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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOWARD CLARK, *individually, and on behalf of a class of similarly situated persons*, Plaintiffs, v. WESTBRAE NATURAL, INC. Defendant.	Case No.: 20-cv-3221 **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Howard Clark ("Plaintiff"), by Plaintiff's undersigned attorneys, alleges upon information and belief, except for allegations pertaining to Plaintiff, which are based on personal knowledge:

1. Westbrae Natural, Inc. ("Defendant") manufactures, distributes, markets, labels and sells soymilk beverages purporting to be flavored only by vanilla under their Westsoy brand ("Product" or "Products").

2. The Products are available to consumers from retail and online stores of third-parties and are sold in sizes including cartons of 32 OZ and 64 OZ.

3. The relevant front label representations include the term "Vanilla".

4. Unfortunately for consumers, this claim is unlawful and misleading, as the vanilla flavoring comes from, at least in part, non-vanilla plant sources.

5. Defendant's labeling violates Food and Drug Administration ("FDA") regulations and is therefore unlawful under California Unlawful Competition Law ("UCL").

6. Additionally, the unqualified, prominent and conspicuous representation as "Vanilla" is false, deceptive and misleading because the Product contains non-vanilla flavors which imitate and extend vanilla but are not derived from the vanilla bean, yet these flavors are not disclosed to consumers as required and expected. This provides for separate violation of the consumer protection laws at issue here.

7. Plaintiff brings this action to enjoin Defendant's conduct and also to recover monies spent by consumers for the unlawfully and deceptively labeled products.

I. Increase in Consumption of Non-Dairy, Plant-Based Milk Alternatives

8. Over the past ten years, the number of dairy milk substitutes has proliferated to include "milks" (milk-like beverages) made from various agricultural commodities.

9. Some of the most popular milk alternatives are made from soybeans, rice and almonds.

10. Reasons for consuming non-dairy milks include avoidance of animal products due to health, environmental or ethical reasons, dietary goals or food allergies.[1]

11. Studies indicate that of the 7.2 million U.S. adults with food allergies, 3 million are allergic to tree nuts, 1.5 million are allergic to soy and a very small number are allergic to rice.[2]

12. Whether due to few people being allergic to soy and tree nuts (almonds) or the different qualities of each product type, consumers seldom substitute between these products.

13. They are typically sold in sweetened and unsweetened varieties with added characterizing flavors.

14. The amount and type of flavoring used in rice, almond and soy milks vary based upon the texture and taste of the product type.

[1] Margaret J. Schuster, et al. "Comparison of the Nutrient Content of Cow's Milk and Nondairy Milk Alternatives: What's the Difference?," *Nutrition Today* 53.4 (2018): 153-159.
[2] Ruchi Gupta et al., "Prevalence and severity of food allergies among US adults," JAMA network open 2, no. 1 (2019): e185630-e185630.

II. Vanilla is Constantly Subject to Efforts at Imitation Due to High Demand

15. The tropical orchid of the genus Vanilla (V. planifolia) is the source of the prized flavor commonly known as vanilla, defined by law as "the total sapid and odorous principles extractable from one-unit weight of vanilla beans." [3]

16. Vanilla's "desirable flavor attributes…make it one of the most common ingredients used in the global marketplace, whether as a primary flavor, as a component of another flavor, or for its desirable aroma qualities."[4]

17. Though the Pure Food and Drugs Act of 1906 ("Pure Food Act") was enacted to "protect consumer health and prevent commercial fraud," this was but one episode in the perpetual struggle against those who have sought profit through sale of imitation and lower quality commodities, dressed up as the genuine articles.[5]

18. It was evident that protecting consumers from fraudulent vanilla would be challenging, as E. M. Chace, Assistant Chief of the Foods Division of the U.S. Department of Agriculture's Bureau of Chemistry, noted "There is at least three times as much vanilla consumed [in the United States] as all other flavors together."[6]

19. This demand could not be met by natural sources of vanilla, leading manufacturers to devise clever, deceptive and dangerous methods to imitate vanilla's flavor and appearance.

20. Today, headlines tell a story of a resurgent global threat of "food fraud" – from olive oil made from cottonseeds to the horsemeat scandal in the European Union.[7]

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[3] 21 C.F.R. §169.3(c).

[4] Daphna Havkin-Frenkel, F.C. Bellanger, Eds., Handbook of Vanilla Science and Technology, Wiley, 2018.

[5] Berenstein, 412; some of the earliest recorded examples of food fraud include unscrupulous Roman merchants who sweetened wine with lead.

[6] E. M. Chace, "The Manufacture of Flavoring Extracts," Yearbook of the United States Department of Agriculture 1908 (Washington, DC: Government Printing Office, 1909) pp.333–42, 333 quoted in Nadia Berenstein, "Making a global sensation: Vanilla flavor, synthetic chemistry, and the meanings of purity," History of Science 54.4 (2016): 399-424 at 399.

[7] Jenny Eagle, 'Today's complex, fragmented, global food supply chains have led to an increase in food fraud', FoodNavigator.com, Feb. 20, 2019; M. Dourado et al., Do we really know what's in our plate?. Annals of Medicine, 51(sup1), 179-179 (May 2019); Aline Wisniewski et al., "How to tackle food fraud in official food control authorities in Germany." Journal of Consumer Protection and Food Safety: 1-10. June 11, 2019.

21. Though "food fraud" has no agreed-upon definition, its typologies encompass an ever-expanding, often overlapping range of techniques with one common goal: giving consumers less than what they bargained for.

A. Food Fraud as Applied to Vanilla

22. Vanilla is considered a "high-risk [for food fraud] product because of the multiple market impact factors such as natural disasters in the source regions, unstable production, wide variability of quality and value of vanilla flavorings," second only to saffron in price.[8]

23. The efforts at imitating vanilla offers a lens to the types of food fraud regularly employed across the spectrum of valuable commodities in today's interconnected world.[9]

Type of Food Fraud	Application to Vanilla
➢ Addition of markers specifically tested for instead of natural component of vanilla beans	• Manipulation of the carbon isotope ratios to produce synthetic vanillin with similar carbon isotope composition to natural vanilla
➢ Appearance of *more* and/or higher quality of the valued ingredient	• Ground vanilla beans and/or seeds to provide visual appeal as "specks" so consumer thinks the product contains real vanilla beans, when the ground beans have been exhausted of flavor • Caramel to darken the color of an imitation vanilla so it more closely resembles the hue of real vanilla[10] • Annatto and turmeric extracts in dairy products purporting to be flavored with vanilla, which causes the color to better resemble the hue of rich, yellow butter

[8] Société Générale de Surveillance SA, ("SGS "), Authenticity Testing of Vanilla Flavors – Alignment Between Source Material, Claims and Regulation, May 2019.
[9] Kathleen Wybourn, DNV GL, Understanding Food Fraud and Mitigation Strategies, PowerPoint Presentation, Mar. 16, 2016.
[10] Renée Johnson, "Food fraud and economically motivated adulteration of food and food ingredients." Congressional Research Service R43358, January 10, 2014.

➢ Substitution and replacement of a high quality ingredient with alternate ingredient of lower quality	• Tonka beans, though similar in appearance to vanilla beans, are banned from entry to the United States due to fraudulent use • Coumarin, a toxic phytochemical found in Tonka beans, added to imitation vanillas to increase vanilla flavor perception
➢ Addition of less expensive substitute ingredient to mimic flavor of more valuable component	• Synthetically produced ethyl vanillin, from recycled paper, tree bark or coal tar, to imitate taste of real vanilla
➢ Compounding, Diluting, Extending	• "to mix flavor materials together at a special ratio in which they [sic] compliment each other to give the desirable aroma and taste"[11] • Combination with flavoring substances such as propenyl guaethol ("Vanitrope"), a "flavoring agent [, also] unconnected to vanilla beans or vanillin, but unmistakably producing the sensation of vanilla"[12] • "Spiking" or "fortification" of vanilla through addition of natural and artificial flavors including vanillin, which simulates vanilla taste but obtained from tree bark
➢ Addition of fillers to give the impression there is more of the product than there actually is	• Injection of vanilla beans with mercury, a poisonous substance, to raise the weight of vanilla beans, alleged in *International Flavors and Fragrances (IFF), Inc. v. Day Pitney LLP and Robert G. Rose,* 2005, Docket Number L-4486-09, Superior Court of New Jersey, Middlesex County

[11] Chee-Teck Tan, "Physical Chemistry in Flavor Products Preparation: An Overview" in Flavor Technology, ACS Symposium Series, Vol. 610 1995. 1-17.
[12] Berenstein, 423.

