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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13

14 GARO MADENLIAN, on behalf of
himself and all others similarly
15 situated,

16 Plaintiffs,

17 v.

18 FLAX USA, INC., and DOES 1
through 10, inclusive,
19

20 Defendants.

Case No.: **SACV13-01748 JVS (JPRx)**

COMPLAINT
CLASS ACTION

[Violations of California's Unfair
Competition Law, California Business &
Professions Code § 17200 *et seq.*,
California's False Advertising Law,
California Business & Professions Code
§ 17500 *et seq.*, and California's
Consumers Legal Remedies Act,
California Civil Code § 1750 *et seq.*]

DEMAND FOR JURY TRIAL

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25 Plaintiff, by his counsel of record, brings this action on his own behalf and on
26 behalf of all others similarly situated, and alleges the following upon personal
27 knowledge, or where there is not personal knowledge, upon information and belief:
28

1 **INTRODUCTION**

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

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

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

7 4. Defendant FLAX USA, INC. ("Flax USA") is an example of a
8 manufacturer who has sought to exploit the market for natural products by
9 representing that its products are "All Natural."

10 5. Flax USA manufactures several food products, including a line of
11 "Flaxmilk" beverage products which include the Flax USA Flaxmilk (Unsweetened)
12 product. Flax USA prominently labels these products as "All Natural" when in fact
13 they contain artificial ingredients.

14 6. This lawsuit seeks redress on behalf of a nationwide class of consumers
15 who purchased Flax USA Products which claimed to be "All Natural."
16

17 **JURISDICTION AND VENUE**

18 7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
19 1332(d)(2), because the proposed class has more than 100 class members, the
20 proposed class contains at least one class member who is a citizen of a State
21 different from any defendant, and the matter in controversy exceeds the sum of
22 \$5,000,000.

23 8. This Court has personal jurisdiction over Defendants because each
24 conducts business in California, intentionally avails itself of the markets and
25 benefits of California through its marketing and sales of the products at issue in
26 California so as to render the exercise of jurisdiction by this Court consistent with
27 traditional notions of fair play and substantial justice, and a substantial part of the
28 acts and omissions giving rise to the claims occurred within California.

1 9. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) and
2 (c) in that Defendants reside in this judicial district, Defendants have done and
3 continue to do business, and intentionally avail themselves of the markets within
4 this district, and this is a class action case in which a substantial part of the acts and
5 omissions giving rise to the claims occurred within this judicial district, in Orange
6 County, California.

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8 **PARTIES**

9 10. Plaintiff, GARO MADENLIAN, is and at all times relevant hereto was
10 a resident and citizen of the State of California.

11 11. Defendant FLAX USA, INC. is a corporation organized and existing
12 under the laws of the State of North Dakota. Defendant manufactures, markets, and
13 sells its products throughout California and the United States. Defendant is a
14 leading producer of retail food products, including the products at issue herein.
15 Defendant sells its food products to consumers through grocery and other retail
16 stores throughout the United States.

17 12. At all times mentioned in this Complaint, Defendants and each of them
18 were the agents, employees, joint venturer, and or partners of each other and were
19 acting within the course and scope of such agency, employment, joint venturer and
20 or partnership relationship and or each of the Defendants ratified and or authorized
21 the conduct of each of the other Defendants.

22 13. Plaintiff does not know the true names and capacities of defendants
23 sued herein as DOES 1 through 10, inclusive, and therefore sues these defendants by
24 such fictitious names. Plaintiff is informed and believes that each of the DOE
25 defendants was in some manner legally responsible for the wrongful and unlawful
26 conduct and harm alleged herein. Plaintiff will amend this Complaint to set forth
27 the true names and capacities of these defendants when they have been ascertained,
28 along with appropriate charging allegations.

1 14. Defendant FLAX USA, INC. and DOES 1 through 10 are collectively
2 referred to as Defendants.

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4 **FACTUAL ALLEGATIONS CONCERNING**
5 **FLAX USA PRODUCTS**

6 15. Within the last four years, Plaintiff purchased some of Defendants' Flax
7 USA Products¹, including specifically the Flax USA Flaxmilk (Unsweetened)
8 product.

