orgain's nutritional shakes mislead consumers into paying a premium price for products that do not satisfy the minimum standards established by law for those products and for inferior or undesirable ingredients or for products that contain ingredients not listed on the label.

38. Several of Orgain's nutritional shakes are specifically designed for and marketed to children, making the deception that much more pernicious.

39. Defendant's packaging on some of its shakes prominently displays a picture of a bright monkey along with the phrase "Healthy Kids" in an effort to simultaneously target children and health conscious parents.

40. For each "Healthy Kids" nutritional shake flavor, Defendant uses cartoon-like marketing to target children. The "Healthy Kids" vanilla shake packaging displays a colorful image of a smiling monkey carrying white flowers. The "Healthy Kids" strawberry shake packaging displays a colorful image of a smiling monkey carrying a bright red strawberry and

the "Healthy Kids" chocolate shake packaging displays a colorful image of a smiling monkey carrying a large chocolate square.

41. Defendant also deceptively markets its "Healthy Kids" nutritional shakes to parents seeking healthy alternatives for their children.

42. Given the prevalence of obesity in the United States, parents are desperate for healthy options in the supermarket aisles. In touting their nutritional shakes as "doctor-formulated to provide perfectly balanced nutrition..." while intentionally failing to list sugar as an ingredient, Defendant is misleading parents into purchasing Orgain nutritional shakes.

43. One consumer stated that she gives her son an Orgain shake every day. Monique Zelman commented the following on Orgain's Facebook page:

[M]y son is small and not a big eater so I give him one every day. I try to find deals b/c they are expensive but definitely worth the price. (Monique Zelman, December 10, 2013) (See Recent Posts by Others at <https://www.facebook.com/drinkorgain>, as appeared on 2/20/14)

44. Even expectant mothers are being misled by Orgain's deceptive practices. One consumer who purchased Defendant's product and reviewed it on Orgain's facebook page stated as follows:

I am so thankful for Orgain. I have had a rough pregnancy and it has helped me a lot with getting food and nutrients inside me. Waiting to hear about the next sale so I can place another bulk order (I am tight with money, but always try to keep a stash on hand and catch all of the sales)! Thanks again Orgain! (Amanda K. Upton, December 11, 2013 at 2:14pm)

Orgain's reply:

Thank you Amanda! We are so happy to be providing organic nourishment for you and your baby. We will definitely keep you posted. In the meantime, please email us and we'll send you some coupons as a token of our appreciation. [Info@drinkorgain.com](mailto:Info@drinkorgain.com) (December 12, 2013 at 8:07pm) (See Recent Posts by Others at <https://www.facebook.com/drinkorgain>, as appeared on 2/20/14)

45. Orgain's Facebook page further misleads consumers by stating "gain health. gain energy. gain life." Several consumers on Amazon.com are under the impression that the Orgain nutritional shakes do not contain added sugar:

- "These are the perfect alternative to Ensure. Orgain is not another sugar filled nutrition drink" (Sophi, 12/27/13)  
(<http://www.amazon.com/Orgain-Creamy-Chocolate-11-Ounce-Container/product-reviews/B003FDG4K4?pageNumber=48>, as appeared on 2/20/14)
- "I bought this organic product for my wife who is having difficulty eating, thus achieving sufficient nutrition levels, because of advanced stage cancer. We have both tried the competitive products Boost and Ensure and find Orgain far superior, not only because it tastes better, but because it is not full of sugar--which cancer grows in--and has no preservatives and chemicals" (Wayne, 1/9/14)  
(<http://www.amazon.com/Orgain-Organic-Vanilla-11-Ounce-Container/product-reviews/B003FDC2I2?pageNumber=4>, as appeared on 2/20/14)

46. Orgain's false, unlawful, and misleading product descriptions and ingredient listings render these nutritional shakes misbranded under New York Law. Specifically, N.Y. Agric. and Markets Law § 201 states:

Food shall be deemed to be misbranded: ...unless its label bears (a) the common or usual name of the food, if any there be.... See N.Y. AGM. LAW § 201, Misbranding of Food.

