

**GUTRIDE SAFIER LLP**

ADAM J. GUTRIDE (State Bar No. 181446)

SETH A. SAFIER (State Bar No. 197427)

MARIE MCCRARY (State Bar No. 262670)

100 Pine St., Suite 1250

San Francisco, California 94111

Telephone: (415) 336-6545

Facsimile: (415) 449-6469

Attorneys for Plaintiff, BRENDAN PEACOCK

**FILED**  
**ALAMEDA COUNTY**

MAR - 6 2018

CLERK OF THE SUPERIOR COURT  
By [Signature] DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

BRENDAN PEACOCK, an individual, on  
behalf of himself, the general public and  
those similarly situated,

Plaintiff,

v.

SMALL PLANET FOODS, INC.; GEN-  
ERAL MILLS, INC.; and DOES 1  
THROUGH 50,

Defendants.

CASE NO. 18895553

UNLIMITED CIVIL CASE

CLASS ACTION COMPLAINT FOR VIOLA-  
TION OF THE CALIFORNIA CONSUMERS  
LEGAL REMEDIES ACT; FALSE ADVER-  
TISING; FRAUD, DECEIT, AND/OR MIS-  
REPRESENTATION; AND UNFAIR  
BUSINESS PRACTICES

JURY TRIAL DEMANDED

FILED BY FAX

1 Brendan Peacock, by and through his counsel, brings this Class Action Complaint ("Class  
2 Action Complaint") against Defendants Small Planet Foods, Inc.; General Mills, Inc.; and Does 1  
3 through 50, on behalf of himself and those similarly situated, for violations of the Consumer  
4 Legal Remedies Act, false advertising, unfair trade practices, and fraud, deceit and/or  
5 misrepresentation. The following allegations are based upon information and belief, including the  
6 investigation of Plaintiff's counsel, unless stated otherwise.

### 7 INTRODUCTION

8 1. This case concerns Defendants' false and deceptive marketing and sale of  
9 Cascadian Farm brand frozen fruits and vegetables. Defendants' identical misrepresentations  
10 mislead consumers into believing that all of their frozen fruit and vegetable products are grown  
11 on an organic farm in Skagit Valley, a small region in the state of Washington along the Skagit  
12 River in the Cascade mountains. In truth, Defendants' frozen fruit and vegetables are not grown  
13 on a farm in the Cascades mountain range and/or in the Skagit Valley region. Rather, because  
14 Defendants are multinational agrobusinesses, the fruit and vegetables used in their frozen  
15 products are sourced from all over the United States and the world.

16 2. Throughout the class period, Defendants have obtained substantial profits from the  
17 deceptive sale of frozen fruits and vegetables marketed as being made grown on an organic farm  
18 in "Skagit Valley, WA." This action seeks: (i) to require Defendants to pay damages to  
19 purchasers of the Cascadian Farm brand frozen fruits and vegetables, namely the price premium  
20 paid for the products, i.e., the difference between the price consumers paid for the products and  
21 the price that they would have paid but for Defendants' misrepresentation, in an amount to be  
22 proven at trial using econometric or statistical techniques such as hedonic regression or conjoint  
23 analysis; (ii) an injunction precluding the sale of the Cascadian Farm brand frozen fruits and  
24 vegetables within a reasonable time after entry of judgment, unless the products' packaging and  
25 marketing are modified to remove the misrepresentation and to disclose the omitted facts as to  
26 their states and countries of origin; and (iii) an order requiring Defendants to remove phrases such  
27 as "Cascadian Farm" and "Skagit Valley, WA" from the products' packaging and marketing, and  
28 to affirmatively inform purchasers that the frozen fruits and vegetables are grown elsewhere in

1 the United States and in foreign countries.

2 **PARTIES**

3 3. Brendan Peacock ("Plaintiff") is, and at all times alleged in this Class Action  
4 Complaint was, an individual and a resident of Sacramento, California.

5 4. Defendant Small Planet Foods, Inc. ("Small Planet") is a corporation incorporated  
6 under the laws of the State of Washington, having its principal place of business in Minneapolis,  
7 Minnesota.

8 5. Defendant General Mills, Inc. ("General Mills") is a corporation incorporated  
9 under the laws of the State of Delaware, having its principal place of business in Minneapolis,  
10 Minnesota. Small Planet is a wholly-owned subsidiary of General Mills.

11 6. The true names and capacities of Defendants sued as Does 1 through 50 inclusive  
12 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names pursuant to  
13 section 474 of the California Code of Civil Procedure. Plaintiff will seek leave of Court to amend  
14 this Class Action Complaint when said true names and capacities have been ascertained.

15 7. The Parties identified in paragraphs 4 - 6 of this Class Action Complaint are  
16 collectively referred to hereafter as "Defendants."

17 8. At all times herein mentioned, each of the Defendants was the agent, servant,  
18 representative, officer, director, partner or employee of the other Defendants and, in doing the  
19 things herein alleged, was acting within the scope and course of his/her/its authority as such  
20 agent, servant, representative, officer, director, partner or employee, and with the permission and  
21 consent of each Defendant.

22 9. At all times herein mentioned, each of the Defendants was a member of, and  
23 engaged in, a joint venture, partnership and common enterprise, and acting within the course and  
24 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

25 10. At all times herein mentioned, the acts and omissions of each of the Defendants  
26 concurred and contributed to the various acts and omissions of each and all of the other  
27 Defendants in proximately causing the injuries and damages as herein alleged.

28 11. At all times herein mentioned, each of the Defendants ratified each and every act

1 or omission complained of herein. At all times herein mentioned, each of the Defendants aided  
 2 and abetted the acts and omissions of each and all of the other Defendants in proximately causing  
 3 the damages, and other injuries, as herein alleged.

#### 4 JURISDICTION AND VENUE

5 12. This action is brought by Plaintiff pursuant, *inter alia*, to the California Business  
 6 and Professions Code, section 17200, *et. seq.* Plaintiff and Defendants are "persons" within the  
 7 meaning of the California Business and Professions Code, section 17201.

8 13. The injuries, damages and/or harm upon which this action is based occurred in, or  
 9 arose out of activities engaged in by Defendants within, affecting, and emanating from, the State  
 10 of California.

11 14. Defendants have engaged, and continue to engage, in substantial and continuous  
 12 business practices in the State of California, including in Alameda County. For example,  
 13 Defendant General Mills maintains an office in Berkeley, California that is engaged in the  
 14 marketing, advertising and sale of consumer food products. General Mills continues to hire  
 15 personnel for its Berkeley office. As of the filing of this Complaint, Plaintiff is aware of, at least,  
 16 fourteen different listings for open positions at Defendant's Berkeley office. These listing  
 17 includes positions for marketing, "sustainability," "product innovation," "global ecommerce,"  
 18 "ecommerce," "food service," sales and "marketing communications" personnel.

19 15. In accordance with California Civil Code Section 1780(d), Plaintiff concurrently  
 20 files herewith a declaration establishing that, on or around January 4, 2018, he purchased a  
 21 package of Cascadian Farm Harvest Berries at a Grocery Outlet store in Sacramento, California.  
 22 (Plaintiff's declaration is attached hereto as Exhibit A.)

23 16. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

#### 24 SUBSTANTIVE ALLEGATIONS

##### 25 **A. Defendants Falsely Advertise Their Products As Being from Skagit Valley, WA and 26 the Cascade Mountain Region.**

27 17. Small Planet and General Mills are importers, marketers, and sellers of food  
 28 products in the United States.

