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Dockets Management Staff (HFA-305)
U.S. Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

RE: Docket No. FDA–2018–N–3522 for "*Use of the Names of Dairy Foods in the Labeling of Plant-Based Products*" (Publication Date: November 21, 2018)

Dear FDA Desk Officer:

The Natural Products Association (NPA) is submitting this letter as general comment to docket FDA–2018–N–3522 (Docket Name: Use of the Names of Dairy Foods in the Labeling of Plant-Based Products). The NPA was founded in 1936 to promote and protect the unique values and shared interests of retailers and suppliers of natural nutritional foods and natural products, including conventional foods, medical foods, dietary supplements, and foods for special dietary use. The NPA is a non-profit 501(c)(6) association whose mission is to advocate for the rights of consumers to have access to products that will maintain and improve their health, and for the rights of retailers and suppliers to sell these products. We are the oldest and largest trade association in the natural products industry representing over 1,100 members accounting for almost 10,000 retail, manufacturing, wholesale, and distribution locations of natural products, including foods, dietary supplements, homeopathic products, and health/beauty aids. The vast majority of our members either sell, manufacture, or distribute food and dietary supplement products regulated by the Center for Food Safety and Applied Nutrition (CFSAN). Some of our members sell or manufacture plant-based products with 'milk', 'cheese', or 'yogurt' on the label, products with dairy terms as part of the tradename, and products with milk-derived ingredients.

Therefore, NPA has an interest to submit comments on this topic. Thank you for the opportunity to comment.

Background

On September 28, 2018, FDA published a notice in the Federal Register for public comment.[1] FDA's notice invites comments on the labeling of plant-based products with names that include the names of dairy foods such as "*milk*," "*cultured milk*," "*yogurt,*" and "*cheese*." FDA is interested in learning how consumers use these plant-based products and how they understand terms such as "*milk*" or "*yogurt*" when included in the names of plant-based products. FDA is also interested in learning whether consumers are aware of and understand differences between the basic nature, characteristics, ingredients, and nutritional content of plant-based products and their dairy counterparts.

The timing for this notice seems to be precipitated by plaintiffs in recent lawsuits which have focused on nutritional differences between plant-based milk brands and dairy milk, rather than dwelling on alleged violations in the codified federal regulations over the standard of identity for milk (which limit it to the lacteal secretions of cows). In one case vs Blue Diamond Growers in May 2017 on the grounds of federal pre-emption, the judge ruled that a reasonable consumer would not assume that two distinct product have the same nutritional content. When the case was appealed, the Ninth Circuit agreed with the original ruling. The unpublished memo judgement stated "*[a] reasonable jury could not conclude that almond milk is 'nutritionally inferior' to dairy milk … as two distinct food products necessarily have different nutritional profiles*." Unfortunately, the unpublished memo does not set a legal precedent, meaning other courts cannot cite it. This public notice and comment aims to collect data regarding any consumer confusion on labels and whether consumers understand the nature, ingredients and nutritional content of plant-based products that consumers may substitute for dairy foods.

[1] Federal Register Vol. 83, No. 189 pg. 49103-49107.

Descriptions of Plant Milks in Recipes and Poultices were Common Between Ancient Civilizations Through the Middle Ages

In the ancient Roman manuscript "*De re coquinaria*", Marcus Gavius Apicius writes about the use of plant milks as common ingredients in the kitchen. He mentioned "*Lacte Nucis … sucu seu lacte illius arboris*", which translates to "*nut milk*" and the technique of "*extracting the milk of some plants and trees*". During the middle ages, plant milks were just as common an ingredient as salt or animal milk. Recipes describing nut milks are repeated in cooking manuscripts throughout medieval Europe. The twelfth century Catalan manuscript "*Llibre de Sent Sovi*" highlights Menjar blanc, a soup made with almond milk ("*Illet d'ametles*").

