

1 BONNETT, FAIRBOURN, FRIEDMAN
 & BALINT, P.C.
 2 PATRICIA N. SYVERSON (CA SBN 203111)
 MANFRED P. MUECKE (CA SBN 222893)
 3 600 W. Broadway, Suite 900
 San Diego, California 92101
 4 psyverson@bffb.com
mmuecke@bffb.com
 5 Telephone: (619) 798-4593

6 BONNETT, FAIRBOURN, FRIEDMAN
 & BALINT, P.C.
 7 ELAINE A. RYAN (*To Be Admitted Pro Hac Vice*)
 CARRIE A. LALIBERTE (*To Be Admitted Pro Hac Vice*)
 8 2325 E. Camelback Rd. Suite 300
 Phoenix, AZ 85016
 9 eryan@bffb.com
claliberte@bffb.com
 10 Telephone: (602) 274-1100

11 *Attorneys for Plaintiffs*
 12 *Additional Attorneys on Signature Page*

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 TAMARA FRANKEL and
 16 NATASHA PARACHA, On Behalf
 of Themselves and All Others
 17 Similarly Situated,

18 Plaintiffs,

19 v.

20 BOB'S RED MILL NATURAL
 21 FOODS, INC., an Oregon
 22 Corporation.

23 Defendant.
 24

Case No.:

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*; and
2. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiffs Tamara Frankel and Natasha Paracha bring this action on behalf of
2 themselves and all others similarly situated against Defendant Bob’s Red Mill
3 Natural Foods and states:

4 **FACTUAL ALLEGATIONS**

5 1. Defendant manufactures, markets, sells, and distributes various food
6 products under its Bob’s Red Mill brand. This lawsuit concerns two of those
7 products: Steel Cut Oats and Old Fashioned Rolled Oats (the “Products”).¹

8 2. In marketing its Products, Defendant seeks to appeal to the consuming
9 public’s ever-growing health consciousness and increasing appetite for nutritious,
10 wholesome foods that will benefit their health and avoidance of highly-processed
11 foods with non-healthy attributes such as GMOs, artificial additives, gluten, added
12 sugars, and hydrogenated oils.

13 3. Defendant makes several detailed representations about the health
14 attributes of its Products on the front of the Product packages. Defendant represents
15 on the front of its Products that the Products are “Whole Grain”. The front of the Old
16 Fashioned Rolled Oats further states that the Product is “Gluten Free”, “Wheat Free”,
17 “Dairy Free”, and “purity tested”. The front of the Steel Cut Oats further states that
18 the Product is a “Friend of the Heart” and is “wholesome”, and the Product package
19 further boasts “To Your Good Health” and “You Can See Our Quality”. These
20 representations are collectively referred to as the “Product healthy attribute
21 representations”.

22 4. The Product healthy attribute representations lead reasonable consumers
23 to believe the Products will foster their “good health” and not potentially harm their
24 health.

25 5. However, recent testing by the Environmental Working Group (EWG),
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¹ Plaintiffs reserve the right to add additional products upon completion of discovery.
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1 a nonprofit organization dedicated to protecting human health and the environment,
2 revealed that Defendant's Products contain glyphosate, one of the most widely used
3 herbicides in the United States. EWG's Children's Health Initiative, "Breakfast With
4 a Dose of Roundup?" August 15, 2018, *available at*
5 <https://www.ewg.org/childrenshealth/glyphosateincereal/#.W3TTbPZFW2w>
6 ("EWG") (last visited August 23, 2018). Each year, more than 250 million pounds of
7 glyphosate is sprayed on American crops, including wheat, barley, and oats just
8 before they are harvested. *Id.*

9 6. The International Agency for Research on Cancer, part of the World
10 Health Organization, has determined that glyphosate is "probably carcinogenic to
11 humans". IARC Monographs Volume 112: evaluation of five organophosphate
12 insecticides and herbicides, March 20, 2015, *available at*
13 <http://www.iarc.fr/en/media-centre/iarcnews/pdf/MonographVolume112.pdf> (last
14 visited August 23, 2018). Glyphosate is even more dangerous for children, who are
15 more susceptible to carcinogens. *See EWG.*

16 7. Because it is a carcinogen with no nutritional value, the presence of *any*
17 amount of glyphosate in the Products is material to reasonable consumers. No
18 reasonable consumer would purchase the Products knowing that they contained
19 glyphosate.

