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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

<p>11</p> <p>12 LEVON TCHAYELIAN, on behalf of himself and all others similarly 13 situated,</p> <p style="text-align: center;">14 Plaintiff,</p> <p>15 v.</p> <p>16 BLUE DIAMOND GROWERS, and DOES 1 through 10, inclusive,</p> <p style="text-align: center;">17 Defendants.</p> <hr/> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p>) Case No.:</p> <p>)</p> <p>) COMPLAINT</p> <p>) DEMAND FOR JURY TRIAL</p> <p>) CLASS ACTION</p> <p>) [Violations of California's Unfair Competition Law, California Business & Professions Code § 17200 <i>et seq.</i>, California's False Advertising Law, California Business & Professions Code § 17500 <i>et seq.</i>, and California's Consumers Legal Remedies Act, California Civil Code § 1750 <i>et seq.</i>]</p>
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24 Plaintiff, by his counsel of record, brings this action on his own behalf and on
25 behalf of all others similarly situated, and alleges the following upon personal
26 knowledge, or where there is not personal knowledge, upon information and belief:

1 **INTRODUCTION**

2 1. Food and beverage manufacturers have sought to capitalize on the fast-
3 growing market for natural products, which is now a multi-billion dollar industry.

4 2. Unfortunately, not all manufacturers truthfully represent their products.

5 3. Instead, some manufactures seek to capture a share of the market by
6 touting their products as "All Natural" when in fact that is not true.

7 4. Defendant BLUE DIAMOND GROWERS ("Blue Diamond") is an
8 example of a manufacturer who has sought to exploit the market for natural products
9 by representing that its products are "All Natural."

10 5. Blue Diamond manufactures several food products, including a line of
11 "Almond Breeze Almondmilk" products which include the Almond Breeze
12 Almondmilk Vanilla (refrigerated), Almond Breeze Almondmilk Coconutmilk
13 Blend Almond Coconut Unsweetened (refrigerated), and Almond Breeze
14 Almondmilk Original Unsweetened (shelf stable) products. Blue Diamond
15 prominently and repeatedly labels these products as "All Natural" when in fact they
16 contain artificial ingredients. Moreover, Blue Diamond claims that some of its
17 products contain "Evaporated Cane Juice" when in fact its products do not contain
18 any such juice and instead contain sugars or syrups.

19 6. This lawsuit seeks redress on behalf of a nationwide class of consumers
20 who purchased Blue Diamond Products which claimed to be "All Natural" and/or
21 claimed to contain "Evaporated Cane Juice."

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23 **JURISDICTION**

24 7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
25 1332(d)(2), because the proposed class has more than 100 class members, the
26 proposed class contains at least one class member who is a citizen of a State
27 different from any defendant, and the matter in controversy exceeds the sum of
28 \$5,000,000.

1 8. Blue Diamond is a producer of food products and is the world's largest
2 almond processing and marketing company. Its products include Nut Chips,
3 flavored almonds, Nut Thins, cooking and baking almonds, and Almond Breeze
4 Almondmilk.

5 9. Blue Diamond saw an emerging market for natural foods in the late
6 nineteen-nineties and introduced two products in the market – Nut Thins and
7 Almond Breeze. Blue Diamond has seen a nearly six-hundred percent growth in
8 sales for all of its branded products sold in the United States from 1999 to 2009.

9 10. Blue Diamond's food products, including its Almond Breeze
10 Almondmilk products, are sold to consumers through third parties in California and
11 throughout the United States.

12 11. Blue Diamond had \$1.2 billion in sales for fiscal year 2013.

13 12. Blue Diamond had over \$1 billion in net sales and revenues
14 (specifically \$ 1,006,363,000) during its fiscal year 2012.

15 13. Blue Diamond's net sales and revenues for fiscal year 2011 were over
16 \$825 million (specifically \$825,161,000).

17 14. Blue Diamond's net sales and revenues for fiscal year 2010 were over
18 \$775 million (specifically \$ 775,330,000).

19 15. Thus, for its fiscal years 2013, 2012, 2011 and 2010 Blue Diamond had
20 combined net sales and revenues of over \$3.8 billion.

21 16. By 2010, annual nationwide sales of Almond Breeze Almondmilk for
22 the entire United States exceeded \$57 million.

23 17. Nationwide sales of Almond Breeze Almondmilk increased by double
24 digit growth rates during each and every one of Blue Diamond's fiscal years since
25 2010.

26 18. Almond Breeze Almondmilk is sold both refrigerated (also known as
27 "chilled") and as shelf stable (also known as "aseptic").
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1 19. Blue Diamond's fiscal year 2011 sales of refrigerated (chilled) Almond
2 Breeze Almondmilk increased by 91% from the year earlier. Fiscal year 2011 also
3 saw the shelf stable (aseptic) Almond Breeze Almondmilk increase 22% from the
4 year earlier.

5 20. Blue Diamond's fiscal year 2012 sales of refrigerated (chilled) Almond
6 Breeze Almondmilk increased by 59% from the year earlier. Fiscal year 2012 also
7 saw the shelf stable (aseptic) Almond Breeze Almondmilk increase 21% from the
8 year earlier.

9 21. Blue Diamond's fiscal year 2013 sales of refrigerated (chilled) Almond
10 Breeze Almondmilk increased by 74% from the year earlier. Fiscal year 2013 also
11 saw the shelf stable (aseptic) Almond Breeze Almondmilk increase 40% from the
12 year earlier.

13 22. Thus, during the Class period, total nationwide sales of Almond Breeze
14 Almondmilk in the United States were in excess of \$5,000,000.

15 23. During every year since 2010, Almond Breeze Almondmilk has been
16 offered for sale and sold in more than 90% of grocery stores in the United States.

17 24. According to Blue Diamond, "Blue Diamond Almond Breeze ranked as
18 America's #1 preferred non-dairy milk!"

19 25. This Court has personal jurisdiction over all Defendants because all
20 Defendants are citizens of California, reside within this judicial district, conduct
21 business in California, intentionally avail themselves of the markets and benefits of
22 California through their marketing and sales of the products at issue in California so
23 as to render the exercise of jurisdiction by this Court consistent with traditional
24 notions of fair play and substantial justice, and a substantial part of the transactions,
25 acts and omissions giving rise to the claims occurred within California and this
26 judicial district.

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VENUE

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2 26. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) and
3 (c) in that Defendants reside in this judicial district, Defendants have done and
4 continue to do business in this judicial district, Defendants have intentionally
5 availed themselves of the markets within this judicial district through the promotion,
6 marketing, sale and distribution of their products within this judicial district, and this
7 is a class action case in which a substantial part of the transactions, acts and
8 omissions giving rise to the Class' claims occurred within this judicial district.

