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17 *Attorneys for Defendants*
18 *Small Planet Foods, Inc., and*
19 *General Mills, Inc.*

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 OAKLAND DIVISION

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

26 Plaintiff,

27 v.

28 SMALL PLANET FOODS, INC.;
GENERAL MILLS, INC.; and DOES 1
THROUGH 50,

Defendants.

Case No.

**DEFENDANTS SMALL PLANET FOODS,
INC. AND GENERAL MILLS, INC.'S
NOTICE OF REMOVAL**

[Complaint filed March 6, 2018 and removed
from the Superior Court of the State of
California for the County of Alameda, Case No.
RG18895553]

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(d), 1441(a), and 1446,
3 defendants SMALL PLANET FOODS, INC. and GENERAL MILLS, INC. (hereinafter “General
4 Mills”) hereby remove to this Federal Court the state court action described below.

5
6 **I. THE STATE COURT ACTION**

7 On March 6, 2018, Plaintiff Brendan Peacock commenced this case in the Superior Court
8 of California in and for the County of Alameda, titled *Brendan Peacock, an individual, on behalf*
9 *of himself, the general public, and those similarly situated, Plaintiff v. Small Planet Foods, Inc.;*
10 *General Mills, Inc.; and Does 1 through 50, Defendants;* Case No. RG18895553. Pursuant to 28
11 U.S.C. § 1446(a), a copy of the Complaint filed in that action is attached hereto as **Exhibit A**.
12 Plaintiff served Defendants General Mills, Inc. and Small Planet Foods, Inc. with a copy of the
13 Complaint and Summons from the Superior Court on March 9, 2018. A copy of the Summons is
14 attached hereto as **Exhibit C**.

15 The Complaint alleges four causes of action against General Mills: (1) Violation of the
16 Consumer Legal Remedies Act, California Civil Code § 1750, *et seq.*; (2) False Advertising,
17 Business and Professions Code § 17500, *et seq.*; (3) Fraud, Deceit, and/or Misrepresentation; and
18 (4) Unfair, Unlawful and Deceptive Trade Practices, Business and Professions Code § 17200, *et*
19 *seq.* Ex. 1 (Compl.) ¶¶ 63–100. All four claims arise out of General Mills’ allegedly false and
20 deceptive marketing and sale of Cascadian Farm brand frozen fruits and vegetables (hereinafter
21 “Cascadian Farm Products”). *Id.* ¶¶ 1, 18–19.¹

22 Plaintiff brings this action as a putative class action. *See, e.g., id.* ¶ 54. He seeks to
23 represent a class of “[a]ll persons who, between February 28, 2014 and the present, purchased, in
24 California, any of Defendants’ Products,” and a subclass consisting of “[a]ll members of the Class
25 who purchased any of Defendants’ Imported Products.” *Id.* ¶ 54. Plaintiff alleges that the
26 members of the putative class at least exceeds 200, and its members are “so numerous that joinder

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28 ¹ The products at issue in the case are listed in paragraph 18 of the complaint and are too numerous to list here. These products are hereinafter referred to as “Cascadian Farm Products.”

1 of all such persons is impracticable.” *Id.* ¶ 56.

2 Plaintiff seeks the following forms of relief: (1) injunctive relief; (2) restitution of a price
3 premium Plaintiff and the class members allegedly paid for the Cascadian Farm Products;
4 (4) “[a]n award of punitive damages, the amount of which is to be determined at trial”; and
5 (3) reasonable attorneys’ fees and costs. Compl. at 29–30.

6 II. JURISDICTION

7 A. This Action Is Removable Under the Class Action Fairness Act of 2005, 28 U.S.C. 8 §§ 1332(d) and 1453

9 “[A]ny civil action brought in State court of which the district courts of the United States
10 have original jurisdiction, may be removed by the defendant . . .” 28 U.S.C. § 1441(a). This
11 action is removable under § 1441 because the District Courts of the United States have original
12 jurisdiction over it pursuant to the Class Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C.
13 § 1332(d); *see also* 28 U.S.C. § 1453(b) (setting procedure for removing class actions).

14 CAFA gives federal courts original jurisdiction over putative class actions in which:
15 (1) the aggregate number of members in the proposed class is 100 or more; (2) the amount in
16 controversy “exceeds the sum or value of \$5,000,000, exclusive of interests and costs”; and
17 (3) the parties are minimally diverse, meaning, “any member of a class of plaintiffs is a citizen of
18 a State different from any defendant.” 28 U.S.C. § 1332(d)(2), (d)(5)(B). For the following
19 reasons, and as shown in the accompanying declaration of Lisa Wacek, these requirements are
20 met here.

