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 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 11 SAN JOSE DIVISION

12
 13 CHRIS WERDEBAUGH, individually and
 on behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 BLUE DIAMOND GROWERS,

17
 18 Defendant.

Case No. 5: 12-CV-02724 LHK

**CLASS ACTION AND REPRESENTATIVE
 ACTION**

**FIRST AMENDED COMPLAINT FOR
 DAMAGES, EQUITABLE AND
 INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

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 20
 21 Plaintiff, Chris Werdebaugh (hereinafter "Plaintiff"), through his undersigned attorneys,
 22 brings this lawsuit against Defendant Blue Diamond Growers (hereinafter, "Blue Diamond" or
 23 "Defendant") as to his own acts upon personal knowledge, and as to all other matters upon
 24 information and belief.

25 **I. DEFINITIONS**

- 26 1. "Class Period" is April 11, 2008 to the present.
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1 2. “Purchased Product” is Blue Diamond’s Almond Breeze Chocolate Almond Milk
2 that was purchased by Plaintiff during the Class Period. Pictures of the Purchased Product along
3 with specific descriptions of the labels are included within Section VIII *infra*.

4 3. “Substantially Similar Products” are the Blue Diamond products listed in
5 Paragraph 4 *infra*. Each of these listed products: (i) make the same label misrepresentations, as
6 described herein, as the Purchased Product and (ii) violate the same regulations of the Sherman
7 Food Drug & Cosmetic Law, California Health & Safety Code § 109875, *et seq.* (the “Sherman
8 Law”) as the Purchased Product, as described herein.

9 4. Upon information and belief, these Substantially Similar Products are Blue
10 Diamond products, sold during the class period, listed below. Plaintiff reserves the right to
11 supplement this list if evidence is adduced during discovery to show that other Blue Diamond
12 products had labels which violate the same provisions of the Sherman Law and have the same
13 label representations as the Purchased Product:

14 (A) Blue Diamond Growers’ almond products labeled with the ingredient “evaporated
15 cane juice” including:

- 16 - Oven Roasted Cinnamon Brown Sugar Almonds;
- 17 - 100 Calorie Packs Cinnamon Brown Sugar Almonds;
- 18 - Almond Breeze Shelf Stable Original Almond Milk;
- 19 - Almond Breeze Shelf Stable Vanilla Almond Milk;
- 20 - Almond Breeze Shelf Stable Chocolate Almond Milk;
- 21 - Almond Breeze Refrigerated Original Almond Milk;
- 22 - Almond Breeze Refrigerated Vanilla Almond Milk;
- 23 - Almond Breeze Refrigerated Chocolate Almond Milk;
- 24 - Almond Breeze Shelf Stable Almond Coconut Vanilla Almond Milk;
- 25 - Almond Breeze Refrigerated Almond Coconut Original Almond Milk; and
- 26 - Blue Diamond Breeze Almondmilk Coconutmilk Blend Shelf Stable Almond
27 Milk.

1 (B) Blue Diamond Growers' products labeled "All Natural" despite containing
2 artificial or synthetic ingredients, flavorings, coloring, and/or chemical preservatives
3 including:

- 4 - Almond Breeze Chocolate Refrigerated Almond Milk;
- 5 - Almond Breeze Original Refrigerated Almond Milk;
- 6 - Almond Breeze Original Unsweetened Refrigerated Almond Milk;
- 7 - Almond Breeze Shelf Stable Original Unsweetened Almond Milk;
- 8 - Almond Breeze Refrigerated Almond Coconut Original Unsweetened Almond
9 Milk;
- 10 - Almond Breeze Refrigerated Almond Coconut Original Almond Milk;
- 11 - Almond Breeze Shelf Stable Almond Coconut Vanilla Unsweetened Almond
12 Milk;
- 13 - Almond Breeze Shelf Stable Almond Coconut Vanilla Almond Milk;
- 14 - Almond Breeze Vanilla Refrigerated Almond Milk;
- 15 - Almond Breeze Vanilla Unsweetened Refrigerated Almond Milk;
- 16 - Almond Breeze Shelf Stable Vanilla Almond Milk;
- 17 - Almond Breeze Shelf Stable Chocolate Unsweetened Almond Milk;
- 18 - Almond Breeze Shelf Stable Chocolate Almond Milk;
- 19 - Almond Breeze Shelf Stable Original Almond Milk;
- 20 - Almond Breeze Shelf Stable Vanilla Unsweetened Almond Milk;
- 21 - Blue Diamond Breeze Almondmilk Coconutmilk Blend Shelf Stable Almond
22 Milk;
- 23 - Blue Diamond Nut Chips Sour Cream and Chive; and
- 24 - Blue Diamond Nut Chips Sea Salt.

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26 **II. SUMMARY OF THE CASE**

27 5. Plaintiff's case has two facets. The first is the "UCL unlawful" part. Plaintiff's
28 first cause of action is brought pursuant to the unlawful prong of California's Unfair Competition

1 Law, Cal. Bus. & Prof. Code § 17200 (“UCL”). *See* First Cause of Action, ¶¶ 97-107. Plaintiff
2 alleges that Defendant packages and labels the Purchased Product in violation of California’s
3 Sherman Law which adopts, incorporates – and is identical – to the federal Food Drug &
4 Cosmetic Act, 21 U.S.C. § 301 *et seq.* (“FDCA”). These violations (which do not require a
5 finding that the labels are “misleading”) render the Purchased Product “misbranded” which is no
6 small thing. Under California law, a food product that is misbranded cannot legally be
7 manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold,
8 possessed, have no economic value, and are legally worthless. Indeed, the sale, purchase or
9 possession of misbranded food is a criminal act in California and the FDA even threatens food
10 companies with seizure of misbranded products. This “misbranding” – standing alone without
11 any allegations of deception by Defendants or review of or reliance on the labels by Plaintiff –
12 gives rise to Plaintiff’s first cause of action under the UCL.

13 6. The second aspect to this case is the “deceptive” part. Plaintiff alleges that the
14 labels on the Purchased Product – aside from being unlawful under the Sherman Law – are also
15 misleading, deceptive, unfair and fraudulent. Plaintiff describes these labels and the ways in
16 which they are misleading. Plaintiff alleges that he reviewed the labels on the Purchased Product,
17 reasonably relied in substantial part on the labels, and was thereby deceived, in deciding to
18 purchase these products. Moreover, the very fact that Defendant sold such Purchased Product
19 and Substantially Similar Products and did not disclose this fact to consumers is a deceptive act in
20 and of itself. Plaintiff would not have purchased a product that is illegal to own or possess. Had
21 Defendant informed Plaintiff of this fact there would have been no purchases.

