

EXHIBIT H

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

GROCERY MANUFACTURERS
ASSOCIATION, SNACK FOOD
ASSOCIATION, INTERNATIONAL DAIRY
FOODS ASSOCIATION, and NATIONAL
ASSOCIATION OF MANUFACTURERS,

Plaintiffs,

v.

WILLIAM H. SORRELL, in his official capacity
as the Attorney General of Vermont; PETER E.
SHUMLIN, in his official capacity as
Governor of Vermont; TRACY DOLAN, in her
official capacity as Commissioner of the
Vermont Department of Health; and JAMES B.
REARDON, in his official capacity as
Commissioner of the Vermont Department of
Finance and Management,

Defendants.

Case No. 5:14-cv-117

**DECLARATION OF RHONDA MILLER
IN SUPPORT OF DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Rhonda Miller, hereby declare:

1. I am currently employed by Clif Bar and Company as a Senior Sourcing Manager, Packaging.
2. Clif Bar and Company was founded in 1992. It is a leading seller of organic and wholesome energy foods and snacks. Many of Clif Bar's products are certified organic and Clif Bar is committed to organic agriculture. Since 2003, Clif Bar has

purchased more than 425 million pounds of organic ingredients. Clif Bar has been a long-time supporter of GMO labeling initiatives, first supporting the national Just Label It campaign, and later the California, Oregon, Washington and Vermont state initiatives.

3. Clif Bar sells eight different product lines, including energy bars like Clif Bar, Luna Bar and Builders Bar, athletic performance foods like Clif Shot energy gels, energy chews and drink mixes, kids' snacks such as Clif Kid ZBar and ZFruit and snacks like Mojo Fruit and Nut Bars and Clif Crunch granola bars. Across these products lines, there are more than 115 flavors, each with a unique wrapper and many being packaged in multiple pack sizes and configurations, which also have unique packaging artwork and materials.

4. In my role at Clif Bar, I am responsible for negotiating procurement contracts with our packaging suppliers, including wrapper film, cartons and shipping cases. I forecast the amounts of packaging that should be ordered by our manufacturers, provide artwork to our packaging printers and assist our cross functional teams in planning for, costing out and implementing packaging changes.

5. Over the last twenty-four (24) years, I have worked for consumer packaged goods food companies ("CPG's") in various procurement and inventory roles. The CPG's I have worked for include Clif Bar, Otis Spunkmeyer, Safeway Inc. (Corporate Private Label Brands), Ghirardelli Chocolate Company, Specialty Brands (Spice Islands, French's, Dec-A-Cake Brands) and ABCO Laboratories. During that time, I have worked on thousands of packaging copy changes, driven by

packaging change designs, marketing updates, legal changes and supplier transitions.

6. On average, CPG's plan to change their packaging every twelve (12) to eighteen (18) months. In practice, many companies change their packaging more often to accommodate for seasonal packaging, one time uses, promotional packaging and temporary packaging call-outs (e.g. "new" claims). Often when CPG's implement legal changes, they bundle other desired changes together to get the maximum benefit of modifying the label artwork.

7. I understand the Vermont law to require manufacturers of foods containing genetically engineered ingredients to add a statement stating that the food is "Produced with genetic engineering".

8. During my two and a half years at Clif Bar, I have participated in hundreds of packaging changes, including small changes, such as the addition of new artwork elements to the package to wholesale packaging redesigns. Those changes have been implemented on many different materials and by different print methods. We have made adjustments to the best by/expiration line; we have made simple artwork changes, such as adding a front of pack call-out, and we have made complete packaging redesigns. In my professional opinion, a change such as the one mandated by the Vermont law would require nothing more than a simple artwork change and would not be time intensive.

9. Based on my experience, the change could be implemented in a number of different ways. Some manufacturers could make the change by adding the

statement to the best by/expiration line, while others could make a simple artwork change to the package.

10. In many food manufacturing facilities, an on-site printer is used to print the expiration and/or lot code on the packaging. Using this equipment to print the GMO labeling statement would be a low cost and very time effective way to accomplish the change. It would not require changes to packaging artwork and it would not incur the costs associated with printing new packaging. The printers in food manufacturing facilities have different capabilities with respect to the number of characters and number of lines they can print. Manufacturers could use those printers to add the GMO statement to the best by/expiration line if the printer was capable of printing two lines of text and a sufficient number of characters to state the “best by” date and the GMO statement.

11. If adding the GMO statement to the best by/expiration line is not an option, CPG’s would work with their packaging printers to change the re-print cylinders and/or plates (depending on the print method and packaging material). I estimate a one-time cost of approximately \$250 for each flexography plate used to print film, labels and cases, and between \$250 and \$850 to change the artwork plates for cartons printed by lithography. (Carton plates are remade every time they print.) Some CPG’s may print films by rotogravure. In that case, the cylinders and artwork used in the rotogravure process run about between \$500-\$1,100 each. Usually one cylinder or plate is required per packaging item. Thus, the total cost for each packaging change would range between \$500 and \$1,950.

12. A packaging change like the one described above will require copy change and/or adjustment on the electronic artwork files and proofing by the CPG. I estimate the change would take no more than 30 minutes. Once the artwork is approved, the plates or cylinders are made by a third party. The time elapsed between final approval of the artwork and printing of the packaging ranges from three (3) to eight (8) weeks.

13. The other possible cost to consider would be for excess packaging that does not bear the GMO labeling. Clif Bar typically holds sixty (60) to ninety (90) days of packaging inventory on hand. This is an industry rule of thumb. With proper planning and so much advance notice to prepare for the transition, it would be relatively easy to minimize packaging inventories in advance of the change. This would leave manufacturers with very little excess packaging inventory. In addition, if manufacturers wished to use the excess packaging inventory, they could distribute it to states other than Vermont.

14. In my work, I have seen most companies plan to make regularly scheduled packaging changes. The companies plan to make changes once every twelve (12) to eighteen (18) months. Clif Bar calendars packaging changes once every eighteen (18) months, but due to various label changes or ingredient supply changes, we often make copy changes more frequently than that. Every company with which I have been involved is accustomed to making packaging changes out of this sequence. These unscheduled changes may be due to regulatory changes, ingredient supply issues or marketing needs. While these types of packaging

changes are not planned for, they are not insurmountable and can be combined with other desired changes for greater efficiency.

15. Adding the GMO statement outside of the regularly scheduled packaging change window could take anywhere between one (1) and six (6) months. A change to the best by/expiration line could likely be done within a month and would require a programming change on the date code equipment. Changing the artwork on the information panel and printing new packaging would on average take between four (4) and six (6) months. This would allow time for the art work changes, printing and delivery to the manufacturers. A packaging change including an artwork change could also be expedited. I estimate expediting the change would increase the costs stated above by approximately five percent (5%) to ten percent (10%).

16. In my experience, most companies aggregate all required and desired labelling changes and make them at once. This practice makes for more efficient packaging changes and it mitigates the time and money spent implementing the change. I am aware that the FDA is expected to enact new regulations regarding the required nutrition facts in the near future. I believe these changes will require most companies to change their packaging. Companies could use that required change as an opportunity to add the GMO language required in Vermont.

17. I have worked with packaging for twenty-four (24) years. In my opinion, there is nothing posed by the small changes required by the Vermont law that would put anyone out of business or cause an overwhelming logistical hurdle.

I swear under penalty of perjury that the foregoing is true and correct.

Date: November 12, 2014

A handwritten signature in cursive script that reads "Rhonda Miller". The signature is written in black ink and is positioned above the printed name.

Rhonda Miller