18. This case concerns Defendants' marketing and sale of their frozen fruit and

1 vegetable products under the brand name "Cascadian Farm." The specific products as issue in this  
2 case are:

- 3 a. Cascadian Farm Mango Strawberry Blend;
- 4 b. Cascadian Farm Cherry Berry Blend;
- 5 c. Cascadian Farm Harvest Berries;
- 6 d. Cascadian Farm Mango Chunks;
- 7 e. Cascadian Farm Blackberries;
- 8 f. Cascadian Farm Raspberries;
- 9 g. Cascadian Farm Blueberries;
- 10 h. Cascadian Farm Strawberries;
- 11 i. Cascadian Farm Sliced Peaches;
- 12 j. Cascadian Farm Cut Spinach;
- 13 k. Cascadian Farm Riced Cauliflower;
- 14 l. Cascadian Farm Beets;
- 15 m. Cascadian Farm Kale;
- 16 n. Cascadian Farm Multi-Colored Carrots;
- 17 o. Cascadian Farm Broccoli Florets;
- 18 p. Cascadian Farm Swiss Chard;
- 19 q. Cascadian Farm Broccoli Cuts;
- 20 r. Cascadian Farm Cut Green Beans;
- 21 s. Cascadian Farm Shelled Edamame;
- 22 t. Cascadian Farm Edamame;
- 23 u. Cascadian Farm Sweet Peas;
- 24 v. Cascadian Farm Garden Peas;
- 25 w. Cascadian Farm Sweet Corn;
- 26 x. Cascadian Farm Peas and Carrots;
- 27 y. Cascadian Farm Mixed Vegetables;
- 28 z. Cascadian Farm Riced Cauliflower Blend with Bell Peppers & Onions;



- 1           aa.     Cascadian Farm Riced Cauliflower with Roasted Sweet Potatoes & Kale;
- 2           bb.     Cascadian Farm Riced Cauliflower Blend with Stir-Fry Vegetables;
- 3           cc.     Cascadian Farm Mirepoix;
- 4           dd.     Cascadian Farm Chinese-Style Stirfy Blend;
- 5           ee.     Cascadian Farm California-Style Blend; and
- 6           ff.     Cascadian Farm Gardener's Blend.

7 These products are collectively referred to as the "Products."

8           19.     This case arises from Defendants' repeated use of intentional misrepresentations  
9 and selective omissions to deceive and mislead consumers into believing that the fruits and  
10 vegetables in the Products are grown on a farm in Skagit Valley, WA in the Cascades, when the  
11 Products are in fact sourced from all over the United States and the world.

12           20.     First, Defendants' brand name, "Cascadian Farm" which identically appears in  
13 bold letters in a banner on the front of each of the Product packages, implies that the Products are  
14 grown on a farm in the Cascade mountains.

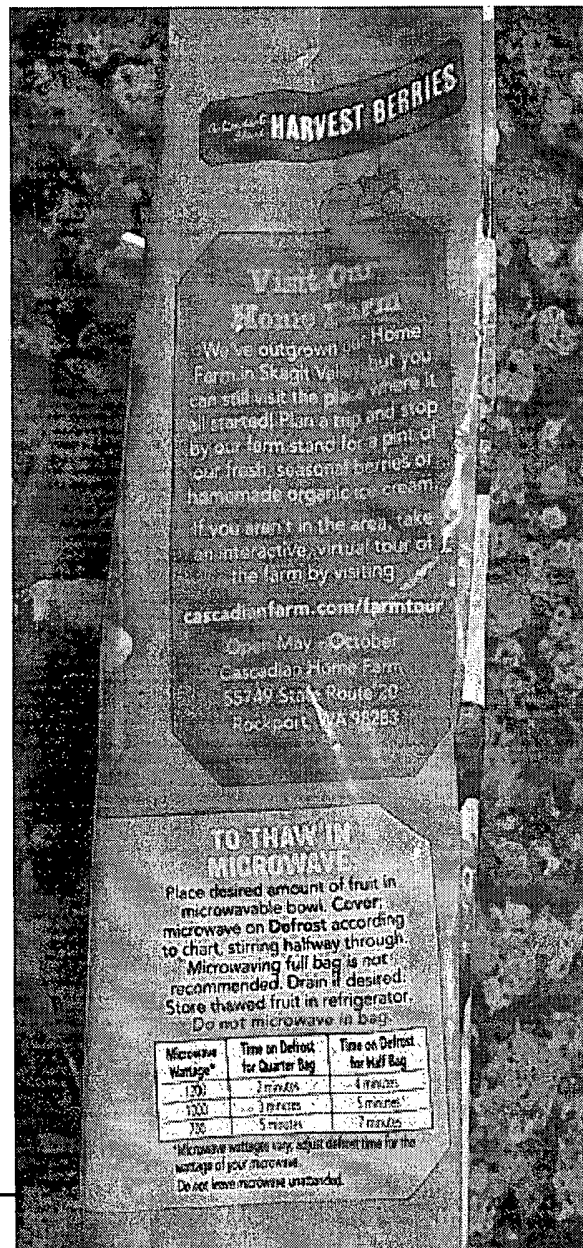
15           21.     Further, on the front of each of the Product packages is a photograph of a farm  
16 with the Cascade mountains in the background. Each of the Product packages also state "VISIT



1 OUR HOME FARM, SKAGIT VALLEY, WA SINCE 1972.” For example, below is a  
 2 photograph of the front of the package of the Cascadian Farm Harvest Berries.

3 The front of the package of the other Products is substantially similar except for the name of the  
 4 product and the fruit or vegetable depicted.

5 22. On the side of each of the Product packages, Defendants again emphasize the  
 6 geographic origin of the fruits and vegetables. In particular, the packages state “We’ve outgrown  
 7 our Home Farm in Skagit Valley, but you can still visit the place where it all started.” The side  
 8 panel provides the following address for the farm: “Cascadian Home Farm, 55749 State Route 20,  
 9 Rockport, WA 98283.” For example, below is a photograph of the side of the package of the  
 10 Cascadian Farm Harvest Berries.





1 The side of the package of the other Products is substantially similar except for the name of the  
 2 product at the top. Nowhere on the front or side of the packages for any of the Products do  
 3 Defendants disclose that the fruits and vegetables are sourced from all over the United States and  
 4 the world.

5 23. On the back of the Product packages, Defendants state the true origin of the  
 6 products by disclosing, for example, "Product of Mexico/Chile." The font is much smaller than  
 7 the various representations about the Defendants' "home farm" described in paragraphs 21-22. In  
 8 many cases, it is printed sideways, and is thus, only readable if the consumer turns the Product  
 9 package sideways and examines the small text box. For example, below is a photograph of the  
 10 back of the package of the Cascadian Farm Harvest Berries, depicting the disclosure in the small  
 11 blue box towards the bottom:





1  
2 The back of the package of the other Products is substantially similar, each disclosing the true  
3 origins in a small font on the bottom half of the back of the package.

4 24. Defendants' packaging for the Products' intentionally misleads consumers into  
5 believing that the fruits and vegetables are grown on an organic farm in Skagit Valley, a small region  
6 in the state of Washington along the Skagit River in the Cascade mountains. Defendants'  
7 representations are false and deceptive, because many of the Products are obtained from foreign  
8 countries, such as Mexico and Chile, and imported into the United States (hereinafter "Imported  
9 Products"), whereas the remainder of the Products are predominately, or exclusively, grown on  
10 farms located elsewhere in the United States.