22 7. Plaintiff did not know, and had no reason to know, that Defendant’s Purchased
23 Product was misbranded under the Sherman Law and bore food labeling claims that failed to meet
24 the requirements to make those food labeling claims. Similarly, Plaintiff did not know, and had
25 no reason to know, that Defendant’s Purchased Product was false and misleading.

26 8. In order to remedy the harm arising from Defendant’s illegal conduct, which has
27 resulted in unjust profits, Plaintiff brings this action on behalf of a nationwide class of consumers
28 who, within the Class Period, purchased Defendant’s Almond Breeze Chocolate Almond Milk

1 and Substantially Similar Products (1) labeled “All Natural” where said label also states that the
2 product contains artificial or synthetic ingredients, flavorings, coloring, and/or chemical
3 preservatives; (2) labeled with the ingredient “evaporated cane juice” when such ingredient was
4 not “juice” but was actually sugar(s) or syrup(s).

5 **III. BACKGROUND**

6 9. Identical California and federal laws require truthful, accurate information on the
7 labels of packaged foods. This case is about companies selling misbranded food to consumers.
8 The law is clear: misbranded food cannot legally be sold, possessed, has no economic value and
9 is legally worthless. Purchasers of misbranded food are entitled to a refund of their purchase
10 price.

11 10. Identical California and federal laws regulate the content of labels on packaged
12 food. The requirements FDCA were adopted by the California Sherman Law. Under both the
13 Sherman Law and FDCA section 403(a), food is “misbranded” if “its labeling is false or
14 misleading in any particular,” or if it does not contain certain information on its label or its
15 labeling. 21 U.S.C. § 343(a).

16 11. Under the FDCA, the term “false” has its usual meaning of “untruthful,” while the
17 term “misleading” is a term of art. Misbranding reaches not only false claims, but also those
18 claims that might be technically true, but still misleading. If any one representation in the
19 labeling is misleading, the entire food is misbranded, nor can any other statement in the labeling
20 cure a misleading statement.

21 12. Under California law, a food product that is “misbranded” cannot legally be
22 manufactured, advertised, distributed, held or sold. Misbranded products cannot be legally sold,
23 possessed, have no economic value, and are legally worthless. Plaintiff and members of the Class
24 who purchased these products paid an unwarranted premium for these products.

25 13. Blue Diamond’s websites, www.bluediamond.com and www.almondbreeze.com,
26 are incorporated into the label for each of Defendant’s product that bears the web address
27 www.bluediamond.com and/or www.almondbreeze.com. The Purchased Product and/or the
28 Substantially Similar Products bear this website. According to the FDA and as a matter of law,

1 the Blue Diamond websites and all linked websites constitute the labeling of any product bearing
2 this web address.

3 14. If a manufacturer, like Blue Diamond, is going to make a claim on a food label, the
4 label must meet certain legal requirements that help consumers make informed choices and
5 ensure that they are not misled and that label claims are truthful, accurate, and backed by
6 scientific evidence. As described more fully below, Defendant has sold products that are
7 misbranded and are worthless because (i) the labels violate the Sherman Law and, separately, (ii)
8 Defendant made, and continues to make, false, misleading and deceptive claims on its labels.

9 15. Plaintiff brings this action under California law, which is identical to federal law,
10 for a number of the Defendant's food labeling practices which are both (i) unlawful and (ii)
11 deceptive and misleading to consumers. These include:

12 a. Representing food products to be "all natural," when they contain chemical
13 preservatives, synthetic chemicals, added artificial color and other artificial ingredients;

14 b. Making unlawful and misleading "evaporated cane juice" claims;

15 c. Making unlawful health claims on its website regarding the Purchased Product and
16 the Substantially Similar Products.

17 **IV. PARTIES**

18 16. Plaintiff Chris Werdebaugh is a resident of Los Gatos, California who purchased
19 the Blue Diamond Purchased Product during the Class Period.

20 17. Defendant Blue Diamond Growers is a California corporation with its principal
21 place of business in Sacramento, California. Defendant can be served with process by service on
22 its registered agent in California: Robert Donovan, 1802 C Street, Sacramento, California 95811
23 and/or pursuant to Rule 5 of the Federal Rules of Civil Procedure by service upon its counsel of
24 record.

25 18. Defendant is a leading producer of retail food products, including the Purchased
26 Product and Substantially Similar Products at issue herein. Defendant sells its food products to
27 consumers through grocery and other retail stores throughout the United States.
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1 19. California law applies to all claims set forth in this *First Amended Complaint*
2 because Plaintiff lives in California and purchased the Purchased Product there. Also, the
3 Defendant sold its products through California and availed itself to this state. All of the
4 misconduct alleged herein was contrived in, implemented in, and has a shared nexus with
5 California. The formulation and execution of the unlawful practices alleged herein, occurred in,
6 or emanated from California.

7 20. Accordingly, California has significant contacts and/or a significant aggregation of
8 contacts with the claims asserted by Plaintiff and all Class members.

9 **V. JURISDICTION AND VENUE**

10 21. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d)
11 because this is a class action in which: (1) there are over 100 members in the proposed class; (2)
12 members of the proposed class have a different citizenship from Defendant; and (3) the claims of
13 the proposed class members exceed \$5,000,000 in the aggregate.

14 22. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to
15 28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, and is
16 between citizens of different states.

17 23. The Court has personal jurisdiction over Defendant because a substantial portion
18 of the wrongdoing alleged in this *First Amended Complaint* occurred in California, Defendant is
19 authorized to do business in California, has sufficient minimum contacts with California, and
20 otherwise intentionally avails itself of the markets in California through the promotion, marketing
21 and sale of merchandise, sufficient to render the exercise of jurisdiction by this Court permissible
22 under traditional notions of fair play and substantial justice.

23 24. Because a substantial part of the events or omissions giving rise to these claims
24 occurred in this District and because the Court has personal jurisdiction over Defendant, venue is
25 proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b).

26 **VI. FACTUAL ALLEGATIONS**

27 **A. Identical California and Federal Laws Regulate Food Labeling**

1 25. Food manufacturers are required to comply with identical state and federal laws
2 and regulations that govern the labeling of food products. First and foremost among there is the
3 FDCA and its labeling regulations, including those set forth in 21 C.F.R. § 101.

4 26. Pursuant to the Sherman Law, California has expressly adopted the federal
5 labeling requirements as its own and indicated that “[a]ll food labeling regulations and any
6 amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993,
7 or adopted on or after that date shall be the food regulations of this state.” California Health &
8 Safety Code § 110100.

