

GUTRIDE SAFIER LLP

SETH A. SAFIER (State Bar No. 197427)

MARIE A. MCCRARY (State Bar No. 262670)

HAYLEY REYNOLDS (State Bar No. 306427)

100 Pine Street, Suite 1250

San Francisco, CA 94111

Telephone: (415) 336-6545

Facsimile: (415) 449-6469

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MOLLY BROWN, individually, and on
behalf of the general public and those
similarly situated,

Plaintiff,

v.

VAN’S INTERNATIONAL FOODS, INC.,

Defendant.

CASE NO.

**CLASS ACTION COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
CONSUMERS LEGAL REMEDIES ACT;
FALSE ADVERTISING; FRAUD, DECEIT,
AND/OR MISREPRESENTATION;
UNFAIR BUSINESS PRACTICES; AND
UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiff Molly Brown, by and through her counsel, brings this class action against Defendant Van’s International Foods, Inc. to seek redress for its unlawful and deceptive practices in labeling and marketing its consumer food products.

2. Consumers are increasingly health conscious and, as a result, many consumers seek foods high in protein. To capitalize on this trend, Defendant prominently labels some of its consumer food products as providing specific amounts of protein per serving depending on the product, such as “10g PLANT-BASED protein” on the front of the Van’s Power Grains Protein Original Waffles. Consumers, in turn, reasonably expect that each product will actually provide the amount of protein per serving claimed on the front of the product package.

3. However, the Food and Drug Administration (“FDA”) recognizes that not all proteins are the same in their ability to meet human nutritional requirements. Some proteins are deficient in one or more of the nine amino acids essential to human protein synthesis and/or are

1 not fully digestible within the human gut. When a human body uses up the least prevalent essential
2 amino acid from a food product, protein synthesis shuts down and all of the remaining amino
3 acids from that protein source degrade mostly into waste. Likewise, whatever portion of a protein
4 source is not digestible is similarly unavailable for protein synthesis. A protein's ability to support
5 human nutritional requirements is known as its "quality."

6 4. The FDA required method for measuring protein quality is called the "Protein
7 Digestibility Corrected Amino Acid Score"—known by its acronym PDCAAS (pronounced Pee-
8 Dee-Kass). It combines a protein source's amino acid profile and its percent digestibility into a
9 discount factor ranging from 0.0 to 1.0 that, when multiplied by the total protein quantity, shows
10 how much protein in a product is actually available to support human nutritional requirements.
11 The regulations term this the "corrected amount of protein per serving." 21 C.F.R.
12 § 101.9(c)(7)(ii). For example, a PDCAAS of .5 means that only half of the protein in that product
13 is actually available to support human protein needs. If the product contained 10 grams total
14 protein per serving, the corrected amount of protein would be only 5 grams per serving.

15 5. Because protein products can vary widely in their ability to support human protein
16 needs (even between two comparator products with the same total protein quantity), the FDA
17 prohibits manufacturers from advertising or promoting their products with a protein claim unless
18 they have calculated the corrected amount of protein per serving based on PDCAAS and provided
19 this information to consumers in the Nutrition Facts Panel ("NFP") in the form of a percent daily
20 value ("%DV) for protein. 21 C.F.R. § 101.9(c)(7)(i). The %DV is the corrected amount of
21 protein per serving divided by the daily reference value for protein of 50 grams. *Id.* Using the
22 same example of a product containing 10 grams total protein per serving with a PDCAAS of .5,
23 the %DV is 10% (5g/50g). Had all of the protein in the product been useful in human nutrition,
24 the %DV would be 20% (10g/50g).

25 6. Accordingly, Defendant's products are unlawfully, unfairly and deceptively
26 misbranded. The protein claims on the front of the package, such as such as "10g PLANT-BASED
27 protein" are unlawful and in violation of parallel state and federal requirements because
28

1 Defendant failed to provide a %DV for protein in the NFP calculated according to the PDCAAS
2 methodology.

3 7. Moreover, because Defendant’s protein claim is in the form of a quantitative
4 amount appearing alone, without any information about protein quality, it is also separately
5 actionable as misleading. FDA regulations prohibit a manufacturer from stating “the amount or
6 percentage of a nutrient” on the front label if it is “false or misleading in any respect.” 21 C.F.R.
7 § 101.13(i)(3). The primary protein sources in Defendant’s products are wheat and oats. Both are
8 low quality proteins with PDCAAS scores that range between 0.4 and 0.5. Accordingly, although
9 Defendant advertises its products with a “10g PLANT-BASED protein” claim, it actually
10 provides, in a form that humans can use, as little as 5 grams of protein, i.e., less than half the
11 protein consumers reasonable expect to receive based on the label. This is misleading.

12 8. Defendant’s unlawful and misleading protein claims caused Plaintiff and members
13 of the class to pay a price premium for the products.

14 **PARTIES**

15 9. Molly Brown (“Plaintiff”) is an individual and a resident of Novato, California.

16 10. Defendant Van’s International Foods, Inc. (“Defendant”) is a corporation existing
17 under the laws of California with its principal place of business in Oakbrook Terrace, Illinois, and
18 is registered to do business in California.

19 **JURISDICTION AND VENUE**

20 11. This Court has jurisdiction over the subject matter of this action pursuant to 28
21 U.S.C. § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000, exclusive of
22 interest and costs; and at least one Plaintiff and Defendant are citizens of different states.

23 12. The injuries, damages and/or harm upon which this action is based, occurred or
24 arose out of activities engaged in by Defendant within, affecting, and emanating from, the State
25 of California. Defendant regularly conducts and/or solicits business in, engages in other persistent
26 courses of conduct in, and/or derives substantial revenue from products provided to persons in
27 the State of California. Defendant has engaged, and continues to engage, in substantial and
28 continuous business practices in the State of California.

1 13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
2 substantial part of the events or omissions giving rise to the claims occurred in the state of
3 California, including within this District.

