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FILED
Superior Court Of California
County Of Los Angeles

JAN 28 2017

Shorri R. Carter, Executive Officer/Clerk
By Charie E. Coleman, Deputy

7 Attorneys for Plaintiff
Cynthia Cardarelli Painter

SUPERIOR COURT OF THE STATE OF CALIFORNIA **BY FAX**
FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

v.

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

Defendant.

Case No.: **BC 6 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

01/23/2017

RECEIPT #: CCH243111102
 DATE PAID: 01/23/17 04:17 PM
 PAYMENT: \$435.00
 RECEIVED: 310

CHECK: \$435.00
 CASH: \$0.00
 CHANGE: \$0.00
 CARD: \$0.00

CITY/CASE: BC647816
 LEA/DEF#: 11

RECEIPT #: CCH243111103
 DATE PAID: 01/23/17 04:18 PM
 PAYMENT: \$1,000.00
 RECEIVED: 11

CHECK: \$1,000.00
 CASH: \$0.00
 CHANGE: \$0.00
 CARD: \$0.00

CLASS ACTION COMPLAINT

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1 **INTRODUCTION**

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

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

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

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

22 ² “Milk is the lacteal secretion, practically free from colostrum, obtained by the
23 complete milking of one or more healthy cows. Milk that is in final package form for beverage
24 use shall have been pasteurized or ultrapasteurized, and shall contain not less than 8 1/4
25 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.

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

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

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

- 5 • "Made from real California almonds, Almond Breeze Original is a deliciously
6 creamy alternative to dairy and soy milk. Almond Breeze Original is lactose
7 free, soy free, calcium enriched, and contains only 60 calories per glass—that's
8 half the calories of 2% milk."
- 9 • "1 cup of 2% fat dairy milk contains 30% DV calcium vs. 1 cup of Almond
10 Breeze Unsweetened Vanilla Almondmilk contains 45% DV calcium."
- 11 • "There may be no such thing as a perfect food, but almonds come in high on
12 the super-food list. A top plant source for **Protein and Vitamin E**, almonds
13 also contain fiber, calcium, iron, and other important nutrients."
- 14 • "Almond Breeze is an excellent source of Calcium, Vitamin D, and Vitamin E,
15 and a good source of Vitamin A."

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

19 ESSENTIAL 20 VITAMIN/NUTRIENT	21 2% FAT DAIRY 22 MILK ⁵	23 ALMOND BREEZE 24 ORIGINAL ALMONDMILK
25 PROTEIN	26 8.05g (16% DRV ⁶)	27 1g
28 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/>.

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

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

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

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

20 7. The amount of essential vitamins and nutrients provided by dairy milk has a
21 material bearing on price and consumer acceptance of products attempting to substitute dairy
22 milk. Blue Diamond has labeled its products to highlight its low calorie and fat content as
23 compared to 2% fat dairy milk and has been successful in capturing the market share
24 previously attributed to dairy milk due to its omissions regarding the actual nutritional
25 comparison of essential nutrients. By deceiving consumers about the nature, quality, and/or
26 ingredients of its products, Blue Diamond is able to command a premium price, increasing
27 consumers' willingness to pay and reduce the market share of competing products, thereby
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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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26 ⁸ *Scientific Report of the 2015 Dietary Guidelines Advisory Committee, Part D.*
27 *Chapter 1, Advisory Report to the Secretary of Health and Human Services and the Secretary*
28 *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)*
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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1 16. Thus, the Almond Beverages cannot be legally manufactured, advertised,
2 distributed, or sold in the United States as they are currently labeled. See 21 U.S.C. § 331. In
3 order to comply with federal and state labeling requirements, Defendant must:

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

16 **PARTIES**

17 **PLAINTIFF CYNTHIA CARDARELLI PAINTER**

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

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

25 19. In deciding to purchase the Almond Beverages, Plaintiff saw, relied upon, and
26 reasonably believed that the Almond Beverages were nutritionally superior to dairy milk and
27 contained comparable amounts of the essential vitamins and nutrients contained in dairy milk
28 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

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1 misleading or does not conform to FDCA requirements. *See* Cal. Health & Safety Code §§
2 110100(a), 110660-110805.

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

5 31. Further, it is a violation of the Sherman Law to advertise any misbranded food,
6 § 110398; to manufacture, sell deliver, hold, or offer for sale any food that is misbranded, §
7 110760; to misbrand any food, § 110765; or to receive in commerce any food that is
8 misbranded or deliver or proffer it for delivery, § 110770.

9 **The Almond Beverages Are Nutritionally Inferior to Dairy Milk**

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

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21 ⁹ *See* 21 C.F.R. 101.3(e).

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

29 ¹¹ *Guidance for Industry: A Food Labeling Guide*, available at
/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/uc
m2006828.htm#toc (January 2013).

1 33. On information and belief, Defendant fails to disclose to consumers that its
 2 Almond Beverages lack the following essential vitamins and nutrients, as defined by the FDA,
 3 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)

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

20 35. Because Blue Diamond will not notify Class Members that the Almond
 21 Beverages are in fact nutritionally inferior to dairy milk or label its Almond Beverages as
 22 “imitation milk”, Plaintiff and Class Members (as well as members of the general public)
 23 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

28 ¹² 21 C.F.R. § 102.5(b). (emphasis added).

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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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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.

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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.

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

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

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

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

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

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

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

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

01/23/2017

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;

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

84. 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.

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

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

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

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

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

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

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

FILED

1 **PRAYER FOR RELIEF**

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

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

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

DEMAND FOR JURY TRIAL

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

Dated: January 23, 2017

Respectfully submitted,
Capstone Law APC

By: /s/ Lee A. Cirsch
Lee A. Cirsch
Robert K. Friedl
Trisha K. Monesi

Attorneys for Plaintiff Cynthia Cardarelli
Painter

01/23/2017

EXHIBIT 1

01/23/2017

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Robert.Friedl@capstonelawyers.com
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Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff
Cynthia Cardarelli Painter

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,

Plaintiffs,

v.

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

Defendant.

Case No.:

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

01/23/2017

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

01/23/2017

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 FILED Superior Court Of California County Of Los Angeles JAN 23 2017 Sherri R. Carter, Executive Officer/Clerk By <u>Charlie L. Coleman</u> Deputy Charlie L. Coleman
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 6 4 7 8 1 6
CASE NAME: CARDARELLI PAINTER v. BLUE DIAMOND GROWERS	JUDGE: DEPT:
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) <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	Complex Case Designation 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/AWD (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/AWD (23) Non-PI/PD/AWD (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/AWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (08) <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 (26) 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)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **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) Trisha Monesi
(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.

BY FAX

01/23/2017

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

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SHORT TITLE: CARDARELLI PAINTER v. BLUE DIAMOND GROWERS	CASE NUMBER: BC 6 4 7 8 1 6
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**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. | |

710396210

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) Product Liability (24) Medical Malpractice (45) Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A6070 Asbestos Property Damage	1, 11
	<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11
	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1, 4, 11
	<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11
	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 4, 11
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 4, 11
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1, 4, 11
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11

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 Non-Personal Injury/Property Damage/Wrongful Death Tort
 Employment
 Contract
 Real Property
 Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
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
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
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
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-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

Judicial Review

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
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 <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2, 8 2 2
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8
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 (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 5, 11 2, 6 2, 9 2, 8 2, 8 2, 8, 9
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 <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8 2, 8 1, 2, 8 1, 2, 8
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 <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2, 3, 9 2, 3, 9 2, 3, 9 2 2, 7 2, 3, 8 2, 9

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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 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

[Handwritten Signature]
 (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.

01/23/2017