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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

CRYSTAL BROWN, on Behalf of Herself
 and All Others Similarly Situated,

Plaintiff,

v.

DANONE NORTH AMERICA, LLC and
 THE WHITEWAVE FOODS COMPANY,

Defendants.

Case No. 3:17-cv-07325

CLASS ACTION COMPLAINT FOR:

- 1. VIOLATION OF CONSUMERS
LEGAL REMEDIES ACT, CIVIL
CODE §§1750, et seq.; and**
- 2. VIOLATION OF THE UNFAIR
COMPETITION LAW, BUSINESS
AND PROFESSIONS CODE
§§17200, et seq.**

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiff Crystal Brown brings this class action complaint against defendants Danone
 2 North America, LLC and The WhiteWave Foods Company (collectively “DanoneWave”), on
 3 behalf of herself and all others similarly situated. Plaintiff alleges the following complaint
 4 upon personal knowledge as to herself and her own acts and experiences and, as to all other
 5 matters, upon information and belief, including investigation conducted by her attorneys.

6 **NATURE OF THE ACTION**

7 1. This is a consumer protection class action brought pursuant to Fed. R. Civ. P.
 8 23 arising out of defendants’ false and deceptive advertising of their Horizon Organic Milk
 9 plus DHA Omega-3 products. The deceptively advertised products are: Horizon Organic Milk
 10 with DHA Omega-3; Horizon Organic Reduced Fat Milk with DHA Omega-3; Horizon
 11 Organic Fat-Free Milk with DHA Omega-3; Horizon Organic Lowfat Chocolate Milk with
 12 DHA Omega-3; Horizon Organic Lowfat Chocolate Milk Box with DHA Omega-3; and
 13 Horizon Organic Lowfat Vanilla Milk Box with DHA Omega-3 (collectively “Horizon
 14 Organic milk”).

15 2. DanoneWave produces, markets, sells, and distributes Horizon Organic milk.
 16 Through an extensive, integrated, and widespread nationwide marketing campaign,
 17 DanoneWave promises that Horizon Organic milk is certified “organic.”

18 3. The organic promise is made prominently on each Horizon Organic milk
 19 package and throughout the marketing materials.

20 4. As DanoneWave knows and promotes, there is an ever-increasing sentiment
 21 among consumers that organic foods and beverages are healthier than and superior to
 22 conventionally produced foods and beverages. Consumers are willing to, and do, pay more for
 23 organic foods and beverages. DanoneWave’s advertising and marketing campaign is designed
 24 to induce consumers to purchase Horizon Organic milk in reliance on defendants’ false and
 25 deceptive promise that the milk is organic.

26 5. Horizon Organic milk is not organic. The DHA DanoneWave adds to the
 27 Horizon Organic milk is not organic and is not an additive that may be included in certified
 28 organic food products, such as defendants’ Horizon Organic milk. As a result of

1 DanoneWave's false and misleading advertising, defendants have caused consumers to
 2 purchase Horizon Organic milk that is not organic as it purports to be.

3 6. Plaintiff Brown brings this action on behalf of herself and all other similarly
 4 situated consumers to halt DanoneWave's dissemination of the false and misleading
 5 advertising message, correct the false and misleading perception defendants have created in
 6 the minds of consumers, and to obtain redress for those who have purchased Horizon Organic
 7 milk.

8 INTRADISTRICT ASSIGNMENT

9 7. Pursuant to Civil Local Rules 3-2(c)-(d), and 3-5(b), Defendant is
 10 headquartered in San Francisco County, this action otherwise arises in San Francisco County,
 11 and it is therefore appropriate to assign this action to the San Francisco Division.