20 8. Even though Defendant knew that the Products contain the probable
21 carcinogen glyphosate or, at a minimum, that it could not guarantee the Products did
22 not contain glyphosate given its wide use as a pesticide, Defendant does not disclose
23 this information on the front of the Product labels, choosing instead to specifically
24 identify only the healthy attributes of its Products. Nor does Defendant include this
25 information on the back or sides of the packages, where more detailed Product
26 information is generally found, instead choosing to repeat and reinforce the healthy
27 attributes identified on the front of the packages. In fact, nowhere on its Product
28

1 packages – inside or out – does Defendant disclose that the Products contain or likely
2 contain glyphosate, such that Defendant’s Product healthy attribute representations
3 are misleading half-truths.

4 9. As the manufacturer and distributor of the Products, Defendant knew
5 that the Products contained or likely contained glyphosate. By contrast, Plaintiffs
6 and consumers did not and do not have access to such information. Nor is that fact
7 easily discovered by Plaintiffs and consumers before purchase of the Products.
8 Because Defendant had knowledge that the Products contain or likely contain
9 glyphosate, and Plaintiffs and consumers did not, Defendant had a duty to disclose
10 that fact—and that glyphosate is a probable carcinogen—to consumers, which it did
11 not do.

12 10. Consumers have a reasonable expectation that material product
13 information, such as the presence of a probable carcinogen like glyphosate, will be
14 provided by a product manufacturer, especially when the manufacturer affirmatively
15 identifies the health-related attributes of its Products such as “Gluten Free”, “Whole
16 Grain”, and “Friend of the Heart”. By only identifying the health attributes of its
17 Products and failing to disclose that the Products contain or likely contain glyphosate,
18 Defendant actively concealed this information from Plaintiffs, Class members, and
19 the general public. *See* representative Product labels, attached hereto as Exhibit A.

20 11. Defendant had a duty to disclose the fact that the Products contain or
21 likely contain glyphosate and that glyphosate is a probable carcinogen, which was
22 known to Defendant and unknown and/or not reasonably accessible to Plaintiffs and
23 consumers, on its Product labels where the disclosure could be viewed by Plaintiffs
24 and consumers at the point-of-sale.

25 12. By failing to disclose the fact that the Products contain or likely contain
26 glyphosate and continuing to sell the Products in packages omitting this information,
27 Defendant has and continues to deceive and mislead consumers, including Plaintiffs.

1 13. As a result of Defendant’s misleading half-truths and material
2 nondisclosures, consumers will continue to purchase Defendant’s Products that,
3 unbeknownst to them, contain or likely contain glyphosate.

4 14. Plaintiffs bring this action on behalf of themselves and other similarly
5 situated consumers who purchased the Products to halt the dissemination of this
6 misleading and deceptive advertising message, correct the misleading perception it
7 has created in the minds of consumers, and obtain redress for those who have
8 purchased the Products. Based on violations of California unfair competition laws
9 (detailed below), Plaintiffs seek declaratory, injunctive, and restitutionary relief for
10 consumers who purchased the Products.

11 **JURISDICTION AND VENUE**

12 15. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2).
13 The matter in controversy, exclusive of interest and costs, exceeds the sum or value
14 of \$5,000,000 and is a class action in which there are in excess of 100 class members
15 and some members of the Class are citizens of a state different from Defendant.