9 27. In addition to its blanket adoption of federal labeling requirements, California has
10 also enacted a number of laws and regulations that adopt and incorporate specific enumerated
11 federal food laws and regulations. See California Health & Safety Code § 110660 (misbranded if
12 label is false and misleading); California Health & Safety Code § 110665 (misbranded if label
13 fails to conform to the requirements set forth in 21 U.S.C. § 343(q)); California Health & Safety
14 Code § 110670 (misbranded if label fails to conform with the requirements 21 U.S.C. § 343(r));
15 California Health & Safety Code § 110705 (misbranded if words, statements and other
16 information required by the Sherman Law are either missing or not sufficiently conspicuous); and
17 California Health & Safety Code § 110740 (misbranded if contains artificial flavoring, artificial
18 coloring and chemical preservatives but fails to adequately disclose that fact on label).

19 **B. FDA Enforcement History**

20 28. In recent years the FDA has become increasingly concerned that food
21 manufacturers have been disregarding food labeling regulations. To address this concern, the
22 FDA elected to take steps (like the October 2009, the FDA issued a Guidance for Industry: Letter
23 regarding Point Of Purchase Food Labeling and the March 3, 2010 FDA issued “Open Letter to
24 Industry from [FDA Commissioner] Dr. Hamburg”) to inform the food industry of its concerns
25 and to place the industry on notice that food labeling compliance was an area of enforcement
26 priority. Additionally, the FDA has sent warning letters to the industry, including many of
27 Defendants’ peer food manufacturers, for the same types of misbranded labels and deceptive
28 labeling claims described herein.

1 29. Defendant did see, or should have seen, these warnings. Defendant did not change
2 the labels in response to the warning letters sent to other companies.

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4 **VII. OVERVIEW OF APPLICABLE SHERMAN LAW VIOLATIONS**

5 **A. “All Natural” Claims**

6 30. The Purchased Product contains an unlawful “All Natural” claim.

7 31. Defendant’s use of “all natural” claims on products containing unnatural
8 ingredients such as added color, synthetic and artificial substances, and added colors violates the
9 Sherman Law, California Health & Safety Code § 110660 because such label claims are “false
10 and misleading.” § 110660 is identical to the prohibition in 21 U.S.C. § 343(a) against labeling
11 that is “false or misleading in any particular.”

12 32. The FDA has repeatedly stated its policy to restrict the use of the term “natural” in
13 connection with added color, synthetic substances and flavors addressed in 21 C.F.R. § 101.22.

14 33. The FDA has also repeatedly affirmed its policy regarding the use of the term
15 “natural” as meaning that nothing artificial or synthetic (including all color additives regardless of
16 source) has been included in, or has been added to, a food that would not normally be expected to
17 be in the food. See 58 FR 2302, 2407, January 6, 1993.

18 34. Any coloring or preservative can preclude the use of the term “natural” even if the
19 coloring or preservative is derived from natural sources. Further, the FDA distinguishes between
20 natural and artificial flavors in 21 C.F.R. § 101.22.

21 35. Defendant’s “All Natural” labeling practices violate FDA Compliance Policy
22 Guide Sec. 587.100, which states: “[t]he use of the words ‘food color added,’ ‘natural color,’ or
23 similar words containing the term ‘food’ or ‘natural’ may be erroneously interpreted to mean the
24 color is a naturally occurring constituent in the food. Since all added colors result in an
25 artificially colored food, we would object to the declaration of any added color as ‘food’ or
26 ‘natural.’”

27 36. The FDA has sent out numerous warning letters concerning this issue. Defendant
28 is aware of these FDA warning letters.

1 37. Defendant has nonetheless unlawfully labeled food products, both the Purchased
2 Product and Substantially Similar Products, as being “All Natural” when they actually contain
3 artificial ingredients and flavorings, artificial coloring and chemical preservatives.

4 38. A reasonable consumer would expect that when Defendant labels its products as
5 “All Natural,” the products’ ingredients are “natural” as defined by the federal government and its
6 agencies. A reasonable consumer would also expect that when Defendant labels its products as
7 “All Natural” the products’ ingredients are “natural” under the common use of that word. A
8 reasonable consumer would understand that such “All Natural” products do not contain synthetic,
9 artificial, or excessively processed ingredients.

10 39. Consumers are thus misled into purchasing Defendant’s products with synthetic
11 unnatural ingredients that are not “All Natural” as falsely represented on its labeling.

12 40. Defendant’s products in this respect are both unlawful (being misbranded under
13 the Sherman Law) and misleading and deceptive.

14 **B. “Evaporated Cane Juice” Claims.**

15 41. The Purchased Product contains an unlawful “evaporated cane juice” claim.

16 42. Defendant’s use of “evaporated cane juice” claims on products when the
17 ingredient is not “juice” but was actually sugar(s) or syrup(s) violate the Sherman Law, California
18 Health & Safety Code § 110660 because such label claims are “false and misleading.”

19 43. In its guidance for industry and warning letters to manufacturers, the FDA has
20 repeatedly stated its policy of restricting the ingredient names listed on product labels to their
21 common or usual name, as provided in 21 C.F.R. § 101.4(a)(1).

22 44. An ingredient’s common or usual name is the name established by common usage
23 or regulation, as provided in 21 C.F.R. § 102.5(d).

24 45. The common or usual name must accurately describe the basic nature of the food
25 or its characterizing properties or ingredients, and may not be “confusingly similar to the name of
26 the other food that is not reasonably encompassed within the same name,” as provided in 21
27 C.F.R. § 102.5(a).

1 46. In October 2009, the FDA issued Guidance for Industry concerning “evaporated
2 cane juice” claims stating:

- 3 - “...the term “evaporated cane juice” has started to appear as an ingredient on food
4 labels, most commonly to declare the presence of sweeteners derived from sugar
5 cane syrup. However, FDA’s current policy is that sweeteners derived from sugar
6 cane syrup should not be declared as “evaporated cane juice” because that term
7 falsely suggests that the sweeteners are juice...
- 8 - “Juice” is defined by 21 CFR 120.1(a) as “the aqueous liquid expressed or
9 extracted from one or more fruits or vegetables, purees of the edible portions of
10 one or more fruits or vegetables, or any concentrates of such liquid or puree.” ...
- 11 - “As provided in 21 CFR 101.4(a)(1), “Ingredients required to be declared on the
12 label or labeling of a food . . . shall be listed by common or usual name” The
13 common or usual name for an ingredient is the name established by common usage
14 or by regulation (21 CFR 102.5(d)). The common or usual name must accurately
15 describe the basic nature of the food or its characterizing properties or ingredients,
16 and may not be “confusingly similar to the name of any other food that is not
17 reasonably encompassed within the same name” (21 CFR 102.5(a))...
- 18 - “Sugar cane products with common or usual names defined by regulation are
19 sugar (21 CFR 101.4(b)(20)) and cane sirup (alternatively spelled “syrup”) (21
20 CFR 168.130). Other sugar cane products have common or usual names
21 established by common usage (e.g., molasses, raw sugar, brown sugar, turbinado
22 sugar, muscovado sugar, and demerara sugar)...
- 23 - “The intent of this draft guidance is to advise the regulated industry of FDA’s view
24 that the term “evaporated cane juice” is not the common or usual name of any type
25 of sweetener, including dried cane syrup. Because cane syrup has a standard of
26 identity defined by regulation in 21 CFR 168.130, the common or usual name for
27 the solid or dried form of cane syrup is “dried cane syrup.”...
- 28 - “Sweeteners derived from sugar cane syrup should not be listed in the ingredient
declaration by names which suggest that the ingredients are juice, such as
“evaporated cane juice.” FDA considers such representations to be false and
misleading under section 403(a)(1) of the Act (21 U.S.C. 343(a)(1)) because they
fail to reveal the basic nature of the food and its characterizing properties (i.e., that
the ingredients are sugars or syrups) as required by 21 CFR 102.5. Furthermore,
sweeteners derived from sugar cane syrup are not juice and should not be included
in the percentage juice declaration on the labels of beverages that are represented
to contain fruit or vegetable juice (see 21 CFR 101.30).

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm181491.htm>

47. Defendant was aware of the guidance and regulations concerning “evaporated cane
juice.”

1 48. Defendant nonetheless unlawfully listed “evaporated cane juice” as an ingredient
2 on its products, including the Purchased Product and Substantially Similar Products, when it
3 actually contained sugar(s) and/or syrup(s).

4 49. Defendant also made the same illegal claims on its websites and advertising in
5 violation of federal and California law.

6 50. A reasonable consumer would expect that when Defendant lists the ingredients on
7 its products, the products’ ingredients are given their common or usual name as defined by the
8 federal government and its agencies.

9 51. Consumers are thus misled into purchasing Defendant’s products with false and
10 misleading ingredient names, which do not describe the basic nature of the food or its
11 characterizing properties or ingredients and which are “confusingly similar to the name of”
12 another food, i.e., juice, “...not reasonably encompassed within the same name,” as provided in
13 21 C.F.R. § 102.5(a).

14 52. Defendant’s products are in this respect misbranded under federal and California
15 law. Misbranded products cannot be legally sold and are legally worthless.

16 53. Defendant’s products in this respect are both unlawful (being misbranded under
17 the Sherman Law) and misleading and deceptive.

18 **VIII. THE PURCHASED PRODUCT (1) UNLAWFULLY VIOLATES THE SHERMAN**
19 **LAW AND (2) IS MISLEADING AND DECEPTIVE**

20 54. There is one (1) Purchased Product, Blue Diamond’s Almond Breeze Chocolate
21 Almond Milk. Plaintiff purchased the Purchased Product during the Class Period.

22 55. The Purchased Product has a label that violates the Sherman Law and is therefore
23 misbranded and may not be sold or purchased.

24 56. The Purchased Product has a label that is false, misleading and deceptive.

25 57. The label (front, back and side) of the package of the Purchased Product purchased
26 by Plaintiff is as follows:

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58. The following unlawful and misleading language appears on the label:

“All Natural”

“Almond Breeze® Almondmilk is an all natural, great tasting NON-DAIRY BEVERAGE.”

“All Natural with added Vitamins and Minerals.”

1 59. Further, the following unlawful and misleading language appears in the label's list
2 of ingredients:

3 ***“INGREDIENTS”: ALMONDMILK (FILTERED WATER, ALMONDS),***
4 ***EVAPORATED CANE JUICE, COCOA (DUTCH PROCESS), CALCIUM***
5 ***CARBONATE, SEA SALT, POTASSIUM CITRATE, CARRAGEENAN,***
6 ***NATURAL FLAVORS, SUNFLOWER LECITHIN, VITAMIN A PALMITATE,***
7 ***VITAMIN D-2 AND D-ALPHA-TOCOPHERAL (NATURAL VITAMIN E).***

8 60. Plaintiff reasonably relied on these label representations in paragraphs 58 and 59
9 and based and justified his decision to purchase the product, in substantial part, on these label
10 misrepresentations. Also, Plaintiff reasonably relied on the fact that this product was not
11 misbranded under the Sherman Law and was therefore legal to buy and possess.

12 61. Plaintiff was misled by Defendant's unlawful and misleading label on this product.
13 Plaintiff would not have otherwise purchased this product had he known the truth about this
14 product. Plaintiff had other food alternatives that satisfied legal standards and Plaintiff also had
15 cheaper alternatives.

16 62. The Purchase Product is unlawful, misbranded and violates the Sherman Law,
17 California Health & Safety Code § 110660, as well as the guidance, regulations and statutes listed
18 in Section VII (A) *supra* because the label uses the phrase “All Natural” even though this product
19 contains the following artificial ingredients: cocoa (Dutch process), potassium citrate, Vitamin A
20 Palmitate, Vitamin D-2 and Vitamin D-Alpha-Tocopherol. This product is also misleading and
21 deceptive because the label uses the phrases “[a]ll natural” on food that contains artificial
22 ingredients and, therefore, is not truly “all natural.” Defendant also made those same unlawful
23 representations concerning this product on its website, and Plaintiff saw and relied on those
24 website representations.

25 63. The Purchase Product is unlawful, misbranded, misleading, deceptive and violates
26 the Sherman Law, California Health & Safety Code § 110660, as well as the guidance,
27 regulations and statutes listed in Section VII (B) *supra* because the label lists “EVAPORATED
28 CANE JUICE” as an ingredient, when such is not a “juice,” but rather, in ordinary and commonly
understood terms “sugar,” “syrup” and/or a product of sugar cane or sugar cane syrup. Defendant

1 also made those unlawful representations concerning this product on its website, representations
2 Plaintiff saw and relied upon.

3
4 **IX. DEFENDANT VIOLATED CALIFORNIA LAW BY MANUFACTURING,
ADVERTISING, DISTRIBUTING AND SELLING MISBRANDED FOOD**

5 64. Defendant has manufactured, advertised, distributed and sold products that are
6 misbranded under California law. Misbranded products cannot be legally manufactured,
7 advertised, distributed, sold or held and are legally worthless as a matter of law.

8 65. Defendant has violated California Health & Safety Code § 110390 which makes it
9 unlawful to disseminate false or misleading food advertisements that include statements on
10 products and product packaging or labeling or any other medium used to directly or indirectly
11 induce the purchase of a food product.

12 66. Defendant has violated California Health & Safety Code § 110395 which makes it
13 unlawful to manufacture, sell, deliver, hold or offer to sell any falsely advertised food.