11 **B. Defendants Have Utilized a Long Term Marketing and Advertising Campaign to**  
12 **Promote Cascadian Farm as a Farm in the Cascades to Obscure the Fact that They**  
13 **Are Multinational Agrobusinesses.**

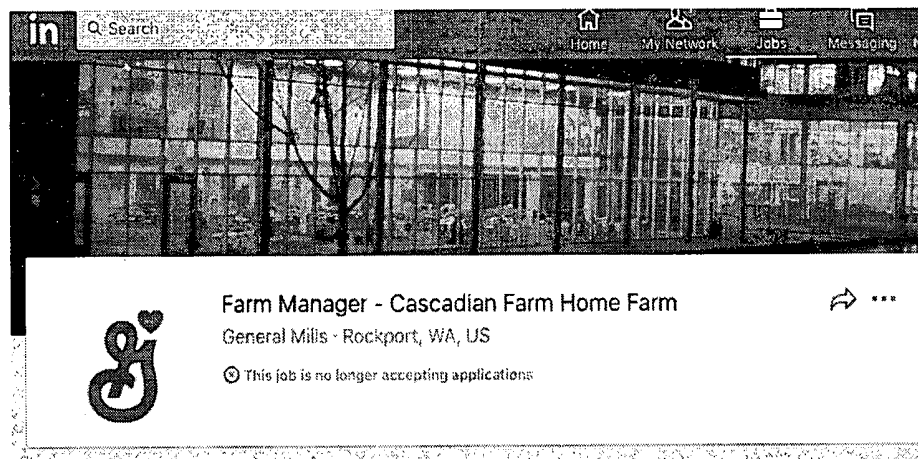
14 25. To unfairly and unlawfully attempt to capitalize on consumers' desires for organic,  
15 natural fruits and vegetables grown on domestic small farms, Defendants have employed a variety  
16 of long-term marketing and advertising campaigns and strategies to deceive consumers into  
17 believing that the Products are grown on a farm in the Cascades. The reality is, however, that the  
18 marketing of the Cascadian Farm brand is directed and controlled by Defendant General Mills,  
19 which uses Defendant Small Planet as a front, enabling it to conceal the fact that consumers are  
20 not buying from a small, organic company in the Skagit Valley region in Washington, but from a  
21 massive, multinational agrobusiness, which has purchased the produce it sells under the  
22 Cascadian Farm brand from large farms based all over the world.

23 26. Defendant Small Planet formed in Washington in 1972, and promoted itself as a  
24 trusted organic brand operating from a small farm in the Cascades. In 1999, Defendant General  
25 Mills acquired Small Planet. At the time, General Mills was seeking to move into the organic  
26 produce business.

27 27. General Mills knew in 1999, as it knows now, that consumers interested in  
28 purchasing organic produce from small American farmers are skeptical of purchasing food from a  
massive, multinational corporation best known for selling sugary cereals and other processed,

1 chemically laden snacks. Thus, rather than dissolve Small Planet after acquisition, it maintained it  
 2 as a separate subsidiary to hold out as the owner and manufacturer of foods made under the  
 3 Cascadian Farm brand. Nevertheless, General Mills retained exclusive control of Small Planet  
 4 and its decisions, and directed the marketing of that brand to ensure it retained its image of a  
 5 small, local farm. To carry out this plan, Gene Kahn, the founder of Cascadian Farm, assumed a  
 6 job as Vice President, and later, Global Sustainability Officer at General Mills, where he oversaw  
 7 the growth of the brand. In addition, General Mills relocated some of Small Foods' operations  
 8 from Washington to Minneapolis, Minnesota, so that its employees could work at the General  
 9 Mills headquarters. Others were relocated to General Mills offices around the United States,  
 10 including in Alameda County.

11 28. General Mills continues to conduct much of the advertising for Small Planet. In an  
 12 attempt to attract long time General Mills consumers who might be interested in purchasing more  
 13 organic produce from small, American farms, General Mills promotes the Cascadian Farm brand  
 14 heavily on its website. "Cascadian Farm" is listed as one of its organic, natural brands. When  
 15 products need to be recalled, it is General Mills that issues the recall notice. *See, e.g.,*  
 16 [https://www.usatoday.com/story/money/nation-now/2017/10/12/general-mills-recalls-cascadian-](https://www.usatoday.com/story/money/nation-now/2017/10/12/general-mills-recalls-cascadian-farm-cinnamon-raisin-granola-cereal-unlisted-nut-allergen/759493001/)  
 17 [farm-cinnamon-raisin-granola-cereal-unlisted-nut-allergen/759493001/](https://www.usatoday.com/story/money/nation-now/2017/10/12/general-mills-recalls-cascadian-farm-cinnamon-raisin-granola-cereal-unlisted-nut-allergen/759493001/) (last accessed Feb. 25,  
 18 2018). And when recruiting employees, General Mills hires employees itself. For example, a  
 19 recent job advertisement on LinkedIn shows the General Mills logo next to the advertisement for  
 20 a manager for the "farm":



1           29.     Thus, together, Defendants have utilized a long term advertising campaign to  
2 market the Products specifically, and the Cascadian Farm brand generally, in a way to suggest all  
3 of their frozen fruit and vegetable products are grown on a farm in the Cascade mountains, while  
4 concealing the fact that because Defendants are multinational agrobusinesses, the fruit and  
5 vegetables used in their frozen products are sourced from all over the United States and the world.

6           30.     For example, Defendants operate a website – <https://www.cascadianfarm.com/> – to  
7 further their deception. In a central location on the home page, consumers are presented with an  
8 option to “tour OUR FARM.” Clicking on the link takes consumers to a three and a half minute  
9 long video, narrated by “Farmer Jim Meyer,” who is described as the “General Manger of the  
10 Cascadian Farm Home Farm.” In the video, Defendants show idyllic farm scenes of individuals  
11 hand-picking the produce and old, simple tractors, with the Cascade mountains in the  
12 background, while “Farmer Jim Meyer” describes the “natural beauty” of the area and the  
13 benefits of organic farming. At no point in the video do Defendants state that the Products come  
14 from locations outside of Skagit Valley, WA.

15           31.     On a different link on the home page called “Our Farm,” consumers are taken to a  
16 page that purports to tell the story of “The Farm.” There it says that “Cascadian Farm is also a  
17 real place – a working, active productive farm dedicated to bringing wholesome orgnic food to  
18 your table.” <https://www.cascadianfarm.com/our-farm/the-farm> (last accessed Feb. 25, 2018).  
19 While the story does say, “Today Cascadian Farm has grown beyond our original farm”, it does  
20 not identify any of the farm’s other locations, which suggests to reasonable consumers that the  
21 farm has merely expanded in acreage. That page also includes links to a “Farm Blog” and  
22 directions to visit the farm.

23           32.     Defendants also rely on social media to further their deception. For example,  
24 throughout the class period they have operated a Facebook page —  
25 <https://www.facebook.com/CascadianFarm> — that is followed or liked by more than 600,000  
26 people. The Cascadian Farm facebook page features photos of Western Washington, claims a  
27 Rockport, WA location, and contains status updates about the “home farm” in Washington. These  
28 status updates regularly appear in the Facebook feeds of many of the 600,000 people who have



1 elected to follow the page, and are further viewed by consumers who visit the page to seek more  
2 information about the company. Defendants for example, use this Facebook page to promote the  
3 produce they grow on the home farm, without disclosing that consumers who buy the Products  
4 are unlikely to receive produce from Skagit Valley, and may receive imported produce. Some  
5 examples of these posts are below:





Cascadian Farm

January 24 · 🌐

Dreaming of spring. There's nothing like a sun-warmed strawberry picked straight off of the plant. Strawberries are the first fruit to ripen at the home farm and we're looking forward to harvesting them by the handful this spring.