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¹ The phrase "Flax USA Products" as used in this Complaint includes the Flax
USA Flaxmilk (Unsweetened) product and the Substantially Similar Products
described in paragraphs 36 through 37, below.

1 16. The Flax USA Flaxmilk (Unsweetened) product purchased by Plaintiff
2 has the following labels:



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17. The label of the Flax USA Flaxmilk (Unsweetened) product includes the following representations on the front of the product's package:

"All Natural"

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1 18. The ingredients on the side label of the Flax USA Flaxmilk
2 (Unsweetened) product's package states as follows:

3 **"INGREDIENTS:** ALL NATURAL FLAXMILK (FILTERED
4 WATER, COLD PRESSED FLAX OIL), TAPIOCA STARCH,
5 TRICALCIUM PHOSPHATE, CANOLA LECITHIN AND/OR
6 SUNFLOWER LECITHIN, NATURAL FLAVORS, SEA SALT,
7 GUAR GUM, XANTHAN GUM, CARRAGEENAN, VITAMIN A
8 PALMITATE, VITAMIN D₂, VITAMIN B₁₂."

9 19. Defendants unlawfully misbranded and falsely, misleadingly and
10 deceptively represented the Flax USA Flaxmilk (Unsweetened) product as "All
11 Natural" despite that it contains non-natural ingredients, including the following
12 artificial or synthetic ingredients: Tricalcium Phosphate, Xanthan Gum, Vitamin A
13 Palmitate, Vitamin D₂, Vitamin B₁₂."²

14 20. The size and placement of ingredients, which appear in smaller print
15 and on the side of each of the Flax USA Products' packaging, are in stark contrast to
16 the conspicuous "All Natural" representations, which appear in larger print and in
17 more prominent locations on the packaging.

18 21. Reasonable consumers, including Plaintiff, do not have the specialized
19 knowledge necessary to identify ingredients in Flax USA Products as being
20 inconsistent with the "All Natural" claims.

21 22. A claim that a product is "all natural" is material to a reasonable
22 consumer.

23 23. A reasonable consumer would expect that a product labeled as "All
24 Natural" does not contain any artificial, synthetic or extensively processed
25 ingredients.

26 24. This expectation of a reasonable consumer is consistent with the
27 common use of the word "natural" as well as with the views of the federal
28 government and its agencies.

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

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

4 26. 21 C.F.R. § 101.22 distinguishes between artificial versus natural
5 foods, spices, flavorings, colorings, and preservatives on food labels. Any coloring
6 or preservative can preclude the use of the term "natural" even if the coloring or
7 preservative is derived from natural sources.

8 27. The Food and Drug Administration ("FDA") has repeatedly affirmed its
9 policy through guidelines that define the appropriate boundaries for using the term
10 "natural." According to the FDA:

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

21 28. The FDA Compliance Policy Guide Sec. 587.100 further provides that:
22 "The use of the words 'food color added,' 'natural color,' or similar
23 words containing the term 'food' or 'natural' may be erroneously
24 interpreted to mean the color is a naturally occurring constituent in the
25 food. Since all added colors result in an artificially colored food, we
26 would object to the declaration of any added color as 'food' or
27 'natural.'"

28 29. Defendants engaged in an extensive and long-term advertising
campaign labeling and otherwise marketing their Flax USA Products, including the
Flax USA Flaxmilk (Unsweetened) product, as "All Natural" when, in fact, they are
not "All Natural."

1 30. Plaintiff purchased certain Flax USA Products, including specifically
2 the Flax USA Flaxmilk (Unsweetened) product, in reliance on Defendants'
3 representations and omissions on the products' labels that the products were "All
4 Natural."

5 31. Plaintiff reasonably and justifiably relied on the "All Natural"
6 representations on Flax USA Products, including specifically the Flax USA
7 Flaxmilk (Unsweetened) product, and based his decision to purchase such product in
8 substantial part on such representations.