England's "*The Forme of Cury*," which dates to 1390 and written by the chefs of King Richard III, catalogs 45 recipes using plant milks. Hazelnut milk, almond milk and even rice milk are all mentioned in this Royal English recipe book. In France, "*Le Viander of Taveillent"* and "*Le cuisinier Francois*" of Pierre de la Varenne refer to almond milk with the term "*Laict d'amandes*" as an ingredient in recipes. The term "*almond milk*" finds its way dating back to 14th century Europe, where it was listed in the *Utilis Coquinario*, a fourteenth century culinary manuscript, for making a butter from almond milk. The passage describes the following:

> *Botere of almand melk. Tak þikke almound melk … boyle it, … as it boyleth cast yn a litel wyn or vynegre, & þan do it on a caneuas & lat þe whey renne out. … þan gadere it vp with þyn hondes … hang it vp a myle wey, … ley it after in cold water, … serue it forth*.
>
> {Translation from Middle English: Butter of almond milk. Take thick almond milk … boil it … as it boils cast in a little wine or vinegar, … then do it on a canvas … let the whey run out. … then gather it up

with your hands … hang it up for the time it takes to walk a mile, …

lay it after in cold water, … serve it forth.}[2]

Descriptions of Plant Milks in North America

Almeda Lambert is one of the first U.S. citizens to describe plant milks using peanuts, almonds, tiger nuts, cashews, coconuts, pine nuts in her 1899 book "*Guide for Nut Cookery*". The earliest account of plant milks however comes from a USDA publication two years earlier by C.F. Langworthy.[3] This government publication describes the nutritional composition of various Japanese soy foods, including natto, miso, tofu, frozen tofu, yuba, and shoyu. The following is an excerpt from his 1897 publication.

> "*Tofu, or bean cheese, is prepared as follows: [t]he beans are soaked in water for about twelve hours, and crushed between millstones until of a uniform consistency. The ground material is then boiled with about three times its bulk of water for about an hour, and filtered through cloth. The filtrate is white and opaque, having somewhat the appearance of milk. It has, however, the taste and smell of malt. This milky liquid, to some extent, resembles cow's milk in composition, as is shown by the following table*".

The table Langworthy refers to is titled "*Comparison of the composition of soy-bean milk and cows' milk,*". It shows that the two liquids (soy milk/cow milk) have the following comparable compositions: water 92.53%/86.08%, albuminoids 3.02%/4.00%, fat 2.13%/3.05%, etc. This is the earliest U.S. reference to a plant milk on record as Langworthy states:

[2] Hieatt CB and Butler S. (1985). Curye on Inglish: English Culinary Manuscripts of the Fourteenth-Century (Including the Forme of Cury). New York: Early English Test Society by the Oxford University Press.
[3] Langworthy C.F. (1897). Soy beans as food for man. USDA Farmers' Bulletin No. 58. Pg 20-23. July 7. Revised (very slightly) in 1899.

> "*The protein in soy-bean milk is precipitated by adding the mother liquor obtained in the manufacture of salt from sea water, which contains considerable magnesium chloride*."

It is also the earliest U.S. government publication known that uses the term "*soy-bean milk*" or any other plant-based milk. It is also the earliest published work of the USDA with nutrition and soybeans.

If one ignores the entire historical global record where milk, yogurt, or cheese has been used for plant-based products, there is still the U.S. use of these terms over the past 120+ years. Non-dairy milks, cheeses, and yogurts have been discussed in common household cookbooks and manuscripts in the U.S. since the turn of last century. These are not new terms being placed into the U.S. lexicon. These terms should not be up for debate out of some new found confusion. If use of the terms milk, yogurt, or cheese for plant-based foods was not confusing for citizens 120 years ago, why should it be confusing to a consumer today? Nuts could be stored for making "*milk*" for a long time. Animal milks did not last for a long time and could transmit illness/diseases due to lack of refrigeration. Plant milks were an alternative to the luxury one would have to have for drinking only animal milks. Rich nobles drank animal milks but also imported exotic nuts to make plant-based milks. These terms (e.g. soy milk, almond milk, nut cheese, etc.) have been in existence for a very long time without any confusion over the two. Perhaps it is the FDA's modern definition that a milk must only be a lacteal secretion from cows which is causing the greatest confusion because they failed to consider non-dairy milk or cheeses in their analysis before creating their standards of identity. Perhaps the simplest solution is to amend the milk standard of identity to "*Dairy Milk*". FDA can create a new standard of identity for non-dairy milks. This solution would be in line with use of these "*dairy*" terms for plant-based foods in the historical record.