- Subtle, yet deliberate misidentification and obfuscation of a product's components and qualities as they appear on the ingredient list
  - "ground vanilla beans" gives impression it describes unexhausted vanilla beans when actually it is devoid of flavor and used for aesthetics
  - "natural vanilla flavorings" – "-ing" as suffix referring to something *like* that which is described
  - "Vanilla With Other Natural Flavors" – implying – wrongly – such a product has a sufficient amount of vanilla to characterize the food
  - "Natural Flavors" – containing "natural vanillin" derived not from vanilla beans but from tree pulp. When paired with real vanilla, vanillin is required to be declared as an artificial flavor
  - "Non-Characterizing" flavors which are not identical to vanilla, but that extend vanilla

➢ Ingredient List Deception[13]

24. The "plasticity of legal reasoning" with respect to food fraud epitomize what H. Mansfield Robinson and Cecil H. Cribb noted in 1895 in the context of Victorian England:

> the most striking feature of the latter-day sophisticator of foods is his knowledge of the law and his skill in evading it. If a legal limit on strength or quality be fixed for any substance (as in the case of spirits), he carefully brings his goods right down to it, and perhaps just so little below that no magistrate would convict him.

The law and chemistry of food and drugs. London: F.J. Rebman at p. 320.[14]

[13] Recent example of this would be "evaporated cane juice" as a more healthful sounding term to consumers to identify sugar.

[14] Cited in Sébastien Rioux, "Capitalist food production and the rise of legal adulteration: Regulating food standards in 19th-century Britain," Journal of Agrarian Change 19.1 (2019) at p. 65 (64-81).

B. The Use of Vanillin to Simulate Vanilla

25. The most persistent challenger to the authenticity of real vanilla has been synthetic versions of its main flavor component, vanillin.

26. First synthesized from non-vanilla sources by German chemists in the mid-1800s, vanillin was the equivalent of steroids for vanilla flavor.

27. According to Skip Rosskam, a professor of vanilla at Penn State University and former head of the David Michael flavor house in Philadelphia, "one ounce of vanillin is equal to a full gallon of single-fold vanilla extract."[15]

28. Today, only 1-2% of vanillin in commercial use is vanillin obtained from the vanilla plant, which means that almost all vanillin has no connection to the vanilla bean.

29. Nevertheless, disclosure of this powerful ingredient has always been required where a product purports to be flavored with vanilla. See Kansas State Board of Health, Bulletin, Vol. 7, 1911, p. 168 (cautioning consumers that flavor combinations such as "vanilla and vanillin…vanilla flavor compound," etc., are not "vanilla [extract] no matter what claims, explanations or formulas are given on the label.").

30. Since vanilla is the only flavor with its own standard of identity, its labeling is controlled not by the general flavor regulations but by the standards for vanilla ingredients.

31. This means that if a product is represented as being characterized by vanilla yet contains non-vanilla vanillin, the label and packaging must declare vanillin an artificial flavor. See Vanilla-vanillin extract at 21 C.F.R. § 169.180(b) ("The specified name of the food is 'Vanilla-vanillin extract _-fold' or '_-fold vanilla-vanillin extract', followed immediately by the statement 'contains vanillin, an artificial flavor (or flavoring)'."); see also 21 C.F.R. § 169.181(b), § 169.182(b) (Vanilla-vanillin flavoring and Vanilla-vanillin powder).

32. This prevents consumers from being misled by products which may taste similar to real vanilla and but for consumer protection requirements, would be sold at the price of real vanilla.

[15] Katy Severson, Imitation vs. Real Vanilla: Scientists Explain How Baking Affects Flavor, Huffington Post, May 21, 2019.

C. Production of "Natural Vanillins" Combined with "Natural Vanilla"

33. The past ten years have seen many vanillins purporting to be a "natural flavor" – derived from a natural source material which undergoes a natural production process.

34. However, "natural vanillin" is not a "natural vanilla flavor" because the raw material is not vanilla beans but ferulic acid and eugenol.

35. Ferulic acid can be converted to vanillin through a natural fermentation process which is cost prohibitive for almost all applications.

36. Vanillin from eugenol is easier to produce in a way claimed to be a "natural process."

37. However, because this process occurs without transparency or verification in China, regulators and consumers are not told the production method is more properly described as that of an artificial flavor, involving a chain of chemical reactions.

III. Flavor Industry's Efforts to Use Less Vanilla, Regardless of any Shortages

38. The "flavor industry" refers to the largest "flavor houses" such as Symrise AG, Firmenich, Givaudan, International Flavors and Fragrances (including David Michael), Frutarom and Takasago International along with the largest food manufacturing companies such as Unilever.

39. The recent global shortage of vanilla beans has provided the flavor industry another opportunity to "innovate[ing] natural vanilla solutions…to protect our existing customers."[16]

40. Their "customers" do not include the impoverished vanilla farmers nor consumers, who are sold products labeled as "vanilla" for the same or higher prices than when those products contained only vanilla.

41. These efforts include (1) market disruption and manipulation and (2) the development of alternatives to vanilla which completely or partially replace vanilla.

A. Flavor Industry's Attempt to Disrupt Supply of Vanilla to Create a "Permanent Shortage"

[16] Amanda Del Buouno, Ingredient Spotlight, Beverage Industry, Oct. 3, 2016.

42. The flavor industry has developed schemes such as the "Sustainable Vanilla Initiative" and "Rainforest Alliance Certified," to supposedly assure a significant supply of vanilla at stable, reasonable prices.

43. Contrary to their intention, these programs make vanilla less "sustainable" by paying farmers to destroy their vanilla and harvest palm oil under the pretense of "crop diversification."

44. There have also been allegations that these programs use child and/or slave labor.

45. Other tactics alleged to be utilized by these companies include "phantom bidding," where saboteurs claim they will pay a higher price to small producers, only to leave the farmers in the lurch, forced to sell at bottom dollar to remaining bidders.[17]

46. The reasons for these counterintuitive actions is because they benefit from high vanilla prices and the use of less real vanilla.

47. When less vanilla is available, companies must purchase the higher margin, proprietary, "vanilla-like" flavorings made with advanced technology and synthetic biology.

B. <u>Use of Vanilla WONF Ingredients to Replace and Provide Less Vanilla</u>

48. Though flavor companies will not admit their desire to move off real vanilla, this conclusion is consistent with the comments of industry executives.

49. According to Suzanne Johnson, vice president or research at a North Carolina laboratory, "Many companies are trying to switch to natural vanilla with other natural flavors [WONF] in order to keep a high-quality taste at a lower price," known as "Vanilla WONF."

50. The head of "taste solutions" at Irish conglomerate Kerry urged flavor manufacturers to "[G]et creative" and "build a compounded vanilla flavor with other natural flavors."

51. A compounded vanilla flavor "that matches the taste of pure vanilla natural extracts" can supposedly "provide the same vanilla taste expectation while requiring a smaller

[17] Monte Reel, The Volatile Economics of Natural Vanilla in Madagascar, Bloomberg.com, Dec. 16, 2019.

quantity of vanilla beans. The result is a greater consistency in pricing, availability and quality."[18]

52. These compounded flavors exist in a "black box" with "as many as 100 or more flavor ingredients," including potentiators and enhancers, like maltol and piperonal, blended together to enhance the vanilla, allowing the use of less vanilla to achieve the intended taste.[19]

53. The effort to replace vanilla with so-called Vanilla WONF started in the late 1960s, but the last 10 years have seen the proliferation of this ingredient.

C. Decline of Industry Self-Governance

54. That high level executives in the flavor industry are willing to boast of their stratagems to give consumers less vanilla for the same or greater price is not unexpected.

55. The once powerful and respected trade group, The Flavor and Extract Manufacturers Association ("FEMA"), abandoned its "self-policing" of misleading vanilla labeling claims and disbanding its Vanilla Committee.

56. FEMA previously opposed industry efforts to deceive consumers, but cast the public to the curb in pursuit of membership dues from its largest members.