9 32. Plaintiff also reasonably assumed that the Flax USA Products were not
10 misbranded and were legal to offer for sale and to purchase.

11 33. Plaintiff was misled and deceived by Defendants' misbranded products
12 and label representations and would not have purchased the Flax USA Flaxmilk
13 (Unsweetened) product, in the absence of the foregoing "All Natural"
14 representations and omissions.

15 34. Plaintiff relied on Defendants' misbranded labels and false, misleading
16 and deceptive labeling claims and omissions and suffered injury in fact and a loss of
17 money with each purchase of Defendants' Flax USA Products.

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

25 36. In addition to the Flax USA Flaxmilk (Unsweetened) product,
26 Defendants also misbranded and misrepresented other substantially similar Flax
27 USA products ("Substantially Similar Products"). Each of the Substantially Similar
28 Products makes the same label misrepresentations and violates the same California

1 Sherman Food, Drug, And Cosmetic Law, California Health & Safety Code §
2 109875 *et seq.*, laws as the Flax USA Flaxmilk (Unsweetened) product.

3 37. The Substantially Similar Products include the following Flax USA
4 products labeled as "All Natural:"

- 5 • Flax USA Flaxmilk (Original); and
- 6 • Flax USA Flaxmilk (Vanilla).

7 38. Plaintiff reserves the right to add additional products to the list of
8 Substantially Similar Products set forth in paragraph 37, above, based upon
9 additional investigation or discovery.

10 39. Defendants know that consumers are willing to pay for all natural
11 products. Defendants advertise the Flax USA Products with the intention that
12 consumers rely on the affirmative misrepresentations of fact on their labeling that
13 the products are "All Natural." Further, Defendants' omissions of the material fact
14 that the products include ingredients that are not "All Natural," but instead contain
15 artificial, synthetic or extensively processed ingredients, are likely to deceive
16 reasonable consumers.

17 40. Defendants know that the Flax USA Products, including the Flax USA
18 Flaxmilk (Unsweetened) product, are misbranded and that their labeling claims and
19 omissions are false, misleading, deceptive, and likely to deceive reasonable
20 consumers.

21 41. Yet, Defendants have engaged and continue to engage in their
22 misbranding and with their misrepresentations of fact and omissions of fact in
23 furtherance of their motive to sell and profit from the Flax USA Products on the
24 backs and at the expense of consumers and the consuming public.

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1 **CLASS ACTION ALLEGATIONS**

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

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

6 "All persons in the United States who, within four years from the
7 date of filing this action, purchased any of the Flax USA Products which
8 was labeled "All Natural" but contains artificial or synthetic
9 ingredients."³

10 44. Excluded from the Class are Defendants and their directors, officers
11 and employees.

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

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

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

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

25 49. The questions of fact and law common to the Class predominate over
26 questions which may affect individual members and include the following:

27 _____
28 ³ Plaintiff reserves the right to amend or otherwise modify the Class definition
and/or add subclasses.

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

3 (b) Whether Defendants violated California Business and
4 Professions Code § 17200 *et seq.*;

5 (c) Whether Defendants violated California Business and
6 Professions Code § 17500 *et seq.*;

7 (d) Whether Defendants violated California Civil Code § 1750 *et*
8 *seq.*; and

9 (e) The relief, including injunctive and other equitable relief, to
10 which Plaintiff and the Class are entitled.

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

16 51. Adequacy of Representation (Fed. R. Civ. P. 23(a)(4)): Plaintiff is an
17 adequate representative of the Class because his interests do not conflict with the
18 interests of the Class which Plaintiff seeks to represent. Plaintiff will fairly,
19 adequately, and vigorously represent and protect the interests of the Class and has
20 no interests antagonistic to the Class. Plaintiff has retained counsel who is
21 competent and experienced in the prosecution of class action litigation.