Consumer Understanding and Use of the Term Milk in Plant-Based Products from Online Dictionaries

Soymilk is understood by consumers from dictionary use of the term. The terms soymilk, soy milk, soya milk, and soybean milk have all been used interchangeably to describe the liquid food derived from the cooking and processing of whole soya beans with water. While FDA's definition limits the term "*milk*" to lacteal secretions from one or more healthy cows, the Merriam-Webster Dictionary does not limit milk's definition to cows by stating it is "*a fluid secreted by the mammary glands of females for the nourishment of their young.*" It also describes milk as "*a food product produced from seeds or fruit that resembles and is used similarly to cow's milk*". It is also defined as the "*contents of an unripe kernel of grain*". The term "*milk*" is described in the Oxford Dictionary as "*[t]he white juice of certain plants … [example] coconut milk*". The Webster's II New College Dictionary (3rd Edition, 2005) describes soy milk as a "*milk substitute made from soybeans and often supplemented with vitamins.*"

Coconut milk is understood by consumers from dictionary use of the term. The Merriam-Webster Dictionary describes coconut milk as a thick, white, milky liquid extracted from grated coconut after it has been soaked in boiling water. Similarly, almond milk is defined by the Merriam-Webster Dictionary as an emulsion (as from blanched almonds, acacia, sugar, and water) used as a demulcent. The Macmillan Dictionary describes "*coconut milk*" as "*the sweet thin liquid contained in a coconut, used in drinks and in Asian and Caribbean cooking.*" The Longman Dictionary of Contemporary English defines coconut milk as "*the liquid inside a coconut.*"

Federal Understanding and Use of the Term Milk in Plant-Based Products from USDA Educational Publications

Earlier we provided the first ever use of the term "*soy-bean milk*" in the U.S., and it came from an 1897 government publication from the USDA Farmers' Bulletin. This manuscript

communicated compositional analysis and a rudimentary nutritional comparison of soy-bean milk with cow milk as education to the public. However, that is not the only time the USDA has discussed plant-based milks. The U.S. Department of Agriculture (USDA) in its 1963 edition of Agriculture Handbook No. 8, provided compositional characteristics of "*soybean milk*" in both fluid and powder form. The fluid "*soybean milk*" listed contained 3.4% protein, 1.5% fat, 2.2% total carbohydrates and 0.5% ash.[4] This federal document was approved for reprinting in October 1975. Soymilk, according to the Collins English Dictionary, is a milk substitute made from soya, a flour, butter, or other food [that] is made from soya beans. The Oxford Dictionary (US) describes soy milk (also soybean milk) as the liquid obtained by suspending soybean flour in water, used as a fat-free substitute for milk, particularly by vegans and by those unable to tolerate milk products. The Macmillan Dictionary describes soymilk (or soya milk) as a white liquid from soybeans, used as a drink and in cooking. In its "*Home and Garden Bulletin No. 208*" from 1977, the USDA listed the nutritive values of various soy food products including "*soy milk*." In 1986, as part of its program to revise the Agriculture Handbook No. 8, USDA published the Agriculture Handbook No. 8-16 – Composition of Foods: Legumes and Legume Products. This USDA publication discusses the commercial production of "*soy milk*" in the U.S.[5] The product composition was described as containing 2.75% protein, 1.91% fat, 1.81% carbohydrates and 0.27% ash.[6] One can search in the USDA's Agricultural Research Service National Nutrient Database for Standard Reference Legacy Release for the term "*soy milk*" and find the composition for soymilk (all flavors), enhanced as 2.94% protein, 1.99% fat, and 3.45% total carbohydrates.[7] In addition, this USDA database contains composition data as standard reference for soy yogurt, another use of dairy foods in the labeling of plant-based products. It is clear that FDA and USDA are at odds in

[4] USDA. 1963. Agriculture Handbook No. 8 – Composition of Foods: Raw, Processed, Prepared, Revised December 1963. Washington DC, pg58-59.
[5] USDA. (1986). Agriculture Handbook No. 8-16 – Composition of Foods: Legumes and Legume Products. Washington, DC, pg. 9.
[6] USDA. (1986). Agriculture Handbook No. 8-16 – Composition of Foods: Legumes and Legume Products. Washington, DC, pg. 141.
[7] USDA. Agricultural Research Service. National Nutrient Database for Standard Reference Legacy Release. Basic Report: 16223, Soymilk (All flavors), enhanced. https://ndb.nal.usda.gov/ndb/foods/show/16223. Accessed 1/22/2019.

their allowance of 'milk', 'cheese', 'yogurt', and other terminology in the labeling of plant-based products.

