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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

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GARO MADENLIAN, on behalf of ) Case No.: SACV13-01748 JVS (JPRx)  
himself and all others similarly )  
situated, ) **FIRST AMENDED COMPLAINT**  
 ) **CLASS ACTION**  
 )  
Plaintiffs, )  
 )  
v. ) [Violations of California's Unfair  
 ) Competition Law, California Business &  
 ) Professions Code § 17200 *et seq.*,  
 ) California's False Advertising Law,  
 ) California Business & Professions Code  
 ) § 17500 *et seq.*, and California's  
 ) Consumers Legal Remedies Act,  
 ) California Civil Code § 1750 *et seq.*]

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**DEMAND FOR JURY TRIAL**

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This First Amended Complaint is filed pursuant to California's Consumers Legal Remedies Act ("CLRA") which provides that "the consumer may amend his or her complaint without leave of court to include a request for damages" after serving a defendant with the CLRA notice set forth in California Civil Code §

1 1782(a). California Civil Code § 1782(d). This First Amended Complaint is also  
2 filed pursuant to this Court's Orders whereby "The Court sets the last day to amend  
3 pleadings as August 25, 2014." Dkt. No. 18.

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

7  
8 **INTRODUCTION**

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

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

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

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

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

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

23  
24 **JURISDICTION AND VENUE**

25 7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §  
26 1332(d)(2), because the proposed class has more than 100 class members, the  
27 proposed class contains at least one class member who is a citizen of a State  
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1 different from any defendant, and the matter in controversy exceeds the sum of  
2 \$5,000,000.

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

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

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**PARTIES**

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

19 11. Defendant FLAX USA, INC. is a corporation organized and existing  
20 under the laws of the State of North Dakota. Defendant manufactures, markets, and  
21 sells its products throughout California and the United States. Defendant is a  
22 leading producer of retail food products, including the products at issue herein.  
23 Defendant sells its food products to consumers through grocery and other retail  
24 stores throughout the United States.

25 12. At all times mentioned in this First Amended Complaint, Defendants  
26 and each of them were the agents, employees, joint venturer, and or partners of each  
27 other and were acting within the course and scope of such agency, employment,  
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1 joint venturer and or partnership relationship and or each of the Defendants ratified  
2 and or authorized the conduct of each of the other Defendants.

3 13. Plaintiff does not know the true names and capacities of defendants  
4 sued herein as DOES 1 through 10, inclusive, and therefore sues these defendants by  
5 such fictitious names. Plaintiff is informed and believes that each of the DOE  
6 defendants was in some manner legally responsible for the wrongful and unlawful  
7 conduct and harm alleged herein. Plaintiff will amend this First Amended  
8 Complaint to set forth the true names and capacities of these defendants when they  
9 have been ascertained, along with appropriate charging allegations.

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

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13 **FACTUAL ALLEGATIONS CONCERNING**  
14 **FLAX USA PRODUCTS**

15 15. Within four years from the date of filing the Complaint, Plaintiff  
16 purchased some of Defendants' Flax USA Products<sup>1</sup>, including specifically the Flax  
17 USA Flaxmilk (Unsweetened) product.

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

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



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

**"All Natural"**

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

3 **"INGREDIENTS:** ALL NATURAL FLAXMILK (FILTERED  
4 WATER, COLD PRESSED FLAX OIL), TAPIOCA STARCH,  
5 TRICALCIUM PHOSPHATE, CANOLA LECITHIN AND/OR  
6 SUNFLOWER LECITHIN, NATURAL FLAVORS, SEA SALT,  
7 GUAR GUM, XANTHAN GUM, CARRAGEENAN, VITAMIN A  
8 PALMITATE, VITAMIN D<sub>2</sub>, VITAMIN B<sub>12</sub>."

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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28 <sup>3</sup> Plaintiff reserves the right to amend or otherwise modify the Class definition  
and/or add subclasses.

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

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

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

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

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

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

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

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

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

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

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**FIRST CAUSE OF ACTION**

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**For Violation of California's Unfair Competition Law,**

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**California Business & Professions Code § 17200 *et seq.***

20

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

21

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

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

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

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

1 prohibited by [the false advertising law (§ 17500 *et seq.*)]."  
2 Cal.4th 939, 949 (2002).  
3

4 57. "The UCL's purpose is to protect both consumers and competitors by  
5 promoting fair competition in commercial markets for goods and services." *Kasky*,  
6 27 Cal.4th at 949.

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

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

10 59. Defendants' conduct of labeling, advertising and otherwise representing  
11 its products as "All Natural" is unlawful and constitutes misbranding under the  
12 Sherman Food, Drug, And Cosmetic Law, California Health & Safety Code §  
13 109875 *et seq.* (the "Sherman Law").

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

17 61. The Sherman Law expressly states that "Any food is misbranded if its  
18 labeling is false or misleading in any particular." California Health & Safety Code §  
19 110660.<sup>5</sup>

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

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

<sup>5</sup> Identical to FDCA 21 U.S.C. § 343(a).