21 1. This Is a Putative Class Action in Which the Aggregate Number of Members 22 Is 100 or More

23 This action is a putative class action within the meaning of CAFA. CAFA defines “class
24 action” as “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar
25 State statute or rule of judicial procedure authorizing an action to be brought by 1 or more
26 representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B). Plaintiff filed this action
27 under section 382 of the California Code of Civil Procedure, Compl. at ¶ 54, which authorizes
28 “one or more [to] sue . . . for the benefit of all” when “the question is one of common or general

1 interest, of many persons, or when the parties are numerous, and it is impracticable to bring them
2 all before the court,” Cal. Civ. Pro. § 382. The requirements of class certification under § 382
3 “parallel those of Fed. R. Civ. P. 23.” *Vigil v. Naturals*, 2016 WL 6806206, at *3 (C.D. Cal. Nov.
4 17, 2016). Likewise, as Plaintiff alleges, the putative class contains 100 or more members. *See*
5 Compl. ¶ 56 (alleging that the class and subclass “each is composed of more than 100 persons”).

6 **2. The Amount in Controversy Exceeds \$5,000,000**

7 CAFA permits courts to aggregate the claims of the individual class members “to
8 determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
9 interests and costs.” 28 U.S.C. § 1332(d)(6). Where, as here, the plaintiff does not allege an
10 amount in controversy in the complaint, “a defendant can establish the amount in controversy by
11 an unchallenged, plausible assertion of the amount in controversy in its notice of removal.”
12 *Ibarra v. Manheim Invs.*, 775 F.3d 1193, 1197–98 (9th Cir. 2015). If defendant’s assertions are
13 challenged, it bears the burden of establishing the amount in controversy by a preponderance of
14 the evidence. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 553–54
15 (2014). “This burden is not ‘daunting’ and only requires that the defendant ‘provide evidence
16 establishing that it is more likely than not that the amount in controversy exceeds [\$5,000,000].”
17 *Blevins v. Republic Refrigeration, Inc.*, 2015 WL 12516693, at *6 (C.D. Cal. Sept. 25, 2015)
18 (citation omitted) (alterations in original). Defendant may submit this evidence in opposition to
19 plaintiff’s motion to remand. *Dart Cherokee*, 135 S. Ct. at 554.

20 Here, Plaintiff’s request for restitution places more than \$5,000,000 in controversy.² *See*
21 Compl. at 29–30. Plaintiff seeks an order from this court requiring General Mills to pay
22 “restitution of the price premium paid, i.e., the difference the price consumers paid for the
23 Products and the price that they would have paid but for Defendant’s misrepresentations.” *Id.* at
24 29. Plaintiff alleges that “[i]f consumers knew that the Products were not from a farm in the
25 Cascades, but from elsewhere in the United States or imported, they would pay less for the
26 Products.” Compl. ¶ 40; *see also id.* ¶ 39 (“Because consumers believe the Products are from a
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28 ² Defendants dispute that Plaintiff is entitled to any relief.

1 farm in the Cascades, and not sourced from all over the United States and the world, Defendants
2 are able to charge a premium for the Products as compared to similar produce.”). Plaintiff does
3 not allege a specific price premium. *Id.* ¶ 39.

4 As detailed in the declaration of Lisa Wacek filed in support of this Notice of Removal,
5 Defendants sold more than \$18 million worth of the Products to California retailers in 2014,
6 2015, 2016, 2017, and the first three months of 2018 (“Class Period”). Declaration of Lisa Wacek
7 (“Wacek Decl.”) ¶ 5; Compl. ¶ 54 (class period dates from February 28, 2014 through present);
8 *Hunter v. Nature’s Way Prods., LLC*, 2016 WL 4262188, at *11 (S.D. Cal. Aug. 12, 2016)
9 (explaining that the “statute of limitations for actions under FAL or CLRA is three years” and
10 “[t]he statute of limitations for UCL or breach of warranty claims is four years”). This sales figure
11 is less than the total retail sales number because retailers sell the Products to consumers at a
12 markup. Wacek Decl. ¶ 4. Thus, even if Plaintiff seeks only a fraction of the retail sales of the
13 Products, that number likely exceeds \$5 million. *See* Wacek Decl. ¶ 4–5.

