

EXHIBIT A

EXHIBIT A

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

BLUE DIAMOND GROWERS, a California corporation, and DOES 1-100, inclusive.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

CYNTHIA CARDARELLI PAINTER, individually and on behalf of other members of the general public similarly situated.

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

CONFORMED COPY
ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

JAN 28 2017

Sherril R. Carter, Executive Officer/Clerk
By: Charles L. Coleman, 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): Superior Court of California
111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER:
(Número del caso)

BC 6 47 816

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):
Trisha Monesi, Capstone Law, APC, 1875 Century Park East, Suite 1000, Los Angeles, CA 90067

BY FAX

DATE: JAN 23 2017
(Fecha)

SHERRI R. CARTER

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)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): **Blue Diamond Growers, a California corporation**
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

SHORT TITLE: CARDARELLI PAINTER v. BLUE DIAMOND GROWERS

CASE NUMBER BC 6 4 7 8 1 6

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

- | | |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, Central District. | 7. Location where petitioner resides. |
| 2. Permissive filing in central district. | 8. Location wherein defendant/respondent functions wholly. |
| 3. Location where cause of action arose. | 9. Location where one or more of the parties reside. |
| 4. Mandatory personal injury filing in North District. | 10. Location of Labor Commissioner Office. |
| 5. Location where performance required or defendant resides. | 11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury). |
| 6. Location of property or permanently garaged vehicle. | |

Auto Tort

Other Personal Injury/Property Damage/Wrongful Death Tort

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11 1, 4, 11
Other Personal Injury/Property Damage/Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11 1, 4, 11 1, 4, 11 1, 4, 11

SHORT TITLE: CARDARELLI PAINTER v. BLUE DIAMOND GROWERS	CASE NUMBER:
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input checked="" type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
Contract	Breach of Contract/ Warranty (06) (not Insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels_____	2, 6
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Real Property	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
Unlawful Detainer	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

SHORT TITLE:

CARDARELLI PAINTER v. BLUE DIAMOND GROWERS

CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2, 8
		<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2
		<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2, 5, 11
		<input type="checkbox"/> A6160 Abstract of Judgment	2, 6
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2, 9
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2, 8
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2, 8
		<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 8, 9
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1, 2, 8
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2, 8
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1, 2, 8
	<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8	
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2, 3, 9
		<input type="checkbox"/> A6123 Workplace Harassment	2, 3, 9
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2, 3, 9
		<input type="checkbox"/> A6190 Election Contest	2
		<input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender	2, 7
		<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2, 3, 8
		<input type="checkbox"/> A6100 Other Civil Petition	2, 9

SHORT TITLE: CARDARELLI PAINTER v. BLUE DIAMOND GROWERS	CASE NUMBER
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Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.			ADDRESS:
CITY:	STATE:	ZIP CODE:	

Step 5: Certification of Assignment: I certify that this case is properly filed in the CENTRAL District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: 1/23/2017


 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Trisha Monesi (SBN 303512) Trisha.Monesi@capstonelawyers.com CAPSTONE LAW APC 1875 Century Park East, Suite 1000, Los Angeles, CA 90067 TELEPHONE NO.: 310-556-4811 FAX NO.: 310-943-0396 ATTORNEY FOR (Name): PLAINTIFF CYNTHIA CARDARELLI PAINTER		FOR COURT USE ONLY CONFORMED COPY ORIGINAL FILED Superior Court Of California County Of Los Angeles JAN 23 2017 Sherri R. Carter, Executive Officer/Clerk By: Charlie L. Coleman, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME:		CASE NUMBER: BC 647816 JUDGE: DEPT:
CASE NAME: CARDARELLI PAINTER v. BLUE DIAMOND GROWERS		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

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:		
Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <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) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" 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) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (16)	Contract <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) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <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)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <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) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

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): 3
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: 1/23/2017

Trisha Monesi (SBN 303512)

(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.

Page 1 of 3

BY FAX

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller
Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

JAN 23 2017

Sherri R. Carter, Executive Officer/Clerk
By: Charlie L. Coleman, Deputy

Lee A. Cirsch (SBN 227668)
Lee.Cirsch@capstonelawyers.com
Robert K. Friedl (SBN 134947)
Robert.Friedl@capstonelawyers.com
Trisha K. Monesi (SBN 303512)
Trisha.Monesi@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff
Cynthia Cardarelli Painter

BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CYNTHIA CARDARELLI PAINTER,
individually, and on behalf of other
members of the general public similarly
situated,

Plaintiff,

v.

BLUE DIAMOND GROWERS, a
California corporation, and DOES 1
through 100, inclusive,

Defendant.

Case No.:

BC 8 4 7 8 1 6

CLASS ACTION COMPLAINT FOR:

- (1) Violations of California's Consumers
Legal Remedies Act
- (2) Violation of Unfair Competition Law,
California Business & Professions Code
§ 17200 *et seq.*
- (3) Violation of False Advertising Law,
California Business & Professions Code
§ 17500

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Cynthia Cardarelli Painter ("Plaintiff") brings this action for herself and on behalf of all persons in the United States who, at any time since four years prior to the filing of this complaint, purchased any Almond Breeze Almond Milk beverage ("Almond Beverages")¹ manufactured, marketed, distributed, and sold by Blue Diamond Growers ("Blue Diamond" or "Defendant").

2. This case arises out of the false, misleading, and deceptive marketing practices of Defendant's Almond Breeze products. Defendant has deceptively informed and led its customers to believe that they were purchasing, for a premium price, a dairy milk alternative that is nutritionally equivalent, and even superior, to dairy milk, as defined by the U.S. Food & Drug Administration (the "FDA")². However, as discussed in detail below, Defendant's Almond Beverages significantly lack many of the essential nutrients and vitamins provided in dairy milk, which Defendant fails to disclose to and actively conceals from consumers.

3. Consumer demand for non-dairy milks ("milk substitutes") has exponentially increased over the past decade. In fact, almond-based milk substitutes, including Defendant's Almond Beverages, experienced a 40% increase in sales between 2013 and 2014 alone, while dairy milk sales have steadily declined.³ By calling its Almond Beverages "milk", a term historically used to define cow's milk, Defendant has capitalized on reasonable consumers' understanding of the well-known health benefits and essential nutrients⁴ that dairy milk

¹ On information and belief, the Almond Beverages include, without limitation, the following:

² "Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in final package form for beverage use shall have been pasteurized or ultrapasteurized, and shall contain not less than 8 1/4 percent milk solids not fat and not less than 3 1/4 percent milkfat. Milk may have been adjusted by separating part of the milkfat therefrom, or by adding thereto cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Milk may be homogenized." See 21 CFR § 131.110.

³ <http://www.sacbee.com/news/local/health-and-medicine/article31689980.html>.

⁴ "Dairy foods are excellent sources of nutrients of public health concern, including Vitamin D, calcium, and potassium. Consumption of dairy foods provides numerous health

provides without actually providing those health benefits and essential nutrients. Moreover, Defendant's entire marketing strategy portrays its Almond Beverages as nutritionally superior to dairy milk. For example, Defendant's official website advertises its Almond Beverages with the following claims:

- "Made from real California almonds, Almond Breeze Original is a deliciously creamy alternative to dairy and soymilk. Almond Breeze Original is lactose free, soy free, calcium enriched, and contains only 60 calories per glass—that's half the calories of 2% milk."
- "1 cup of 2% fat dairy milk contains 30% DV calcium vs. 1 cup of Almond Breeze Unsweetened Vanilla Almondmilk contains 45% DV calcium."
- "There may be no such thing as a perfect food, but almonds come in high on the super-food list. A top plant source for **Protein** and **Vitamin E**, almonds also contain fiber, calcium, iron, and other important nutrients."
- "Almond Breeze is an excellent source of Calcium, Vitamin D, and Vitamin E, and a good source of Vitamin A."

4. However, on information and belief, Defendant fails to disclose to consumers that its Almond Beverages lack the following essential vitamins and nutrients, as defined by the FDA, available in measurable amounts in 2% fat dairy milk:

ESSENTIAL VITAMIN/NUTRIENT	2% FAT DAIRY MILK ⁵	ALMOND BREEZE ORIGINAL ALMONDMILK
PROTEIN	8.05g (16% DRV ⁶)	1g
MAGNESIUM	27mg (6.8% RDI ⁷)	(4% RDI)

benefits including lower risk of diabetes, metabolic syndrome, cardiovascular disease and obesity. [...] on average across the calorie levels, dairy foods contribute about 67 percent of calcium, 64 percent of Vitamin D, and 17 percent of magnesium."

⁵ *All Nutrients Milk, reduced fat, fluid, 2% milkfat, with added vitamin A and vitamin D*, USDA National Nutrient Database for Standard Reference, Release 28 (May 2016), available at <https://ndb.nal.usda.gov/ndb/>.

⁶ Daily Reference Value, *See* National Nutrient Database for U.S. Dept. of Agriculture, Release 28 (May 2016), available at <https://ndb.nal.usda.gov/ndb/>.

⁷ Reference Daily Intake, *See* National Nutrient Database for U.S. Dept. of Agriculture, Release 28 (May 2016), available at <https://ndb.nal.usda.gov/ndb/>.

PHOSPHORUS	224mg (22% RDI)	2% RDI
POTASSIUM	342mg (9.7% DRV)	170mg (4% DRV)
ZINC	1.17mg (7.8% RDI)	0mg (0% RDI)
RIBOFLAVIN	.451mg (26% RDI)	2% RDI
PANTOTHENIC ACID	.869mg (8.7% RDI)	.079mg (1% RDI)*
VITAMIN B6	.093ug (4.7% RDI)	.039mg (2% RDI)*
FOLATE	12ug (3% RDI)	3ug (<1% RDI)
VITAMIN D	120iu (30% RDI)	(25% RDI)

*Nutritional values not provided on Defendant's Almond Beverage labels. *See All Nutrients, Beverages, almond milk, unsweetened*, USDA National Nutrient Database for Standard Reference, Release 28 (May 2016), available at <https://ndb.nal.usda.gov/ndb/>.

5. Further, Defendant fails to label its Almond Beverages as "imitation milk", as required by the FDA, because the Almond Beverages are, in fact, nutritionally inferior to dairy milk due to the reduction in the content of essential nutrients present in a measurable amount in dairy milk, as identified above and throughout this complaint.

6. Because Defendant utilizes the common or usual name of a food (i.e. "milk") but fails to reveal the basic nature and characterizing ingredients of the Almond Beverages, in accordance with 21 C.F.R. § 102.5(b), Defendant *must* label its Almond Beverages as "imitation milk", as required by 21 C.F.R. § 101.3(e).

7. The amount of essential vitamins and nutrients provided by dairy milk has a material bearing on price and consumer acceptance of products attempting to substitute dairy milk. Blue Diamond has labeled its products to highlight its low calorie and fat content as compared to 2% fat dairy milk and has been successful in capturing the market share previously attributed to dairy milk due to its omissions regarding the actual nutritional comparison of essential nutrients. By deceiving consumers about the nature, quality, and/or ingredients of its products, Blue Diamond is able to command a premium price, increasing consumers' willingness to pay and reduce the market share of competing products, thereby

1 increasing its own sales and profits.

2 8. Reasonable consumers must, and do, rely on Blue Diamond's overall
3 marketing, including, without limitation, product advertisements, labels, displays, and
4 packaging, in determining whether to purchase its Almond Beverages. As such, reasonable
5 consumers remain unaware that they are not receiving the same levels of essential vitamins
6 and nutrients provided in dairy milk when purchasing Defendants' Almond Beverages to
7 substitute dairy milk.

8 9. Defendant's deceptive labeling poses a serious health concern to consumers. In
9 fact, the 2015 Dietary Guidelines Advisory Committee Report found that in cases where
10 people do not consume dairy, the levels of calcium, magnesium, iron, vitamin A and
11 riboflavin drop below the recommended intake, and intake levels of potassium, vitamin D and
12 choline also drop substantially.⁸ While Defendant could fortify its Almond Beverages to
13 contain comparable quantities of the essential vitamins and nutrients contained in dairy milk,
14 it chooses not to do so. Even so, absorption of these vitamins and nutrients is less efficient
15 from plant beverages such as the Almond Beverages.

16 10. On information and belief, every Almond Beverage at issue in this complaint
17 has the same nutritional content and contains the same deceptive misrepresentations employed
18 by Blue Diamond.

19 11. If Plaintiff and Class Members knew that the Almond Beverages were
20 nutritionally inferior and lacked the same level of essential vitamins and nutrients as dairy
21 milk, Plaintiff and Class Members would not have purchased the Almond Beverages or would
22 have paid less for them.

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25 ⁸ *Scientific Report of the 2015 Dietary Guidelines Advisory Committee, Part D.*
26 *Chapter 1*, Advisory Report to the Secretary of Health and Human Services and the Secretary
27 of Agriculture, February 2015, available at [https://health.gov/dietaryguidelines/2015-](https://health.gov/dietaryguidelines/2015-scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf)
28 [scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf](https://health.gov/dietaryguidelines/2015-scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf).

1 12. On information and belief, Blue Diamond knew about and concealed the
2 nutritional inferiority of its Almond Beverage products from Plaintiff and Class Members,
3 prior to the time of sale and thereafter.

4 13. By employing the labeling and marketing tactics illustrated above, Blue
5 Diamond intends for consumers to rely on its representations regarding the calorie and fat
6 content of its Almond Beverages rather than the actual values of essential vitamins and
7 nutrients as compared to dairy milk, and hundreds of thousands of reasonable consumers did
8 in fact so rely. Because Blue Diamond will not notify Class Members that the Almond
9 Beverages are in fact nutritionally inferior to dairy milk, Plaintiff and Class Members (as well
10 as members of the general public) remain subject to Blue Diamond's deceptive advertising.

11 14. As a result of their reliance on Defendant's omissions and mischaracterizations,
12 consumers have suffered an ascertainable loss of money, including, but not limited to, out of
13 pocket costs incurred in purchasing over-valued Almond Beverages. Further, as a result of its
14 deceptive marketing and unfair competition with other similar manufacturers and brands, Blue
15 Diamond realized sizable profits.

