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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF LOS ANGELES**

15 LARRY TRAN, ROBERTO MORAN, and) Case Nos. BC561427; BC588986 (related)
16 OSIE MARSHALL, on behalf of)
17 themselves and all others similarly situated,) *Assigned for all purposes to the*
18) *Hon. Daniel J. Buckley, Dept. 1*
19 Plaintiffs,)

20 v.) CLASS ACTION

21 GOOD HEALTH NATURAL PRODUCTS,) **DECLARATION OF CHANT YEDALIAN IN**
22 INC., a Delaware corporation,) **SUPPORT OF MOTION FOR FINAL**
23) **APPROVAL OF CLASS ACTION**
24) **SETTLEMENT, AND FOR AWARD OF**
25) **ATTORNEYS' FEES AND COSTS TO**
26) **CLASS COUNSEL AND INCENTIVE**
27) **AWARD TO THE CLASS**
28) **REPRESENTATIVES**

Hearing Date: January 14, 2020
Time: 9:00 a.m.
Dept.: 1

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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. I am also admitted to the Second, Fifth, Sixth, Ninth, Eleventh, and District of Columbia federal Circuit Courts of Appeals, and the federal District Courts for the Central, Northern, Eastern and Southern Districts of California, the Eastern District of Wisconsin, and the Western District of Tennessee. I am the attorney for the named Plaintiff Larry Tran in this matter and one of the lead Class Counsel appointed by the Court as part of its March 7, 2019 Order granting preliminary approval of the Settlement. 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 concurrently filed Unopposed Motion For Final Approval Of Class Action Settlement, And For Award Of Attorneys’ Fees And Costs To Class Counsel And Incentive Award To The Class Representatives.

Qualifications of Counsel

2. I am an attorney and a consumer activist.

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

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

5. I have extensive experience with cases, like the instant matter, which allege food mislabeling violations.

6. In fact, I have served as a lead class counsel on one of the largest food mislabeling class action settlements in the country resulting in an \$8.995 million settlement, plus extensive equitable relief which requires various labeling and marketing changes, for Blue Diamond almond milk and nut-thins products. I litigated the almond milk allegations in various different courts,

1 state and federal. One of the cases concerning the almond milk allegations, *Melvin, et al. v. Blue*
2 *Diamond Growers*, Case No. BC532044, was litigated in this Courthouse. Before settlement was
3 reached, I worked on and filed, among other things, a contested class certification motion in
4 *Melvin*. The class certification motion filings in *Melvin* included an economist's declaration which
5 set forth damages/remedies models and methodologies, which I worked on extensively with the
6 economist to develop. I also litigated the nut-thins allegations before Judge Berle in *Blue Diamond*
7 *Growers Product Labeling Cases*, Judicial Council Coordination Proceeding ("JCCP") No. 4822.
8 Ultimately, a nationwide class settlement was reached with Blue Diamond Growers resulting in an
9 \$8.995 million settlement (\$7,500,000 fund for almond milk, and \$1,495,000 fund for nut-thins).
10 Among the lead counsel involved and appointed in the matters, I was the only counsel appointed
11 to serve as lead counsel for *both* the almond milk class and the nut-thins class. Preliminary and
12 final approval of the nationwide class settlement was ultimately sought and granted in the Circuit
13 Court of Washington County, Arkansas in *Townsend, et al, v. Blue Diamond Growers*, Case No.
14 CV 14-958-4.

15 7. Other examples of my involvement with food mislabeling cases include a published
16 opinion in a case concerning "natural" representations, *Anderson v. The Hain Celestial Group,*
17 *Inc.*, 87 F.Supp.3d 1226 (N.D. Cal. 2015), and class-wide settlements in two other cases involving
18 "natural" representations wherein both of which I was lead class counsel, *Madenlian, et al. v. Flax*
19 *USA, Inc.*, U.S.D.C. Case No. SACV13-01748 JVS (JPRx) (C.D. Cal.) and *Tran, et al. v. Good*
20 *Karma Food Technologies, Inc., et al.*, Case No. BC561218 (Los Angeles Superior Court).

21 8. Although food labeling litigation is a relatively new area of the law, I am no
22 stranger to "cutting-edge" litigation involving consumer rights. I have been involved in various
23 novel and "cutting edge" litigation involving the enforcement of consumer rights, including
24 statutory rights and constitutional rights. I am a sincere believer in protecting the rights of
25 consumers and am committed to act in their best interests. For example, I have personally (as a
26 party and lead attorney) filed lawsuits to help preserve access to the court and jury system. I filed
27 *Yedalian v. Kaiser Foundation Health Plan, Inc., et al.* (L.A. Superior Court Case No.
28 BC288469), which was a lawsuit against several of California's largest HMO's challenging the

1 enforceability of their arbitration clauses and asserting that their representations to their patient
2 members - that binding arbitration is a member's only means of legal recourse to resolve disputes
3 with their HMO - are false and misleading and violate state consumer protection laws. *Yedalian*
4 ultimately resulted in a landmark settlement with the Kaiser and PacifiCare groups of defendants
5 (respectively the State's largest and fifth largest HMO's) requiring the HMO's to provide written
6 notification to patient members concerning their rights when disputes arose.

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

15 10. My work on behalf of consumers does not end with my legal efforts as an attorney.
16 I believe I am specially well suited to represent consumers because, in addition to my legal
17 experience, I am a consumer activist. I have worked hand-in-hand with various consumer
18 protection organizations including the Foundation for Taxpayer and Consumer Rights ("FTCR"),
19 Cal PIRG, AARP, Congress of California Seniors, Sierra Club and others to promote and preserve
20 consumer rights. For example, I along with the FTCR and the California Nurses Association held
21 the very first campaign in Oakland, California spearheading the movement to defeat Proposition
22 64 (which sought to amend California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200
23 et seq.). This was followed by editorial board meetings and rallies and other grass-root type events
24 throughout California to defeat Proposition 64, in which I actively participated. Several of the
25 organizations I have worked with including the FTCR and AARP have written articles about my
26 consumer related efforts.

27 11. In addition to working with consumer organizations, I have also worked with
28 members of the community such as musicians and other artists to create content to educate and

1 galvanize the public on consumer related issues. An example of one such project, which I
2 produced, directed, and co-wrote, is a video parody about the high-cost of prescription
3 medications confronting seniors and other residents of the United States (viewable at
4 www.todaysspecial.org).

5 12. In sum, I believe my experience and expertise as a consumer attorney, my genuine
6 interest in protecting consumer rights, and my work to date in food mislabeling litigation,
7 including but not limited to this action, adequately qualify me to serve as Class Counsel on behalf
8 of the best interests of the consumer Settlement Class.

9 13. I do not know of any conflict of interest between myself or my company and any
10 member of the Settlement Class which should or would preclude me from representing the
11 Settlement Class.

12 **Attorney's Fees**

13 14. As one of the Class Counsel in this matter, I respectfully request a total award of
14 attorneys' fees in the amount of \$333,333.33, to be paid from the Settlement Fund. (Agreement §
15 IX.A.) Pursuant to the Agreement, the attorneys' fees shall be divided 50% to Counsel One, P.C.
16 and 50% to Chant & Company A Professional Law Corporation. (Agreement § IX.A.)

17 15. These fees would compensate Class Counsel for investigating the facts,
18 prosecuting the lawsuits, negotiating the Settlement, drafting the Settlement documents, obtaining
19 the Court's preliminary and final approval of the Settlement, causing Defendant to change its
20 labeling and marketing practices, and ensuring that the Settlement is properly administered and
21 implemented.

22 16. An award of attorneys' fees equal to one-third (33 1/3%) of the Settlement Fund is
23 within the fair market rate range for services. Unless otherwise specifically proscribed by law
24 (such as, for example, MICRA), the cases which I handle on a contingency basis generally consist
25 of a negotiated contingency fee of the gross recovery. A one-third contingent fee is well within
26 the range of contingency fees freely negotiated in the legal marketplace for a matter involving the
27 risks and issues of this litigation. I would not hesitate to ask a minimum of one-third of the gross
28 recovery in a matter which involves significant risks of non-payment.

1 17. Up to December 13, 2019, I have devoted 309.08 hours of my time on this matter. I
2 expect to devote approximately 8 hours of additional time after December 13, 2019, including for
3 matters such as finalizing the motion for final approval and related documents, communications
4 with counsel and the Claims Administrator, appearing for the final approval hearing, and work
5 relating to the continuing administration of this Settlement.

6 18. To the extent the Court would like to review the different tasks I performed, I am
7 submitting an unredacted paper copy of my itemized time records for the Court's *in camera*
8 review.¹

9 19. These itemized time records show the tasks I performed and the amount of time I
10 worked.

11 20. Each and every task which I performed concerns the causes of action prosecuted,
12 and ultimately settled, in this matter.

13 21. My current hourly rate is \$650. I have had this current rate since April 2017.
14 “[D]istrict courts have the discretion to compensate prevailing parties for any delay in the receipt
15 of fees by awarding fees at current rather than historic rates in order to adjust for inflation and loss
16 of the use funds.” *Gates v. Deukmejian*, 987 F. 2d 1392, 1406 (9th Cir. 1992). If my current rate
17 were not applied for the time devoted on this matter prior to April 2017, because I devoted 97
18 hours up until March 27, 2017, the lodestar (set forth below) would decrease by \$9,700.00.

19 22. I adjusted my hourly rate in April 2017 to adjust for having made no upward
20 increases for the previous five years. From April 2012 until March 2017, my hourly rate was \$550.
21 See, e.g., *In re Toys “R” Us—Delaware, Inc.—Fair And Accurate Credit Transactions Act*
22 *(FACTA) Litigation*, No. cv-08-01980 MMM (FMOx), 295 F.R.D. 438, 462-464 (C.D. Cal.
23 January 17, 2014), recognizing and approving my previous hourly rate.

24 23. Prior to April 2012, my approved hourly rate was \$500. E.g., *Jarchafjian v.*
25 *American Multi-Cinema, Inc., et al.*, No. cv-09-03434 JHN (AJWx), 2011 U.S. Dist. LEXIS
26 158005 *6 (C.D. Cal. October 6, 2011).

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28 ¹ Because the time records are unredacted, they contain sensitive and privileged information as well as work product, and they are therefore submitted for *in camera* review.

1 24. My current rate is based, in part, on my qualifications and experience, a brief
2 summary of which is set forth in paragraphs 2-12, above.

3 25. Moreover, my current rate is further supported by the fact that this is a class action
4 case, and class action work requires specialized learning and experience.

5 26. My 309.08 hours of work devoted up to December 13, 2019 multiplied by my
6 \$650 hourly rate yields a lodestar of \$200,902.00. The 8 hours estimated to be incurred after
7 December 13, 2019 adds an additional \$5,200.00 to the lodestar, for a total lodestar of
8 \$206,102.00.

9
10 **Reimbursement Of Costs**

11 27. I seek reimbursement in the amount of \$5,741.13 consisting of the following costs
12 (to be paid from the Settlement Fund):

Complaint filing fee:	435.00
Complex case fee:	1,000.00
Advance jury fees deposit:	150.00
Stipulation fees:	40.00
Court Reporter and Transcript fees:	2,605.00
File & Serve Xpress fees:	393.00
Atty Service & Postage fees:	201.13
CourtCall fees:	94.00
Parking and misc:	75.00
Estimated Final Approval and later expenses for Court Reporter and Transcript, File & Serve Xpress, Atty Service, Parking:	748.00
TOTAL:	\$5,741.13

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Incentive Award for Each of the Class Representatives

28. I respectfully request that each of the Class Representatives be awarded an incentive award in the amount of \$3,333.33.

29. Were it not for the Class Representatives stepping forward and shouldering the duties of protecting and prosecuting the interests of other Settlement Class Members, I believe that it is likely the interests of the Settlement Class would neither have been prosecuted, nor benefited.

30. Moreover, I believe the Class Representatives have done all things reasonably expected of them in their capacity as Class Representative. By stepping forward to shoulder this action on behalf of the class, they also took on risks, including the risk of being subjected to liability for defense costs in the event the litigation was unsuccessful. Based on my interactions with Mr. Tran, he regularly and consistently communicated with me throughout the time this matter was pending. Through my discussions and other communications with Mr. Tran I know that he reviewed relevant documents, provided his input, and otherwise kept apprised of litigation related events and developments. Mr. Tran also provided his ideas and input to me in the various rounds of settlement negotiations and exchanges. I am informed that the other Class Representatives, Roberto Moran, Osie Marshall, similarly participated. (Orshansky Decl. ¶¶ 68-70, 73, 75.) In sum, I believe the Class Representatives contributed as much of their valuable time as this litigation demanded to ensure a vigilant prosecution of and favorable outcome for the best interests of the Settlement Class. I believe these facts further support an incentive award because they “recognize [a class representatives] willingness to act as a private attorney general.” *In re Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1393-1394; *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009).

31. I believe that but for the Class Representatives’ actions, there would be no resulting benefit to individual Settlement Class Members or *cy pres* benefits. Moreover, it is only as a result of the Class Representatives’ actions that the Defendant ceased its offensive conduct and agreed to implement substantial labeling and marketing changes. Thus, the Class Representatives effectuated substantial change of conduct.

1 32. The fact that the Court has already made a preliminary finding that the Settlement
2 is fair, adequate and reasonable, also supports the significance of the benefits achieved through the
3 Class Representatives' initiative and perseverance.

4 33. Based upon my time records as well as my communications with Mr. Tran, I
5 estimate that he devoted approximately 20-25 hours of his time to pursue this litigation. By
6 definition, the time he devoted to this litigation was time spent away from work and/or leisure in
7 an effort to advance the interests of the entire class.

8 34. Another factor properly considered by the Court in assessing an incentive award is
9 the personal benefit, or lack thereof, enjoyed by the class representative as a result of the litigation.
10 *In re Toys "R" Us—Delaware, Inc.—Fair And Accurate Credit Transactions Act (FACTA)*
11 *Litigation*, No. cv-08-01980 MMM (FMOx), 295 F.R.D. 438, 472 (C.D. Cal. January 17, 2014):

12 An incentive award may be appropriate when a class representative will not
13 gain any benefit beyond that he would receive as an ordinary class member. See
14 *Razilov*, 2006 WL 3312024, at *4 (approving the payment of an incentive award
15 where the only benefit a class representative was going to receive from a settlement
16 was the same statutory damages other class members would receive); *Van Vranken*,
17 901 F.Supp. at 299 (where a class representative's claim made up 'only a tiny fraction
of the common fund,' a substantial incentive award was appropriate). The named
plaintiffs in this action will receive no relief beyond that available to members of the
class in general; absent an incentive award, they will each be eligible to submit a
claim for a \$5, \$15, or \$30 voucher. This factor, therefore, also favors approval of an
incentive award.

18 35. I also believe that the amount requested is also reasonable in relation to other cases.
19 In *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001), the court approved
20 incentive awards of \$300,000 to each named plaintiff in recognition of the services they provided
21 to the class by responding to discovery, participating in the mediation process and taking the risk
22 of stepping forward on behalf of the class. In *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294,
23 300 (N.D. Cal. 1995), a \$50,000 incentive award was approved for similar participation.

24 36. In sum, I believe the requested incentive payment of \$3,333.33 to each of the Class
25 Representatives in this matter, for the valuable time and resources they contributed to advance this
26 litigation is fair and reasonable, and I respectfully request that the Court approve and award this
27 amount to each of them as their incentive award.

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

Executed this 13th day of December 2019.



CHANT YEDALIAN
Declarant