INTRADISTRICT ASSIGNMENT

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11 27. Pursuant to Civil L.R. 3-2(c), this action should be assigned to the San
12 Jose Division of this Court because one or more counties identified in Civil L.R. 3-
13 2(e) for the San Jose Division are each a county in which a substantial part of the
14 events or omissions which give rise to the Class' claims occurred.

15 28. There is also another action, which has overlapping class allegations,
16 entitled *Chris Werdebaugh v. Blue Diamond Growers*, Case No. 5:12-cv-02724-
17 LHK, which has been assigned to the San Jose Division and is pending before the
18 Honorable Lucy H. Koh.

PARTIES

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21 29. Plaintiff, LEVON TCHAYELIAN, is and at all times relevant hereto
22 was a resident and citizen of the State of California.

23 30. Defendant BLUE DIAMOND GROWERS is a corporation organized
24 and existing under the laws of the State of California. Blue Diamond manufactures,
25 markets, and sells its products throughout California and the United States. Blue
26 Diamond is a leading producer of retail food products, including the products at
27 issue herein. Blue Diamond sells its food products to consumers through grocery
28 and other retail stores in California and throughout the United States.

1 31. At all times mentioned in this Complaint, Defendants and each of them
2 were the agents, employees, joint venturer, and or partners of each other and were
3 acting within the course and scope of such agency, employment, joint venturer and
4 or partnership relationship and or each of the Defendants ratified and or authorized
5 the conduct of each of the other Defendants.

6 32. Plaintiff does not know the true names and capacities of defendants
7 sued herein as DOES 1 through 10, inclusive, and therefore sues these defendants by
8 such fictitious names. Plaintiff is informed and believe that each of the DOE
9 defendants was in some manner legally responsible for the wrongful and unlawful
10 conduct and harm alleged herein. Plaintiff will amend this Complaint to set forth
11 the true names and capacities of these defendants when they have been ascertained,
12 along with appropriate charging allegations.

13 33. Defendant BLUE DIAMOND GROWERS and DOES 1 through 10 are
14 collectively referred to as Defendants.

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16 **FACTUAL ALLEGATIONS CONCERNING**
17 **BLUE DIAMOND PRODUCTS**

18 34. Within the last four years, Plaintiff Levon Tchayelian purchased some
19 of Defendants' Blue Diamond Products¹, including the Almond Breeze Almondmilk
20 Vanilla (refrigerated), Almond Breeze Almondmilk Coconutmilk Blend Almond
21 Coconut Unsweetened (refrigerated) and Almond Breeze Almondmilk Original
22 Unsweetened (shelf stable) products.

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27 ¹ The phrase "Blue Diamond Products" as used in this Complaint includes the
28 Almond Breeze Almondmilk Vanilla (refrigerated), Almond Breeze Almondmilk
Coconutmilk Blend Almond Coconut Unsweetened (refrigerated) and Almond
Breeze Almondmilk Original Unsweetened (shelf stable) products and the
Substantially Similar Products described in paragraphs 71 through 73, below.

1 35. The Almond Breeze Almondmilk Vanilla (refrigerated) product
2 purchased by Plaintiff Levon Tchayelian has the following labels:
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1 36. The label of the Almond Breeze Almondmilk Vanilla (refrigerated)
2 product includes the following representations on the product's package:

3 **"ALL NATURAL"** (front of package)

4 **"ALL NATURAL"** (back of package)

5 **"All Natural with added Vitamins & Minerals."**

6 **"Almond Breeze® Almondmilk is an all natural, great tasting, non-dairy**
7 **beverage."**

8 37. The ingredients on the side label of the Almond Breeze Almondmilk
9 Vanilla (refrigerated) product's package states as follows:

10 **"INGREDIENTS: ALMONDMILK (FILTERED WATER,**
11 **ALMONDS), EVAPORATED CANE JUICE, CALCIUM**
12 **CARBONATE, NATURAL VANILLA FLAVOR WITH OTHER**
13 **NATURAL FLAVORS, SEA SALT, POTASSIUM CITRATE,**
14 **CARRAGEENAN, SUNFLOWER LECITHIN, VITAMIN A**
15 **PALMITATE, VITAMIN D2, D-ALPHA-TOCOPHEROL**
16 **(NATURAL VITAMIN E)."**

17 38. Defendants unlawfully misbranded and falsely, misleadingly and
18 deceptively represented the Almond Breeze Almondmilk Vanilla (refrigerated)
19 product as "All Natural" despite that it contains non-natural ingredients, including
20 the following artificial or synthetic ingredients: Potassium Citrate, Vitamin A
21 Palmitate, Vitamin D2 and D-Alpha-Tocopherol.²

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28 ² Plaintiff reserves the right to amend these allegations if additional investigation or discovery reveals other non-natural ingredients.

1 39. The Almond Breeze Almondmilk Coconutmilk Blend Almond Coconut
2 Unsweetened (refrigerated) product purchased by Plaintiff Levon Tchayelian has the
3 following labels:
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1 40. The label of the Almond Breeze Almondmilk Coconutmilk Blend
2 Almond Coconut Unsweetened (refrigerated) product includes the following
3 representations on the product's package:

4 **"ALL NATURAL"** (front of package)

5 **"ALL NATURAL"** (back of package)

6 **"All Natural with Added Vitamins & Minerals."**

7 41. The ingredients on the side label of the Almond Breeze Almondmilk
8 Coconutmilk Blend Almond Coconut Unsweetened (refrigerated) product's package
9 states as follows:

10 **"INGREDIENTS:** ALMONDMILK (FILTERED WATER,
11 ALMONDS), COCONUTMILK (FILTERED WATER, COCONUT
12 CREAM [COCONUT EXTRACT, WATER, XANTHAN GUM,
13 CARRAGEENAN, GUAR GUM]), CALCIUM CARBONATE,
14 NATURAL FLAVORS, POTASSIUM CITRATE, SEA SALT,
15 CARRAGEENAN, SUNFLOWER LECITHIN, VITAMIN A
16 PALMITATE, VITAMIN D2, D-ALPHA-TOCOPHEROL
17 (NATURAL VITAMIN E)."