16 15. The Almond Beverages are misbranded under Sections 403(a), (c), (f), and (g)
17 of the Food Drug & Cosmetic Act (the "FDCA"), 21 U.S.C. §§ 343(a), (c), (f), and (g).
18 Further, the Sherman Food, Drug, and Cosmetic Law (the "Sherman Law"), Cal. Health &
19 Safety Code §§ 109875-111915, expressly incorporates the food labeling requirements set
20 forth in the FDCA, and provides that any food is misbranded if its labeling is false or
21 misleading or does not conform to FDCA requirements. See Cal. Health & Safety Code §§
22 110100(a), 110660-110805.

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16. Thus, the Almond Beverages cannot be legally manufactured, advertised, distributed, or sold in the United States as they are currently labeled. See 21 U.S.C. § 331. In order to comply with federal and state labeling requirements, Defendant must:

- a. Revise its Almond Beverages' labels to state, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, milk; or
- b. Revise its Almond Beverages' labels to state the percentages of characterizing ingredients or information concerning the presence or absence of the ingredients as part of the common or usual name of milk; or
- c. Fortify its Almond Beverages with vitamins and nutrients in an amount equal to or greater than the amount of essential vitamins and nutrients present in dairy milk in measurable amounts; or
- d. Cease utilizing the common or usual name "milk" in the statement of identity of its Almond Beverages.

PARTIES

PLAINTIFF CYNTHIA CARDARELLI PAINTER

17. Plaintiff Cynthia Cardarelli Painter is a California citizen who resides in Long Beach, California. During the class period alleged herein, Plaintiff purchased several Almond Beverages on numerous occasions from Costco stores in Los Angeles County.

18. Plaintiff purchased Defendant's Almond Beverages in reliance on Blue Diamond's marketing of the products including the claims and product information on the packaging and labeling, specifically claims comparing the Almond Beverages' nutritional contents to dairy milk.

19. In deciding to purchase the Almond Beverages, Plaintiff saw, relied upon, and reasonably believed that the Almond Beverages were nutritionally superior to dairy milk and contained comparable amounts of the essential vitamins and nutrients contained in dairy milk including cholesterol, iron, and potassium contents. Purchasing a nutritionally superior

1 alternative to dairy milk was, and is, important to Plaintiff. In fact, Defendant's
2 representations and omissions regarding the nutritional contents of the Almond Beverages
3 were material to Plaintiff in her decision to purchase Almond Beverages.

4 20. If Plaintiff had known at the time of purchase that these products were
5 nutritionally inferior to dairy milk, she would not have purchased the Almond Beverages or
6 would have paid less for them.

7 **DEFENDANT**

8 21. Defendant Blue Diamond Growers is a corporation organized and in existence
9 under the laws of the State of California and is registered to do business in the State of
10 California. Blue Diamond Growers' corporate headquarters and principal place of business
11 are located at 1802 C Street, Sacramento, California 95811. Blue Diamond Growers tests,
12 manufactures, markets, distributes, and sells Almond Breeze Almond Milk products
13 nationwide and in California.

14 22. Plaintiff is unaware of the true names or capacities of the Defendants sued
15 herein under the fictitious names DOES 1 through 100, but will seek leave of this Court to
16 amend the complaint and serve such fictitiously named Defendants once their names and
17 capacities become known.

18 23. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through
19 100 are the partners, agents, owners, shareholders, managers, or employees of Blue Diamond
20 Growers at all relevant times.

21 24. At all relevant times, Defendant was and is engaged in the business of testing,
22 manufacturing, marketing, distributing, and selling Almond Breeze Almond Milk products in
23 Los Angeles County and throughout the United States of America.

24 **JURISDICTION**

25 25. This Court has jurisdiction over this action pursuant to California Code of Civil
26 Procedure § 410.10. Personal jurisdiction over Blue Diamond is proper because Blue
27 Diamond has purposefully availed itself of the privilege of conducting business activities in
28 California, including, but not limited to, testing, manufacturing, marketing, distributing,

1 and/or selling Almond Beverages to Plaintiff and prospective class members.

2 26. This class action is brought pursuant to California Code of Civil Procedure §
3 382. Plaintiff is a California resident, as are all prospective class members. The monetary
4 damages and restitution sought by Plaintiff and the prospective class members exceed the
5 minimal jurisdiction limits of the Superior Court and will be established according to proof at
6 trial.

7 VENUE

8 27. Venue is proper in this Court pursuant to California Code of Civil Procedure §§
9 395, 395.5 and California Civil Code § 1780 because Plaintiff resides in the County of Los
10 Angeles, California, and the acts, omissions, and contractual performance alleged herein took
11 place in the County of Los Angeles, California. Plaintiff's Declaration, as required under Cal.
12 Civ. Code section 1780(d), which reflects that Defendant is doing business in Los Angeles
13 County, California, is filed concurrently as **Exhibit 1**.

14 FACTUAL ALLEGATIONS

15 28. Consumer demand for non-dairy milks ("milk substitutes") has exponentially
16 increased over the past decade. In fact, almond-based milk substitutes, including Defendant's
17 Almond Beverages, experienced a 40% increase in sales between 2013 and 2014 alone, while
18 dairy milk sales have steadily declined. By calling its Almond Beverages "milk", a term
19 historically used to define cow's milk, Defendant has capitalized on reasonable consumers'
20 understanding of the well-known health benefits and essential nutrients that dairy milk
21 provides without actually providing those health benefits and essential nutrients. Moreover,
22 Defendant's entire marketing strategy portrays its Almond Beverages as nutritionally superior
23 to dairy milk.

24 29. The Almond Beverages are misbranded under Sections 403(a), (c), (f), and (g)
25 of the Food Drug & Cosmetic Act (the "FDCA"), 21 U.S.C. §§ 343(a), (c), (f), and (g).
26 Further, the Sherman Food, Drug, and Cosmetic Law (the "Sherman Law"), Cal. Health &
27 Safety Code §§ 109875-111915, expressly incorporates the food labeling requirements set
28 forth in the FDCA, and provides that any food is misbranded if its labeling is false or

misleading or does not conform to FDCA requirements. *See* Cal. Health & Safety Code §§ 110100(a), 110660-110805.

30. Thus, the Almond Beverages cannot be legally manufactured, advertised, distributed, or sold in the United States as they are currently labeled. *See* 21 U.S.C. § 331.

31. Further, it is a violation of the Sherman Law to advertise any misbranded food, § 110398; to manufacture, sell deliver, hold, or offer for sale any food that is misbranded, § 110760; to misbrand any food, § 110765; or to receive in commerce any food that is misbranded or deliver or proffer it for delivery, § 110770.

The Almond Beverages Are Nutritionally Inferior to Dairy Milk

32. Foods must be labeled “imitation”, and are deemed misbranded when they are not, if the food is intended to substitute for and resemble another food but is nutritionally inferior to that food.⁹ A food is nutritionally inferior when there is “any reduction in the content of an essential nutrient that is present in a measurable amount.”¹⁰ In clarifying this requirement, the FDA has stated “...a new food that resembles a traditional food and is a substitute for the traditional food must be labeled as an imitation if the new food contains less protein or a lesser amount of any essential vitamin or mineral.”¹¹

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⁹ *See* 21 C.F.R. 101.3(e).

¹⁰ *See* 21 C.F.R. § 101.3(e)(4)(ii), “For the purpose of this section, a measurable amount of an essential nutrient in a food shall be considered to be 2 percent or more of the Daily Reference Value (DRV) of protein listed under §101.9(c)(7)(iii) and of potassium listed under §101.9(c)(9) per reference amount customarily consumed and 2 percent or more of the Reference Daily Intake (RDI) of any vitamin or mineral listed under §101.9(c)(8)(iv) per reference amount customarily consumed, except that selenium, molybdenum, chromium, and chloride need not be considered.”

¹¹ *Guidance for Industry: A Food Labeling Guide*, available at [/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm2006828.htm#toc](#) (January 2013).

33. On information and belief, Defendant fails to disclose to consumers that its Almond Beverages lack the following essential vitamins and nutrients, as defined by the FDA, available in measurable amounts in 2% fat dairy milk:

ESSENTIAL VITAMIN/NUTRIENT	2% FAT DAIRY MILK	ALMOND BREEZE ORIGINAL ALMONDMILK
PROTEIN	8.05g (16% DRV)	1g
MAGNESIUM	27mg (6.8% RDI)	(4% RDI)
PHOSPHORUS	224mg (22% RDI)	(2% RDI)
POTASSIUM	342mg (9.7% DRV)	170mg (4% DRV)
ZINC	1.17mg (7.8% RDI)	0mg (0% RDI)
RIBOFLAVIN	.451mg (26% RDI)	(2% RDI)
PANTOTHENIC ACID	.869mg (8.7% RDI)	.079mg (1% RDI)*
VITAMIN B6	.093ug (4.7% RDI)	.039mg (2% RDI)*
FOLATE	12ug (3% RDI)	3ug (<1% RDI)
VITAMIN D	120iu (30% RDI)	(25% RDI)

34. Further, Defendant fails to label its Almond Beverages as “imitation milk”, as required by the FDA, because the Almond Beverages are, in fact, nutritionally inferior to dairy milk due to the reduction in the content of essential nutrients present in a measurable amount in dairy milk, as identified above and throughout this complaint.

35. Because Blue Diamond will not notify Class Members that the Almond Beverages are in fact nutritionally inferior to dairy milk or label its Almond Beverages as “imitation milk”, Plaintiff and Class Members (as well as members of the general public) remain subject to Blue Diamond’s deceptive advertising and misrepresentations.

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1 **Defendant Fails to Include All Required Statement of Identity Disclosures Under The**
2 **“Common or Usual Name” Principle For Its Almond Beverages**

3 36. When a product utilizes the “common or usual name of a food”, it must
4 include:

5 **“the percentage(s) of any characterizing ingredient(s) or component(s) when the**
6 **proportion of such ingredient(s) or component(s) in the food has a material**
7 **bearing on price or consumer acceptance or when the labeling or the appearance**
8 **of the food may otherwise create an erroneous impression that such ingredient(s)**
9 **or component(s) is present in an amount greater than is actually the case.”¹²**

10 37. Here, by calling its Almond Beverages “milk”, a term defined by the FDA
11 specifically in reference to cow’s milk, Defendant has capitalized on reasonable consumers’
12 understanding of the well-known health benefits and essential nutrients that dairy milk
13 provides without actually providing those health benefits and essential nutrients. Moreover,
14 Defendant’s entire marketing strategy portrays its Almond Beverages as nutritionally superior
15 to dairy milk.

16 38. Further, the FDA relaxed its statement of identity standards in the early 1990s
17 due to concerns regarding lack of innovation in food development and attention to healthier
18 alternatives to standardized foods. At that time, a manufacturer could not use the name of a
19 standardized food unless the substitute food contained the “characterizing ingredient” of the
20 food. In allowing for the “common or usual name” standard, the FDA and the FTC
21 specifically addressed concerns over consumer deception. In doing so, the agencies heavily
22 relied on the existence of false advertising and consumer protection laws to address consumer
23 deception in situations where manufacturers attempt to abuse the standard and provide
24 nutritionally inferior products while commanding a premium price. The relaxed standard of
25 identity requirements was intended to promote healthier alternatives to standardized food by
26 providing *more* nutritional value, not less, as is the case with the Almond Beverages.

27 39. By employing the labeling and marketing tactics illustrated above, Blue
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¹² 21 C.F.R. § 102.5(b). (emphasis added).

1 Diamond intends for consumers to rely on its representations regarding the calorie and fat
2 content of its Almond Beverages rather than the actual values of essential vitamins and
3 nutrients and the characterizing ingredients as compared to dairy milk, and hundreds of
4 thousands of reasonable consumers did in fact so rely. Because Blue Diamond will not notify
5 Class Members that the Almond Beverages are nutritionally inferior to dairy milk, Plaintiff
6 and Class Members (as well as members of the general public) remain subject to Blue
7 Diamond's deceptive advertising. Further, because Blue Diamond will not notify Class
8 Members of the percentage of the characterizing ingredients of its Almond Beverages in
9 comparison to common "milk" or list its Almond Beverages as "imitation milk", Plaintiff and
10 Class Members remain subject to Blue Diamond's deceptive and unlawful advertising.

11 40. If Plaintiff and Class Members knew that the Almond Beverages were
12 nutritionally inferior and lacked the same level of essential vitamins and nutrients as dairy
13 milk, Plaintiff and Class Members would not have purchased the Almond Beverages or would
14 have paid less for them.

15 41. Blue Diamond knows, or should reasonably know, that consumers purchase its
16 products to substitute for common dairy milk and knows that consumers will pay a premium
17 for these products or would not purchase these products at all unless they contained equal or
18 greater amounts of essential vitamins and nutrients provided in dairy milk.

19 42. As a result of their reliance on Defendant's representations, consumers have
20 suffered an ascertainable loss of money, including, but not limited to, out of pocket costs
21 incurred in purchasing over-valued Almond Beverages. Further, as a result of its deceptive
22 marketing and unfair competition with other similar manufacturers and brands, Blue Diamond
23 realized sizable profits.

24 43. As the intended, direct, and proximate result of Blue Diamond's false,
25 misleading, and deceptive representations and omissions, Blue Diamond has been unjustly
26 enriched through more sales of Falsely Labeled Products and higher profits at the expense of
27 Plaintiff and the Class members.
28

1 CLASS ALLEGATIONS

2 44. Plaintiffs bring this lawsuit as a class action on behalf of herself and all others
3 similarly situated as members of the proposed Plaintiff Classes under California Code of Civil
4 Procedure § 382.

5 45. The Class and Sub-Class(es) are defined as:

6 **Nationwide Class:** All individuals in the United States who purchased any
7 Almond Breeze Almond Milk product since four years prior to the filing of this
8 complaint (the "Nationwide Class" or "Class").

9 **California Sub-Class:** All members of the Nationwide Class who reside in the
10 State of California (the "California Sub-Class").