4 14. In accordance with California Civil Code Section 1780(d), Plaintiff Brown
5 concurrently files herewith a declaration establishing that, at various times throughout the class
6 period, she purchased Van’s Protein Waffles in Original, Blueberry, and Chocolate Chip flavors,
7 as well as Van’s Protein Pancakes in Chocolate Chip flavor from Whole Foods stores in San
8 Rafael and Novato, California and Sprouts stores in San Rafael and Petaluma, California from
9 approximately 2019 to February 2021. (Plaintiff’s declaration is attached hereto as Exhibit A.)

10 15. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

11 **SUBSTANTIVE ALLEGATIONS**

12 16. Defendant manufactures, distributes, markets, advertises, and sells breakfast food
13 products in the United States under the brand name “Vans.” Some of these products, including
14 waffles and pancakes, have packaging that predominately, uniformly, and consistently states on
15 the principal display panel of the product labels that they contain and provide a certain amount of
16 protein per serving. Plaintiff has attached as Exhibit B a non-exhaustive list of the Vans products
17 that make protein claims on the front of the product packages. The products listed in Exhibit B,
18 and any other Vans brand product that claims a specific amount of protein on the front of its label,
19 will hereinafter be referred to as the “Products.”

20 17. The representation that the Products contain and provide a specific amount of
21 protein per serving was uniformly communicated to Plaintiff and every other person who
22 purchased any of the Products in California and the United States. The same or substantially
23 similar product label has appeared on each Product during the entirety of the Class Period in the
24 general form of the following example:



18. The nutrition facts panel on the Products uniformly and consistently failed to provide any referenced percent daily value of the Products’ protein content throughout the Class Period. The nutrition facts panel of the Products has appeared consistently throughout the Class Period in the general form of the following example:

Nutrition Facts

4 servings per container
Serving size 2 pancakes

Amount per serving
Calories 190

	% Daily Value*
Total Fat 5g	6%
Saturated Fat 0g	0%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 280mg	12%
Total Carbohydrate 27g	10%
Dietary Fiber 1g	4%
Total Sugars 5g	
Includes 4g Added Sugars	8%
Protein 10g	
Vitamin D 0mcg	0%
Calcium 30mg	2%
Iron 2mg	10%
Potassium 58mg	2%

Disclaimer: Nutritional information is subject to change. See product label to verify ingredients and allergens.

1 person, that means about 50 grams of protein each day. For a 200-pound person, that means about
2 70 grams of protein each day.³

3 22. Athletes and fitness enthusiasts typically consume much higher amounts of protein
4 each day; typically between 1 to 1.5 grams of protein for every pound of body weight.

5 23. The health benefits of protein are just as important, if not more important, for
6 children. Children are in a relative state of constant growth and rely on protein as the building
7 block of muscle, bone, skin, hair, and virtually every other body part or tissue. The National
8 Academies of Science recommends the following amounts of daily intake of protein based on age
9 group: 1-3 years old: 13 g of protein per day; 4-8 years old: 19 g of protein per day; 9-13 years
10 old: 34 g of protein per day.

11 24. Protein *quantity* by itself does not tell the full story from a human nutritional
12 standpoint. A protein's *quality* is also critical because humans cannot fully digest or utilize some
13 proteins. Proteins are not monolithic. They are simply chains of amino acids, and different types
14 of amino acids chained together in different ways will make different types of proteins. Further,
15 the makeup of the protein changes the function of that protein in the human body, and certain
16 types of proteins are more easily digested and used by humans than others.

17 25. All of a human's proteins are formed through the process of protein synthesis
18 within their own bodies. That is, although humans consume dietary proteins, they digest those
19 proteins, break them down into their constituent amino acids, and then use those amino acids as
20 building blocks to synthesize the human proteins necessary for life, tissue repair, and other
21 functions. Of the twenty total amino acids, humans can produce only eleven of them on their own.
22 Humans cannot produce, under any circumstances, nine of the amino acids required for protein
23 synthesis. These nine amino acids are called the "essential amino acids" and they must be supplied
24 through the diet.

25 26. All nine essential amino acids are necessary for protein synthesis to take place.
26 Lacking even one essential amino acid will prevent protein synthesis from occurring, and the rest

27
28 ³ *Id.*

1 of the proteins will degrade into waste. Accordingly, once the body uses up the limiting essential
2 amino acid from a protein source, the remainder of that protein becomes useless to human protein
3 synthesis and has little nutritional value. As the FDA has explicitly recognized, “[b]ecause excess
4 amino acids are not stored in the body, humans need a constant supply of good quality dietary
5 proteins to support growth and development.” 58 Fed. Reg. 2079 at 2101. High-quality proteins,
6 therefore, are those that contain all nine essential amino acids because they have a greater effect
7 on protein synthesis and are fully digestible. A dietary protein containing all of the essential amino
8 acids in the correct proportions is typically called a “complete protein.”

9 27. A protein source’s digestibility also affects the amount of useable protein a person
10 receives from consuming it. Many plant-based proteins are only 85% digestible, meaning 15% of
11 the protein from that source will simply pass through the body without ever being absorbed at all.

12 28. As the FDA has stated in official guidance, “Accurate methods for determining
13 protein quality are necessary because different food protein sources are not equivalent in their
14 ability to support growth and body protein maintenance.” 56 Fed. Reg. 60366, § B. The Protein
15 Digestibility Corrected Amino Acid Score (“PDCAAS”) is the FDA mandated measure of protein
16 quality, and it accounts for both the amino acid profile and the digestibility of the protein. 21
17 C.F.R. § 101.9(c)(7)(ii). The PDCAAS method requires the manufacturer to determine the
18 amount of essential amino acids that the food contains and then combine that into a discount
19 factor score based on humans’ ability to digest the amino acid profile.