14 Plaintiff’s remaining requests for relief substantially increase General Mills’ potential
15 damages exposure, putting CAFA jurisdiction beyond reasonable dispute. Plaintiff requests
16 “punitive damages, the amount of which is to be determined at trial.” Compl. at 30. Plaintiff also
17 seeks injunctive relief, which would presumably include an order requiring General Mills to
18 remove language and graphics on the Cascadian Farm Products that suggest the Products are
19 sourced from Skagit Valley, Washington. Compl. at 29. Such an order would require General
20 Mills to retrieve, redesign, and replace the Cascadian Farm Products’ labeling at substantial cost.
21 This cost is properly considered part of the amount in controversy. *See, e.g., Anderson v.*
22 *Seaworld Parks & Entm’t, Inc.*, 132 F. Supp. 3d 1156, 1161 (N.D. Cal. 2015) (“The amount in
23 controversy in class actions requesting an injunction may be determined by the cost of
24 compliance by Defendant.” (citation omitted)). Finally, Plaintiff seeks attorneys’ fees and costs,
25 which add to the amount in controversy where, as here, the underlying statute provides for an
26 attorneys’ fee award. *See Alexander v. FedEx Ground Packaging Sys., Inc.*, 2005 WL 701601, at
27 *5 (N.D. Cal. Mar. 25, 2005); *see* Cal. Civ. Code § 1780(e) (court must award costs and
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1 attorneys' fees to prevailing plaintiff in CLRA case).

2 In sum, Plaintiff's requested restitution, together with potential punitive damages, the cost
3 of complying with an injunction, and attorneys' fees and costs, places the amount in controversy
4 well above CAFA's \$5 million threshold.

5 **3. The Parties Are Minimally Diverse**

6 The parties are minimally diverse because "any member of [the class] of plaintiffs is a
7 citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

8 Plaintiff Brendan Peacock is a resident and citizen of California who—on information and
9 belief is domiciled—in Sacramento, California. Compl. ¶ 3; *see Rice v. Thomas*, 64 F. App'x 628,
10 628–29 (9th Cir. 2003) (explaining that an individual is domiciled in a place if she resides and has
11 an intent to stay there). Plaintiff also seeks to represent a class of California consumers. Compl.
12 ¶ 54. It is reasonable to assume that at least one of these consumers is domiciled in California.

13 Defendants are not citizens of California. General Mills, Inc. is incorporated under the
14 laws of Delaware, and its principal place of business is in Minneapolis, Minnesota. *See* Compl.
15 ¶ 5. Small Planet Foods is a Washington corporation with its principal place of business in
16 Minneapolis, Minnesota. *See* Compl. ¶ 4; *see Albino v. Standard Ins. Co.*, 349 F. Supp. 2d 1334,
17 1337 (C.D. Cal. 2004) (for purposes of diversity jurisdiction, "[a] corporation is a citizen both of
18 the state where it was incorporated and the state where it has its primary place of business").
19 Thus, Defendants are citizens of different states from Plaintiff, and CAFA's minimal diversity
20 requirements are met. *See* 28 U.S.C. § 1332(d)(2).

21 **B. None of CAFA's Exceptions Bar Removal in this Case**

22 This action does not fall within the exclusions to removal jurisdiction described in 28
23 U.S.C. §§ 1332(d)(4), (d)(9), or 28 U.S.C. § 1453(d).³

24 Section 1332(d)(4) requires a federal court to decline jurisdiction over a class action
25 when, among other things, "greater than two-thirds of the members of all proposed plaintiff

26 _____
27 ³ General Mills, Inc. and Small Planet Foods—the only defendants in this action—are not
28 "States, State officials, or other governmental entities against whom the district court may be
foreclosed from ordering relief." 28 U.S.C. § 1332(d)(5)(A) therefore does not preclude this
Court's jurisdiction.

1 classes in the aggregate are citizens of the State in which the action was originally filed,” and at
2 least one defendant whose “alleged conduct forms a significant basis for the claims asserted by
3 the proposed class . . . is a citizen of the State in which the action was originally filed.” 28 U.S.C.
4 § 1332(d)(4)(A); *see also* 28 U.S.C. § 1332(d)(4)(B) (similarly excluding cases where “two thirds
5 or more of” the class members and “the primary defendants, are citizens of the State in which the
6 action was originally filed”). Section 1332(d)(4) does not apply here because neither of the
7 Defendants are citizens of California, the state in which the action was originally filed. Compl.
8 ¶¶ 4–5 (alleging that the Defendants are citizens of Delaware, Minnesota, and Washington).

9 Sections 1332(d)(9) and 1453(d) exempt certain securities and corporate governance cases
10 from CAFA’s broad jurisdictional grant. *See* 28 U.S.C. § 1332(d)(9) (explaining that § 1332(d)(2)
11 does not apply to cases arising under several sections of the Securities Act of 1933, several
12 sections of the Securities Exchange Act of 1934, and certain state corporate governance laws); *id.*
13 § 1453(d) (same). Those provisions do not bar jurisdiction here because Plaintiff’s claims do not
14 arise under the Securities Act of 1933 or the Securities Exchange Act of 1934, nor do they
15 involve state-centric corporate governance issues. *See* Compl. ¶¶ 63–100 (making claims that
16 arise under California common law and consumer protection statutes).

17 III. VENUE AND INTRA-DISTRICT ASSIGNMENT

18 The Northern District of California, Oakland Division is the proper venue for this action
19 upon removal because this district and division embrace the California Superior Court, County of
20 Alameda, where the Complaint was filed and is currently pending. *See* 28 U.S.C. § 1441(a).