11 **CLRA Sub-Class:** All members of the California Sub-Class who are
12 "consumers" within the meaning of California Civil Code § 1761(d) (the
13 "CLRA Sub-Class").

14 46. Excluded from the Class and Sub-Classes are: (1) Defendant, any entity or
15 division in which Defendant has a controlling interest, and its legal representatives, officers,
16 directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's
17 staff; (3) any Judge sitting in the presiding state and/or federal court system who may hear an
18 appeal of any judgment entered; and (4) those persons who have suffered personal injuries as
19 a result of the facts alleged herein. Plaintiff reserves the right to amend the Class and Sub-
20 Class definitions if discovery and further investigation reveal that the Class and Sub-Class
21 should be expanded or otherwise modified.

22 47. There is a well-defined community of interest in the litigation and each
23 subclass is readily ascertainable.

24 48. Numerosity: Although the exact number of prospective class members is
25 uncertain and can only be ascertained through appropriate discovery, the number is great
26 enough such that joinder is impracticable. The disposition of prospective class members'
27 claims in a single action will provide substantial benefits to all parties and to the Court. The
28 prospective class members are readily identifiable from information and records in
Defendant's possession, custody, or control, as well as from records kept by the departments
of motor vehicles of the various states.

1 49. Typicality: The claims of the representative Plaintiff are typical of the claims of
2 the all prospective class members in that the representative Plaintiff and the prospective class
3 members purchased Almond Breeze Almond Milk products and were subjected to the same
4 deceptive advertising practices by Defendant since four years prior to the filing of this
5 complaint. The representative Plaintiff, like all Class Members, has been damaged by
6 Defendant's misconduct in that they incurred expenses due to their reliance on Defendant's
7 deceptive representations and omissions regarding its Almond Beverages, as described
8 throughout this complaint. Furthermore, the factual bases of Blue Diamond's misconduct are
9 common to all prospective class members and represent a common thread resulting in injury
10 to all prospective class members.

11 50. Commonality: There are numerous questions of law and fact common to
12 Plaintiff and the prospective class members that predominate over any question affecting
13 individual prospective class members. These common legal and factual issues include the
14 following:

- 15 a. Whether Blue Diamond misrepresented and/or failed to disclose
16 material facts concerning the Almond Beverages;
- 17 b. Whether the Almond Beverages are misbranded under federal and state
18 laws;
- 19 c. Whether the Almond Beverages are nutritionally inferior to dairy milk;
- 20 d. Whether Blue Diamond's conduct was unfair and/or deceptive;
- 21 e. Whether Blue Diamond has a duty to disclose the true nature of its
22 Almond Beverages' ingredients;
- 23 f. Whether Plaintiff and other Class Members are entitled to equitable
24 relief, including but not limited to a preliminary and/or permanent
25 injunction;
- 26 g. Whether Plaintiff and other Class Members are entitled to damages;
- 27 h. Whether Defendant knew or reasonably should have known of its
28 deceptive representations and omissions relating to its Almond

1 Beverages' ingredients; and

- 2 i. Whether Defendant is obligated to inform Class Members of their right
3 to seek reimbursement for having paid for Almond Beverages in
4 reliance on Defendant's misrepresentations.

5 51. Adequate Representation: Plaintiff will fairly and adequately protect the
6 interests of the Class Members. Plaintiff has retained attorneys experienced in the prosecution
7 of class actions, including consumer and product defect class actions, and Plaintiff intends to
8 prosecute this action vigorously.

9 52. Superiority: Plaintiff and the prospective class members have all suffered and
10 will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful
11 conduct. A class action is superior to other available methods for the fair and efficient
12 adjudication of the controversy. Absent a class action, prospective class members would
13 likely find the cost of litigating their claims prohibitively high and would therefore have no
14 effective remedy at law. Because the individual prospective class members' claims are
15 relatively small, it is likely that only a few prospective class members could afford to seek
16 legal redress for Defendant's misconduct. Absent a class action, prospective class members
17 will continue to incur damages, and Defendant's misconduct will continue without remedy.
18 Class treatment of common questions of law and fact would also be a superior method to
19 multiple individual actions or piecemeal litigation in that class treatment will conserve the
20 resources of the courts and the litigants and will promote consistency and efficiency of
21 adjudication.

22 **FIRST CAUSE OF ACTION**

23 **(Violation of California's Consumers Legal Remedies Act, California Civil Code §**
24 **1750, *et seq.*)**

25 53. Plaintiff re-alleges and incorporates by reference each and every allegation
26 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

27 54. Plaintiff brings this cause of action on behalf of herself and on behalf of the
28 members of the CLRA Sub-Class.

1 55. Defendant is a “person” as defined by California Civil Code § 1761(c).

2 56. Plaintiff and CLRA Sub-Class Members are “consumers” within the meaning
3 of California Civil Code § 1761(d) because they bought the Almond Beverages for personal,
4 family, or household purposes.

5 57. By failing to disclose and concealing the true and actual nature of the Almond
6 Beverages from Plaintiff and prospective Class Members, Defendant violated California Civil
7 Code § 1770(a), as it represented that the Almond Beverages had characteristics and benefits
8 that they do not have, represented that the Almond Beverages were of a particular standard,
9 quality, or grade when they were of another, and advertised the Almond Beverages with the
10 intent not to sell them as advertised. *See* Cal. Civ. Code §§ 1770(a)(5)(7) & (9).

11 58. Defendant’s unfair and deceptive acts or practices occurred repeatedly in
12 Defendant’s trade or business and were capable of deceiving a substantial portion of the
13 purchasing public.

14 59. Defendant knew the Almond Beverages did not possess the characteristics and
15 benefits as represented and were not of the particular standard, quality or grade as represented.

16 60. As a result of their reliance on Defendant’s representations and omissions,
17 Class Members suffered an ascertainable loss of money, property, and/or value of their
18 Almond Beverages.

19 61. Defendant was under a duty to Plaintiff and Class Members to disclose the true
20 and actual nature of the Almond Beverages’ ingredients because:

- 21 a. Defendant was in a superior position to know the true state of facts
22 about the ingredients in the Almond Beverages;
- 23 b. Plaintiff and Class Members could not reasonably have been expected to
24 learn or discover the true nature of the ingredients in the Almond
25 Beverages at the time of purchase and thereafter; and
- 26 c. Defendant knew that Plaintiff and Class Members could not reasonably
27 have been expected to learn of or discover the true nature of the Almond
28 Beverages’ ingredients.

62. In failing to disclose and misrepresenting the true nature and contents of the Almond Beverages, Defendant knowingly and intentionally concealed material facts and breached its duty not to do so.

63. The facts Defendant concealed from or misrepresented to Plaintiff and Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase the Almond Beverages or pay less. If Plaintiff and Class Members had known that the Almond Beverages were nutritionally inferior, or contained less essential vitamins and nutrients, as dairy milk, they would not have purchased the Almond Beverages or would have paid less for them.

64. Plaintiff and Class Members are reasonable consumers who expect manufacturers, like Blue Diamond, to provide accurate and truthful representations regarding the nutritional quantities and dietary benefits contained in their products, especially as compared to those present in dairy milk, which Defendant's Almond Beverages attempt to replace. Further, reasonable consumers, like Plaintiff, rely on the representations made by manufacturers regarding products' ingredients in determining whether to purchase the particular products and consider that information important to their purchase decision.

65. As a direct and proximate result of Defendant's unfair methods of competition and/or unfair and deceptive practices, Plaintiff and the Class have suffered and will continue to suffer actual damages.

66. Plaintiff and the Class are entitled to equitable relief.

67. Plaintiff provided Defendant with notice of its violations of the CLRA pursuant to California Civil Code § 1782(a). If Defendant fails to provide appropriate relief for its violations of the CLRA within 30 days, Plaintiff will seek monetary, compensatory, and punitive damages, in addition to injunctive and equitable relief.

SECOND CAUSE OF ACTION

(Violation of California Business & Professions Code § 17500 *et seq.*)

68. Plaintiff incorporates by reference the allegations contained in each and every paragraph of this Complaint.

1 69. Plaintiff brings this cause of action on behalf of herself and on behalf of the
2 Nationwide Class, or in the alternative, on behalf of the California Sub-Class.

3 70. California Business & Professions Code § 17500 prohibits unfair, deceptive,
4 untrue, and misleading advertising in connection with the disposal of personal property
5 (among other things), including, without limitation, false statements as to the use, worth,
6 benefits, or characteristics of the property.

7 71. Defendant has committed acts of untrue and misleading advertising by
8 engaging in false representations as to the essential vitamins and nutrients contained in its
9 Almond Beverages. In addition, Defendant made such untrue or misleading advertisements
10 with the intent to dispose of said merchandise.

11 72. Blue Diamond knew, or in the exercise of reasonable care should have known,
12 that these representations were misleading and deceptive.

13 73. The falsely advertised synthetic and artificial ingredients of the Almond
14 Beverages was, and continues to be, likely to deceive members of the public.

15 74. As a result of their reliance on Defendant's misrepresentations and omissions,
16 Class Members suffered an ascertainable loss of money, property, and/or value of their
17 Almond Beverages.

18 75. As a direct and proximate result of Defendant's unfair and deceptive practices,
19 Plaintiff and the Class have suffered and will continue to suffer actual damages.

20 76. Blue Diamond has been unjustly enriched and should be required to make
21 restitution to Plaintiff and the Class. Pursuant to § 17535 of the Business & Professions Code,
22 Plaintiff and Class Members are entitled to an order of this Court enjoining such future
23 conduct on the part of Blue Diamond, and such other orders and judgments which may be
24 necessary to disgorge Blue Diamond's ill-gotten gains and restore to any person in interest
25 any money paid for its Almond Beverages as a result of the wrongful conduct of Blue
26 Diamond.

1 **THIRD CAUSE OF ACTION**

2 **(Violation of California Business & Professions Code § 17200 *et seq.*)**

3 77. Plaintiff incorporates by reference the allegations contained in each and every
4 paragraph of this Complaint.

5 78. Plaintiff brings this cause of action on behalf of herself and on behalf of the
6 Nationwide Class, or in the alternative, on behalf of himself and on behalf of the California
7 Sub-Class.

8 79. As a result of their reliance on Defendant's misrepresentations and omissions,
9 Class Members suffered an ascertainable loss of money, property, and/or value of their
10 Almond Beverages.

11 80. California Business & Professions Code § 17200 prohibits acts of "unfair
12 competition," including any "unlawful, unfair or fraudulent business act or practice" and
13 "unfair, deceptive, untrue or misleading advertising."

14 81. Plaintiff and Class Members are reasonable consumers who expect
15 manufacturers, like Blue Diamond, to provide accurate and truthful representations regarding
16 the nutritional quantities and dietary benefits contained in their products, especially as
17 compared to those present in dairy milk, which Defendant's Almond Beverages attempt to
18 replace. Further, reasonable consumers, like Plaintiff, rely on the representations made by
19 manufacturers regarding products' ingredients in determining whether to purchase the
20 particular products and consider that information important to their purchase decision.

21 82. In failing to disclose and actively misrepresenting the actual nutritional
22 composition of the Almond Beverages in relation to dairy milk, Defendant has knowingly and
23 intentionally concealed material facts and breached its duty not to do so.

24 83. Defendant was under a duty to Plaintiff and Class Members to disclose the
25 actual nutritional composition of the Almond Beverages in relation to dairy milk, and other
26 omitted or misrepresented facts alleged herein, because:

- 27 a. Defendant was in a superior position to know the true nutritional
28 composition of the Almond Beverages as compared to dairy milk;

- 1 b. Defendant made partial representations about nutritional composition of
2 the Almond Beverages without revealing the material information
3 needed to determine whether to purchase; and
4 c. Defendant actively concealed the true nutritional composition of the
5 Almond Beverages from Plaintiff and the Class.

6 84. The facts Defendant concealed from or misrepresented to Plaintiff and Class
7 Members are material in that a reasonable consumer would have considered them to be
8 important in deciding whether to purchase the Almond Beverages or pay less. If Plaintiff and
9 Class Members had known that the Almond Beverages' were nutritionally inferior, or
10 contained less essential vitamins and nutrients, as dairy milk, they would not have purchased
11 the Almond Beverages or would have paid less for them.

12 85. Defendant's conduct was and is likely to deceive consumers.

13 86. Defendant's acts, conduct and practices were unlawful, in that they constituted:

- 14 a. Violations of California's Consumers Legal Remedies Act;
15 b. Violations of California's False Advertising Law;
16 c. Violations of California's Sherman Law; and
17 d. Violations of the Federal Food Drug & Cosmetic Act;

18 87. By its conduct, Defendant has engaged in unfair competition and unlawful,
19 unfair, and fraudulent business practices.

20 88. Defendant's unfair or deceptive acts or practices occurred repeatedly in
21 Defendant's trade or business, and were capable of deceiving a substantial portion of the
22 purchasing public.

23 89. As a direct and proximate result of Defendant's unfair and deceptive practices,
24 Plaintiff and the Class have suffered and will continue to suffer actual damages.

25 90. Defendant has been unjustly enriched and should be required to make
26 restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the Business &
27 Professions Code.
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91. Plaintiff, on behalf of himself, and all others similarly situated, requests the

- a. An order certifying the proposed Class and Sub-Classes, designating Plaintiff as named representative of the Class, and designating the undersigned as Class Counsel;
- b. An order enjoining Defendant from further deceptive advertising, sales, and other business practices with respect to its representations regarding the Almond Beverages;
- c. An injunction:
 - i. Ordering Defendant to revise its Almond Beverages' labels to state, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, milk; or
 - ii. Ordering Defendant to revise its Almond Beverages' labels to state the percentages of characterizing ingredients or information concerning the presence or absence of the ingredients as part of the common or usual name of milk; or
 - iii. Ordering Defendant to fortify its Almond Beverages with vitamins and nutrients in an amount equal to or greater than the amount of essential vitamins and nutrients present in dairy milk in measurable amounts; or
 - iv. Ordering Defendant to cease utilizing the common or usual name "milk" in the statement of identity of its Almond Beverages.
- d. A declaration requiring Defendant to comply with the various provisions of the Federal Food Drug & Cosmetic Act, California's Sherman Law, California's False Advertising Law and CLRA alleged herein and to make all the required representations;

- 1 e. An award to Plaintiff and the Class for compensatory, exemplary, and
2 statutory damages, including interest, in an amount to be proven at trial;
3 f. A declaration that Defendant must disgorge, for the benefit of the Class,
4 all or part of the ill-gotten profits it received from the sale of its Almond
5 Beverages, or make full restitution to Plaintiff and Class Members;
6 g. An award of attorneys' fees and costs, as allowed by law;
7 h. An award of attorneys' fees and costs pursuant to California Code of
8 Civil Procedure § 1021.5;
9 i. An award of pre-judgment and post-judgment interest, as provided by
10 law;
11 j. Leave to amend the Complaint to conform to the evidence produced at
12 trial; and
13 k. Such other relief as may be appropriate under the circumstances.