IV. Front Label is Misleading Due to Not Disclosing Non-Vanilla Flavors That Affect the Amount of Vanilla Used and Enhance the Vanilla Taste

57. The Product's designation of its characterizing flavor as "Vanilla" without any qualifying terms – flavored, with other natural flavors, artificially flavored – gives consumers the impression that its entire flavor (taste sensation and ingredient imparting same) is contributed by the characterizing food ingredient of vanilla beans. See 21 C.F.R. § 101.22(i)(1) (describing a food which contains no simulating artificial flavor and not subject to 21 C.F.R. § 101.22(i)(1)(i)-(iii)).

[18] Donna Berry, Understanding the limitations of natural flavors, BakingBusiness.com, Jan. 16, 2018.

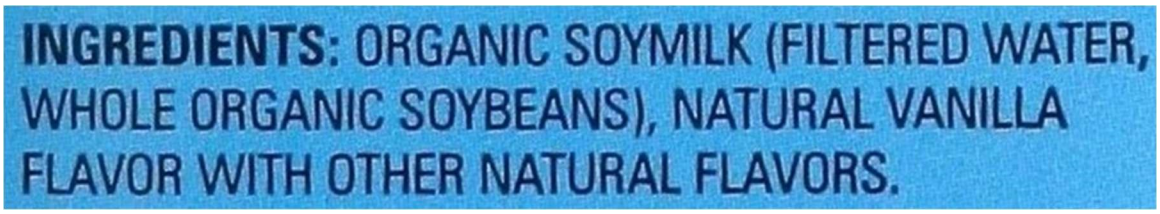
[19] Hallagan and Drake, FEMA GRAS and U.S. Regulatory Authority: U.S. Flavor and Food Labeling Implications, Perfumer & Flavorist, Oct. 25, 2018; Charles Zapsalis et al., *Food chemistry and nutritional biochemistry*. Wiley, 1985, p. 611 (describing the flavor industry's goal to develop vanilla compound flavors "That *Seem*[s] to be Authentic or at Least Derived from a Natural Source") (emphasis added).

58. Consumers have these expectations because regulations have long been in place to require companies to designate a product's characterizing flavor in a way which tells them accurate information to make an informed choice.

59. For instance, a food labeled "strawberry shortcake," "vanilla soymilk" or "apple pie," will be expected to contain an amount of the characterizing ingredients – strawberries, vanilla or apples – to independently characterize the food. See 21 C.F.R. § 101.22(i)(1) ("If the food contains no artificial flavor which simulates, resembles or reinforces the characterizing flavor, the name of the food on the principal display panel or panels of the label shall be accompanied by the common or usual name of the characterizing flavor, e.g., "vanilla", in letters not less than one-half the height of the letters used in the name of the food, except that…").

60. By not including any qualifying terms after "vanilla" such as "flavored" or "other natural flavors," consumers will expect the Product contains actual vanilla from the vanilla bean, that vanilla is the characterizing flavor, the amount of vanilla is sufficient to flavor the Product, no other flavors simulate, resemble, reinforce, enhance or extend the flavoring from vanilla.

61. The Product's front label misleads consumers because even though it states "Vanilla," it does not disclose that it contains "Other Natural Flavors," as indicated on its ingredient list.



INGREDIENTS: ORGANIC SOYMILK (FILTERED WATER, WHOLE ORGANIC SOYBEANS), NATURAL VANILLA FLAVOR WITH OTHER NATURAL FLAVORS.

A. Defendant's Front Label Misleads Consumers by Not Disclosing Non-Vanilla Plant Vanilla Flavors

62. Federal regulations define "Other Natural Flavors" as flavors not from the product whose flavor is simulated:

> 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.

63. The term "With Other Natural Flavors" following the name of the characterizing flavor of vanilla ("Natural Vanilla Flavor") on the ingredient list means these flavors (1) are not derived from vanilla and (2) "simulate[s], resemble[s] or reinforce[s] the characterizing flavor" of vanilla. See 21 C.F.R. § 101.22(i)(1)(iii).

64. Though defendant discloses the non-vanilla flavors on the ingredient list, it is also required to include them on the front label.

65. If the amount of vanilla from vanilla beans is sufficient to independently characterize the Product, the front label could state "[Vanilla] With Other Natural Flavor." See 21 C.F.R. § 101.22(i)(1)(iii); see also 21 C.F.R. § 101.22(i)(1) ("introductory text" describing scenario where food contains "no artificial flavor which simulates, resembles or reinforces the characterizing flavor," and none of the sub-paragraphs of 21 C.F.R. § 101.22(i)(1) apply).

66. If the amount of vanilla from vanilla beans is insufficient to independently characterize the Product, the front label would state "[Vanilla] Flavored With Other Natural Flavor." See 21 C.F.R. § 101.22(i)(1)(iii) referring to "paragraph (i)(1)(i) of this section"; see also 21 C.F.R. § 101.22(i)(1)(i).

67. Defendant's front label fails to choose either of these options which is misleading to consumers who expect the Product's flavor to come entirely from vanilla, since there are no qualifications on the front label.

B. Even If the Front Label Indicated "With Other Natural Flavor," it Would be Misleading to Fail to Distinguish "Vanilla"

68. If the front label merely stated "Vanilla Flavor With Other Natural Flavor," consumers would still be deceived because they are accustomed to the standardized vanilla ingredients – vanilla extract and vanilla flavoring.

69. Because these ingredients "are expensive" and valued by consumers because of their quality, it misleading to not distinguish such flavor combinations from other similar products. Exhibit A, Letter from FDA to Ernie Molina, Warner-Jenkinson Company of California, January 17, 1980 ("the general principles of 21 CFR 102.5 should apply" when a product contains vanilla with other natural flavors so consumers are not misled as to the amount of vanilla).

70. 21 C.F.R. § 102.5(b) requires disclosure of the "percentage(s) of any characterizing ingredient(s) or component(s) [as part of the product name] when the proportion of such ingredient(s) or component(s) in the food has a material bearing on price or consumer acceptance or when the labeling or the appearance of the food may otherwise create an erroneous impression that such ingredient(s) or component(s) is present in an amount greater than is actually the case."

71. If the "Natural Vanilla Flavor With Other Natural Flavors" consists of half vanilla and half non-vanilla natural flavors, the Product name should state "contains 50% vanilla extract and 50% non-vanilla flavors" or whatever the proportions are. Exhibit A; 21 C.F.R. § 102.5(b).

V. Gas-Chromatography-Mass Spectrometry Analysis Reveals the Product Contains Little if any Real Vanilla yet High Levels of Non-Vanilla Vanillin

72. One of the most valuable ways to detect food fraud is to break a food down into its component parts.

73. Where a flavor is the target of food fraud, gas chromatography-mass spectrometry ("GC-MS") is "the analysis method of choice for smaller and volatile molecules such as benzenes, alcohols and aromatics" as it is able to "separate complex mixtures [, and] to quantify analytes."[20]

[20] ThermoFisher Scientific, Gas Chromatography Mass Spectrometry (GC/MS) Information.

74. Beginning with the gas chromatograph, the sample is vaporized (the gas phase) and separated into its components by a capillary column "packed with a stationary (solid) phase."

75. The compounds are "propelled by an inert carrier gas such as argon, helium or nitrogen" where they separate from each other and "elute from the column at different times, which is generally referred to as their retention times."

76. After the components exit the GC column, "they are ionized by the mass spectrometer using electron or chemical ionization sources."

77. Ionized molecules get accelerated through the mass analyzer, which is typically a quadrupole or ion trap.

78. Then the "ions are separated based on their different mass-to-charge (m/z) ratios."

79. The last steps "involve ion detection and analysis, with compound peaks appearing as a function of their m/z ratios, with peak heights "proportional to the quantity of the corresponding compound."

80. A complex sample will generate "several different peaks, and the final readout will be a mass spectrum" which plots the elution time on the X-axis and the amount or intensity of the compounds on the Y-axis.

