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7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION
10

11 GARO MADENLIAN, on behalf of
himself and all others similarly situated,

12 Plaintiff,

13 vs.

14 FLAX USA, INC., and DOES 1 through
15 10, inclusive,

16 Defendant.

Case No. SACV13-01748 JVS (JPRx)

Honorable James V. Selna
Courtroom 827-A

STIPULATION OF SETTLEMENT

Action Filed: November 5, 2013
Trial Date: August 25, 2015

17
18 This Stipulation of Settlement is made and entered into by and among
19 Plaintiff GARO MADENLIAN, on behalf of himself and all others similarly
20 situated (“Plaintiffs”) and Defendant FLAX USA, INC. (“Defendant”) (collectively,
21 the “Parties”).

22 **I. DEFINITIONS**

23 A. As used in this Stipulation the following capitalized terms have the
24 meanings specified below. Unless otherwise indicated, defined terms include the
25 plural as well as the singular.

26 1. “Administrative Costs” means all of the costs for dissemination
27 of the Class Notice and Claim Form, publication on TopClassActions.com, the
28 Settlement Website and all services of the Class Action Settlement Administrator.

1 2. “Challenged Ingredients” means one of more of the following
2 ingredients: Tricalcium Phosphate, Xanthan Gum, Vitamin A Palmitate, Vitamin
3 D₂, and Vitamin B₁₂.

4 3. “Claim Deadline” means the last day to submit a timely Claim
5 Form eligible for cash payment pursuant to this Stipulation, which shall be one
6 hundred eighty (180) days after the first publication of the Class Notice via
7 TopClassActions.com.

8 4. “Claim Form” means the document to be submitted by Claimants
9 seeking payment pursuant to this Stipulation, which shall be substantially in the
10 form attached hereto as Exhibit A, that will be available online at the Settlement
11 Website, and available upon request from the Class Action Settlement
12 Administrator.

13 5. “Claimant” means a Settlement Class Member who submits a
14 claim for payment pursuant to this Stipulation.

15 6. “Class” means all Persons in the United States who purchased
16 any of the Products during the Settlement Class Period. Excluded from the Class
17 are: (a) Defendant’s employees, officers and directors; (b) Class Counsel and its
18 employees, officers and directors; (c) Defendant’s Counsel and its partners,
19 employees, officers and directors; (d) Persons who purchased the Products for the
20 intended or actual use of distribution, re-sale or donation; (e) Persons who timely
21 and properly exclude themselves from the Class; and (d) the Court, the Court’s
22 immediate family, and Court staff.

23 7. “Class Action Settlement Administrator” means, subject to Court
24 approval: Gilardi & Co., LLC.

25 8. “TopClassActions.com Publication Deadline” is forty (40) days
26 after the Court enters the Preliminary Approval Order and means the deadline for
27 the Class Action Settlement Administrator to publish the Class Notice via the
28 website known as TopClassActions.com, pursuant to the cost proposal and plan

1 attached hereto as Exhibit C.

2 9. "Class Counsel" means, subject to Court approval: Chant &
3 Company A Professional Law Corporation, through Chant Yedalian, Esq.

4 10. "Class Notice" means the "Notice of Class Action Settlement"
5 substantially in the form attached hereto as Exhibit B to be published on the
6 Settlement Website and TopClassActions.com, or available by request from the
7 Class Action Settlement Administrator.

8 11. "Class Representative" means, subject to Court approval:
9 Plaintiff Garo Madenlian.

10 12. "Court" means the United States District Court for the Central
11 District of California.

12 13. "Defendant" means Flax USA, Inc.

13 14. "Defendant's Counsel" means Rutan & Tucker, LLP, through
14 Steven J. Goon, Esq. and Karen E. Walter, Esq.

15 15. "Effective Date" means the date on which all of the conditions of
16 settlement have been satisfied, as discussed in § IX of this Stipulation.

17 16. "Eligible Claim" means a claim that is eligible for payment
18 under the terms and conditions of this Stipulation, as discussed in § IV.C of this
19 Stipulation.

20 17. "Final Judgment" means the "Final Judgment And Order of
21 Dismissal" to be entered by the Court, which, among other things, fully and finally
22 approves the settlement and dismisses the First Amended Complaint with prejudice,
23 and retains continuing jurisdiction over the interpretation, implementation and
24 enforcement of the settlement. The Parties shall submit a proposed Final Judgment
25 And Order of Dismissal as an exhibit to their joint motion for the Preliminary
26 Approval Order.

27 18. "Litigation" means the lawsuit captioned Madenlian, et al. v.
28 Flax USA, Inc., Case No. 8:13-cv-01748-JVS-JPR (C.D. Cal.), consisting of the

1 original complaint, first amended complaint and all claims and defenses raised by
2 the pleadings.

3 19. "Party" or "Parties" means the Plaintiffs and Defendant in this
4 Litigation.

5 20. "Person" means a natural person, individual, corporation,
6 partnership, association, government agency, or any other type of legal entity,
7 whatsoever.

8 21. "Plaintiffs" means the Class Representative and each of the
9 Settlement Class Members.

10 22. "Preliminary Approval Order" means the "Order Preliminarily
11 Approving Class Action Settlement, Conditionally Certifying the Settlement Class,
12 Providing For Notice and Scheduling Order," which the Parties shall submit in
13 proposed form as an exhibit to their joint motion for the Preliminary Approval
14 Order. The proposed Preliminary Approval Order will, among other things,
15 preliminarily approve this Stipulation, certify the settlement-only class, describe
16 how notice will be provided to the Settlement Class and set a schedule for the
17 Settlement Hearing.

18 23. "Products" means all of Defendant's aseptic (*i.e.*, shelf-stable,
19 non-refrigerated) flax milk products, in the 32-oz carton size, available in only the
20 following flavors: unsweetened, vanilla and original flavors. The singular
21 "Product" means any of the "Products."

22 24. "Released Claims" means any and all actions, claims, demands,
23 rights, suits, damages, costs, expenses, penalties, attorneys' fees and causes of
24 action of whatever kind or nature, known or unknown, suspected or unsuspected, in
25 law or equity, that arose during the Settlement Class Period and arise, in any manner
26 whatsoever, out of any facts alleged by Plaintiffs in the Litigation. The Released
27 Claims include, without limiting the foregoing definition, all claims asserting any of
28 the Products or Products' ingredients are not "natural," all claims challenging the

1 truth or accuracy of the statement “All Natural Dairy Free Beverage*” in
2 conjunction with the statement “*Added Vitamins & Minerals.” The Parties
3 acknowledge and agree that personal injury claims are not part of any of the facts
4 alleged by Plaintiffs in the Litigation and personal injury claims are not included
5 within the Released Claims.

6 25. “Released Persons” means and includes Defendant, its owners,
7 subsidiaries, affiliates, joint-ventures, partners, members, divisions, distributors,
8 wholesalers, retailers, re-sellers, licensors, suppliers, officers, directors, employees,
9 shareholders, agents, attorneys, administrators, successors, predecessors, insurers,
10 spokespersons, public relations firms, advertising agencies, co-packers, packagers
11 and assigns of all such persons or entities.

12 26. “Settlement Class Member(s)” or “Member(s) of the Settlement
13 Class” means a member of the Class who has not been properly excluded from the
14 Class.

15 27. “Settlement Class Period” means the period from November 5,
16 2009, up to and including the date of entry of the Preliminary Approval Order.

17 28. “Settlement Fund” means the fund discussed in § IV.B of this
18 Stipulation.

19 29. “Settlement Hearing” means the hearing(s) to be held by the
20 Court to consider and determine whether the proposed settlement of this Litigation
21 as contained in this Stipulation should be finally approved as fair, reasonable, and
22 adequate, and whether the Final Judgment approving the settlement contained in this
23 Stipulation should be entered. The Parties shall ask the Court to schedule the
24 Settlement Hearing approximately 130 days after the Court enters the Preliminary
25 Approval Order.

26 30. “Settlement Website” means the website to be created for this
27 settlement that will include information about the Litigation and the settlement,
28 relevant documents and electronic and printable forms relating to the settlement,

1 including the Claim Form which can be submitted online, submitted via facsimile,
2 or printed and mailed. The Settlement Website shall be activated no later than thirty
3 (30) days after the Court enters the Preliminary Approval Order.

4 31. “Stipulation” means this Stipulation of Settlement, including its
5 attached exhibits (which are incorporated herein by reference), duly executed by the
6 Class Representative, Class Counsel, Defendant and Defendant’s Counsel.

7 B. Other capitalized terms used in this Stipulation but not defined above
8 shall have the meaning ascribed to them in this Stipulation and the exhibits attached
9 hereto.

10 **II. RECITALS**

11 A. The Class Representative filed the original complaint in this Litigation
12 on November 5, 2013 (ECF no. 1). He filed a first amended complaint on July 23,
13 2014 (ECF no. 31).

14 B. On July 31, 2014, the Parties stipulated that the first amended
15 complaint will be the operative complaint for purposes of settlement, only, and
16 without Defendant waiving any rights to challenge or otherwise respond to the first
17 amended complaint (ECF no. 32).

18 C. On July 31, 2014, the Court entered an order based on the Parties’
19 stipulation staying all deadlines applicable to Defendant’s challenge(s) and/or
20 response(s) to the first amended complaint (ECF no. 33).