21 IV. DEFENDANTS HAVE SATISFIED ALL OTHER REMOVAL REQUIREMENTS

22 This Notice of Removal is timely filed. General Mills was served with a copy of the
23 Complaint and Summons on March 9, 2018. General Mills filed and served this Notice of
24 Removal within 30 days of service of the Complaint in compliance with 28 U.S.C. § 1446(b).

25 As required by 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and
26 orders served upon the Defendants are being filed herewith. Copies of the Complaint, the Civil
27 Case Cover Sheet, the Summons, and the Complex Determination Hearing and Case Management
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1 Conference notice are attached hereto as **Exhibits A–D**. No other pleadings have been filed to
2 date in this matter in the Alameda County Superior Court. A true and correct copy of the state
3 court’s docket is attached hereto as **Exhibit E**.

4 Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly serve on Plaintiff and file with
5 the Superior Court a “[n]otice to adverse parties and state court.” Pursuant to Federal Rule of
6 Civil Procedure 5(d), Defendants will also file with this Court a “Certificate of Service of Notice
7 to Adverse Party and State Court of Removal to Federal Court.”

8 **V. RESERVATION OF RIGHTS AND DEFENSES**

9 General Mills expressly reserve all defenses and rights, and none of the foregoing shall be
10 construed as in any way conceding the truth of any of Plaintiff’s allegations or waiving any of
11 General Mills’ defenses. *See, e.g., Key v. DSW, Inc.*, 454 F. Supp. 2d 684, 691 (S.D. Ohio 2006)
12 (“[T]he fact that Defendant removed the case does not mean that Defendant concedes that
13 Plaintiff has adequately alleged appropriate damages.”).

14 **VI. CONCLUSION**

15 WHEREFORE, General Mills request that this Court consider this Notice of Removal as
16 provided by law governing the removal of cases to this Court, that this Court take such steps as
17 are necessary to achieve the removal of this matter to this Court from Alameda County Superior
18 Court, and that this Court will make such other orders as may be appropriate to effect the
19 preparation and filing of a true record in this cause of all proceedings that may have been had in
20 the state court action.

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DATED: April 6, 2018

PERKINS COIE LLP

By: /s/ David T. Biderman

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*Attorney for Defendants Small Planet
Foods, Inc. and General Mills, Inc.*

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PROOF OF SERVICE BY OVERNIGHT DELIVERY

I am a citizen of the United States and employed in King County, Washington. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1201 Third Avenue, Seattle, WA 98101. On April 6, 2018, I deposited with United Parcel Service, a true and correct copy of the within documents:

- **DEFENDANT’S NOTICE OF REMOVAL AND EXHIBITS**
- **DECLARATION OF LISA WACEK IN SUPPORT OF DEFENDANTS NOTICE OF REMOVAL**

in a sealed envelope, addressed as follows:

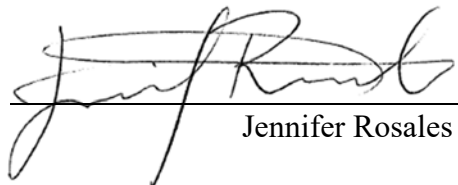
Adam J. Gutride, Esq.
Seth A. Safier, Esq.
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100 Pine Street, Suite 1250
San Francisco, California 94111

Attorneys for Plaintiff

Following ordinary business practices, the envelope was sealed and placed for collection by United Parcel Service on this date, and would, in the ordinary course of business, be retrieved by United Parcel Service for overnight delivery on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 6, 2018, at Seattle, Washington.



Jennifer Rosales

EXHIBIT A



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FILED
ALAMEDA COUNTY
 MAR - 6 2018
 CLERK OF THE SUPERIOR COURT
 By [Signature] DEPUTY

Attorneys for Plaintiff, BRENDAN PEACOCK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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

CASE NO. [Signature] 18895553

UNLIMITED CIVIL CASE

Plaintiff,

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

v.

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

JURY TRIAL DEMANDED

Defendants.

FILED BY FAX

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1 the United States and in foreign countries.

2 **PARTIES**

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

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

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

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

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

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

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

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

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

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

4 **JURISDICTION AND VENUE**

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

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

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

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

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

24 **SUBSTANTIVE ALLEGATIONS**

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

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

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

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

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

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- aa. Cascadian Farm Riced Cauliflower with Roasted Sweet Potatoes & Kale;
- bb. Cascadian Farm Riced Cauliflower Blend with Stir-Fry Vegetables;
- cc. Cascadian Farm Mirepoix;
- dd. Cascadian Farm Chinese-Style Stirfry Blend;
- ee. Cascadian Farm California-Style Blend; and
- ff. Cascadian Farm Gardener's Blend.