NPA is Unaware of Plant-Based Food Products Using Dairy Terms with Label Information That are Inaccurate, Confusing, or Misleading to Consumers

In his statement, FDA Commissioner Dr. Scott Gottlieb said the agency recognized that "*some consumers may prefer to use plant-based products instead of dairy products for a variety of reasons, including an allergy or lifestyle choice*." Regarding the nutritional equivalency of plant-based milks to cow's milk, Dr. Gottlieb insisted *"[w]e must also ensure that the labeling of such products does not mislead consumers, especially if this could compromise their health and well-being*." NPA agrees that consumers deserve access to accurate and meaningful information about the products they use each and every day. If the FDA has data to share with the public about these products, which suggest they are inaccurate, confusing, misleading, or deceptive, NPA is happy to sit down with the Agency to discuss further. NPA is unaware of any such products that are problematic.

As the FDA considers making changes to the ways many popular products are labeled and branded, we urge FDA to also consider the impact this can have on commercial free speech. Courts handling false advertising cases of plant milks have argued that the federal standard of identity for 'milk' limits it to the lacteal secretions from cows. In a December 1, 2015 order, US district judge Vince Chhabria dismissed a class action claim that Trader Joe's misled consumers misbranding products without cow's milk as 'soymilk'.[8] He said no 'reasonable consumer' would confuse soy with dairy milk. He wrote that the fact there is a federal standard of identity for 'milk' [which limits it to lacteal secretions from cows] "*does not categorically preclude a company from giving any food product a name that includes the word 'milk'*". The standardization of milk simply means that a company cannot pass off a product as 'milk' if it does not meet the regulatory

[8] Case number 3:13-cv-01333 (Gitson *et al*. v. Trader Joe's Company).

definition of milk. Regarding whether the use of the word "*soymilk*" in Trader Joe's products could violate the federal Food, Drug, and Cosmetic Act, the judge responded with an emphatic "*no.*"

NPA should exercise enforcement discretion over 'milk' and similar terms in plant-based products while it makes a final decision. In a warning letter issued to Lifesoy, Inc., a soymilk manufacturer on August 8, 2008, FDA included a comment that milk is a standardized food, and therefore the agency does not consider "*soy milk*" to be an appropriate common or usual name for a product that does not contain milk.[9] While warning letters are deemed by FDA and the courts as informal and advisory and NOT final agency action, NPA points out that the warning letter provides no explanation for the basis of this statement/standard of identity comment. NPA would also point out that there have been no final agency actions issued to Lifesoy, Inc. since this August 2008 warning letter.

NPA supports FDA's enforcement against companies misusing standards of identity, but there is a slippery slope when companies are also now warned by the Agency about using commercial free speech for soymilk in the name of their products. These comments were echoed by fellow US district judge Samuel Conti, who threw out a similar case (3:13-cv-01953) vs WhiteWave Foods. Similarly, district judge Stephen Wilson of the central district of California argued in the case against Blue Diamond Growers (Almond Breeze) about the nutrition equivalency argument between plant-based and cow's milk. He stated that the word 'milk' did not come with a certain set of nutritional expectations or understanding. He stated *"[i]f the consumer is concerned about the nutritious qualities of the product, they can read the nutrition label*". However, the reason we are now seeing FDA opine again on the issue of whether plant-based milks must be labeled as 'imitation' comes from the Whitewave ruling. Lawrence O'Neill, the chief district judge in the eastern district of California stated "*[t]hough neither party acknowledges it, plaintiff's position–that defendant's [Silk] almondmilk is mislabeled in that it should be labeled as an 'imitation'–is an issue of first impression. The court has conducted*

[9] https://www.fdalabelcompliance.com/letters/ucm1048184. Accessed 1/23/2019.

extensive research and is unable to locate any authority that suggests the issue has been considered officially by the FDA or the courts." He writes *"[t]issue of whether defendant's products (or any other plant-based 'milk') should be deemed an 'imitation' under §101.3(e) fits squarely within the FDA's authority, and will require the agency's expertise in determining how to fashion labels so they adequately inform consumers*". Now the ball is in FDA's "*court*" to fully consider the issue in an official capacity through notice and stakeholder comment.

Use of Dairy Terms in Labels of Plant-Based Products is Not a Public Health Crisis

Another point to consider is whether this standard of identity issue is a public health crisis for the Agency. Again, if FDA has data to suggest that it is a public health matter, NPA would like the opportunity to discuss the data with the Agency. If the Agency wants to hold firm on its standard of identity for 'milk', 'cheese', and 'yogurt', then they must examine further how beating on that regulatory drum meets a particular public health outcome. If the strategy is to perform a warning letter blitz on plant-based foods using dairy terms to inform consumers without data to demonstrate it is misleading, confusing, or inaccurate, then federal resources dedicated to issuing paper to industry is not a real public health issue. Even if the Agency submitted a warning letter over the standard of identity issue in the future, NPA has doubts it would ever go to final Agency action, especially in cases where 'milk', 'cheese', 'yogurt' or other term was used as part of the tradename. If there is no burning public health matter to address here with standards of identity, the Agency needs to cut bait and fish in more important waters.