20 29. Defendant uses plant-based proteins in its products. Because of the differences in
21 benefits depending on the amino acid composition of a protein, the source of protein is important.
22 Whey protein is animal-based and contains all nine essential amino acids. It has a high biological
23 value and is fully digestible by humans. Thus, whey protein has a PDCAAS of 1.0. Plant protein
24 contains higher levels of antioxidants, but rarely contains all nine essential amino acids. Further,
25 plant proteins such as wheat and oat proteins, which Defendant uses in its Products according to
26 the ingredient lists, are not fully digested by humans. Both types of proteins also typically have a
27 PDCAAS of between 0.4 and 0.5, meaning only 40-50% of the protein from those sources will
28 be digested and available to humans.

1 33. Defendant’s products all make protein claims on the front label, but fail, uniformly
2 to provide a %DV for protein in the NFP. The protein claim on the front is, therefore, unlawful,
3 and was never permitted to be on the label in the first instance.

4 34. In addition to regulating the NFP, the FDA has promulgated a separate set of
5 regulations that govern nutrient content claims on the front of a package. 21 C.F.R. § 101.13. A
6 nutrient content claim is a claim that “expressly or implicitly characterizes the level of a nutrient.”
7 21 C.F.R. § 101.13(b). “Express” nutrient content claims include any statement outside the
8 Nutrition Facts Panel, about the level of a nutrient. 21 C.F.R. 101.13(b)(1); 21 C.F.R. § 101.13(c).
9 Stating information from the nutrition facts panel (such as grams protein per serving) elsewhere
10 on the package necessarily constitutes a nutrient content claim. 21 C.F.R. § 101.13(c).

11 A manufacturer cannot make a nutrient content claim in the form of a “statement
12 about the amount or percentage of a nutrient” if the statement is “false or misleading
in any respect.” 21 C.F.R. 101.13(i)(3).

13 35. Under the FDCA, the term false has its usual meaning of “untruthful,” while the
14 term misleading is a term of art that covers labels that are technically true, but are likely to deceive
15 consumers.

16 36. While a required statement *inside* of the NFP escapes regulations reserved for
17 nutrient content claims (21 C.F.R. § 101.13(c)), the identical statement *outside* of the NFP is still
18 considered a nutrient content claim and is therefore subject to 21 C.F.R. § 101.13(i)(3). 21 C.F.R.
19 § 101.13(c). Indeed, the Ninth Circuit has specifically held that “a requirement to state certain
20 facts in the nutrition label is not a license to make that statement elsewhere on the product.” *Reid v.*
21 *Johnson & Johnson*, 780 F.3d 952, 960 (9th Cir. 2015). Thus, Defendant’s quantitative protein
22 claims on the front label are subject to analysis as a nutrient content claim and cannot be false or
23 misleading in any manner.

24 37. Moreover, the FDA has explained in published guidance that that “Information on
25 protein quantity alone can be misleading on foods that are of low protein quality” and that
26 “nutrition labeling must allow consumers to readily identify foods with particularly low quality
27 protein to prevent them from being misled by information on only the amount of protein present.”
28 58 Fed. Reg. 2079 at 2101-2.

1 38. Defendant’s protein representations on the front package are misleading for this
2 very reason. They broadly tout protein quantity *alone* while ignoring that the poor quality proteins
3 in the Products will provide far less useable protein than claimed. The claim on the front is
4 therefore separately misleading and should never have appeared on the package.

5 **Defendant’s Marketing and Labeling of its Products Violates State and Federal**
6 **Food Labeling Laws**

7 39. Defendant’s Products are unlawful, misbranded, and violate the Sherman Law,
8 California Health & Safety Code § 110660, et seq. Defendant makes protein content claims on
9 the front of its Product packages and yet has left the Percent Daily Value column of its nutrition
10 facts for protein completely blank in violation of applicable nutrition labeling regulations.
11 Further, the front label is also independently misleading. Each Products’ label states that it
12 provides a specific amount of protein per serving—such as “10g PLANT-BASED protein” for
13 the Vans Protein Original Waffles—when, in fact, after adjusting the protein content based on
14 PDCAAS, the products will provide approximately half that much protein.

15 40. Defendant’s marketing, advertising, and sale of the Products violates the false
16 advertising provisions of the Sherman Law (California Health & Safety Code § 110390, *et. seq.*),
17 including but not limited to:

- 18 a. Section 110390, which makes it unlawful to disseminate false or misleading food
19 advertisements that include statements on products and product packaging or
20 labeling or any other medium used to directly or indirectly induce the purchase of
21 a food product;
- 22 b. Section 110395, which makes it unlawful to manufacture, sell, deliver, hold or
23 offer to sell any falsely or misleadingly advertised food; and
- 24 c. Sections 110398 and 110400, which make it unlawful to advertise misbranded
25 food or to deliver or proffer for delivery any food that has been falsely or
26 misleadingly advertised.

1 41. Defendant’s marketing, advertising, and sale of the Products violates the
2 misbranding provisions of the Sherman Law (California Health & Safety Code § 110660, *et. seq.*),
3 including but not limited to:

- 4 a. Section 110665 (a food is misbranded if its labeling does not conform with the
5 requirements for nutrition labeling as set forth in 21 U.S.C. Sec. 343(q));
- 6 b. Section 110705 (a food is misbranded if words, statements and other information
7 required by the Sherman Law to appear food labeling is either missing or not
8 sufficiently conspicuous);
- 9 c. Section 110760, which makes it unlawful for any person to manufacture, sell,
10 deliver, hold, or offer for sale any food that is misbranded;
- 11 d. Section 110765, which makes it unlawful for any person to misbrand any food;
12 and
- 13 e. Section 110770, which makes it unlawful for any person to receive in commerce
14 any food that is misbranded or to deliver or proffer for delivery any such food.

15 42. Defendant has violated 21 U.S.C. § 343(a), and the standards set by FDA
16 regulations, including but not limited to 21 C.F.R. § 101.9 (c)(7), which have been incorporated
17 by reference in the Sherman Law, by failing to include on their product labels the nutritional
18 information required by law.