22 52. Superiority (Fed. R. Civ. P. 23(b)(3)): A class action is superior to
23 other available means for the fair and efficient adjudication of the claims of the
24 Class. While the aggregate damages which may be and if awarded to the Class are
25 likely to be substantial, the actual economic damages suffered by individual
26 members of the Class are likely relatively small. As a result, the expense and
27 burden of individual litigation makes it economically infeasible and procedurally
28 impracticable for each member of the Class to individually seek redress for the

1 wrongs done to them. The likelihood of individual Class members prosecuting
2 separate claims is remote. Plaintiff does not know of any other litigation already
3 commenced by or against any member of the Class concerning Defendants' conduct
4 at issue in this case. Individualized litigation would also present the potential for
5 varying, inconsistent or contradictory judgments, and would increase the delay and
6 expense to all parties and the court system resulting from multiple trials of the same
7 factual issues. In contrast, the conduct of this matter as a class action presents fewer
8 management difficulties, conserves the resources of the parties and the court system,
9 and would protect the rights of each member of the Class. Plaintiff knows of no
10 difficulty to be encountered in the management of this action that would preclude its
11 maintenance as a class action.

12 53. Injunctive or Declaratory Relief (Fed. R. Civ. P. 23(b)(2)): A class
13 action is also appropriate because Defendants have acted or refused to act on
14 grounds that apply generally to the Class, so that final injunctive relief or
15 corresponding declaratory relief is appropriate respecting the Class as a whole.

16
17 **FIRST CAUSE OF ACTION**

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

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

22 54. Plaintiff hereby incorporates by reference the allegations contained in
23 this Complaint.

24 55. Plaintiff asserts this claim on behalf of himself and the Class as against
25 Defendants and each of them.

26 56. "California's unfair competition law (UCL) (§ 17200 *et seq.*) defines
27 'unfair competition' to mean and include 'any unlawful, unfair or fraudulent business
28 act or practice and unfair, deceptive, untrue or misleading advertising and any act

1 prohibited by [the false advertising law (§ 17500 *et seq.*)]." *Kasky v. Nike, Inc.*, 27
2 Cal.4th 939, 949 (2002).

3 57. "The UCL's purpose is to protect both consumers and competitors by
4 promoting fair competition in commercial markets for goods and services." *Kasky*,
5 27 Cal.4th at 949.

6 58. Defendants have violated the UCL in several of the following ways,
7 each of which are independently actionable:

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

9 59. Defendants' conduct of labeling, advertising and otherwise representing
10 its products as "All Natural" is unlawful and constitutes misbranding under the
11 Sherman Food, Drug, And Cosmetic Law, California Health & Safety Code §
12 109875 *et seq.* (the "Sherman Law").

13 60. California's Sherman Law adopts, incorporates – and is identical – to
14 the relevant provisions of the federal Food Drug and Cosmetic Act, 21 U.S.C. § 301
15 *et seq.* ("FDCA").⁴

16 61. The Sherman Law expressly states that "Any food is misbranded if its
17 labeling is false or misleading in any particular." California Health & Safety Code §
18 110660.⁵

19 62. The Sherman Law also provides that "Any food is misbranded if any
20 word, statement, or other information required pursuant to this part to appear on the
21 label or labeling is not prominently placed upon the label or labeling with
22 conspicuousness, as compared with other words, statements, designs, or devices in
23 the labeling and in terms as to render it likely to be read and understood by the
24

25 ⁴ Through the Sherman Law, California has also adopted all federal food
26 labeling regulations as its own: "All food labeling regulations and any amendments
27 to those regulations adopted pursuant to the federal act ... shall be the food labeling
28 regulations of this state." California Health & Safety Code § 110100. "Federal act
means the federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. Sec. 301
et seq.)." California Health & Safety Code § 109930.

⁵ Identical to FDCA 21 U.S.C. § 343(a).

1 ordinary individual under customary conditions of purchase and use." California
2 Health & Safety Code § 110705.⁶

3 63. The Sherman Law expressly states that "Any food is misbranded if it
4 bears or contains any artificial flavoring, artificial coloring, or chemical
5 preservative, unless its labeling states that fact." California Health & Safety Code §
6 110740.⁷

7 64. The Sherman Law also provides that a food is misbranded if its label
8 does not clearly state "the common or usual name of the food" or "the common or
9 usual name of each ingredient." California Health & Safety Code §§ 110720.
10 110725.⁸

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

13 66. "It is unlawful for any person to misbrand any food." California Health
14 & Safety Code § 110765.