16 16. This Court has personal jurisdiction over Defendant because Defendant
17 is authorized to conduct and do business in California, including this District.
18 Defendant marketed, promoted, distributed, and sold the Products in California, and
19 Defendant has sufficient minimum contacts with this State and/or sufficiently availed
20 itself of the markets in this State through its promotion, sales, distribution, and
21 marketing within this State, including this District, to render the exercise of
22 jurisdiction by this Court permissible.

23 17. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)
24 because a substantial part of the events giving rise to Plaintiff Frankel’s claims
25 occurred while she resided in this judicial district. Venue is also proper under
26 U.S.C. §1965(a) because Defendant transacts substantial business in this District.

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PARTIES

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2 18. Plaintiff Tamara Frankel resides in San Francisco County, California.
3 Throughout the relevant period, Plaintiff Frankel routinely was exposed to, saw, and
4 relied upon Defendant's Product healthy attribute representations by reading the
5 Bob's Red Mill Steel Cut Oats Product labels (both the large package and the smaller
6 single serving packages) at various stores in the San Francisco Bay area, including
7 Safeway in Santa Clara, California, Draeger's in Los Altos, California, and Whole
8 Foods in San Francisco, California. Plaintiff Frankel purchased the Products for
9 approximately \$2 of the single serving and \$7-8 for the larger package. At all
10 relevant times, Plaintiff was unaware that the Products contained glyphosate or that
11 Defendant could not guarantee they did not contain glyphosate. Had Defendant
12 disclosed on the packages that the Products contained or may contain glyphosate,
13 Plaintiff Frankel would have seen and read that disclosure and would not have
14 purchased them. As a result, Plaintiff Frankel suffered injury in fact and lost money
15 at the time of purchase.

16 19. Plaintiff Natasha Paracha resides in Los Angeles County, California.
17 Throughout the relevant period, Plaintiff Paracha routinely was exposed to, saw, and
18 relied upon Defendant's Product healthy attribute representations by reading the
19 Bob's Red Mill Steel Cut Oats and Bob's Red Mill Old Fashioned Rolled Oats
20 Product labels at various stores in her area, including the Cal Poly Farms store in
21 Pomona, California and Sprouts in Brea, California. Plaintiff Paracha purchased the
22 Products for approximately \$6-8/package. At all relevant times, Plaintiff was
23 unaware that the Products contained glyphosate or that Defendant could not guarantee
24 they did not contain glyphosate. Had Defendant disclosed on the packages that the
25 Products contained or may contain glyphosate, Plaintiff Paracha would have seen and
26 read that disclosure and would not have purchased them. As a result, Plaintiff
27 Paracha suffered injury in fact and lost money at the time of purchase.

1 20. Defendant Bob’s Red Mill Natural Foods is an employee-owned
2 company whose headquarters is located at 13521 SE Pheasant Ct, Milwaukie, OR
3 97222. Bob’s Red Mill Natural Foods manufactures, advertises, markets, distributes,
4 and/or sells the Products to tens of thousands of consumers in California and
5 throughout the United States.

6
7 **CLASS DEFINITION AND ALLEGATIONS**

8 21. Plaintiffs brings this action on behalf of themselves and all other
9 similarly situated consumers pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal
10 Rules of Civil Procedure and seeks certification of the following Class:

11 **Multi-State Class Action**

12 All consumers who, within the applicable statute of limitations
13 period until the date notice is disseminated, purchased the Products
14 in California, Florida, Illinois, Massachusetts, Michigan, Minnesota,
15 Missouri, New Jersey, New York, and Washington.²

16 Excluded from this Class are Defendant and its officers,
17 directors, employees and those who purchased the Products
18 for the purpose of resale.

19 22. In the alternative to a Multi-State Class, Plaintiffs seek certification of the
20 following California-Only Class:

21 **California-Only Class Action**

22 All California consumers who within the applicable statute
23 of limitations period until the date notice is disseminated,
24 purchased the Products.