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

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

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

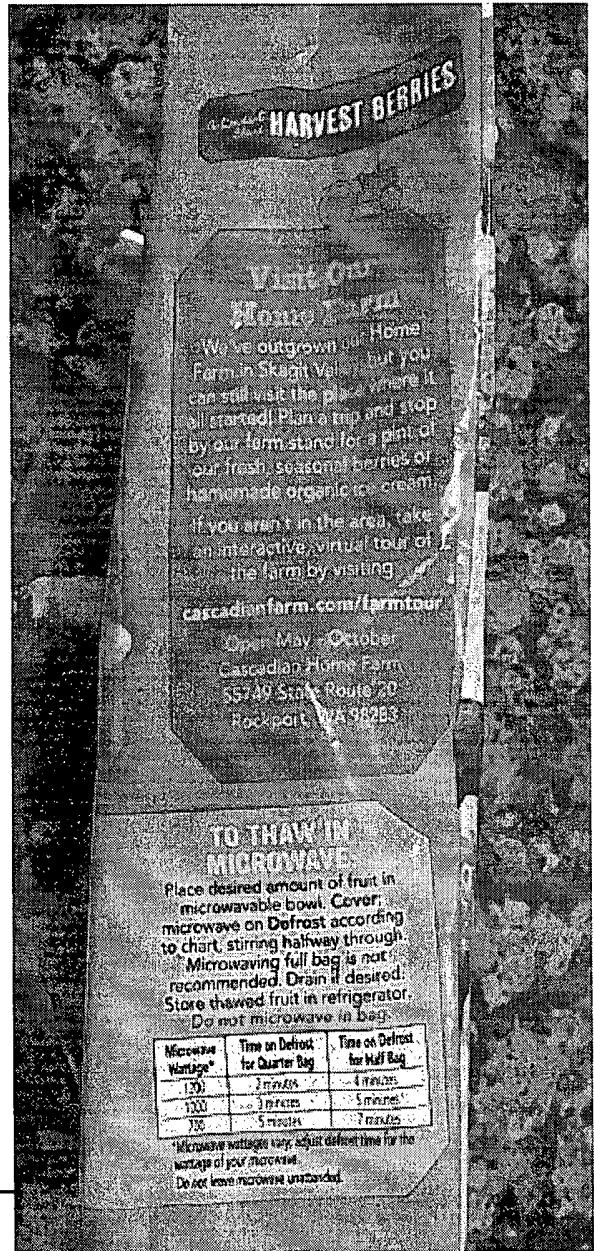
21. Further, on the front of each of the Product packages is a photograph of a farm with the Cascade mountains in the background. Each of the Product packages also state "VISIT



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

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

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



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

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



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

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

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

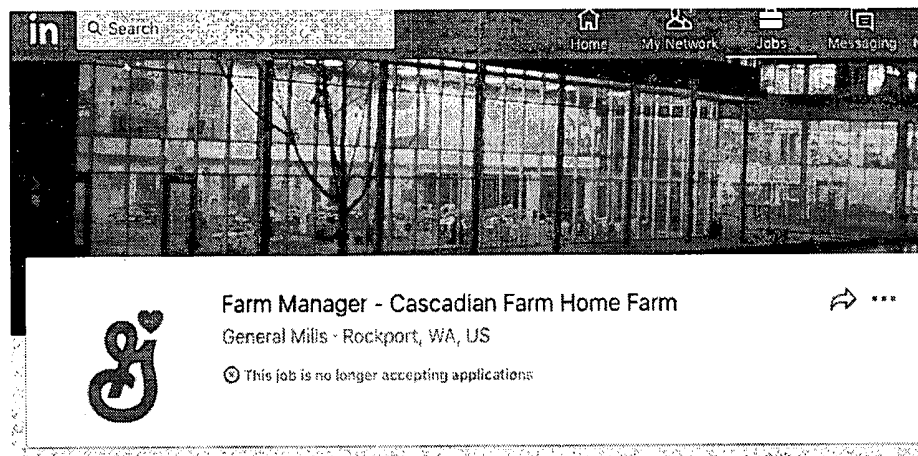
14 25. To unfairly and unlawfully attempt to capitalize on consumers' desires for organic,
15 natural fruits and vegetables grown on domestic small farms, Defendants have employed a variety
16 of long-term marketing and advertising campaigns and strategies to deceive consumers into
17 believing that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