15 67. "It is unlawful for any person to manufacture, sell, deliver, hold, or
16 offer for sale any food that is misbranded." California Health & Safety Code §
17 110760.

18 68. "It is unlawful for any person to receive in commerce any food that is
19 misbranded or to deliver or proffer for delivery any such food." California Health &
20 Safety Code § 110770.

21 69. Defendants manufactured, delivered, held, offered for sale, sold and/or
22 otherwise received into commerce their misbranded products.

23 70. Defendants sold their misbranded products within California and
24 throughout the United States.

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26 _____
27 ⁶ Identical to FDCA 21 U.S.C. § 343(f).

28 ⁷ Identical to FDCA 21 U.S.C. § 343(k).

⁸ Identical to FDCA 21 U.S.C. § 343(g); and 21 C.F.R. § 101.4(a)(1), 21
C.F.R. § 102.5(a), (d).

1 71. As a result of Defendants' conduct, Plaintiff and Class members
2 purchased misbranded products which have no value and are not saleable, as a
3 matter of law, and Plaintiff and Class members suffered injury in fact and lost
4 money or property as a result of Defendants' conduct.

5 **Unlawful (Other Violations)**

6 72. In addition to Defendants' misbranding violations set forth above,
7 Defendants have also violated the UCL by violating other laws including, but not
8 limited to, the following:

9 73. Defendants' conduct violates the advertising prohibitions under the
10 Sherman Law, California Health & Safety Code §§ 110390, 110395, 110398 and
11 110400.

12 74. Defendants' conduct violates California's False Advertising Law,
13 California Business & Professions Code § 17500 *et seq.*

14 75. Defendants' conduct violates California's Consumers Legal Remedies
15 Act., California Civil Code § 1750 *et seq.*

16 **Unfair**

17 76. Defendants' conduct is unfair under the UCL because it offends
18 established public policy and/or is immoral, unethical, oppressive, unscrupulous
19 and/or substantially injurious to Plaintiff and the Class. Defendants' conduct
20 undermines and violates the spirit and policies underlying the Sherman Law, the
21 False Advertising Law, and the Consumers Legal Remedies Act. There is no
22 legitimate utility of Defendants' conduct, let alone any that would outweigh the
23 harm to Plaintiff and the Class.

24 77. Plaintiff and Class members did not know and, as reasonable
25 consumers had no way of reasonably knowing that the products were misbranded
26 and were not properly marketed, advertised, packaged and labeled, and thus could
27 not have reasonably avoided the injury each of them suffered.

28 //

1 **Fraudulent**

2 78. Defendants' conduct is also fraudulent under the UCL because it is
3 likely to deceive reasonable consumers.

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

5 79. As described herein, Defendants' conduct also violates the UCL
6 because the conduct constitutes unfair, deceptive, untrue and/or misleading
7 advertising.

8 **Relief Sought**

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

11 81. Defendants' conduct is ongoing and, unless restrained, likely to recur.

12 82. Plaintiff, on behalf of himself and Class members, seeks equitable
13 relief requiring Defendants to refund and restore to Plaintiff and all Class members
14 all monies they paid for the Flax USA Products, and injunctive relief prohibiting
15 Defendants from engaging in the misconduct described herein.

16
17 **SECOND CAUSE OF ACTION**

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

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

22 83. Plaintiff hereby incorporates by reference the allegations contained in
23 this Complaint.

24 84. Plaintiff asserts this claim on behalf of himself and the Class as against
25 Defendants and each of them.

26 85. Both the UCL and California's False Advertising Law prohibit "not
27 only advertising which is false, but also advertising which[,] although true, is either
28 actually misleading or which has a capacity, likelihood or tendency to deceive or

1 confuse the public.' [Citation.] Thus, to state a claim under either the UCL or the
2 false advertising law, based on false advertising or promotional practices, 'it is
3 necessary only to show that `members of the public are likely to be deceived.'"
4 *Kasky v. Nike, Inc.*, 27 Cal.4th 939, 951 (2002).