14 **DEMAND FOR JURY TRIAL**

15 92. Plaintiff demands a trial by jury of any and all issues in this action so triable.

16 Dated: January 23, 2017

Respectfully submitted,

Capstone Law APC

19 By: /s/ Lee A. Cirsch

20 Lee A. Cirsch
21 Robert K. Friedl
Trisha K. Monesi

22 Attorneys for Plaintiff Cynthia Cardarelli
23 Painter
24
25
26
27
28

EXHIBIT 1

1 Lee A. Cirsch (SBN 227668)
2 Lee.Cirsch@capstonelawyers.com
3 Robert K. Friedl (SBN 134947)
4 Robert.Friedl@capstonelawyers.com
5 Trisha K. Monesi (SBN 303512)
6 Trisha.Monesi@capstonelawyers.com
7 Capstone Law APC
8 1875 Century Park East, Suite 1000
9 Los Angeles, California 90067
10 Telephone: (310) 556-4811
11 Facsimile: (310) 943-0396

12 Attorneys for Plaintiff
13 Cynthia Cardarelli Painter

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES

17 CYNTHIA CARDARELLI PAINTER,
18 individually, and on behalf of other
19 members of the general public similarly
20 situated,

21 Plaintiffs,

22 v.

23 BLUE DIAMOND GROWERS, a
24 California corporation, and DOES 1
25 through 100, inclusive,

26 Defendant.
27
28

Case No.:

**DECLARATION OF CYNTHIA
CARDARELLI PAINTER IN SUPPORT
OF VENUE FOR CLASS ACTION
COMPLAINT PURSUANT TO CIVIL
CODE SECTION 1780(d)**

1 **DECLARATION OF CYNTHIA CARDARELLI PAINTER**

2 I, CYNTHIA CARDARELLI PAINTER, declare under penalty of perjury as follows:

3 1. I make this declaration based upon my personal knowledge except as to those
4 matters stated herein that are based upon information and belief, and as to those matters I
5 believe them to be true. I am over the age of eighteen, a citizen of the State of California, and
6 a Plaintiff in this action.

7 2. Pursuant to California Civil Code section 1780(d), this Declaration is submitted
8 in support of Plaintiff's Selection of Venue for the Trial of Plaintiffs' Cause of Action
9 alleging violation of the California Consumers Legal Remedies Act.

10 3. I reside in Long Beach, California, which is in the County of Los Angeles.

11 4. I purchased Almond Breeze Almond Milk throughout the past 12 months at
12 Signal Hill Costco, which is one of the products at issue in this action, which is located in the
13 County of Los Angeles.

14 5. I am informed and believe that Defendant Blue Diamond Growers
15 ("Defendant") is a California corporation organized and existing under the laws of the State of
16 California, and registered to conduct business in California. Defendant Blue Diamond
17 Growers' Corporate Headquarters are located at 1802 C Street, Sacramento, California 95811.

18 6. On information and belief, Defendant tests, manufactures, markets, distributes,
19 and/or sells the Almond Breeze almond-based beverages at issue in Plaintiffs' Complaint,
20 filed concurrently herewith, in Los Angeles County and throughout the United States of
21 America.

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7. The transactions described above form the basis of this action, or a substantial portion thereof, and occurred in the County of Los Angeles. On information and belief, Defendant conducts business in Los Angeles County, California, including, but not limited to, marketing, distributing, and/or selling its products to Class Members. Accordingly, Los Angeles County is a proper place for trial of this action.

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

Executed January ____, 2017 in Long Beach, California.

Cynthia Cardarelli Painter

VOLUNTARY EFFICIENT LITIGATION STIPULATIONS



Superior Court of California
County of Los Angeles



Los Angeles County
Bar Association
Litigation Section

Los Angeles County
Bar Association Labor and
Employment Law Section



Consumer Attorneys
Association of Los Angeles



Southern California
Defense Counsel



Association of
Business Trial Lawyers



California Employment
Lawyers Association

The Early Organizational Meeting Stipulation, Discovery Resolution Stipulation, and Motions in Limine Stipulation are voluntary stipulations entered into by the parties. The parties may enter into one, two, or all three of the stipulations; however, they may not alter the stipulations as written, because the Court wants to ensure uniformity of application. These stipulations are meant to encourage cooperation between the parties and to assist in resolving issues in a manner that promotes economic case resolution and judicial efficiency.

The following organizations endorse the goal of promoting efficiency in litigation and ask that counsel consider using these stipulations as a voluntary way to promote communications and procedures among counsel and with the court to fairly resolve issues in their cases.

◆ Los Angeles County Bar Association Litigation Section ◆

◆ Los Angeles County Bar Association
Labor and Employment Law Section ◆

◆ Consumer Attorneys Association of Los Angeles ◆

◆ Southern California Defense Counsel ◆

◆ Association of Business Trial Lawyers ◆

◆ California Employment Lawyers Association ◆

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FAX NO. (Optional):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			CASE NUMBER:
STIPULATION – EARLY ORGANIZATIONAL MEETING			

This stipulation is intended to encourage cooperation among the parties at an early stage in the litigation and to assist the parties in efficient case resolution.

The parties agree that:

1. The parties commit to conduct an initial conference (in-person or via teleconference or via videoconference) within 15 days from the date this stipulation is signed, *to discuss and consider whether there can be agreement on the following:*
 - a. Are motions to challenge the pleadings necessary? If the issue can be resolved by amendment as of right, or if the Court would allow leave to amend, could an amended complaint resolve most or all of the issues a demurrer might otherwise raise? If so, the parties agree to work through pleading issues so that a demurrer need only raise issues they cannot resolve. Is the issue that the defendant seeks to raise amenable to resolution on demurrer, or would some other type of motion be preferable? Could a voluntary targeted exchange of documents or information by any party cure an uncertainty in the pleadings?
 - b. Initial mutual exchanges of documents at the "core" of the litigation. (For example, in an employment case, the employment records, personnel file and documents relating to the conduct in question could be considered "core." In a personal injury case, an incident or police report, medical records, and repair or maintenance records could be considered "core.");
 - c. Exchange of names and contact information of witnesses;
 - d. Any insurance agreement that may be available to satisfy part or all of a judgment, or to indemnify or reimburse for payments made to satisfy a judgment;
 - e. Exchange of any other information that might be helpful to facilitate understanding, handling, or resolution of the case in a manner that preserves objections or privileges by agreement;
 - f. Controlling issues of law that, if resolved early, will promote efficiency and economy in other phases of the case. Also, when and how such issues can be presented to the Court;
 - g. Whether or when the case should be scheduled with a settlement officer, what discovery or court ruling on legal issues is reasonably required to make settlement discussions meaningful, and whether the parties wish to use a sitting judge or a private mediator or other options as

SHORT TITLE:	CASE NUMBER:
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discussed in the "Alternative Dispute Resolution (ADR) Information Package" served with the complaint;

- h. Computation of damages, including documents, not privileged or protected from disclosure, on which such computation is based;
 - i. Whether the case is suitable for the Expedited Jury Trial procedures (see information at www.lacourt.org under "Civil" and then under "General Information").
2. The time for a defending party to respond to a complaint or cross-complaint will be extended to _____ (INSERT DATE) for the complaint, and _____ (INSERT DATE) for the cross-complaint, which is comprised of the 30 days to respond under Government Code § 68616(b), and the 30 days permitted by Code of Civil Procedure section 1054(a), good cause having been found by the Civil Supervising Judge due to the case management benefits provided by this Stipulation. A copy of the General Order can be found at www.lacourt.org under "Civil", click on "General Information", then click on "Voluntary Efficient Litigation Stipulations".
 3. The parties will prepare a joint report titled "Joint Status Report Pursuant to Initial Conference and Early Organizational Meeting Stipulation, and if desired, a proposed order summarizing results of their meet and confer and advising the Court of any way it may assist the parties' efficient conduct or resolution of the case. The parties shall attach the Joint Status Report to the Case Management Conference statement, and file the documents when the CMC statement is due.
 4. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day

The following parties stipulate:

Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR PLAINTIFF)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR DEFENDANT)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR DEFENDANT)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR DEFENDANT)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR _____)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR _____)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR _____)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
STIPULATION – DISCOVERY RESOLUTION			CASE NUMBER:

This stipulation is intended to provide a fast and informal resolution of discovery issues through limited paperwork and an informal conference with the Court to aid in the resolution of the issues.

The parties agree that:

1. Prior to the discovery cut-off in this action, no discovery motion shall be filed or heard unless the moving party first makes a written request for an Informal Discovery Conference pursuant to the terms of this stipulation.
2. At the Informal Discovery Conference the Court will consider the dispute presented by parties and determine whether it can be resolved informally. Nothing set forth herein will preclude a party from making a record at the conclusion of an Informal Discovery Conference, either orally or in writing.
3. Following a reasonable and good faith attempt at an informal resolution of each issue to be presented, a party may request an Informal Discovery Conference pursuant to the following procedures:
 - a. The party requesting the Informal Discovery Conference will:
 - i. File a Request for Informal Discovery Conference with the clerk's office on the approved form (copy attached) and deliver a courtesy, conformed copy to the assigned department;
 - ii. Include a brief summary of the dispute and specify the relief requested; and
 - iii. Serve the opposing party pursuant to any authorized or agreed method of service that ensures that the opposing party receives the Request for Informal Discovery Conference no later than the next court day following the filing.
 - b. Any Answer to a Request for Informal Discovery Conference must:
 - i. Also be filed on the approved form (copy attached);
 - ii. Include a brief summary of why the requested relief should be denied;

SHORT TITLE:

CASE NUMBER:

- iii. Be filed within two (2) court days of receipt of the Request; and
 - iv. Be served on the opposing party pursuant to any authorized or agreed upon method of service that ensures that the opposing party receives the Answer no later than the next court day following the filing.
- c. No other pleadings, including but not limited to exhibits, declarations, or attachments, will be accepted.
 - d. If the Court has not granted or denied the Request for Informal Discovery Conference within ten (10) days following the filing of the Request, then it shall be deemed to have been denied. If the Court acts on the Request, the parties will be notified whether the Request for Informal Discovery Conference has been granted or denied and, if granted, the date and time of the Informal Discovery Conference, which must be within twenty (20) days of the filing of the Request for Informal Discovery Conference.
 - e. If the conference is not held within twenty (20) days of the filing of the Request for Informal Discovery Conference, unless extended by agreement of the parties and the Court, then the Request for the Informal Discovery Conference shall be deemed to have been denied at that time.
4. If (a) the Court has denied a conference or (b) one of the time deadlines above has expired without the Court having acted or (c) the Informal Discovery Conference is concluded without resolving the dispute, then a party may file a discovery motion to address unresolved issues.
 5. The parties hereby further agree that the time for making a motion to compel or other discovery motion is tolled from the date of filing of the Request for Informal Discovery Conference until (a) the request is denied or deemed denied or (b) twenty (20) days after the filing of the Request for Informal Discovery Conference, whichever is earlier, unless extended by Order of the Court.
- It is the understanding and intent of the parties that this stipulation shall, for each discovery dispute to which it applies, constitute a writing memorializing a "specific later date to which the propounding [or demanding or requesting] party and the responding party have agreed in writing," within the meaning of Code Civil Procedure sections 2030.300(c), 2031.320(c), and 2033.290(c).
6. Nothing herein will preclude any party from applying *ex parte* for appropriate relief, including an order shortening time for a motion to be heard concerning discovery.
 7. Any party may terminate this stipulation by giving twenty-one (21) days notice of intent to terminate the stipulation.
 8. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day.

SHORT TITLE:	CASE NUMBER:
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The following parties stipulate:

Date:

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Date:

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Date:

(TYPE OR PRINT NAME)

➤

(ATTORNEY FOR PLAINTIFF)

➤

(ATTORNEY FOR DEFENDANT)

➤

(ATTORNEY FOR DEFENDANT)

➤

(ATTORNEY FOR DEFENDANT)

➤

(ATTORNEY FOR _____)

➤

(ATTORNEY FOR _____)

➤

(ATTORNEY FOR _____)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
INFORMAL DISCOVERY CONFERENCE (pursuant to the Discovery Resolution Stipulation of the parties)			CASE NUMBER:

1. This document relates to:

- ☐ Request for Informal Discovery Conference
☐ Answer to Request for Informal Discovery Conference

2. Deadline for Court to decide on Request: _____ (Insert date 10 calendar days following filing of the Request).
3. Deadline for Court to hold Informal Discovery Conference: _____ (Insert date 20 calendar days following filing of the Request).
4. For a Request for Informal Discovery Conference, briefly describe the nature of the discovery dispute, including the facts and legal arguments at issue. For an Answer to Request for Informal Discovery Conference, briefly describe why the Court should deny the requested discovery, including the facts and legal arguments at issue.

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FAX NO. (Optional):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			CASE NUMBER:
STIPULATION AND ORDER – MOTIONS IN LIMINE			

This stipulation is intended to provide fast and informal resolution of evidentiary issues through diligent efforts to define and discuss such issues and limit paperwork.