14 67. Defendant has violated California Health & Safety Code §§ 110398 and 110400
15 which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any
16 food that has been falsely advertised.

17 68. Defendant violated California Health & Safety Code § 110660 because its labeling
18 is false and misleading in one or more ways.

19 69. Defendant violated California Health & Safety Code § 110725 because its labeling
20 failed to state the common or usual names of ingredients.

21 70. Defendant violated California Health & Safety Code § 110720 because its labeling
22 failed to state the common or usual names of food.

23 71. Defendant violated California Health & Safety Code § 110735 because they
24 purport to be or are represented for special dietary uses, and its labeling fail to bear such
25 information concerning their vitamin, mineral, and other dietary properties as the Secretary
26 determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers
27 as to its value for such uses.
28

1 72. Defendant violated California Health & Safety Code § 110740 because they
2 contain artificial flavoring, artificial coloring and chemical preservatives but fail to adequately
3 disclose that fact on their labeling.

4 73. Defendants violated California Health & Safety Code § 110760 which makes it
5 unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is
6 misbranded.

7 74. Defendant violated California Health & Safety Code § 110765 which makes it
8 unlawful for any person to misbrand any food.

9 75. Defendant violated California Health & Safety Code § 110770 which makes it
10 unlawful for any person to receive in commerce any food that is misbranded or to deliver or
11 proffer for delivery any such food.

12 76. Defendant has violated the standards set by 21 C.F.R. § 101.22, 21 C.F.R. §
13 101.4(a)(1), 21 C.F.R. § 102.5(d), 21 C.F.R. § 102.5(a), 21 C.F.R. § 120.1(a), 21 U.S.C. §343,
14 and 21 C.F.R. § 101.30.

15
16 **X. PLAINTIFF BOUGHT THE PURCHASED PRODUCTS**

17 77. Plaintiff cares about the nutritional content of food and seeks to maintain a healthy
18 diet. During the Class Period, Plaintiff spent more than twenty-five dollars (\$25.00) on the
19 Purchased Product.

20 78. Plaintiff read and reasonably relied on the labels on Defendant's Purchased
21 Product before purchasing it as described herein. Plaintiff relied on Defendant's labeling as
22 described herein and based and justified the decision to purchase Defendant's product, in
23 substantial part, on the label.

24 79. At point of sale, Plaintiff did not know, and had no reason to know, that the
25 Purchased Product was unlawful and misbranded as set forth herein, and would not have bought
26 the product had he known the truth about it, i.e., that the product was illegal to purchase and
27 possess.

1 80. After Plaintiff learned that Defendant’s Purchased Product was falsely labeled, he
2 stopped purchasing it.

3 81. As a result of Defendant’s unlawful misrepresentations, Plaintiff and thousands of
4 others in California and throughout the United States purchased the Purchased Product and the
5 Substantially Similar Products at issue.

6 82. Defendant’s labeling as alleged herein is false and misleading and was designed to
7 increase sales of the products at issue. Defendant’s misrepresentations are part of its systematic
8 labeling practice and a reasonable person would attach importance to Defendant’s
9 misrepresentations in determining whether to purchase the products at issue.

10 83. A reasonable person would also attach importance to whether Defendant’s
11 products are “misbranded,” i.e., legally salable, and capable of legal possession, and to
12 Defendant’s representations about these issues in determining whether to purchase the products at
13 issue. Plaintiff would not have purchased Defendant’s products had he known they were not
14 capable of being legally sold or held.

15 84. Plaintiff’s purchase of the Purchased Product damaged Plaintiff because
16 misbranded products cannot be legally sold, possessed, have no economic value, and are legally
17 worthless.

18 **XI. SUBSTANTIALLY SIMILAR PRODUCT CLAIMS**

19 85. The products listed in paragraph 4 have the same claims and share the same label
20 representations and Sherman Law violations as the Purchased Product as described herein.

21 (A) Improperly listing “evaporated cane juice” as an ingredient:

- 22 - Oven Roasted Cinnamon Brown Sugar Almonds;
- 23 - 100 Calorie Packs Cinnamon Brown Sugar Almonds;
- 24 - Almond Breeze Shelf Stable Original Almond Milk;
- 25 - Almond Breeze Shelf Stable Vanilla Almond Milk;
- 26 - Almond Breeze Shelf Stable Chocolate Almond Milk;
- 27 - Almond Breeze Refrigerated Original Almond Milk;
- 28 - Almond Breeze Refrigerated Vanilla Almond Milk;
- Almond Breeze Refrigerated Chocolate Almond Milk;
- Almond Breeze Shelf Stable Almond Coconut Vanilla Almond Milk;
- Almond Breeze Refrigerated Almond Coconut Original Almond Milk; and
- Blue Diamond Breeze Almondmilk Coconutmilk Blend Shelf Stable Almond Milk.

1 (B) Improperly labeled “All Natural;”

- 2 - Almond Breeze Chocolate Refrigerated Almond Milk;
 3 - Almond Breeze Original Refrigerated Almond Milk;
 4 - Almond Breeze Original Unsweetened Refrigerated Almond Milk;
 5 - Almond Breeze Shelf Stable Original Unsweetened Almond Milk;
 6 - Almond Breeze Refrigerated Almond Coconut Original Unsweetened Almond Milk;
 7 - Almond Breeze Refrigerated Almond Coconut Original Almond Milk;
 8 - Almond Breeze Shelf Stable Almond Coconut Vanilla Unsweetened Almond Milk;
 9 - Almond Breeze Shelf Stable Almond Coconut Vanilla Almond Milk;
 10 - Almond Breeze Vanilla Refrigerated Almond Milk;
 11 - Almond Breeze Vanilla Unsweetened Refrigerated Almond Milk;
 12 - Almond Breeze Shelf Stable Vanilla Almond Milk;
 13 - Almond Breeze Shelf Stable Chocolate Unsweetened Almond Milk;
 14 - Almond Breeze Shelf Stable Chocolate Almond Milk;
 15 - Almond Breeze Shelf Stable Original Almond Milk;
 16 - Almond Breeze Shelf Stable Vanilla Unsweetened Almond Milk;
 17 - Blue Diamond Breeze Almondmilk Coconutmilk Blend Shelf Stable Almond Milk;
 18 - Blue Diamond Nut Chips Sour Cream and Chive; and
 19 - Blue Diamond Nut Chips Sea Salt.