👍 Like

💬 Comment

➦ Share

👤 13

Throughout the class period, Defendants regularly posted similar images and comments to the Cascadian Farm Facebook feed. Defendants post these pictures with the intent to convey to consumers that their Products are from a small farm in the Cascade mountains. At no time, have Defendants disclosed on their Facebook feed that some of the Products advertised are imported and that virutally all are not from a farm in the Cascades, but from elsewhere in the United States or abroad.

33. Defendants also operate a Twitter account, @cascadianfarm, which has over 10,000 followers. Defendants have operated this page since August 2009. On that page, Defendants display photos of Western Washington and the Cascade Mountains, claim Skagit Valley, WA as the farm's location, and, post status updates about the "home farm" in Washington. Defendants post many of the same posts as they put on their Facebook page, described in the preceding paragraph, as well as other similar posts. For example:

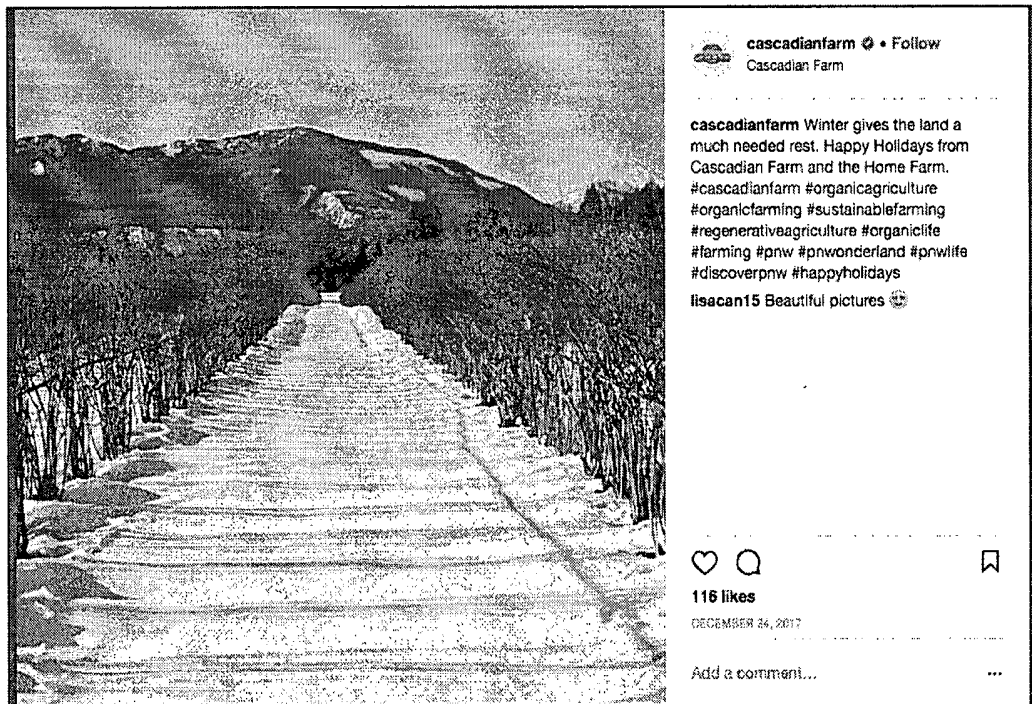
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



34. As with their Facebook feed, Defendants post these pictures with the intent to convey to consumers that the Products are from a farm in the Cascade mountains. At no time, have Defendants disclosed on their Twitter account that some of the Products advertised are imported and that most are not from a farm in the Cascades, but from elsewhere in the United States or abroad.

35. Defendants also maintain a Cascadian Farm Instagram account, cascadianfarm, which has over 5,131 followers. On that Defendants' instagram account they display photos of Western Washington and the Cascade Mountains, and post photo status updates about the "home farm" in Washington. Defendants post many of the same posts as they put on their Facebook and Twitter pages, described in the preceding paragraphs, as well as other similar posts. For example:





36. As with their Facebook and Twitter feeds, Defendants post these pictures with the intent to convey to consumers that the Products are from a farm in the Cascade mountains. At no time, have Defendants disclosed on their Instagram page that some of the Products advertised are imported and that virtually all are not from a farm in the Cascades, but from elsewhere in the United States or abroad.

37. Defendants also maintain a Cascadian Farm YouTube channel, available at <https://www.youtube.com/user/cascadianfarm>, where they place promotional videos about the brand. These videos get posted to the Cascadian Farm social media pages, such as Facebook and Twitter. Many of the videos on the page feature the Cascade mountains, and show the farm as a small, local operation based entirely in the Skagit Valley. For example, one video entitled "Cascadian Farm: The Ideal Behind the Place," features the Cascade Mountains and Skagit River prominently, and show food being farmed in this location. This video has been viewed by more than 1.5 million people. Other video topics are also chosen to convey the image of a small, local farm in the Skagit Valley, such as a series featuring gardening tips from "Farmer Jim Meyer" and others about the benefits of organic farming. Like all of Cascadian Farms brand advertising, the videos on its YouTube channel do not disclose that some of the Products advertised are imported

1 and that virtually all are not from a farm in the Cascades, but from elsewhere in the United States  
2 or abroad.

3 38. Because of Defendants' false and misleading country of origin claims, Defendants  
4 are able to charge, and consumers pay, a higher price for all of the Products than would exist if  
5 they were labeled in a truthful, non-deceptive manner. Fruits and vegetables that are perceived to  
6 be grown in the United States command a higher price in the market than fruits and vegetables  
7 grown in other countries, which are the true source of the fruits and vegetables in the Products.

8 39. Because consumers believe the Products are from a farm in the Cascades, and not  
9 sourced from all over the United States and the world, Defendants are able to charge a premium  
10 for the Products as compared to similar produce. For example, on February 20, 2018, a consumer  
11 who shopped at the grocery store Berkeley Bowl via Instacart.com would find that a ten ounce  
12 bag of Cascadian Farm Organic Broccoli Florets cost \$3.79, whereas a ten ounce bag of  
13 Woodstock Organic Broccoli Florets cost just \$3.19. Likewise, while a 10 ounce bag of  
14 Cascadian Farm Organic Strawberries cost \$4.99, a ten ounce bag of Cadia Organic Strawberries  
15 was just \$4.09. Neither Cadia nor Woodstock made any representations as to the geographic  
16 origins of their products on the front of the package.

17 40. If consumers knew that the Products were not from a farm in the Cascades, but  
18 from elsewhere in the United States or imported, they would pay less for the Products.

19 **C. Defendants' Geographic Representations Are Not Only Misleading to Reasonable  
20 Consumers, But Per Se Unlawful.**

21 41. The United States Food and Drug Administration (the "FDA") has promulgated  
22 regulations governing misbranding of food and providing that food is misbranded if its label  
23 "expresses or implies a geographical origin of the food . . . except when such representation is []  
24 [a] truthful representation of geographical origin." See 21 C.F.R. § 101.18 (c) (emphasis added).  
25 Because the "CASCADIAN FARM" and "SKAGIT VALLEY, WA" representations are not  
26 truthful, Defendants' labels violate 21 C.F.R. § 101.18, which has been independently adopted as  
27 part of the Sherman Food, Drug and Cosmetic Law, California Health and Safety Code ("Cal.  
28 Health & Saf. Code") § 109875, *et. seq.* See Cal. Health & Saf. Code §§ 110100(a), 110380,  
110505 (adopting FDA standards).