18 42. Defendants unlawfully misbranded and falsely, misleadingly and
19 deceptively represented the Almond Breeze Almondmilk Coconutmilk Blend
20 Almond Coconut Unsweetened (refrigerated) product as "All Natural" despite that it
21 contains non-natural ingredients, including the following artificial or synthetic
22 ingredients: Xanthan Gum, Potassium Citrate, Vitamin A Palmitate, Vitamin D2 and
23 D-Alpha-Tocopherol.³

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28 ³ Plaintiff reserves the right to amend these allegations if additional investigation or discovery reveals other non-natural ingredients.

1 43. The Almond Breeze Almondmilk Original Unsweetened (shelf stable)
2 product purchased by Plaintiff Levon Tchayelian has the following labels:
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1 44. The label of the Almond Breeze Almondmilk Original Unsweetened
2 (shelf stable) product includes the following representations on the product's
3 package:

4 **"ALL NATURAL"** (front of package)

5 **"ALL NATURAL"** (back of package)

6 **"All Natural with Added Vitamins & Minerals."**

7 **"Almond Breeze® Almondmilk is an all natural, great tasting, NON-**
8 **DAIRY BEVERAGE."**

9 45. The ingredients on the side label of the Almond Breeze Almondmilk
10 Original Unsweetened (shelf stable) product's package states as follows:

11 **"INGREDIENTS:** ALMONDMILK (FILTERED WATER,
12 ALMONDS), CALCIUM CARBONATE, TAPIOCA STARCH,
13 SEA SALT, POTASSIUM CITRATE, CARRAGEENAN,
14 SUNFLOWER LECITHIN, NATURAL FLAVOR, VITAMIN A
15 PALMITATE, VITAMIN D2 AND D-ALPHA-TOCOPHEROL
(NATURAL VITAMIN E)."

16 46. Defendants unlawfully misbranded and falsely, misleadingly and
17 deceptively represented the Almond Breeze Almondmilk Original Unsweetened
18 (shelf stable) product as "All Natural" despite that it contains non-natural
19 ingredients, including the following artificial or synthetic ingredients: Potassium
20 Citrate, Vitamin A Palmitate, Vitamin D2 and D-Alpha-Tocopherol.⁴

21 47. The size and placement of ingredients, which appear in smaller print
22 and on the side of each of the Blue Diamond Products' packaging, are in stark
23 contrast to the conspicuous "All Natural" representations, which appear in larger
24 print and in more prominent locations on the packaging.

25 48. Reasonable consumers, including Plaintiff, do not have the specialized
26 knowledge necessary to identify ingredients in Blue Diamond Products as being
27 inconsistent with the "All Natural" and "Juice" claims.

28 ⁴ Plaintiff reserves the right to amend these allegations if additional investigation or discovery reveals other non-natural ingredients.

1 49. A claim that a product is "all natural" is material to a reasonable
2 consumer.

3 50. A reasonable consumer would expect that a product labeled as "All
4 Natural" does not contain any artificial, synthetic or extensively processed
5 ingredients.

6 51. This expectation of a reasonable consumer is consistent with the
7 common use of the word "natural" as well as with the views of the federal
8 government and its agencies.

9 52. The Food and Drug Administration ("FDA") has repeatedly stated its
10 policy to restrict the use of the term "natural" in connection with added color,
11 synthetic substances and flavors addressed in 21 C.F.R. § 101.22.

12 53. 21 C.F.R. § 101.22 distinguishes between artificial versus natural
13 foods, spices, flavorings, colorings, and preservatives on food labels. Any coloring
14 or preservative can preclude the use of the term "natural" even if the coloring or
15 preservative is derived from natural sources.

16 54. The Food and Drug Administration ("FDA") has repeatedly affirmed its
17 policy through guidelines that define the appropriate boundaries for using the term
18 "natural." According to the FDA:

19 "The agency will maintain its current policy ... not to restrict the use
20 of the term 'natural' except for added color, synthetic substances, and
21 flavors as provided in § 101.22. Additionally, the agency will
22 maintain its policy ... regarding the use of 'natural' as meaning that
23 nothing artificial or synthetic (including all color additives regardless
24 of source) has been included in, or has been added to, a food that
25 would not normally be expected to be in the food. Further ... the
26 agency will continue to distinguish between natural and artificial
27 flavors as outlined in § 101.22." 58 Federal Register 2302, 2407 (Jan.
28 6, 1993).

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1 55. The FDA Compliance Policy Guide Sec. 587.100 further provides that:
2 "The use of the words 'food color added,' 'natural color,' or similar
3 words containing the term 'food' or 'natural' may be erroneously
4 interpreted to mean the color is a naturally occurring constituent in the
5 food. Since all added colors result in an artificially colored food, we
6 would object to the declaration of any added color as 'food' or
7 'natural.'"

8 56. Additionally, some of Defendants' Blue Diamond Products contain
9 ingredients from otherwise natural sources that have been extensively processed. As
10 an example, "Evaporated Cane Juice" is the end product of sugar cane being
11 extensively processed. Some manufacturers of so-called "Evaporated Cane Juice"
12 add synthetic substances such as Phosphoric Acid and/or Calcium Hydroxide to
13 extract cane syrup prior to evaporation. Phosphoric Acid and Calcium Hydroxide
14 are both synthetic ingredients.

15 57. Moreover, Defendants' Blue Diamond Products which claim to contain
16 "Evaporated Cane Juice" are misbranded, as well as false and misleading, because
17 they do not actually contain "Juice" but instead contain sugar or syrup derived from
18 sugar.

19 58. 21 C.F.R. § 120.1 defines "juice" as "the aqueous liquid expressed or
20 extracted from one or more fruits or vegetables...."

21 59. 21 C.F.R. § 168.130, requires that "the liquid food derived ... of the
22 juice of sugarcane ... or by solution in water of sugarcane concentrate made from
23 such juice" shall go by the name "cane sirup" or "sugar cane sirup." Alternatively,
24 the word "sirup" may be spelled "syrup." *Ibid.*

25 60. Federal regulations instruct that ingredients must be described by their
26 common or usual names, 21 C.F.R. § 101.4(a)(1), and not by a name that is
27 "confusingly similar to the name of any other food that is not reasonably
28 encompassed within the same name," 21 C.F.R. § 102.5(a), (d).

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1 61. The FDA has indicated that the use of the term "cane juice" is false and
2 misleading, since it is not actually "juice" but sugar or syrup derived from sugar.
3 See FDA Guidance for Industry: Ingredients Declared as Evaporated Cane Juice;
4 Draft Guidance, October 2009.