21 D. Plaintiffs’ Allegations: Plaintiffs allege that they bought Defendant’s
22 flax milk Products based, at least in part, on the following allegedly misleading
23 statement printed on the cartons: “All Natural Dairy Free Beverage*.” Plaintiffs
24 allege that, based on this statement, they believed the Products were “All Natural”
25 and contained no artificial or synthetic ingredients, and had they known that the
26 Products contained the Challenged Ingredients (which they contend are artificial
27 and/or synthetic), they would not have purchased the Products.

28 E. Defendant’s Allegations: Defendant contends that the statements “All

1 Natural Dairy Free Beverage* / *Added Vitamins & Minerals,” read in
2 combination, do not represent that the added vitamins and minerals are “all natural.”
3 Defendant disputes that the inclusion of the Challenged Ingredients renders the
4 Products’ carton false or misleading to reasonable consumers.

5 F. On June 20, 2014, the Parties participated in a settlement conference
6 conducted by the Honorable Jean P. Rosenbluth. Subsequent to this conference, the
7 Parties engaged in additional, hard-fought settlement negotiations. As a result of
8 those negotiations, the Parties agreed to settle the Litigation pursuant to the terms set
9 forth in this Stipulation.

10 G. Based upon Class Counsel’s investigation and evaluation of the facts
11 and law relating to the matters alleged in the pleadings, including the exchange of
12 sales data and ingredient information for the Products, Plaintiffs and Class Counsel
13 agreed to settle the Litigation pursuant to the provisions of this Stipulation after
14 considering, among other things: (1) the benefits available to the Class under the
15 terms herein; (2) the attendant risks and uncertainty of litigation, especially in
16 complex actions such as this, as well as the difficulties and delays inherent in such
17 litigation; and (3) the desirability of consummating this Stipulation to provide
18 effective relief to the Class.

19 H. Defendant has denied and continues to deny each and all of the claims
20 and contentions alleged by Plaintiffs. Defendant has expressly denied and continues
21 to deny all charges of wrongdoing or liability against it arising out of any of the
22 conduct, statements, acts or omissions alleged, or that could have been alleged, in
23 the Litigation. Nonetheless, Defendant has concluded that further defense of the
24 Litigation would be protracted and expensive, and that it is desirable that the
25 Litigation be fully and finally settled in the manner and upon the terms and
26 conditions set forth in the Stipulation. Defendant also has taken into account the
27 uncertainty and risks inherent in any litigation. Defendant, therefore, has
28 determined that it is desirable and beneficial to it that the Litigation be settled in the

1 manner and upon the terms and conditions set forth in the Stipulation.

2 I. This Stipulation effectuates the resolution of disputed claims and is for
3 settlement purposes only.

4 **III. CERTIFICATION OF THE SETTLEMENT CLASS**

5 Defendant hereby consents, solely for purposes of the settlement set forth
6 herein, to the certification of the Settlement Class, to the appointment of Class
7 Counsel as counsel for the Settlement Class, and to the conditional approval of Mr.
8 Garo Madenlian as a suitable Class Representative; provided, however, that if this
9 Stipulation fails to receive Court approval or otherwise fails to be consummated,
10 including, but not limited to, the Judgment not becoming final as provided in § IX of
11 this Stipulation, then Defendant retains all rights it had immediately preceding the
12 execution of this Stipulation to object to the maintenance of this Litigation as a class
13 action, and in that event, nothing in this Stipulation or other papers or proceedings
14 related to the settlement shall be used as evidence or argument by any Party
15 concerning whether the Litigation may properly be maintained as a class action,
16 whether the Class is ascertainable, or whether Class Counsel or the Plaintiffs can
17 adequately represent the Settlement Class Members under applicable law, or on any
18 other point relevant to class certification proceedings under the Federal Rules of
19 Civil Procedure, Rule 23.

20 **IV. SETTLEMENT RELIEF**

21 The settlement includes cash payments and non-monetary relief.

22 **A. Cash Payments to Settlement Class Members**

23 1. With Identification of Purchase Location: Settlement Class
24 Members may seek reimbursement of \$3.25 per carton for every Product they
25 purchased during the Settlement Class Period (up to a maximum of 10 cartons) for
26 which they indicate on the Claim Form both (1) the name of the retailer where they
27 purchased the Product and (2) the city and state where that retailer is located. The
28 Claim Form shall explain that if a Settlement Class Member chooses this option but

1 does not correctly indicate (1) the name of the retailer where they purchased the
2 Product or (2) the city and state where that retailer is located, the Claim Form will
3 not be valid and no reimbursement will be made.

4 2. Without Identification of Purchase Location: Without
5 identifying their retailer or the retailer's location, Settlement Class Members may
6 seek reimbursement of \$2.50 per carton for every Product they purchased during the
7 Settlement Class Period (up to a maximum of 10 cartons). The Claim Form shall
8 explain that Settlement Class Members are not required to identify any retailer or
9 retailer location in order to receive \$2.50 per carton for every Product they
10 purchased during the Settlement Class Period (up to a maximum of 10 cartons).

11 3. Maximum Recovery: Cash recovery under Paragraphs (1) and
12 (2) above is limited to 10 cartons per Claimant as well as 10 cartons per address.

13 4. Claimants may seek payment by submitting a Claim Form either
14 by mail, by facsimile or via the Settlement Website. Each Claim Form will be
15 signed (electronically or manually) under penalty of perjury. The actual amount
16 paid to individual Claimants will depend upon the number of Eligible Claims made.

17 5. The Class Action Administrator will mail payments (in check
18 form) directly to the eligible Settlement Class Members no later than forty-five (45)
19 days after the Effective Date or forty-five (45) days after the Claim Deadline,
20 whichever is later (the "Claims Payment Date"). Checks that (1) remain un-cashed
21 or (2) are returned through the mail as undelivered can be cancelled by the Class
22 Action Administrator or Defendant 120 days or more after the date when they were
23 mailed.

24 6. To be timely, Claim Forms must be postmarked, received via
25 facsimile or submitted online no later than one hundred eighty (180) days after the
26 Class Notice is first published on TopClassActions.com (the "Claim Deadline").

27 **B. Settlement Fund**

28 1. Defendant agrees to fund this settlement in the maximum amount

1 of \$260,000.00. The Settlement Fund shall be used to pay, in order of priority,
2 (1) Administrative Costs, and then (2) Eligible Claims.

3 2. If after payment of all Administrative Costs the total amount of
4 Eligible Claims exceeds the Settlement Fund, then each Claimant's award shall be
5 proportionately reduced (so that the total paid to satisfy Eligible Claims does not
6 exceed the portion of the Settlement Fund remaining after payment of all
7 Administrative Costs).

8 3. If after payment of all Administrative Costs and Eligible Claims
9 money remains in the Settlement Fund, then the remaining amount shall revert to
10 Defendant.

11 **C. Eligibility for Cash Payment**

12 1. To be eligible for a cash payment, the Settlement Class Member
13 must timely submit a signed and completed Claim Form. A claim shall not be
14 eligible for payment unless (1) the Claim Form is received on or before the Claim
15 Deadline, (2) the Claim Form contains a complete, legible name and mailing address
16 for the Claimant and (3) the Claim Form is signed, manually or electronically, under
17 penalty of perjury.

18 2. The Class Action Settlement Administrator will use adequate and
19 customary procedures and standards to prevent the payment of fraudulent claims
20 and to pay only legitimate claims. Such procedures will include, without limitation,
21 (1) requiring manual entry of a security code to access the Claim Form via the
22 Settlement Website, (2) where the Claimant provides retailer information,
23 comparing that information against a list of retailers that sold the Products, and
24 (3) screening for duplicate claims or Claimants seeking more than the maximum
25 cash payment permitted by this Stipulation.

26 3. The Claim Form will also request an e-mail address for each
27 Claimant, but an e-mail address will not be required to be eligible for a cash
28 payment. The determination of the Class Action Settlement Administrator, after

1 consultation with Class Counsel and Defendant’s Counsel, concerning the eligibility
2 and amount of payment shall be final.

3 **D. Other Relief**

4 1. By no later than 30 days following the Effective Date (“the
5 Injunctive Relief Effective Date”), Defendant agrees not to use the phrase “all
6 natural” on any printed flax milk packaging. Sales of Products in packaging printed
7 prior to the Injunctive Relief Effective Date shall not constitute a violation of this
8 Stipulation.

9 **V. NOTICE TO THE CLASS, COMMUNICATIONS WITH**
10 **SETTLEMENT CLASS MEMBERS AND REDEMPTION OF**
11 **SETTLEMENT RELIEF**

12 **A. Class Notice**

13 The Class Notice (Exhibit B) shall conform to all applicable requirements of
14 the Federal Rules of Civil Procedure and the United States Constitution (including
15 the Due Process Clauses). The Class Notice shall set forth the following
16 information

17 1. General Terms. The Class Notice shall:

18 a. inform Settlement Class Members that, if they do not
19 exclude themselves from the Class, they may be eligible to receive the relief under
20 the proposed settlement;

21 b. contain a short, plain statement of the background of the
22 Litigation, the Class certification for settlement purposes and the proposed
23 settlement;

24 c. describe the proposed settlement relief outlined in this
25 Stipulation; and

26 d. state that any relief to Settlement Class Members is
27 contingent on the Court’s final approval of the proposed settlement.

