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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

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

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

continues business operations in the State of California.

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

14. In accordance with California Civil Code Section 1780(d), Plaintiff Brown concurrently files herewith a declaration establishing that, at various times throughout the class period, she purchased Van's Protein Waffles in Original, Blueberry, and Chocolate Chip flavors, as well as Van's Protein Pancakes in Chocolate Chip flavor 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. (Plaintiff's declaration is attached hereto as Exhibit A.)

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

SUBSTANTIVE ALLEGATIONS

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

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

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