42. While the FDA regulations permit a geographical representation in a trademarked name, that exception only applies where it is generally understood by the consumer to mean the product of a particular manufacturer or distributor. Here, because of Defendants' use of pictures of the Cascade mountains and representations about their farm in Skagit Valley, the company's long time association with that region, and Defendants' efforts to obscure the multinational corporation General Mills from the product packaging, consumers understand the representation to be a descriptor of the geographic origins of the product in addition to the brand's trademark.

43. Part 134, Chapter 1 of Title 19 of the Code of Federal Regulations sets forth regulations implementing the geographic origin marking requirements and exceptions of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

44. 19 C.F.R. § 134.46 requires that:

In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or location in the United States, ... other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

45. The front of all of Defendants' Imported Product packages contain unqualified domestic-origin claims. The packages predominately state "CASCADIAN FARM" and "SKAGIT VALLEY, WA." These United States locations are not the location where the fruits and vegetables used in Defendants' Products are grown. Yet, Defendants, in violation of 19 C.F.R. § 134.46, do not include on the Products, "in close proximity" to the "CASCADIAN FARM" and "SKAGIT VALLEY, WA" representations, any indication of the true country of origin of the fruits and vegetables preceded by "Made in," "Product of," or other words of similar meaning. Instead, Defendants state only on the back of all the Products' packages appearing, in much smaller font, a notation such as: "Product of Mexico/Chile."

46. Under the Tariff Act and implementing regulations, in situations where a product



1 sold to consumers is composed of ingredients from various countries of origin, all the countries of  
2 origin must be disclosed, and must appear in close proximity to any representation that the  
3 product is "imported from" or "made in." § 19 C.F.R. 134.46. For example, in Letter N130295,  
4 dated November 24, 2010, the CBP explained that a tin of olive oil, which stated "Imported from  
5 Italy" prominently on the side panel, was in violation of the Tariff Act, because the olives were  
6 pressed and grown elsewhere, and the company had only disclosed that fact by printing a key  
7 identifying the true countries of origin in small font (similar to the key used by Defendants)  
8 towards the bottom of the side panel.

9       47. An exception exists if the ingredients from various countries are "substantially  
10 transformed" into a new product in a single country, in which case the country where the  
11 substantial transformation occurred can be claimed as the country of origin. 19 C.F.R. 134.1(b).  
12 However, the blending or mixing together of ingredients from multiple countries does not  
13 constitute a "substantial transformation." *See, e.g.*, Letter HQ 735085, dated June 4, 1993  
14 (explaining that a package containing produce grown in various countries, transported to Mexico,  
15 where it is mixed with produce grown in Mexico, did not undergo a substantial transformation in  
16 Mexico and must identify the countries of origin of all the components).

17       48. In addition to violating the above-identified regulations, Defendants' use of the  
18 brand name "Cascadian Farm," the "SKAGIT VALLEY, WA", and the photograph of a farm  
19 located in the Cascade mountains on the front of all the Product packages, are intended to, and do,  
20 mislead consumers into believing that the fruits and vegetables in the Products are grown in the  
21 United States, specifically, in on a farm in Skagit Valley in the Cascades. The small, cryptic  
22 information on the back of the package, which discloses the actual non-USA origin of the fruits  
23 and vegetables, does not lessen Defendants' deception because, as the U.S. Court of Appeals for  
24 the Ninth Circuit has stated, "reasonable consumers...should [not] be expected to look beyond  
25 misleading representations on the front of the box to discover the truth from the...small print on  
26 the side of the box." *Williams v. Gerber Products Co.*, 552 F.3d 934, 939 (9th Cir. 2008).

27       49. Defendants' practices with respect to the Imported Products also run afoul of the  
28 "Made in the USA" policy of the Federal Trade Commission ("FTC"). Per those rules, marketers

1 should be wary of using U.S. geographic references when “all or virtually all” of the product are  
2 not of U.S. origin. As the FTC has explained:

3           For example, assume that a company advertises its product in an adver-  
4           tisement that features pictures of employees at work at what is identified as the  
5           company's U.S. factory, these pictures are superimposed on an image of a U.S.  
6           flag, and the advertisement bears the headline "American Quality." Although  
7           there is no express representation that the company's product is "Made in USA,"  
8           the net impression of the advertisement is likely to convey to consumers a claim  
9           that the product is of U.S. origin.

10           [https://www.ftc.gov/public-statements/1997/12/enforcement-policy-statement-us-origin-](https://www.ftc.gov/public-statements/1997/12/enforcement-policy-statement-us-origin-claims)  
11           claims (last accessed Feb. 25, 2018). Here, Defendants practices with respect to the Imported  
12           Products violate this policy, as they utilize images of one “factory,” i.e., a farm and  
13           representations about the Cascade region, without disclosing that the produce is grown abroad.

#### 14           **PLAINTIFF'S EXPERIENCE**

15           50. In or around January 4, 2018, Plaintiff desired to purchase domestically-grown  
16           frozen fruit. Plaintiff was familiar with the Cascadian Farm brand and believed it to be a small,  
17           domestic company specializing in organic produce. He had purchased other Cascadian Farm  
18           products over the years, and had viewed its packaging numerous times, which typically included  
19           representations about the “home farm” and pictures of the Cascade Mountains. Prior to  
20           purchasing Defendants' Cascadian Farm Harvest Berries, Plaintiff reviewed the packaging to  
21           satisfy himself that he was purchasing frozen fruit grown in the United States. Plaintiff  
22           specifically reviewed the brand name “Cascadian Farm” and Defendants' statement on the front  
23           of the package that “VISIT OUR HOME FARM, SKAGIT VALLEY, WA SINCE 1972.”  
24           Further, he specifically viewed the photograph on the front of the package of a farm located in the  
25           Cascade mountains. Plaintiff relied on Defendants' affirmative disclosures to believe he was  
26           purchasing frozen berries that were grown in Skagit Valley, WA in the Cascades. Plaintiff also  
27           relied on Defendants' failure to adequately disclose that Defendants' representations meant  
28           merely that there was a farm in Skagit Valley but the berries in the package were grown on other  
29           farms outside the United States. As Plaintiff saw nothing on the front of the package to arouse his  
30           suspicion that the frozen berries were anything other than purely of the Cascades and/or Skagit  
31           Valley, WA origin, Plaintiff did not look for, or see, additional information about the country of

1 origin on the back of the package.

2 51. Plaintiff purchased Defendants' Cascadian Farm Harvest Berries from a Grocery  
3 Outlet supermarket in or near Sacramento, California for \$3.99.

4 52. The package of berries that Plaintiff purchased was marked on the back in small  
5 print "Product of Mexico/Chile." Plaintiff did not see or review this statement before purchase.

6 53. Plaintiff intends to make additional purchases of frozen fruits and vegetables,  
7 including brands that are or may be owned by Defendants. Plaintiff has no way to determine prior  
8 to his purchases whether the packages of frozen fruits and vegetables sold and labeled with  
9 "Cascadian Farm" or "Skagit Valley, WA" are in fact grown in Skagit Valley in the Cascades, or  
10 rather contain a substantial amount of fruit or vegetables grown elsewhere. Thus, in the absence  
11 of the injunctive relief requested in this Complaint, Plaintiff is likely to be deceived in the future  
12 and to suffer additional harm.

