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Attorneys for Defendant
GARDEN OF LIGHT, INC.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BARBARA MORENO, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

GARDEN OF LIGHT, INC., a
Connecticut corporation dba
BAKERY ON MAIN; and DOES 1-
25, Inclusive,

Defendants.

Case Number

5:16-cv-02160

**NOTICE OF REMOVAL OF
ACTION ON BASIS OF
DIVERSITY OF
CITIZENSHIP UNDER THE
CLASS ACTION FAIRNESS
ACT (28 U.S.C. § 1332(d))**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant Garden of Light, Inc. dba Bakery
on Main hereby removes to this Court the state action described below.

1. On August 18, 2016, an action was commenced in the Superior Court of
the State of California for the County of San Bernardino, entitled Barbara Moreno
v. Garden of Light, Inc. dba Bakery on Main, et al., Case Number
CIVDS1613760. A true and correct copy of the Class Action Complaint (“the
Complaint”) by which that action was commenced (accompanied by a copy of the
Summons) is attached hereto as Exhibit 1.

1 2. On September 15, 2016, a copy of the Complaint and the Summons were
2 served on the California agent for service of process on Defendant Garden of
3 Light, Inc.

4 3. In the Complaint, Plaintiff Barbara Moreno is suing individually, and on
5 behalf of all others similarly situated, against Garden of Light, Inc. and Does 1-25,
6 inclusive. The Complaint contains four causes of action for (1) alleged negligent
7 representation; (2) alleged violation of California's Consumers Legal Remedies
8 Act; (3) alleged violation of California's statutory False Advertising Law; and (4)
9 California's statutory Unfair Competition Law.

10 4. This action is a civil action of which this Court has original jurisdiction
11 and which may be removed to this Court by Defendant Garden of Light, Inc.,
12 pursuant to the provisions of 28 U.S.C. § 1441(a), in that it satisfies the special
13 diversity of citizenship requirements of 28 U.S.C. § 1332(d), which codifies part
14 of the Class Action Fairness Act.

15 5. Under 28 U.S.C. § 1332(d)(2), "The district courts shall have original
16 jurisdiction of any civil action in which the matter in controversy exceeds the sum
17 or value of \$5,000,000, exclusive of interest and costs, and is a class action in
18 which (A) any member of a class of plaintiffs is a citizen of a State different from
19 any defendant"

20 6. Plaintiff Barbara Moreno is an individual who alleges in Paragraph 1 of
21 the Complaint that she resides in San Bernardino, California. She seeks to
22 represent a nationwide class of certain consumers. Garden of Light, Inc. is
23 incorporated in Connecticut and has its principal place of business in Connecticut.
24 Plaintiff Barbara Moreno and Defendant Garden of Light, Inc. are thus citizens of
25 different states. In addition, the nationwide class that Plaintiff seeks to certify
26 would contain numerous other individuals who are citizens of states other than
27 Connecticut. The diversity of citizenship requirement is thus satisfied.
28

1 7. The amount in controversy requirement is also satisfied for the following
2 reasons.

3 8. Plaintiff Barbara Moreno alleges in Paragraph 1 of the Complaint that
4 she purchased a particular Garden of Light, Inc. product called Extreme Fruit &
5 Nut Bag, which she alleges in Paragraph 21 is sold for “approximately \$6.00.”
6 Plaintiff bases her causes of action on the product listing “evaporated cane juice”
7 as one of the ingredients, which she characterizes as being “false and misleading”
8 labeling. She also places at issue all other Garden of Light, Inc. products that have
9 listed “evaporated cane juice” as an ingredient.

10 9. In Paragraph 23 of the Complaint, Plaintiff states that she “brings this
11 class action for damages and other monetary relief on behalf of the following
12 class: All persons located within the United States who [purchased] any of
13 Defendant’s products labeled with ‘evaporated cane juice’ at any time during the
14 four years preceding the filing of this Complaint.”

15 10. The Complaint does not specify a particular amount of money being
16 sought as damages and/or restitution. In Paragraph 20, Plaintiff avers that the
17 members of “the Class would not have paid as much, if at all, for the product but
18 for Defendant’s [alleged] misrepresentations.” In Paragraph 54, Plaintiff seeks
19 “restitution and restitutionary disgorgement for all sums obtained” by Garden of
20 Light, Inc. Paragraph 66 alleges that “Plaintiff and members of the Class have
21 suffered economic injury by losing money as a result of purchasing the product
22 [and] would not have purchased or would have paid less for the product[s] had
23 they known that they were not as represented,” while Paragraph 67 seeks “an
24 order requiring Defendant to make full restitution of all moneys it wrongfully
25 obtained from Plaintiff and the Class.”