19 43. A reasonable consumer would expect that the Products provide what Defendant
20 identifies them to provide on the product labels and that the labels would not be contrary to the
21 policies or regulations of the State of California and/or the FDA. For example, a reasonable
22 consumer would expect that when Defendant labels its Products with “10g PLANT-BASED
23 protein” per serving, as it claimed the Vans Protein Original Waffles label, the Products would
24 provide 10 grams of protein per serving in a form their bodies could use as protein.

25 44. Consumers lack the meaningful ability to test or independently ascertain the
26 truthfulness of Defendant’s food labeling claims, especially at the point of sale. Reasonable
27 consumers do not walk around with the PDCAAS values for various protein sources stored in
28 their heads. They would not know the true amount of protein the Products provide nutritionally

1 merely by looking elsewhere on the product package. Its discovery requires investigation well
2 beyond the grocery store aisle and knowledge of food chemistry beyond that of the average
3 consumer. An average consumer does not have the specialized knowledge necessary to ascertain
4 that a serving of a Product does not provide the number of grams of protein that is represented on
5 the front of the product package. An average consumer also lacks the specialized knowledge
6 necessary to determine the PDCAAS for the Products. The average reasonable consumer had no
7 reason to suspect that Defendant's representations on the packages were misleading. Therefore,
8 consumers had no reason to investigate whether the Products actually do provide the amount of
9 protein per serving that the labels claim they do and reasonably relied on Defendant's
10 representations regarding the nature of the Products.

11 45. Defendant intends and knows that consumers will and do rely upon food labeling
12 statements in making their purchasing decisions. Label claims and other forms of advertising and
13 marketing drive product sales, particularly if placed prominently on the front of product
14 packaging, as Defendant has done with the claims on the Products that they contain and provide
15 specific amounts of protein per serving.

16 **Defendant Misleadingly Markets Its Products to Increase Profits and Gain a**
17 **Competitive Edge**

18 46. In making false, misleading, and deceptive representations, Defendant
19 distinguishes its Products from its competitors' products. Defendant knew and intended that
20 consumers would purchase, and pay a premium for, products labeled with a protein claim. By
21 using this branding and marketing strategy, Defendant is stating that its Products are superior to,
22 better than, and more nutritious and healthful than other products that do not make protein claims,
23 or that do not mislead consumers about the amount of protein their products actually provide.

24 **Defendant Intends to Continue to Market its Products as Containing More**
25 **Protein than the Products Actually Contain**

26 47. Because consumers pay a price premium for products that make protein claims,
27 and also pay a premium for products that provide more protein, by labeling its Products as
28

1 containing more grams of protein per serving than they actually provide, Defendant is able to both
2 increase its sales and retain more profits.

3 48. Defendant engaged in the practices complained of herein to further its private
4 interests of: (i) increasing sales of its Products while decreasing the sales of competitors that do
5 not misrepresent the number of grams of protein contained in its products, and/or (ii) commanding
6 a higher price for its Products because consumers will pay more for these Products due to
7 consumers' demand for products containing more protein.

8 49. The market for protein products is continuing to grow and expand, and because
9 Defendant knows consumers rely on representations about the number of grams of protein in food
10 products, Defendant has an incentive to continue to make such unlawful and misleading
11 representations. In addition, other trends suggest that Defendant has no incentive to change its
12 labeling practices.

13 50. For example, one market analysis revealed that between 2013-2017, product
14 launches with a protein claim grew 31%.⁵

15 51. To capitalize on the growing market, Defendant continues to launch new product
16 lines and flavors to diversify its portfolio to maintain its competitive edge. Moreover, Defendant
17 has continued to replicate its misrepresentations on the new product lines. It is therefore likely
18 that Defendant will continue to misleadingly advertise its Products and perpetuate the
19 misrepresentations regarding the protein in its Products.

20 **PLAINTIFF'S EXPERIENCES**

21 52. Plaintiff has purchased Van's Protein Waffles in Original, Blueberry, and
22 Chocolate Chip flavors, as well as Van's Protein Pancakes in Chocolate Chip flavor from Whole
23 Foods stores in San Rafael and Novato, California and Sprouts stores in San Rafael and Petaluma,
24 California from approximately 2019 to February 2021.

25
26
27
28 ⁵ https://www.bakeryandsnacks.com/Article/2018/11/26/10-key-snack-trends-to-watch?utm_source=copyright&utm_medium=OnSite&utm_campaign=copyright

1 53. Plaintiff made each of her purchases after reading and relying on the Defendant's
2 product front label that promised the Products provided a specific number of grams of protein per
3 serving. For example, she purchased the Vans Protein Original Waffles relying on the
4 representation of "10g PLANT-BASED protein" per serving on the front of the product package.
5 She relied on the protein representation for each product that she purchased and purchased each
6 product because of the protein representations. She also believed in the truth of each
7 representation, i.e., that the product would actually provide her the specific amount of protein on
8 the front label in a form her body could utilize as protein.

9 54. Plaintiff not only purchased the Products because the labels said that they provided
10 a specified amount of protein per serving, but she also paid more money for the Products than she
11 would have paid had the product not unlawfully contained a protein claim, or had that protein
12 claim not been misleading regarding the number of grams of protein it provided.

13 55. Had Defendant not misrepresented (by omission and commission) the true nature
14 of the Products, Plaintiff would not have purchased them or, at a very minimum, she would have
15 paid less for the Products.