5 86. As stated in this Complaint, Defendants publicly disseminated untrue
6 or misleading advertising or intended not to sell Flax USA Products as advertised in
7 violation of California Business & Professional Code § 17500 *et seq.*, by, *inter alia*,
8 representing that Flax USA Products are "All Natural," when they are not.

9 87. Defendants committed such violations of the False Advertising Law
10 with actual knowledge or in the exercise of reasonable care should have known the
11 representations were untrue or misleading.

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

14 89. Defendants' conduct is ongoing and, unless restrained, likely to recur.

15 90. Plaintiff, on behalf of himself and Class members, seeks equitable
16 relief requiring Defendants to refund and restore to Plaintiff and all Class members
17 all monies they paid for the Flax USA Products, and injunctive relief prohibiting
18 Defendants from engaging in the misconduct described herein.

19
20 **THIRD CAUSE OF ACTION**

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

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

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

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

25 91. Plaintiff hereby incorporates by reference the allegations contained in
26 this Complaint.

27 92. Plaintiff asserts this claim on behalf of himself and the Class as against
28 Defendants and each of them.

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

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

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

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

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

16 98. Defendants' Flax USA Products are "goods" within the meaning of
17 Civil Code §§ 1761(a) and 1770.

18 99. Plaintiff and Class members are "consumers" within the meaning of
19 Civil Code §§ 1761(d) and 1770.

20 100. Each purchase of Defendants' Flax USA Products by Plaintiff and each
21 Class member constitutes a "transaction" within the meaning of Civil Code §§
22 1761(e) and 1770.

23 101. Defendants' conduct is ongoing and, unless restrained, likely to recur.

24 102. Plaintiff, on behalf of himself and Class members, seeks injunctive
25 relief prohibiting Defendants from engaging in the misconduct described herein.

26 103. No relief of any kind, other than injunctive relief, is currently sought
27 pursuant to this CLRA cause of action.

28

1 104. No damages of any kind are currently sought pursuant to this CLRA
2 cause of action.

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

4 "An action for injunctive relief brought under the specific provisions
5 of Section 1770 may be commenced without compliance with
6 subdivision (a) [notice requirement]. Not less than 30 days after the
7 commencement of an action for injunctive relief, and after compliance
8 with subdivision (a) [notice requirement], the consumer may amend
9 his or her complaint without leave of court to include a request for
10 damages."

11 106. The CLRA, Civil Code § 1782(a), states as follows:

12 (a) Thirty days or more prior to the commencement of an
13 action for damages pursuant to this title, the consumer shall do the
14 following:

15 (1) Notify the person alleged to have employed or
16 committed methods, acts, or practices declared unlawful by Section
17 1770 of the particular alleged violations of Section 1770.

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

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

25 107. Pursuant to Civil Code § 1782(a), Plaintiff will provide FLAX USA,
26 INC. with notice of its CLRA violations by certified mail return receipt requested.
27 If Defendant FLAX USA, INC. fails to provide appropriate relief for the CLRA
28 violations, Plaintiff will amend this Complaint to seek monetary damages
(compensatory, punitive, etc.) and other relief under the CLRA on behalf of Plaintiff
and the Class.

1 108. Defendant FLAX USA, INC. has not filed any statement or designation
2 with the California Secretary of State.

3 109. Defendant FLAX USA, INC. has not received a certificate of
4 qualification from the California Secretary of State.

5 110. Defendant FLAX USA, INC. is not registered with the California
6 Secretary of State.

7 111. Defendant FLAX USA, INC. has not publicly disclosed any address as
8 its principal place of business within California.

9 112. Defendant FLAX USA, INC. does not have a designated agent for
10 service of process within California.

11 113. Defendant FLAX USA, INC. may be provided the notice specified in
12 Civil Code § 1782(a) by sending such notice to FLAX USA, INC., c/o John P.
13 Stober, 1661 7th St. NE, Goodrich, ND 58444-9304.