26 11. In light of Garden of Light, Inc.’s nationwide sales over the last four
27 years of the Granola Extreme Fruit & Nut Bag plus other products that have listed
28 “evaporated cane juice” as an ingredient on their labels, there is over \$5 million

1 placed at issue by Plaintiff's claims for damages and/or restitution which Plaintiff
 2 seeks all the way up to the full amount that the putative class paid for the products
 3 at issue or that Garden of Light, Inc. received (with statutory attorneys' fees
 4 sought as well).

5 12. Just as Garden of Light, Inc. will dispute liability and class
 6 certification, it disputes that Plaintiff and the class she seeks to represent incurred
 7 any damages, and Garden of Light, Inc. is not agreeing to any particular model for
 8 determining claimed damages. As noted by the Ninth Circuit, defendants
 9 asserting "upon a CAFA removal that the amount in controversy exceeds \$5
 10 million ... are still free to challenge the actual amount of damages in subsequent
 11 proceedings and at trial." *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193,
 12 1198 n.1 (9th Cir. 2015) ("they are not stipulating to damages suffered, but only
 13 estimating the damages that are in controversy").

14
 15 Dated: October 12, 2016

George C. Salmas
 Michael R. Hambly
 THE FOOD LAWYERS®

17
 18 By: /s/: Michael R. Hambly
 Michael R. Hambly

19
 20 Attorneys for Defendant
 GARDEN OF LIGHT, INC.
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EXHIBIT 1
TO NOTICE OF REMOVAL

Complaint in Barbara Moreno v. Garden of Light, Inc., et al.,
San Bernardino Superior Court Case Number CIVDS1613760

COPY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

AUG 18 2016

BY Victoria Sanchez
 VICTORIA SANCHEZ, DEPUTY

6 Attorneys for Plaintiff and the Class

7
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF SAN BERNARDINO

10 BARBARA MORENO, individually, and on
 11 behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 GARDEN OF LIGHT, INC. dba BAKERY ON
 15 MAIN and DOES 1-25, Inclusive,

16 Defendants.

Case No.: CIVDS1613760

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

17
 18
 19 **I. INTRODUCTION**

20 Garden of Light, Inc. dba Bakery on Main ("Defendant" or "Bakery") manufactures, markets,
 21 and sells various food products, including Granola Extreme Fruit & Nut Bag ("product" or
 22 "Granola"). Defendant goes out of its way to advertise its products, including its Granola, as healthy.
 23 In order to propagate its healthy claims, Defendant lists "evaporated cane juice" as an ingredient in its
 24 product. Nowhere does Defendant explain to consumers that "evaporated cane juice" is (1) not juice
 25 and (2) "evaporated cane juice" in its common and usual name is sugar. By so doing, Defendant is
 26 able to deceive consumers, including Plaintiff, regarding the health claims made by Defendant.

27 Defendant's misrepresentations regarding the product were designed to, and did, deceive
 28 Plaintiff and others similarly situated (collectively the "Class") with regard to the ingredients and

1 health claims of the product. Plaintiff and members of the Class relied on Defendant's
 2 misrepresentations and would not have paid as much, if at all, for the product but for Defendant's
 3 misrepresentations.

4 Plaintiff brings this class action lawsuit to enjoin the ongoing deception of thousands of
 5 consumers by Defendant, and to recover the money taken by this unlawful practice.

6 **THE PARTIES**

7 **A. Plaintiff.**

8 1. Plaintiff, Barbara Moreno, is, and at all times relevant hereto, was an individual
 9 residing in San Bernardino County, California. Plaintiff purchased the product earlier this year in San
 10 Bernardino County, California. Prior to purchasing Defendant's product, Plaintiff reviewed and relied
 11 upon Defendant's advertising and ingredients as detailed above. Plaintiff relied on Defendant's
 12 representations regarding the ingredients of Defendant's product, as detailed herein, and but for those
 13 representations, Plaintiff would not have purchased or paid as much for the product.