12 PARTIES

13 8. Plaintiff Crystal Brown is a citizen of the State of California. At all times
 14 relevant to this action, she resided in San Francisco, California. Plaintiff Brown purchased
 15 Horizon Organic milk on various occasions for approximately one year, beginning in or
 16 around January 2015, and up to and including January 2016. Plaintiff purchased different
 17 varieties of the product including Horizon Organic Milk with DHA Omega-3; Horizon
 18 Organic Reduced Fat Milk with DHA Omega-3; Horizon Organic Fat-Free Milk with DHA
 19 Omega-3; Horizon Organic Lowfat Chocolate Milk with DHA Omega-3; Horizon Organic
 20 Lowfat Chocolate Milk Box with DHA Omega-3. The products were purchased
 21 approximately once a week from retailers, primarily Safeway and Whole Foods. Prior to her
 22 purchases, plaintiff Brown read defendants' labels on which they represented that the milk was
 23 "Organic." In reliance upon these representations that the milk was organic, Brown purchased
 24 what she reasonably believed were organic milk products. Had plaintiff known the truth about
 25 Horizon Organic milk and that it was not organic as represented, she would not have
 26 purchased the products or would not have paid the price she paid. As a result of defendants'
 27 conduct alleged herein, plaintiff suffered injury in fact and lost money and property.
 28

9. Defendant Danone North America, LLC (“Danone N.A.”) is organized and existing under the laws of the state of Delaware. Danone N.A.’s headquarters are at 100 Hillside Avenue, White Plains, New York, 10603. Danone N.A. is a wholly-owned subsidiary of GroupeDanone, a multinational food products corporation based in Paris, France. On April 12, 2017, GroupeDanone announced the acquisition of WhiteWave for \$12 billion.

10. Defendant The WhiteWave Foods Company (“WhiteWave”), a former subsidiary of Dean Foods, is organized and existing under the laws of the state of Delaware. WhiteWave’s headquarters are at 1225 Seventeenth Street, Suite 1000, Denver, Colorado, 80202. Among other activities, WhiteWave produces, advertises, markets, and sells milk under the Horizon Organic brand. Horizon Organic is the largest supplier of organic milk in the country with market share exceeding 40 percent. At all times relevant to this litigation, WhiteWave produced, advertised, marketed, and sold Horizon Organic DHA Omega milk to tens of thousands of consumers nationwide, including in California. WhiteWave distributed Horizon Organic milk to consumers from its five regional distribution centers, including one located at 1721 San Juan Highway, San Juan Bautista, California, 95045. On April 12, 2017, WhiteWave announced that it had been acquired by GroupeDanone.

11. Danone N.A. and WhiteWave combined their activities in North America to form a strategic business unit known as DanoneWave. Defendants, via their business unit DanoneWave, produce, advertise, market, and distribute Horizon Organic DHA Omega milk to thousands of customers in California and throughout the United States.

JURISDICTION AND VENUE

12. The court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds \$5,000,000 and is a class action in which there are in excess of 100 class members and some of the class members are citizens of states different from each of the defendants.

13. The court has personal jurisdiction over both defendants Danone N.A. and WhiteWave because they conduct extensive business in California. Defendants have marketed, promoted, distributed, and sold Horizon Organic milk in California, have sufficient

1 minimum contacts with California, and/or have sufficiently availed themselves of California
2 markets through the promotion, sales, distribution, and marketing in California to render the
3 exercise of jurisdiction by California courts permissible.

4 14. Venue is proper in this court pursuant to 28 U.S.C. §1391(a) and (b) because a
5 substantial part of the events or omissions giving rise to plaintiff Brown's claims occurred in
6 this district. Venue also is proper under 18 U.S.C. §1965(a) because defendants transact
7 substantial business in this district.

8 **FACTUAL ALLEGATIONS**

9 15. Since 1994, Horizon Organic milk has been distributed, marketed, and sold
10 nationwide.

11 16. Horizon Organic milk is sold at a variety of grocery chains, as well as other
12 retail outlets. Horizon Organic milk is available in half-gallon cartons (64 fl. oz.) and/or half
13 pint boxes (8 fl. oz.). One-half gallon of Horizon Organic milk retails for approximately \$5.00
14 to \$6.00, significantly higher than a one-half gallon of non-organic milk.

15 17. Each Horizon Organic milk label prominently and in bold capital letters
16 represents that Horizon milk is "**ORGANIC.**" The label for each of the Horizon Organic milk
17 products at issue in this case are reproduced below.