1 ordinary individual under customary conditions of purchase and use." California  
2 Health & Safety Code § 110705.<sup>6</sup>

3 63. The Sherman Law expressly states that "Any food is misbranded if it  
4 bears or contains any artificial flavoring, artificial coloring, or chemical  
5 preservative, unless its labeling states that fact." California Health & Safety Code §  
6 110740.<sup>7</sup>

7 64. The Sherman Law also provides that a food is misbranded if its label  
8 does not clearly state "the common or usual name of the food" or "the common or  
9 usual name of each ingredient." California Health & Safety Code §§ 110720.  
10 110725.<sup>8</sup>

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

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

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

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

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

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

25  
26 \_\_\_\_\_  
27 <sup>6</sup> Identical to FDCA 21 U.S.C. § 343(f).

28 <sup>7</sup> Identical to FDCA 21 U.S.C. § 343(k).

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

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

5           **Unlawful (Other Violations)**

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

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

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

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

16           **Unfair**

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

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

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

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

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

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

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

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

19  
20 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 103. The CLRA, Civil Code § 1782(a), states as follows:

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

1 (1) Notify the person alleged to have employed or  
2 committed methods, acts, or practices declared unlawful by Section  
3 1770 of the particular alleged violations of Section 1770.

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

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

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

12 "An action for injunctive relief brought under the specific provisions  
13 of Section 1770 may be commenced without compliance with  
14 subdivision (a) [notice requirement]. Not less than 30 days after the  
15 commencement of an action for injunctive relief, and after compliance  
16 with subdivision (a) [notice requirement], the consumer may amend  
17 his or her complaint without leave of court to include a request for  
18 damages."

19 105. The Civil Code § 1782(a) notice of FLAX USA, INC.'s CLRA  
20 violations, and demand, was served on FLAX USA, INC. on June 14, 2014. As  
21 authorized by Civil Code § 1782(a), on June 14, 2014, Plaintiff's counsel served  
22 FLAX USA, INC. with the CLRA notice and demand by certified mail return  
23 receipt requested.

24 106. FLAX USA, INC. has failed to provide appropriate relief for its  
25 violations of the CLRA within 30 days after receipt of the CLRA notice and  
26 demand. Accordingly, pursuant to Sections 1780 and 1782 of the CLRA, Plaintiff,  
27 is entitled to recover, on behalf of Plaintiff and the Class, actual damages, punitive  
28 damages, attorney's fees and costs, equitable relief, including injunctive relief and  
restitution, and any other relief the Court deems proper for FLAX USA, INC.'s  
CLRA violations.

1 107. Defendants' violations of the CLRA were willful with a conscious  
2 disregard of the rights of Plaintiff and the Class, and Defendants' conduct was also  
3 oppressive and fraudulent, thus supporting an award of punitive damages.

4 108. Consequently, Plaintiff and the Class are entitled to actual and punitive  
5 damages against Defendants for their violations of the CLRA. In addition, pursuant  
6 to Civil Code § 1780, Plaintiff and the Class are entitled to equitable relief requiring  
7 Defendants to refund and restore to Plaintiff and all Class members all monies they  
8 paid for the Flax USA Products, and injunctive relief prohibiting Defendants from  
9 engaging in the misconduct described herein. Pursuant to Civil Code § 1780,  
10 Plaintiff and the Class are also entitled to attorney's fees and costs, and any other  
11 relief the Court deems proper, for FLAX USA, INC.'s CLRA violations.

12 109. Defendant FLAX USA, INC. has not filed any statement or designation  
13 with the California Secretary of State.

14 110. Defendant FLAX USA, INC. has not received a certificate of  
15 qualification from the California Secretary of State.

16 111. Defendant FLAX USA, INC. is not registered with the California  
17 Secretary of State.

18 112. Defendant FLAX USA, INC. has not publicly disclosed any address as  
19 its principal place of business within California.

20 113. Defendant FLAX USA, INC. does not have a publically designated  
21 agent for service of process within California.

22  
23 **PRAYER FOR RELIEF**

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

25 1. An order certifying the Class and appointing Plaintiff as the  
26 representative of the Class, and appointing counsel of record for Plaintiff as counsel  
27 for the Class;

28 2. Actual damages to Plaintiff and all Class members;

- 1           3.     Equitable relief requiring Defendants to refund and restore to Plaintiff
- 2 and all Class members all monies they paid for the Flax USA Products;
- 3           4.     Injunctive relief prohibiting Defendants from engaging in the
- 4 misconduct described herein;
- 5           5.     Punitive damages against all Defendants;
- 6           6.     An award of attorney's fees;
- 7           7.     An award of costs;
- 8           8.     An award of interest, including prejudgment interest; and
- 9           9.     For such other and further relief as the Court may deem proper.

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Dated: July 21, 2014

CHANT & COMPANY  
A Professional Law Corporation  
By:           /S/ – Chant Yedalian            
      Chant Yedalian  
Counsel for Plaintiff

**DEMAND FOR JURY TRIAL**

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

Dated: July 21, 2014

CHANT & COMPANY  
A Professional Law Corporation  
By:           /S/ – Chant Yedalian            
      Chant Yedalian  
Counsel for Plaintiff