14 **B. Defendant.**

15 Plaintiff is informed and believes, and upon such information and belief alleges:

16 2. Defendant, Garden of Light, Inc. dba Bakery on Main ("Bakery" or "Defendant") is
 17 company organized and existing under the laws of the state of Connecticut, with a principal place of
 18 business located at 127 Park Avenue, Suite 100, East Hartford, CT 06108. Defendant offers the
 19 product for sale through various channels, including the internet and retailers throughout the nation,
 20 including the State of California. Defendant, directly and through its agents, has substantial contacts
 21 with and receives substantial benefits and income from and through the State of California. Defendant
 22 is the owner and distributor of the product and is the company that created and/or authorized the false,
 23 misleading, and deceptive advertisements and packaging for the product.

24 3. Plaintiff does not know the true names or capacities of the persons or entities sued herein
 25 as DOES 1 to 25, inclusive, and therefore sues such defendants by such fictitious names. Plaintiff is
 26 informed and believes and thereon alleges that each of the DOE defendants is in some manner legally
 27 responsible for the damages suffered by Plaintiff and the members of the class as alleged herein.
 28 Plaintiff will amend this Complaint to set forth the true names and capacities of these defendants when

1 they have been ascertained, along with appropriate charging allegations, as may be necessary.

2 4. At all times mentioned herein, Defendants, and each of them, were members of, and
3 engaged in, a joint venture, partnership, and common enterprise, and acted within the course and
4 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

5 5. At all times mentioned herein, the acts and omissions of Defendants, and each of them,
6 contributed to the various acts and omissions of each and all of the other Defendants in proximately
7 causing the injuries and damages as alleged herein.

8 6. At all times mentioned herein, Defendants, and each of them, ratified each and every
9 act or omission complained of herein. At all times mentioned herein, Defendants, and each of them,
10 aided and abetted the acts and omissions of each and all of the other Defendants in proximately
11 causing the damages as alleged herein.

12 **III. JURISDICTION AND VENUE**

13 7. This Court has jurisdiction over all causes of action asserted herein.

14 8. Venue is proper in this Court because Plaintiff purchased the product in this County and
15 because Defendant has received substantial compensation from sales in this County. Specifically,
16 Defendant knowingly engages in activities directed at consumers in this County, and Defendant
17 obtains substantial benefits from its scheme perpetrated in this County. Plaintiff has filed concurrently
18 herewith the declaration of venue required by Civil Code Section 1780(d) and is attached hereto as
19 Exhibit One.

20 9. Defendant and other out-of-state participants can be brought before this Court pursuant
21 to California's "long-arm" jurisdictional statute.

22 **IV. FACTS**

23 10. Defendant manufactures, markets, and sells the product. The product is marketed as
24 healthy. In the ingredient list for the product, Defendant lists "evaporated cane juice" as an ingredient.
25 Defendant does not list the ingredient as "sugar" or any other commonly known sweetener. Nowhere
26 on the product or in the ingredient list does Defendant explain that "evaporated cane juice" is not
27 actually juice and is actually sugar.

28 11. The Food and Drug Administration ("FDA") has warned manufacturers and advertisers

1 not to use the term “evaporated cane juice” because: (1) it is false and misleading; (2) the term violates
2 a number of labeling regulations requiring products to be labeled with the usual and common names of
3 ingredients and to accurately describe those ingredients; and (3) “evaporated cane juice” is not juice.

4 12. Accurate labeling is required in order to help consumers make informed choices and
5 not be misled. As detailed herein, Defendant has made, and continues to make, false and deceptive
6 claims in violation of federal and California laws that govern labeling claims.

7 13. California and federal laws are identical and regulate the labeling of food. The Federal
8 Food Drug & Cosmetic Act (“FDCA”) was adopted by California through the Sherman Food Drug &
9 Cosmetic Law, California Health & Safety Code § 109875, et seq. (“Sherman Law”). Under FDCA
10 403(a), food is “misbranded” when “its labeling is false or misleading in any particular,” and/or if it
11 does not contain required information on its labeling. 21 U.S.C. § 343(a).

12 14. According to the FDCA, if any claim made on the labeling of a product is false or
13 misleading, the food product is misbranded, and no other labeling statement can cure misleading
14 statement(s). “Misleading” is judged in reference to “the ignorant, the unthinking and the credulous
15 who, when making a purchase, do not stop to analyze.” *United States v. El-O-Pathic Pharmacy*, 192
16 F.2d 62, 75 (9th Cir. 1951).

