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12 Attorneys for Defendant
13 BUMBLE BEE FOODS, LLC

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

17 TRICIA OGDEN, individually and on behalf
18 of all others similarly situated,

19 Plaintiffs,

20 v.

21 BUMBLE BEE FOODS, LLC,

22 Defendant.

Case No. 5:12-CV-01828-LHK

**DEFENDANT BUMBLE BEE FOODS,
LLC'S ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED**

1 Pursuant to Civil Local Rule 3-12, Bumble Bee Foods, LLC (“Bumble Bee”) brings this
2 administrative motion for the Court to consider whether the above-captioned case (the “Ogden
3 Action”) is related to *Garrett v. Bumble Bee Foods, LLC*, No. 5:14-cv-02546-EJD (the “Garrett
4 Action”). The Garrett Action was removed to this Court on June 3, 2014, and was assigned to
5 Judge Edward J. Davila. For the following reasons, the Garrett and Ogden Actions should be
6 deemed related.¹

7 I. INTRODUCTION

8 Represented by the same counsel as Plaintiffs’ here, Tricia Ogden (a member of the
9 putative class) filed the above-captioned case as a putative class action against Bumble Bee in this
10 Court on April 12, 2012 challenging Bumble Bee products based on similar facts and the same
11 legal theories as in the Garrett Action. In the Ogden Action, Ogden asserted claims for violations
12 of California Business and Professions Code § 17200 *et seq.* (“UCL”); California Business and
13 Professions Code § 17500 *et seq.* (“FAL”); the Consumer Legal Remedies Act, California Civil
14 Code § 1750 *et seq.* (“CLRA”); Song-Beverly Act, California Civil Code § 1790 *et seq.*; and
15 Magnuson-Moss Act, 15 U.S.C. § 2301 *et seq.*; and restitution based on unjust enrichment/quasi-
16 contract. Ogden First Amended Complaint (“Ogden FAC”) (Dkt. No. 14). The Ogden Action
17 was filed on behalf of Ogden and a putative nationwide class consisting of those persons who
18 purchased Bumble Bee’s food products labeled or advertised as “Rich in Natural Omega-3” or
19 “Excellent Source Omega-3,” labeled or advertised with a nutrient content claim for a nutrient
20 lacking a Daily Value or lacking the minimum Daily Value specified for the type of claim made,
21 labeled or advertised with a nutrient or health claim despite containing a disqualifying nutrient
22 level precluding the claim, or labeled or advertised with an unauthorized health or drug claim. *Id.*
23 ¶ 133.

24 On January 2, 2014, Judge Koh granted Bumble Bee’s motion for summary judgment in
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27 ¹ A courtesy copy of this Motion will be provided to Judge Davila in the Garrett Action.
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1 part, finding, among other things, that Bumble Bee was entitled to summary judgment on Ogden's
2 (a) UCL, FAL and CLRA claims based on Bumble Bee's use of an American Heart Association
3 heart symbol on product labels, (b) UCL, FAL and CLRA restitution claims, (c) breach of
4 warranty claims, and (d) unjust enrichment claims. As a result, injunctive relief was the only
5 remaining remedy available to Ogden. Ogden then withdrew her pending motion for class
6 certification and subsequently dismissed the Ogden Action with prejudice.

7 Plaintiffs' counsel was not abandoning their claims against Bumble Bee, however.
8 Plaintiffs' counsel refiled Ogden's putative class action claims in California state court as the
9 Garrett Action. Just like in the Ogden Action, the Garrett Action asserts claims against Bumble
10 Bee for violations of the UCL, FAL and CLRA; breach of implied warranty; and unjust
11 enrichment arising out of Bumble Bee's alleged mislabeling of certain products. Garrett
12 Complaint (Dkt. No. 1). The Garrett Action is filed on behalf of Plaintiffs and a putative class
13 consisting of those persons in the State of California who purchased Bumble Bee's food products
14 labeled or advertised as "Excellent Source Omega-3" and/or bearing an AHA seal without
15 disclosing it as a paid endorsement at any time since April 12, 2008. *Id.* ¶ 87.

16 Bumble Bee now seeks to have the Garrett Action related to the Ogden Action pursuant to
17 Civil Local Rule 3-12.

18 **II. LEGAL STANDARD**

19 Local Rule 3-12(a) provides that: "An action is related to another when: (1) The actions
20 concern substantially the same parties, property, transaction or event; and (2) It appears likely that
21 there will be an unduly burdensome duplication of labor and expense or conflicting results if the
22 cases are conducted before different Judges." In addition, "[w]henever a party knows or learns
23 that an action, filed in or removed to this district is related to an action which is or was pending in
24 this District as defined in Civil L.R. 3-12(a), the party must promptly file in the earliest-filed case
25 an Administrative Motion to Consider Whether Cases Should be Related, pursuant to Civil L.R. 7-
26 11."