16 56. Plaintiff continues to desire to purchase protein products, including those marketed
17 and sold by Defendant. If the Products were reformulated to provide the grams of protein that are
18 represented on the labels, Plaintiff would likely purchase them again in the future. Plaintiff
19 regularly visits stores where the Products and other protein products are sold. Because Plaintiff
20 does not know the formula for Defendant's products and cannot test whether or not the Products
21 provide the amount of protein that is represented on the label, Plaintiff will be unable to rely on
22 Defendant's labels when shopping for protein products in the future absent an injunction that
23 prohibits Defendant from labeling its products with the incorrect number of grams of protein that
24 each serving contains. Should Defendant begin to market and sell a new line of products, Plaintiff
25 could be at risk for buying another one of Defendant's products in reliance on the same or similar
26 misrepresentation.

27 57. Plaintiff and members of the Classes have been economically damaged by their
28 purchase of the Products because the advertising for the Products was and is untrue and/or

1 misleading under state law and the products are misbranded; therefore, the Products are worth
2 less than what Plaintiff and members of the Class paid for them and/or Plaintiff and members of
3 the Class did not receive what they reasonably intended to receive.

4 **CLASS ALLEGATIONS**

5 58. Plaintiff brings this class action lawsuit on behalf of herself and proposed classes
6 of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil
7 Procedure. Plaintiff seeks to represent the following groups of similarly situated persons, defined
8 as follows:

9 The Class: All persons in the United States who purchased the Products between
10 January 1, 2022 and the present.

11 The Subclass: All persons in the State of California who purchased the Products
12 between January 1, 2022 and the present.

13 59. This action has been brought and may properly be maintained as a class action
14 against Defendant because there is a well-defined community of interest in the litigation and the
15 proposed classes are easily ascertainable.

16 60. Numerosity: Plaintiff does not know the exact size the Classes, but they estimate
17 that it is composed of more than 100 persons. The persons in the Classes are so numerous that the
18 joinder of all such persons is impracticable and the disposition of their claims in a class action
19 rather than in individual actions will benefit the parties and the courts.

20 61. Common Questions Predominate: This action involves common questions of law
21 and fact to the potential Classes because each class member's claim derives from the deceptive,
22 unlawful and/or unfair statements and omissions that led consumers to believe that the Products
23 contained the amount of protein as represented on the Product labels. The common questions of
24 law and fact predominate over individual questions, as proof of a common or single set of facts
25 will establish the right of each member of the Classes to recover. The questions of law and fact
26 common to the Classes are:

- 27 a. What is PDCAAS for the protein in the Products;
28 b. Whether the marketing, advertising, packaging, labeling, and other promotional
materials for the Products are unlawful and/or misleading;

- 1 c. Whether Defendant's actions violate Federal and California laws invoked herein;
- 2 d. Whether labeling the Products with a protein claim causes the Products to
- 3 command a price premium in the market;
- 4 e. Whether Defendant's advertising and marketing regarding the Products sold to the
- 5 Class members was likely to deceive reasonable consumers;
- 6 f. Whether representations regarding the number of grams of protein in the Products
- 7 are material to a reasonable consumer;
- 8 g. Whether Defendant engaged in the behavior knowingly, recklessly, or negligently;
- 9 h. The amount of profits and revenues Defendant earned as a result of the conduct;
- 10 i. Whether Class members are entitled to restitution, injunctive and other equitable
- 11 relief and, if so, what is the nature (and amount) of such relief; and
- 12 j. Whether Class members are entitled to payment of actual, incidental,
- 13 consequential, exemplary and/or statutory damages plus interest thereon, and if so,
- 14 what is the nature of such relief.

15 62. Typicality: Plaintiff's claims are typical of the claims of the other members of the
16 Classes because, among other things, all such claims arise out of the same wrongful course of
17 conduct engaged in by Defendant in violation of law as complained of herein. Further, the
18 damages of each member of the Classes were caused directly by Defendant's wrongful conduct
19 in violation of the law as alleged herein.

20 63. Adequacy of Representation: Plaintiff will fairly and adequately protect the
21 interests of all class members because it is in their best interests to prosecute the claims alleged
22 herein to obtain full compensation due to them for the unfair and illegal conduct of which they
23 complain. Plaintiff also has no interests that are in conflict with, or antagonistic to, the interests
24 of class members. Plaintiff has retained highly competent and experienced class action attorneys
25 to represent their interests and that of the classes. By prevailing on their own claims, Plaintiff will
26 establish Defendant's liability to all class members. Plaintiff and their counsel have the necessary
27 financial resources to adequately and vigorously litigate this class action, and Plaintiff and counsel
28 are aware of their fiduciary responsibilities to the class members and are determined to diligently

1 discharge those duties by vigorously seeking the maximum possible recovery for class members.

2 64. Superiority: There is no plain, speedy, or adequate remedy other than by
3 maintenance of this class action. The prosecution of individual remedies by members of the
4 classes will tend to establish inconsistent standards of conduct for Defendant and result in the
5 impairment of Class members' rights and the disposition of their interests through actions to
6 which they were not parties. Class action treatment will permit a large number of similarly
7 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,
8 and without the unnecessary duplication of effort and expense that numerous individual actions
9 would engender. Furthermore, as the damages suffered by each individual member of the classes
10 may be relatively small, the expenses and burden of individual litigation would make it difficult
11 or impossible for individual members of the classes to redress the wrongs done to them, while an
12 important public interest will be served by addressing the matter as a class action.

13 65. Plaintiff is unaware of any difficulties that are likely to be encountered in the
14 management of this action that would preclude its maintenance as a class action.

15 **CAUSES OF ACTION**

16 Plaintiff does not plead, and hereby disclaim, causes of action under the FDCA and
17 regulations promulgated thereunder by the FDA. Plaintiff relies on the FDCA and FDA
18 regulations only to the extent such laws and regulations have been separately enacted as state law
19 or regulation or provide a predicate basis of liability under the state and common laws cited in the
20 following causes of action.

21 **PLAINTIFF'S FIRST CAUSE OF ACTION**
22 **(Unlawful, unfair, and fraudulent trade practices violation of Business and Professions**
23 **Code § 17200, et seq.)**
24 **On Behalf of Plaintiff and the Subclass**

25 66. Plaintiff realleges and incorporate by reference the paragraphs of this Class Action
26 Complaint as if set forth herein.