Inconsistency by FDA in Regulating Standards of Identity

FDA is very inconsistent on enforcing over standards of identity in gerneal. For example, the FDA's definition of milk in 21 CFR 133.3[10] is far too narrow in scope to be practical. Milk from

[10] 21 CFR 133.3 Definitions. (a) *Milk* means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, which may be clarified and may be adjusted by separating part of the fat therefrom; concentrated milk, reconstituted milk, and dry whole milk.

any other farm animal would not qualify as 'milk' including camel's, sheep's and goat's milk, according to FDA's formal definition codified in the federal regulations. If the Agency was evenhanded on the issue, these products would all have to be labeled as 'imitation' milk as they are not the lacteal secretions from "*… one or more cows*". The same is true when analyzing the standard of identity for bread.[11] The federal definition of bread requires the presence of yeast for leavening. Under such an exacting standard, unleavened breads, some flatbreads, some sourdough breads, and chemically leavened breads through the use of baking soda or baking powder are not breads. Instead of modifying the standards of identity, FDA should be evenhanded in its approach. NPA urges FDA to play fair and exercise enforcement discretion over violations of standards of identity. NPA does not see how any of these violations of the CFR are deleterious to public health.

FDA Should Allow the Qualified Terms Nut Cheeses

FDA's definitions for cheeses[12] all involve the ingredient 'milk', so according to the it's definition of 'milk,' cheese must originate from cow's milk. FDA provides no other exceptions. This is what happens when food definitions are so narrow. Sensibility is thrown out the door. In addition to goat cheeses, which would not qualify as a cheese according to FDA, and any cheese that did not come from a cow, there are other types of cheeses which would also have to be labeled with the 'imitation' moniker. Today's grocery store aisles now have healthy alternatives to cheeses including what are called nut cheese, but nut cheeses are anything but new. Nut cheeses have been around for centuries. Nut cheese is made from nut milk, or the white, liquid juice of certain nuts, rather than animal milk. These cheeses are typically made from cashews,

[11] 21 CFR 136.110 (a) Bread, white bread, and rolls, white rolls, or buns, and white buns are the foods produced by baking mixed yeast-leavened dough prepared from one or more of the farinaceous ingredients listed in paragraph (c)(1) of this section…" The ingredients other than flour include water, yeast (any type which produces a leavening effect), salt, shortening, milk, egg products, and nutritive carbohydrate sweeteners.
[12] Asiago fresh and asiago soft cheese is the first cheese described in the codified federal regulations under section 133.102. 21 CFR 133.102 "(a) Asiago fresh cheese, asiago soft cheese, is the food prepared from ilk and other ingredients specified in this section …"

macadamia, and brazil nuts. The nuts are washed, soaked and blended into a nut milk with a creamy consistency. Similar to dairy cheese, nut milk is next infused with probiotic cultures, typically *Lactobacillus acidophilus*, and fermented to develop flavor and texture. This is the same culture found in a wide variety of diary cheeses as it is used as a start culture in Swiss cheese as well as added to cheddar in the post-pasteurization process. The probiotic cultures often give the cheese its distinct dairy-like tang taste. Fermenting the nut milk with probiotics produces a soft, malleable cheese, some of which is set aside as a substitute for cream cheese, while the rest of a batch is typically molded and aged for proper depth of flavor, the longer the nut cheese ferments.

NPA would argue that the fermentation process with starter cultures is the fundamental aspect of manufacturing a cheese, rather than its association with cows. Whether the starting ingredients utilized dairy milk or botanical nuts, both dairy and plant-based ingredients require starter cultures and fermentation into a 'cheese'. A cheese is descriptive of the food form after fermentation. Therefore, nut cheeses should be allowed to use the term 'cheese' as they essentially go through the same fundamental processes as dairy cheese, including fermentation, aging, and flavoring.