25 ² The States in the Multistate Class are limited to those States with similar consumer
26 fraud laws as applied to the facts of this case: California (Cal. Bus. & Prof. Code
27 §17200, *et seq.*); Florida (Fla. Stat. §501.201, *et seq.*); Illinois (815 Ill. Comp. Stat.
28 502/1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich.
Comp. Laws §445.901, *et seq.*); Minnesota (Minn. Stat. §325F.67, *et seq.*);
Missouri (Mo. Rev. Stat. 010, *et seq.*); New Jersey (N.J. Stat. §56:8-1, *et seq.*); New
York (N.Y. Gen. Bus. Law §349, *et seq.*); and Washington (Wash. Rev. Code
§19.86.010, *et seq.*). These statutes are referred to as “Similar Consumer Fraud
Statutes.”

1 Excluded from this Class are Defendant and its officers,
2 directors and employees, and those who purchased the
Products for the purpose of resale.

3 23. **Numerosity.** The members of the Classes are so numerous that joinder
4 of all members of the Classes is impracticable. Plaintiffs are informed and believe
5 that the proposed Classes contain thousands of purchasers of the Products who have
6 been damaged by Defendant's conduct as alleged herein. The precise number of
7 Class members is unknown to Plaintiffs.

8 24. **Existence and Predominance of Common Questions of Law and**
9 **Fact.** This action involves common questions of law and fact, which predominate
10 over any questions affecting individual Class members. These common legal and
11 factual questions include, but are not limited to, the following:

- 12 (a) whether Defendant's alleged conduct is unlawful;
13 (b) whether the alleged conduct constitutes violations of the laws asserted;
14 (c) whether Defendant engaged in misleading and/or deceptive advertising;

15 and

16 (d) whether Plaintiffs and Class members are entitled to appropriate
17 remedies, including restitution and injunctive relief.

18 25. **Typicality.** Plaintiffs' claims are typical of the claims of the members
19 of the Classes because, *inter alia*, all Class members were injured through the
20 uniform misconduct described above. Plaintiffs are also advancing the same claims
21 and legal theories on behalf of themselves and all Class members.

22 26. **Adequacy of Representation.** Plaintiffs will fairly and adequately
23 protect the interests of Class members. Plaintiffs have retained counsel experienced
24 in complex consumer class action litigation, and Plaintiffs intend to prosecute this
25 action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the
26 Classes.

27 27. **Superiority.** A class action is superior to all other available means for
28

1 the fair and efficient adjudication of this controversy. The damages or other financial
2 detriment suffered by individual Class members is relatively small compared to the
3 burden and expense that would be entailed by individual litigation of their claims
4 against Defendant. It would thus be virtually impossible for members of the Classes,
5 on an individual basis, to obtain effective redress for the wrongs done to them.
6 Furthermore, even if Class members could afford such individualized litigation, the
7 court system could not. Individualized litigation would create the danger of
8 inconsistent or contradictory judgments arising from the same set of facts.
9 Individualized litigation would also increase the delay and expense to all parties and
10 the court system from the issues raised by this action. By contrast, the class action
11 device provides the benefits of adjudication of these issues in a single proceeding,
12 economies of scale, and comprehensive supervision by a single court, and presents
13 no unusual management difficulties under the circumstances here.

14 28. Unless a Class is certified, Defendant will retain monies received as a
15 result of its conduct that were taken from Plaintiffs and Class members.

16 **COUNT I**

17 **Violation of Business & Professions Code §17200, et seq.**
18 **and Similar Consumer Fraud Statutes, supra note 2**
19 **(On Behalf of the Multi-State or California-Only Class)**

20 29. Plaintiffs repeat and re-allege the allegations contained in the
21 paragraphs above, as if fully set forth herein.

22 30. Plaintiffs bring this claim individually and on behalf of the Classes.

23 31. As alleged herein, Plaintiffs have suffered injury in fact and lost money
24 or property at the time of purchase as a result of Defendant's conduct because they
25 purchased Defendant's Products in reliance on Defendant's Product healthy attribute
26 representations. Had Plaintiffs known that the Products contained glyphosate or that
27 Defendant could not guarantee the Products did not contain glyphosate, Plaintiffs

1 would not have purchased the Products.