28 2. Notice of Exclusion, Objection and Other Rights. The Class

1 Notice shall inform Settlement Class Members:

2 a. that they may exclude themselves from the Class by
3 submitting a written exclusion request postmarked no later than sixty (60) days after
4 the date when the Class Notice is first published on TopClassActions.com, or such
5 other deadline as may be ordered by the Court;

6 b. that any Settlement Class Member who has not submitted
7 a written request for exclusion may, if he or she desires, object to the proposed
8 settlement by filing and serving a written statement of objections along with proof
9 of membership in the Class no later than sixty (60) days after the date when the
10 Class Notice is first published on TopClassActions.com, or such other deadline as
11 may be ordered by the Court;

12 c. that any Settlement Class Member, if he or she so
13 requests, may enter an appearance at the Settlement Hearing either personally or
14 through counsel;

15 d. that any Judgment entered in the Litigation, whether
16 favorable or unfavorable to the Class, shall include, and be binding on, all
17 Settlement Class Members who have not been excluded from the Class, even if they
18 have objected to the proposed settlement and even if they have any other claim,
19 lawsuit or proceeding pending against Defendant;

20 e. that any Settlement Class Member who has not submitted
21 a timely written request for exclusion may submit a completed and signed Claim
22 Form seeking a cash payment under this settlement that must be postmarked,
23 received via facsimile or submitted via the Settlement Website no later than the
24 Claim Deadline;

25 f. Claimants who receive cash payments must cash their
26 checks within 90 days of receipt; and

27 g. of the terms of the release.

28 **B. Publication**

1 No later than thirty (30) days after the Court enters the Preliminary Approval
2 Order, the Class Notice shall be posted on the Settlement Website. After that, but
3 no later than forty (40) days after the Court enters the Preliminary Approval Order,
4 the Class Notice, or information and links permitting access to the Class Notice,
5 shall be posted on TopClassActions.com, in accordance with the plan attached as
6 Exhibit C.

7 **C. Retention of Class Action Settlement Administrator**

8 Subject to Court approval, Gilardi & Co., LLC shall be retained as the Class
9 Action Settlement Administrator to help implement the terms of the proposed
10 Stipulation.

11 1. The Class Action Settlement Administrator shall assist with
12 various administrative tasks, including, without limitation, (a) arranging for
13 publication on TopClassActions.com, (b) handling returned mail not delivered to
14 Claimants, (c) answering inquiries from Settlement Class Members and/or
15 forwarding such inquiries to Class Counsel or their designee, (d) receiving and
16 maintaining on behalf of the Court and the Parties any Settlement Class Member
17 correspondence regarding requests for exclusion to the settlement, (e) establishing
18 and maintaining the Settlement Website through the Claim Deadline, (f) receiving
19 and processing claims and distributing payments to Settlement Class Members, and
20 (g) otherwise assisting with administration of the Stipulation.

21 2. The Defendant's contract with the Class Action Settlement
22 Administrator shall obligate the Class Action Settlement Administrator to abide by
23 the following performance standards:

24 a. The Class Action Settlement Administrator shall
25 accurately and neutrally describe, and shall train and instruct its employees and
26 agents to accurately and objectively describe, the provisions of this Stipulation in
27 communications with Settlement Class Members;

28 b. The Class Action Settlement Administrator shall provide

1 prompt, accurate and objective responses to inquiries from Class Counsel or their
2 designee, Defendant and/or Defendant's Counsel.

3 c. The proposal received from the Class Action Settlement
4 Administrator describing anticipated Administration Costs is attached hereto as
5 Exhibit D.

6 **VI. APPROVAL PROCEDURES AND RELATED PROVISIONS**

7 **A. Preliminary Approval and Settlement Hearing**

8 Promptly after execution of this Stipulation, the Parties shall submit this
9 Stipulation to the Court and shall jointly move for entry of a Preliminary Approval
10 Order preliminarily approving this Stipulation, providing for the dissemination of
11 the Class Notice, and scheduling a Settlement Hearing.

12 **B. Requests for Exclusion**

13 1. Class members will have until sixty (60) days after the date when
14 the Class Notice is first published on TopClassActions.com to exclude themselves
15 from the Settlement Class (the "Opt-Out Deadline"). Class members may opt out by
16 timely sending a written request postmarked no later than the Opt-Out Deadline to
17 the Class Action Settlement Administrator. Class members who timely opt out of
18 the settlement: (a) will not be a part of the settlement, (b) will have no right to
19 receive any benefits under the settlement, (c) will not be bound by the terms of the
20 settlement, and (d) will not have any right to object to the terms of the settlement at
21 the Settlement Hearing. The written request for exclusion must state the title and
22 case number of this Litigation, request exclusion from the Settlement Class, provide
23 the name, address and telephone number of the requestor, must be signed by the
24 requestor, and include a statement indicating that the requester is a member of the
25 Class. A list reflecting all requests for exclusion shall be provided by the Class
26 Action Administrator to Class Counsel and the Court at least twenty (20) days
27 before the Settlement Hearing.

28 2. Any Class member who does not file a timely written request for

1 exclusion as provided in the preceding paragraph shall be bound by all subsequent
2 proceedings, orders and the Judgment in this Litigation relating to this Stipulation,
3 even if he or she has pending, or subsequently initiates, litigation, arbitration or any
4 other proceeding against Defendant relating to the Released Claims.

5 **C. Objections to the Settlement or to the Fee Motion**

6 1. Any Settlement Class Member, on his or her own, or through an
7 attorney hired at his or her own expense, may object to the terms of the settlement or
8 to any of the terms of this Stipulation. Any such objection must be filed with the
9 Court and also served on Class Counsel and Defendant's Counsel. To be effective,
10 any such objection must be in writing and include the contents described in
11 Paragraph VI.C.3, below, and must be filed and served no later than sixty (60) days
12 after the date the Class Notice is first published on TopClassActions.com, or as the
13 Court otherwise directs. Any objections not raised properly and timely will be
14 waived.

15 2. Any Settlement Class Member, on his or her own, or through an
16 attorney hired at his or her own expense, may object to Class Counsel's motion for
17 an award of attorneys' fees and costs and/or the Class Representative's motion for
18 an Incentive Award. Such motion will be posted on the Settlement Website no later
19 than thirty (30) days before the Settlement Hearing scheduled by the Court. Any
20 objection must be filed with the Court and also served on Class Counsel and
21 Defendant's Counsel. To be effective, any such objection must be in writing and
22 include the contents described in Paragraph VI.C.3, below, and must be filed and
23 served no later than twenty-one (21) days before the Settlement Hearing, or as the
24 Court otherwise directs. Any objections not raised properly and timely will be
25 waived.

26 3. To be effective, any objection described in Paragraph VI.C.1 or
27 VI.C.2 must contain all of the following information:

28 a. A reference at the beginning to this case, Madenlian, et al.

1 v. Flax USA, Inc., Case No. 8:13-cv-01748-JVS-JPR (C.D. Cal.);

2 b. The objector's full name, address, and telephone number;

3 c. A written statement of all grounds for the objection,
4 accompanied by any legal support for such objection;

5 d. Copies of any papers, briefs, or other documents upon
6 which the objection is based;

7 e. A list of all persons who will be called to testify in support
8 of the objection; and

9 f. A statement of whether the objector intends to appear at
10 the fairness hearing. If the objector intends to appear at the Settlement Hearing
11 through counsel, the objection must also state the identity of all attorneys
12 representing the objector who will appear at the Settlement Hearing.

13 **VII. RELEASES**

14 As of the Effective Date, and except as to such rights or claims created by the
15 settlement, Plaintiffs and each Settlement Class Member, and each of their heirs,
16 guardians, executors, administrators, representatives, agents, attorneys, partners,
17 successors, predecessors-in-interest, and assigns, shall be deemed to have, and by
18 operation of the Judgment shall have, fully, finally, and forever released,
19 relinquished, and discharged all Released Claims against the Released Persons. In
20 connection with the Released Claims (defined at § I.A.(24), above, including the
21 time period therein), each Settlement Class Member shall be deemed to have waived
22 any and all provisions, rights, and benefits conferred by § 1542 of the California
23 Civil Code and any statute, rule, and legal doctrine similar, comparable, or
24 equivalent to California Civil Code § 1542, which reads as follows:

25 *A general release does not extend to claims which the*
26 *creditor does not know or suspect to exist in his or her*
27 *favor at the time of executing the release, which if known*
by him or her must have materially affected his or her
settlement with the debtor.

28

1 **VIII. CLASS COUNSEL’S COSTS AND EXPENSES AND CLASS**
2 **REPRESENTATIVE INCENTIVE AWARDS**

3 A. Class Counsel may apply to the Court for an award of reasonable costs
4 and attorneys’ fees, in an amount not to exceed \$70,000. Defendant will not object
5 to, oppose, or otherwise contest Class Counsel receiving an award of attorneys’ fees
6 and costs of up to \$70,000. Subject to the terms and conditions of this Stipulation
7 and any order of the Court, any award of costs/fees approved by the Court to Class
8 Counsel shall be paid by Defendant within thirty (30) days of the Claims Payment
9 Date with Defendant delivering a check to Class Counsel, payable to “Chant &
10 Company A Professional Law Corporation.” Such payment will be paid separately
11 by Defendant and will not come from the Settlement Fund. Such payment will be in
12 lieu of any other fees or expenses Plaintiffs and/or their attorneys might otherwise
13 have been entitled to recover in the Litigation.