18. Certified organic milk, such as Horizon Organic milk, is processed according to federal rules addressing factors such as animal raising and feeding practices, and use of nutritional additives such as DHA. For example, rules require milk marketed as organic to come from cows whose food was grown without chemical fertilizers, pesticides, or genetically modified seeds. Herds cannot be treated with hormones or antibiotics for their milk to be advertised as organic.

19. DanoneWave knows that purchasing and consuming a truly organic product is important to consumers who buy organic. DanoneWave affirms on the Horizon website that “we’re committed to organic standards and ingredients.” Horizon Organic milk is not organic as DanoneWave represents.

20. The DHA Omega-3 added to Horizon Organic milk is derived from algae.¹ The DHA Omega-3 used in DanoneWave milk is not organic. It is synthetically manufactured using Schizochytrium, a type of algae that is fed a continuous diet of corn syrup in order to boost reproduction. The corn syrup fed to the algae is derived from GMO corn. The DHA manufacturing process includes treating the microalgae with an enzyme that hydrolyzes the cell wall causing it to rupture and release DHA algal oil from the cell. The oil is released in an aqueous broth to form a water/oil emulsion. Isoropyl alcohol is added to break the oil and water emulsion. The DHA manufacturing process also requires the use of non-organic processing aids, some of which remain in the finished DHA product.

21. An exclusive list of nutritional additives may be added to organic food products and the products still labeled “organic.” As early as 2008, the FDA and other agencies made clear that the only essential vitamins and minerals that could be added to food products labeled certified organic are: Protein, Vitamins A, C, D, E, B6, B12, Copper, Potassium, Calcium, Iron, Thiamin, Riboflavin, Niacin, Folate, Biotin, Pantothenic acid, Phosphorus, Magnesium, Zinc, Copper, and Iodine.

22. DHA Omega-3 is not on this list. Food manufacturers’ requests that DHA be added to the list of permitted synthetic ingredients in organic food have not been approved.

23. If a food product includes DHA Omega-3 as an ingredient or additive the product is not organic and it is false and misleading to label and advertise the product as organic.

24. DanoneWave nonetheless labels and advertises its Horizon Organic milk products as “**ORGANIC**”. This advertising is false or misleading to consumers.

¹ Omega-3s are a polyunsaturated fatty acid. DHA (docosahexaenoic acid) is one of the long chain omega-3 fatty acids.

CLASS ACTION ALLEGATIONS

25. Plaintiff Brown brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and (3) on behalf of a class defined as:

All persons within the State of California, and other states with laws similar to California's, who purchased Horizon Organic milk.

26. Excluded from the class are: defendants, their parents, subsidiaries, affiliates, officers, and directors; the judge to whom this case is assigned and any immediate family members thereof; and those who purchased Horizon Organic milk for the purpose of resale.

27. Certification of plaintiff's claims for classwide treatment is appropriate because she can prove the elements of her claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

28. **Numerosity.** Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the class are so numerous that joinder of all class members is impracticable. DanoneWave has sold many thousands of units to class members.

29. **Commonality & Predominance.** Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(b)(3), this action involves common questions of law and fact which predominate over any questions affecting individual class members including, without limitation:

- a. whether the representations discussed herein that DanoneWave made about Horizon Organic products were false, misleading, or likely to deceive;
- b. whether DanoneWave's conduct violates public policy;
- c. whether DanoneWave engaged in false or misleading advertising;
- d. whether DanoneWave's conduct constitutes violations of the laws asserted herein;
- e. whether plaintiff Brown and the other class members have been injured, and the proper measure of their losses as a result of those injuries; and
- f. whether plaintiff Brown and the other class members are entitled to injunctive, declaratory, or other equitable relief.

1 30. **Typicality.** Pursuant to Fed. R. Civ. P. 23(a)(3), plaintiff's claims are typical of
2 the other class members' claims because, among other things, all class members were
3 comparably injured through the uniform prohibited conduct described above.