27 67. Plaintiff brings this claim individually and on behalf of the other members of the
28 Subclass.

68. Within four (4) years preceding the filing of this lawsuit, and at all times

1 mentioned herein, Defendant has engaged, and continues to engage, in unlawful, unfair, and
2 fraudulent trade practices in California by engaging in the unlawful, unfair, and fraudulent
3 business practices outlined in this complaint.

4 69. In particular, Defendant has engaged, and continues to engage, in unlawful
5 practices by, without limitation, violating the following state and federal laws: (i) the CLRA as
6 described herein; (ii) the FAL as described herein; (iii) the advertising provisions of the Sherman
7 Law (Article 3), including without limitation, California Health & Safety Code §§ 110390,
8 110395, 110398 and 110400; (iv) the misbranded food provisions of the Sherman Law (Article
9 6), including without limitation, California Health & Safety Code §§ 110660, 110665, 110705,
10 110760, 110765, and 110770; and (v) and federal laws regulating the advertising and branding of
11 food in 21 U.S.C. § 343(a), *et seq.* and FDA regulations, including but not limited to 21 C.F.R.
12 21 C.F.R. § 101.9 (c)(7), which are incorporated into the Sherman Law (California Health &
13 Safety Code §§ 110100(a), 110380, and 110505).

14 70. In particular, Defendant has engaged, and continues to engage, in unlawful and
15 fraudulent practices by, without limitation, the following: (i) unlawfully making a protein claim
16 on the front of the package without ever providing the required %DV in the NFP; and (ii)
17 misleading reasonable consumers regarding the amount of protein that the Products provide
18 nutritionally in a form that humans can use.

19 71. Plaintiff and those similarly situated relied to their detriment on Defendant's
20 unlawful, unfair, and fraudulent business practices. Had Plaintiff and those similarly situated been
21 adequately informed and not deceived by Defendant, they would have acted differently by,
22 without limitation: (i) declining to purchase the Products, (ii) purchasing less of the Products, or
23 (iii) paying less for the Products.

24 72. Defendant's acts and omissions are likely to deceive the general public.

25 73. Defendant engaged in these deceptive and unlawful practices to increase its
26 profits. Accordingly, Defendant has engaged in unlawful trade practices, as defined and
27 prohibited by section 17200, *et seq.* of the California Business and Professions Code.

28

1 74. The aforementioned practices, which Defendant has used to its significant
2 financial gain, also constitute unlawful competition and provide an unlawful advantage over
3 Defendant’s competitors as well as injury to the general public.

4 75. As a direct and proximate result of such actions, Plaintiff and the other Class
5 members, have suffered and continue to suffer injury in fact and have lost money and/or property
6 as a result of such deceptive and/or unlawful trade practices and unfair competition in an amount
7 which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.
8 Among other things, Plaintiff and Class members lost the amount they paid for the Products.

9 76. As a direct and proximate result of such actions, Defendant has enjoyed, and
10 continues to enjoy, significant financial gain in an amount which will be proven at trial, but which
11 is in excess of the jurisdictional minimum of this Court.

12 77. Plaintiff seeks, on behalf of herself and those similarly situated, equitable relief,
13 including restitution for the premium and/or the full price that they and others paid to Defendants
14 as result of Defendants’ conduct. Plaintiff and the Class lack an adequate remedy at law to obtain
15 such relief with respect to their “unlawfulness” claims in this UCL cause of action because the
16 California Sherman Law does not provide a direct cause of action, so Plaintiff and the Subclass
17 must allege those violations as predicate acts under the UCL to obtain relief.

18 78. Plaintiff also seeks equitable relief, including restitution, with respect to their UCL
19 “fraudulent” prong claims. Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiff makes
20 the following allegations in this paragraph only hypothetically and as an alternative to any
21 contrary allegations in their other causes of action, in the event that such causes of action do not
22 succeed. Plaintiff and the Subclass may be unable to obtain monetary, declaratory and/or
23 injunctive relief directly under other causes of action and will lack an adequate remedy of law, if
24 the Court requires them to show classwide reliance and materiality beyond the objective
25 reasonable consumer standard applied under the UCL, because Plaintiff may not be able to
26 establish each Subclass member’s individualized understanding of Defendants’ misleading
27 representations as described in this Complaint, but the UCL does not require individualized proof
28 of deception or injury by absent class members. *See, e.g., Stearns v Ticketmaster*, 655 F.3d 1013,

1 1020, 1023-25 (distinguishing, for purposes of CLRA claim, among class members for whom
 2 website representations may have been materially deficient, but requiring certification of UCL
 3 claim for entire class). In addition, Plaintiff and the Subclass may be unable to obtain such relief
 4 under other causes of action and will lack an adequate remedy at law, if Plaintiff is unable to
 5 demonstrate the requisite *mens rea* (intent, reckless, and/or negligence), because the UCL
 6 imposes no such *mens rea* requirement and liability exists even if Defendants acted in good faith.

7 79. Plaintiff also seeks, on behalf of herself and those similarly situated, a declaration
 8 that the above-described trade practices are fraudulent, unfair, and/or unlawful.

9 80. Plaintiff seeks, on behalf of herself and those similarly situated, an injunction to
 10 prohibit Defendant from continuing to engage in the deceptive and/or unlawful trade practices
 11 complained of herein. Such misconduct by Defendant, unless and until enjoined and restrained
 12 by order of this Court, will continue to cause injury in fact to the general public and the loss of
 13 money and property in that Defendant will continue to violate the laws of California, unless
 14 specifically ordered to comply with the same. This expectation of future violations will require
 15 current and future consumers to repeatedly and continuously seek legal redress in order to recover
 16 monies paid to Defendant to which they were not entitled. Plaintiff, those similarly situated and/or
 17 other consumers nationwide have no other adequate remedy at law to ensure future compliance
 18 with the California Business and Professions Code alleged to have been violated herein.