81. Computer databases of mass spectra are used, like a DNA database, to match the detected compounds based on their m/z ratio.[21]

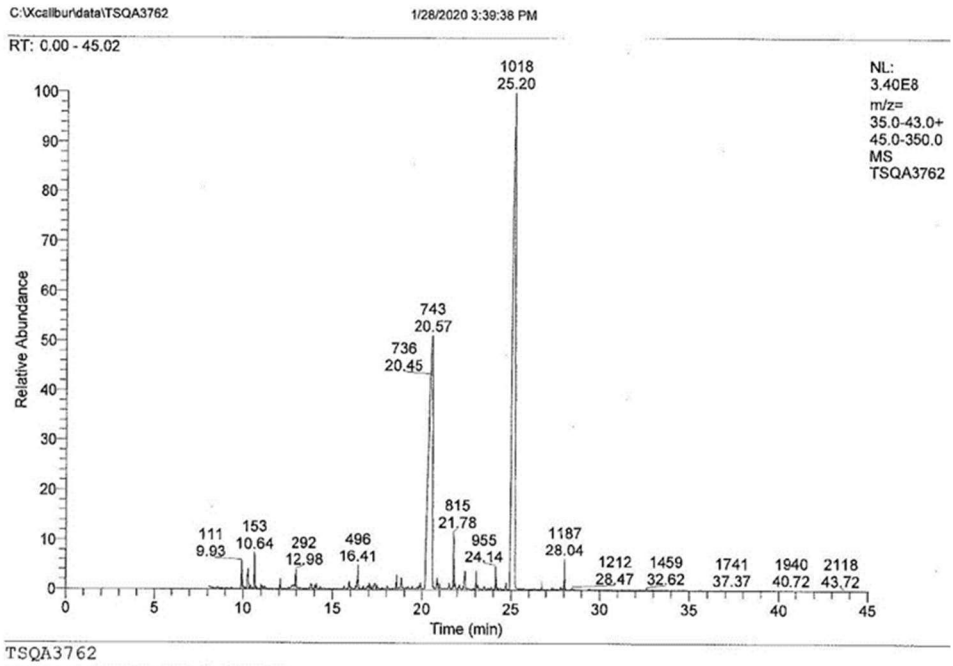
82. For a flavor like vanilla, GC-MS can detect the presence of the four vanilla marker compounds, which are present in consistent amounts:

Compounds	Percent Present in Vanilla Beans
vanillin	1.3-1.7 %
p-hydroxybenzaldehyde	0.1%
vanillic acid	0.05%
p-hydroxybenzoic acid	0.03%

83. The Product was subjected to GC-MS analysis which generated the below chromatogram and peak assignment table. Exhibit B, GC-MS Report, January 31, 2020, p. 6.

[21] *Id.*

Chromatogram



TSQA3762
Type: Unknown ID: 1 Row: 1

Sample Name:	Westsoy Organic Unsweetened Vanilla Soymilk (Production Code: 10219254714:44 1229629), DCM Extract, 150C/30min, matrix spiked with w/w 1.0ppm Int. Std. by P&T-TD-GC-MS
Study:	
Client:	Sheehan & Associates, P.C., LLN7608
Laboratory:	Mass Spectrometry - Dr. Tom Hartman
Company:	
Phone:	
Instrument Method:	C:\Xcalibur\methods\voc45solventdelay8min.meth
Processing Method:	
Vial:	1
Injection Volume (µl):	10.00
Sample Weight:	0.00
Sample Volume (µl):	0.00
ISTD Amount:	0.00
Dil Factor:	1.00

84. The peak assignment table identified the flavor compounds by matching their m/z ratio with a computer database of virtually all known compounds. Exhibit B, GC-MS Report, January 31, 2020, p. 5.

Peak Assignment Table

Table 1

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

Data File = TSQA3762

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

85. The relative amounts of the detected compounds are indicated in columns two (Area Integration) and four (concentration parts per million or "Conc. PPM w/w.").

86. The most concentrated compounds, corresponding to the highest peaks were from vanillin (MS Scan # 1018, 38.59 PPM) and maltol (MS Scan # 743, 29.23 PPM).

87. With respect to the four vanilla marker compounds, the Product only contains vanillin.

88. Because vanillin has the same chemical profile whether obtained from vanilla beans or produced synthetically, the absence of p-hydroxybenzaldehyde, p-hydroxybenzoic acid and vanillic acid is significant.

89. This is because most vanillin used in food to simulate vanilla is not obtained from vanilla beans but from artificial processes which convert natural source materials to vanillin.

90. To evaluate whether the vanillin is from vanilla beans or ferulic acid, eugenol or lignin, the relative amounts of the four marker compounds are looked at to demonstrate authenticity of the vanilla.

91. For instance, the ratio of vanillin to p-hydroxybenzaldehyde is roughly fifteen-to-one (15:1) in a sample of authentic vanilla derived from vanilla beans.

92. Where a product or sample contains relative amounts of these compounds – or none at all – which deviate significantly from this ratio, it is a molecular indicator that what tastes like vanilla to plaintiff and consumers is actually not from vanilla.

93. Given the total absence of the non-vanillin marker compounds and the high level of vanillin, the logical conclusion is that if real vanilla is used, it is in trace or de minimis amounts not detectable by advanced scientific means.

94. Non-vanilla vanillin is typically added to flavors containing a drop of real vanilla to "fortify" or "spike" a vanilla taste.

95. However, the Product's front label does not state "contains some vanilla" or "made with a drop of vanilla," but rather, designates the characterizing flavor as "Vanilla" without any qualifying terms.

96. The Product's front label fails to declare the presence of "other natural flavor" is based in part on the detection of maltol (MS Scan # 743, 29.23 PPM).

97. Maltol is a flavor enhancer and synthetic flavoring substance which does not "contribute a flavor of its own" but is used to enhance and substitute for real vanilla, by increasing the sweetness of a food or beverage.[22]

[22] 21 C.F.R. § 172.515(b) ("Synthetic flavoring substances and adjuvants."); Maltol, UL Prospector, Bryan W. Nash & Sons Ltd.1. Linalool's concentration at 0.72 PPM exceeds more than half of the compounds detected by the GC-MS analysis, revealing its importance to the overall composition of the Product.

98. Given the importance of maltol to creating a vanilla flavor in the Product considering it appears to have little to no vanilla, and that maltol is designated a synthetic flavoring substance, no reasonable consumer would expect such an integral component of the Product to be synthetic as maltol is. See 21 C.F.R. § 172.515(b) ("Synthetic flavoring substances and adjuvants.").

VI. The Product Should Be Labeled Artificially Flavored

99. To the extent the "Other Natural Flavors" contain vanillin from a natural source and made through a natural process, yet not derived from the vanilla plant, it is misleading to not represent the Product as "Artificially Flavored" on the front label.

100. This is because the "standards of identity for vanilla extract (21 CFR 169.175) and vanilla flavoring (21 CFR 169.177) do not provide for the use of vanillin," such that even "natural vanillin" may not "be used to make natural vanilla flavors." Exhibit C, FDA Letter, Ferre-Hockensmith to Richard Brownell, Jr., April 19, 2005, pp. 1-2; see 21 C.F.R. § 169.175(a)(1)-(5) (listing glycerin, propylene glycol, sugar, dextrose and corn sirup as only optional ingredients for vanilla extract).

101. Vanillin may be added to vanilla extract but the ingredient list must say "contains vanillin, an artificial flavor (or flavoring)" and the front label is required to disclose the presence of artificial flavor. See Vanilla-vanillin extract at 21 C.F.R. § 169.180(b) ("The specified name of the food is 'Vanilla-vanillin extract _-fold' or '_-fold vanilla-vanillin extract', followed immediately by the statement 'contains vanillin, an artificial flavor (or flavoring)'.").

102. Even if the vanillin is produced through a natural process, the front label statements and images imply the Product's flavor "is a 'natural vanilla flavor'" even though naturally produced vanillin "is not derived from vanilla beans. Exhibit D, FDA Letter, Ferre-Hockensmith to Richard Brownell, Jr., August 5, 2008, p. 2.

103. Naturally produced vanillin may be designated as "'natural flavor' or 'contains natural flavor'" in the context of the general flavor regulations at 21 C.F.R. § 101.22. Exhibit D, FDA Letter, Ferre-Hockensmith to Richard Brownell, Jr., August 5, 2008, p. 2.

104. However, adding any type or amount of vanillin to a vanilla extract or vanilla flavoring and implying the Product contains a "natural vanilla flavor" is misleading to consumers and in violation of law.

105. If naturally produced vanillin were added separately to another finished food, it would be listed in the ingredients as "'vanillin' or 'natural flavor' but it should not be done in a way to imply that it is a 'natural vanilla flavor' because it is not derived from vanilla beans." Exhibit E, FDA Letter, Negash Belay to Agneta Weisz, October 10, 2008.

106. Adding naturally produced vanillin to a real vanilla flavor like vanilla extract, coupled with statements and images of vanilla deceives consumers to think the vanilla taste is from vanilla beans.