### 13 CLASS ALLEGATIONS

14 54. Plaintiff brings this action against Defendants on behalf of himself and all others  
15 similarly situated, as a class action pursuant to section 382 of the California Code of Civil  
16 Procedure and section 1781 of the California Civil Code. Plaintiff seeks to represent the following  
17 groups of similarly situated persons, defined as follows:

18 All persons who, between February 28, 2014 and the present, purchased, in  
19 California, any of Defendants' Products (the "Class"); and

20 All members of the Class who purchased any of Defendants' Imported Prod-  
21 ucts (the "Imported Subclass").

22 55. This action has been brought and may properly be maintained as a class action  
23 against Defendants pursuant to the provisions of California Code of Civil Procedure section 382  
24 because there is a well-defined community of interest in the litigation and the proposed classes  
25 are easily ascertainable.

26 56. Numerosity: Plaintiff does not know the exact size of the class or subclass, but it is  
27 estimated that each is composed of more than 100 persons. The persons are so numerous that the  
28 joinder of all such persons is impracticable and the disposition of their claims in a class action  
rather than in individual actions will benefit the parties and the courts.



1           57. Common Questions Predominate: This action involves common questions of law  
2 and fact to the potential classes and subclass because each class and subclass member's claim  
3 derives from the deceptive, unlawful and/or unfair statements and omissions that led Defendants'  
4 customers to believe that the Products were grown on a farm in Skagit Valley in the Cascades.  
5 The common questions of law and fact predominate over individual questions, as proof of a  
6 common or single set of facts will establish the right of each member of the classes and subclass  
7 to recover. Among the common questions of law and fact are:

8           a) Whether Defendants' Products were grown on a farm in Skagit Valley in the  
9 Cascades;

10           b) Whether Defendants misled class members by, *inter alia*, using the brand name  
11 "Cascadian Farm," representing that their Products originated from a farm in Skagit Valley, WA,  
12 and/or utilizing a photograph of a farm in the Cascade mountains on their Product packages;

13           c) Whether Defendants' advertising and marketing regarding their Products sold to  
14 class members was likely to deceive class members or was unfair;

15           d) Whether Defendants engaged in the alleged conduct knowingly, recklessly, or  
16 negligently;

17           e) The amount of the premium lost by class members as a result of such wrongdoing;

18           f) Whether class members are entitled to injunctive and other equitable relief and, if  
19 so, what is the nature of such relief; and

20           g) Whether class members are entitled to payment of actual, incidental,  
21 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the  
22 nature of such relief.

23           58. Typicality: Plaintiff's claims are typical of the class and subclass members  
24 because, in California in January of 2018, he purchased one of the Products, namely Defendants'  
25 Cascadian Farm Harvest Berries, in reliance on Defendants' misrepresentations and omissions  
26 that it was grown on a farm in Skagit Valley in the Cascades. Thus, Plaintiff and the class  
27 members sustained the same injuries and damages arising out of Defendants' conduct in violation  
28 of the law. The injuries and damages of each class member were caused directly by Defendants'

1 wrongful conduct in violation of law as alleged.

2       59. Adequacy: Plaintiff will fairly and adequately protect the interests of all class  
3 members because it is in his best interests to prosecute the claims alleged herein to obtain full  
4 compensation due to him for the unfair and illegal conduct of which he complains. Plaintiff also  
5 has no interests that are in conflict with or antagonistic to the interests of class and subclass  
6 members. Plaintiff has retained highly competent and experienced class action attorneys to  
7 represent his interests and that of the classes and subclass. By prevailing on his own claim,  
8 Plaintiff will establish Defendants' liability to all class and subclass members. Plaintiff and his  
9 counsel have the necessary financial resources to adequately and vigorously litigate this class  
10 action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the class and  
11 subclass members and are determined to diligently discharge those duties by vigorously seeking  
12 the maximum possible recovery for class members.

13       60. Superiority: There is no plain, speedy, or adequate remedy other than by  
14 maintenance of this class action. The prosecution of individual remedies by members of the  
15 classes and subclass will tend to establish inconsistent standards of conduct for the Defendants  
16 and result in the impairment of class members' rights and the disposition of their interests through  
17 actions to which they were not parties. Class action treatment will permit a large number of  
18 similarly situated persons to prosecute their common claims in a single forum simultaneously,  
19 efficiently, and without the unnecessary duplication of effort and expense that numerous  
20 individual actions would engender. Furthermore, as the damages suffered by each individual  
21 member of the class may be relatively small, the expenses and burden of individual litigation  
22 would make it difficult or impossible for individual members of the class to redress the wrongs  
23 done to them, while an important public interest will be served by addressing the matter as a class  
24 action.

25       61. Plaintiff is unaware of any difficulties that are likely to be encountered in the  
26 management of this action that would preclude its maintenance as a class action.

27                   **CAUSES OF ACTION**

28       62. Plaintiff does not plead, and hereby disclaims, causes of action under the Food

1 Drug and Cosmetic Act ("FDCA") and regulations promulgated thereunder by the FDA, and the  
 2 Federal Trade Commission and regulations promulgated thereunder. If failure to do so would  
 3 cause any of his claims to be preempted, Plaintiff also disclaims causes of action under the Tariff  
 4 Act and regulations promulgated by the USDA, IOC and/or CBP. Plaintiff relies on these  
 5 regulations only to the extent such laws and regulations have been separately enacted as state law  
 6 or regulations or provide a predicate basis of liability under the state and common laws cited in  
 7 the following causes of action.

8 **PLAINTIFF'S FIRST CAUSE OF ACTION**

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

10 **On Behalf of Himself and the Class)**

11 63. Plaintiff realleges and incorporates the paragraphs of this Class Action Complaint  
 12 as if set forth herein.

13 64. This cause of action is brought pursuant to the California Consumers Legal  
 14 Remedies Act, California Civil Code § 1750, *et. seq.* ("CLRA").

15 65. Defendants' actions, representations and conduct have violated, and continue to  
 16 violate the CLRA, because they extend to transactions that are intended to result, or which have  
 17 resulted, in the sale or lease of goods or services to consumers.

18 66. Plaintiff and other Class members are "consumers" as that term is defined by the  
 19 CLRA in California Civil Code § 1761(d).

20 67. The Products that Plaintiff (and others similarly situated class members) purchased  
 21 from Defendants were "goods" within the meaning of California Civil Code § 1761(a).

22 68. By engaging in the actions, representations and conduct set forth in this Class  
 23 Action Complaint, Defendants have violated, and continue to violate, § 1770(a)(2), § 1770(a)(4),  
 24 § 1770(a)(5), § 1770(a)(7), and § 1770(a)(9) of the CLRA. In violation of California Civil Code  
 25 §1770(a)(2), Defendants' acts and practices constitute improper representations regarding the  
 26 source, sponsorship, approval, or certification of the goods they sold, namely that their "source"  
 27 is the Cascades and/or "Skagit, WA." In violation of California Civil Code §1770(a)(4),  
 28 Defendants' acts and practices constitute improper representations or designations of geographic

1 origin in connection with goods or service, namely that the origin is the Cascades and/or Skagit,  
2 WA. In violation of California Civil Code §1770(a)(5), Defendants' acts and practices constitute  
3 improper representations that the goods they sell have sponsorship, approval, characteristics,  
4 ingredients, uses, benefits, or quantities, which they do not have, namely that they are made from  
5 fruits and vegetables grown in the Cascades and/or Skagit, WA, and contain no (or a negligible  
6 amount of) fruits or vegetables grown elsewhere, including in other countries. In violation of  
7 California Civil Code §1770(a)(7), Defendants' acts and practices constitute improper  
8 representations that the goods they sell are of a particular standard, quality, or grade, namely  
9 domestically-grown, when they are of another. In violation of California Civil Code §1770(a)(9),  
10 Defendants have advertised goods or services with intent not to sell them as advertised.  
11 Specifically, Defendants' acts and practices led customers to falsely believe that their Products  
12 were grown in Skagit Valley in the Cascades when they knew that all such representations were  
13 be false and/or misleading.