19 **PLAINTIFF'S SECOND CAUSE OF ACTION**
 20 **(Violation of the Consumers Legal Remedies Act (the "CLRA"), California Civil Code §**
 21 **1750, *et seq.*)**
 22 **On Behalf of Plaintiff and the Subclass**

23 81. Plaintiff realleges and incorporate the paragraphs of this Class Action Complaint
 24 as if set forth herein.

25 82. Plaintiff brings this claim individually and on behalf of the other members of the
 26 Subclass.

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

1 84. Plaintiff and other subclass members are “consumers” as that term is defined by
2 the CLRA in California Civil Code § 1761(d).

3 85. The Products that Plaintiff (and other similarly situated subclass members)
4 purchased from Defendant were “goods” within the meaning of California Civil Code § 1761(a).

5 86. Defendant’s acts and practices, set forth in this Class Action Complaint, led
6 customers to falsely believe that the Products provided the amount of protein claimed on the
7 product package. By engaging in the actions, representations and conduct set forth in this Class
8 Action Complaint, Defendant has violated, and continues to violate, § 1770(a)(2), § 1770(a)(5),
9 § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California Civil Code
10 §1770(a)(2), Defendant’s acts and practices constitute improper representations regarding the
11 source, sponsorship, approval, or certification of the goods they sold. In violation of California
12 Civil Code §1770(a)(5), Defendant’s acts and practices constitute improper representations that
13 the goods they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or
14 quantities, which they do not have. In violation of California Civil Code §1770(a)(7), Defendant’s
15 acts and practices constitute improper representations that the goods it sells are of a particular
16 standard, quality, or grade, when they are of another. In violation of California Civil Code
17 §1770(a)(8), Defendant has disparaged the goods, services, or business of another by false or
18 misleading representation of fact. In violation of California Civil Code §1770(a)(9), Defendant
19 has advertised goods or services with intent not to sell them as advertised.

20 87. Plaintiff requests that this Court enjoin Defendant from continuing to employ the
21 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
22 § 1780(a)(2). If Defendant is not restrained from engaging in these types of practices in the future,
23 Plaintiff and the other members of the Subclass will continue to suffer harm. Plaintiff and those
24 similarly situated have no adequate remedy at law to stop Defendant’s continuing practices.

25 88. Defendant was provided with notice and a demand to correct, repair, replace or
26 otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of herein.
27 Despite receiving the aforementioned notice and demand, Defendant failed to do so in that, among
28 other things, it failed to identify similarly situated customers, notify them of their right to

1 correction, repair, replacement or other remedy, and/or to provide that remedy. Accordingly,
2 Plaintiff seeks, pursuant to California Civil Code § 1780(a)(3), on behalf of herself and those
3 similarly situated subclass members, compensatory damages, punitive damages and restitution of
4 any ill-gotten gains due to Defendant's acts and practices.

5 89. Plaintiff also request that this Court award her costs and reasonable attorneys' fees
6 pursuant to California Civil Code § 1780(d).

7 **PLAINTIFF'S THIRD CAUSE OF ACTION**
8 **(False Advertising, Business and Professions Code § 17500, *et seq.* ("FAL"))**
9 **On Behalf of Plaintiff and the Subclass**

10 90. Plaintiff realleges and incorporate by reference the paragraphs of this Class Action
11 Complaint as if set forth herein.

12 91. Plaintiff brings this claim individually and on behalf of the other members of the
13 Subclass.

14 92. Beginning at an exact date unknown to Plaintiff, but within three (3) years
15 preceding the filing of the Class Action Complaint, Defendant made untrue, false, deceptive
16 and/or misleading statements in connection with the advertising and marketing of the Products.

17 93. Defendant made representations and statements (by omission and commission)
18 that led reasonable customers to believe that the Products that they were purchasing provided
19 more grams of protein per serving than the Products actually provided. Further, Defendant failed
20 to list the %DV of protein on its Products as it was required to do.

21 94. Plaintiff and those similarly situated relied to their detriment on Defendant's false,
22 misleading and deceptive advertising and marketing practices, including each of the
23 misrepresentations and omissions set forth above. Had Plaintiff and those similarly situated been
24 adequately informed and not intentionally deceived by Defendant, they would have acted
25 differently by, without limitation, refraining from purchasing Defendant's Products or paying less
26 for them.

27 95. Defendant's acts and omissions are likely to deceive the general public.

28 96. Defendant engaged in these false, misleading and deceptive advertising and
marketing practices to increase its profits. Accordingly, Defendant has engaged in false

1 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
2 Professions Code.

3 97. The aforementioned practices, which Defendant used, and continues to use, to its
4 significant financial gain, also constitute unlawful competition and provide an unlawful
5 advantage over Defendant's competitors as well as injury to the general public.

6 98. As a direct and proximate result of such actions, Plaintiff and the other Subclass
7 members have suffered, and continue to suffer, injury in fact and have lost money and/or property
8 as a result of such false, deceptive and misleading advertising in an amount which will be proven
9 at trial, but which is in excess of the jurisdictional minimum of this Court.