17 15. Ingredients, such as “evaporated cane juice”, are not to be listed by names, which
18 suggest that the ingredients are anything other than sugar or syrup because it fails to reveal the basic
19 nature of the food and its properties as required by 21 C.F.R. § 102.5. By listing “evaporated cane
20 juice” as an ingredient of its product, Defendant has violated federal and California labeling
21 regulations.

22 16. The FDA has decreed that “evaporated cane juice” is not the common or usual name of
23 any type of sweetener, including sugar. Sugar is defined in 21 C.F.R. §101.4(b)(20) and 21 C.F.R.
24 §184.1854, as the usual or common name for the crystallization from sugar cane or sugar beet juice
25 that has been extracted by pressing or diffusion, then clarified and evaporated. 21 C.F.R. §168.130
26 defines cane syrup.

27 17. Sugar cane products must be described by their usual or common name, sugar or cane
28 syrup. 21 C.F.R. §101.4; 21 C.F.R. §184.1854; and 21 C.F.R. §168.1340.

1 18. The FDA has directed that sweeteners should not be listed by names that suggest that
2 the ingredients are juice. The FDA considers such listing as “false and misleading” under section
3 403(a)(1) of the FDCA (21 U.S.C. 343(a)(1)) because listing in this manner does not reveal the basic
4 nature of the food and its properties as required by 21 C.F.R. § 102.5. Despite these requirements,
5 Defendant has made, and continues to make false and misleading representations regarding its product
6 in violation of both federal and California laws regarding appropriate and legal labeling.

7 19. Under both federal and California law, Defendant’s misbranded product cannot be
8 manufactured, advertised, distributed, or sold. Defendant’s deceptive and false labeling stems from its
9 desire to label its foods with perceived healthy characteristics. Such deceptive and false labeling
10 drives sales of the product, and did in fact deceive Plaintiff and California consumers.

11 20. Defendant’s misrepresentations regarding the product were designed to, and did, lead
12 Plaintiff and others similarly situated (collectively the “Class”) to believe that the product were of a
13 quality that they are not and did not contain ingredients which, in fact, are found in the product.
14 Plaintiff and members of the Class relied on Defendant’s misrepresentations and would not have paid
15 as much, if at all, for the product but for Defendant’s misrepresentations.

16 21. Defendant sells the product for approximately \$6.00 based on the preceding false
17 advertising claims. As a result, Defendant has wrongfully taken hundreds of thousands of dollars from
18 consumers.

19 22. Accordingly, Plaintiff brings this lawsuit to enjoin the ongoing deception of thousands
20 of consumers by Defendant, and to recover the funds taken by this unlawful practice.

21 **V. CLASS ACTION ALLEGATIONS**

22 23. Plaintiff brings this class action for damages and other monetary relief on behalf of the
23 following class:

24 All persons located within the United States who any of Defendant’s
25 products labeled with “evaporated cane juice” at any time during the
26 four years preceding the filing of this Complaint (the “Class”).

27 24. Excluded from the Class are governmental entities, Defendant, any entity in which
28 Defendant has a controlling interest, and Defendant’s officers, directors, affiliates, legal

1 representatives, employees, co-conspirators, successors, subsidiaries, and assigns and individuals
2 bound by any prior settlement involving the product. Also excluded from the Class is any judge,
3 justice, or judicial officer presiding over this matter and the members of their immediate families and
4 judicial staff.

5 25. The proposed Class is so numerous that individual joinder of all its members is
6 impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff believes that
7 the total number of Class members is at least in the hundreds of thousands and members of the Class
8 are numerous and geographically dispersed across California. While the exact number and identities
9 of the Class members are unknown at this time, such information can be ascertained through
10 appropriate investigation and discovery. The disposition of the claims of the Class members in a
11 single class action will provide substantial benefits to all parties and to the Court.