14 69. Plaintiff requests that this Court enjoin Defendants from continuing to employ the  
15 unlawful methods, acts and practices alleged herein pursuant to California Civil Code  
16 § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the  
17 future, Plaintiff and the other members of the California Subclass will continue to suffer harm.

18 70. CLRA § 1782 NOTICE. Irrespective of any representations to the contrary in this  
19 Class Action Complaint, Plaintiff specifically disclaims, at this time, any request for damages  
20 under any provision of the CLRA. Plaintiff, however, hereby provides Defendants with notice  
21 and demand that within thirty (30) days from that date, Defendants correct, repair, replace or  
22 otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of herein.  
23 Defendants' failure to do so will result in Plaintiff amending this Class Action Complaint to seek,  
24 pursuant to California Civil Code § 1780(a)(3), on behalf of himself and those similarly situated  
25 class members, compensatory damages, punitive damages and/or restitution of any ill-gotten  
26 gains due to Defendants' acts and practices. In particular, Plaintiff will seek to recover on behalf  
27 of himself and those similarly situated the price premium paid for the Products, i.e., difference  
28 between the price consumers paid for the Products and the price that they would have paid but for



1 Defendant's misrepresentation. This premium can be determined by using econometric or  
2 statistical techniques such as hedonic regression or conjoint analysis.

3 71. Plaintiff also requests that this Court award him his costs and reasonable attorneys'  
4 fees pursuant to California Civil Code § 1780(d).

5 **PLAINTIFF'S SECOND CAUSE OF ACTION**  
6 **(False Advertising, Business and Professions Code § 17500, *et. seq.* ("FAL")**  
7 **On Behalf of Himself and the Class)**

8 72. Plaintiff realleges and incorporates by reference the paragraphs of this Class  
9 Action Complaint as if set forth herein.

10 73. Beginning at an exact date unknown to Plaintiff, but within three (3) years  
11 preceding the filing of the Class Action Complaint, Defendants made untrue, false, deceptive  
12 and/or misleading statements in connection with the advertising and marketing of their Products.

13 74. Defendants made representations and statements (by omission and commission)  
14 that led reasonable customers to believe that they were purchasing fruits and vegetables that were  
15 grown on a farm in Skagit Valley in the Cascades. Defendants deceptively failed to inform  
16 Plaintiff, and those similarly situated, that their Products did not actually originate from the  
17 Cascades and/or Skagit Valley, WA.

18 75. Plaintiff and those similarly situated relied to their detriment on Defendants' false,  
19 misleading and deceptive advertising and marketing practices, including each of the  
20 misrepresentations and omissions set forth in paragraphs 17-53 above. Had Plaintiff known that  
21 the Products were grown outside the United States, Plaintiff would not have paid a premium for  
22 them.

23 76. Defendants' acts and omissions are likely to deceive the general public.

24 77. Defendants engaged in these false, misleading and deceptive advertising and  
25 marketing practices to increase their profits. Accordingly, Defendants have engaged in false  
26 advertising, as defined and prohibited by section 17500, *et. seq.*, of the California Business and  
27 Professions Code.

28 78. The aforementioned practices, which Defendants used, and continue to use, to  
their significant financial gain, also constitute unlawful competition and provide an unlawful



1 advantage over Defendants' competitors as well as injury to the general public.

2       79. As a direct and proximate result of such actions, Plaintiff and the other members of  
3 the Class have suffered, and continue to suffer, injury in fact and have lost money and/or property  
4 as a result of such false, deceptive and misleading advertising in an amount which will be proven  
5 at trial, but which is in excess of the jurisdictional minimum of this Court. In particular, Plaintiff  
6 and those similarly situated paid a price premium for the Products, i.e., the difference between the  
7 price consumers paid for the Products and the price that they would have paid but for Defendant's  
8 misrepresentation. This premium can be determined by using econometric or statistical  
9 techniques such as hedonic regression or conjoint analysis.

10       80. Plaintiff seeks, on behalf of those similarly situated, full restitution of the price  
11 premium paid, to restore any and all monies acquired by Defendants from Plaintiff, the general  
12 public, or those similarly situated by means of the false, misleading, and deceptive advertising  
13 and marketing practices complained of herein, plus interest thereon.

14       81. Plaintiff seeks, on behalf of those similarly situated, a declaration that the above-  
15 described practices constitute false, misleading and deceptive advertising.

16       82. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit the  
17 sale of the Products within a reasonable time after entry of judgment, unless packaging and  
18 marketing is modified to remove misrepresentation and to disclose the omitted facts. Such  
19 misconduct by Defendant, unless and until enjoined and restrained by order of this Court, will  
20 continue to cause injury in fact to the general public and the loss of money and property in that  
21 the Defendants will continue to violate the laws of California, unless specifically ordered to  
22 comply with the same. This expectation of future violations will require current and future  
23 consumers to repeatedly and continuously seek legal redress in order to recover monies paid to  
24 Defendants to which Defendants are not entitled. Plaintiff, those similarly situated and/or other  
25 consumers nationwide have no other adequate remedy at law to ensure future compliance with the  
26 California Business and Professions Code alleged to have been violated herein.

27                   **PLAINTIFF'S THIRD CAUSE OF ACTION**  
28

**(Fraud, Deceit and/or Misrepresentation  
On Behalf of Himself and the Class)**

83. Plaintiff realleges and incorporates by reference the paragraphs of this Class Action Complaint as if set forth herein.

84. In or around January of 2018, Defendants fraudulently and deceptively led Plaintiff to believe that Defendants' Products were grown on a farm in Skagit Valley in the Cascades. Defendants also failed to inform Plaintiff that the Products were imported from other countries. These omissions were material at the time they were made. They concerned material facts that were essential to the analysis undertaken by Plaintiff, and those similarly situated, as to whether to purchase Defendants' Products.

85. Defendants made identical misrepresentations and omissions to members of the Class regarding Defendants' Products.

86. In not so informing Plaintiff and the members of the Class, Defendants breached their duty to them. Defendants also gained financially from, and as a result of, their breach.

87. Plaintiff and those similarly situated relied to their detriment on Defendants' fraudulent omissions. Had Plaintiff and those similarly situated been adequately informed and not intentionally deceived by Defendants, they would have acted differently by, without limitation, not purchasing (or paying less for) Defendants' Products.

88. Defendants had a duty to inform class members at the time of their purchase of that the Products that the fruits and vegetables they were purchasing were not grown on a farm in Skagit Valley in the Cascades. Defendants failed to provide this information to Class members. Class members relied to their detriment on Defendants' omissions. These omissions were material to the decisions of the class members to purchase Defendants' Products. In making these omissions, Defendants breached their duty to class members. Defendants also gained financially from, and as a result of, their breach.