107. The FDA's guidance on labeling naturally derived vanillin allows for it to be labeled a "natural flavor" only outside the context of the standardized vanilla ingredients "under sections 169.180, 169.181, and 169.182 in 21 CFR." Exhibit D, FDA Letter, Ferre-Hockensmith to Richard Brownell, Jr., August 5, 2008, p. 2.

108. A plain reading of the flavor regulations coupled with the complete absence of non-vanillin marker compounds would require the Product be designated as "artificially flavored." See 21 C.F.R. § 101.22(i)(1)(ii) ("If none of the natural flavor used in the food is derived from the product whose flavor is simulated, the food in which the flavor is used shall be labeled either with the flavor of the product from which the flavor is derived or as 'artificially flavored.'").

VII. Conclusion

109. The identification of "Natural Vanilla Flavor With Other Natural Flavors" on the ingredient list is not sufficient to cure the misleading front label designation of "Vanilla" because it fails to tell consumers that the Product contains a de minimis amount of vanilla and that the vanilla taste is supplied by non-vanilla vanillin (an artificial flavor when used with vanilla) and maltol.

110. The GC-MS analysis, the flavoring regulations and defendant's clear violation of the regulations provide support for the central contention that the Product's label deceives consumers to expect it contains more vanilla than it actually does.

111. The Product's label violates the flavor declaration requirements because it either contains "an amount of characterizing ingredient insufficient to independently characterize the food, or the food contains no such ingredient." See 21 C.F.R. § 101.22(i)(1)(i) (instructing that "the name of the characterizing flavor may be immediately preceded by the word 'natural' and shall be immediately followed by the word 'flavored'").

112. Defendant's branding and packaging of the Product is designed to – and does – deceive, mislead, and defraud consumers.

113. Defendant has sold more of the Products and at higher prices per unit than it would have in the absence of this misconduct, resulting in additional profits at the expense of consumers.

114. The amount and proportion of the characterizing component, vanilla, has a material bearing on price or consumer acceptance of the Products because consumers are willing to pay more for such Products.

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

116. Had plaintiff and class members known the truth, they would not have bought the Products or would have paid less for it.

117. As a result of the false and misleading labeling, the Product is sold at a premium price, approximately no less than $4.79 per 32 OZ, excluding tax, compared to other similar products represented in a non-misleading way.

Jurisdiction and Venue

118. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2) (Class Action Fairness Act of 2005 or "CAFA").

119. 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.

120. Upon information and belief, the aggregate amount in controversy is more than $5,000,000.00, exclusive of interests and costs.

121. This is a reasonable assumption because defendant's Products are sold in widely throughout and have been sold bearing the allegedly misleading claims for several years.

122. Defendant is a citizen of New York because even though it is incorporated in Delaware, its principal place of business is in New York.

123. Plaintiff is a citizen of California.

124. "Minimal diversity" exists because the parties are citizens of different states.

125. This court has personal jurisdiction over defendant because it conducts and transacts business, contracts to provide and/or supply and provides and/or supplies services and/or goods within California.

126. Venue is proper because plaintiff and many class members reside in this District and defendant does business in this District and State.

127. A substantial part of events and omissions giving rise to the claims occurred in this District.

Parties

128. Plaintiff is a citizen of San Francisco, California. Plaintiff bought the Product in February, 2020 from a Whole Foods store located on Market Street in San Francisco, California.

129. Defendant Westbrae Natural, Inc. is a Delaware corporation with a principal place of business on Long Island, New York.

130. Plaintiff was economically harmed by Defendant's false, deceptive, and misleading branding and packaging of the Product as the value of the Product was less than that Plaintiff actually purchased and was materially less than its value as misrepresented by Defendant.

131. Plaintiff would consider purchasing the Product again if the labeling were accurate.

Class Allegations

132. The classes will consist of all purchasers of the Products in California during the applicable statutes of limitations.

133. 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.

134. 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.

135. Plaintiff is an adequate representative because Plaintiff's interests do not conflict with other members.

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

137. 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.

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

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

FIRST CLAIM

(ON BEHALF OF THE CLASS)

(Violation of California Business & Professions Code §§ 17200 *et seq.* – Unlawful Conduct Prong of the UCL)

140. Plaintiff incorporates by reference all allegations contained in the complaint as if fully set forth herein.

141. California Business & Professions Code section 17200 ("UCL") prohibits any "unlawful, unfair or fraudulent business act or practice."

142. The acts, omissions, misrepresentations, practices, and non-disclosures of Unilever, as alleged herein, constitute "unlawful" business acts and practices in that they violate the Federal Food, Drug, and Cosmetic Act ("FFDCA") and its implementing regulations, including, at least, the following sections:

a. 21 U.S.C. § 343, which deems food misbranded when the label contains a statement that is "false or misleading in any particular," with "misleading" defined to "take[] into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material";

b. 21 U.S.C. § 321(n), which states the nature of a false and misleading advertisement;

c. 21 U.S.C. §343(g), which deems a food misbranded if it purports to be a food which is subject to a standard of identity but does not comply with such standard due to not containing the ingredients required by the standard; and

d. 21 C.F.R. § 101.18(b), which prohibits true statements about ingredients that are misleading in light of the presence of other ingredients;

143. Defendant's conduct is further "unlawful" because it violates the California False Advertising Law ("FAL") and the Consumer Legal Remedies Act ("CLRA"), as discussed in the claims below.

144. Defendant's conduct also violates the California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code section 109875, *et seq.* ("Sherman Law"), including, at least, the following sections:

e. Section 110100 (adopting all FDA regulations as state regulations);

f. Section 110290 ("In determining whether the labeling or advertisement of a food … is misleading, all representations made or suggested by statement, word, design, device, sound, or any combination of these, shall be taken into account. The extent that the labeling or advertising fails to reveal facts concerning the food … or consequences of customary use of the food … shall also be considered.");

g. Section 110390 ("It is unlawful for any person to disseminate any false advertisement of any food…. An advertisement is false if it is false or misleading in any particular.");

h. Section 110395 ("It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food … that is falsely advertised.");

i. Section 110398 ("It is unlawful for any person to advertise any food, drug, device, or cosmetic that is adulterated or misbranded.");

j. Section 110400 ("It is unlawful for any person to receive in commerce any food … that is falsely advertised or to deliver or proffer for delivery any such food…."); and

k. Section 110660 ("Any food is misbranded if its labeling is false or misleading in any particular.").

145. Each of the challenged statements made and actions taken by Defendant violates the FFDCA, the CLRA, the FAL, and the Sherman Law, and therefore violates the "unlawful" prong of the UCL.

146. Defendant leveraged its deception to induce Plaintiff and members of the Class to purchase products that were of lesser value and quality than advertised.

147. Defendant's unlawful conduct caused Plaintiff and members of the Class to suffer injury in fact and to lose money or property in that the Products are illegal, and therefore of value. It also denied them the benefit of the bargain when they decided to purchase Defendant's

Products over other products that are less expensive, and contain virtually the same or immaterially different amounts of vanilla. Had Plaintiff and the members of the Class been aware of Defendant's false and misleading advertising tactics, they would not have purchased the Products at all, or would have paid less than what they did for it.

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

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

SECOND CLAIM

(ON BEHALF OF THE CLASS)

(Violation of California Business & Professions Code §§ 17200, *et seq.* – Unfair and Fraudulent Conduct Prong of the UCL)

150. Plaintiff incorporates by reference all of the allegations of the preceding paragraphs as if fully set forth herein.

151. California Business & Professions Code section 17200 prohibits any "unlawful, unfair or fraudulent business act or practice."

152. The false and misleading labeling of the Products as alleged herein, constitutes "unfair" business acts and practices because such conduct is immoral, unscrupulous, and offends public policy. Further, the gravity of Defendant's conduct outweighs any conceivable benefit of such conduct.

153. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant as alleged herein constitute "fraudulent" business acts and practices, because Defendant's conduct is false and misleading to Plaintiff and members of the Class.

154. Defendant's labeling and marketing of the Products is likely to deceive Class Members about the flavoring source and amount of vanilla of the Products.

155. Defendant either knew or reasonably should have known that the claims and statements on the labels of the Products were likely to deceive consumers.

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

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

THIRD CLAIM
(ON BEHALF OF THE CLASS)
Violation of California's Consumers Legal Remedies Act
Cal. Civ. Code § 1750 *et seq*.