12 26. There is a well-defined community of interest in the questions of law and fact involved
13 affecting the plaintiff class and these common questions predominate over any questions that may
14 affect individual Class members. Common questions of fact and law include, but are not limited to,
15 the following:

- 16 a. Whether Defendant's products are labeled with "evaporated cane juice";
- 17 b. Whether Defendant has falsely represented that the product has benefits
18 which it does not have;
- 19 c. Whether Defendant knew that its ingredient claims were false;
- 20 d. Whether Defendant's conduct constitutes breach of express warranty;
- 21 e. Whether Defendant's conduct constitutes breach of the implied warranty of
22 fitness for a particular purpose;
- 23 f. Whether Defendant's conduct constitutes negligent misrepresentation;
- 24 g. Whether Defendant's conduct constitutes a violation of the Consumers
25 Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*);
- 26 h. Whether Defendant's conduct constitutes a violation of California's false
27 advertising law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*);
- 28 i. Whether Defendant's conduct constitutes an unfair, unlawful, and/or

1 fraudulent business practice in violation of California's unfair competition
2 law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);

3 j. Whether Plaintiff and Class members are entitled to compensatory damages,
4 and if so, the nature of such damages;

5 k. Whether Plaintiff and Class members are entitled to restitutionary relief; and

6 l. Whether Plaintiff and Class members are entitled to injunctive relief.

7 27. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all
8 members of the Class have been similarly affected by Defendant's common course of conduct since
9 they all relied on Defendant's representations concerning the ingredients of the product and purchased
10 the product based on those representations.

11 28. Plaintiff will fairly and adequately represent and protect the interests of the Class.
12 Plaintiff has retained counsel with substantial experience in handling complex class action litigation.
13 Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the Class and
14 have the financial resources to do so.

15 29. Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a
16 result of Defendant's unlawful and wrongful conduct. A class action is superior to other available
17 methods for the fair and efficient adjudication of the present controversy. Individual joinder of all
18 members of the class is impracticable. Even if individual class members had the resources to pursue
19 individual litigation, it would be unduly burdensome to the courts in which the individual litigation
20 would proceed. Individual litigation magnifies the delay and expense to all parties in the court system
21 of resolving the controversies engendered by Defendant's common course of conduct. The class
22 action device allows a single court to provide the benefits of unitary adjudication, judicial economy,
23 and the fair and efficient handling of all class members' claims in a single forum. The conduct of this
24 action as a class action conserves the resources of the parties and of the judicial system and protects
25 the rights of the class members. Furthermore, for many, if not most, a class action is the only feasible
26 mechanism that allows an opportunity for legal redress and justice.

27 30. Adjudication of individual class members' claims with respect to Defendant would, as a
28 practical matter, be dispositive of the interests of other members not parties to the adjudication, and

1 could substantially impair or impede the ability of other class members to protect their interests.

2 **VI. CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **NEGLIGENT MISREPRESENTATION**

5 **(By Plaintiff and on Behalf of the Class Against Defendant)**

6 31. Plaintiff incorporates by this reference the allegations contained in the paragraphs
7 above as if fully set forth herein.

8 32. During the Class Period, Defendant's misrepresented the ingredients of the product to
9 consumers through the advertising, marketing, and sale of the product.

10 33. Defendant's misrepresentations regarding the product ingredients were false and
11 misleading because "evaporated cane juice" is not juice.

12 34. Defendant's misrepresentations regarding the labeling of the ingredients were material
13 because a reasonable consumer would attach importance to them in determining whether to purchase
14 and consume the product.

15 35. Defendant's material misrepresentations regarding the product are false and made
16 without reasonable grounds for believing them to be true.

17 36. Defendant made material misrepresentations regarding the ingredients of the product
18 with the intent to induce Plaintiff and Class members to purchase and consume the product.

19 37. Plaintiff and Class members reasonably relied on Defendant's material
20 misrepresentations in choosing to purchase and consume the product.

21 38. As a direct and proximate result of Defendant's conduct, Plaintiff and Class members
22 have incurred damages in an amount to be proven at trial. Plaintiff and Class members are not seeking
23 damages arising out of personal injuries.

24 **SECOND CAUSE OF ACTION**

25 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

26 **(CAL. CIV. CODE §§ 1750, ET SEQ.)**

27 **(By Plaintiff and on Behalf of the Class Against Defendant)**

28 39. Plaintiff incorporates by this reference the allegations contained in the paragraphs

1 above as if fully set forth herein.

2 40. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury
3 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff
4 purchased the product in reliance on Defendant's labeling of the product.

5 41. Defendant has engaged in and continues to engage in business practices in violation of
6 California Civil Code §§ 1750, *et seq.* (the "Consumers Legal Remedies Act") by making false and
7 unsubstantiated representations concerning the ingredients of the product. These business practices
8 are misleading and/or likely to mislead consumers and should be enjoined.