5 62. In its guidance to the food industry, the FDA explained, among other
6 things, as follows:

7 "[T]he term 'evaporated cane juice' has started to appear as an
8 ingredient on food labels, most commonly to declare the presence of
9 sweeteners derived from sugar cane syrup. However, FDA's current
10 policy is that sweeteners derived from sugar cane syrup should not be
11 declared as 'evaporated cane juice' because that term falsely suggests
12 that the sweeteners are juice [].

13 'Juice' is defined by 21 CFR 120.1(a) as 'the aqueous liquid
14 expressed or extracted from one or more fruits or vegetables, purees
15 of the edible portions of one or more fruits or vegetables, or any
16 concentrates of such liquid or puree....'

17 As provided in 21 CFR 101.4(a)(1), 'Ingredients required to be
18 declared on the label or labeling of a food ... shall be listed by
19 common or usual name....' The common or usual name for an
20 ingredient is the name established by common usage or by regulation
21 (21 CFR 102.5(d)). The common or usual name must accurately
22 describe the basic nature of the food or its characterizing properties or
23 ingredients, and may not be 'confusingly similar to the name of any
24 other food that is not reasonably encompassed within the same name'
25 (21 CFR 102.5(a)).

26 Sugar cane products exist in many different forms, ranging from
27 raw sugars and syrups to refined sugar and molasses. These products
28 are differentiated by their moisture, molasses, and sucrose content as
well as by crystal size and any special treatments (e.g., treatment with
sulfur). Sugar cane products with common or usual names defined by
regulation are sugar (21 CFR 101.4(b)(20)) and cane sirup
(alternatively spelled 'syrup') (21 CFR 168.130). Other sugar cane
products have common or usual names established by common usage
(e.g., molasses, raw sugar, brown sugar, turbinado sugar, muscovado
sugar, and demerara sugar)....

1 The intent of this draft guidance is to advise the regulated
2 industry of FDA's view that the term 'evaporated cane juice' is not the
3 common or usual name of any type of sweetener, including dried cane
4 syrup. Because cane syrup has a standard of identity defined by
5 regulation in 21 CFR 168.130, the common or usual name for the
solid or dried form of cane syrup is 'dried cane syrup.'

6 Sweeteners derived from sugar cane syrup should not be listed
7 in the ingredient declaration by names which suggest that the
8 ingredients are juice, such as 'evaporated cane juice.' FDA considers
9 such representations to be false and misleading under section
10 403(a)(1) of the Act (21 U.S.C. 343(a)(1)) because they fail to reveal
11 the basic nature of the food and its characterizing properties (i.e., that
the ingredients are sugars or syrups) as required by 21 CFR 102.5."
12 See FDA Guidance for Industry: Ingredients Declared as Evaporated
Cane Juice; Draft Guidance, October 2009.

13 63. Because Defendants' Blue Diamond Products, which claim to contain
14 "Evaporated Cane Juice" are false and misleading, and misbranded, they have no
15 value as a matter of law.

16 64. Defendants engaged in an extensive and long-term advertising
17 campaign labeling and otherwise marketing their Blue Diamond Products, including
18 the Almond Breeze Almondmilk Vanilla (refrigerated), Almond Breeze
19 Almondmilk Coconutmilk Blend Almond Coconut Unsweetened (refrigerated) and
20 Almond Breeze Almondmilk Original Unsweetened (shelf stable) products, as "All
21 Natural" when, in fact, they are not "All Natural."

22 65. Plaintiff Levon Tchayelian purchased certain Blue Diamond Products,
23 including the Almond Breeze Almondmilk Vanilla (refrigerated), Almond Breeze
24 Almondmilk Coconutmilk Blend Almond Coconut Unsweetened (refrigerated) and
25 Almond Breeze Almondmilk Original Unsweetened (shelf stable) products, in
26 reliance on Defendants' representations and omissions on the products' labels that
27 the products were "All Natural."

28 66. Plaintiff Levon Tchayelian reasonably and justifiably relied on the "All
Natural" representations on Blue Diamond Products, including the Almond Breeze

1 Almondmilk Vanilla (refrigerated), Almond Breeze Almondmilk Coconutmilk
2 Blend Almond Coconut Unsweetened (refrigerated) and Almond Breeze
3 Almondmilk Original Unsweetened (shelf stable) products, and based his decision
4 to purchase such products in substantial part on such representations.

5 67. Plaintiff Levon Tchayelian also reasonably assumed that the Blue
6 Diamond Products were not misbranded and were legal to offer for sale and to
7 purchase.

8 68. Plaintiff Levon Tchayelian was misled and deceived by Defendants'
9 misbranded products and label representations and would not have purchased the
10 Blue Diamond Products, including the Almond Breeze Almondmilk Vanilla
11 (refrigerated), Almond Breeze Almondmilk Coconutmilk Blend Almond Coconut
12 Unsweetened (refrigerated) and Almond Breeze Almondmilk Original Unsweetened
13 (shelf stable) products, in the absence of the foregoing "All Natural" representations
14 and omissions.

15 69. Plaintiff Levon Tchayelian relied on Defendants' misbranded labels and
16 false, misleading and deceptive labeling claims and omissions and suffered injury in
17 fact and a loss of money with each purchase of Defendants' Blue Diamond Products.

18 70. As a result of Defendants' misbranding and false, misleading and
19 deceptive labeling claims and omissions, consumers such as Plaintiff did not receive
20 the benefit of their bargain when they purchased Blue Diamond Products. They
21 each paid money for a product(s) that is misbranded (and therefore has no value as a
22 matter of law), and is not what it claims to be or what they bargained for. They also
23 paid a premium for the Blue Diamond Products and lost the opportunity to purchase
24 and consume other, truly all natural foods.

25 71. In addition to the Almond Breeze Almondmilk Vanilla (refrigerated),
26 Almond Breeze Almondmilk Coconutmilk Blend Almond Coconut Unsweetened
27 (refrigerated) and Almond Breeze Almondmilk Original Unsweetened (shelf stable)
28 products, Defendants also misbranded and misrepresented other substantially similar

1 Blue Diamond products ("Substantially Similar Products"). Each of the
 2 Substantially Similar Products makes the same label misrepresentations and violates
 3 the same California Sherman Food, Drug, And Cosmetic Law, California Health &
 4 Safety Code § 109875 *et seq.*, laws as the Almond Breeze Almondmilk Vanilla
 5 (refrigerated), Almond Breeze Almondmilk Coconutmilk Blend Almond Coconut
 6 Unsweetened (refrigerated) and Almond Breeze Almondmilk Original Unsweetened
 7 (shelf stable) products.

