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 18  
 19 **UNITED STATES DISTRICT COURT**  
 20 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**  
 21

22 CHRIS WERDEBAUGH, individually and  
 on behalf of other similarly situated,  
 23  
 Plaintiff,  
 24  
 v.  
 25  
 BLUE DIAMOND GROWERS,  
 26  
 Defendant.

CASE NO. 5:12-cv-02724 LHK  
**STIPULATION AND ~~[PROPOSED]~~  
 ORDER REGARDING AMENDED  
 COMPLAINT AND DISMISSAL WITH  
 PREJUDICE OF SONG-BEVERLY ACT  
 AND MAGNUSON-MOSS ACT CLAIMS**  
 Judge: Hon. Lucy H. Koh

1 Pursuant to the Court's Minute and Case Management Order dated May 1, 2013,  
2 the parties hereby stipulate and agree as follows:

3 WHEREAS, Blue Diamond contends that Plaintiff's Complaint is deficient in  
4 several respects and should be dismissed in its entirety;

5 WHEREAS, pursuant to the May 1, 2013 Minute and Case Management Order,  
6 the Court ordered the parties to meet and confer to discuss Blue Diamond's concerns  
7 regarding the sufficiency of the allegations in the Complaint and further ordered Blue  
8 Diamond to identify deficiencies in the Complaint that Plaintiffs will attempt to cure in an  
9 amended complaint;

10 WHEREAS, the parties have so met and conferred as required by the Court's May  
11 1, 2013 Order;

12 WHEREAS, without waiving its alternative arguments for dismissal of each and  
13 every cause of action in the Complaint, Blue Diamond contends that Plaintiff's first,  
14 second, third, fourth, fifth, and sixth causes of action fail to meet the pleading requirement  
15 of Federal Rule of Civil Procedure 8(a), as well as the heightened pleading requirement  
16 of Federal Rule of Civil Procedure 9(b). Accordingly, Blue Diamond identifies the  
17 following deficiencies in the allegations related to these causes of action:

- 18 • The Complaint fails to specify which Blue Diamond products are at issue in  
19 this case, i.e., which products, if any, were purchased by Plaintiff and when.
- 20 • The Complaint fails to specify which allegedly unlawful representations  
21 appeared on the particular Blue Diamond products allegedly purchased by  
22 Plaintiff.
- 23 • The Complaint fails to specify the particular state or federal regulations that  
24 Blue Diamond allegedly violated with respect to specific Blue Diamond  
25 products.
- 26 • The Complaint fails to specify how Blue Diamond allegedly violated  
27 particular state or federal regulations with respect to specific Blue Diamond  
28 products.

- 1 • The Complaint fails to clearly specify the particular statements Plaintiff
- 2 relied upon when purchasing the identified Blue Diamond products and
- 3 when Plaintiff so relied.
- 4 • The Complaint fails to sufficiently identify which particular Blue Diamond
- 5 statements are allegedly likely to deceive reasonable consumers.
- 6 • The allegations referring generically to "Misbranded Food Products" are
- 7 insufficient to specifically identify either the products at issue or the
- 8 particular state or federal regulations allegedly violated.

9 THEREFORE, the parties hereby stipulate and agree as follows:

10 1. Plaintiff agrees to attempt to cure the above-identified deficiencies in the

11 Complaint with an amended complaint to be filed by May 24, 2013.

12 2. Plaintiff agrees to dismiss with prejudice both the eighth cause of action for

13 violation of the Song-Beverly Act and the ninth cause of action for violation of the

14 Magnuson-Moss Act.

15 IT IS SO STIPULATED.

16 PRATT & ASSOCIATES

17 DATED: May 10, 2013

18 By: /S/ Ben F. Pierce Gore  
19 Ben F. Pierce Gore  
20 Attorneys for Plaintiff Chris Werdebaugh

21 HANSON BRIDGETT LLP

22 DATED: May 10, 2013

23 By: /S/ Megan Oliver Thompson  
24 Megan Oliver Thompson  
25 Attorneys for Defendant Blue Diamond Growers

26 PURSUANT TO STIPULATION, IT IS SO ORDERED.

27 DATED: May 13, 2013

28   
Hon. Lucy H. Koh  
United States District Court Magistrate Judge