The parties agree that:

1. At least ____ days before the final status conference, each party will provide all other parties with a list containing a one paragraph explanation of each proposed motion in limine. Each one paragraph explanation must identify the substance of a single proposed motion in limine and the grounds for the proposed motion.
2. The parties thereafter will meet and confer, either in person or via teleconference or videoconference, concerning all proposed motions in limine. In that meet and confer, the parties will determine:
 - a. Whether the parties can stipulate to any of the proposed motions. If the parties so stipulate, they may file a stipulation and proposed order with the Court.
 - b. Whether any of the proposed motions can be briefed and submitted by means of a short joint statement of issues. For each motion which can be addressed by a short joint statement of issues, a short joint statement of issues must be filed with the Court 10 days prior to the final status conference. Each side's portion of the short joint statement of issues may not exceed three pages. The parties will meet and confer to agree on a date and manner for exchanging the parties' respective portions of the short joint statement of issues and the process for filing the short joint statement of issues.
3. All proposed motions in limine that are not either the subject of a stipulation or briefed via a short joint statement of issues will be briefed and filed in accordance with the California Rules of Court and the Los Angeles Superior Court Rules.

SHORT TITLE:	CASE NUMBER:
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The following parties stipulate:

Date:

(TYPE OR PRINT NAME)

Date:

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Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

➤ _____
(ATTORNEY FOR PLAINTIFF)

➤ _____
(ATTORNEY FOR DEFENDANT)

➤ _____
(ATTORNEY FOR DEFENDANT)

➤ _____
(ATTORNEY FOR DEFENDANT)

➤ _____
(ATTORNEY FOR _____)

➤ _____
(ATTORNEY FOR _____)

➤ _____
(ATTORNEY FOR _____)

THE COURT SO ORDERS.

Date: _____

JUDICIAL OFFICER

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT – CLASS ACTION CASES**

Case Number _____

BC 6 4 7 8 1 6

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT
Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 3.3 (c)).

	ASSIGNED JUDGE	DEPT.	ROOM
	Judge Elihu M. Berle	323	1707
	Judge William F. Highberger	322	1702
	Judge John Shepard Wiley, Jr.	311	1408
	Judge Kenneth Freeman	310	1412
	Judge Ann Jones	308	1415
	Judge Maren E. Nelson	307	1402
	OTHER		

Instructions for handling Class Action Civil Cases

The following critical provisions of the Chapter Three Rules, as applicable in the Central District, are summarized for your assistance.

APPLICATION

The Chapter Three Rules were effective January 1, 1994. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Chapter Three Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure section 170.6 must be made within **15** days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

COMPLAINTS: All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

CROSS-COMPLAINTS: Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

Given to the Plaintiff/Cross Complainant/Attorney of Record on _____ **SHERRI R. CARTER**, Executive Officer/Clerk

BY _____, Deputy Clerk

C.L. COLEMAN

JAN 23 2017

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/07/17

DEPT. 310

HONORABLE KENNETH R. FREEMAN

JUDGE R. ARRAIGA

DEPUTY CLERK

HONORABLE
Add-On #2

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. WEBB, C.A.

Deputy Sheriff

NONE

Reporter

BC647816

Plaintiff

Counsel

CYNTHIA CARDARELLI PAINTER

NO APPEARANCES

VS

Defendant

BLUE DIAMOND GROWERS

Counsel

Complex- 2-7-2017

NATURE OF PROCEEDINGS:

COURT ORDER REGARDING NEWLY FILED CLASS ACTION

By this order, the Court determines this case to be Complex according to Rule 3.400 of the California Rules of Court. The Clerk's Office has randomly assigned this case to this department for all purposes.

By this order, the Court stays the case, except for service of the Summons and Complaint. The stay continues at least until the Initial Status Conference. Initial Status Conference is set for April 7, 2017, at 10:00 a.m., in this department. At least 10 days prior to the Initial Status Conference, counsel for all parties must discuss the issues set forth in the Initial Status Conference Order issued this date. The Initial Status Conference Order is to help the Court and the parties manage this complex case by developing an orderly schedule for briefing, discovery, and court hearings. The parties are informally encouraged to exchange documents and information as may be useful for case evaluation.

Responsive pleadings shall not be filed until further Order of the Court. Parties must file a Notice of Appearance in lieu of an Answer or other responsive pleading. The filing of a Notice of Appearance shall not constitute a waiver of any substantive or procedural challenge to the Complaint. Nothing in this order stays the time for filing an Affidavit of

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/07/17

DEPT. 310

HONORABLE KENNETH R. FREEMAN

JUDGE

R. ARRAIGA

DEPUTY CLERK

HONORABLE
Add-On #2

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. WEBB, C.A.

Deputy Sheriff

NONE

Reporter

BC647816

Plaintiff

Counsel

CYNTHIA CARDARELLI PAINTER

NO APPEARANCES

VS

Defendant

BLUE DIAMOND GROWERS

Counsel

Complex- 2-7-2017

NATURE OF PROCEEDINGS:

Prejudice pursuant to Code of Civil Procedure Section 170.6.

Counsel are directed to access the following link for information on procedures in the Complex Litigation Program courtrooms:

<http://www.lacourt.org/division/civil/CI0037.aspx>

According to Government Code Section 70616 subdivisions (a) and (b), each party shall pay a fee of \$1,000.00 to the Los Angeles Superior Court within 10 calendar days from this date.

The Plaintiff must serve a copy of this Minute Order and the attached Initial Status Conference Order on all parties forthwith and file a Proof of Service in this department within seven days of service.

CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6

I, the below named Executive Officer/Clerk of the above entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of this Minute Order and the Initial Status Conference Order entered herein, on February 7, 2017, upon each party or counsel of record in the above entitled

MINUTES ENTERED 02/07/17 COUNTY CLERK
--

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/07/17

DEPT. 310

HONORABLE KENNETH R. FREEMAN

JUDGE

R. ARRAIGA

DEPUTY CLERK

HONORABLE
Add-On #2

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. WEBB, C.A.

Deputy Sheriff

NONE

Reporter

BC647816

Plaintiff

Counsel

CYNTHIA CARDARELLI PAINTER

NO APPEARANCES

VS

Defendant

BLUE DIAMOND GROWERS

Counsel

Complex- 2-7-2017

NATURE OF PROCEEDINGS:

action, by electronically serving the document on
Counsel for Plaintiff, Lee Cirsch at
Lee.Cirsch@capstonelawyers.com
on February 7, 2017 from my place of business,
Central Civil West Courthouse, 600 South
Commonwealth Avenue, Los Angeles, California 90005
in accordance with standard court practices.

Dated: February 7, 2017

Sherri R. Carter, Executive Officer/Clerk

By: R. ARRAIGA, Deputy Clerk

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CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB 07 2017

Sherri R. Carter, Executive Officer/Clerk
By: Roxanne Arraiga, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

CYNTHIA CARDARELLI PAINTER, et al.,
Plaintiff,

vs.

BLUE DIAMOND GROWERS, et al.,
Defendants.

Case No. BC647816

INITIAL STATUS CONFERENCE ORDER
(COMPLEX LITIGATION PROGRAM)

Case Assigned for All Purposes to
Judge Kenneth R. Freeman

Department: 310

Date: April 7, 2017

Time: 10:00 a.m.

This case has been assigned for all purposes to Judge Kenneth R. Freeman in the Complex Litigation Program. An Initial Status Conference is set for **April 7, 2017 at 10:00 a.m.** in Department 310 located in the Central Civil West Courthouse at 600 South Commonwealth Avenue, Los Angeles, California 90005. Counsel for all the parties are ordered to attend.

The Court orders counsel to prepare for the Initial Status Conference by identifying and discussing the central legal and factual issues in the case. Counsel for plaintiff is ordered to initiate contact with counsel for defense to begin this process. Counsel then must negotiate and agree, as possible, on a case management plan. To this end, counsel must file a Joint Initial Status Conference Class Action Response Statement ten (10) court days (**March 24, 2017 DIRECTLY in Department 310**) before the Initial Status Conference. The Joint Response Statement must be

1 filed on line-numbered pleading paper and must specifically answer each of the below-numbered
2 questions. Do not the use the Judicial Council Form CM-110 (Case Management Statement) for
3 this purpose.

4 **1. PARTIES AND COUNSEL:** Please list all presently-named class representatives and
5 presently-named defendants, together with all counsel of record, including counsel's contact and
6 email information.

7
8 **2. POTENTIAL ADDITIONAL PARTIES:** Does any plaintiff presently intend to add
9 more class representatives? If so, and if known, by what date and by what name? Does any
10 plaintiff presently intend to name more defendants? If so, and if known, by what date and by
11 what name? Does any appearing defendant presently intend to file a cross-complaint? If so, who
12 will be named.

13 **3. IMPROPERLY NAMED DEFENDANT(S):** If the complaint names the wrong
14 person or entity, please explain.

15
16 **4. ADEQUACY OF PROPOSED CLASS REPRESENTATIVE(S):** If any party
17 believes one or more named plaintiffs might not be an adequate class representative, please
18 explain. No prejudice will attach to these responses.

19 **5. ESTIMATED CLASS SIZE:** Please discuss and indicate the estimated class size.

20 **6. OTHER ACTIONS WITH OVERLAPPING CLASS DEFINITIONS:** Please list
21 other cases with overlapping class definitions. Please identify the court, the short caption title, the
22 docket number, and the case status.

23
24 **7. POTENTIALLY RELEVANT ARBITRATION AND/OR CLASS ACTION**
25 **WAIVER CLAUSES:** Please include a sample of any clause of this sort. Opposing parties must
26 summarize their views on this issue.

27 **8. POTENTIAL EARLY CRUCIAL MOTIONS:** Opposing counsel are to identify and
28

1 describe the significant core issues in the case. Counsel then are to identify efficient ways to
2 resolve those issues. The vehicles include:

- 3 ■ Early motions in limine,
- 4 ■ Early motions about particular jury instructions,
- 5 ■ Demurrers,
- 6 ■ Motions to strike,
- 7 ■ Motions for judgment on the pleadings, and
- 8 ■ Motions for summary judgment and summary adjudication.

9
10 **9. CLASS CONTACT INFORMATION:** Does plaintiff need class contact information
11 from the defendant's records? If so, do the parties consent to an "opt-out" notice process (as
12 approved in *Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4th 554, 561) to
13 precede defense delivery of this information to plaintiff's counsel? If the parties agree on the
14 notice process, who should pay for it? Should there be a third-party administrator?

15
16 **10. PROTECTIVE ORDERS:** Parties considering an order to protect confidential
17 information from general disclosure should begin with the model protective orders found on the
18 Los Angeles Superior Court Website under "Civil Tools for Litigators."

19 **11. DISCOVERY:** Please discuss discovery. Do the parties agree on a plan? If not, can
20 the parties negotiate a compromise? At minimum, please summarize each side's views on
21 discovery. The Court generally allows discovery on matters relevant to class certification, which
22 (depending on circumstances) may include factual issues also touching the merits. The Court
23 generally does not permit extensive or expensive discovery relevant only to the merits (for
24 example, detailed damages discovery) unless a persuasive showing establishes early need. If any
25 party seeks discovery from absent class members, please estimate how many, and also state the
26
27
28

1 kind of discovery you propose¹.

2 **12. INSURANCE COVERAGE:** Please state if there is insurance for indemnity or
3 reimbursement.

4 **13. ALTERNATIVE DISPUTE RESOLUTION:** Please discuss ADR and state each
5 party's position about it. If pertinent, how can the Court help identify the correct neutral and
6 prepare the case for a successful settlement negotiation?

7 **14. TIMELINE FOR CASE MANAGEMENT:** Please recommend dates and times for
8 the following:
9

- 10 ■ The next status conference,
- 11 ■ A schedule for alternative dispute resolution, if it is relevant,
- 12 ■ A filing deadline for the motion for class certification, and
- 13 ■ Filing deadlines and descriptions for other anticipated non-discovery motions.

14 **15. ELECTRONIC SERVICE OF PAPERS:** For efficiency the complex program
15 requires the parties in every new case to use a third-party cloud service. While the parties are free
16 to choose one of the services shown below, this Court (Department 310) prefers that the parties
17 select:
18

- 19 ■ **Case Anywhere** (<http://www.caseanywhere.com>).

20 The parties are not required to select Case Anywhere, but may chose instead either

- 21 ■ **File & Serve Xpress** (<https://secure.fileandservexpress.com>) or
- 22 ■ **CaseHomePage** (<http://www.casehomepage.com>).

23 Please agree on one and submit the parties' choice when filing the Joint Initial Status
24 Conference Class Action Response Statement. If there is agreement, please identify the vendor. If
25

26 _____
27 ¹ See California Rule of Court, Rule 3.768.
28

1 parties cannot agree, the Court will select the vendor at the Initial Status Conference. Electronic
2 service is not the same as electronic filing. Only traditional methods of filing by physical delivery
3 of original papers or by fax filing are presently acceptable.

4 **Reminder When Seeking To Dismiss Or To Obtain Settlement Approval:**

5 “A dismissal of an entire class action, or of any party or cause of action in a class action,
6 requires Court approval . . . Requests for dismissal must be accompanied by a declaration setting
7 forth the facts on which the party relies. The declaration must clearly state whether consideration,
8 direct or indirect, is being given for the dismissal and must describe the consideration in detail.”²
9

10 If the parties have settled the class action, that too will require judicial approval based on a noticed
11 motion (although it may be possible to shorten time by consent for good cause shown).

12 Pending further order of this Court, and except as otherwise provided in this Initial Status
13 Conference Order, these proceedings are stayed in their entirety. This stay shall preclude the
14 filing of any answer, demurrer, motion to strike, or motions challenging the jurisdiction of the
15 Court. However, any defendant may file a Notice of Appearance for purposes of identification of
16 counsel and preparation of a service list. The filing of such a Notice of Appearance shall be
17 without prejudice to any challenge to the jurisdiction of the Court, substantive or procedural
18 challenges to the Complaint, without prejudice to any affirmative defense, and without prejudice
19 to the filing of any cross-complaint in this action. This stay is issued to assist the Court and the
20 parties in managing this “complex” case through the development of an orderly schedule for
21 briefing and hearings on procedural and substantive challenges to the complaint and other issues
22 that may assist in the orderly management of these cases. This stay shall not preclude the parties
23 from informally exchanging documents that may assist in their initial evaluation of the issues
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27 ² California Rule of Court, Rule 3.770(a)
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1 presented in this case, however shall stay all outstanding discovery requests.