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

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

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

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



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

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

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

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

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



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

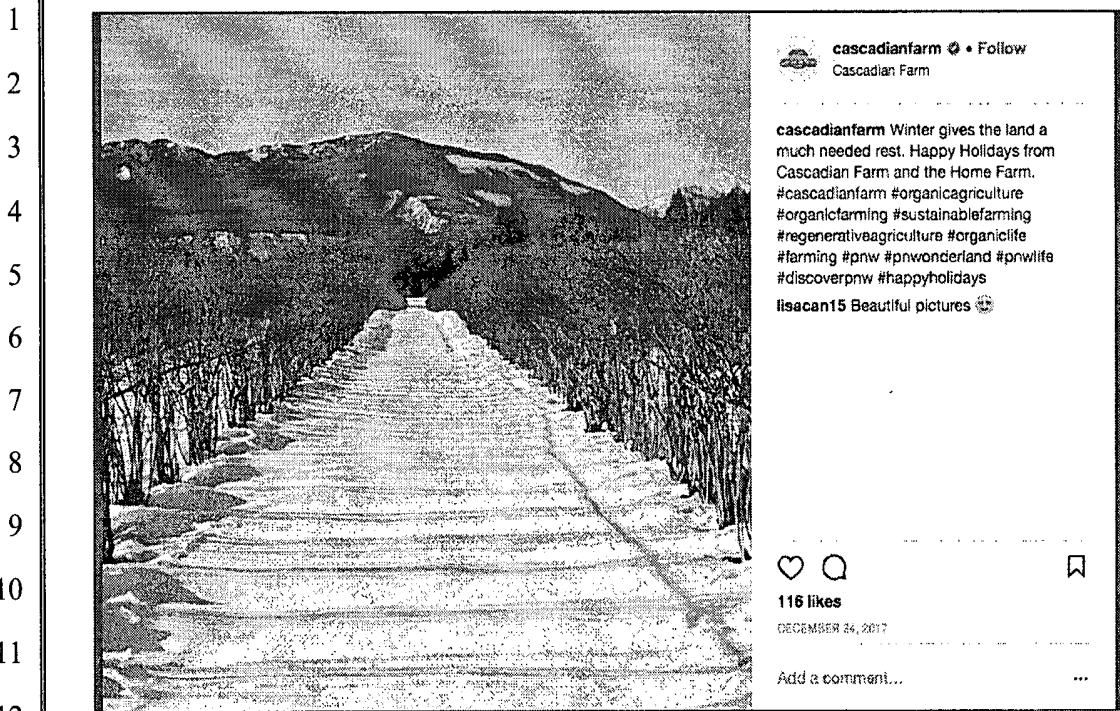
33. Defendants also operate a Twitter account, @cascadianfarm, which has over 10,000 followers. Defendants have operated this page since August 2009. On that page, Defendants display photos of Western Washington and the Cascade Mountains, claim Skagit Valley, WA as the farm’s location, and, post status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

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

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



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

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

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

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

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

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

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

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

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

8 43. Part 134, Chapter 1 of Title 19 of the Code of Federal Regulations sets forth
9 regulations implementing the geographic origin marking requirements and exceptions of section
10 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking
11 provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

12 44. 19 C.F.R. § 134.46 requires that:

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

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

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

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

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

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

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

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

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

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

14 PLAINTIFF’S EXPERIENCE

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

1 origin on the back of the package.

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

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

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

13 **CLASS ALLEGATIONS**

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

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

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

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

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

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

- 8 a) Whether Defendants' Products were grown on a farm in Skagit Valley in the
9 Cascades;
- 10 b) Whether Defendants misled class members by, *inter alia*, using the brand name
11 "Cascadian Farm," representing that their Products originated from a farm in Skagit Valley, WA,
12 and/or utilizing a photograph of a farm in the Cascade mountains on their Product packages;
- 13 c) Whether Defendants' advertising and marketing regarding their Products sold to
14 class members was likely to deceive class members or was unfair;
- 15 d) Whether Defendants engaged in the alleged conduct knowingly, recklessly, or
16 negligently;
- 17 e) The amount of the premium lost by class members as a result of such wrongdoing;
- 18 f) Whether class members are entitled to injunctive and other equitable relief and, if
19 so, what is the nature of such relief; and
- 20 g) Whether class members are entitled to payment of actual, incidental,
21 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the
22 nature of such relief.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 d. violating the CLRA as described herein;

28 e. violating the FAL as described herein;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: February 28, 2018

GUTRIDE SAFIER LLP



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

Attorneys for Plaintiff

Exhibit A

EXHIBIT A

I, BRENDAN PEACOCK, declare:

1. I am the Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2215.5 and California Civil Code section 1780(d).

3. As set forth in my complaint, on January 4, 2018, I purchased a package of Cascadian Farm Harvest Berries at a Grocery Outlet store in Sacramento, California.

4. I later learned the Cascadian Farm Harvest Berries I purchased were not grown on a farm in the Cascade mountains in "Skagit Valley, WA" or in the United States.

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

Executed this 2nd day of February 2018, in Sacramento, California.