89. By and through such fraud, deceit, misrepresentations and/or omissions, Defendants intended to induce Plaintiff and those similarly situated to alter their position to their detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiff and those similarly situated to, without limitation, to pay a premium to purchase the Products.



1           90. As a direct and proximate result of Defendants' misrepresentations and omissions,  
 2 Plaintiff and those similarly situated have suffered damages. In particular, Plaintiff seeks to  
 3 recover on behalf of himself and those similarly situated the price premium paid for the Products,  
 4 i.e., the difference between the price consumers paid for the Products and the price that they  
 5 would have paid but for Defendant's misrepresentation. This premium can be determined by  
 6 using econometric or statistical techniques such as hedonic regression or conjoint analysis.

7           91. Defendants' conduct as described herein was willful and malicious and was  
 8 designed to maximize Defendants' profits even though Defendants knew that it would cause loss  
 9 and harm to Plaintiff and those similarly situated.

10                           **PLAINTIFF'S FOURTH CAUSE OF ACTION**  
 11                           **(Unfair, Unlawful and Deceptive Trade Practices,**  
 12                           **Business and Professions Code § 17200, *et. seq.***  
                               **On Behalf of Himself and the Class)**

13           92. Plaintiff realleges and incorporates by reference the paragraphs of this Class  
 14 Action Complaint as if set forth herein.

15           93. Within four (4) years preceding the filing of this Class Action Complaint, and at  
 16 all times mentioned herein, Defendants have engaged, and continue to engage, in unfair, unlawful  
 17 and deceptive trade practices in California by engaging in the unfair, deceptive and unlawful  
 18 business practices outlined in this Class Action Complaint. In particular, Defendants have  
 19 engaged, and continue to engage, in unfair, unlawful and deceptive trade practices by, without  
 20 limitation, the following:

21           a. deceptively representing to Plaintiff, and those similarly situated, the Products  
 22 were grown on a farm in Skagit Valley in the Cascades;

23           b. failing to adequately inform Plaintiff, and those similarly situated, that the  
 24 Products were not grown on a farm in Skagit Valley in the Cascades;

25           c. engaging in fraud, deceit, and misrepresentation as described herein;

26           d. violating the CLRA as described herein;

27           e. violating the FAL as described herein;

28           f. violating the California Health and Safety Act §§ 112875, *et. seq.*;

1 g. violating the Sherman Food, Drug and Cosmetic Act, Cal. Health & Saf. Code,  
2 including, without limitation, sections 110300, 110380, 110385, 110390, 110395, 110398,  
3 110400, 110660, 110680, 110760, 110765, and 110770; and

4 h. and with respect to the Subclass, violating the Tariff Act of 1930, 19 U.S.C. §  
5 1304(a); 19 C.F.R. Part 134, including §§ 134.11 and 134.46; and the policies of the Federal  
6 Trade Commission on claims relating to the United States origin of the products.

7 94. Plaintiff and those similarly situated relied to their detriment on Defendants'  
8 unfair, deceptive and unlawful business practices. Had Plaintiff and those similarly situated been  
9 adequately informed and not deceived by Defendants, they would have acted differently by  
10 paying less for Defendants' Products.

11 95. Defendants' acts and omissions are likely to deceive the general public.

12 96. Defendants engaged in these unfair practices to increase their profits. Accordingly,  
13 Defendants have engaged in unlawful trade practices, as defined and prohibited by section 17200,  
14 *et. seq.* of the California Business and Professions Code.

15 97. The aforementioned practices, which Defendants have used to their significant  
16 financial gain, also constitute unlawful competition and provide an unlawful advantage over  
17 Defendants' competitors as well as injury to the general public.

18 98. As a direct and proximate result of such actions, Plaintiff and the other members of  
19 the Class have suffered and continue to suffer injury in fact and have lost money and/or property  
20 as a result of such deceptive and/or unlawful trade practices and unfair competition in an amount  
21 which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.  
22 In particular, Plaintiff seeks to recover on behalf of himself, and those similarly situated, the price  
23 premium paid for the Products, i.e., the difference between the price consumers paid for the  
24 Products and the price that they would have paid but for Defendant's misrepresentation. This  
25 premium can be determined by using econometric or statistical techniques such as hedonic  
26 regression or conjoint analysis.

27 99. Plaintiff seeks, on behalf of those similarly situated, a declaration that the above-  
28 described trade practices are fraudulent and/or unlawful.

100. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit the sale of the Products within a reasonable time after entry of judgment, unless packaging and marketing is modified to remove misrepresentation and to disclose the omitted facts. Such misconduct by Defendant, unless and until enjoined and restrained by order of this Court, will continue to cause injury in fact to the general public and the loss of money and property in that Defendants will continue to violate the laws of California, unless specifically ordered to comply with the same. This expectation of future violations will require current and future consumers to repeatedly and continuously seek legal redress in order to recover monies paid to Defendants to which Defendants were not entitled. Plaintiff, those similarly situated and/or other consumers nationwide have no other adequate remedy at law to ensure future compliance with the California Business and Professions Code alleged to have been violated herein.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment as follows:

- A. On Cause of Action Number 1 against Defendants and in favor of Plaintiff and the other members of the Class:
  1. [reserved];
  2. for injunctive relief pursuant to, without limitation, the California Business & Professions Code §§ 17200, *et seq.* and 17500, *et seq.* and injunctive relief pursuant to California Civil Code section 1780;
  3. [Reserved]; and
  4. [Reserved].
- B. On Causes of Action Numbers 2 and 4 against Defendants and in favor of Plaintiff and the other members of the Class:
  1. for restitution of the price premium paid, i.e., the difference between the price consumers paid for the Products and the price that they would have paid but for Defendant's misrepresentation, in an amount to be proven at trial using econometric or statistical techniques such as hedonic regression or conjoint analysis, pursuant to, without limitation, the California Busi-

1                   ness & Professions Code §§ 17200, et seq. and 17500, et seq.; and

2                   2.       for injunctive relief pursuant to, without limitation, the California Business  
3                   & Professions Code §§ 17200, et seq. and 17500, *et. seq.*

4       C.       On Cause of Action Number 3 against Defendants and in favor of Plaintiff and the  
5       other members of the Class:

- 6                   1.       an award of compensatory damages, in the amount of the price premium  
7                   paid, i.e., the difference between the price consumers paid for the Products  
8                   and the price that they would have paid but for Defendant's misrepresenta-  
9                   tion, in an amount to be proven at trial using econometric or statistical  
10                  techniques such as hedonic regression or conjoint analysis; and  
11                  2.       an award of punitive damages, the amount of which is to be determined at  
12                  trial.

13       D.       On all causes of action against Defendants and in favor of Plaintiff, class members  
14       and the general public:

- 15                  1.       for reasonable attorneys' fees according to proof pursuant to, without limi-  
16                  tation, the California Legal Remedies Act and California Code of Civil  
17                  Procedure § 1021.5;  
18                  2.       for costs of suit incurred; and  
19                  3.       for such further relief as this Court may deem just and proper.



**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: February 28, 2018

**GUTRIDE SAFIER LLP**

A handwritten signature in black ink, appearing to read "Seth A. Safier", is written over a rectangular area of the document that has a light gray, dotted background.

Adam J. Gutride, Esq.  
Seth A. Safier, Esq.  
Marie McCrary, Esq.  
Kristen G. Simplicio, Esq.  
100 Pine St., Suite 1250  
San Francisco, California 94111

Attorneys for Plaintiff