2 Plaintiff's counsel is directed to serve a copy of this Initial Status Conference Order on
3 counsel for all parties, or if counsel has not been identified, on all parties, within five (5) days of
4 service of this order. If any defendant has not been served in this action, service is to be completed
5 within twenty (20) days of the date of this order.

6 Dated: February 7, 2017

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8 **KENNETH R. FREEMAN**

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10 Judge Kenneth R. Freeman
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1 Lee A. Cirsch (SBN 227668)
Lee.Cirsch@capstonelawyers.com
2 Robert K. Friedl (SBN 134947)
Robert.Friedl@capstonelawyers.com
3 Trisha K. Monesi (SBN 303512)
Trisha.Monesi@capstonelawyers.com
4 Capstone Law APC
1875 Century Park East, Suite 1000
5 Los Angeles, California 90067
Telephone: (310) 556-4811
6 Facsimile: (310) 943-0396

7 Attorneys for Plaintiff
Cynthia Cardarelli Painter

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 FOR THE COUNTY OF LOS ANGELES

11 CYNTHIA CARDARELLI PAINTER,
individually, and on behalf of other
12 members of the general public similarly
situated,

13 Plaintiff,

14 v.

15 BLUE DIAMOND GROWERS, a
16 California corporation, and DOES 1
through 100, inclusive,

17 Defendant.
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Superior Court of California
County of Los Angeles

FEB 24 2017

Sherri R. Carter, Executive Officer/Clerk
By Veronica Hillard, Deputy

BY FAX

Case No.: BC647816

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Violations of California's Consumers
Legal Remedies Act
- (2) Violation of Unfair Competition Law,
California Business & Professions Code
§ 17200 *et seq.*
- (3) Violation of False Advertising Law,
California Business & Professions Code
§ 17500

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Cynthia Cardarelli Painter (“Plaintiff”) brings this action for herself and on behalf of all persons in the United States who, at any time since four years prior to the filing of this complaint, purchased any Almond Breeze Almond Milk beverage (“Almond Beverages”)¹ manufactured, marketed, distributed, and sold by Blue Diamond Growers (“Blue Diamond” or “Defendant”).

2. This case arises out of the false, misleading, and deceptive marketing practices of Defendant’s Almond Breeze products. Defendant has deceptively informed and led its customers to believe that they were purchasing, for a premium price, a dairy milk alternative that is nutritionally equivalent, and even superior, to dairy milk, as defined by the U.S. Food & Drug Administration (the “FDA”)². However, as discussed in detail below, Defendant’s Almond Beverages significantly lack many of the essential nutrients and vitamins provided in dairy milk, which Defendant fails to disclose to and actively conceals from consumers.

3. Consumer demand for non-dairy milks (“milk substitutes”) has exponentially increased over the past decade. In fact, almond-based milk substitutes, including Defendant’s Almond Beverages, experienced a 40% increase in sales between 2013 and 2014 alone, while dairy milk sales have steadily declined.³ By calling its Almond Beverages “milk”, a term historically used to define cow’s milk, Defendant has capitalized on reasonable consumers’ understanding of the well-known health benefits and essential nutrients⁴ that dairy milk

¹ On information and belief, the Almond Beverages include, without limitation, the following:

² “Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in final package form for beverage use shall have been pasteurized or ultrapasteurized, and shall contain not less than 8 1/4 percent milk solids not fat and not less than 3 1/4 percent milkfat. Milk may have been adjusted by separating part of the milkfat therefrom, or by adding thereto cream, concentrated milk, dry whole milk, skim milk, concentrated skim milk, or nonfat dry milk. Milk may be homogenized.” See 21 CFR § 131.110.

³ <http://www.sacbee.com/news/local/health-and-medicine/article31689980.html>.

⁴ “Dairy foods are excellent sources of nutrients of public health concern, including Vitamin D, calcium, and potassium. Consumption of dairy foods provides numerous health

provides without actually providing those health benefits and essential nutrients. Moreover, Defendant's entire marketing strategy portrays its Almond Beverages as nutritionally superior to dairy milk. For example, Defendant's official website advertises its Almond Beverages with the following claims:

- "Made from real California almonds, Almond Breeze Original is a deliciously creamy alternative to dairy and soymilk. Almond Breeze Original is lactose free, soy free, calcium enriched, and contains only 60 calories per glass—that's half the calories of 2% milk."
- "1 cup of 2% fat dairy milk contains 30% DV calcium vs. 1 cup of Almond Breeze Unsweetened Vanilla Almondmilk contains 45% DV calcium."
- "There may be no such thing as a perfect food, but almonds come in high on the super-food list. A top plant source for **Protein** and **Vitamin E**, almonds also contain fiber, calcium, iron, and other important nutrients."
- "Almond Breeze is an excellent source of Calcium, Vitamin D, and Vitamin E, and a good source of Vitamin A."

4. However, on information and belief, Defendant fails to disclose to consumers that its Almond Beverages lack the following essential vitamins and nutrients, as defined by the FDA, available in measurable amounts in 2% fat dairy milk:

ESSENTIAL VITAMIN/NUTRIENT	2% FAT DAIRY MILK ⁵	ALMOND BREEZE ORIGINAL ALMONDMILK
PROTEIN	8.05g (16% DRV ⁶)	1g
MAGNESIUM	27mg (6.8% RDI ⁷)	(4% RDI)

benefits including lower risk of diabetes, metabolic syndrome, cardiovascular disease and obesity. [...] on average across the calorie levels, dairy foods contribute about 67 percent of calcium, 64 percent of Vitamin D, and 17 percent of magnesium."

⁵ *All Nutrients Milk, reduced fat, fluid, 2% milkfat, with added vitamin A and vitamin D*, USDA National Nutrient Database for Standard Reference, Release 28 (May 2016), available at <https://ndb.nal.usda.gov/ndb/>.

⁶ Daily Reference Value, *See* National Nutrient Database for U.S. Dept. of Agriculture, Release 28 (May 2016), available at <https://ndb.nal.usda.gov/ndb/>.

⁷ Reference Daily Intake, *See* National Nutrient Database for U.S. Dept. of Agriculture, Release 28 (May 2016), available at <https://ndb.nal.usda.gov/ndb/>.

PHOSPHORUS	224mg (22% RDI)	2% RDI
POTASSIUM	342mg (9.7% DRV)	170mg (4% DRV)
ZINC	1.17mg (7.8% RDI)	0mg (0% RDI)
RIBOFLAVIN	.451mg (26% RDI)	2% RDI
PANTOTHENIC ACID	.869mg (8.7% RDI)	.079mg (1% RDI)*
VITAMIN B6	.093ug (4.7% RDI)	.039mg (2% RDI)*
FOLATE	12ug (3% RDI)	3ug (<1% RDI)
VITAMIN D	120iu (30% RDI)	(25% RDI)

*Nutritional values not provided on Defendant's Almond Beverage labels. *See All Nutrients, Beverages, almond milk, unsweetened*, USDA National Nutrient Database for Standard Reference, Release 28 (May 2016), available at <https://ndb.nal.usda.gov/ndb/>.

5. Further, Defendant fails to label its Almond Beverages as "imitation milk", as required by the FDA, because the Almond Beverages are, in fact, nutritionally inferior to dairy milk due to the reduction in the content of essential nutrients present in a measurable amount in dairy milk, as identified above and throughout this complaint.

6. Because Defendant utilizes the common or usual name of a food (i.e. "milk") but fails to reveal the basic nature and characterizing ingredients of the Almond Beverages, in accordance with 21 C.F.R. § 102.5(b), Defendant *must* label its Almond Beverages as "imitation milk", as required by 21 C.F.R. § 101.3(e).

7. The amount of essential vitamins and nutrients provided by dairy milk has a material bearing on price and consumer acceptance of products attempting to substitute dairy milk. Blue Diamond has labeled its products to highlight its low calorie and fat content as compared to 2% fat dairy milk and has been successful in capturing the market share previously attributed to dairy milk due to its omissions regarding the actual nutritional comparison of essential nutrients. By deceiving consumers about the nature, quality, and/or ingredients of its products, Blue Diamond is able to command a premium price, increasing consumers' willingness to pay and reduce the market share of competing products, thereby

1 increasing its own sales and profits.

2 8. Reasonable consumers must, and do, rely on Blue Diamond's overall
3 marketing, including, without limitation, product advertisements, labels, displays, and
4 packaging, in determining whether to purchase its Almond Beverages. As such, reasonable
5 consumers remain unaware that they are not receiving the same levels of essential vitamins
6 and nutrients provided in dairy milk when purchasing Defendants' Almond Beverages to
7 substitute dairy milk.

8 9. Defendant's deceptive labeling poses a serious health concern to consumers. In
9 fact, the 2015 Dietary Guidelines Advisory Committee Report found that in cases where
10 people do not consume dairy, the levels of calcium, magnesium, iron, vitamin A and
11 riboflavin drop below the recommended intake, and intake levels of potassium, vitamin D and
12 choline also drop substantially.⁸ While Defendant could fortify its Almond Beverages to
13 contain comparable quantities of the essential vitamins and nutrients contained in dairy milk,
14 it chooses not to do so. Even so, absorption of these vitamins and nutrients is less efficient
15 from plant beverages such as the Almond Beverages.

16 10. On information and belief, every Almond Beverage at issue in this complaint
17 has the same nutritional content and contains the same deceptive misrepresentations employed
18 by Blue Diamond.

19 11. If Plaintiff and Class Members knew that the Almond Beverages were
20 nutritionally inferior and lacked the same level of essential vitamins and nutrients as dairy
21 milk, Plaintiff and Class Members would not have purchased the Almond Beverages or would
22 have paid less for them.

23 //

24 //

25 ⁸ *Scientific Report of the 2015 Dietary Guidelines Advisory Committee, Part D.*
26 *Chapter 1*, Advisory Report to the Secretary of Health and Human Services and the Secretary
27 of Agriculture, February 2015, available at [https://health.gov/dietaryguidelines/2015-](https://health.gov/dietaryguidelines/2015-scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf)
28 [scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf](https://health.gov/dietaryguidelines/2015-scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf).

1 12. On information and belief, Blue Diamond knew about and concealed the
2 nutritional inferiority of its Almond Beverage products from Plaintiff and Class Members,
3 prior to the time of sale and thereafter.

4 13. By employing the labeling and marketing tactics illustrated above, Blue
5 Diamond intends for consumers to rely on its representations regarding the calorie and fat
6 content of its Almond Beverages rather than the actual values of essential vitamins and
7 nutrients as compared to dairy milk, and hundreds of thousands of reasonable consumers did
8 in fact so rely. Because Blue Diamond will not notify Class Members that the Almond
9 Beverages are in fact nutritionally inferior to dairy milk, Plaintiff and Class Members (as well
10 as members of the general public) remain subject to Blue Diamond's deceptive advertising.

11 14. As a result of their reliance on Defendant's omissions and mischaracterizations,
12 consumers have suffered an ascertainable loss of money, including, but not limited to, out of
13 pocket costs incurred in purchasing over-valued Almond Beverages. Further, as a result of its
14 deceptive marketing and unfair competition with other similar manufacturers and brands, Blue
15 Diamond realized sizable profits.

16 15. The Almond Beverages are misbranded under Sections 403(a), (c), (f), and (g)
17 of the Food Drug & Cosmetic Act (the "FDCA"), 21 U.S.C. §§ 343(a), (c), (f), and (g).
18 Further, the Sherman Food, Drug, and Cosmetic Law (the "Sherman Law"), Cal. Health &
19 Safety Code §§ 109875-111915, expressly incorporates the food labeling requirements set
20 forth in the FDCA, and provides that any food is misbranded if its labeling is false or
21 misleading or does not conform to FDCA requirements. See Cal. Health & Safety Code §§
22 110100(a), 110660-110805.

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16. Thus, the Almond Beverages cannot be legally manufactured, advertised, distributed, or sold in the United States as they are currently labeled. See 21 U.S.C. § 331. In order to comply with federal and state labeling requirements, Defendant must:

- a. Revise its Almond Beverages' labels to state, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, milk;
or
- b. Revise its Almond Beverages' labels to state the percentages of characterizing ingredients or information concerning the presence or absence of the ingredients as part of the common or usual name of milk;
or
- c. Fortify its Almond Beverages with vitamins and nutrients in an amount equal to or greater than the amount of essential vitamins and nutrients present in dairy milk in measurable amounts; or
- d. Cease utilizing the common or usual name "milk" in the statement of identity of its Almond Beverages.

PARTIES

PLAINTIFF CYNTHIA CARDARELLI PAINTER

17. Plaintiff Cynthia Cardarelli Painter is a California citizen who resides in Long Beach, California. During the class period alleged herein, Plaintiff purchased several Almond Beverages on numerous occasions from Costco stores in Los Angeles County.

18. Plaintiff purchased Defendant's Almond Beverages in reliance on Blue Diamond's marketing of the products including the claims and product information on the packaging and labeling, specifically claims comparing the Almond Beverages' nutritional contents to dairy milk.

19. In deciding to purchase the Almond Beverages, Plaintiff saw, relied upon, and reasonably believed that the Almond Beverages were nutritionally superior to dairy milk and contained comparable amounts of the essential vitamins and nutrients contained in dairy milk including cholesterol, iron, and potassium contents. Purchasing a nutritionally superior

1 alternative to dairy milk was, and is, important to Plaintiff. In fact, Defendant's
2 representations and omissions regarding the nutritional contents of the Almond Beverages
3 were material to Plaintiff in her decision to purchase Almond Beverages.

4 20. If Plaintiff had known at the time of purchase that these products were
5 nutritionally inferior to dairy milk, she would not have purchased the Almond Beverages or
6 would have paid less for them.