9 42. Defendant has engaged in deceptive acts or practices intended to result in the sale of
10 the product in violation of Civil Code § 1770. Defendant knew and/or should have known that its
11 representations of fact concerning the ingredients of the product were material and likely to mislead
12 the public. Defendant affirmatively misrepresented that the product had certain benefits, which they
13 do not have.

14 43. Defendant's conduct alleged herein violates the Consumers Legal Remedies Act,
15 including but not limited to, the following provisions: (1) using deceptive representations in
16 connection with goods or services in violation of Civil Code § 1770(a)(4); (2) representing that goods
17 or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which
18 they do not have in violation of Civil Code § 1770(a)(5); and/or (3) advertising goods or services with
19 intent not to sell them as advertised in violation of Civil Code § 1770(a)(9). As a direct and proximate
20 result of Defendant's conduct, as set forth herein, Defendant has received ill-gotten gains and/or
21 profits, including but not limited to, money. Therefore, Defendant has been unjustly enriched.

22 44. There is no other adequate remedy at law, and Plaintiff and Class members will suffer
23 irreparable harm unless Defendant's conduct is enjoined.

24 45. Concurrently herewith, Plaintiff's counsel mailed to Defendant, by certified mail,
25 return receipt requested, the written notice required by Civil Code Section 1782(a) on June 29, 2016.
26 A Copy of the letter is attached hereto as Exhibit Two.

27 46. The declaration of venue required by Civil Code § 1780(d) is attached hereto as Exhibit
28 One.

47. Defendant's wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the Consumers Legal Remedies Act since Defendant is still representing that their product has characteristics, uses, benefits, and abilities which are false and misleading, and have injured Plaintiff and the Class.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW

(CAL. BUS. & PROF. CODE §§ 17500, *ET SEQ.*)

(By Plaintiff and on Behalf of the Class Against Defendant)

48. Plaintiff incorporates by this reference the allegations contained in the paragraphs above as if fully set forth herein.

49. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff purchased the product in reliance on Defendant's marketing claims as outlined herein.

50. Defendant has engaged in false advertising as it has disseminated false and/or misleading representations about the product.

51. Defendant knew or should have known by exercising reasonable care that its representations were false and/or misleading. During the Class Period, Defendant engaged in false advertising in violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*, by misrepresenting in its advertising and marketing of the product to Plaintiff, Class members, and the consuming public the ingredients of its product.

52. Each of the aforementioned representations alleged in this Complaint was false and misleading regarding the ingredients of the product.

53. By disseminating and publishing these assertions in connection with the sale of the product, Defendant has engaged in and continues to engage in false advertising in violation of Bus. & Prof. Code §§ 17500, *et seq.*

54. As a direct and proximate result of Defendant's conduct, as set forth herein, Defendant has received ill-gotten gains and/or profits, including but not limited to, money. Therefore, Defendant has been unjustly enriched. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff requests restitution

1 and restitutionary disgorgement for all sums obtained in violation of Cal. Bus. & Prof. Code §§ 17500,
2 *et seq.*

3 55. Plaintiff seeks injunctive relief, restitution, and restitutionary disgorgement of
4 Defendant's ill-gotten gains as specifically provided in Cal. Bus. & Prof. Code § 17535.

5 56. Plaintiff and Class members seek to enjoin Defendant from engaging in these wrongful
6 practices, as alleged herein, in the future. There is no other adequate remedy at law and if an
7 injunction is not ordered, Plaintiff and the Class will suffer irreparable harm and/or injury.

8 **FOURTH CAUSE OF ACTION**

9 **UNLAWFUL, FRAUDULENT & UNFAIR BUSINESS PRACTICES**

10 **(CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*)**

11 **(By Plaintiff and on Behalf of the Class Against Defendant)**

12 57. Plaintiff incorporates by this reference the allegations contained in the paragraphs
13 above as if fully set forth herein.

14 58. Plaintiff has standing to pursue this cause of action because Plaintiff has suffered injury
15 in fact and has lost money as a result of Defendant's actions as set forth herein. Specifically, Plaintiff
16 purchased the product in reliance on Defendant's marketing claims as outlined herein.