Thus, similar to the federal law, New York law requires that ingredients be listed under their common and usual name. Otherwise, they are misbranded.

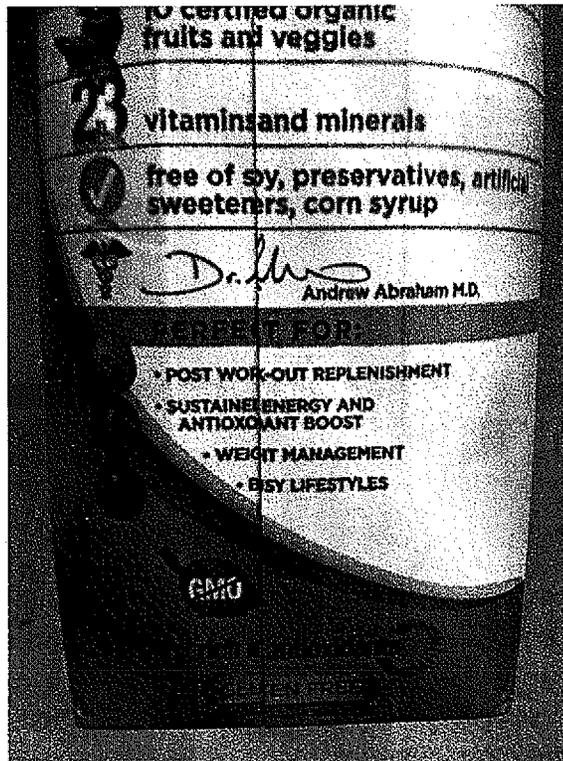
47. Plaintiff and the Class paid a premium price for their Orgain nutritional shakes with ECJ. Through its deceptive practice of marketing and selling its nutritional shakes with ECJ as an ingredient, Orgain was able to command a premium price by deceiving consumers about the attributes of its shakes and distinguishing itself from similar products. Orgain was motivated to mislead consumers for no other reason than to take away market share from competing products, thereby increasing its own profits. Plaintiff paid \$4.34 for each individual Orgain shake purchased and \$42.00 for every 12 pack purchased. Similar ready to drink nutritional shakes

such as Boost Original are sold for \$14.99 for a 12 pack at Target and Ensure Nutrition shakes are sold for \$19.97 for a 16 pack at Walmart.

48. Plaintiff and the Class have been damaged by Orgain's deceptive and unfair conduct in that they purchased a misbranded product or paid prices they otherwise would not have paid had Orgain not misrepresented the nutritional shakes' ingredients.

#### **Defendant Makes Unlawful Antioxidant Claims**

49. On its product labels, Orgain touts that its nutritional shakes are "rich in antioxidants" and are "Perfect for:...Sustained Energy and Antioxidant Boost." A copy of the product label is reproduced below:



50. Federal regulations regulate antioxidant claims as a particular type of nutrient content claim. Specifically, 21 C.F.R. § 101.54(g) contains special requirements for nutrient claims that use the term “antioxidant”:

- (1) The name of the antioxidant must be disclosed;
- (2) There must be an established Referenced Daily Intakes (“RDI”) for that antioxidant, and if not, no “antioxidant” claim can be made about it;
- (3) The label claim must include the specific name of the nutrient that is an antioxidant and cannot simply say “antioxidants” (e.g., “high in antioxidant vitamins C and E”), *see* 21 C.F.R. § 101.54(g)(4);
- (4) The nutrient that is the subject of the antioxidant claim must also have recognized antioxidant activity, *i.e.*, there must be scientific evidence that after it is eaten and absorbed from the gastrointestinal tract, the substance participates in physiological, biochemical or cellular processes that inactivate free radicals or prevent free radical-initiated chemical reactions, *see* 21 C.F.R. § 101.54(g)(2); and
- (5) The antioxidant nutrient must meet the requirements for nutrient content claims in 21 C.F.R. § 101.54(b) for “high” or “rich in” claims. For example, to use a “high” claim, the food would have to contain 20% or more of the Daily Reference Value (“DRV”) or RDI per serving.