7 **DEFENDANT**

8 21. Defendant Blue Diamond Growers is a corporation organized and in existence
9 under the laws of the State of California and is registered to do business in the State of
10 California. Blue Diamond Growers' corporate headquarters and principal place of business
11 are located at 1802 C Street, Sacramento, California 95811. Blue Diamond Growers tests,
12 manufactures, markets, distributes, and sells Almond Breeze Almond Milk products
13 nationwide and in California.

14 22. Plaintiff is unaware of the true names or capacities of the Defendants sued
15 herein under the fictitious names DOES 1 through 100, but will seek leave of this Court to
16 amend the complaint and serve such fictitiously named Defendants once their names and
17 capacities become known.

18 23. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through
19 100 are the partners, agents, owners, shareholders, managers, or employees of Blue Diamond
20 Growers at all relevant times.

21 24. At all relevant times, Defendant was and is engaged in the business of testing,
22 manufacturing, marketing, distributing, and selling Almond Breeze Almond Milk products in
23 Los Angeles County and throughout the United States of America.

24 **JURISDICTION**

25 25. This Court has jurisdiction over this action pursuant to California Code of Civil
26 Procedure § 410.10. Personal jurisdiction over Blue Diamond is proper because Blue
27 Diamond has purposefully availed itself of the privilege of conducting business activities in
28 California, including, but not limited to, testing, manufacturing, marketing, distributing,

1 and/or selling Almond Beverages to Plaintiff and prospective class members.

2 26. This class action is brought pursuant to California Code of Civil Procedure §
3 382. Plaintiff is a California resident, as are all prospective class members. The monetary
4 damages and restitution sought by Plaintiff and the prospective class members exceed the
5 minimal jurisdiction limits of the Superior Court and will be established according to proof at
6 trial.

7 VENUE

8 27. Venue is proper in this Court pursuant to California Code of Civil Procedure §§
9 395, 395.5 and California Civil Code § 1780 because Plaintiff resides in the County of Los
10 Angeles, California, and the acts, omissions, and contractual performance alleged herein took
11 place in the County of Los Angeles, California. Plaintiff's Declaration, as required under Cal.
12 Civ. Code section 1780(d), which reflects that Defendant is doing business in Los Angeles
13 County, California, is filed concurrently as **Exhibit 1**.

14 FACTUAL ALLEGATIONS

15 28. Consumer demand for non-dairy milks ("milk substitutes") has exponentially
16 increased over the past decade. In fact, almond-based milk substitutes, including Defendant's
17 Almond Beverages, experienced a 40% increase in sales between 2013 and 2014 alone, while
18 dairy milk sales have steadily declined. By calling its Almond Beverages "milk", a term
19 historically used to define cow's milk, Defendant has capitalized on reasonable consumers'
20 understanding of the well-known health benefits and essential nutrients that dairy milk
21 provides without actually providing those health benefits and essential nutrients. Moreover,
22 Defendant's entire marketing strategy portrays its Almond Beverages as nutritionally superior
23 to dairy milk.

24 29. The Almond Beverages are misbranded under Sections 403(a), (c), (f), and (g)
25 of the Food Drug & Cosmetic Act (the "FDCA"), 21 U.S.C. §§ 343(a), (c), (f), and (g).
26 Further, the Sherman Food, Drug, and Cosmetic Law (the "Sherman Law"), Cal. Health &
27 Safety Code §§ 109875-111915, expressly incorporates the food labeling requirements set
28 forth in the FDCA, and provides that any food is misbranded if its labeling is false or

misleading or does not conform to FDCA requirements. *See* Cal. Health & Safety Code §§ 110100(a), 110660-110805.

30. Thus, the Almond Beverages cannot be legally manufactured, advertised, distributed, or sold in the United States as they are currently labeled. *See* 21 U.S.C. § 331.

31. Further, it is a violation of the Sherman Law to advertise any misbranded food, § 110398; to manufacture, sell deliver, hold, or offer for sale any food that is misbranded, § 110760; to misbrand any food, § 110765; or to receive in commerce any food that is misbranded or deliver or proffer it for delivery, § 110770.

The Almond Beverages Are Nutritionally Inferior to Dairy Milk

32. Foods must be labeled “imitation”, and are deemed misbranded when they are not, if the food is intended to substitute for and resemble another food but is nutritionally inferior to that food.⁹ A food is nutritionally inferior when there is “any reduction in the content of an essential nutrient that is present in a measurable amount.”¹⁰ In clarifying this requirement, the FDA has stated “...a new food that resembles a traditional food and is a substitute for the traditional food must be labeled as an imitation if the new food contains less protein or a lesser amount of any essential vitamin or mineral.”¹¹

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⁹ *See* 21 C.F.R. 101.3(e).

¹⁰ *See* 21 C.F.R. § 101.3(e)(4)(ii), “For the purpose of this section, a measurable amount of an essential nutrient in a food shall be considered to be 2 percent or more of the Daily Reference Value (DRV) of protein listed under §101.9(c)(7)(iii) and of potassium listed under §101.9(c)(9) per reference amount customarily consumed and 2 percent or more of the Reference Daily Intake (RDI) of any vitamin or mineral listed under §101.9(c)(8)(iv) per reference amount customarily consumed, except that selenium, molybdenum, chromium, and chloride need not be considered.”

¹¹ *Guidance for Industry: A Food Labeling Guide*, available at [/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm2006828.htm#toc](#) (January 2013).

33. On information and belief, Defendant fails to disclose to consumers that its Almond Beverages lack the following essential vitamins and nutrients, as defined by the FDA, available in measurable amounts in 2% fat dairy milk:

ESSENTIAL VITAMIN/NUTRIENT	2% FAT DAIRY MILK	ALMOND BREEZE ORIGINAL ALMONDMILK
PROTEIN	8.05g (16% DRV)	1g
MAGNESIUM	27mg (6.8% RDI)	(4% RDI)
PHOSPHORUS	224mg (22% RDI)	(2% RDI)
POTASSIUM	342mg (9.7% DRV)	170mg (4% DRV)
ZINC	1.17mg (7.8% RDI)	0mg (0% RDI)
RIBOFLAVIN	.451mg (26% RDI)	(2% RDI)
PANTOTHENIC ACID	.869mg (8.7% RDI)	.079mg (1% RDI)*
VITAMIN B6	.093ug (4.7% RDI)	.039mg (2% RDI)*
FOLATE	12ug (3% RDI)	3ug (<1% RDI)
VITAMIN D	120iu (30% RDI)	(25% RDI)

34. Further, Defendant fails to label its Almond Beverages as “imitation milk”, as required by the FDA, because the Almond Beverages are, in fact, nutritionally inferior to dairy milk due to the reduction in the content of essential nutrients present in a measurable amount in dairy milk, as identified above and throughout this complaint.

35. Because Blue Diamond will not notify Class Members that the Almond Beverages are in fact nutritionally inferior to dairy milk or label its Almond Beverages as “imitation milk”, Plaintiff and Class Members (as well as members of the general public) remain subject to Blue Diamond’s deceptive advertising and misrepresentations.

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**Defendant Fails to Include All Required Statement of Identity Disclosures Under The
“Common or Usual Name” Principle For Its Almond Beverages**

36. When a product utilizes the “common or usual name of a food”, it must include:

“the percentage(s) of any characterizing ingredient(s) or component(s) when the proportion of such ingredient(s) or component(s) in the food has a material bearing on price or consumer acceptance or when the labeling or the appearance of the food may otherwise create an erroneous impression that such ingredient(s) or component(s) is present in an amount greater than is actually the case.”¹²

37. Here, by calling its Almond Beverages “milk”, a term defined by the FDA specifically in reference to cow’s milk, Defendant has capitalized on reasonable consumers’ understanding of the well-known health benefits and essential nutrients that dairy milk provides without actually providing those health benefits and essential nutrients. Moreover, Defendant’s entire marketing strategy portrays its Almond Beverages as nutritionally superior to dairy milk.

38. Further, the FDA relaxed its statement of identity standards in the early 1990s due to concerns regarding lack of innovation in food development and attention to healthier alternatives to standardized foods. At that time, a manufacturer could not use the name of a standardized food unless the substitute food contained the “characterizing ingredient” of the food. In allowing for the “common or usual name” standard, the FDA and the FTC specifically addressed concerns over consumer deception. In doing so, the agencies heavily relied on the existence of false advertising and consumer protection laws to address consumer deception in situations where manufacturers attempt to abuse the standard and provide nutritionally inferior products while commanding a premium price. The relaxed standard of identity requirements was intended to promote healthier alternatives to standardized food by providing *more* nutritional value, not less, as is the case with the Almond Beverages.

39. By employing the labeling and marketing tactics illustrated above, Blue

¹² 21 C.F.R. § 102.5(b). (emphasis added).

1 Diamond intends for consumers to rely on its representations regarding the calorie and fat
2 content of its Almond Beverages rather than the actual values of essential vitamins and
3 nutrients and the characterizing ingredients as compared to dairy milk, and hundreds of
4 thousands of reasonable consumers did in fact so rely. Because Blue Diamond will not notify
5 Class Members that the Almond Beverages are nutritionally inferior to dairy milk, Plaintiff
6 and Class Members (as well as members of the general public) remain subject to Blue
7 Diamond's deceptive advertising. Further, because Blue Diamond will not notify Class
8 Members of the percentage of the characterizing ingredients of its Almond Beverages in
9 comparison to common "milk" or list its Almond Beverages as "imitation milk", Plaintiff and
10 Class Members remain subject to Blue Diamond's deceptive and unlawful advertising.

11 40. If Plaintiff and Class Members knew that the Almond Beverages were
12 nutritionally inferior and lacked the same level of essential vitamins and nutrients as dairy
13 milk, Plaintiff and Class Members would not have purchased the Almond Beverages or would
14 have paid less for them.

15 41. Blue Diamond knows, or should reasonably know, that consumers purchase its
16 products to substitute for common dairy milk and knows that consumers will pay a premium
17 for these products or would not purchase these products at all unless they contained equal or
18 greater amounts of essential vitamins and nutrients provided in dairy milk.

19 42. As a result of their reliance on Defendant's representations, consumers have
20 suffered an ascertainable loss of money, including, but not limited to, out of pocket costs
21 incurred in purchasing over-valued Almond Beverages. Further, as a result of its deceptive
22 marketing and unfair competition with other similar manufacturers and brands, Blue Diamond
23 realized sizable profits.

24 43. As the intended, direct, and proximate result of Blue Diamond's false,
25 misleading, and deceptive representations and omissions, Blue Diamond has been unjustly
26 enriched through more sales of Falsely Labeled Products and higher profits at the expense of
27 Plaintiff and the Class members.
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45. The Class and Sub-Class(es) are defined as:

CLRA Sub-Class: All members of the California Sub-Class who are “consumers” within the meaning of California Civil Code § 1761(d) (the “CLRA Sub-Class”).

48. Numerosity: Although the exact number of prospective class members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of prospective class members' claims in a single action will provide substantial benefits to all parties and to the Court. The prospective class members are readily identifiable from information and records in Defendant's possession, custody, or control, as well as from records kept by the departments of motor vehicles of the various states.

1 49. Typicality: The claims of the representative Plaintiff are typical of the claims of
2 the all prospective class members in that the representative Plaintiff and the prospective class
3 members purchased Almond Breeze Almond Milk products and were subjected to the same
4 deceptive advertising practices by Defendant since four years prior to the filing of this
5 complaint. The representative Plaintiff, like all Class Members, has been damaged by
6 Defendant's misconduct in that they incurred expenses due to their reliance on Defendant's
7 deceptive representations and omissions regarding its Almond Beverages, as described
8 throughout this complaint. Furthermore, the factual bases of Blue Diamond's misconduct are
9 common to all prospective class members and represent a common thread resulting in injury
10 to all prospective class members.

11 50. Commonality: There are numerous questions of law and fact common to
12 Plaintiff and the prospective class members that predominate over any question affecting
13 individual prospective class members. These common legal and factual issues include the
14 following:

- 15 a. Whether Blue Diamond misrepresented and/or failed to disclose
16 material facts concerning the Almond Beverages;
- 17 b. Whether the Almond Beverages are misbranded under federal and state
18 laws;
- 19 c. Whether the Almond Beverages are nutritionally inferior to dairy milk;
- 20 d. Whether Blue Diamond's conduct was unfair and/or deceptive;
- 21 e. Whether Blue Diamond has a duty to disclose the true nature of its
22 Almond Beverages' ingredients;
- 23 f. Whether Plaintiff and other Class Members are entitled to equitable
24 relief, including but not limited to a preliminary and/or permanent
25 injunction;
- 26 g. Whether Plaintiff and other Class Members are entitled to damages;
- 27 h. Whether Defendant knew or reasonably should have known of its
28 deceptive representations and omissions relating to its Almond

1 Beverages' ingredients; and

- 2 i. Whether Defendant is obligated to inform Class Members of their right
3 to seek reimbursement for having paid for Almond Beverages in
4 reliance on Defendant's misrepresentations.

5 51. Adequate Representation: Plaintiff will fairly and adequately protect the
6 interests of the Class Members. Plaintiff has retained attorneys experienced in the prosecution
7 of class actions, including consumer and product defect class actions, and Plaintiff intends to
8 prosecute this action vigorously.

9 52. Superiority: Plaintiff and the prospective class members have all suffered and
10 will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful
11 conduct. A class action is superior to other available methods for the fair and efficient
12 adjudication of the controversy. Absent a class action, prospective class members would
13 likely find the cost of litigating their claims prohibitively high and would therefore have no
14 effective remedy at law. Because the individual prospective class members' claims are
15 relatively small, it is likely that only a few prospective class members could afford to seek
16 legal redress for Defendant's misconduct. Absent a class action, prospective class members
17 will continue to incur damages, and Defendant's misconduct will continue without remedy.
18 Class treatment of common questions of law and fact would also be a superior method to
19 multiple individual actions or piecemeal litigation in that class treatment will conserve the
20 resources of the courts and the litigants and will promote consistency and efficiency of
21 adjudication.

22 **FIRST CAUSE OF ACTION**

23 **(Violation of California's Consumers Legal Remedies Act, California Civil Code §**
24 **1750, *et seq.*)**

25 53. Plaintiff re-alleges and incorporates by reference each and every allegation
26 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

27 54. Plaintiff brings this cause of action on behalf of herself and on behalf of the
28 members of the CLRA Sub-Class.