17 59. Defendant's actions as alleged in this Complaint constitute an unfair or deceptive
18 business practice within the meaning of California Business and Professions Code §§ 17200, *et seq.*,
19 in that Defendant's actions are unfair, unlawful, and fraudulent, and because Defendant has made
20 unfair, deceptive, untrue, or misleading statements in advertising media, including the Internet, within
21 the meaning of California Business and Professions Code §§ 17200, *et seq.*

22 60. Defendant knew or should have known by exercising reasonable care that its
23 representations were false and/or misleading. During the Class Period, Defendant engaged in unfair,
24 unlawful, and fraudulent business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*,
25 by misrepresenting in its advertising and marketing of the product to Plaintiff, Class members, and the
26 consuming public.

27 61. Each of the aforementioned representations alleged in this Complaint was false and
28 misleading regarding the ingredients of the product.

62. Defendant's business practices, as alleged herein, are unfair because they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers in that consumers are misled by the claims made with respect to the product as set forth herein.

63. Defendant's business practices, as alleged herein, are unlawful because they violate the Consumers Legal Remedies Act and False Advertising Law.

64. Defendant's business practices, as alleged herein, are fraudulent because they are likely to, and did, deceive customers—including Plaintiff and members of the Class—into believing that the product have characteristics and benefits they in fact do not have.

65. Defendant's wrongful business practices constituted, and constitute, a continuing course of conduct of unfair competition since Defendant are marketing and selling their product in a manner likely to deceive the public.

66. As a direct and proximate result of Defendant's wrongful business practices in violation of Business and Professions Code §§ 17200, *et seq.*, Plaintiff and members of the Class have suffered economic injury by losing money as a result of purchasing the product. Plaintiff and members of the Class would not have purchased or would have paid less for the product had they known that they were not as represented.

67. Pursuant to Business and Professions Code § 17203, Plaintiff and the Class seek an order of this Court enjoining Defendant from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law, including those set forth in the Complaint. Plaintiff and the Class also seek an order-requiring Defendant to make full restitution of all moneys it wrongfully obtained from Plaintiff and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and members of the Class request that the Court enter an order or judgment against Defendant, and each of them, as follows:

1. For an order certifying the Class, appointing Plaintiff and Plaintiff's counsel to represent the Class, and notice to the Class to be paid by Defendant;
2. For damages suffered by Plaintiff and Class members;

3. For restitution to Plaintiff and Class members of all monies wrongfully obtained by Defendant;
4. For an injunction ordering Defendant to cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
5. For both pre-judgment and post-judgment interest at the maximum allowable rate on any amounts awarded;
6. For Plaintiff's costs of the proceedings herein;
7. For reasonable attorneys' fees as allowed by statute; and
8. For any and all such other and further relief that this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: August 18, 2016

APEX TRIAL LAW
A Professional Corporation

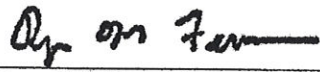
By: 
Ryan M. Ferrell
Attorney for Plaintiff and the Class

EXHIBIT 1

1 I, Barbara Moreno, declare as follows:

2 1. I am a Plaintiff in this action, and am a citizen of the State of California. I have
3 personal knowledge of the facts herein and, if called as a witness, I could and would testify
4 competently thereto.

5
6 2. The Complaint in this action, filed concurrently with this Declaration, is filed in the
7 proper place for trial under Civil Code Section 1780(d) in that San Bernardino County is a county in
8 which Defendants are doing business.

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct.

12
13 
14 Barbara Moreno

EXHIBIT 2



4100 Newport Place, Suite 800
Newport Beach, CA 92660
Phone: (949) 438-0033
Fax: (949) 299-0133
Email: rferrell@apextrial.com

June 29, 2016

VIA CERTIFIED MAIL

GARDEN OF LIGHT, INC.
127 PARK AVENUE, SUITE 100
EAST HARTFORD, CT 06108
Attention: Legal Department

*Re: Class Action For Violations of California B&P Codes 17200, 17500
and California Consumer Legal Remedies Act*

Ladies and Gentlemen:

Please give this letter your immediate attention.

This law firm has been retained to prosecute a class action lawsuit against you for violations of California Business & Professions Code Sections 17200 and 17500 and California Consumer Legal Remedies Act (California Civil Code §§ 1750, *et seq.*).