51. The antioxidant labeling for Defendant’s Orgain shakes violate federal law because (1) the label does not specify which antioxidants the shakes are allegedly “rich in” and (2) since the antioxidant is not specified, Defendant lacks adequate evidence that the unknown antioxidant nutrients participate in physiological, biochemical or cellular processes that inactivate free

radicals or prevent free radical-initiated chemical reactions after they are eaten and absorbed from the gastrointestinal tract.

52. As stated above, there are only 50 milligrams each of fruits and vegetables per 11 ounce Orgain drink. 50 milligrams is equal to 5% of 1 gram. The health benefits of such antioxidant blend is non-existent.

53. For these reasons, Defendant's antioxidant claims at issue in this Complaint are misleading and in violation of 21 C.F.R. § 101.54 and the nutritional shakes at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States.

#### **CLASS ACTION ALLEGATIONS**

54. Plaintiff brings this action as a class action pursuant Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

All persons or entities in the United States who made retail purchases of Orgain nutritional shakes during the applicable limitations period, and/or such subclasses as the Court may deem appropriate. Excluded from the Class are current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

55. Plaintiff reserves the right to revise the Class definition based on facts learned in the course of litigating this matter.

56. This action is proper for class treatment under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiff at this time, Plaintiff is informed and believes that there are thousands

of Class members. Thus, the Class is so numerous that individual joinder of all Class members is impracticable.

57. Questions of law and fact arise from Defendant's conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

- a. whether listing sugar as ECJ on its products is false and misleading;
- b. whether listing the ingredient "evaporated cane juice" is misleading because it is not "juice";
- c. whether identifying sugar as ECJ renders the nutritional shakes at issue misbranded;
- d. whether Orgain failed to disclose to consumers that ECJ is an unlawful term that is merely sugar or dried cane syrup;
- e. whether Orgain engaged in a marketing practice intended to deceive consumers by substituting the term ECJ for sugar in their nutritional shakes;
- f. whether the antioxidant labeling on Orgain nutritional shakes violates federal, state or common law;
- g. whether Orgain has made deceptive nutrient content and anti-oxidant claims;
- h. whether Orgain has been unjustly enriched at the expense of Plaintiff and the other Class members by its misconduct;
- i. whether Orgain must disgorge any and all profits it has made as a result of its misconduct;
- j. whether Orgain should be barred from marketing its nutritional shakes as listing ECJ as an ingredient; and

- k. whether Orgain should be barred from marketing its nutritional shakes being rich in anti-oxidants.

58. Plaintiff's claims are typical of those of the Class members because Plaintiff and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein. Plaintiff purchased Defendant's nutritional shakes during the Class Period and sustained similar injuries arising out of Defendant's conduct in violation of New York State law. Defendant's unlawful, unfair and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of the Class were caused directly by Defendant's wrongful misconduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

59. Plaintiff will fairly and adequately represent and pursue the interests of the Class and has retained competent counsel experienced in prosecuting nationwide class actions. Plaintiff understands the nature of his claims herein, has no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiff has retained highly competent and experienced class action attorneys to represent his interests and those of the Class. Plaintiff and Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

60. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

61. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

62. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

63. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

64. Defendant's conduct is generally applicable to the Class as a whole and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

**CAUSES OF ACTION**

**COUNT I**

**INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349  
(DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)**

65. Plaintiff realleges and incorporates herein by reference paragraphs 1 – 64 herein and further alleges as follows:

66. Plaintiff brings this claim individually and on behalf of the other members of the Class for an injunction for violations of New York’s Deceptive Acts or Practices Law, Gen. Bus. Law § 349 (“NY GBL”).