BRENDAN PEACOCK

EXHIBIT B



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Seth Safier, SBN 197427
 Gutride Safier LLP, 100 Pine St., #1250, San Francisco, CA 94111
 seth@gutridesafier.com
 TELEPHONE NO: 415-336-6545
 Plaintiff, Peacock
 FAX NO: 415-449-6469

FOR C

FILED
ALAMEDA COUNTY
 MAR - 6 2018
 CLERK OF THE SUPERIOR COURT
 By DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
 STREET ADDRESS: 1225 Fallon Street
 MAILING ADDRESS: 1225 Fallon Street
 CITY AND ZIP CODE: Oakland, CA 94612
 BRANCH NAME: René C. Davidson Courthouse

CASE NAME:
 PEACOCK v. SMALL PLANET FOODS, INC.; et al

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 18895553
 JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): four (4)

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 2/28/17
 Seth A. Safier, Esq.

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

FILED BY FAX

EXHIBIT C



**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

SMALL PLANET FOODS, INC.; GENERAL MILLS, INC.; and DOES 1 THROUGH 50

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

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

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**FILED
ALAMEDA COUNTY**

MAR - 6 2018

CLERK OF THE SUPERIOR COURT

By  DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

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

The name and address of the court is:
(El nombre y dirección de la corte es):

Alameda County Superior Court, 1225 Fallon St, Oakland, CA 94612

CASE NUMBER
(Número del Caso):

18895553

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

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

Seth Safier (SBN197427); Gutride Safier LLP, 100 Pine St., #1250, San Francisco, CA 94111; 415-336-6545

DATE:
(Fecha)

MAR - 6 2018

Chad Finke

Clerk, by
(Secretario)

Deputy
(Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served

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

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

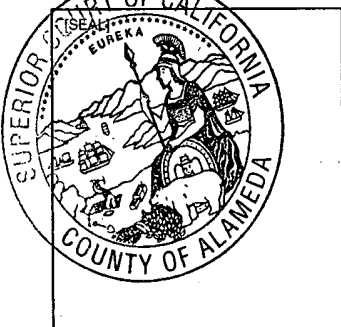


EXHIBIT D

Gutride Safier LLP
Attn: Safier, Seth A
100 Pine St., Suite 1250
San Francisco, CA 94111

Small Planet Foods, Inc.

**Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse**

Peacock <p style="text-align: right;">Plaintiff/Petitioner(s)</p> VS. Small Planet Foods, Inc. <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG18895553</u> NOTICE OF HEARING
---	---

To each party or to the attorney(s) of record for each party herein:
Notice is hereby given that the above-entitled action has been set for:
Complex Determination Hearing
Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:
DATE: 05/01/2018 TIME: 03:00 PM DEPARTMENT: 23
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Case Management Conference:
DATE: 06/05/2018 TIME: 03:00 PM DEPARTMENT: 23
LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 23 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6939. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 23.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to **Direct Calendar Departments** at

<http://apps.alameda.courts.ca.gov/domainweb>.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 23.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 23 by e-mail at Dept.23@alameda.courts.ca.gov or by phone at (510) 267-6939.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 03/08/2018

Chad Finke Executive Officer / Clerk of the Superior Court

By  digital

Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 03/08/2018.

By  digital

Deputy Clerk

EXHIBIT E

THE SUPERIOR COURT OF CALIFORNIA

DomainWeb

your resource for case filing information

COUNTY OF ALAMEDA

Buy Credits
0 Credit(s)



Checkout (0 item(s))

DomainWeb How This Site Works FAQ

Case Details

Case Number: RG18895553

Title: Peacock VS Small Planet Foods, Inc.

Case Summary	Register of Action	Participants	Tentative Rulings	Future Hearings	Minutes
--------------	--------------------	--------------	-------------------	-----------------	---------

Date	Description	Pages	Price		Select
3/8/2018	Case Management Conference 06/05/2018 03:00 PM D- 23	2		View	<input type="checkbox"/>
3/8/2018	Complex Determination Hearing 05/01/2018 03:00 PM D- 23				
3/6/2018	Summons on Complaint Issued and Filed	1	\$1.00	Half Page Preview	<input type="checkbox"/>
3/6/2018	Civil Case Cover Sheet Filed for Brendan Peacock	1	\$1.00	Half Page Preview	<input checked="" type="checkbox"/>
3/6/2018	Complex Designation Requested				
3/6/2018	Complaint Business Tort/Unfair Business Practice Filed	35	\$20.00	Half Page Preview	<input type="checkbox"/>

Page: 1 of 1

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Telephone: 206.359.8000
9 Facsimile: 206.359.9000

10 *Attorneys for Defendants*
Small Planet Foods, Inc., and
11 *General Mills, Inc.*

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION
15

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

18 Plaintiff,

19 v.