First, our client purchased your product Granola Extreme Fruit & Nut Bag. The Granola Extreme Fruit & Nut Bag lists as an ingredient "evaporated cane juice." Use of the term evaporated cane juice is an attempt to hide the sugar content. The FDA has recently weighed in on the use of "evaporated cane juice" on ingredient lists to mask the sugar content of a product. In part, the FDA stated as follows:

- Sweeteners derived from sugar cane should not be listed in the ingredient declaration by names such as "evaporated cane juice," which suggest that the ingredients are made from or contain fruit or vegetable "juice" as defined in 21 CFR 120.1. We consider such representations to be false and misleading under section 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 343(a)(1)) because they do not

accurately describe 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.

- Thus, the term “evaporated cane juice” is false or misleading because it suggests that the sweetener is “juice” or is made from “juice” and does not reveal that its basic nature and characterizing properties are those of a sugar.
- As provided in 21 CFR 101.4(a)(1), “Ingredients required to be declared on the label or labeling of a food . . . shall be listed by common or usual name . . .” The common or usual name for an ingredient is the name established by common usage or by regulation (21 CFR 102.5(d)).
- This guidance is intended to help consumers make informed choices among sweeteners by promoting accurate and consistent labeling. To that end, we are advising the regulated industry of our view that the term “evaporated cane juice” is not the common or usual name of any type of sweetener and that this ingredient should instead be declared on food labels as “sugar,” preceded by one or more truthful, non-misleading descriptors if the manufacturer so chooses (e.g., “cane sugar”). [...] the term “evaporated cane juice” describes neither the basic nature of the food nor its characterizing properties, and therefore does not comply with 21 CFR 102.5(a).
- Sweeteners derived from sugar cane should not be listed in the ingredient declaration by names such as “evaporated cane juice,” which suggest that the ingredients are made from or contain fruit or vegetable “juice” as defined in 21 CFR 120.1. We consider such representations to be false and misleading under section 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 343(a)(1)) because they do not accurately describe 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.

“Guidance for Industry: Ingredients Declared as Evaporated Cane Juice”


<http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm181491.htm>

Second, through the use of the term “evaporated cane juice” to mask sugar, you have violated California Civil Code § 1770(a)(5) (representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities which they do not have. You have also violated California B&P Code §§ 17500, *et seq.*, by misrepresenting in its advertising and marketing of the Granola Extreme Fruit & Nut Bag to Plaintiff, Class members, and the consuming public that the Granola Extreme Fruit & Nut Bag contains “evaporated cane juice” instead of the common name of the ingredient “sugar.” Finally, you have also violated Professions Code §§ 17200, *et seq.*, in that Defendant’s actions are unfair, unlawful, and fraudulent, within the meaning of California Business and Professions Code §§ 17200, *et seq.*

Finally, we intend to file a class action lawsuit within thirty days of today’s date in compliance with California Civil Code § 1782(a). Pursuant to that section, if you will refund all consumers their money spent on Granola Extreme Fruit & Nut Bag and remove the term “evaporated cane juice” from the ingredient label of the Granola Extreme Fruit & Nut Bag, we will take no further action.

If you believe that any of the assertions in this letter or the attached draft complaint are inaccurate or would like to discuss a confidential pre-filing resolution of this case, I urge you to retain counsel to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan M. Ferrell", with a stylized flourish at the end.

Ryan M. Ferrell, Esq.

COPY**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**GARDEN OF LIGHT, INC. dba BAKERY ON MAIN and DOES 1-25,
Inclusive,**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**BARBARA MORENO, individually, and on behalf of all others similarly
situated,FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO COUNTY

AUG 18 2016

BY Victoria Sanchez
VICTORIA SANCHEZ, DEPUTY**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

Civil Division

247 West Third Street, San Bernardino, CA 92415-0210

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Ryan M. Ferrell (Bar # 258037)

APEX TRIAL LAW, A Professional Corporation

4100 Newport Place Drive, Suite 800, Newport Beach, CA 92660

DATE:

(Fecha)

AUG 18 2016

Clerk, by

(Secretario)

CASE NUMBER:
(Número del Caso):

CIVDS1613760

Fax No.: 949-438-0033

Phone No.: 949-299-0133

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

- 3.
- ☒
- on behalf of (specify):

under: ☒

CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)☐ CCP 416.40 (association or partnership)☐ other (specify):☐ CCP 416.60 (minor)☐ CCP 416.70 (conservatee)☐ CCP 416.90 (authorized person)

- 4.
- ☐
- by personal delivery on (date):

Page 1 of 1