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United States District Court  
Southern District of New York

1:19-cv-09227

Quincy Steele Jimmy Arriola, individually  
and on behalf of all others similarly situated,

Plaintiffs

- against -

Wegmans Food Markets, Inc.,

Defendant

Class Action Complaint

Plaintiff by attorneys alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Wegmans Food Markets, Inc. (“defendant”) manufactures, distributes, markets, labels and sells ice cream products purporting to contain vanilla ice cream under the Wegmans brand (“Products”).

2. The Products are available to consumers from defendant’s approximately 90 stores in states from Virginia to Massachusetts, and directly from defendant’s website.

3. The Products are sold in containers of 1.5 quarts and 1.0 pints cartons and represented as containing vanilla ice cream on the labels, in point-of-sale marketing, store display ads and print circulars and promotions, websites, television and/or radio ads.

4. The Products include approximately eighty (80) flavors across three (3) distinct Product Lines – Regular, Premium and Organic.

5. Within the Regular Product Line, defendant sells standard 10% milkfat ice cream and versions of ice cream modified by express nutrient content claims.

6. No fewer than twenty-two (22), or 27.5%, of the Products purport to contain types of vanilla ice cream, some of which are indicated below.<sup>1</sup>

<u>Product Name</u>	<u>Statement of Identity</u>	<u>Product Line</u>
Chocolate Chip	Vanilla Ice Cream with Chocolate Flakes	Regular
Cookies & Cream	Vanilla Ice Cream with Chocolate Flavored Crème Filled Cookie Pieces	Regular
French Vanilla	French Vanilla	Regular
Lactose Free* Vanilla	Lactose Free* Vanilla Ice Cream	Regular
Light* Cappuccino Chip	Coffee Ice Cream with Vanilla Swirls & Mocha Chips	Regular; Light
Light* Cookies & Cream	Vanilla Ice Cream with Cookie Pieces	Regular; Light
Light* French Vanilla	Light* French Vanilla Ice Cream	Regular; Light
Light* Peanut Butter Swirl	Vanilla Ice Cream with Real Peanut Butter Swirls	Regular; Light
Light* Pecan Praline	Vanilla Ice Cream with Ribbons of Caramel & Praline Pecan Pieces	Regular; Light
Light* Raspberry Truffle	Vanilla Ice Cream with Ribbons of Natural Raspberry & Chocolate Flavored Flakes	Regular; Light
Light* Vanilla	Light* Vanilla Ice Cream	Regular; Light

<sup>1</sup> 21 C.F.R. § 135.110(f)(6) (applying identical labeling for vanilla ice cream when combined with other flavors, i.e., Neapolitan).

Neapolitan	Chocolate, Strawberry and Vanilla Ice Creams.	Regular
No Sugar Added Vanilla Light	Vanilla Light Ice Cream	Regular; Light; No Sugar Added
Nutter Batter Premium	Vanilla Ice Cream with Peanut Butter Dough, Caramel & Peanut Butter Swirls	Premium
Peanut Chocolate Stampede	Vanilla Ice Cream with Peanut Butter & Fudge Swirls, Fudge Covered Peanuts, Fudge Covered Pretzels & Praline Peanuts	Regular
Root Beer Float	Vanilla Ice Cream with Root Beer Flavored Swirls	Regular
Scrapin' the Bowl	Vanilla & Chocolate Swirled Ice Cream with Chunks of Cookie Dough & Brownie Dough Pieces	Premium
Vanilla	Vanilla Ice Cream	Organic; Premium
Vanilla	Vanilla Ice Cream	Premium
Vanilla & Chocolate Twist	Chocolate Ice Cream Swirled with Vanilla Ice Cream	Organic; Premium
Vanilla and Chocolate	Vanilla and Chocolate Ice Cream	Regular
Vanilla Orange	Vanilla Ice Cream Swirled with Orange Sherbet	Regular