20 SMALL PLANET FOODS, INC.;;
21 GENERAL MILLS, INC.;; and DOES 1
THROUGH 50,

22 Defendants.
23

Case No.

**DECLARATION OF LISA WACEK IN
SUPPORT OF DEFENDANTS SMALL
PLANET FOODS, INC. AND GENERAL
MILLS, INC.'S NOTICE OF REMOVAL**

[Complaint filed March 6, 2018 and removed
from the Superior Court of the State of
California for the County of Alameda, Case No.
RG18895553]

1 I, Lisa Wacek, declare as follows:

2 1. I am a Senior Manager, Service & Order Operations Support at General Mills, Inc.
3 I have worked at General Mills since 2005, and have held my current position since 2007. My
4 duties and responsibilities as Senior Manager, Service & Order Operations Support includes
5 maintaining knowledge and familiarity with the shipment of General Mills' products through
6 distribution channels for retail sale. I make this declaration in support of Defendants General Mills,
7 Inc. and Small Planet Foods, Inc.'s (collectively, "General Mills") Notice of Removal.

8 2. I have personal knowledge of the accounting processes and practices for General
9 Mills, which includes those for the fruit and vegetable products at issue in this litigation (hereinafter
10 "Cascadian Farms Products").¹ I also have personal knowledge of General Mills' sales information
11 on a state-by-state basis.

12 3. I understand that Plaintiff seeks compensatory damages and/or restitution equal to
13 an unspecified premium he paid for Cascadian Farm Products sold in California between February
14 28, 2014 and March 6, 2018 (the "Class Period"). I also understand that Plaintiff seeks punitive
15 damages, attorneys' fees and costs, and an injunction. General Mills disputes that Plaintiff is
16 entitled to any recovery or any relief for his claims. However, I understand that the Court will
17 accept as true Plaintiff's theories of recovery for the purposes of analyzing the amount Plaintiff's
18 claims put in controversy.

19 4. General Mills sells the Cascadian Farm Products to grocery stores, distributors, and
20 other third parties. General Mills does not sell these products directly to consumers. As a result,
21 General Mills does not possess sales information for Cascadian Farm Products as the retail level.
22 General Mills does, however, maintain financial information regarding its own sales of Cascadian
23 Farm Products to California retailers, such as grocery stores, distributors, and third parties who, in
24 turn, sell to consumers. General Mills allocates purchases to a state if it ships the product to an
25 address in that state. Although some California retailers may sell Cascadian Farm Products to non-
26 California consumers, this practice will likely produce small and offsetting effects on state-specific

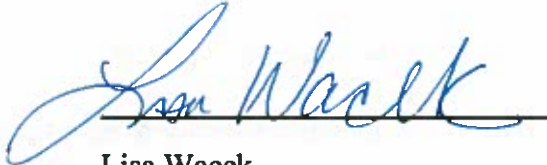
27 _____
28 ¹ The products at issue in the case are listed in paragraph 18 of the complaint and are too numerous to list here.

1 sales numbers. The total sales figure reflected by this data is less than the total retail sales number
2 because retailers sell Cascadian Farm Products to consumers at a markup.

3 5. General Mills' total California sales of Cascadian Farm Products in calendar years
4 2014, 2015, 2016, 2017, and part of 2018 was more than \$18,000,000. Again, this figure is less
5 than retail sales number in California over the relevant time period because retailers sell the
6 Cascadian Farm Products to consumers at a markup.

7
8
9 I declare under penalty of perjury under the laws of the United States of America and
10 California that the foregoing is true and correct.

11 Executed this 5 day of April 2018, at Minneapolis, Minnesota.

12
13 
14 _____

15 Lisa Wacek
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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

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

(b) County of Residence of First Listed Plaintiff Sacramento County, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Adam J. Gutride, Seth A. Safier, Mary McCrary, Gutride Safier LLP, 100 Pine St., Suite 1250, San Francisco, CA, 94111 (Tel. 415-336-6545)

DEFENDANTS

SMALL PLANET FOODS, INC.; GENERAL MILLS, INC.; and DOES 1 THROUGH 50,

County of Residence of First Listed Defendant Hennepin County, Minn. (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) David Biderman, Bar No. 101577, Perkins Coie LLP, 505 Howard Street #1000, San Francisco, CA 94105 (Tel. 415-344-7000; Dbiderman@perkinscoie.com)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns PTF and DEF for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1332(d), 1441(a), 1446

Brief description of cause:

Violation of California's consumer protection statutes (CLRA, FAL, UCL) and common law fraud

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 18,000,000.00

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

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

JUDGE DOCKET NUMBER

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

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

DATE 04/06/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ David T. Biderman

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

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

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Small Planet Foods, General Mills Facing Class Action Over Sourcing of Cascadian Farm Frozen Fruits, Veggies](#)