8 72. The Substantially Similar Products include the following Blue
 9 Diamond products labeled as "All Natural:"

- 10 • Almond Breeze Almondmilk Chocolate (refrigerated);
- 11 • Almond Breeze Almondmilk Original (refrigerated);
- 12 • Almond Breeze Almondmilk Original Unsweetened (refrigerated);
- 13 • Almond Breeze Almondmilk Vanilla Unsweetened (refrigerated);
- 14 • Almond Breeze Almondmilk Coconutmilk Blend Almond Coconut
 15 (refrigerated);
- 16 • Almond Breeze Almondmilk Chocolate (shelf stable);
- 17 • Almond Breeze Almondmilk Chocolate Unsweetened (shelf stable);
- 18 • Almond Breeze Almondmilk Original (shelf stable);
- 19 • Almond Breeze Almondmilk Vanilla (shelf stable);
- 20 • Almond Breeze Almondmilk Vanilla Unsweetened (shelf stable);
- 21 • Almond Breeze Almondmilk Coconutmilk Blend Almond Coconut
 22 (shelf stable);
- 23 • Almond Breeze Almondmilk Coconutmilk Blend Almond Coconut
 24 Unsweetened (shelf stable)
- 25 • Almond Breeze Almondmilk Coconutmilk Blend Vanilla Almond
 26 Coconut (shelf stable); and
- 27 • Almond Breeze Almondmilk Coconutmilk Blend Vanilla Almond
 28 Coconut Unsweetened (shelf stable).

1 73. The Substantially Similar Products include the following Blue
2 Diamond products labeled as containing "Evaporated Cane Juice:"

3 • Almond Breeze Almondmilk Chocolate (refrigerated);
4 • Almond Breeze Almondmilk Original (refrigerated);
5 • Almond Breeze Almondmilk Coconutmilk Blend Almond Coconut
6 (refrigerated);

7 • Almond Breeze Almondmilk Chocolate (shelf stable);

8 • Almond Breeze Almondmilk Original (shelf stable);

9 • Almond Breeze Almondmilk Vanilla (shelf stable);

10 • Almond Breeze Almondmilk Coconutmilk Blend Almond Coconut
11 (shelf stable); and

12 • Almond Breeze Almondmilk Coconutmilk Blend Vanilla Almond
13 Coconut (shelf stable).

14 74. Plaintiff reserves the right to add additional products to the lists of
15 Substantially Similar Products set forth in paragraphs 72 and 73, above, based upon
16 additional investigation or discovery.

17 75. Defendants know that consumers are willing to pay for all natural
18 products. Defendants advertise the Blue Diamond Products with the intention that
19 consumers rely on the affirmative misrepresentations of fact on their labeling that
20 the products are "All Natural." Further, Defendants' omissions of the material fact
21 that the products include ingredients that are not "All Natural," but instead contain
22 artificial, synthetic or extensively processed ingredients, are likely to deceive
23 reasonable consumers.

24 76. Defendants know that the Blue Diamond Products, including the
25 Almond Breeze Almondmilk Vanilla (refrigerated), Almond Breeze Almondmilk
26 Coconutmilk Blend Almond Coconut Unsweetened (refrigerated) and Almond
27 Breeze Almondmilk Original Unsweetened (shelf stable) products, are misbranded
28

1 and that their labeling claims and omissions are false, misleading, deceptive, and
2 likely to deceive reasonable consumers.

3 77. Yet, Defendants have engaged and continue to engage in their
4 misbranding and with their misrepresentations of fact and omissions of fact in
5 furtherance of their motive to sell and profit from the Blue Diamond Products on the
6 backs and at the expense of consumers and the consuming public.

7

8

CLASS ACTION ALLEGATIONS

9 78. Plaintiff brings this class action on behalf of himself and all other
10 persons similarly situated pursuant to Rules 23(a) and 23(b)(2) and 23(b)(3) of the
11 Federal Rules of Civil Procedure.

12 79. The class ("Class") which Plaintiff seeks to represent is defined as:

13 "All persons in the United States who, within four years from the
14 date of filing this action, purchased any of the Blue Diamond Products
15 which: (1) was labeled "All Natural" but contains artificial or synthetic
16 ingredients and/or (2) contains the ingredient labeled as "Evaporated
17 Cane Juice."⁵

18 80. Excluded from the Class are Defendants and their directors, officers
19 and employees.

20 81. Numerosity (Fed. R. Civ. P. 23(a)(1)): The Class is so numerous that
21 joinder of all individual members in one action would be impracticable. The
22 disposition of their claims through this class action will benefit both the parties and
23 this Court.

24 82. Plaintiff is informed and believes and thereon alleges that there are, at a
25 minimum, many thousands, or millions, of members that comprise the Class.

26

27

28 ⁵ Plaintiff reserves the right to amend or otherwise modify the Class definition
and/or add subclasses.

1 83. Members of the Class may be notified of the pendency of this action by
2 techniques and forms commonly used in class actions, such as by published notice,
3 e-mail notice, website notice, first-class mail, or combinations thereof, or by other
4 methods suitable to this class and deemed necessary and or appropriate by the Court.

5 84. Common Questions of Fact and Law (Fed. R. Civ. P. 23(a)(2) and
6 (b)(3)): There are a well-defined community of interest and common questions of
7 fact and law affecting the members of the Class.

8 85. The questions of fact and law common to the Class predominate over
9 questions which may affect individual members and include the following:

10 (a) Whether Defendants' "All Natural" representations are unlawful,
11 unfair, deceptive, untrue or misleading;

12 (b) Whether Defendants' "Evaporated Cane Juice" representations
13 are unlawful, unfair, deceptive, untrue or misleading;

14 (c) Whether Defendants violated California Business and
15 Professions Code § 17200 *et seq.*;

16 (d) Whether Defendants violated California Business and
17 Professions Code § 17500 *et seq.*;

18 (e) Whether Defendants violated California Civil Code § 1750 *et*
19 *seq.*; and

20 (f) The relief, including injunctive and other equitable relief, to
21 which Plaintiff and the Class are entitled.

22 86. Typicality (Fed. R. Civ. P. 23(a)(3)): Plaintiff's claims are typical of the
23 claims of the entire Class. Plaintiff and all Class members each bought one or more
24 of Defendants' products which are at issue in this case. The claims of Plaintiff and
25 members of the Class are based on the same legal and remedial theories and arise
26 from the same unlawful conduct.