#### I. Ice Cream Products

7. Ice cream is a year-round treat enjoyed by 96% of Americans.<sup>2</sup>

8. Its popularity is attributed “to the perfect combination of elements – sugar, fat, frozen water, and air – that make up the mouthwatering concoction.”<sup>3</sup>

9. Ice cream is defined by a minimum of 10 percent milkfat, weighing no less than 4.5 pounds to the gallon and containing less than 1.4 % egg yolk solids.<sup>4</sup>

<sup>2</sup> Arwa Mahdawi, [The big scoop: America's favorite ice-cream flavor, revealed](#), The Guardian, July 11, 2018

<sup>3</sup> Vox Creative, [The Reason You Love Ice Cream So Much Is Simple: Science](#), Eater.com, October 12, 2017.

<sup>4</sup> 21 C.F.R. § 135.110(a)(2) (“Ice cream and frozen custard.”).

10. When ice cream has 1.4% or more egg yolk solids as part of its base, it is referred to as “french ice cream.”<sup>5</sup>

11. According to ice cream lore, Thomas Jefferson may have discovered vanilla ice cream when a bottle of vanilla extract accidentally spilled into the frozen milk and cream dessert he was preparing during the summer he wrote our Constitution.<sup>6</sup>

## II. Vanilla is Perennial Favorite Ice Cream Flavor

12. Vanilla is the consistent number one flavor for 28% of consumers, confirmed two groups who would know – the International Dairy Foods Association (IDFA) (ice cream producers) and National Ice Cream Retailers Association (ice cream parlors).

13. The reasons for vanilla’s staying power are “not only because it is creamy and delicious, but also because of its ability to enhance so many other desserts and treats.”<sup>7</sup>

14. By some estimates, approximately two-thirds of “all ice cream eaten is either vanilla or vanilla with something stirred into it, like chocolate chips.”<sup>8</sup>

15. The applications of vanilla ice cream include its centerpiece between chocolate wafers (“sandwich”), enrobed in chocolate on a stick (“bar”), topping a warm slice of fresh-baked pie (“à la Mode”), drizzled with hot fudge and sprinkled with crushed nuts and topped by a maraschino cherry (“sundae”) or dunked in a cold frothy glass of root beer (“float”).<sup>9</sup>

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<sup>5</sup> 21 C.F.R. § 135.110(f)(1).

<sup>6</sup> [Thomas Jefferson’s Handwritten Vanilla Ice Cream Recipe](#), Open Culture, July 13, 2014; [Thomas Jefferson’s Vanilla Ice Cream](#), Taste of Home, June-July 2012; [Thomas Jefferson’s Original Vanilla Ice Cream Recipe](#), Jefferson Papers, Library of Congress; Anna Berkes, “[Ice Cream](#)” in Thomas Jefferson Encyclopedia, Thomas Jefferson Foundation, Inc., [Monticello.org](#), June 28, 2013

<sup>7</sup> Press Release, IDFA, [Vanilla Reigns Supreme; Chocolate Flavors Dominate in Top Five Ice Cream Favorites Among Americans](#), July 1, 2018

<sup>8</sup> Bill Daley (the other one), [Which vanilla ice cream is the cream of the crop? We taste test 12 top brands](#), Chicago Tribune, July 18, 2018

<sup>9</sup> [The True Wonders of Vanilla Ice Cream](#), FrozenDessertSupplies.com.

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

16. The tropical orchid commonly known as “vanilla” does not develop its prized flavor on its own.

17. By law, vanilla refers to the “the total sapid and odorous principles extractable from one-unit weight of vanilla beans.”<sup>10</sup>

18. Shortly after the passage of the Pure Food and Drugs Act of 1906, 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.”<sup>11</sup>

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

20. Though the Pure Food and Drugs 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.<sup>12</sup>

21. Daily 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.<sup>13</sup>

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<sup>10</sup> 21 C.F.R. §169.3(c)

<sup>11</sup> 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.

<sup>12</sup> Berenstein, 412; some of the earliest recorded examples of food fraud include unscrupulous Roman merchants who sweetened wine with lead.

<sup>13</sup> 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.

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