13 **XII. CLASS ACTION ALLEGATIONS**

14 86. Plaintiff brings this action as a class action pursuant to Federal Rule of Procedure
 15 23(b)(2) and 23(b)(3) on behalf of the following class:

16 All persons in the United States who, within the last four years, purchased
 17 Defendants’ almond milk and substantially related products (1) labeled “All
 18 Natural” despite containing artificial or synthetic ingredients, flavorings, coloring,
 19 and/or chemical preservatives and/or (2) labeled with the ingredient
 20 “EVAPORATED CANE JUICE” (the “Class”).

21 87. The following persons are expressly excluded from the Class:

22 (1) Defendant and its subsidiaries and affiliates; (2) all persons who make a timely election to be
 23 excluded from the proposed Class; (3) governmental entities; and (4) the Court to which this case
 24 is assigned and its staff.

25 88. This action can be maintained as a class action because there is a well-defined
 26 community of interest in the litigation and the proposed Class is easily ascertainable.

27 89. Numerosity: Based upon Defendant’s publicly available sales data with respect to the
 28 misbranded products at issue, it is estimated that the Class numbers in the thousands, and that
 joinder of all Class members is impracticable.

1 90. Common Questions Predominate: This action involves common questions of law
2 and fact applicable to each Class member that predominate over questions that affect only
3 individual Class members. Thus, proof of a common set of facts will establish the right of each
4 Class member to recover. Questions of law and fact common to each Class member include, just
5 for example:

- 6 a. Whether Defendant engaged in unlawful, unfair or deceptive
7 business practices by failing to properly package and label
8 products sold to consumers;
- 9 b. Whether the food products at issue were misbranded or unlawfully
10 packaged, labeled and sold under the Sherman Law;
- 11 c. Whether Defendant made unlawful and misleading “All Natural”
12 claims with respect to its food products sold to consumers;
- 13 d. Whether Defendant made unlawful and misleading “evaporated
14 cane juice” claims with respect to its food products sold to
15 consumers;
- 16 e. Whether Defendant violated California Bus. & Prof. Code §
17 17200, *et seq.*, California Bus. & Prof. Code § 17500, *et seq.*, the
18 Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*,
19 California Civ. Code § 1790, *et seq.*, 15 U.S.C. § 2301, *et seq.*, and
20 the Sherman Law;
- 21 f. Whether Plaintiff and the Class are entitled to equitable and/or
22 injunctive relief; and
- 23 g. Whether Defendant’s unlawful, unfair and/or deceptive practices
24 harmed Plaintiff and the Class.

25 91. Typicality: Plaintiff’s claims are typical of the claims of the Class because Plaintiff
26 bought Defendant’s Purchased Product during the Class Period. Defendant’s unlawful, unfair
27 and/or fraudulent actions concern the same business practices described herein irrespective of
28 where they occurred or were experienced. Plaintiff and the Class sustained similar injuries
arising out of Defendant’s conduct in violation of California law. The injuries of each member of
the Class were caused directly by Defendant’s wrongful conduct. In addition, the factual
underpinning of Defendant’s misconduct is common to all Class members and represents a
common thread of misconduct resulting in injury to all members of the Class. Plaintiff’s claims
arise from the same practices and course of conduct that give rise to the claims of the Class
members and are based on the same legal theories.

1 92. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class.
2 Neither Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to
3 the interests of the Class members. Plaintiff has retained highly competent and experienced class
4 action attorneys to represent his interests and those of the members of the Class. Plaintiff and
5 Plaintiff's counsel have the necessary financial resources to adequately and vigorously litigate
6 this class action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class
7 members and will diligently discharge those duties by vigorously seeking the maximum possible
8 recovery for the Class.

9 93. Superiority: There is no plain, speedy or adequate remedy other than by maintenance
10 of this class action. The prosecution of individual remedies by members of the Class will tend to
11 establish inconsistent standards of conduct for Defendant and result in the impairment of Class
12 members' rights and the disposition of their interests through actions to which they were not
13 parties. Class action treatment will permit a large number of similarly situated persons to
14 prosecute their common claims in a single forum simultaneously, efficiently and without the
15 unnecessary duplication of effort and expense that numerous individual actions would engender.
16 Further, as the damages suffered by individual members of the Class may be relatively small, the
17 expense and burden of individual litigation would make it difficult or impossible for individual
18 members of the Class to redress the wrongs done to them, while an important public interest will
19 be served by addressing the matter as a class action. Class treatment of common questions of law
20 and fact would also be superior to multiple individual actions or piecemeal litigation in that class
21 treatment will conserve the resources of the Court and the litigants, and will promote consistency
22 and efficiency of adjudication.

23 94. The prerequisites to maintaining a class action for injunctive or equitable relief
24 pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds
25 generally applicable to the Class, thereby making appropriate final injunctive or equitable relief
26 with respect to the Class as a whole.

27 95. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3)
28

1 are met as questions of law or fact common to class members predominate over any questions
2 affecting only individual members, and a class action is superior to other available methods for
3 fairly and efficiently adjudicating the controversy. Plaintiff and Plaintiff's counsel are unaware
4 of any difficulties that are likely to be encountered in the management of this action that would
5 preclude its maintenance as a class action.

6 **XIII. CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**
8 **Business and Professions Code § 17200, *et seq.***
9 **Unlawful Business Acts and Practices**

10 96. Plaintiff incorporates by reference each allegation set forth above.

11 97. Defendant's conduct constitutes unlawful business acts and practices.

12 98. Defendant sold the Purchased Product in California and throughout the United
13 States during the Class Period.

14 99. Defendant is a corporation and, therefore, a "person" within the meaning of the
15 Sherman Law.

16 100. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of
17 Defendant's violations of the advertising provisions of Article 3 of the Sherman Law and the
18 misbranded food provisions of Article 6 of the Sherman Law.

19 101. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of
20 Defendant's violations of § 17500, *et seq.*, which forbids untrue and misleading advertising.

21 102. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of
22 Defendant's violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

23 103. Defendant sold Plaintiff and the Class Purchased Product and Substantially Similar
24 Products that were not capable of being sold, or held legally and which were legally worthless.
25 Plaintiff and the Class paid a premium price for these products.
26

27 104. As a result of Defendant's illegal business practices, Plaintiff and the
28

1 Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such
2 future conduct and such other orders and judgments which may be necessary to disgorge
3 Defendant's ill-gotten gains and to restore to any Class Member any money paid for the
4 Purchased Products and Substantially Similar Products.

5 105. Defendant's unlawful business acts present a threat and reasonable continued
6 likelihood of injury to Plaintiff and the Class.

7
8 106. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to
9 Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by
10 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's
11 ill-gotten gains and restore any money paid for Defendant's Purchase Product and Substantially
12 Similar Products by Plaintiff and the Class.

13 **SECOND CAUSE OF ACTION**
14 **Business and Professions Code § 17200, et seq.**
15 **Unfair Business Acts and Practices**

16 107. Plaintiff incorporates by reference each allegation set forth above.