4 31. **Adequacy of Representation.** Pursuant to Fed. R. Civ. P. 23(a)(4), plaintiff is
5 an adequate representative of the class because her interests do not conflict with the interests
6 of the other class members she seeks to represent; she has retained counsel competent and
7 experienced in complex commercial and class action litigation; and she intends to prosecute
8 this action vigorously. Plaintiff Brown's counsel are experienced in handling complex
9 litigation, including class actions. The interests of the class members will be fairly and
10 adequately protected by plaintiff and her counsel.

11 32. **Declaratory & Injunctive Relief.** Pursuant to Fed. R. Civ. P. 23(b)(2),
12 DanoneWave has acted or refused to act on grounds generally applicable to plaintiff and the
13 other class members, thereby making appropriate final injunctive relief and declaratory relief,
14 as described below, with respect to the class as a whole.

15 33. **Superiority.** Pursuant to Fed. R. Civ. P. 23(b)(3), a class action is superior to
16 any other available means for the fair and efficient adjudication of this controversy, and no
17 unusual difficulties are likely to be encountered in the management of this class action. The
18 damages or other financial detriment suffered by plaintiff Brown and the other class members
19 are relatively small compared to the burden and expense that would be required to individually
20 litigate their claims against DanoneWave, so it would be impracticable for class members to
21 seek redress individually for DanoneWave's wrongful conduct. Even if the class members
22 could afford individual litigation, the court system could not. Individualized litigation creates
23 a potential for inconsistent or contradictory judgments, and increases the delay and expense to
24 all parties and the court system. By contrast, the class action device presents far fewer
25 management difficulties, and provides the benefits of single adjudication, economy of scale,
26 and comprehensive supervision by a single court.

27 ///

28 ///

CLAIMS ALLEGED

COUNT I

**Violation of California's Unfair Competition Law
(Business & Professions Code §§17200, *et seq.*)**

34. Plaintiff Brown incorporates the preceding paragraphs as if fully set forth herein.

35. Plaintiff Brown has suffered injury in fact and lost money or property as a result of DanoneWave's conduct because she purchased one or more of defendants' Horizon Organic milk products in reliance on defendants' false and deceptive representations that the products were organic when they were not.

36. The Unfair Competition Law, Business & Professions Code §§17200, *et seq.* ("UCL"), prohibits any "unlawful," "fraudulent," or "unfair" business act or practice and any false or misleading advertising. DanoneWave committed unlawful business practices by, among other things, making representations (which also constitute advertising within the meaning of §17200) and omissions of material facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770(a)(5), (7), (9), and (16) and Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common law.

37. Plaintiff Brown, individually and on behalf of the other class members, reserves the right to allege other violations of law which constitute other unlawful business acts or practices.

38. In the course of conducting business, DanoneWave committed "unfair" business practices by, among other things, making the representations (which also constitute advertising within the meaning of §17200) and omissions of material facts regarding Horizon Organic milk in its advertising campaign, including the product packaging, as set forth herein. There is no societal benefit from false and misleading advertising – only harm. Plaintiff Brown and class members paid for a product that does not confer the benefits it promises. While plaintiff Brown and the other class members were harmed, DanoneWave was unjustly enriched by the false misrepresentations and omissions. As a result, DanoneWave's conduct is

1 “unfair,” as it offended an established public policy. Further, DanoneWave engaged in
2 immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to
3 consumers.

4 39. Further, as set forth in this complaint, plaintiff Brown alleges violations of
5 consumer protection, unfair competition, and truth in advertising laws in California, resulting
6 in harm to consumers. DanoneWave’s acts or omissions also violate and offend the public
7 policy against engaging in false and misleading advertising, unfair competition, and deceptive
8 conduct towards consumers. This conduct constitutes violations of the unfair prong of
9 Business & Professions Code §§17200, *et seq.*

10 40. There were reasonably available alternatives to further DanoneWave’s
11 legitimate business interests, other than the conduct described herein.