14 C. Class Counsel may apply to the Court for an Incentive Award to the
15 Class Representative in an amount not to exceed \$5,000. Defendant will not object
16 to, oppose, or otherwise contest Class Representative receiving an Incentive Award
17 of up to \$5,000. The Incentive Award, if issued by the Court, will be paid by
18 Defendant delivering to Class Counsel a check payable to “Garo Madenlian” within
19 thirty (30) days of the Claims Payment Date. The Incentive Award will be paid
20 separately by Defendant and will not come from the Settlement Fund. Any
21 Incentive Award ordered by the Court shall be in addition to any money the Class
22 Representative may receive from the Settlement Fund as a result of submitting an
23 Eligible Claim.

24 **IX. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,**
25 **CANCELLATION OR TERMINATION**

26 A. The Effective Date of this Stipulation shall be the first date after which
27 all of the following events and conditions have been met or have occurred:

- 28 1. The Court has preliminarily approved this Stipulation and

1 entered the Preliminary Approval Order;

2 2. The Court has entered the Final Judgment; and

3 3. Unless the Parties otherwise agree in writing to waive all or any
4 portion of the following provision, there has occurred: (i) in the event there is a
5 properly and timely filed objection to entry of the Final Judgment, the expiration
6 (without the filing or noticing of an appeal) of the time to appeal from the Final
7 Judgment; (ii) in the event there is an appeal, the final dismissal of all appeals from
8 the Final Judgment; (iii) in the event there is an appeal, affirmance on appeal of the
9 Final Judgment in substantial form; (iv) in the event there is an appeal and if a ruling
10 or decision is entered by an appellate court with respect to affirmance of the Final
11 Judgment, the time to petition for rehearing or re-argument, petitions for rehearing
12 en banc and petitions for certiorari or any other form of review with respect to such
13 ruling or decision has expired; or (v) in the event there is an appeal and if a petition
14 for rehearing or re-argument, petitions for rehearing en banc and petitions for
15 certiorari or any other form of review with respect to the Final Judgment is filed, the
16 petition has been denied or dismissed or, if granted, has resulted in affirmance of the
17 Final Judgment in substantial form.

18 B. If all of the conditions specified in § IX.A of this Stipulation are not
19 met, then this Stipulation shall be canceled and terminated unless Class Counsel and
20 Defendant mutually agree in writing to proceed with this Stipulation.

21 C. In the event that this Stipulation is not approved by the Court or the
22 settlement set forth in this Stipulation is terminated or fails to become effective in
23 accordance with its terms, the Parties shall be restored to their respective pre-
24 settlement positions in the Litigation, including with regard to any agreements
25 concerning tolling and similar agreements, and this entire Stipulation shall become
26 null and void.

27 **X. MISCELLANEOUS PROVISIONS**

28 A. The Parties hereto and their undersigned counsel agree to undertake

1 their best efforts and mutually cooperate to promptly effectuate this Stipulation and
2 the terms of the settlement set forth herein, including taking all steps and efforts
3 contemplated by this Stipulation and any other steps and efforts which may become
4 necessary by order of the Court or otherwise.

5 B. The undersigned counsel represent that they are fully authorized to
6 execute and enter into the terms and conditions of this Stipulation on behalf of their
7 respective clients.

8 C. This Stipulation contains the entire agreement among the Parties hereto
9 and supersedes any prior agreements or understandings between them. Except for
10 § II, all terms of this Stipulation are contractual and not mere recitals and shall be
11 construed as if drafted by all Parties. The presumption found in California Civil
12 Code § 1654 (and equivalent, comparable or analogous provisions of the laws of the
13 United States of America or any state or territory thereof, or of the common law or
14 civil law) that uncertainties in a contract are interpreted against the party causing an
15 uncertainty to exist hereby is waived by all Parties.

16 D. The terms of this Stipulation are and shall be binding upon each of the
17 Parties, their agents, attorneys, employees, successors and assigns, and upon all
18 other Persons claiming any interest in the subject matter through any of the Parties,
19 including any Settlement Class Member.

20 E. Whenever this Stipulation requires or contemplates that one Party shall
21 or may give notice to the other, notice shall be provided by facsimile, email and/or
22 next day (excluding Sunday) express delivery service as follows (subject to the right
23 of each of the Parties to designate in writing another address, facsimile number,
24 email address and/or telephone number should such change):

25 1. If to Plaintiffs, then to:

26 Chant Yedalian, Esq.

27 CHANT & COMPANY A Professional Law Corporation

28 1010 N. Central Ave.

1 Glendale, CA 91202
2 Phone: 877.574.7100
3 Fax: 877.574.9411
4 chant@chant.mobi

5 2. If to Defendant, then to:

6 Steven J. Goon, Esq.
7 RUTAN & TUCKER, LLP
8 611 Anton Blvd., Suite 1400
9 Costa Mesa, CA 92626
10 Phone: 714.641.5100
11 Fax: 714.546.9035
12 sgoon@rutan.com

13 F. The time periods and/or dates described in this Settlement Agreement
14 with respect to the giving of notices and hearings are subject to approval and change
15 by the Court or by the written agreement of Class Counsel and Defendant's Counsel,
16 without notice to Settlement Class Members. The Parties reserve the right, by
17 agreement and subject to the Court's approval, to grant any reasonable extension of
18 time that might be needed to carry out any of the provisions of this Settlement
19 Agreement.

20 G. All time periods set forth herein shall be computed in calendar days. In
21 computing any period of time prescribed or allowed by this Stipulation or by order
22 of the Court, the day of the act, event or default from which the designated period of
23 time begins to run shall not be included. The last day of the period so computed
24 shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the
25 act to be done is the filing of a paper in Court, a day in which weather or other
26 conditions have made the Office of the Clerk or the Court inaccessible, in which
27 event the period shall run until the end of the next day as not one of the
28 aforementioned days.

1 H. The Parties, their successors and assigns, and their attorneys undertake
2 to implement the terms of this Stipulation in good faith and to use good faith in
3 resolving any disputes that may arise in the implementation of the terms of this
4 Stipulation.

5 I. This Stipulation may be amended or modified only by a written
6 instrument signed by Class Counsel and Defendant's Counsel. Amendments and
7 modifications may be made without additional notice to the Settlement Class
8 Members unless such notice is required by the Court.

9 J. The exhibits to this Stipulation are an integral part of the Settlement
10 and are hereby incorporated and made a part of this Stipulation.

11 K. Neither this Stipulation nor the settlement, nor any act performed or
12 document executed pursuant to or in furtherance of this Stipulation or the
13 settlement: (i) is or may be deemed to be or may be used as an admission of, or
14 evidence of, the validity of any Released Claim, or of any wrongdoing or liability of
15 Defendant, or of the propriety of Class Counsel maintaining the Litigation as a class
16 action; or (ii) is or may be deemed to be or may be used as an admission of, or
17 evidence of, any fault or omission of Defendant in any civil, criminal, or
18 administrative proceeding in any court, administrative agency, or other tribunal,
19 except that Defendant may file this Stipulation or the Judgment in any action that
20 may be brought against any Released Person in order to support a defense or
21 counterclaim based on principles of res judicata, collateral estoppel, release, good
22 faith settlement, judgment bar, or reduction or any other theory of claim preclusion
23 or issue preclusion or similar defense or counterclaim.

24 L. The Court shall retain continuing jurisdiction with respect to the
25 interpretation, implementation and enforcement of the terms of this Stipulation, and
26 all Parties hereto submit to the jurisdiction of the Court for purposes of interpreting,
27 implementing and enforcing the settlement embodied in this Stipulation.

28 M. No provision of this Stipulation, and no written communication or

1 disclosure between or among the Parties or their attorneys and other advisers, is or
2 was intended to be, nor will be construed or relied upon as, tax advice. Each of the
3 Parties has relied exclusively upon his, her or its own independent legal and tax
4 advisers for advice (including tax advice) in connection with this Stipulation. None
5 of the Parties has entered into this Agreement based upon the recommendation of
6 any of the other Parties or any attorney or advisor to any of the other Parties.

7 N. The Parties shall each bear their own attorneys' fees and costs, except
8 as provided in this Stipulation.

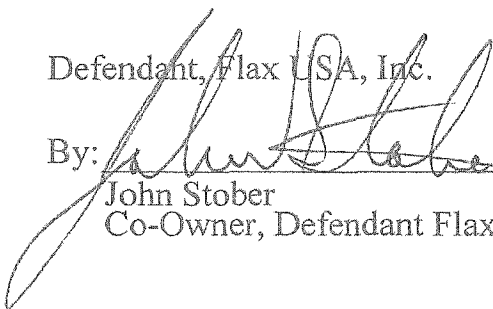
9 M. This Stipulation may be executed in counterparts, including, but not
10 limited to, pages transmitted by facsimile or in electronic PDF file format, each of
11 which, when so executed and delivered, shall be deemed to be an original.

12 N. This Stipulation shall be deemed to have been executed upon the last
13 date of execution by all of the undersigned.

14 IN WITNESS THEREOF, the Parties hereto have caused this Stipulation to
15 be executed by their duly authorized representatives.

16
17 Dated: August 18th, 2014

Defendant, Flax USA, Inc.