Injunctive Relief Only

158. Plaintiff incorporates by reference all preceding paragraphs.

159. Defendant's acts, practices, advertising, labeling, packaging, representations and omissions are not unique to the parties and have a broader impact on the public.

160. Plaintiff desired to purchase products which were described by defendant and expected by reasonable consumers, given the product type and representations.

161. Plaintiff engaged in transactions as consumers who bought the Products for personal, family, or household consumption or use. Cal. Civ. Code § 1761(d)-(e).

162. Defendant's conduct was misleading, deceptive, unlawful, fraudulent, and unfair because it gives the impression to consumers the Products contain sufficient amounts of the highlighted ingredient, vanilla, to independently characterize the taste or flavor of the Products, did not contain other flavor components which simulate, resemble or reinforce the characterizing flavor and only contained flavor from vanilla.

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

164. In accordance with Civ Code § 1780(a), Plaintiff seeks injunctive relief for violations of the CLRA and an injunction to enjoin the deceptive advertising and sales practices.

165. Plaintiff does not seek damages now in this Complaint, but will amend his complaint to seek damages, once notice has been sent via Cal. Civ. Code § 1782 and if Defendant does not comply with the requirements of that notice within 30 days.

166. The conduct alleged in this Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for the purposes of the CLRA.

167. Pursuant to California Civil Code § 1780 Plaintiff seeks an order that requires Defendant to remove and/or refrain from making representations on the Products' packaging that misrepresents the Products' composition.

168. Plaintiff and prospective class members may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

169. The representations and omissions were relied on by Plaintiff and class members, who paid more than they would have, causing damages.

FOURTH CLAIM
(ON BEHALF OF THE CLASS)
(Violation of California Business & Professions Code §§ 17500, *et seq.* – False and Misleading Advertising)

170. Plaintiff incorporates by reference all preceding paragraphs.

171. Defendant falsely advertised the Products by representing the Products contain sufficient amounts of the highlighted ingredient, vanilla, to independently characterize the taste or flavor of the Products, did not contain other flavor components which simulate, resemble or reinforce the characterizing flavor and only contained flavor from vanilla.

172. Plaintiff and other members of the class were injured in fact and lost money or property as a result of Defendant's violations of California's False Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq.

173. Plaintiff seeks an order requiring Defendant to remove and/or refrain from making the representations on the Products' packaging and the return of the money paid by Plaintiff and other class members.

FIFTH CLAIM
(ON BEHALF OF THE CLASS)
Unjust Enrichment

174. Plaintiff incorporates by reference all preceding paragraphs.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment:

176. Declaring this a proper class action, certifying Plaintiff as representative and undersigned as counsel for the class;

177. Entering preliminary and permanent injunctive relief by directing defendant to correct the challenged practices to comply with the law;

178. Injunctive relief to remove, correct and/or refrain from the challenged practices and representations, restitution and disgorgement for members of the Class;

179. Awarding monetary damages and interest for those claims that seek damages (but not the CLRA, which does not seek damages at this juncture), including treble and punitive damages, pursuant to the common law and other statutory claims;

180. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and

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

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: May 12, 2020

Respectfully submitted,

REESE LLP

/s/ Michael R. Reese
Michael R. Reese
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Telephone: (212) 643-0500
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spencer@spencersheehan.com

Counsel for Plaintiff and the Proposed Class

AFFIDAVIT OF MICHAEL R. REESE

PURSUANT TO CALIFORNIA CIVIL CODE § 1780

Michael R. Reese declares:

1. I am an attorney duly admitted to practice before this Court. I am a partner in the law firm of Reese LLP, attorneys of record for Plaintiff.

2. I am one of the attorneys principally responsible for the handling of this matter. I am personally familiar with the facts set forth in this declaration, and if called as a witness, I could and would competently testify to the matters stated herein.

3. This action has been commenced in a county described in California Civil Code section 1780 as a proper place for the trial of the action. The transactions or a substantial portion thereof occurred in San Francisco County, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 12, 2020, at New York, New York

/s/ Michael R. Reese

Michael R. Reese

EXHIBIT “A”

Mr. Ernie Molina
Warner-Jenkinson Company of California
P.O. Box 16797
Irvine, California 92713

Dear Mr. Molina:

This is in reply to your letter of January 17, 1980 concerning the labeling of vanilla flavoring with other natural flavors.

A flavoring composed of 50% vanilla extract and 50% natural flavors not derived from vanilla beans intended for retail sale may be identified as "vanilla flavor with other natural flavors". However, because "vanilla extract" and "vanilla flavoring" are standardized foods and these products are expensive we believe in order to distinguish this product from other similar products the general principles of 21 CFR FR 102.5 should apply. Thus, the name should be accompanied by "contains 50% vanilla extract and 50% non-vanilla flavors".

Since this product is to be sold at retail it must comply with the applicable labeling requirements of 21 CFR 101. These provisions would require at a minimum that the label for the food bear: (1) an identity statement; (2) an accurate net contents declaration; (3) a listing of each ingredient in the food by its common or usual name in descending order of predominance by weight; and (4) the name and address of the manufacturer, packer or distributor.

If we can be of further assistance, please let us know.

Sincerely yours,

Taylor M. Quinn
Associate Director
for Compliance
Bureau of Foods

EXHIBIT “B”

RUTGERS
New Jersey Agricultural Experiment Station

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

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

January 31, 2020

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

spencer@spencersheehan.com

CONFIDENTIAL

Mass Spectrometry Laboratory Analysis Report #7608

Flavor Analysis of Westsoy Organic Unsweetened Vanilla Soymilk

Dear Mr. Sheehan:

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

I Sample Log

The following samples were received for analysis:

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

II Analysis Request

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

III Analysis Methodology

The product (10 g) was transferred to a borosilicate glass test tube sealed with Teflon-lined, screw cap closure, matrix-spiked with 10 µg of naphthalene-d_8 internal standard (1.0 ppm w/v) and mixed thoroughly using a lab vortexor. The sample was then divided into 4 equal portions, transferred to glass vials and extracted with equal volumes (1:1) of methylene chloride. The layers were allowed to separate and then the methylene chloride extracts isolated and pooled together. The pooled extracts were centrifuged 30 minutes at 2500 rpm to clarify (separate any water or emulsion) then dried with anhydrous sodium sulfate. The dried extract was concentrated under a gentle stream of nitrogen to a final volume of approximately 0.5 mL then transferred to a Purge & Trap apparatus (Scientific Instrument Services, Solid Sample P&T system) and subjected to Purge & Trap-Thermal Desorption-GC-MS analysis as follows:

Purge & Trap-Thermal Desorption-GC-MS

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

GC-MS Analysis Methodology

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

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

Materials

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

IV Results

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

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

Respectfully Submitted,

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

Attachments

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

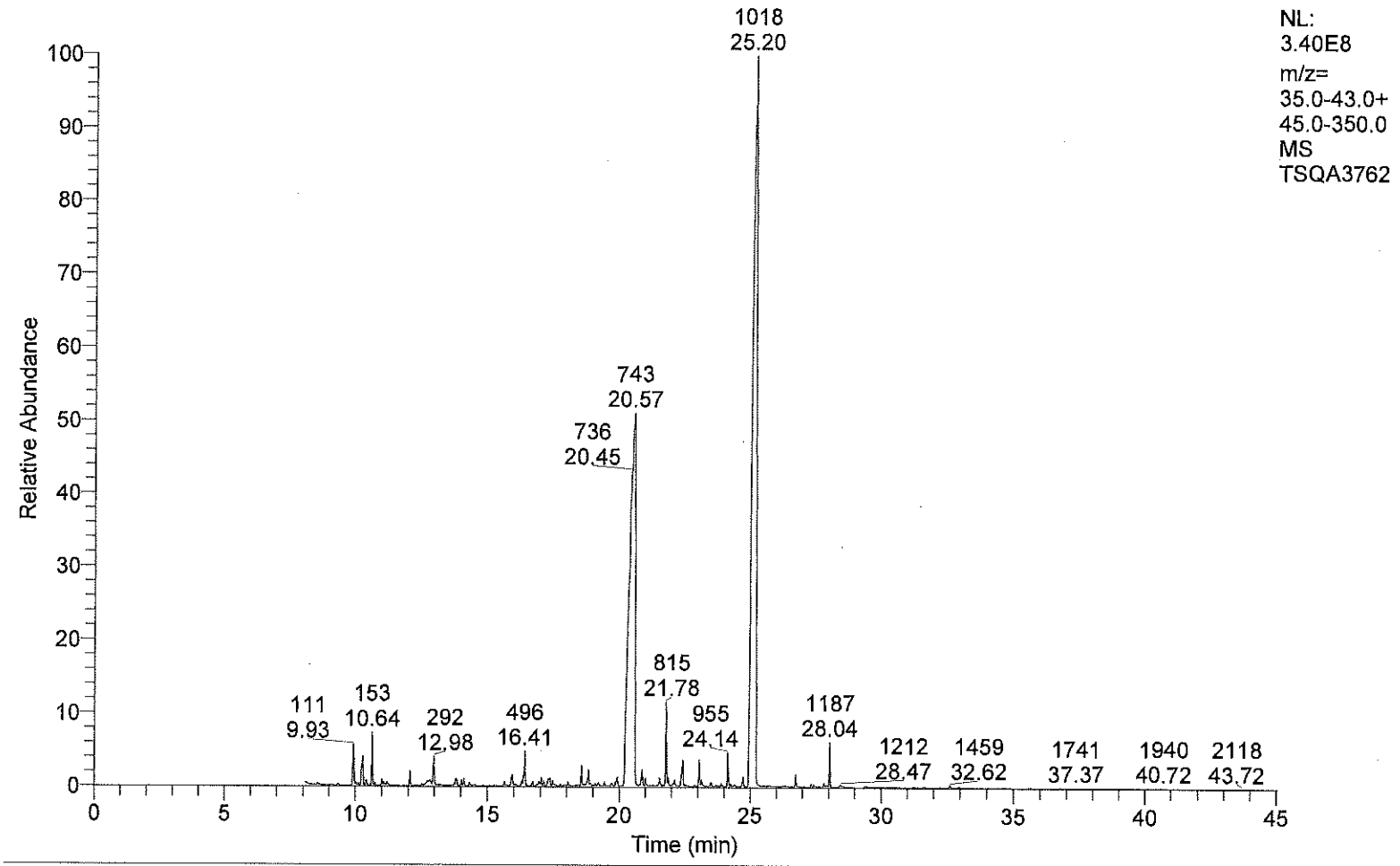
Table 1

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

Data File = TSQA3762

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

RT: 0.00 - 45.02



TSQA3762
Type: Unknown ID: 1 Row: 1

Sample Name:	Westsoy Organic Unsweetened Vanilla Soymilk (Production Code: 10219254714:44 1229629), DCM Extract, 150C/30min, matrix spiked with w/w 1.0ppm Int. Std. by P&T-TD-GC-MS
Study:	
Client:	Sheehan & Associates, P.C., LLN7608
Laboratory:	Mass Spectrometry - Dr. Tom Hartman
Company:	
Phone:	
Instrument Method:	C:\Xcalibur\methods\voc45solventdelay8min.meth
Processing Method:	
Vial:	1
Injection Volume (µl):	10.00
Sample Weight:	0.00
Sample Volume (µl):	0.00
ISTD Amount:	0.00
Dil Factor:	1.00

WESTBRAE NATURAL®

WESTSOY®

Organic Unsweetened Vanilla

SOYMILK

American Heart Association CERTIFIED Meets Criteria For Heart-Healthy Food ®

TM

See back panel for information about the relationship between saturated fat, cholesterol and heart disease.*

9g PROTEIN

NON GMO Project VERIFIED nongmoproject.org

32 FL OZ (1QT) 946 mL

K PARVE

USDA ORGANIC

Nutrition Facts

Serving Size 1 cup, 8 fl oz (240mL)
Servings Per Container 4

Amount per serving

Calories 100 Calories from Fat 45

	% Daily Value*
Total Fat 5g	**8%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Polyunsaturated Fat 3g	
Monounsaturated Fat 1g	
Cholesterol 0mg	**0%**
Sodium 30mg	**1%**
Potassium 390mg	**11%**
Total Carbohydrate 4g	**1%**
Dietary Fiber 1g	**6%**
Sugars 3g	
Protein 9g	**18%**

Vitamin A 0% • Vitamin C 0%
Calcium 0% • Iron 8%

*Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	less than	65g	80g
Sat Fat	less than	20g	25g
Cholesterol	less than	300mg	300mg
Sodium	less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g
Protein		50g	65g

INGREDIENTS: ORGANIC SOYMILK (FILTERED WATER, WHOLE ORGANIC SOYBEANS), NATURAL VANILLA FLAVOR WITH OTHER NATURAL FLAVORS.
CONTAINS: SOY

MANUFACTURED FOR DISTRIBUTION BY:
THE HAIN CELESTIAL GROUP, INC.
LAKE SUCCESS, NY 11042 USA

HAIN CELESTIAL™

CERTIFIED ORGANIC
BY QUALITY ASSURANCE
INTERNATIONAL (QAI)

QUALITY ASSURANCE INTERNATIONAL
CERTIFIED ORGANIC

EXHIBIT “C”

DEPARTMENT OF HEALTH AND HUMAN SERVICES Public Health Service

Food and Drug Administration
College Park, MD 20740

APR 19 2005

Mr. Richard J. Brownell, Jr.
Vice President
Vanilla Products
Virginia Dare
882 Third Avenue
Brooklyn, New York 11232

Dear Mr. Brownell:

This is in response to your letter of February 10, 2005, to the Food and Drug Administration (FDA) regarding our October 8, 2004, letter to Rhodia, Inc. on the labeling of a vanillin product derived by fermentation. You requested clarification on our response to Rhodia, Inc. because you believe that it may be misinterpreted. In addition, you requested further clarification on whether a vanillin product derived by a natural process may be used to make natural vanilla flavors.

FDA's policy on the use of the term "natural" is that "natural" means that nothing artificial (including artificial flavors) or synthetic (including all color additives regardless of source) has been included in or has been added to a food that would not normally be expected to be in the food. Additionally, we do not restrict the use of the term "natural" except on products that contain added color, synthetic substances and flavors as defined in Title 21 of the Code of Federal Regulations (CFR), section 101.22.

As you know, on April 5, 2004, Rhodia, Inc. wrote to us requesting a letter confirming that vanillin derived from a natural source such as ferulic acid via a natural process such as fermentation can be labeled "natural vanillin" or "vanillin derived naturally by fermentation." In our October 8, 2004, response to Rhodia, Inc. we stated that the common or usual name of the product Rhodia, Inc. described in its letter is "vanillin." Further, we stated that if the product is manufactured by a natural process, we would not object to the use of a statement such as "vanillin derived naturally through fermentation" elsewhere on the product label because such statement indicates how the product was processed. However, the product Rhodia, Inc. described would not qualify as "natural vanillin." Thus, although we would not object to a statement on the label indicating that vanillin is derived naturally through a fermentation process, we point out that such a statement should not imply that the vanillin is a natural flavor or that a finished food containing it is natural.

In your letter, you requested further clarification on whether a vanillin product derived by a natural process may be used to make natural vanilla flavors. The standards of identity for vanilla extract

(21 CFR 169.175) and vanilla flavoring (21 CFR 169.177) do not provide for the use of vanillin. Therefore, vanillin may not be used to make natural vanilla flavors in such standardized foods.

If we may be of further assistance, please let us know.

Sincerely yours,

Catalina Ferré-Hockensmith

Catalina Ferré-Hockensmith
Consumer Safety Officer
Division of Food Labeling
and Standards
Office of Nutritional Products, Labeling
and Dietary Supplements
Center for Food Safety
and Applied Nutrition

EXHIBIT “D”

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Food and Drug Administration
College Park, MD 20740-38

AUG 05 2008

Richard J. Brownell Jr.
Vice President Vanilla Products
Virginia Dare Extracts, Inc.
882 Third Avenue
Brooklyn, New York 11232

Dear Mr. Brownell:

This is in response to your letter to the Food and Drug Administration (FDA) dated March 16, 2007, on the labeling of finished foods or beverages where vanilla is the characterizing flavor and the label refers to natural vanilla, vanilla flavor or some other similar description. We regret the delay in responding to your inquiry, and hope the following information is still helpful to you.

You specifically asked when a food or beverage product is marketed (labeled) as (natural) vanilla, does the characterizing (vanilla) flavor have to be derived from vanilla beans and conform to the vanilla standard of identity. According to our regulation in Title 21 of the Code of Federal Regulations (CFR), section 101.22(i)(1), if a food contains no artificial flavor that simulates, resembles or reinforces the characterizing flavor, the name of the food on the label shall be accompanied by the common or usual name of the characterizing flavor, e.g., "vanilla." For example, the common or usual name of an ice cream product that does not contain artificial flavors would be "vanilla ice cream," and it should be made from vanilla beans. On the other hand, if a product such as ice cream does not contain enough of the characterizing ingredient, vanilla beans, to characterize the food or it does not contain such ingredient, and contains vanilla flavor, the product must be labeled "natural vanilla flavored ice cream" or "vanilla flavored ice cream." However, the flavors used to make such product must be derived from vanilla beans such as vanilla extract or vanilla flavor that are subject to standards of identity. Products made from vanillin should not be named "vanilla ____," e.g., "vanilla ice cream," or "vanilla flavored ____," e.g., "vanilla flavored ice cream" because these products are not made from vanilla beans or vanilla flavors made from vanilla beans. Furthermore, if a food contains any artificial flavor which resembles or reinforces the characterizing flavor, the name of the food on the label should be accompanied by the common or usual name of the characterizing flavor and the word(s) "artificial" or "artificially flavored", e.g., "artificial vanilla," "artificially flavored vanilla" or "vanilla artificially flavored."

In our April 19, 2005, letter to you on the labeling of a Rhodia, Inc. vanillin product derived from a natural source such as ferulic acid via a natural process such as fermentation, we stated that this vanillin product "would not qualify as natural vanillin." In our April 19, 2005, letter we also stated that although we would not object to a statement on the label indicating that vanillin is derived naturally through a fermentation process, such a statement should not imply that the vanillin is a natural flavor or that a finished food containing vanillin is natural. However, upon further consideration on this issue, we realize that our views about vanillin expressed in the April 19, 2005, letter were based on the food standards regulations under sections 169.180, 169.181, and 169.182 in 21 CFR.

These regulations pertain to standardized vanilla extract ingredients that contain added vanillin and require the designation "contains vanillin, an artificial flavor (or flavoring"). However, it should be noted that these regulations pre-date the fermentation process that Rhodia uses to produce vanillin. Also, 21 CFR 101.22(a)(1) provides that fermentation products are not considered to be artificial flavors. Thus, the new Rhodia process produces a natural flavor and consequently, the ingredient label of a finished food containing the vanillin product made by Rhodia can bear the term "vanillin," "natural flavor" or "contains natural flavor" but the term "natural flavor" must not be used in such a way to imply that it is a "natural vanilla flavor" because it is not derived from vanilla beans. Furthermore, the term "natural" is not a part of the common or usual name of Rhodia's product when sold as the finished food. The common or usual name of Rhodia's product is "vanillin," regardless of the type of method used to produce it. Therefore, the statement of identity of the product sold as the finished food is "vanillin."

If we may be of further assistance, please let us know.

Sincerely yours,

Catalina Ferré-Hockensmith

Catalina Ferré-Hockensmith
Food Labeling and Standards Staff
Office of Nutrition, Labeling
and Dietary Supplements
Center for Food Safety
and Applied Nutrition

EXHIBIT “E”

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
College Park, MD 20740

October 10, 2008

Ms. Agneta Weisz
Comax Flavors
130 Baylis Road
Melville, NY 11747

Dear Ms. Weisz:

This is in response to your letter, dated November 15, 2007, requesting the Food and Drug Administration's (FDA) opinion as to whether vanillin produced by a fermentation process developed by Comax Flavors (Comax) would be considered a natural flavoring substance in accordance with section 101.22 (a)(3) in Title 21 of the Code of Federal Regulations (21 CFR). Along with your letter you submitted a description of the manufacturing process and information on product analysis and specifications. In a letter, dated December 11, 2007, you submitted additional information on the chemical analysis of your product.

Based on the information you submitted, we have determined that Comax's fermentation process for vanillin production can be considered to be a natural process. As such, Comax's vanillin product can be categorized as a natural flavor in accordance with section 101.22 (a)(3). However, with respect to labeling, the common or usual name of the product you describe is "vanillin," regardless of the type of method used to produce it. Therefore, the product should be labeled as "vanillin." FDA would expect vanillin to be produced by either Comax or synthetically to meet the specifications listed in the Food Chemicals Codex (FCC) in order to be acceptable for food use. If the substance happens to be manufactured through a natural process, as in the case of Comax's fermentation process, this can be indicated by an additional labeling statement referring to the manufacturing process (e.g., "vanillin derived naturally through fermentation" or "natural" somewhere else on the label).

Moreover, we point out that when vanillin manufactured through a natural process such as Comax's vanillin is used as an ingredient in another finished food, it should be listed in the ingredient list as "vanillin" or "natural flavor" but it should not be done in a way to imply that it is a "natural vanilla flavor" because it is not derived from vanilla beans.

Please contact us again if you have further questions regarding this matter.

Sincerely,

Negash Belay

Negash Belay, Ph.D.
Office of Food Additive Safety
Center for Food Safety
and Applied Nutrition

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Howard Clark

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

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

Michael Reese (212) 643-0500
REESE LLP 100 West 93rd Street, 16th Floor, New York, New York

DEFENDANTS

Westbrae Natural, Inc.

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

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

Attorneys *(If Known)*

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

- [ ] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question *(U.S. Government Not a Party)*
- [ ] 2 U.S. Government Defendant
- [x] 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)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	[x] 1	[ ] 1	Incorporated *or* Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[x] 2	Incorporated *and* Principal Place of Business In Another State	[ ] 5	[ ] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

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

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment Of Veteran's Benefits
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability
- [ ] 196 Franchise

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury
- [ ] 362 Personal Injury -Medical Malpractice

PERSONAL INJURY
- [ ] 365 Personal Injury – Product Liability
- [ ] 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [x] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 440 Other Civil Rights
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing/ Accommodations
- [ ] 445 Amer. w/Disabilities–Employment
- [ ] 446 Amer. w/Disabilities–Other
- [ ] 448 Education

PRISONER PETITIONS

HABEAS CORPUS
- [ ] 463 Alien Detainee
- [ ] 510 Motions to Vacate Sentence
- [ ] 530 General
- [ ] 535 Death Penalty

OTHER
- [ ] 540 Mandamus & Other
- [ ] 550 Civil Rights
- [ ] 555 Prison Condition
- [ ] 560 Civil Detainee–Conditions of Confinement

FORFEITURE/PENALTY
- [ ] 625 Drug Related Seizure of Property 21 USC § 881
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Management Relations
- [ ] 740 Railway Labor Act
- [ ] 751 Family and Medical Leave Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Employee Retirement Income Security Act

IMMIGRATION
- [ ] 462 Naturalization Application
- [ ] 465 Other Immigration Actions

BANKRUPTCY
- [ ] 422 Appeal 28 USC § 158
- [ ] 423 Withdrawal 28 USC § 157

PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [ ] 835 Patent–Abbreviated New Drug Application
- [ ] 840 Trademark

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS–Third Party 26 USC § 7609

OTHER STATUTES
- [ ] 375 False Claims Act
- [ ] 376 Qui Tam (31 USC § 3729(a))
- [ ] 400 State Reapportionment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced & Corrupt Organizations
- [ ] 480 Consumer Credit
- [ ] 485 Telephone Consumer Protection Act
- [ ] 490 Cable/Sat TV
- [ ] 850 Securities/Commodities/ Exchange
- [ ] 890 Other Statutory Actions
- [ ] 891 Agricultural Acts
- [ ] 893 Environmental Matters
- [ ] 895 Freedom of Information Act
- [ ] 896 Arbitration
- [ ] 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- [ ] 950 Constitutionality of State Statutes

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. 1332

Brief description of cause:
food adulteration

VII. REQUESTED IN COMPLAINT:

[✓] CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, Fed. R. Civ. P.

DEMAND $ 5000000

CHECK YES only if demanded in complaint:
JURY DEMAND: [x] Yes [ ] No

VIII. RELATED CASE(S), IF ANY *(See instructions):*

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) [ ] SAN FRANCISCO/OAKLAND [ ] SAN JOSE [ ] EUREKA-MCKINLEYVILLE

DATE April 12, 2020

SIGNATURE OF ATTORNEY OF RECORD /s/ Michael R. Reese