12 41. Business & Professions Code §§17200, *et seq.*, also prohibits any “fraudulent
13 business act or practice.” In the course of conducting business, DanoneWave’s “fraudulent
14 business act[s] or practice[s]” include, among other things, making the representations (which
15 also constitute false advertising within the meaning of §17200) and omissions of material facts
16 regarding Horizon Organic milk in its advertising campaign, including on the product
17 packaging and labeling, as set forth more fully herein. DanoneWave’s misrepresentations and
18 omissions regarding the “organic” nature of its products were false and deceptive in violation
19 of the UCL’s fraudulent prong.

20 42. Plaintiff Brown and the class members have been deceived as a result of their
21 reliance on DanoneWave’s material representations and omissions. This reliance has caused
22 harm to plaintiff Brown and other members of the class, each of whom purchased Horizon
23 organic milk.

24 43. DanoneWave knew, or should have known, that its material representations and
25 omissions would be likely to deceive the consuming public and result in consumers purchasing
26 the Horizon Organic milk.

27 44. As a result of its deception, DanoneWave has been able to reap unjust revenue
28 and profit.

45. Defendants' conduct is ongoing and continues to this date. Unless restrained and enjoined, DanoneWave will continue to engage in the above-described conduct making injunctive relief necessary and appropriate.

46. Plaintiff Brown, on behalf of herself, all others similarly situated, and the general public, also seeks restitution from DanoneWave of all money obtained from plaintiff and the other class members collected as a result of their unfair business practices, an injunction prohibiting defendants from continuing such practices, corrective advertising, and all other relief this Court deems appropriate, consistent with Business & Professions Code §17200.

COUNT II

Violation of California Consumers Legal Remedies Act (Civil Code §§1750, *et seq.*)

47. Plaintiff Brown incorporates the preceding paragraphs as if fully set forth herein.

48. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §§1750, *et seq.* ("CLRA"). Plaintiff Brown is a consumer as defined by California Civil Code §1761(d). DanoneWave's Horizon Organic milk products are "goods" within the meaning of the CLRA.

49. DanoneWave violated and continues to violate the CLRA by engaging in the following practices proscribed by Civil Code §1770(a) in transactions with plaintiff Brown and the class which were intended to result in, and did result in, the purchase of its Horizon Organic milk by plaintiff and other class members:

(5) Representing that [Horizon Organic milk] ... has approval, characteristics, uses [and] benefits ... which [they do] not have

(7) Representing that [Horizon Organic milk] is of a particular standard, quality or grade ... if [they are] of another.

(9) Advertising goods ... with intent not to sell them as advertised.

(16) Representing that [Horizon Organic milk] has been supplied in accordance with a previous representation when [they have] not.

50. DanoneWave violated the Act by representing and failing to disclose material facts on the Horizon Organic milk packaging and associated advertising, as described above, when defendants knew, or should have known, that the representations were false and misleading and that the omissions of material facts were facts they were obligated to disclose.

51. Pursuant to Civil Code §1782(d), plaintiff Brown, individually and on behalf of the class, seeks a court order enjoining the above-described wrongful acts and practices of defendants and for restitution and disgorgement.

52. Pursuant to §1782 of the Act, defendants Danone N.A. and WhiteWave were each notified in writing by certified mail of the particular violations of §1770 of the Act. The notification demanded that defendants rectify the problems associated with the actions detailed above and give notice to all affected consumers of defendants' intent to so act. A copy of the letters are attached hereto as Exhibit A.

53. If defendants fail to rectify or agree to rectify the problems associated with their conduct described above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act, plaintiff Brown will amend this complaint as a matter of right to additionally seek actual, punitive and statutory damages as permitted by the CLRA.

54. DanoneWave's conduct is fraudulent, wanton, and malicious. Plaintiff and the class also seek attorneys' fees and costs as permitted by the CLRA.

55. Pursuant to §1780(d) of the Act, attached hereto as Exhibit B is the affidavit showing that this action has been commenced in the proper form.