18
19 By: 
John Stober
Co-Owner, Defendant Flax USA, Inc.

20
21 Dated: August _____, 2014

Rutan & Tucker, LLP

22
23 By: _____
24 Steven J. Goon
25 Attorneys for Defendant
26 Flax USA, Inc.
27
28

1 disclosure between or among the Parties or their attorneys and other advisers, is or
2 was intended to be, nor will be construed or relied upon as, tax advice. Each of the
3 Parties has relied exclusively upon his, her or its own independent legal and tax
4 advisers for advice (including tax advice) in connection with this Stipulation. None
5 of the Parties has entered into this Agreement based upon the recommendation of
6 any of the other Parties or any attorney or advisor to any of the other Parties.

7 N. The Parties shall each bear their own attorneys' fees and costs, except
8 as provided in this Stipulation.

9 M. This Stipulation may be executed in counterparts, including, but not
10 limited to, pages transmitted by facsimile or in electronic PDF file format, each of
11 which, when so executed and delivered, shall be deemed to be an original.

12 N. This Stipulation shall be deemed to have been executed upon the last
13 date of execution by all of the undersigned.

14 IN WITNESS THEREOF, the Parties hereto have caused this Stipulation to
15 be executed by their duly authorized representatives.

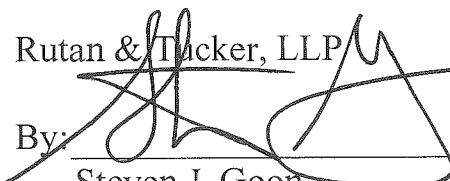
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Dated: August _____, 2014

Defendant, Flax USA, Inc.

By: _____
John Stober
Co-Owner, Defendant Flax USA, Inc.

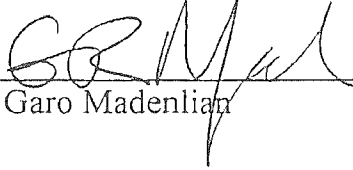
Dated: August 18, 2014

Rutan & Tucker, LLP
By: 
Steven J. Goon
Attorneys for Defendant
Flax USA, Inc.

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Dated: August 18, 2014

Plaintiff and Class Representative

By: 
Garo Madenlian

Dated: August 18, 2014

Chant & Company,
A Professional Law Corporation

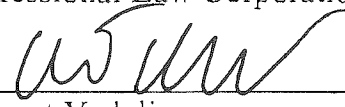
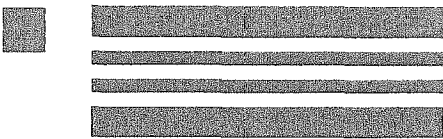
By: 
Chant Yedalian
Class Counsel

EXHIBIT A



Madenlian v. Flax USA, Inc.
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA,
SACV 13-1748-JVS (JPRx)

Must Be Postmarked
or Submitted Online
or By Facsimile
No Later Than
Month XX, 2015

FLAX1



Claim Form

<<Barcode>> <<ClaimID>>
<<FirstName>> <<LastName>>
<<Addr1>> <<Addr2>>
<<City>>, <<State>> <<Zip>>

I. Eligible Products

If you purchased one or more 32-oz cartons of Flax USA brand aseptic (non-refrigerated) flax milk on or before **Month XX, 2014**, in the United States for personal use and not for resale, distribution or donation, then you may be able to recover money pursuant to a class action settlement. Please read the Full Notice (available at www.FlaxMilkSettlement.com) regarding the Settlement before filling out this Claim Form.

You may be eligible to receive up to \$3.25 per carton (up to a maximum of 10 cartons, or \$32.50 per claimant or address) if you follow the instructions below and identify the name, city and state of the retailer(s) where you purchased flax milk.

You may be eligible to receive up to \$2.50 per carton (up to a maximum of 10 cartons, or \$25.00 per claimant or address) if you follow the instructions below, but do not identify the name, city and state of the retailer(s) where you purchased flax milk.

Any money available to you may be reduced if the total amount of money due to eligible consumers in this settlement exceeds the total amount of money available to fund the settlement. This is described in greater detail in the Full Notice available at www.FlaxMilkSettlement.com.

II. How to Receive Settlement Money

A. Claim Form Submission

There are three ways to submit a claim:

1. File a claim online at www.FlaxMilkSettlement.com on or before **Month XX, 2015**; or
2. Mail a completed Claim Form, to Flax Milk Litigation Settlement, c/o Gilardi & Co, LLC, P.O. Box 8060, San Rafael, CA 94912-8060. Mailed Claim Forms must be postmarked no later than **Month XX, 2015**.
3. Fax a completed Claim Form to Flax Milk Litigation Settlement, c/o Gilardi & Co, LLC to 415-256-9756. Claim Forms sent via facsimile must be received on or before **Month XX, 2015**.

B. Required Information

Regardless of how you submit a claim, to be eligible to receive any payment, your Claim Form must truthfully, completely and legibly provide the following information:

1. All information in the "Claimant Information" section below;
2. All information in the "Flax Milk Purchase Information" section below; and
3. A verification signed under penalty of perjury at the end of the Claim Form.
 - a. Claim Forms submitted online must be electronically signed under penalty of perjury;
 - b. Claim Forms submitted by mail or facsimile must be manually signed under penalty of perjury. The Claim Form that is mailed must bear your original signature, not a copy or a scan.

EXHIBIT A, PAGE 24



FOR CLAIMS PROCESSING ONLY	OB <input type="checkbox"/>	CB <input type="checkbox"/>	<input type="radio"/> DOC <input type="radio"/> LC <input type="radio"/> REV	<input type="radio"/> RED <input type="radio"/> A <input type="radio"/> B
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C. Optional Information

You are not required to complete the "Retailer Information" section below. However, in order to be eligible for a higher, per-carton payment, your Claim Form must truthfully, completely and legibly provide all information in the "Retailer Information" section below.

If you choose this option, but do not correctly indicate (1) the name of the retailer where you purchased each carton and (2) the city and state where that retailer is located, your claim will be ineligible for any payment.

D. Use of Claim Form Information

Any information provided in a Claim Form ~~will~~ may be shared with the Court ^{or} the parties, their attorneys and the Claims Administrator. If a dispute arises involving your claim, a copy of your claim may be attached to public court filings. *and will be shared with*

E. Ineligible Claims

The Claims Administrator, in consultation with the attorneys representing the Plaintiff and Defendant, retains the discretion to determine when claims exceed the allowed maximums, are duplicates, contain false information or are otherwise ineligible for any payment under the terms of the settlement. The decision of the Claims Administrator concerning the validity of all submitted claims is final.

III. Claimant Information

First Name M.I. Last Name

Street Address

City State Zip Code

Area code Telephone number (or best number to reach you) - -

Email Address (Optional)

IV. Flax Milk Purchase Information

I purchased one or more 32-oz cartons of Flax USA brand aseptic (non-refrigerated) flax milk on or before **Month XX, 2014**, in the United States for personal use and not for resale, distribution or donation. The number of cartons that I purchased and for which I am making a claim (up to a maximum of 10) is as follows:

(Insert Number of Cartons You Purchased)

V. Retailer Information (Optional)

As explained above, this section is optional and you are not required to complete it unless you are claiming a higher, per-carton payment. The retailer of each carton for which I am making a claim is as follows:

Identify each carton for which you are making a claim, starting with 1 and continuing, if applicable, up to 10.

Carton No.: Retailer's Name:

Retailer's City Retailer's State

Carton No.: Retailer's Name:

Retailer's City Retailer's State



Carton No.: Retailer's Name:

Retailer's City: Retailer's State:

Carton No.: Retailer's Name:

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Carton No.: Retailer's Name:

Retailer's City: Retailer's State:

Carton No.: Retailer's Name:

Retailer's City: Retailer's State:



VI. Verification

I declare under penalty of perjury of the laws of the United States of America that I purchased one or more 32-oz cartons of Flax USA brand aseptic (non-refrigerated) flax milk for personal use and not for resale, distribution, or donation, and that all the information provided in this Claim Form, together with all the information submitted with this Claim Form (if any), is, to the best of my knowledge, accurate and correct.

Signature _____

Date _____

Please keep a copy of your completed Claim Form and copies of any proof of purchase(s) for your records. Note: if you are not the purchaser of the flax milk products but you are signing this Claim Form as a representative for a Settlement Class Member, a certification of current authority to act on behalf of the Settlement Class Member must be included with the Claim Form.

Please mail your completed Claim Form to the Claims Administrator so that it is postmarked no later than Month XX, 2015, with any proof of purchase(s), to:

Flax Milk Litigation Settlement
c/o Gilardi & Co. LLC
P.O. Box 8060
San Rafael, CA 94912-8060

Or you can file a claim online at www.FlaxMilkSettlement.com
Or you can fax your completed Claim Form to 415-256-9756.



EXHIBIT B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Garo Madenlian, et al. v. Flax USA, Inc.

Civil Litigation No. SACV13-01748 JVS (JPRx)

If you purchased flax milk sold in the United States by Flax USA, Inc., then you may be entitled to compensation.

IMPORTANT

PLEASE READ THIS NOTICE CAREFULLY

THIS NOTICE RELATES TO THE PENDENCY OF A CLASS ACTION LAWSUIT AND, IF YOU ARE A SETTLEMENT CLASS MEMBER, CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS TO MAKE A CLAIM UNDER THE SETTLEMENT OR TO OPT OUT OF OR OBJECT TO THE SETTLEMENT¹

(A federal court has authorized this Notice. It is not a solicitation from a lawyer.)