2 32. The Unfair Competition Law, Business & Professions Code §17200, *et*
3 *seq.* (“UCL”) prohibits any “unlawful,” “fraudulent,” or “unfair” business act or
4 practice and any false or misleading advertising. The Similar Consumer Fraud
5 Statutes likewise prohibit the use of unfair or deceptive practices in the course of
6 trade or commerce, and are to be liberally construed.

7 33. In the course of conducting business, Defendant committed “unlawful”
8 business practices by, *inter alia*, making the Product healthy attribute representations,
9 which are misleading half-truths, and the material omissions (which also constitutes
10 advertising within the meaning of §17200) regarding the Products’ labeling, as set
11 forth more fully herein, and violating Civil Code §§ 1552, 1573, 1709, and 1711, the
12 California Legal Remedies Act, Civil Code § 1750, *et seq.*, Business & Professions
13 Code §§ 17200, *et seq.* and 17500, *et seq.*, the Similar Consumer Fraud Statutes, and
14 the common law.

15 34. Plaintiffs reserve the right to allege other violations of law, which
16 constitute other unlawful business acts or practices. Such conduct is ongoing and
17 continues to this date.

18 35. In the course of conducting business, Defendant committed “unfair”
19 business acts or practices by, *inter alia*, making the Product healthy attribute
20 representations, which are misleading half-truths, and material omissions (which also
21 constitutes advertising within the meaning of § 17200) regarding the Products’
22 labeling, as set forth more fully herein. There is no societal benefit from false
23 advertising, only harm. While Plaintiffs and the public at large were and continue to
24 be harmed, Defendant has been unjustly enriched by its misleading half-truths and
25 material omissions. Because the utility of Defendant’s conduct (zero) is outweighed
26 by the gravity of harm to Plaintiffs, consumers, and the competitive market,
27 Defendant’s conduct is “unfair” having offended an established public policy.

1 Further, Defendant engaged in immoral, unethical, oppressive, and unscrupulous
2 activities that are substantially injurious to the public at large.

3 36. There were reasonable available alternatives to further Defendant's
4 legitimate business interests, other than the conduct described herein.

5 37. In the course of conducting business, Defendant committed "fraudulent
6 business act[s] or practices" and deceptive or misleading advertising by, *inter alia*,
7 making the Product healthy attribute representations, which are misleading half-
8 truths, and the material omissions (which also constitutes advertising within the
9 meaning of §17200) regarding the Products as set forth more fully herein.

10 38. Defendant's actions, claims, and misleading statements, as more fully
11 set forth above, are misleading and/or likely to deceive the consuming public within
12 the meaning of Business & Professions Code §17200, *et seq.* and the Similar
13 Consumer Fraud Statutes.

14 39. Plaintiffs relied on Defendant's Product healthy attribute
15 representations and was in fact injured as a result of those misleading half-truths and
16 material omissions. Plaintiffs have suffered injury in fact and lost money as a result
17 of their purchases of Defendant's Products.

18 40. Unless restrained and enjoined, Defendant will continue to engage in
19 the above described conduct. Accordingly, injunctive relief is appropriate.

20 41. Plaintiffs, on behalf of themselves, all others similarly situated, and the
21 general public, seeks declaratory relief and an injunction prohibiting Defendant from
22 continuing such practices, restitution of all money obtained from Plaintiffs and the
23 members of the Classes collected as a result of unfair competition, and all other relief
24 this Court deems appropriate, consistent with Business & Professions Code § 17203
25 and the Similar Consumer Fraud Statutes.

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2 **COUNT II**
3 **Violations of the Consumers Legal Remedies Act – Civil Code § 1750 *et seq.***
4 **(On Behalf of the California-Only Class)**

5 42. Plaintiffs repeat and re-allege the allegations contained in the
6 paragraphs above, as if fully set forth herein.