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REQUESTS FOR RELIEF

WHEREFORE, plaintiff Brown, individually and on behalf of the class, respectfully requests that the Court enter judgment in her favor and against defendants as follows:

- a. declaring that this action is a proper class action, certifying the class as requested herein, designating plaintiff Brown as class representative, and appointing the undersigned as class counsel;
- b. ordering defendants to pay restitution to plaintiff and class members;
- c. awarding injunctive relief as permitted by law or equity, including enjoining defendants from continuing the unlawful practices as set forth herein, and ordering defendant to engage in a corrective advertising campaign;
- d. ordering defendants to pay attorneys' fees, expenses, and costs to plaintiff and class members;
- e. ordering defendants to pay pre- and post-judgment interest on any amounts awarded; and
- f. ordering such other relief as may be just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), plaintiff Brown demands a trial by jury of all claims in this complaint so triable.

Respectfully submitted,

Dated: December 27, 2017

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
LESLIE E. HURST (178432)
PAULA R. BROWN (254142)

By: s/ Timothy G. Blood

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EXHIBIT A



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Leslie E. Hurst
 lhurst@bholaw.com

December 27, 2017

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7014 0150 0000 6250 7468)

Ms. Lorna Davis
 Executive Vice President and CEO
 Danone North America, LLC
 100 Hillside Ave.
 White Plains, NY 10603

Dear Ms. Davis:

We represent Crystal Brown ("Plaintiff") and all other consumers similarly situated in an action against Danone North America, LLC and The WhiteWave Foods Company (collectively, "Defendants"), arising out of, *inter alia*, omissions and misrepresentations about Horizon Organic milk products with DHA Omega-3.

Plaintiff and others similarly situated purchased Horizon Organic milk products unaware of the fact that Defendants' "organic" representations and omissions were false and deceptive. The full claims, including the facts and circumstances surrounding these claims, are detailed in the class action complaint, a copy of which is attached and incorporated by this reference.

These representations and omissions are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendants with the intent to result in the sale of Horizons Organic milk products to the consuming public. These practices constitute violations of the Consumers Legal Remedies Act, California Civil Code §1750, *et seq.* Specifically, Defendants' practices violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that goods or services have ... approval, characteristics, . . . uses [or] benefits ... [which] they do not have

* * *

- (7) Representing that goods or services are of a particular standard, quality, or grade ... if they are of another.

* * *

- (9) Advertising goods or services with intent not to sell them as advertised.

* * *

- (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.



December 27, 2017

Page 2

Defendants' practices also violate California Business and Professions Code §17200, *et seq.*

While the complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that Defendants immediately correct and rectify these violations by ceasing dissemination of false and misleading information as described in the enclosed complaint, properly inform consumers that Horizons Organic milk is not organic, provide redress for those who have purchased the products, and initiate a corrective advertising campaign to re-educate consumers regarding the truth of the products at issue. In addition, Defendants must offer to refund the purchase price to all consumer purchasers of the products at issue, plus provide reimbursement for interest, costs, and fees.

We await your response.

Sincerely,

LESLIE E. HURST

LEH:ec

Enclosure



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Leslie E. Hurst
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December 27, 2017

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7014 0150 0000 6250 7451)

Mr. Kevin Yost, President
 The WhiteWave Foods Company
 1225 Seventeenth Street, Suite 1000
 Denver, CO 80202

Dear Mr. Yost:

We represent Crystal Brown ("Plaintiff") and all other consumers similarly situated in an action against Danone North America, LLC and The WhiteWave Foods Company (collectively, "Defendants"), arising out of, *inter alia*, omissions and misrepresentations about Horizon Organic milk products with DHA Omega-3.

Plaintiff and others similarly situated purchased Horizon Organic milk products unaware of the fact that Defendants' "organic" representations and omissions were false and deceptive. The full claims, including the facts and circumstances surrounding these claims, are detailed in the class action complaint, a copy of which is attached and incorporated by this reference.

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* * *

- (7) Representing that goods or services are of a particular standard, quality, or grade ... if they are of another.

* * *

- (9) Advertising goods or services with intent not to sell them as advertised.

* * *

- (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

Defendants' practices also violate California Business and Professions Code §17200, *et seq.*

While the complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that Defendants immediately correct and rectify these violations by ceasing



December 27, 2017

Page 2

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We await your response.