Your legal rights are affected whether or not you act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM COMPLETED ONLINE, BY FACSIMILE OR BY MAIL POSTMARKED BY _____, 2014	The only way to receive a cash payment.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY _____, 2014	Receive no cash payment. This is the only option that allows you to pursue claims alleged in the Litigation against the Defendant and/or any of the Released Persons by filing your own lawsuit at your own expense.
OBJECT TO THE SETTLEMENT BY _____, 2014, OR IF OBJECTION IS SOLELY TO THE ATTORNEYS' FEES OR COSTS AND/OR INCENTIVE AWARD, BY _____, 2014	If you do not like the Settlement, you may submit your written objections by the _____, 2014 deadline. If your objection is solely to the Attorneys' Fees and Costs and/or Incentive Award, you may submit your written objections by the _____, 2014 deadline. You must remain in the Settlement Class to make any objection.
ATTEND A HEARING ON _____, 2014 at _____ a.m.	Ask to speak to the Court about the fairness of the Settlement (if you filed a request to do so by _____, 2014). (The location, date and time of the Fairness Hearing is subject to change by Court Order. See Question No. 12 below.)
DO NOTHING	Receive no cash payment and give up your rights to pursue your own lawsuit at your own expense.

Your rights and options, and the deadlines to exercise them, are explained in this Notice.

1. What is this Notice and why should I read it?

This Notice is to inform you of the settlement of a class action lawsuit entitled *Garo Madenlian, et al. v. Flax USA, Inc.* pending before the Hon. James V. Selna in the United States District Court for the Central District of California (the "Court"). The Court has granted preliminary approval of the Settlement and has set a final hearing to take place on _____, 2014 at 1:30 p.m. in the Ronald Reagan Federal Building and U.S. Courthouse, located at 411 West Fourth Street, Courtroom 827-A, Santa Ana, CA 92701-4516, to determine if the Settlement is fair, reasonable and adequate, and to consider the request by Class Counsel for Attorneys' Fees and Costs and an Incentive Award for the Class Representative. This Notice describes the Settlement. Your rights and options – and the deadlines to exercise them – are explained in this Notice. This Notice and the Stipulation of Settlement ("Settlement Agreement") in its entirety are posted on the Settlement Website, www.FlaxMilkSettlement.com, and are also available from the Claims Administrator. Other documents available on the Settlement Website include the First Amended Complaint and the papers that are or will be filed with the Court requesting preliminary and final approval of the Settlement described in this Notice.

2. What is this Litigation about?

Defendant Flax USA sold three flavors of aseptic (*i.e.*, shelf-stable, non-refrigerated) flax milk in 32-oz size cartons: unsweetened, vanilla and original flavors (the "Products"). The Products contain, as identified on the carton labels, ingredients including: Tricalcium Phosphate, Xanthan Gum, Vitamin A Palmitate, Vitamin D2, and Vitamin B12 (the "Challenged Ingredients").

The named Plaintiff filed this lawsuit alleging that he and others bought Defendant's flax milk Products based, at least in part, on the following allegedly misleading statement printed on the cartons: "All Natural Dairy Free Beverage*." Plaintiff alleges that, based on this statement, he and others believed the Products were "All Natural" and contained no artificial or synthetic ingredients, and had they known that the Products contained the Challenged Ingredients (which they contend are artificial and/or synthetic), they would not have purchased the Products. The named Plaintiff sued to recover a refund of the purchase price and other alleged damages, as well as attorneys' fees and costs.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation of Settlement available on the Settlement Website at www.FlaxMilkSettlement.com.

EXHIBIT B, PAGE 28

Defendant denies all allegations of wrongdoing and liability. Defendant contends that the statements "All Natural Dairy Free Beverage* / *Added Vitamins & Minerals," read in combination, do not represent that the added vitamins and minerals are "all natural." Defendant disputes that the inclusion of the Challenged Ingredients renders the Products' carton false or misleading to reasonable consumers.

In light of the expense and uncertainty of litigation, Plaintiff and Defendant have decided to settle the Litigation by entering into the Settlement Agreement. The purchasers of flax milk on whose behalf the Settlement has been made are called "Settlement Class Members." The individuals who make up the Settlement Class (*i.e.*, the Settlement Class Members) are described in Question No. 4 below.

The Settlement has already been preliminarily approved by the Court. Nevertheless, because the settlement of a class action determines the rights of all members of the proposed class, the Court must give final approval to the Settlement before it can take effect.

The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class can be given this Notice and the opportunity to exclude themselves from the Settlement Class, voice their opposition, if any, to final approval of the Settlement, and explain how those who do not exclude themselves from the Settlement Class may submit a Claim Form to obtain the relief offered by the Settlement. If the Settlement is not given final approval by the Court or does not otherwise become final, the Settlement will be void and the Litigation will continue as if there had been no Settlement and no certification of the Settlement Class.

3. Why is there a Settlement?

Although the Court has not yet resolved the merits of the lawsuit, or determined whether the Plaintiff's or Defendant's contentions are true, the Parties have agreed to settle the Litigation. Defendant denies all allegations of wrongdoing and liability and asserts that its conduct was lawful. Defendant is settling to avoid the substantial cost, inconvenience and disruption of litigation. Plaintiff and Class Counsel believe that the Settlement is in the best interests of the Settlement Class because it provides a recovery for Settlement Class Members while avoiding the substantial risk, expense and delay of pursuing the case through trial and any potential appeals.

4. Who is included in the Settlement?

The class covered by the Settlement (the "Settlement Class") is defined as follows: all persons in the United States who purchased any of the Products during the Settlement Class Period (which is from November 5, 2009, to _____, 2014). Excluded from the Class are: (a) Defendant's employees, officers and directors; (b) Class Counsel and its employees, officers and directors; (c) Defendant's Counsel and its partners, employees, officers and directors; (d) Persons who purchased the Products for the intended or actual use of distribution, re-sale or donation; (e) Persons who timely and properly exclude themselves from the Settlement Class; and (d) the Court, the Court's immediate family, and Court staff.

5. What Milk Products are included in the Settlement?

The Settlement is limited to Defendant's three flavors of aseptic (*i.e.*, shelf-stable, non-refrigerated) flax milk sold in 32-oz size cartons: unsweetened, vanilla and original flavors.

6. What does the Settlement provide?

a. Cash Payments and Prospective Relief.

The Parties have agreed to the certification of this case as a class action solely for the purposes of Settlement. Defendant agrees not to use the phrase "all natural" on any flax milk packaging printed in the future. The parties also agreed to create a \$260,000 Settlement Fund to be funded by Defendant, Flax USA, Inc. The Settlement Fund will be used to pay Settlement Class Members who submit Eligible Claims and also to pay all costs associated with administering the claims process.

The settlement provides for two different levels of potential payment to Settlement Class Members:

Lower level: Without identifying their retailer or the retailer's location, Settlement Class Members may seek reimbursement of \$2.50 per carton for every Product they purchased during the Settlement Class Period (up to a maximum of 10 cartons per claimant or address).

Higher level: Settlement Class Members may seek reimbursement of \$3.25 per carton for every Product they purchased during the Settlement Class Period (up to a maximum of 10 cartons per claimant or address) for which they indicate on the Claim Form both (1) the name of the retailer where they purchased the Product and (2) the city and state where that retailer is located.

If after payment of all Administrative Costs the total amount of Eligible Claims exceeds the Settlement Fund, then each Claimant's award shall be proportionately reduced (so that the total paid to satisfy Eligible Claims does not exceed the portion of the Settlement Fund remaining after payment of all Administrative Costs).

b. Process.

To be eligible for a Cash Payment pursuant to the Settlement, a Settlement Class Member must submit one (1) valid, timely and sworn Claim Form to the Claims Administrator that: (i) is postmarked (or received, if submitted via facsimile or online) by _____, 2015, (ii) contains all of the required information set forth in the Claim Form, and (iii) is signed (physically or electronically) by the Settlement Class Member submitting the Claim Form.

You can file your completed Claim Form online or download a Claim Form by going to www.FlaxMilkSettlement.com and following the instructions provided on the website. You can also obtain a Claim Form by writing to the Claims Administrator at Flax Milk Litigation Settlement, c/o Gilardi & Co. LLC, P.O. Box 808003, Petaluma, CA 94975-8003 or by calling toll free 877-280-8361. You can only and need only submit one (1) Claim Form regardless of the number of Products that you purchased.

EXHIBIT B, PAGE 29

7. **Who represents the Settlement Class and who represents Defendant Flax USA, Inc.?**

Class Representatives. For purposes of the Settlement, the Court has appointed named Plaintiff Garo Madenlian to serve as the Class Representative.

Class Counsel. For purposes of the Settlement, the Court has approved the appointment of the following counsel for the Settlement Class:

Chant Yedalian, Esq.
CHANT & COMPANY
A Professional Law Corporation
1010 N. Central Ave.
Glendale, CA 91202
Phone: 877.574.7100
Fax: 877.574.9411

You will not be charged for the services of Class Counsel. If you want to be represented by your own counsel, you may hire a lawyer at your own expense.