14 114. Attached hereto is the venue declaration required by CLRA, Civil Code
15 § 1780(d).⁹

16
17 **PRAYER FOR RELIEF**

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

19 1. An order certifying the Class and appointing Plaintiff as the
20 representative of the Class, and appointing counsel of record for Plaintiff as counsel
21 for the Class;

22 2. Equitable relief requiring Defendants to refund and restore to Plaintiff
23 and all Class members all monies they paid for the Flax USA Products;

24 3. Injunctive relief prohibiting Defendants from engaging in the
25 misconduct described herein;

26 4. An award of attorney's fees;

27
28 ⁹ A declaration may be used in lieu of an affidavit. California Code of Civil
Procedure § 2015.5.

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- 5. An award of costs;
- 6. An award of interest, including prejudgment interest; and
- 7. For such other and further relief as the Court may deem proper.

DATED: October 29, 2013 CHANT & COMPANY
A Professional Law Corporation

By 
Chant Yedalian
Counsel For Plaintiff

DEMAND FOR JURY TRIAL

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

DATED: October 29, 2013 CHANT & COMPANY
A Professional Law Corporation

By 
Chant Yedalian
Counsel For Plaintiff

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DECLARATION BY PLAINTIFF GARO MADENLIAN

I, GARO MADENLIAN, hereby declare that:

- 1. I have personal knowledge of the following facts stated in this Declaration and could competently testify thereto if called upon to do so.
- 2. I am a named Plaintiff in this case.
- 3. I purchased the Flax USA Flaxmilk (Unsweetened) product, which is shown in paragraph 16 of the attached Complaint, in Orange County, California.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing Declaration is true and correct, and was executed by me in the City of Costa Mesa, Orange County, California, on 10/30/13.


GARO MADENLIAN
Declarant

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself)

GARO MADENLIAN, on behalf of himself and all others similarly situated

DEFENDANTS (Check box if you are representing yourself)

FLAX USA, INC., and DOES 1 through 10, inclusive

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

Chant Yedalian, State Bar No. 222325, (chant@chant.mobi)
CHANT & COMPANY A PROFESSIONAL LAW CORPORATION
1010 N. Central Ave., Glendale, CA 91202
Phone: 877.574.7100, Fax: 877.574.9411

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

II. BASIS OF JURISDICTION (Place an X in one box only.)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

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

IV. ORIGIN (Place an X in one box only.)

1. Original Proceeding
 2. Removed from State Court
 3. Remanded from Appellate Court
 4. Reinstated or Reopened
 5. Transferred from Another District (Specify)
 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
28 U.S.C. § 1332(d); Class action/food labeling violations

VII. NATURE OF SUIT (Place an X in one box only.)

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

FOR OFFICE USE ONLY:

Case Number:

SACV13-01748 JVS (JPRx)

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF? <small>Then check the box below for the county in which the majority of DEFENDANTS reside.</small>	A DEFENDANT? <small>Then check the box below for the county in which the majority of PLAINTIFFS reside.</small>	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western	

Question C: Location of plaintiffs, defendants, and claims?	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies: <input checked="" type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	C.2. Is either of the following true? If so, check the one that applies: <input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	SOUTHERN DIVISION

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? NO YES
If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? NO YES
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- A. Arise from the same or closely related transactions, happenings, or events; or
 - B. Call for determination of the same or substantially related or similar questions of law and fact; or
 - C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 - D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): _____  _____ **DATE:** 11/04/13

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge James V. Selna and the assigned Magistrate Judge is Jean P. Rosenbluth.

The case number on all documents filed with the Court should read as follows:

SACV13-01748 JVS (JPRx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

November 5, 2013

Date

By Maria Barr
Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

- | | | |
|---|---|---|
| <input type="checkbox"/> Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012 | <input checked="" type="checkbox"/> Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701 | <input type="checkbox"/> Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501 |
|---|---|---|

Failure to file at the proper location will result in your documents being returned to you.

ClassAction.org

This complaint is part of ClassAction.org's searchable [class action lawsuit database](#)