1 55. Defendant is a “person” as defined by California Civil Code § 1761(c).

2 56. Plaintiff and CLRA Sub-Class Members are “consumers” within the meaning
3 of California Civil Code § 1761(d) because they bought the Almond Beverages for personal,
4 family, or household purposes.

5 57. By failing to disclose and concealing the true and actual nature of the Almond
6 Beverages from Plaintiff and prospective Class Members, Defendant violated California Civil
7 Code § 1770(a), as it represented that the Almond Beverages had characteristics and benefits
8 that they do not have, represented that the Almond Beverages were of a particular standard,
9 quality, or grade when they were of another, and advertised the Almond Beverages with the
10 intent not to sell them as advertised. *See* Cal. Civ. Code §§ 1770(a)(5)(7) & (9).

11 58. Defendant’s unfair and deceptive acts or practices occurred repeatedly in
12 Defendant’s trade or business and were capable of deceiving a substantial portion of the
13 purchasing public.

14 59. Defendant knew the Almond Beverages did not possess the characteristics and
15 benefits as represented and were not of the particular standard, quality or grade as represented.

16 60. As a result of their reliance on Defendant’s representations and omissions,
17 Class Members suffered an ascertainable loss of money, property, and/or value of their
18 Almond Beverages.

19 61. Defendant was under a duty to Plaintiff and Class Members to disclose the true
20 and actual nature of the Almond Beverages’ ingredients because:

- 21 a. Defendant was in a superior position to know the true state of facts
22 about the ingredients in the Almond Beverages;
- 23 b. Plaintiff and Class Members could not reasonably have been expected to
24 learn or discover the true nature of the ingredients in the Almond
25 Beverages at the time of purchase and thereafter; and
- 26 c. Defendant knew that Plaintiff and Class Members could not reasonably
27 have been expected to learn of or discover the true nature of the Almond
28 Beverages’ ingredients.

1 62. In failing to disclose and misrepresenting the true nature and contents of the
2 Almond Beverages, Defendant knowingly and intentionally concealed material facts and
3 breached its duty not to do so.

4 63. The facts Defendant concealed from or misrepresented to Plaintiff and Class
5 Members are material in that a reasonable consumer would have considered them to be
6 important in deciding whether to purchase the Almond Beverages or pay less. If Plaintiff and
7 Class Members had known that the Almond Beverages were nutritionally inferior, or
8 contained less essential vitamins and nutrients, as dairy milk, they would not have purchased
9 the Almond Beverages or would have paid less for them.

10 64. Plaintiff and Class Members are reasonable consumers who expect
11 manufacturers, like Blue Diamond, to provide accurate and truthful representations regarding
12 the nutritional quantities and dietary benefits contained in their products, especially as
13 compared to those present in dairy milk, which Defendant's Almond Beverages attempt to
14 replace. Further, reasonable consumers, like Plaintiff, rely on the representations made by
15 manufacturers regarding products' ingredients in determining whether to purchase the
16 particular products and consider that information important to their purchase decision.

17 65. As a direct and proximate result of Defendant's unfair methods of competition
18 and/or unfair and deceptive practices, Plaintiff and the Class have suffered and will continue
19 to suffer actual damages.

20 66. Plaintiff and the Class are entitled to equitable relief.

21 67. Plaintiff provided Defendant with notice of its violations of the CLRA pursuant
22 to California Civil Code § 1782(a). Defendant failed to provide appropriate relief for its
23 violations of the CLRA within 30 days, or agree within the 30 days to do so within a
24 reasonable timeframe thereafter. Therefore, Plaintiff seeks monetary, compensatory, and
25 punitive damages, in addition to injunctive and equitable relief.

26 **SECOND CAUSE OF ACTION**

27 **(Violation of California Business & Professions Code § 17500 *et seq.*)**

28 68. Plaintiff incorporates by reference the allegations contained in each and every

1 paragraph of this Complaint.

2 69. Plaintiff brings this cause of action on behalf of herself and on behalf of the
3 Nationwide Class, or in the alternative, on behalf of the California Sub-Class.

4 70. California Business & Professions Code § 17500 prohibits unfair, deceptive,
5 untrue, and misleading advertising in connection with the disposal of personal property
6 (among other things), including, without limitation, false statements as to the use, worth,
7 benefits, or characteristics of the property.

8 71. Defendant has committed acts of untrue and misleading advertising by
9 engaging in false representations as to the essential vitamins and nutrients contained in its
10 Almond Beverages. In addition, Defendant made such untrue or misleading advertisements
11 with the intent to dispose of said merchandise.

12 72. Blue Diamond knew, or in the exercise of reasonable care should have known,
13 that these representations were misleading and deceptive.

14 73. The falsely advertised synthetic and artificial ingredients of the Almond
15 Beverages was, and continues to be, likely to deceive members of the public.

16 74. As a result of their reliance on Defendant's misrepresentations and omissions,
17 Class Members suffered an ascertainable loss of money, property, and/or value of their
18 Almond Beverages.

19 75. As a direct and proximate result of Defendant's unfair and deceptive practices,
20 Plaintiff and the Class have suffered and will continue to suffer actual damages.

21 76. Blue Diamond has been unjustly enriched and should be required to make
22 restitution to Plaintiff and the Class. Pursuant to § 17535 of the Business & Professions Code,
23 Plaintiff and Class Members are entitled to an order of this Court enjoining such future
24 conduct on the part of Blue Diamond, and such other orders and judgments which may be
25 necessary to disgorge Blue Diamond's ill-gotten gains and restore to any person in interest
26 any money paid for its Almond Beverages as a result of the wrongful conduct of Blue
27 Diamond.

1 **THIRD CAUSE OF ACTION**

2 **(Violation of California Business & Professions Code § 17200 *et seq.*)**

3 77. Plaintiff incorporates by reference the allegations contained in each and every
4 paragraph of this Complaint.

5 78. Plaintiff brings this cause of action on behalf of herself and on behalf of the
6 Nationwide Class, or in the alternative, on behalf of himself and on behalf of the California
7 Sub-Class.

8 79. As a result of their reliance on Defendant's misrepresentations and omissions,
9 Class Members suffered an ascertainable loss of money, property, and/or value of their
10 Almond Beverages.

11 80. California Business & Professions Code § 17200 prohibits acts of "unfair
12 competition," including any "unlawful, unfair or fraudulent business act or practice" and
13 "unfair, deceptive, untrue or misleading advertising."

14 81. Plaintiff and Class Members are reasonable consumers who expect
15 manufacturers, like Blue Diamond, to provide accurate and truthful representations regarding
16 the nutritional quantities and dietary benefits contained in their products, especially as
17 compared to those present in dairy milk, which Defendant's Almond Beverages attempt to
18 replace. Further, reasonable consumers, like Plaintiff, rely on the representations made by
19 manufacturers regarding products' ingredients in determining whether to purchase the
20 particular products and consider that information important to their purchase decision.

21 82. In failing to disclose and actively misrepresenting the actual nutritional
22 composition of the Almond Beverages in relation to dairy milk, Defendant has knowingly and
23 intentionally concealed material facts and breached its duty not to do so.

24 83. Defendant was under a duty to Plaintiff and Class Members to disclose the
25 actual nutritional composition of the Almond Beverages in relation to dairy milk, and other
26 omitted or misrepresented facts alleged herein, because:

- 27 a. Defendant was in a superior position to know the true nutritional
28 composition of the Almond Beverages as compared to dairy milk;

- 1 b. Defendant made partial representations about nutritional composition of
2 the Almond Beverages without revealing the material information
3 needed to determine whether to purchase; and
4 c. Defendant actively concealed the true nutritional composition of the
5 Almond Beverages from Plaintiff and the Class.

6 84. The facts Defendant concealed from or misrepresented to Plaintiff and Class
7 Members are material in that a reasonable consumer would have considered them to be
8 important in deciding whether to purchase the Almond Beverages or pay less. If Plaintiff and
9 Class Members had known that the Almond Beverages' were nutritionally inferior, or
10 contained less essential vitamins and nutrients, as dairy milk, they would not have purchased
11 the Almond Beverages or would have paid less for them.

12 85. Defendant's conduct was and is likely to deceive consumers.

13 86. Defendant's acts, conduct and practices were unlawful, in that they constituted:

- 14 a. Violations of California's Consumers Legal Remedies Act;
15 b. Violations of California's False Advertising Law;
16 c. Violations of California's Sherman Law; and
17 d. Violations of the Federal Food Drug & Cosmetic Act;

18 87. By its conduct, Defendant has engaged in unfair competition and unlawful,
19 unfair, and fraudulent business practices.

20 88. Defendant's unfair or deceptive acts or practices occurred repeatedly in
21 Defendant's trade or business, and were capable of deceiving a substantial portion of the
22 purchasing public.

23 89. As a direct and proximate result of Defendant's unfair and deceptive practices,
24 Plaintiff and the Class have suffered and will continue to suffer actual damages.

25 90. Defendant has been unjustly enriched and should be required to make
26 restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the Business &
27 Professions Code.
28

PRAYER FOR RELIEF

91. Plaintiff, on behalf of himself, and all others similarly situated, requests the Court to enter judgment against Defendant, as follows:

- a. An order certifying the proposed Class and Sub-Classes, designating Plaintiff as named representative of the Class, and designating the undersigned as Class Counsel;
- b. An order enjoining Defendant from further deceptive advertising, sales, and other business practices with respect to its representations regarding the Almond Beverages;
- c. An injunction:
 - i. Ordering Defendant to revise its Almond Beverages' labels to state, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, milk; or
 - ii. Ordering Defendant to revise its Almond Beverages' labels to state the percentages of characterizing ingredients or information concerning the presence or absence of the ingredients as part of the common or usual name of milk; or
 - iii. Ordering Defendant to fortify its Almond Beverages with vitamins and nutrients in an amount equal to or greater than the amount of essential vitamins and nutrients present in dairy milk in measurable amounts; or
 - iv. Ordering Defendant to cease utilizing the common or usual name "milk" in the statement of identity of its Almond Beverages.
- d. A declaration requiring Defendant to comply with the various provisions of the Federal Food Drug & Cosmetic Act, California's Sherman Law, California's False Advertising Law and CLRA alleged herein and to make all the required representations;

- 1 e. An award to Plaintiff and the Class for compensatory, exemplary, and
2 statutory damages, including interest, in an amount to be proven at trial;
3 f. A declaration that Defendant must disgorge, for the benefit of the Class,
4 all or part of the ill-gotten profits it received from the sale of its Almond
5 Beverages, or make full restitution to Plaintiff and Class Members;
6 g. An award of attorneys' fees and costs, as allowed by law;
7 h. An award of attorneys' fees and costs pursuant to California Code of
8 Civil Procedure § 1021.5;
9 i. An award of pre-judgment and post-judgment interest, as provided by
10 law;
11 j. Leave to amend the Complaint to conform to the evidence produced at
12 trial; and
13 k. Such other relief as may be appropriate under the circumstances.

14 **DEMAND FOR JURY TRIAL**

15 92. Plaintiff demands a trial by jury of any and all issues in this action so triable.

16 Dated: February 23, 2017

Respectfully submitted,

17 Capstone Law APC

18
19 By: /s/ Lee A. Cirsch

20 Lee A. Cirsch
21 Robert K. Friedl
Trisha K. Monesi

22 Attorneys for Plaintiff Cynthia Cardarelli
Painter
23
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26
27
28

EXHIBIT 1

1 Lee A. Cirsch (SBN 227668)
2 Lee.Cirsch@capstonelawyers.com
3 Robert K. Friedl (SBN 134947)
4 Robert.Friedl@capstonelawyers.com
5 Trisha K. Monesi (SBN 303512)
6 Trisha.Monesi@capstonelawyers.com
7 Capstone Law APC
8 1875 Century Park East, Suite 1000
9 Los Angeles, California 90067
10 Telephone: (310) 556-4811
11 Facsimile: (310) 943-0396

12 Attorneys for Plaintiff
13 Cynthia Cardarelli Painter

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF LOS ANGELES

16 CYNTHIA CARDARELLI PAINTER,
17 individually, and on behalf of other
18 members of the general public similarly
19 situated,

20 Plaintiffs,

21 v.

22 BLUE DIAMOND GROWERS, a
23 California corporation, and DOES 1
24 through 100, inclusive,

25 Defendant.

Case No.:

**DECLARATION OF CYNTHIA
CARDARELLI PAINTER IN SUPPORT
OF VENUE FOR CLASS ACTION
COMPLAINT PURSUANT TO CIVIL
CODE SECTION 1780(d)**

DECLARATION OF CYNTHIA CARDARELLI PAINTER

I, CYNTHIA CARDARELLI PAINTER, declare under penalty of perjury as follows:

1. I make this declaration based upon my personal knowledge except as to those matters stated herein that are based upon information and belief, and as to those matters I believe them to be true. I am over the age of eighteen, a citizen of the State of California, and a Plaintiff in this action.

2. Pursuant to California Civil Code section 1780(d), this Declaration is submitted in support of Plaintiff's Selection of Venue for the Trial of Plaintiffs' Cause of Action alleging violation of the California Consumers Legal Remedies Act.

3. I reside in Long Beach, California, which is in the County of Los Angeles.

4. I purchased Almond Breeze Almond Milk throughout the past 12 months at Signal Hill Costco, which is one of the products at issue in this action, which is located in the County of Los Angeles.

5. I am informed and believe that Defendant Blue Diamond Growers ("Defendant") is a California corporation organized and existing under the laws of the State of California, and registered to conduct business in California. Defendant Blue Diamond Growers' Corporate Headquarters are located at 1802 C Street, Sacramento, California 95811.

6. On information and belief, Defendant tests, manufactures, markets, distributes, and/or sells the Almond Breeze almond-based beverages at issue in Plaintiffs' Complaint, filed concurrently herewith, in Los Angeles County and throughout the United States of America.

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

Executed January 23, 2017 in Long Beach, California.

DocuSigned by:
Cynthia Cardarelli Painter
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