67. NY GBL § 349 provides that deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are unlawful.

68. Any person who has been injured by reason of any violation of the NY GBL may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

69. The practices employed by Defendant, whereby Defendant advertised, promoted, and marketed that its nutritional shakes contain ECJ and are “rich in antioxidants” are unfair, deceptive, and misleading and are in violation of the N.Y. Agric. and Markets Law § 201 in that said nutritional shakes are misbranded.

70. Orgain should be enjoined from marketing their nutritional shakes as containing ECJ and as being “rich in antioxidants” without further specification as described above pursuant to NY GBL § 349.

71. Plaintiff, on behalf of himself and all others similarly situated, respectfully demands a judgment enjoining Orgain's conduct, awarding costs of this proceeding and attorneys' fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

**COUNT II**

**VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349  
(DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)**

72. Plaintiff realleges and incorporates herein by reference paragraphs 1 – 71 herein and further alleges as follows:

73. Plaintiff brings this claim individually and on behalf of the other members of the Class for violations of New York's Deceptive Acts or Practices Law, Gen. Bus. Law § 349.

74. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts and practices by misbranding their nutritional shakes as containing ECJ.

75. The practices employed by Defendant, whereby Defendant advertised, promoted, and marketed that its nutritional shakes contain ECJ are unfair, deceptive, and misleading and are in violation of the N.Y. Agric. and Markets Law § 201 in that said products are misbranded.

76. The foregoing deceptive acts and practices were directed at consumers.

77. Plaintiff and the other Class members suffered a loss as a result of Orgain's deceptive and unfair trade acts. Specifically, as a result of Orgain's deceptive and unfair trade acts and practices, Plaintiff and the other Class members suffered monetary losses associated with the purchase of Orgain nutritional shakes with ECJ, *i.e.*, the purchase price of the product and/or the premium paid by Plaintiff and the Class for said products.

**COUNT III**

**NEGLIGENT MISREPRESENTATION  
(All States)**

78. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 77 of this Complaint, as if fully set forth herein.

79. Defendant, directly or through its agents and employees, made false representations, concealments, and nondisclosures to Plaintiff and members of the Class.

80. In making the representations of fact to Plaintiff and members of the Class described herein, Defendant has failed to fulfill its duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendant's negligence and carelessness.

81. Defendant, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendant made and intended the misrepresentations to induce the reliance of Plaintiff and members of the Class.

82. Plaintiff and members of the Class relied upon these false representations and nondisclosures by Defendant when purchasing Orgain nutritional shakes, which reliance was justified and reasonably foreseeable.

83. As a result of Defendant's wrongful conduct, Plaintiff and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for Orgain nutritional shakes, and any interest that would have been accrued on those monies, all in an amount to be determined according to proof at time of trial.

**COUNT IV**

**BREACH OF EXPRESS WARRANTIES  
(All States)**

84. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 83 of this Complaint, as if fully set forth herein.

85. Defendant provided Plaintiff and other members of the Class with written express warranties, including, but not limited to, warranties that its nutritional shakes are “lightly sweetened with...organic evaporated cane juice” and are perfect for “anyone who requires liquid nutrition” and “organic nutrient dense energy any time.”

86. Defendant breached these warranties by providing nutritional shakes that fail to mention sugar as an ingredient and making improper nutrient content claims as to antioxidants.

87. This breach resulted in damages to Plaintiff and the other members of the Class who bought Defendant’s products but did not receive the goods as warranted in that the products were not as healthy as they appear to be.

88. As a proximate result of Defendant’s breach of warranties, Plaintiff and the other Class members have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for products that did not conform to what Defendant promised in its promotion, marketing, advertising, packaging and labeling, and they were deprived of the benefit of their bargain and spent money on products that did not have any value or had less value than warranted or products that they would not have purchased and used had they known the true facts about them.