17 108. Defendant's conduct as set forth herein constitutes unfair business acts and
18 practices.

19 109. Defendant sold the Purchased Product in California and throughout the United
20 States during the Class Period.

21 110. Plaintiff and members of the Class suffered a substantial injury by virtue of
22 buying Defendant's Purchased Product and Substantially Similar Products that they would not
23 have purchased absent Defendant's illegal conduct.

24 111. Defendant's deceptive marketing, advertising, packaging and labeling of its
25 Purchased Product and its sale of unsalable misbranded products that were illegal to possess was
26 of no benefit to consumers, and the harm to consumers and competition is substantial.

27
28 112. Defendant sold Plaintiff and the Class the Purchased Product and Substantially

1 Similar Products that were not capable of being legally sold or held and that were legally
2 worthless. Plaintiff and the class paid a premium for those products.

3 113. Plaintiff and the Class who purchased Defendant's Purchased Product and
4 Substantially Similar Products had no way of reasonably knowing that the products were
5 misbranded and were not properly marketed, advertised, packaged and labeled, and thus could
6 not have reasonably avoided the injury each of them suffered.

7 114. The consequences of Defendant's conduct as set forth herein outweigh any
8 justification, motive or reason therefor. Defendant's conduct is and continues to be immoral,
9 unethical, unscrupulous, contrary to public policy, and is substantially injurious to Plaintiff and
10 the Class.

11 115. As a result of Defendant's conduct, Plaintiff and the Class, pursuant to Business
12 and Professions Code § 17203, are entitled to an order enjoining such future conduct by
13 Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's
14 ill-gotten gains and restore any money paid for Defendant's Purchase Product and Substantially
15 Similar Products by Plaintiff and the Class.
16

17 **THIRD CAUSE OF ACTION**
18 **Business and Professions Code § 17200, et seq.**
19 **Fraudulent Business Acts and Practices**

20 116. Plaintiff incorporates by reference each allegation set forth above.

21 117. Defendant's conduct as set forth herein constitutes fraudulent business practices
22 under California Business and Professions Code sections § 17200, et seq.

23 118. Defendant sold the Purchased Product in California and throughout the United
24 States during the Class Period.

25 119. Defendant's misleading marketing, advertising, packaging and labeling of the
26 Purchase Product and Substantially Similar Products and misrepresentation that the products were
27 salable, capable of possession and not misbranded were likely to deceive reasonable consumers,
28

1 and in fact, Plaintiff and members of the Class were deceived. Defendant has engaged in
2 fraudulent business acts and practices.

3 120. Defendant's fraud and deception caused Plaintiff and the Class to purchase
4 Defendant's Purchased Product and Substantially Similar Products that they would otherwise not
5 have purchased had they known the true nature of those products.
6

7 121. Defendant sold Plaintiff and the Class Purchased Products and Substantially
8 Similar Products that were not capable of being sold or held legally and that were legally
9 worthless.
10

11 122. As a result of Defendant's conduct as set forth herein, Plaintiff and the Class,
12 pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future
13 conduct by Defendant, and such other orders and judgments which may be necessary to disgorge
14 Defendant's ill-gotten gains and restore any money paid for Defendant's Purchased Product and
15 Substantially Similar Products by Plaintiff and the Class.
16

17 **FOURTH CAUSE OF ACTION**
18 **Business and Professions Code § 17500, *et seq.***
19 **Misleading and Deceptive Advertising**

20 123. Plaintiff incorporates by reference each allegation set forth above.

21 124. Plaintiff asserts this cause of action for violations of California Business and
22 Professions Code § 17500, *et seq.* for misleading and deceptive advertising against Defendant.

23 125. Defendant sold the Purchased Product in California and throughout the United
24 States during the Class Period.

25 126. Defendant engaged in a scheme of offering Defendant's Purchased Product for
26 sale to Plaintiff and members of the Class by way of, *inter alia*, product packaging and labeling,
27 and other promotional materials. These materials misrepresented and/or omitted the true contents
28 and nature of Defendant's Purchased Product and Substantially Similar Products. Defendant's
advertisements and inducements were made within California and throughout the United States

1 and come within the definition of advertising as contained in Business and Professions Code
2 §17500, *et seq.* in that such product packaging and labeling, and promotional materials were
3 intended as inducements to purchase Defendant's Purchased Product and are statements
4 disseminated by Defendant to Plaintiff and the Class that were intended to reach members of the
5 Class. Defendant knew, or in the exercise of reasonable care should have known, that these
6 statements were misleading and deceptive as set forth herein.

7 127. In furtherance of its plan and scheme, Defendant prepared and distributed within
8 California and nationwide via product packaging and labeling, and other promotional materials,
9 statements that misleadingly and deceptively represented the composition and the nature of
10 Defendant's Purchased Product. Plaintiff and the Class necessarily and reasonably relied on
11 Defendant's materials, and were the intended targets of such representations.

12 128. Defendant's conduct in disseminating misleading and deceptive statements in
13 California and nationwide to Plaintiff and the Class was and is likely to deceive reasonable
14 consumers by obfuscating the true composition and nature of Defendant's Purchased Product and
15 Substantially Similar Products in violation of the "misleading prong" of California Business and
16 Professions Code § 17500, *et seq.*

17 129. As a result of Defendant's violations of the "misleading prong" of California
18 Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the
19 expense of Plaintiff and the Class. The Purchased Product cannot be legally sold or held and is
20 legally worthless.

21 130. Plaintiff and the Class, pursuant to Business and Professions Code § 17535, are
22 entitled to an order enjoining such future conduct by Defendant, and such other orders and
23 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any
24 money paid for Defendant's Purchased Product and Substantially Similar Products by Plaintiff
25 and the Class.
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FIFTH CAUSE OF ACTION
Business and Professions Code § 17500, *et seq.*
Untrue Advertising

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3 131. Plaintiff incorporates by reference each allegation set forth above.

4 132. Plaintiff asserts this cause of action against Defendant for violations of
5 California Business and Professions Code § 17500, *et seq.*, regarding untrue advertising.

6 133. Defendant sold the Purchased Product in California and throughout the United
7 States during the Class Period.

8 134. Defendant engaged in a scheme of offering Defendant's Purchased Product for
9 sale to Plaintiff and the Class by way of product packaging and labeling, and other promotional
10 materials. These materials misrepresented and/or omitted the true contents and nature of
11 Defendant's Purchased Product and Substantially Similar Products. Defendant's advertisements
12 and inducements were made in California and throughout the United States and come within the
13 definition of advertising as contained in Business and Professions Code §17500, *et seq.* in that the
14 product packaging and labeling, and promotional materials were intended as inducements to
15 purchase Defendant's Purchased Product, and are statements disseminated by Defendant to
16 Plaintiff and the Class. Defendant knew, or in the exercise of reasonable care should have
17 known, that these statements were untrue.