27 87. Adequacy of Representation (Fed. R. Civ. P. 23(a)(4)): Plaintiff is an
28 adequate representative of the Class because his interests do not conflict with the

1 interests of the Class which Plaintiff seeks to represent. Plaintiff will fairly,
2 adequately, and vigorously represent and protect the interests of the Class and has
3 no interests antagonistic to the Class. Plaintiff has retained counsel who is
4 competent and experienced in the prosecution of class action litigation.

5 88. Superiority (Fed. R. Civ. P. 23(b)(3)): A class action is superior to
6 other available means for the fair and efficient adjudication of the claims of the
7 Class. While the aggregate damages which may be and if awarded to the Class are
8 likely to be substantial, the actual economic damages suffered by individual
9 members of the Class are likely relatively small. As a result, the expense and
10 burden of individual litigation makes it economically infeasible and procedurally
11 impracticable for each member of the Class to individually seek redress for the
12 wrongs done to them. The likelihood of individual Class members prosecuting
13 separate claims is remote. Individualized litigation would also present the potential
14 for varying, inconsistent or contradictory judgments, and would increase the delay
15 and expense to all parties and the court system resulting from multiple trials of the
16 same factual issues. In contrast, the conduct of this matter as a class action presents
17 fewer management difficulties, conserves the resources of the parties and the court
18 system, and would protect the rights of each member of the Class. Plaintiff knows
19 of only two other litigations commenced against Blue Diamond and which are still
20 currently pending, *Chris Werdebaugh v. Blue Diamond Growers*, United States
21 District Court for the Northern District of California Case No. 5:12-cv-02724-LHK,
22 and *Ashley Melvin and Taline Keshishian, et al. v. Blue Diamond Growers, et al.*,
23 Los Angeles County Superior Court Case No. BC532044. Plaintiff knows of no
24 difficulty to be encountered in the management of this action that would preclude its
25 maintenance as a class action.

26 89. Injunctive or Declaratory Relief (Fed. R. Civ. P. 23(b)(2)): A class
27 action is also appropriate because Defendants have acted or refused to act on
28

1 grounds that apply generally to the Class, so that final injunctive relief or
2 corresponding declaratory relief is appropriate respecting the Class as a whole.

3
4 **FIRST CAUSE OF ACTION**

5 **For Violation of California's Unfair Competition Law,**
6 **California Business & Professions Code § 17200 *et seq.***

7 **(On Behalf of Plaintiff and the Class as against**
8 **all Defendants including DOES 1 through 10)**

9 90. Plaintiff hereby incorporates by reference the allegations contained in
10 this Complaint.

11 91. Plaintiff assert this claim on behalf of himself and the Class as against
12 Defendants and each of them.

13 92. "California's unfair competition law (UCL) (§ 17200 *et seq.*) defines
14 'unfair competition' to mean and include 'any unlawful, unfair or fraudulent business
15 act or practice and unfair, deceptive, untrue or misleading advertising and any act
16 prohibited by [the false advertising law (§ 17500 *et seq.*)].'" *Kasky v. Nike, Inc.*, 27
17 Cal.4th 939, 949 (2002).

18 93. "The UCL's purpose is to protect both consumers and competitors by
19 promoting fair competition in commercial markets for goods and services." *Kasky*,
20 27 Cal.4th at 949.

21 94. Defendants have violated the UCL in several of the following ways,
22 each of which are independently actionable:

23 **Unlawful (Sherman Law Misbranding Violations)**

24 95. Defendants' conduct of labeling, advertising and otherwise representing
25 its products as "All Natural" and/or containing "Evaporated Cane Juice" is unlawful
26 and constitutes misbranding under the Sherman Food, Drug, And Cosmetic Law,
27 California Health & Safety Code § 109875 *et seq.* (the "Sherman Law").
28

1 96. California's Sherman Law adopts, incorporates – and is identical – to
2 the relevant provisions of the federal Food Drug and Cosmetic Act, 21 U.S.C. § 301
3 *et seq.* ("FDCA").⁶

4 97. The Sherman Law expressly states that "Any food is misbranded if its
5 labeling is false or misleading in any particular." California Health & Safety Code §
6 110660.⁷

7 98. The Sherman Law also provides that "Any food is misbranded if any
8 word, statement, or other information required pursuant to this part to appear on the
9 label or labeling is not prominently placed upon the label or labeling with
10 conspicuousness, as compared with other words, statements, designs, or devices in
11 the labeling and in terms as to render it likely to be read and understood by the
12 ordinary individual under customary conditions of purchase and use." California
13 Health & Safety Code § 110705.⁸

14 99. The Sherman Law expressly states that "Any food is misbranded if it
15 bears or contains any artificial flavoring, artificial coloring, or chemical
16 preservative, unless its labeling states that fact." California Health & Safety Code §
17 110740.⁹

18 100. The Sherman Law also provides that a food is misbranded if its label
19 does not clearly state "the common or usual name of the food" or "the common or
20 usual name of each ingredient." California Health & Safety Code §§ 110720.
21 110725.¹⁰

22 _____
23 ⁶ Through the Sherman Law, California has also adopted all federal food
24 labeling regulations as its own: "All food labeling regulations and any amendments
25 to those regulations adopted pursuant to the federal act ... shall be the food labeling
regulations of this state." California Health & Safety Code § 110100. "Federal act
means the federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. Sec. 301
et seq.)." California Health & Safety Code § 109930.

26 ⁷ Identical to FDCA 21 U.S.C. § 343(a).

27 ⁸ Identical to FDCA 21 U.S.C. § 343(f).

28 ⁹ Identical to FDCA 21 U.S.C. § 343(k).

¹⁰ Identical to FDCA 21 U.S.C. § 343(g); and 21 C.F.R. § 101.4(a)(1), 21
C.F.R. § 102.5(a), (d).

1 101. Misbranded food is unlawful and has no value as it may not be
2 manufactured, delivered, held, offered for sale, or otherwise received in commerce.

3 102. "It is unlawful for any person to misbrand any food." California Health
4 & Safety Code § 110765.

5 103. "It is unlawful for any person to manufacture, sell, deliver, hold, or
6 offer for sale any food that is misbranded." California Health & Safety Code §
7 110760.

8 104. "It is unlawful for any person to receive in commerce any food that is
9 misbranded or to deliver or proffer for delivery any such food." California Health &
10 Safety Code § 110770.

11 105. Defendants manufactured, delivered, held, offered for sale, sold and/or
12 otherwise received into commerce their misbranded products.

13 106. Defendants sold their misbranded products within California and
14 throughout the United States.