10 99. Plaintiff seeks, on behalf of herself and those similarly situated, full restitution of
11 monies, as necessary and according to proof, to restore any and all monies acquired by Defendant
12 from Plaintiff, the general public, or those similarly situated by means of the false, misleading
13 and deceptive advertising and marketing practices complained of herein, plus interest thereon.
14 Pursuant to Federal Rule of Civil Procedure 8(e)(2), Plaintiff makes the following allegations in
15 this paragraph only hypothetically and as an alternative to any contrary allegations in their other
16 causes of action, in the event that such causes of action will not succeed. Plaintiff and the Subclass
17 may be unable to obtain monetary, declaratory and/or injunctive relief directly under other causes
18 of action and will lack an adequate remedy at law, if the Court requires them to show classwide
19 reliance and materiality beyond the objective reasonable consumer standard applied under the
20 FAL, because Plaintiff may not be able to establish each Subclass member's individualized
21 understanding of Defendants' misleading representations as described in this Complaint, but the
22 FAL does not require individualize proof of deception or injury by absent Subclass members. *See,*
23 *e.g., Ries v. Ariz. Bevs. USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012) ("restitutionary relief
24 under the UCL and FAL 'is available without individualized proof of deception, reliance, and
25 injury.'"). In addition, Plaintiff and the Subclass may be unable to obtain such relief under other
26 causes of action and will lack an adequate remedy at law, if Plaintiff is unable to demonstrate the
27 requisite *mens rea* (intent, reckless, and/or negligence), because the FAL imposes no such *mens*
28 *rea* requirement and liability exists even if Defendants acted in good faith.

1 In misleading Plaintiff and not so informing Plaintiff, Defendant breached its duty to them.
2 Defendant also gained financially from, and as a result of, its breach.

3 106. Plaintiff and those similarly situated relied to their detriment on Defendant's
4 misrepresentations and fraudulent omissions. Had Plaintiff and those similarly situated been
5 adequately informed and not intentionally deceived by Defendant, they would have acted
6 differently by, without limitation: (i) declining to purchase the Products, (ii) purchasing less of
7 them, or (iii) paying less for the Products.

8 107. By and through such fraud, deceit, misrepresentations and/or omissions,
9 Defendant intended to induce Plaintiff and those similarly situated to alter their position to their
10 detriment. Specifically, Defendant fraudulently and deceptively induced Plaintiff and those
11 similarly situated to, without limitation, purchase the Products.

12 108. Plaintiff and those similarly situated justifiably and reasonably relied on
13 Defendant's misrepresentations and omissions, and, accordingly, were damaged by Defendant.

14 109. As a direct and proximate result of Defendant's misrepresentations and/or
15 omissions, Plaintiff and those similarly situated have suffered damages, including, without
16 limitation, the amount they paid for the Products.

17 110. Defendant's conduct as described herein was wilful and malicious and was
18 designed to maximize Defendant's profits even though Defendant knew that it would cause loss
19 and harm to Plaintiff and those similarly situated.

20 **PLAINTIFF'S FIFTH CAUSE OF ACTION**
21 **(Unjust Enrichment)**
22 **On Behalf of Plaintiff and the Classes**

23 111. Plaintiff realleges and incorporate by reference all paragraphs alleged herein.

24 112. Plaintiff brings this claim individually and on behalf of the other members of the
25 Class and the Subclass.

26 113. Plaintiff and members of the Classes conferred a benefit on the Defendant by
27 purchasing the Products.

28 114. Defendant has been unjustly enriched in retaining the revenues from Plaintiff's
and Class members' purchases of the Products, which retention is unjust and inequitable, because

1 Defendant falsely represented that the Products contained and provided specific amounts of
2 protein per serving, when, in fact, the Products contained less protein than represented, and
3 provided even less. This harmed Plaintiff and Class members because they paid a price premium
4 as a result.

5 115. Because Defendant's retention of the non-gratuitous benefit conferred on it by
6 Plaintiff and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiff
7 and the Class members for its unjust enrichment, as ordered by the Court. Plaintiff and those
8 similarly situated have no adequate remedy at law to obtain this restitution.

9 116. Plaintiff, therefore, seeks an order requiring Defendant to make restitution to them
10 and other members of the Class.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, on behalf of herself and those similarly situated, respectfully
13 request that the Court enter judgement against Defendant as follows:

14 A. Certification of the proposed Classes, including appointment of Plaintiff's counsel
15 as class counsel;

16 B. An order temporarily and permanently enjoining Defendant from continuing the
17 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

18 C. An award of compensatory damages in an amount to be determined at trial, except
19 for those causes of action where compensatory damages are not legally available;

20 D. An award of statutory damages in an amount to be determined at trial, except for
21 those causes of action where statutory damages are not legally available;

22 E. An award of punitive damages in an amount to be determined at trial, except for
23 those causes of action where punitive damages are not legally available;

24 F. An award of treble damages, except for those causes of action where treble
25 damages are not legally available;

26 G. An award of restitution in an amount to be determined at trial;

27 H. An order requiring Defendant to pay both pre- and post-judgment interest on any
28 amounts awarded;

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

EXHIBIT A

I, Molly Brown, declare:

1. I am a Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2215.5 and California Civil Code section 1780(d).

3. As set forth in my complaint, I purchased Van’s Protein Waffles (Original), Van’s Protein Waffles (Blueberry), Van’s Protein Waffles (Chocolate Chip) and Van’s Protein Pancakes (Chocolate Chip) from Whole Foods stores in San Rafael and Novato, California and Sprouts stores in San Rafael and Petaluma, California from approximately 2019 to February 2021.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this 17th day of November 2021, in Novato, California.

DocuSigned by:
Molly Brown
AEC78E11801A486
Molly Brown

1 I. For reasonable attorneys' fees and the costs of suit incurred; and

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

3 **JURY TRIAL DEMANDED**

4 Plaintiff hereby demands a trial by jury.

5 Dated: January 1, 2022

6 **GUTRIDE SAFIER LLP**

7 /s/Seth Safier/s/

Seth A. Safier, Esq.

8 Marie McCrary, Esq.

Hayley Reynolds, Esq.

100 Pine Street, Suite 1250

San Francisco, CA 94111

10 Attorneys for Plaintiff

Exhibit B

Product Type	Variety/Flavor
Waffles	
Van's Protein Waffles	Original
Van's Protein Waffles	Blueberry
Van's Protein Waffles	Chocolate Chip
Pancakes	
Van's Protein Pancakes	Original
Van's Protein Pancakes	Chocolate Chip
Van's Simply Wholesome Pancakes	Homestyle