7 43. Plaintiffs brings this claim individually and on behalf of the California-
8 Only Class.

9 44. This cause of action is brought pursuant to the Consumers Legal
10 Remedies Act, California Civil Code § 1750, *et seq.* (the “Act”).

11 45. Plaintiffs are consumers as defined by California Civil Code § 1761(d).
12 The Products are “goods” within the meaning of the Act.

13 46. Defendant violated and continues to violate the Act by engaging in the
14 following practices proscribed by California Civil Code § 1770(a) in transactions
15 with Plaintiffs and the California-Only Class which were intended to result in, and
16 did result in, the sale of the Products:

17 (5) Representing that [the Products have] . . . characteristics, . . . uses [and]
18 benefits . . . which [they do] not have

19 * * *

20 (7) Representing that [the Products] are of a particular standard, quality, or
21 grade . . . if they are of another.

22 47. Defendant violated the Act by making the Product healthy attribute
23 representations, which are misleading half-truths, and the material omissions, as
24 described above, when it knew or should have known that the misleading half-truths
25 and material omissions were misleading and deceptive.

26 48. Pursuant to California Civil Code § 1782(d), Plaintiffs and the
27 California-Only Class seek a Court Order declaring Defendant to be in violation of
28 the CLRA, enjoining the above-described wrongful acts and practices of Defendant,

1 and ordering restitution and disgorgement.

2 49. Pursuant to § 1782 of the Act, Plaintiffs notified Defendant in writing
3 by certified mail of the particular violations of § 1770 of the Act and demanded that
4 Defendant rectify the problems associated with the actions detailed above and give
5 notice to all affected consumers of Defendant's intent to so act. A copy of the letter
6 is attached hereto as Exhibit B.

7 50. If Defendant fails to rectify or agree to rectify the problems associated
8 with the actions detailed above and give notice to all affected consumers within 30
9 days of the date of written notice pursuant to § 1782 of the Act, Plaintiffs will amend
10 this Complaint to add claims for actual, punitive, and statutory damages as
11 appropriate.

12 51. Pursuant to § 1780 (d) of the Act, attached hereto as Exhibit C is the
13 affidavit showing that this action has been commenced in the proper forum.

14
15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiffs pray for a judgment:

- 17 A. Certifying the Classes as requested herein;
18 B. Issuing an order declaring that Defendant is in violation of the UCL and
19 CLRA;
20 C. Enjoining Defendant's conduct;
21 D. Awarding restitution and disgorgement of Defendant's revenues to
22 Plaintiffs and the proposed Class members;
23 E. Awarding attorneys' fees and costs; and
24 F. Providing such further relief as may be just and proper.

25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs hereby demand a trial of their claims by jury to the extent
27 authorized by law.

1 Dated: August 31, 2018

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

/s/Patricia N. Syverson

Patricia N. Syverson (203111)
Manfred P. Muecke (222893)
600 W. Broadway, Suite 900
San Diego, California 92101
psyverson@bffb.com
mmuecke@bffb.com
Telephone: (619) 798-4593

BONNETT, FAIRBOURN, FRIEDMAN &
BALINT, P.C.

Elaine A. Ryan (*To Be Admitted Pro Hac Vice*)
Carrie A. Laliberte (*To Be Admitted Pro Hac Vice*)
2325 E. Camelback Rd., Suite 300
Phoenix, AZ 85016
eryan@bffb.com
claliberte@bffb.com
Telephone: (602) 274-1100

SIPRUT PC

Stewart M. Weltman (*To Be Admitted Pro Hac
Vice*)
Todd L. McLawhorn (*To Be Admitted Pro Hac
Vice*)
Michael Chang (*To Be Admitted Pro Hac Vice*)
17 North State Street
Chicago, Illinois 60602
sweltman@siprut.com
tmclawhorn@siprut.com
mchang@siprut.com
Telephone: (312) 236-0000

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

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

Executed the 31st day of August 2018.

/s/ Patricia N. Syverson
Patricia N. Syverson