**COUNT V**

**UNJUST ENRICHMENT  
(All States)**

89. Plaintiff realleges and incorporates herein by reference paragraphs 1 – 88 of this Complaint, as if fully set forth herein.

90. Orgain received certain monies as a result of its uniform deceptive marketing of its nutritional shakes with ECJ that are excessive and unreasonable.

91. Plaintiff and the Class conferred a benefit on Orgain through purchasing its nutritional shakes with ECJ, and Orgain has knowledge of this benefit and has voluntarily accepted and retained the benefits conferred on it.

92. Orgain will be unjustly enriched if it is allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Orgain and for which Orgain has been unjustly enriched.

**COUNT VI**

**Magnuson-Moss Act (15 U.S.C. § 2301, *et seq.*)**

93. Plaintiff realleges and incorporates herein by reference paragraphs 1 – 92 of this Complaint, as if fully set forth herein.

94. Plaintiff and the Class are "consumers" as defined by 15 U.S.C. § 2301(3).

95. Defendant is a "supplier" and "warrantor" as defined by 15 U.S.C. § 2301(4) and (5).

96. Defendant's food products are "consumer products" as defined by 15 U.S.C. § 2301(1).

97. Defendant's nutrient and health content claims constitute "express warranties."

98. Defendant, through its package labels, create express warranties by making the affirmation of fact and promising that its nutritional shakes comply with food labeling regulations under federal and New York law.

99. Despite Defendant's express warranties regarding its nutritional shakes, they do not comply with food labeling regulations under federal and New York law.

100. Defendant breached its express warranties regarding its nutritional shakes in violation of 15 U.S.C. § 2301, *et seq.*

101. Defendant sold Plaintiff and the Class nutritional shakes that were not capable of being sold or legally held, and which were legally worthless. Plaintiff and the Class paid a premium price for the nutritional shakes.

102. As a direct and proximate result of Defendant's actions, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seek judgment against Defendant, as follows:

- A. For an order certifying the nationwide Class and under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent members of the Class;
- B. For an order declaring the Defendant's conduct violates the statutes referenced herein;
- C. For an order finding in favor of Plaintiff and the nationwide Class;
- D. For compensatory and punitive damages in amounts to be determined by the

Court and/or jury;

- E. For prejudgment interest on all amounts awarded;
- F. For an order of restitution and all other forms of equitable monetary relief;
- G. For injunctive relief as pleaded or as the Court may deem proper;
- H. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit; and
- I. Any other relief the Court may deem appropriate.

**DEMAND FOR TRIAL BY JURY**

Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Dated: March 6, 2014

Respectfully submitted,

LEE LITIGATION GROUP, PLLC  
C.K. Lee (CL 4086)  
30 East 39th Street, Second Floor  
New York, NY 10016  
Tel.: 212-465-1188  
Fax: 212-465-1181  
*Attorneys for Plaintiff and the Class*

By: \_\_\_\_\_  
C.K. Lee

JS 44 (Rev. 1/2013)

CIVIL COVER SHEET

CV 14-1515

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

Allan Chang

DEFENDANTS

Orgain, Inc. d/b/a Orgain

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

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

DEARIE, J.

(c) Attorneys (Firm Name, Address, and Telephone Number) C.K. Lee, Esq., Lee Litigation Group, PLLC 30 East 39th Street, Second Floor, New York NY 10016 (212) 465-1188

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

Attorneys (If Known)

SCANLON, M.J.

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 U.S.C. 1332(d)

Brief description of cause: Claims based on false, deceptive, unfair and misleading statements in labeling of consumer products

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 10,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/05/2014 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING W/P JUDGE MAG. JUDGE

Handwritten numbers: 4653071474, 165, VHS, 1815

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Legal Arbitration Rule 83.10 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.

I, C.K. Lee, Esq., counsel for Allan Chang, 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? 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? No
  - b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

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? \_\_\_\_\_

(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: \_\_\_\_\_