Defendant’s Counsel. Defendant Flax USA, Inc. is represented by the following counsel:

Steven J. Goon, Esq.
Karen E. Walter, Esq.
RUTAN & TUCKER, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626
Phone: 714.641.5100
Fax: 714.546.9035

8. **What are the amounts of Class Counsel’s Fees, Expenses and Named Plaintiff Service Awards?**

To date, Class Counsel have not been paid any attorneys’ fees. In compensation for some of their time and risk in prosecuting the litigation on a wholly contingent fee basis, Class Counsel will request, as part of the final approval of this Settlement, that the Court approve a payment of up to \$70,000 for fees and reimbursement of actual out-of-pocket expenses (“Attorneys’ Fees and Costs”). Class Counsel will also ask the Court to approve an Incentive Award of up to \$5,000 to the Named Plaintiff, Garo Madenlian, for the time and effort he contributed to the prosecution of the Litigation. Defendants have agreed not to object to the applications for Attorneys’ Fees and Costs and the Incentive Award. Payment of Attorneys’ Fees and Costs and the Incentive Award will not come from the Settlement Fund but will be paid for separately by Defendant.

9. **What is the effect of final approval of the Settlement?**

If the Court approves the proposed Settlement, the Litigation will be dismissed, and Defendant will provide the Cash Award described above to the Settlement Class Members who have not excluded themselves from the Settlement Class and who have submitted a valid and timely Claim Form. After the Litigation is dismissed, no Settlement Class Member who did not request exclusion will be able to file his or her own lawsuit for recovery for any of the Released Claims. If you want to bring your own lawsuit, you must exclude yourself from this Settlement.

10. **What are my options?**

As a Settlement Class Member, you have the following options:

a. **Participate In The Settlement.**

If the Court approves the Settlement, you will automatically become eligible to receive the benefits described above. If you would like to claim a Cash Award, you must timely complete and submit a Claim Form to the Claims Administrator by _____, 2015.

b. **Exclude Yourself From The Settlement (“Opt-Out”).**

If you would like to be excluded from the Settlement Class, you must send a written exclusion request to the Claims Administrator by U.S. Mail, postage prepaid, postmarked no later than _____, 2014 to the following address: Flax Milk Litigation Settlement, c/o Gilardi & Co. LLC, P.O. Box 8090, San Rafael, CA 94912-8090. A request to exclude yourself from the Settlement Class must include (1) your name, (2) address, (3) telephone number, (4) the Product(s) that you purchased which make you a Class member, (5) the title and case number of the Litigation, and (6) a signed statement indicating your desire to be excluded from the Settlement Class. Exclusions, or opt outs, shall be allowed on an individual basis only, and “mass” or “class” opt outs are not allowed. If you do not timely submit an Opt-Out request including all of the above information, you will be bound by the Settlement and all of your claims for any of the Released Claims will be released. If you validly and timely request exclusion from the Settlement Class, you will not be bound by the Final Order and Judgment entered in this Litigation. Excluding yourself means you cannot receive any of the Settlement benefits or comment upon the Settlement, but you will be able to file a lawsuit on your own behalf. If you have any questions concerning these procedures, please call or write the Claims Administrator or Class Counsel.

EXHIBIT B, PAGE 30

c. File Written Objections to the Settlement.

If you are a member of the Settlement Class and you do not exclude yourself from the Settlement, you may object to the terms of the Settlement. If you object and the Settlement is approved, you will be barred from bringing your own lawsuit and you will be bound by the Final Order and Judgment entered in this Litigation. You may, but need not, enter an appearance through counsel of your choice. If you do retain counsel, however, you will be responsible for your own counsel's fees and costs.

If you object to the Settlement, you or your counsel must, on or before _____, 2014, file with the Court and serve on Class Counsel and Defendant's Counsel at the above addresses a written objection. To be valid, the written objection must contain all of the following:

- a. A reference at the beginning to this case, Madenlian, et al. v. Flax USA, Inc., Case No. 8:13-cv-01748-JVS-JPR (C.D. Cal.);
- b. The objector's full name, address, and telephone number;
- c. A written statement of all grounds for the objection, accompanied by any legal support for such objection;
- d. Copies of any papers, briefs, or other documents upon which the objection is based;
- e. A list of all persons who will be called to testify in support of the objection; and
- f. A statement of whether the objector intends to appear at the Settlement Hearing. If the objector intends to appear at the Settlement Hearing through counsel, the objection must also state the identity of all attorneys representing the objector who will appear at the Settlement Hearing.

Settlement Class Members who do not timely make their objections in accordance with the procedures set forth above waive all objections and may not be heard at the Settlement Hearing or have the right to appeal approval of the Settlement.

d. File Written Objections to the Attorneys' Fees and Costs or Incentive Award.

If you are a member of the Settlement Class and you do not exclude yourself from the Settlement, you may object to Class Counsel's application for Attorneys' Fees and Costs or for an Incentive Award to the Class Representative, the named Plaintiff. To object, you may, but need not, enter an appearance through counsel of your choice. If you do retain counsel, however, you will be responsible for your own counsel's fees and costs.

If you object to the Class Counsel's application for Attorneys' Fees and Costs or for an Incentive Award, you or your counsel must, on or before _____, 2014, file with the Court and serve on Class Counsel and Defendant's Counsel at the above addresses a written objection. To be valid, the written objection must contain all of the following:

- a. A reference at the beginning to this case, Madenlian, et al. v. Flax USA, Inc., Case No. 8:13-cv-01748-JVS-JPR (C.D. Cal.);
- b. The objector's full name, address, and telephone number;
- c. A written statement of all grounds for the objection, accompanied by any legal support for such objection;
- d. Copies of any papers, briefs, or other documents upon which the objection is based;
- e. A list of all persons who will be called to testify in support of the objection; and
- f. A statement of whether the objector intends to appear at the Settlement Hearing. If the objector intends to appear at the Settlement Hearing through counsel, the objection must also state the identity of all attorneys representing the objector who will appear at the Settlement Hearing.

Settlement Class Members who do not timely make their objections in accordance with the procedures set forth above waive all objections and may not be heard at the Settlement Hearing or have the right to appeal approval of the Settlement.

e. Do Nothing.

If you are a member of the Settlement Class and do nothing, you will not receive a Cash Award from the Settlement. You must submit a Claim Form to obtain money under the Settlement. Even if you do nothing, you will be bound by the release provisions contained in the Settlement Agreement.

11. How does the Settlement affect my rights?

If you are a member of the Settlement Class and you do not exclude yourself from the Settlement, you will be legally bound by all orders and judgments of the Court and to the releases of the claims in the Settlement Agreement. This means that in exchange for being a Settlement Class Member and being eligible for the benefits of the Settlement, you will not be able to sue, continue to sue, or be part of any other lawsuit against Defendant Flax USA, Inc. and/or any of the Released Persons that involves the same legal claims as those resolved through this Settlement.

You will not be responsible for any out-of-pocket costs or attorneys' fees concerning this case if you stay in the Settlement Class.

Staying in the Settlement Class also means that you agree to the following releases of claims, which describes exactly the legal claims that you give up:

RELEASES: As of the Effective Date, and except as to such rights or claims created by the settlement, Plaintiffs and each Settlement Class Member, and each of their heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons. In connection with the Released Claims (defined below, including the time period therein), each Settlement Class Member shall be deemed to have waived any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code and any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code § 1542, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

“Released Claims” means any and all actions, claims, demands, rights, suits, damages, costs, expenses, penalties, attorneys’ fees and causes of action of whatever kind or nature, known or unknown, suspected or unsuspected, in law or equity, that arose during the Settlement Class Period and arise, in any manner whatsoever, out of any facts alleged by Plaintiffs in the Litigation. The Released Claims include, without limiting the foregoing definition, all claims asserting any of the Products or Products’ ingredients are not “natural,” all claims challenging the truth or accuracy of the statement “All Natural Dairy Free Beverage*” in conjunction with the statement “*Added Vitamins & Minerals.” The Parties acknowledge and agree that personal injury claims are not part of any of the facts alleged by Plaintiffs in the Litigation and personal injury claims are not included within the Released Claims.

“Released Persons” means and includes Defendant, its owners, subsidiaries, affiliates, joint-ventures, partners, members, divisions, distributors, wholesalers, retailers, re-sellers, licensors, suppliers, officers, directors, employees, shareholders, agents, attorneys, administrators, successors, predecessors, insurers, spokespersons, public relations firms, advertising agencies, co-packers, packagers and assigns of all such persons or entities.

“Settlement Class Period” means the period from November 5, 2009, up to and including [the date of entry of the Preliminary Approval Order].

12. When and where will the Court hold a hearing on the fairness of the Settlement?

A Settlement Hearing will be held before the Hon. James V. Selna on _____, 2014 at 9:00 a.m. at the Ronald Reagan Federal Building and U.S. Courthouse, located at 411 West Fourth Street, Courtroom 827-A, Santa Ana, CA 92701-4516. At the Settlement Hearing, the Court will decide whether the proposed Settlement is fair, reasonable, and adequate and should be approved and, if so, whether to approve the Attorneys’ Fees and Costs and Incentive Awards. The time, date and location of this Settlement Hearing may be changed by the Court without further notice to you. If you plan to attend the hearing, you should confirm its time, date and location. Any updates or changes on the time, date or location of this hearing will be posted on the Settlement Website, www.flaxmilksettlement.com.

13. Do I have to come to the Settlement Hearing?

No. Class Counsel and Defendant’s Counsel will respond to any questions the Court may have. However, you or your own counsel may attend the Settlement Hearing at your own expense. The Court, however, has the right to require you or your counsel to attend the Settlement Hearing. If the Court requires you or your counsel’s attendance at the Settlement Hearing, then you and/or your attorney will be notified by the Court or by Class Counsel.

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the Settlement Hearing concerning the proposed Settlement or the application of Class Counsel for Attorneys’ Fees and Costs or an Incentive Award by following the instructions in Question No. 10(c) or (d) above.

14. How can I get additional information?

For additional information, you may visit the Settlement Website. You may also call or write (1) the Claims Administrator at **Flax Milk Litigation Settlement, c/o Gilardi & Co. LLC, P.O. Box 808003, Petaluma, CA 94975-8003, telephone 1-877-280-8361**, or (2) Class Counsel at the address and telephone number indicated in response to Question No. 7 above. The Claims Administrator is not an affiliate of any party to the Litigation.

EXHIBIT B, PAGE 32

EXHIBIT C



TopClassActions.com

Top Class Actions LLC
15414 S. 24th St.
Phoenix, AZ 85048

Office: 855-475-2468
Direct: 480-353-7534
Fax: 480-323-2021

<http://www.TopClassActions.com>

Online Advertising Proposal

Date Range Run: TBA
Client: Chant Yedalian
Proposed Settlement: TBA
Online Claim Available? TBA

TOTAL AD VIEW ESTIMATE OVER 180 DAYS: 12,000,000

ADVERTISING METHODS

- Summary Notice posted on Top Class Actions in the "Open Class Action Lawsuits" section & Settlement Featured in the "Settlements" carousel on the front page of Top Class Actions for the entire 180 day period. Includes full editorial control of the ad along with when and for how long the summary notice is posted on Top Class Actions.
 - 2,000,000 Monthly page views, with your ad listed on the front page, as the lead settlement for every viewer to see as they arrive at Top Class Actions.
 - Settlement listed on Top Class Actions social media outlets including Facebook, Twitter and Google+. Top Class Actions has more than 100,000 fans, followers and subscribers and our social media presence continues to grow.
 - Inclusion as a featured settlement in at least one Top Class Actions email newsletter which goes out to 118,000 subscribers (and is growing by 3,000+ new subscribers per month.) In addition the settlement will be featured in the "Closing Soon" section of the newsletter until the claim window closes.
 - Infographic created with the high level details of the settlement, distributed to major media outlets via a press release and also published on TopClassActions.com.

TOTAL AD ESTIMATE \$5,000

EXHIBIT D

June 30, 2014

Karen Walter, Esq.
 Rutan & Tucker, LLP
 Matter: Consumer Settlement Administration Cost Estimate



ADMINISTRATION ESTIMATE SUMMARY
FULL ADMINISTRATION WITH CLAIMS PROCESSING AND DISTRIBUTION SERVICES

CLASS SIZE:

Total Estimated Class Size 685,000

Filing Percentage and Number of Claims Filed

<u>SERVICES</u>	<u>1,000</u>	<u>2,500</u>	<u>5,000</u>	<u>10,000</u>
Notification Procedures	\$ 8,150	\$ 8,150	\$ 8,150	\$ 8,150
Processing/Reporting	2,918	3,917	5,204	7,754
Distribution	7,121	9,198	12,065	16,440
Total Estimated Administration Costs	\$ 18,189	\$ 21,264	\$ 25,419	\$ 32,344
Optional Services	\$ 4,533	\$ 4,533	\$ 4,533	\$ 4,533
Live Telephone Support				
Total Administration with Optional Services:	\$ 22,722	\$ 25,797	\$ 29,952	\$ 36,877

June 30, 2014

Karen Walter, Esq.
 Rutan & Tucker, LLP
 Matter: Consumer Settlement Administration Cost Estimate
 Page 2 of 5 of Cost Estimate Spreadsheet



NOTIFICATION PROCEDURES

<u>NOTIFICATION PROCEDURES</u>	<u>Unit Rate</u>	<u>Volume</u>	<u>Cost</u>	<u>Total</u>
Case Setup				
Case Setup	\$ 90.00	5 hrs	\$ 450	
Subtotal Case Setup				\$ 450
Email Correspondence				
Staff time responding to Class Member inquiries	\$ 90.00	30 hrs	\$ 2,700	
Subtotal Email Services				2,700
Website Development				
Interactive case-dedicated website with online claims filing capability			\$ 5,000	5,000
Subtotal Notification Procedures				\$ 8,150

Karen Walter, Esq.
 Rutan & Tucker, LLP
 Matter: Consumer Settlement Administration Cost Estimate
 Page 3 of 5 of Cost Estimate Spreadsheet



CLAIMS PROCESSING AND DISTRIBUTION

PROCESSING/REPORTING	Unit Rate	Projected Claims Filed							
		1,000		2,500		5,000		10,000	
		Volume	Cost	Volume	Cost	Volume	Cost	Volume	Cost
<i>Gilardi's Claims Processing Costs Include Claim Receipt, Evaluation, and Validation</i>									
Cost per Claim for up to 10 Claims Filed via Fax or Mail	\$3.50								
Cost per Claim for 11 to 25 Claims Filed via Fax or Mail	\$2.25								
Cost per Claim for 26 to 50 Claims Filed via Fax or Mail	\$2.00								
Cost per Claim for 51 Claims or more Filed via Fax or Mail	\$1.50								
Cost per Claim for up to 990 Claims Filed via Website	\$0.75								
Cost per Claim for 991 to 2,475 Claims Filed via Website	\$0.65								
Cost per Claim for 2,476 to 4,950 Claims Filed via Website	\$0.50								
Cost per Claim for 4,951 Claims or more Filed via Website	\$0.50								
Estimated Number of Claim Forms filed thru Website	99%	990	\$ 743	2,475	\$ 1,708	4,950	\$ 2,945	9,900	\$ 5,420
Estimated Number of Claim Forms filed by Fax or Postal Mail	1%	10	35	25	69	50	119	100	194
Request For Exclusion Processing									
Estimated Number of Opt-outs		25		25		25		25	
Minutes per Opt-out	1								
Staff Hours Handling Requests for Exclusion (1 hr minimum)	\$ 70.00	1 hr	70	1 hr	70	1 hr	70	1 hr	70
Reporting/Declaration									
Staff hours for general claimant correspondence	\$ 90.00	5 hrs	450	5 hrs	450	5 hrs	450	5 hrs	450
Declaration of Notice Procedures	\$ 90.00	8 hrs	720	8 hrs	720	8 hrs	720	8 hrs	720
Reporting - Assumes 1x per week	\$ 90.00	10 hrs	900	10 hrs	900	10 hrs	900	10 hrs	900
Subtotal Processing/Reporting			\$ 2,918		\$ 3,917		\$ 5,204		\$ 7,754

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Karen Walter, Esq.
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 Page 4 of 5 of Cost Estimate Spreadsheet



CLAIMS PROCESSING AND DISTRIBUTION (cont.)

<u>DISTRIBUTION</u>	<u>Unit Rate</u>	<u>1,000</u>	<u>0%</u>	<u>2,500</u>	<u>0%</u>	<u>5,000</u>	<u>0%</u>	<u>10,000</u>	<u>0%</u>
Settlement Fund Management (Incl. obtaining Tax ID)	\$ 90.00	5 hrs	\$ 450	5 hrs	\$ 450	5 hrs	\$ 450	5 hrs	\$ 450
Distribution Calculations	\$ 90.00	8 hrs	720	10 hrs	900	12 hrs	1,080	15 hrs	1,350
Distribution Preparation	\$ 90.00	8 hrs	720	10 hrs	900	12 hrs	1,080	15 hrs	1,350
Check Print Rate		\$ 1.00		\$ 0.75		\$ 0.65		\$ 0.50	
Issue Checks		1,000	1,000	2,500	1,875	5,000	3,250	10,000	5,000
Domestic First Class Postage	\$ 0.381	1,000	381	2,500	953	5,000	1,905	10,000	3,810
Settlement Fund Tax Reporting	\$ 2,500.00	1 yr	2,500	1 yr	2,500	1 yr	2,500	1 yr	2,500
Staff Hours Handling Check Re-issues	\$ 90.00	5 hrs	450	8 hrs	720	10 hrs	900	12 hrs	1,080
Final Accounting Services	\$ 90.00	10 hrs	900	10 hrs	900	10 hrs	900	10 hrs	900
Subtotal Distribution			\$ 7,121		\$ 9,198		\$ 12,065		\$ 16,440

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June 30, 2014

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OPTIONAL SERVICES

	<u>Unit Rate</u>	<u>Volume</u>	<u>Cost</u>	<u>Total</u>
Live Telephone Support				
Phone Script and FAQ development	\$ 90.00	5 hrs	\$ 450	
Estimated % and # of Class Member Calls		1,000		
Average minutes per call		4 min		
Staff Hours Providing Phone Support	\$ 50.00	67 hrs	3,333	
Estimated % and # of Callers Requesting Claim Form 50%		500		
Claim Form Request Fulfillment	\$ 1.50	500	750	
Subtotal Telephone Support				<u>\$ 4,533</u>