1 **III. THE GARRETT ACTION AND OGDEN ACTION SHOULD BE RELATED**
2 **BEFORE JUDGE KOH**

3 The Garrett Action is based on the same facts as the Ogden Action. The cases involve the
4 same defendant, many of the same Bumble Bee products, the same plaintiffs' counsel,
5 substantially similar claims and overlapping putative classes – in fact, the putative class in the
6 Garrett Action includes Tricia Ogden. Recognizing that the two cases are similar, Plaintiffs allege
7 that the applicable statutes of limitation were tolled during the pendency of the Ogden Action.
8 Garrett Complaint, n. 1.

9 If the Garrett Action is not conducted before Judge Koh, there will likely be substantial
10 duplication of labor and expense, and the possibility of conflicting results with the Ogden Action.
11 Judge Koh has significant knowledge of the claims against Bumble Bee and Bumble Bee's
12 products, has already ruled on a summary judgment motion by Bumble Bee and has considered
13 the parties' class certification briefs. If the cases are not related, and Judge Koh does not preside
14 over the Garrett Action, that knowledge may be lost and another judge may enter conflicting
15 rulings. In the interests of economy and fairness, the Garrett Action should be before the same
16 judge (Judge Koh) that handled the Ogden Action.

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1 **IV. CONCLUSION**

2 Because the Garrett Action and the Ogden Action involve substantially the same parties
3 and claims, the cases should be deemed related and the Garrett Action assigned to Judge Koh in
4 order to conserve resources, avoid conflicting results, and promote an efficient determination of
5 the dispute.

6 Dated: June 23, 2014

Respectfully submitted,

7
8 By: /s/ Robert B. Bader

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14 *Attorneys for Defendant*

BUMBLE BEE FOODS, LLC

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Proof of Service

I further certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 23, 2014.

By: /s/ Robert B. Bader
Robert B. Bader

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 22 Defendant.

Case No. 5:12-CV-01828-LHK

**DECLARATION OF ROBERT B. BADER
 IN SUPPORT OF DEFENDANT BUMBLE
 BEE FOODS, LLC'S ADMINISTRATIVE
 MOTION TO CONSIDER WHETHER
 CASES SHOULD BE RELATED**

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I, Robert B. Bader, declare and state as follows:

1. I am an attorney in the law firm of Goodwin Procter LLP, counsel of record for Defendant Bumble Bee Foods, LLC (“Bumble Bee”) in the above-entitled case (the “Ogden Action”) and in *Garrett v. Bumble Bee Foods, LLC*, No. 5:14-cv-02546-EJD (the “Garrett Action”). I am duly admitted to practice before all courts of the State of California. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would competently testify to the matters set forth herein. I submit this declaration in support of Bumble Bee’s Administrative Motion to Consider Whether Cases Should be Related.

2. On June 17, 2014, I emailed Pierce Gore, counsel of record in the Ogden and Garrett Actions to determine if plaintiffs would stipulate that the two cases are related.

3. On June 20, 2014, Mr. Gore responded by email that plaintiffs would not stipulate to relate the two cases.

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

Executed on June 23, 2014, at San Francisco, California.

/s/ Robert B. Bader
Robert B. Bader

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By: /s/ Robert B. Bader
Robert B. Bader

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**[PROPOSED] ORDER GRANTING
DEFENDANT BUMBLE BEE FOODS,
LLC'S ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED**

1 Upon consideration of the Administrative Motion to Consider Whether Cases Should be
2 Related filed by Bumble Bee Foods, LLC (“Bumble Bee”), and all arguments and papers filed in
3 support of and against the Motion, it is hereby **ORDERED** that Bumble Bee’s Motion is
4 **GRANTED**. *Ogden v. Bumble Bee Foods, LLC*, No. 5:12-CV-01828-LHK is hereby related to
5 *Garrett v. Bumble Bee Foods, LLC*, No. 5:14-cv-02546-EJD (the “Garrett Action”). The Clerk is
6 directed to reassign the Garrett Action to Judge Koh.

7
8 **IT IS SO ORDERED.**

9 DATE: _____

10 Hon. Lucy H. Koh
11 United States District Judge