15 107. As a result of Defendants' conduct, Plaintiff and Class members
16 purchased misbranded products which have no value and are not saleable, as a
17 matter of law, and Plaintiff and Class members suffered injury in fact and lost
18 money or property as a result of Defendants' conduct.

19 **Unlawful (Other Violations)**

20 108. In addition to Defendants' misbranding violations set forth above,
21 Defendants have also violated the UCL by violating other laws including, but not
22 limited to, the following:

23 109. Defendants' conduct violates the advertising prohibitions under the
24 Sherman Law, California Health & Safety Code §§ 110390, 110395, 110398 and
25 110400.

26 110. Defendants' conduct violates California's False Advertising Law,
27 California Business & Professions Code § 17500 *et seq.*
28

1 111. Defendants' conduct violates California's Consumers Legal Remedies
2 Act., California Civil Code § 1750 *et seq.*

3 **Unfair**

4 112. Defendants' conduct is unfair under the UCL because it offends
5 established public policy and/or is immoral, unethical, oppressive, unscrupulous
6 and/or substantially injurious to Plaintiff and the Class. Defendants' conduct
7 undermines and violates the spirit and policies underlying the Sherman Law, the
8 False Advertising Law, and the Consumers Legal Remedies Act. There is no
9 legitimate utility of Defendants' conduct, let alone any that would outweigh the
10 harm to Plaintiff and the Class.

11 113. Plaintiff and Class members did not know and, as reasonable
12 consumers had no way of reasonably knowing that the products were misbranded
13 and were not properly marketed, advertised, packaged and labeled, and thus could
14 not have reasonably avoided the injury each of them suffered.

15 **Fraudulent**

16 114. Defendants' conduct is also fraudulent under the UCL because it is
17 likely to deceive reasonable consumers.

18 **Unfair, Deceptive, Untrue or Misleading Advertising**

19 115. As described herein, Defendants' conduct also violates the UCL
20 because the conduct constitutes unfair, deceptive, untrue and/or misleading
21 advertising.

22 **Relief Sought**

23 116. As a result of Defendants' conduct and violations of the UCL, Plaintiff
24 and Class members suffered injury in fact and lost money or property.

25 117. Defendants' conduct is ongoing and, unless restrained, likely to recur.

26 118. Plaintiff, on behalf of himself and Class members, seeks equitable
27 relief requiring Defendants to refund and restore to Plaintiff and all Class members
28

1 all monies they paid for the Blue Diamond Products, and injunctive relief
2 prohibiting Defendants from engaging in the misconduct described herein.

3
4 **SECOND CAUSE OF ACTION**

5 **For Violation of California's False Advertising Law,**
6 **California Business & Professions Code § 17500 *et seq.***

7 **(On Behalf of Plaintiff and the Class as against**
8 **all Defendants including DOES 1 through 10)**

9 119. Plaintiff hereby incorporates by reference the allegations contained in
10 this Complaint.

11 120. Plaintiff assert this claim on behalf of himself and the Class as against
12 Defendants and each of them.

13 121. Both the UCL and California's False Advertising Law prohibit "not
14 only advertising which is false, but also advertising which[,] although true, is either
15 actually misleading or which has a capacity, likelihood or tendency to deceive or
16 confuse the public.' [Citation.] Thus, to state a claim under either the UCL or the
17 false advertising law, based on false advertising or promotional practices, 'it is
18 necessary only to show that `members of the public are likely to be deceived.'" *Kasky v. Nike, Inc.*, 27 Cal.4th 939, 951 (2002).
19

20 122. As stated in this Complaint, Defendants publicly disseminated untrue
21 or misleading advertising or intended not to sell Blue Diamond Products as
22 advertised in violation of California Business & Professional Code § 17500 *et seq.*,
23 by, *inter alia*:

24 (a) Representing that Blue Diamond Products are "All Natural,"
25 when they are not; and

26 (b) Misrepresenting that Blue Diamond products contain
27 "Evaporated Cane Juice."
28

1 123. Defendants committed such violations of the False Advertising Law
2 with actual knowledge or in the exercise of reasonable care should have known the
3 representations were untrue or misleading.

4 124. As a result of Defendants' conduct and violations of the UCL, Plaintiff
5 and Class members suffered injury in fact and lost money or property.

6 125. Defendants' conduct is ongoing and, unless restrained, likely to recur.

7 126. Plaintiff, on behalf of himself and Class members, seeks equitable
8 relief requiring Defendants to refund and restore to Plaintiff and all Class members
9 all monies they paid for the Blue Diamond Products, and injunctive relief
10 prohibiting Defendants from engaging in the misconduct described herein.

11
12 **THIRD CAUSE OF ACTION**

13 **For Violation of California's Consumers Legal Remedies Act,**

14 **California Civil Code § 1750 *et seq.***

15 **(On Behalf of Plaintiff and the Class as against**

16 **all Defendants including DOES 1 through 10)**

17 127. Plaintiff hereby incorporate by reference the allegations contained in
18 this Complaint.

19 128. Plaintiff asserts this claim on behalf of himself and the Class as against
20 Defendants and each of them.

21 129. Defendants' representations, omissions and conduct have violated, and
22 continue to violate California's Consumers Legal Remedies Act ("CLRA"), because
23 they extend to transactions that are intended to result, or which have resulted, in the
24 sale of goods to consumers, including Plaintiff and the Class.

25 130. Defendants' conduct violates the CLRA, Civil Code § 1770(a)(5) which
26 prohibits "Representing that goods or services have ... characteristics, ingredients,
27 uses, benefits, or quantities which they do not have."
28

1 131. Defendants' conduct violates the CLRA, Civil Code § 1770(a)(7) which
2 prohibits "Representing that goods or services are of a particular standard, quality,
3 or grade ... if they are of another."

4 132. Defendants' conduct violates the CLRA, Civil Code § 1770(a)(9) which
5 prohibits "Advertising goods ... with intent not to sell them as advertised."

6 133. Defendants' conduct violates the CLRA, Civil Code § 1770(a)(16)
7 which prohibits "Representing that the subject of a transaction has been supplied in
8 accordance with a previous representation when it has not."

9 134. Defendants' Blue Diamond Products are "goods" within the meaning of
10 Civil Code §§ 1761(a) and 1770.

11 135. Plaintiff and Class members are "consumers" within the meaning of
12 Civil Code §§ 1761(d) and 1770.

13 136. Each purchase of Defendants' Blue Diamond Products by Plaintiff and
14 each Class member constitutes a "transaction" within the meaning of Civil Code §§
15 1761(e) and 1770.

16 137. Defendants' conduct is ongoing and, unless restrained, likely to recur.