Milk-Derived Ingredients or Components Isolated from Milk

There are also other products on the market which allude to a specific component found in cow's milk or human milk. These could be isolated milk proteins (e.g. A2 fraction of milk lacking a form of β-casein called A1) or oligosaccharide components that can be isolated from human breast milk (e.g. Human Milk Oligosaccharides). Milk component products do, in fact, come from lacteal secretions of cows and humans as they are components found in milk. NPA believes these types of food ingredients and finished products should have the right to call themselves 'milk'. NPA does not see that there is any consumer confusion with use of the term 'milk' for components or isolates of milk as long as there is a qualifier such as "*extract," "the name of the component (e.g. A2) present,*" or "*oligosaccharide*", which further defines the nature of the product to consumers.

On June 29, 2011, FDA sent a warning letter to CytoSport, makers of Muscle Milk, calling into question the company's use of the word 'milk' as part of the trade name when the product contains milk-derived ingredients but no actual milk.[13] FDA concluded in part that the products were misbranded under FDC Act § 403(g)(1) [21 U.S.C. § 343(g)(1)] because they purported to be 'milk,' but did not conform to the standard of identity for milk. FDA further stated that the products were misbranded under FDC Act § 403(a)(1) [21 U.S.C. § 343(a)(1)] because their statements of identity were in "*significantly small and less prominent type than the words 'MUSCLE MILK,'*" and because the principal display panel included the statement "*contains no milk*" despite the fact that the products contain a number of milk-derived ingredients. This warning letter is noteworthy because of use of the term 'milk' in the trade name for the product. It represents probably the only time a company received a warning letter because FDA believed use of a standard of identity, in this case 'milk,' in the tradename was misleading to consumers. The Federal Trade Commission reviewed the use of *'MUSCLE MILK'"* in conjunction with its voluntary disclaimer 'Contains no Milk' and determined there was no deception to consumers.

First Amendment Rights of Commercial Free Speech Protect Use of the Term in the Name of the Plant-Based Product

The warning letter to Muscle Milk for using the term 'milk' in the tradename of the product is an example of FDA overreach. While FTC became the final arbiter over whether Muscle Milk engaged in deceptive advertising practices, FDA set a bad precedent which could be applied to plant-based products using the term 'milk,' 'cheese,' or 'yogurt', as part of the tradename. This is not just an issue over the acceptable standard of identity for 'milk' by FDA, but it also involves commercial free speech. Before any such restrictions are placed on commercial free speech, the government must prove there is a substantial risk of consumer harm and their solution is narrowly tailored to solve the harm. NPA does not see how labeling plant-based foods as 'milk'

[13] http://fda-warning-letters.blogspot.com/2011/06/department-of-health-and-human-services_29.html. Accessed 1/23/2019.

in their name will cause substantial risk to consumers. There is no way that the act of censoring plant-based milk makers would be able to clear this clear constitutional hurdle. NPA believes this issue regarding standards of identity for plant-based foods to use terms with known standards of identity in their names amounts to a first amendment rights issue. We are optimistic that FDA's process will lead to an outcome that both protects consumers and ensures the producers of natural products and plant-based foods are not burdened with unnecessary regulations. The best solution is to allow plant-based producers to call their products milk or cheese, so long as they use qualifying terms such as "*soy*", "*almond*", "*coconut*", "*nut*", etc.

The Case for Federal Pre-Emption

NPA would like to see federal pre-emption of class action lawsuits brought in the states over not only statement of identity disputes but all labeling issues of products. The Plaintiff's bar in California, for example, likes to wield the state regulations for labeling when it suits them and they recently used federal pre-emption in the recent case vs Blue Diamond Growers from May 2017. NPA agrees with the judgment in the Blue Diamond Growers decision, but the fact that this case can't be cited in future standard of identity labeling issues in California is appalling. Similarly, NPA would like to see federal pre-emption of state class action lawsuits involving milk component products. NPA does not want to see a patchwork of 50 different state laws over statement of identity or other issues of product labeling or claims defined federally in the codified federal regulations. Federal pre-emption over the states regarding all aspects of food and supplement labeling is paramount to the industry. We need to have one labeling standard from the federal government so that plaintiffs can't pick a different set of regulations which suits their case in any given week. NPA hopes FDA will provide clarification on these products in the future and allow them to use terms like 'milk' or other standard of food identity.

Conclusion

The NPA thanks FDA for this opportunity to comment. We look forward to participating in this important regulatory process of public notice and comment in the future as FDA decides on next steps regarding its dairy standards of identity when used in the labeling of plant-based products. NPA hopes FDA will consider the suggestions and changes offered up here in these comments.

Respectfully submitted,

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CEO and President, Natural Products Association