Sincerely,

LESLIE E. HURST

LEH:ec

Enclosure

EXHIBIT B

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

CRYSTAL BROWN, on Behalf of Herself
 and All Others Similarly Situated,

Plaintiff,

v.

DANONE NORTH AMERICA, LLC and
 THE WHITEWAVE FOODS COMPANY,

Defendants.

Case No.

CLASS ACTION

**AFFIDAVIT OF LESLIE HURST
 PURSUANT TO CAL. CIVIL CODE
 §1780(D)**

JURY TRIAL DEMANDED

1 I, LESLIE E. HURST, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of
3 California. I am a partner of the law firm of Blood Hurst & O'Reardon LLP, and one of the
4 counsel of record for plaintiff in the above-entitled action.

5 2. Defendants Danone North America LLC and The WhiteWave Foods Company
6 have done and are doing business in San Francisco County, California. Such business includes
7 the marketing, promoting, distributing, and selling of Horizons Organic milk products with
8 DHA Omega-3, the products at issue in the lawsuit.

9 3. Plaintiff Crystal Brown resides in the city of San Francisco which is located in
10 San Francisco County, California.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct. Executed on December 27, 2017, at San Diego, California.

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14 s/ Leslie E. Hurst

15 LESLIE E. HURST
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JS-CAND 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CRYSTAL BROWN, on Behalf of Herself and All Others Similarly Situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Timothy G. Blood
Blood Hurst & O'Reardon, LLP
501 West Broadway, Suite 1490, San Diego, CA 92101

[SEE ATTACHMENT]

Tel: (619) 338-1100

DEFENDANTS

DANONE NORTH AMERICA, LLC and THE WHITEWAVE FOODS COMPANY

County of Residence of First Listed Defendant
(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 3 Federal Question
(U.S. Government Not a Party)
- 2 U.S. Government Defendant ☒ 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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	365 Personal Injury – Product Liability	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	367 Health Care/Pharmaceutical Personal Injury Product Liability	LABOR	PROPERTY RIGHTS	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	368 Asbestos Personal Injury Product Liability	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	PERSONAL PROPERTY	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	<input checked="" type="checkbox"/> 370 Other Fraud	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	371 Truth in Lending	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	380 Other Personal Property Damage	790 Other Labor Litigation	SOCIAL SECURITY	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	385 Property Damage Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
190 Other Contract	360 Other Personal Injury		IMMIGRATION	862 Black Lung (923)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury -Medical Malpractice		462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
196 Franchise	CIVIL RIGHTS	PRISONER PETITIONS	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
REAL PROPERTY	440 Other Civil Rights	HABEAS CORPUS		865 RSI (405(g))	891 Agricultural Acts
210 Land Condemnation	441 Voting	463 Alien Detainee		FEDERAL TAX SUITS	893 Environmental Matters
220 Foreclosure	442 Employment	510 Motions to Vacate Sentence		870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	443 Housing/Accommodations	530 General		871 IRS—Third Party 26 USC § 7609	896 Arbitration
240 Torts to Land	445 Amer. w/Disabilities—Employment	535 Death Penalty			899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	446 Amer. w/Disabilities—Other	OTHER			950 Constitutionality of State Statutes
290 All Other Real Property	448 Education	540 Mandamus & Other			
		550 Civil Rights			
		555 Prison Condition			
		560 Civil Detainee—Conditions of Confinement			

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 (specify) 6 Multidistrict Litigation—Transfer 8 Multidistrict Litigation—Direct File

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)(2)

Brief description of cause:

Violations of Cal. Bus. & Prof. Code §17200 (UCL), and Civil Code §1750 (CLRA)

VII. REQUESTED IN COMPLAINT: ☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

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

DATE 12/27/2017

SIGNATURE OF ATTORNEY OF RECORD

s/ Timothy G. Blood

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. **Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

Date and Attorney Signature. Date and sign the civil cover sheet.

Crystal Brown v. Danone North America, LLC; The WhiteWave Foods Company
United States District Court, Northern District of California, No. 3:17-cv-07325

ATTACHMENT A TO CIVIL COVER SHEET (JS-CAND-44)

Attorneys for Plaintiff Crystal Brown

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