17 138. Plaintiff, on behalf of himself and Class members, seeks injunctive
18 relief prohibiting Defendants from engaging in the misconduct described herein.

19 139. No relief of any kind, other than injunctive relief, is currently sought
20 pursuant to this CLRA cause of action.

21 140. No damages of any kind are currently sought pursuant to this CLRA
22 cause of action.

23 141. The CLRA Civil Code § 1782(d) states in pertinent part as follows:

24 "An action for injunctive relief brought under the specific provisions
25 of Section 1770 may be commenced without compliance with
26 subdivision (a) [notice requirement]. Not less than 30 days after the
27 commencement of an action for injunctive relief, and after compliance
28 with subdivision (a) [notice requirement], the consumer may amend

1 his or her complaint without leave of court to include a request for
2 damages."

3 142. The CLRA, Civil Code § 1782(a), states as follows:

4 "(a) Thirty days or more prior to the commencement of an
5 action for damages pursuant to this title, the consumer shall do the
6 following:

7 (1) Notify the person alleged to have employed or
8 committed methods, acts, or practices declared unlawful by Section
9 1770 of the particular alleged violations of Section 1770.

10 (2) Demand that the person correct, repair, replace, or
11 otherwise rectify the goods or services alleged to be in violation of
12 Section 1770.

13 The notice shall be in writing and shall be sent by certified or
14 registered mail, return receipt requested, to the place where the
15 transaction occurred or to the person's principal place of business
16 within California."

17 143. Pursuant to Civil Code § 1782(a), Plaintiff will provide BLUE
18 DIAMOND GROWERS with notice of its CLRA violations by certified mail return
19 receipt requested. If Defendant BLUE DIAMOND GROWERS fails to provide
20 appropriate relief for the CLRA violations, Plaintiff will amend this Complaint to
21 seek monetary damages (compensatory, punitive, etc.) and other relief under the
22 CLRA on behalf of Plaintiff and the Class.

23 144. Defendant BLUE DIAMOND GROWERS may be provided the notice
24 specified in Civil Code § 1782(a) by sending such notice to BLUE DIAMOND
25 GROWERS, c/o Dean Lavalley, 1802 C Street, Sacramento, CA 95811.

26 145. Attached hereto is the venue declaration required by CLRA, Civil Code
27 § 1780(d).¹¹

28 ¹¹ A declaration may be used in lieu of an affidavit. California Code of Civil
Procedure § 2015.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for:

1. An order certifying the Class and appointing Plaintiff as the representatives of the Class, and appointing counsel of record for Plaintiff as counsel for the Class;
2. Equitable relief requiring Defendants to refund and restore to Plaintiff and all Class members all monies they paid for the Blue Diamond Products;
3. Injunctive relief prohibiting Defendants from engaging in the misconduct described herein;
4. An award of attorney's fees;
5. An award of costs;
6. An award of interest, including prejudgment interest; and
7. For such other and further relief as the Court may deem proper.

DATED: January 7, 2014

CHANT & COMPANY
A Professional Law Corporation

By: /S/ Chant Yedalian
Chant Yedalian
Counsel For Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

DATED: January 7, 2014

CHANT & COMPANY
A Professional Law Corporation

By: /S/ Chant Yedalian
Chant Yedalian
Counsel For Plaintiff

DECLARATION BY PLAINTIFF LEVON TCHAYELIAN

I, LEVON TCHAYELIAN, hereby declare that:

1. The following facts stated in this Declaration are based upon my own personal knowledge, except as to the information which is based upon information and belief, which I believe to be true. If called upon to testify as to the information contained in this Declaration, I could and would competently do so.

2. I am a named Plaintiff in this action.

3. I am over 18 years of age.

4. I purchased the Almond Breeze Almondmilk Vanilla (refrigerated), Almond Breeze Almondmilk Coconutmilk Blend Almond Coconut Unsweetened (refrigerated) and Almond Breeze Almondmilk Original Unsweetened (shelf stable) products, which are shown in paragraphs 35, 39 and 43, respectively, of the attached Complaint, in California.

5. This Court is the appropriate venue for this action because Defendants reside in this judicial district, Defendants have done and continue to do business in this judicial district, Defendants have intentionally availed themselves of the markets within this judicial district through the promotion, marketing, sale and distribution of their products within this judicial district, and this is a class action case in which a substantial part of the transactions, acts and omissions giving rise to the Class' claims occurred within this judicial district.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing Declaration is true and correct, and was executed by me in the City of _____, California, on_____.

LEVON TCHAYELIAN
Declarant

DECLARATION BY PLAINTIFF LEVON TCHAYELIAN

I, LEVON TCHAYELIAN, hereby declare that:

1. The following facts stated in this Declaration are based upon my own personal knowledge, except as to the information which is based upon information and belief, which I believe to be true. If called upon to testify as to the information contained in this Declaration, I could and would competently do so.

2. I am a named Plaintiff in this action.

3. I am over 18 years of age.

4. I purchased the Almond Breeze Almondmilk Vanilla (refrigerated), Almond Breeze Almondmilk Coconutmilk Blend Almond Coconut Unsweetened (refrigerated) and Almond Breeze Almondmilk Original Unsweetened (shelf stable) products, which are shown in paragraphs 35, 39 and 43, respectively, of the attached Complaint, in California.

5. This Court is the appropriate venue for this action because Defendants reside in this judicial district, Defendants have done and continue to do business in this judicial district, Defendants have intentionally availed themselves of the markets within this judicial district through the promotion, marketing, sale and distribution of their products within this judicial district, and this is a class action case in which a substantial part of the transactions, acts and omissions giving rise to the Class' claims occurred within this judicial district.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing Declaration is true and correct, and was executed by me in the City of Van Nuys, California, on January 7, 2014.


LEVON TCHAYELIAN
Declarant

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LEVON TCHAYELIAN, on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Los Angeles (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Chant Yedalian, State Bar No. 222325, (chant@chant.mobi) CHANT & COMPANY A PROFESSIONAL LAW CORPORATION 1010 N. Central Ave., Glendale, CA 91202; Phone: 877.574.7100

DEFENDANTS

BLUE DIAMOND GROWERS, and DOES 1 through 10, inclusive

County of Residence of First Listed Defendant Santa Clara (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d) Brief description of cause: Class action/food labeling violations

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. Lucy H. Koh DOCKET NUMBER 5:12-cv-02724-LHK

DATE 01/07/2014 SIGNATURE OF ATTORNEY OF RECORD /S/ Chant Yedalian

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA