

1 Chant Yedalian, State Bar No. 222325
(chant@chant.mobi)
2 CHANT & COMPANY
A Professional Law Corporation
3 1010 N. Central Ave.
Glendale, CA 91202
4 Phone: 877.574.7100
Fax: 877.574.9411
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6 Counsel for Plaintiff
and the Class
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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 GARO MADENLIAN, on behalf of) Case No.: SACV13-01748 JVS (JPRx)
15 himself and all others similarly)
situated,)
16 Plaintiffs,) **DECLARATION OF CHANT**
17 v.) **YEDALIAN IN SUPPORT OF**
18 FLAX USA, INC., and DOES 1) **MOTION FOR AWARD OF**
through 10, inclusive,) **ATTORNEY'S FEES AND COSTS TO**
19 Defendants.) **CLASS COUNSEL AND INCENTIVE**
20) **PAYMENT TO THE CLASS**
21) **REPRESENTATIVE**
22) **HEARING**
23) Date: February 23, 2015
24) Time: 1:30 p.m.
25) Courtroom: 10C
26) Judge: Hon. James V. Selna
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DECLARATION OF CHANT YEDALIAN

I, Chant Yedalian, declare as follows:

I am an attorney at law licensed to practice before all of the courts of the State of California and have been admitted to practice before this Court. I am the attorney for the named Plaintiff Garo Madenlian and the Class certified by the Court. As such, I have personal knowledge of, or am informed and believe, the following facts herein stated. If called as a witness, I could and would testify competently to the following:

1. This Declaration is made in support of the Motion For Award Of Attorney's Fees And Costs To Class Counsel And Incentive Payment To The Class Representative ("Motion").

**The Fees Sought And The Fact That They Are Below
The 25% Benchmark Approved In The Ninth Circuit**

2. In this case, Flax USA has agreed to pay a \$260,000 Settlement Fund plus up to \$70,000 as a separate payment in fees and costs. When the resulting \$330,000 combined amount is considered a common fund, 25% of that common fund equals \$82,500. Thus, a request for fees in the amount of \$82,500, would satisfy the 25% benchmark established in the Ninth Circuit. *In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 379 (9th Cir. 1995) ["Twenty-five percent is the 'benchmark' that district courts should award in common fund cases"]; *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 942 (9th Cir. 2011).

3. Here, however, I do not seek \$82,500 in fees. Instead, pursuant to the agreed-upon maximum as part of the Settlement, I seek a total of \$70,000 in fees

1 and costs.¹ Thus, the request is less than, and well within, the 25% benchmark
2 which is considered a reasonable fee.

3 4. In addition, the Settlement has also achieved non-pecuniary benefits in
4 the form of stipulated injunctive relief which require Defendant Flax USA not to use
5 the phrase "all natural" on any future flax milk packaging. Settlement § IV.D.1.
6 Such non-pecuniary benefits are properly considered in judging the results of the
7 lawsuit. *See, e.g., Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1121,
8 (C.D. Cal. 2008) (taking into account fact that, in addition to monetary aspects, the
9 defendant stopped the practices at issue).

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Attorney Time Worked On This Case

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5. As demonstrated below, reviewing my lodestar as a cross check on the
percentage method also supports the reasonableness of a \$70,000 award of fees and
costs.

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6. Through January 18, 2015, I have devoted 220.5 hours of time on this
case. I expect to devote at least an additional 10 hours on this case appearing for the
final approval and fairness hearing and ensuring that the continuing claims process
is properly administered and that, ultimately, class benefits are paid. This brings the
total minimum expected time which I will devote to this case to at least 230.5 hours.
In addition, because, as of January 18, 2015, the Parties were still in the process of
drafting the joint motion for final approval and related documents, with the initial
draft to be prepared by the defense, I expect to incur yet additional time in
connection with the work on those documents.

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7. The time that I have already devoted to this case was spent on, among
other things, investigating the claims, prosecuting the claims, successfully opposing
a motion to dismiss, securing agreements to exchange information with the defense

¹ Although I have incurred costs in the prosecution of this case, as explained below
my lodestar exceeds \$70,000, thereby rendering the costs moot.

1 followed by exchanges of information and review and analysis of that information,
2 various settlement discussions and negotiations with the defense, including the
3 briefs and other materials prepared in advance of and submitted to the Magistrate
4 Judge for the Settlement Conference in this case, the various settlement discussions
5 and negotiations following the Settlement Conference, negotiation and drafting
6 and/or editing of settlement documents and proposed notices to the Class, work in
7 attempting to secure the Court's preliminary approval of the Settlement, including
8 work on the motion for preliminary approval of the Settlement and the various
9 related documents, drafting the motion for fees and incentive awards, and work to
10 ensure the proper administration of the Settlement.

11 8. To the extent the Court would like to review all of the different tasks
12 which I performed, I am submitting, along with the Chambers' copy of this Motion,
13 an unredacted paper copy of my 16 pages of itemized time records for the Court's *in*
14 *camera* review.² These itemized time records show the tasks which I performed and
15 the amount of time I worked on each task on each date. Each and every task which I
16 performed concerns one or more of the three causes of action prosecuted, and
17 ultimately settled, in this case. The hours I worked were therefore plainly
18 reasonable and necessary to accomplish these tasks and could and would certainly
19 have been billed to a private client who hired counsel to pursue such litigation.

20
21 **Hourly Rate**

22 9. My hourly rate is \$550. My rate is based, in part, on my qualifications
23 and experience, a brief summary of which is set forth in paragraphs 30-40, below.

24 10. My hourly rate is also consistent with the prevailing attorney fee rates
25 within the Central District of California. As an attorney with more than twelve
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27 ² Because the time records are unredacted, they contain sensitive and privileged
28 information as well as work product, and they are therefore submitted for *in camera*
review.

1 years of experience, I am familiar with the prevailing market rates for skilled and
2 competent class action attorneys within the Central District of California. My
3 familiarity is based upon my own work on attorney fee matters, discussions with
4 other class action attorneys, and review of attorney fee applications and court
5 decisions concerning fees in many class action cases.

6 11. My hourly rate is recognized and approved in the Central District of
7 California. *In re Toys "R" Us—Delaware, Inc.—Fair And Accurate Credit*
8 *Transactions Act (FACTA) Litigation*, No. cv-08-01980 MMM (FMOx), 295
9 F.R.D. 438, 462-464 (C.D. Cal. January 17, 2014) [Approving my hourly rate and
10 discussing court's knowledge of prevailing hourly rates within this district, including
11 other cases supporting those rates].

12 12. The fact that I possessed and was adept at using skills to achieve a
13 relatively early settlement is yet another fact that supports the reasonableness of my
14 hourly rate. *Four In One Company, Inc.*, 2014 WL 4078232 *12 (E.D. Cal. 2014)
15 [Holding that the fact that class counsel obtained a settlement early in litigation and
16 avoided increased costs of litigation weighs in favor of class counsel's award.].
17 Indeed, I believe the success is a testament to my skills and effectiveness, and
18 further supports the reasonableness of my hourly rate.

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20 **Lodestar: Hours Worked Multiplied By The Reasonable Hourly Rate**

21 13. 230.5 hours of work multiplied by my \$550 hourly rate yields a total
22 lodestar of \$126,775.

23
24 **The Lodestar, And Its Use As A Cross Check To The Percentage Method, Also**
25 **Demonstrates That The Fees And Costs Sought Are Reasonable**

26 14. The lodestar of \$126,775, and its use to cross check the percentage
27 method, further demonstrates that the \$70,000 in fees and costs sought is reasonable.

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1 **To The Extent The Lodestar Were Insufficient (Which It Is Not),**
2 **A Multiplier Could Have Been Applied To The Lodestar To Support**
3 **The Cross Check**

4 15. As demonstrated above, my lodestar is greater than the fees and costs
5 sought. However, even if the lodestar were lower, a multiplier could have been
6 applied to the lodestar in performing a cross check. *Vizcaino v. Microsoft Corp.*,
7 290 F.3d 1043, 1051 and n.6 (9th Cir. 2002).

8 16. The Ninth Circuit has found that multipliers range from 0.6–19.6, with
9 most multipliers ranging from 1.0 to 4.0. *Vizcaino*, 290 F.3d at 1051 and n.6.

10 17. Here, one of the most compelling reasons that would support a
11 multiplier, if one were necessary, would be the fact that I took this case on a
12 contingency basis with no guarantee of any recovery. The Court can appreciate that
13 litigating a high-stakes class action case against a sizeable corporate defendant
14 represented by adept counsel, with litigation that can often be contentious and
15 prolonged is not appealing to most lawyers, particularly when the plaintiff's lawyer
16 will have to finance the litigation.

17 18. Another compelling fact that would support a multiplier, if one were
18 necessary, is that the amount in fees sought is lower than 25% of the fund recovered.
19 A reasonable contingency fee in the private marketplace often exceeds 25%. Unless
20 otherwise proscribed by law (such as, for example, MICRA), the cases which I
21 handle on a contingency basis generally consist of a negotiated contingency fee of
22 33 $\frac{1}{3}$ % to 45% of the gross recovery. This range is well within the range of
23 contingency fees freely negotiated in the legal marketplace for a matter involving
24 risks and issues on the scale of this litigation. Thus, were a multiplier necessary, the
25 application of a multiplier in an amount necessary to approximate a contingency fee
26 percentage that would be reasonable to receive in the private marketplace would be
27 justified.

28

1 19. The Ninth Circuit has held that both of the foregoing factors properly
2 support the application of an upward multiplier:

3 "The bar against risk multipliers in statutory fee cases does not apply to
4 common fund cases. *WPPSS*, 19 F.3d at 1299–1300. Indeed, 'courts have
5 routinely enhanced the lodestar to reflect the risk of nonpayment in
6 common fund cases.' *Id.* at 1300. This mirrors the established practice in
7 the private legal market of rewarding attorneys for taking the risk of
8 nonpayment by paying them a premium over their normal hourly rates
9 for winning contingency cases. *Id.* at 1299. In common fund cases,
10 'attorneys whose compensation depends on their winning the case[] must
11 make up in compensation in the cases they win for the lack of
12 compensation in the cases they lose.' *Id.* at 1300–01 (internal citation
13 and quotation omitted)." *Vizcaino*, 290 F.3d at 1051.

14 20. Another fact that would support a multiplier, if one were necessary, is
15 that, as a result of this case, I was precluded from taking on other work. It goes
16 without saying that there are only a set number of hours in any given day, month
17 year, etc. I can only properly litigate a limited number of cases at any one time.
18 Thus, as a result of the time and commitment actually required by this case, I was
19 precluded from taking on and working on other matters which were available to me
20 and where my time could have otherwise been spent.

21
22 **The Incentive Award Requested For The Class Representative**

23 21. I respectfully request that the named Plaintiff and only Class
24 representative, Garo Madenlian, be awarded an incentive award in the amount of
25 \$5,000. As this Court preliminarily found, this amount is fair and reasonable. Dkt.
26 #40 at p. 13.

27 22. Were it not for Mr. Madenlian stepping forward and shouldering the
28 duties of protecting and prosecuting the interests of other Settlement Class members,

1 it is likely the interests of the Settlement Class would neither have been prosecuted,
2 nor benefited. Indeed, the parties have acknowledged that, to their knowledge, there
3 is no other litigation, either pending or otherwise, on a class or individual basis,
4 concerning the claims in this lawsuit.

5 23. Moreover, I believe Mr. Madenlian has done all things reasonably
6 expected of him in his capacity as Class Representative. Mr. Madenlian was
7 subjected to liability for defense costs in the event the litigation was unsuccessful.
8 By stepping forward to shoulder this action on behalf of the class, Mr. Madenlian
9 also took on other risks, including the risk of subjecting himself to intrusive
10 discovery. Mr. Madenlian also regularly and consistently communicated with me
11 (including in-person, by phone and by email) throughout the time this lawsuit was
12 pending. Through my discussions and other communications with him, I know that
13 he also reviewed relevant documents, provided his input, and otherwise kept
14 apprised of litigation related events and developments. He also provided his ideas
15 and input to me in the various rounds of settlement negotiations and exchanges. He
16 also traveled from Orange County (where he resides) and participated in the
17 Settlement Conference before the Magistrate Judge in Los Angeles. He also
18 participated in the process to finalize the written settlement terms and documents,
19 and the post-agreement phases that followed. I believe that he was able to
20 understand the issues in this litigation and meaningfully participate in negotiating
21 the Settlement, particularly since Mr. Madenlian is an attorney (and a former Deputy
22 District Attorney for the County of San Bernardino). In sum, I believe Mr.
23 Madenlian contributed as much of his valuable time as this litigation demanded to
24 ensure a vigilant prosecution of and favorable outcome for the best interests of the
25 Settlement Class. I believe these facts further support an incentive award because
26 they "recognize [a class representative's] willingness to act as a private attorney
27 general." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir.
28 2009).

1 24. I believe that but for Mr. Madenlian's actions, there would be no
2 resulting cash benefit to individual Settlement Class members or the injunctive relief
3 that was obtained securing an end to Defendant's "all natural" labeling practices.
4 Thus, in addition to cash benefits, Mr. Madenlian effectuated substantial change of
5 conduct, thereby accomplishing the consumer protection objectives of the three
6 causes of action he pursued. He was also willing and stepped forward to act as a
7 private attorney general where, to my knowledge, no other plaintiff has done so.

8 25. The fact that the Court has already made a preliminary finding that Mr.
9 Madenlian's incentive award is fair and reasonable further supports the
10 reasonableness of the award. Dkt. #40 at p. 13. Similarly, the fact that the Court
11 also made a preliminary finding that the overall Settlement is fair, adequate and
12 reasonable, also supports the significance of the benefits achieved through the Class
13 Representative's initiative and perseverance.

14 26. Based upon my time records as well as my discussions and
15 communications with him, I estimate that Mr. Madenlian devoted approximately 30-
16 35 hours of his time to pursue this litigation. By definition, the time he devoted to
17 this litigation was time spent away from other matters in an effort to advance the
18 interests of the entire class.

19 27. Another factor properly considered by the Court in assessing an
20 incentive award is the personal benefit, or lack thereof, enjoyed by the class
21 representative as a result of the litigation. *In re Toys "R" Us-Delaware, Inc.—Fair
22 And Accurate Credit Transactions Act (FACTA) Litigation*, No. cv-08-01980
23 MMM (FMOx), 295 F.R.D. 438, 472 (C.D. Cal. 2014):

24 "An incentive award may be appropriate when a class
25 representative will not gain any benefit beyond that he would receive as
26 an ordinary class member. See *Razilov*, 2006 WL 3312024, at *4
27 (approving the payment of an incentive award where the only benefit a
28 class representative was going to receive from a settlement was the same

1 statutory damages other class members would receive); *Van Vranken*,
2 901 F.Supp. at 299 (where a class representative's claim made up 'only a
3 tiny fraction of the common fund,' a substantial incentive award was
4 appropriate). The named plaintiffs in this action will receive no relief
5 beyond that available to members of the class in general; absent an
6 incentive award, they will each be eligible to submit a claim for a \$5,
7 \$15, or \$30 voucher. This factor, therefore, also favors approval of an
8 incentive award." *Ibid.*

9 28. I also believe that the amount requested is also reasonable in relation to
10 other cases. In *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001),
11 the court approved incentive awards of \$300,000 to each named plaintiff in
12 recognition of the services they provided to the class by responding to discovery,
13 participating in the mediation process and taking the risk of stepping forward on
14 behalf of the class. In *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 300
15 (N.D. Cal. 1995), a \$50,000 incentive award was approved for similar participation.
16 In *In re Toys "R" Us—Delaware, Inc.—Fair And Accurate Credit Transactions Act*
17 *(FACTA) Litigation*, No. cv-08-01980 MMM (FMOx), 295 F.R.D. 438, 472 (C.D.
18 Cal. 2014), the court awarded each of the three class representatives a \$5,000
19 incentive payment.

20 29. In sum, I believe the requested incentive payment of \$5,000 to Mr.
21 Madenlian, the only Class Representative in this case, for the valuable time and
22 resources he contributed to advance this litigation is fair and reasonable, and I
23 respectfully request that the Court approve and award this amount as his incentive
24 award.

25
26 **Qualifications of Counsel**

27 30. I am an attorney and a consumer activist.
28

1 31. As an attorney, I have had extensive experience in consumer related
2 lawsuits, including complex cases, coordinated matters, multidistrict litigations
3 ("MDL") and class actions and other representative suits (including suits filed under
4 California Business and Professions Code Section 17200 before and after its
5 amendment by Proposition 64).

6 32. I have been appointed class counsel on several occasions in both
7 federal and state courts.

8 33. Indeed, more than five years ago, this very Court (in ruling on a
9 contested class certification motion) in another consumer case found me to be an
10 adequate class counsel. *E.g., Tchoboian v. Parking Concepts, Inc., et al.*, SACV09-
11 422 JVS (ANx) (C.D. Cal. July 16, 2009), 2009 WL 2169883 at *6 ("The Court
12 finds that the proposed class counsel is qualified, competent, and have no known
13 conflicts of interest with the proposed class representative."). I prosecuted the
14 *Tchoboian* case to conclusion, as I have prosecuted to conclusion several other cases
15 in federal and state court to conclusion on a class basis.

16 34. I am currently handling several other food labeling cases in other
17 courts, including the Northern District of California as well as in the Superior Court
18 for the County of Los Angeles (found to be "Complex" and assigned to the Central
19 Civil West Courthouse)

20 35. This Court can appreciate that class action litigation, particularly in a
21 relatively new area such as food labeling, requires a strong commitment. I made
22 that commitment by personally researching the laws and facts involved in this case,
23 both before filing this lawsuit as well as during this litigation, as was demonstrated,
24 for example, by Plaintiff's opposition to the Defendant's motion to dismiss, which I
25 personally researched, briefed and argued.

26 36. Although food labeling litigation is a relatively new area of the law, I
27 am no stranger to "cutting-edge" litigation involving consumer rights. I have been
28 involved in various novel and "cutting edge" litigation involving the enforcement of

1 consumer rights, including statutory rights and constitutional rights. I am a sincere
2 believer in protecting the rights of consumers and am committed to act in their best
3 interests. For example, I have personally (as a party and lead attorney) filed
4 lawsuits to help preserve access to the court and jury system. I filed *Yedalian v.*
5 *Kaiser Foundation Health Plan, Inc., et al.* (L.A. Superior Court Case No.
6 BC288469), which was a lawsuit against several of California's largest HMO's
7 challenging the enforceability of their arbitration clauses and asserting that their
8 representations to their patient members - that binding arbitration is a member's only
9 means of legal recourse to resolve disputes with their HMO - are false and
10 misleading and violate state consumer protection laws. *Yedalian* ultimately resulted
11 in a landmark settlement with the Kaiser and PacifiCare groups of defendants
12 (respectively the State's largest and fifth largest HMO's) requiring the HMO's to
13 provide written notification to patient members concerning their rights when
14 disputes arose.

15 37. My expertise in protecting consumer rights has been recognized and
16 sought by various organizations. For example, when the late Peter Jennings decided
17 to air a special, multiple-part series on consumer arbitration clauses on ABC World
18 News Tonight with Peter Jennings, the producers of the show requested my services
19 as a consultant, and I agreed to provide same, ultimately resulting in information
20 and materials which were used in the series, including an interview of one of my
21 clients whose then pending case was featured on the series as a result of my
22 consulting services. My work and experiences have been featured in multiple other
23 venues including radio, television, newspapers, magazines, etc.

24 38. My work on behalf of consumers does not end with my legal efforts as
25 an attorney. I believe I am specially well suited to represent consumers because, in
26 addition to my legal experience, I am a consumer activist. I have worked hand-in-
27 hand with various consumer protection organizations including the Foundation for
28 Taxpayer and Consumer Rights ("FTCR"), Cal PIRG, AARP, Congress of

1 California Seniors, Sierra Club and others to promote and preserve consumer rights.
2 For example, I along with the FTCR and the California Nurses Association held the
3 very first campaign in Oakland, California spearheading the movement to defeat
4 Proposition 64 (which sought to amend California's Unfair Competition Law, Cal.
5 Bus. & Prof. Code § 17200 et seq.). This was followed by editorial board meetings
6 and rallies and other grass-root type events throughout California to defeat
7 Proposition 64, in which I actively participated. Several of the organizations I have
8 worked with including the FTCR and AARP have written articles about my
9 consumer related efforts.

10 39. In addition to working with consumer organizations, I have also
11 worked with members of the community such as musicians and other artists to
12 create content to educate and galvanize the public on consumer related issues. An
13 example of one such project, which I produced, directed, and co-wrote, is a video
14 parody about the high-cost of prescription medications confronting seniors and other
15 residents of the United States (viewable at www.todaysspecial.org).

16 40. In sum, I believe my experience and expertise as a consumer attorney,
17 my genuine interest in protecting consumer rights, and my work to date in this food
18 labeling case, adequately qualify me to serve as Class Counsel on behalf of the best
19 interests of the consumer Class.

20 41. I do not know of any conflict of interest between myself or my
21 company and any member of the Class which should or would preclude me from
22 representing the Class.

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

25 Executed this 19th day of January 2015 at Los Angeles, California.

26
27 /S/ – Chant Yedalian
28 CHANT YEDALIAN
Declarant

Motions

[8:13-cv-01748-JVS-JPR Garo Madenlian v. Flax USA Inc. et al](#) **CASE CLOSED on 08/18/2014**

(JPRx), **CLOSED**, DISCOVERY, MANADR, PROTORD

UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Yedalian, Chant on 1/21/2015 at 10:10 AM PST and filed on 1/21/2015

Case Name: Garo Madenlian v. Flax USA Inc. et al

Case Number: [8:13-cv-01748-JVS-JPR](#)

Filer: Garo Madenlian

WARNING: CASE CLOSED on 08/18/2014

Document Number: [41](#)

Docket Text:

NOTICE OF MOTION AND MOTION for Attorney Fees And Costs To Class Counsel And Incentive Payment To The Class Representative filed by Plaintiff Garo Madenlian. Motion set for hearing on 2/23/2015 at 01:30 PM before Judge James V. Selna. (Attachments: # (1) Declaration of Chant Yedalian)(Yedalian, Chant)

8:13-cv-01748-JVS-JPR Notice has been electronically mailed to:

Chant Yedalian chant@chant.mobi, chantyed@aol.com, chantyed@gmail.com

Karen Elizabeth Walter kwalter@rutan.com, hdall@rutan.com

Steven J Goon sgoon@rutan.com, ctennell@rutan.com

8:13-cv-01748-JVS-JPR Notice has been delivered by First Class U. S. Mail or by other means **BY THE FILER** to :

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\Fees Incentive Motion FlaxUSA (For Filing).pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=1/21/2015] [FileNumber=18818572-0] [1024d18745350b9f6e7486fc06d178a2de38d39b163121b201e59f787b17d2dbd995fc503638de82d4f7cc6f7b6b4f6776ca8adbf5658498dfe6d5ba7f4a400a]]

Document description:Declaration of Chant Yedalian

Original filename:C:\fakepath\Fees Incentive Motion CY Decl FlaxUSA (For Filing).pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=1/21/2015] [FileNumber=18818572-1] [31ed3586d88b96b6441b7a4876a8fb3a932cb7fa946d6f61a27dc9d49e77e9c3082097cf03a5dc61a482f48804c644a3bce8980f460952dd086f08a745a8c10e]]