18
19 135. In furtherance of their plan and scheme, Defendant prepared and distributed in
20 California and nationwide via product packaging and labeling, and other promotional materials,
21 statements that falsely advertise the composition of Defendant's Purchased Product, and falsely
22 misrepresented the nature of those products. Plaintiff and the Class were the intended targets of
23 such representations and would reasonably be deceived by Defendant's materials.

24 136. Defendant's conduct in disseminating untrue advertising throughout California
25 deceived Plaintiff and members of the Class by obfuscating the contents, nature and quality of
26 Defendant's Purchased Product in violation of the "untrue prong" of California Business and
27 Professions Code § 17500.
28

1 137. As a result of Defendant's violations of the "untrue prong" of California
2 Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly enriched at the
3 expense of Plaintiff and the Class. The Purchased Product and Substantially Similar Products
4 cannot be legally sold or held and are legally worthless.

5 138. Plaintiff and the Class, pursuant to Business and Professions Code §17535,
6 are entitled to an order enjoining such future conduct by Defendant, and such other orders and
7 judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any
8 money paid for Defendant's Purchased Product and Substantially Similar Products by Plaintiff
9 and the Class.

10 **SIXTH CAUSE OF ACTION**
11 **Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.***

12 139. Plaintiff incorporates by reference each allegation set forth above.

13 140. This cause of action is brought pursuant to the CLRA. Defendant's violations of
14 the CLRA were and are willful, oppressive and fraudulent, thus supporting an award of punitive
15 damages.

16 141. Plaintiff and the Class are entitled to actual and punitive damages against
17 Defendants for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2),
18 Plaintiff and the Class are entitled to an order enjoining the above-described acts and practices,
19 providing restitution to Plaintiff and the Class, ordering payment of costs and attorneys' fees, and
20 any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

21 142. Defendant's actions, representations and conduct have violated, and continue to
22 violate the CLRA, because they extend to transactions that are intended to result, or which have
23 resulted, in the sale of goods to consumers.

24 143. Defendant sold the Purchased Product and Substantially Similar Products in
25 California and throughout the United States during the Class Period.

26 144. Plaintiff and members of the Class are "consumers" as that term is defined by
27
28

1 the CLRA in Cal. Civ. Code §1761(d).

2 145. Defendant's Purchased Product and Substantially Similar Products were and
3 are "goods" within the meaning of Cal. Civ. Code §1761(a).

4 146. By engaging in the conduct set forth herein, Defendant violated and continues
5 to violate Sections 1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair
6 methods of competition and unfair or fraudulent acts or practices in that they misrepresent the
7 particular ingredients, characteristics, uses, benefits and quantities of the goods.

8 147. By engaging in the conduct set forth herein, Defendant violated and continues to
9 violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair methods
10 of competition and unfair or fraudulent acts or practices in that they misrepresent the particular
11 standard, quality or grade of the goods.

12 148. By engaging in the conduct set forth herein, Defendant violated and continues to
13 violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitutes unfair methods
14 of competition and unfair or fraudulent acts or practices in that they advertise goods with the
15 intent not to sell the goods as advertised.

16 149. By engaging in the conduct set forth herein, Defendant has violated and continues
17 to violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitutes unfair
18 methods of competition and unfair or fraudulent acts or practices in that they represent that a
19 subject of a transaction has been supplied in accordance with a previous representation when it
20 has not.

21 22
23 150. Plaintiff requests that he and the Class be awarded the damages requested herein,
24 and that the Court enjoin Defendant from continuing to employ the unlawful methods, acts and
25 practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If Defendant is not restrained
26 from engaging in these practices in the future, Plaintiff and the Class will continue to suffer harm.

27 151. Plaintiff requests that the Court enjoin Defendant from continuing to employ the
28

1 unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If
2 Defendant is not restrained from engaging in these practices in the future, Plaintiff and the Class
3 will continue to suffer harm.

4 152. On July 17, 2012, pursuant to Section 1782(a) of the CLRA, Plaintiff's counsel
5 served Blue Diamond with notice of its violations of the CLRA. As authorized by Blue
6 Diamond's counsel, Plaintiff's counsel served Blue Diamond by certified mail, return receipt
7 requested.

8 153. Blue Diamond has failed to provide appropriate relief for its violations of the
9 CLRA within 30 days of its receipt of the CLRA demand notice. Accordingly, pursuant to
10 Sections 1780 and 1782(b) of the CLRA, Plaintiff is entitled to recover actual damages, punitive
11 damages, attorneys' fees and costs, and any other relief the Court deems proper.

12 154. Defendant's violations of the CLRA were willful, oppressive and fraudulent,
13 thus supporting an award of punitive damages.

14 155. Consequently, Plaintiff and the Class are entitled to actual and punitive damages
15 against Defendant for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code §
16 1782(a)(2), Plaintiff and the Class are entitled to an order enjoining the above-described acts and
17 practices, providing restitution to Plaintiff and the Class, ordering payment of costs and attorneys'
18 fees, and any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code
19 § 1780.

20 **JURY DEMAND**

21 Plaintiff hereby demands a trial by jury of his claims.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, and on
24 behalf of the general public, prays for judgment against Defendant as follows:

25 A. For an order certifying this case as a class action and appointing Plaintiff and his
26 counsel to represent the Class;

27 B. For an order awarding, as appropriate, damages, monetary relief, restitution or
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1 disgorgement to Plaintiff and the Class for all causes of action;

2 C. For an order requiring Defendant to immediately cease and desist from selling its
3 Purchased Products listed in violation of law; enjoining Defendant from continuing to market,
4 advertise, distribute, and sell these products in the unlawful manner described herein; and
5 ordering Defendant to engage in corrective action;

6 D. For all equitable and monetary remedies available pursuant to Cal. Civ. Code §
7 1780;

8 E. For an order awarding attorneys' fees and costs;

9 F. For an order awarding punitive damages;

10 G. For an order awarding pre-and post-judgment interest; and

11 H. For an order providing such further relief as this Court deems proper.

12
13 Dated: May 24, 2013

Respectfully submitted,

14
15 Ben F. Pierce Gore

Ben F. Pierce Gore (SBN 128515)

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

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The undersigned counsel does hereby certify that he has this day served a true and correct copy of the above and foregoing upon counsel of record via the Court’s ECF system and also by US Mail, postage prepaid.

This the 24th day of May, 2013

Signed: Dewitt M. Lovelace

Dewitt M. Lovelace

ClassAction.org

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