Case No. S216305

IN THE SUPREME COURT OF CALIFORNIA

MICHELLE QUESADA
Plaintiff-Appellant,

v.

HERB THYME FARMS, INC.
Defendant-Respondent.

After a Decision of the Court of Appeal of the State of California,
Second Appellate District, Appeal No. 239602
On Appeal from the Los Angeles Superior Court, Case No.
BC436557, Honorable Carl West, Judge, Presiding
(subsequently transferred to the Honorable Kenneth Freeman)

APPLICATION TO FILE AMICUS CURIAE BRIEF OF PUBLIC CITIZEN, INC., and AMICUS CURIAE BRIEF OF PUBLIC CITIZEN, INC. IN SUPPORT OF PLAINTIFF-APPELLANT MICHELLE QUESADA

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF MICHELLE QUESADA

Pursuant to California Rule of Court 8.520(f), Public Citizen, Inc., respectfully seeks permission to file the accompanying amicus brief in support of plaintiff-appellant Michelle Quesada.

Public Citizen, Inc., is a consumer-advocacy organization with over 300,000 members and supporters nationwide that appears on behalf of its membership before Congress, administrative agencies, and courts and works for enactment and enforcement of laws protecting consumers, workers, and the general public. Public Citizen often represents consumer interests in litigation, including as amicus curiae in the United States Supreme Court and federal and state appellate courts.

Among Public Citizen's particular concerns is that defendants in a broad range of cases increasingly rely on arguments that federal laws preempt state laws protecting consumers. Public Citizen has a strong interest in fighting exaggerated claims of federal preemption of state laws, and its lawyers have represented parties in numerous, significant federal preemption cases. (*See, e.g., Williamson v. Mazda Motor Co.* (2011) 131 S. Ct. 1131; *Warner-Lambert v. Kent* (2008) 552 U.S. 440; *Riegel v. Medtronic, Inc.* (2008) 552 U.S. 312; *Medtronic, Inc. v. Lohr* (1996) 518 U.S. 470; *Fellner v. Tri-Union Seafoods, LLC* (3d Cir. 2008) 539 F.3d 237.) Public Citizen also

works to defend consumers' access to accurate information affecting their health. (*See, e.g., Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.* (1976) 425 U.S. 748; *N.Y. State Rest. Ass'n v. N.Y. City Bd. of Health* (S.D.N.Y. 2007) 509 F. Supp. 2d 351 [amicus].)

Here, defendant argues that the Organic Foods Production Act (OFPA) preempts state-law claims by consumers who have been misled into believing that they are buying organic food, when, in fact, the food they are buying was conventionally grown. If accepted, that argument would deprive consumers of necessary protections against unscrupulous food producers who are willing to lie about the methods they use to produce their products. Defendant's argument would also deprive consumers who paid increased prices for food they believed was organic a remedy for the economic injury inflicted upon them. And defendant's preemption theories would undermine OFPA's goals of creating consistent national organic standards, removing incentives for food producers to comply with OFPA and undermining consumers' abilities to trust that food labeled "organic" was produced in accordance with OFPA's national organic standards.

Public Citizen believes that its familiarity with the preemption principles at issue, and with the United States Supreme Court's preemption jurisprudence generally, may be of assistance to this Court in determining whether OFPA preempts Quesada's state-law claims. In particular, this brief

explains that OFPA does not contain any provisions expressly preempting Quesada's claims and that allowing Quesada's claims to proceed would not pose an obstacle to congressional objectives in enacting the statute. Indeed, if anything, Quesada's claims further, rather than hinder, OFPA's goals.

No party or counsel for a party authored this brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Public Citizen, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of Public Citizen's brief.

Dated: December 11, 2014

Respectfully submitted,

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INTRODUCTION AND SUMMARY OF ARGUMENT

In 1990, Congress passed the Organic Foods Production Act (OFPA) to set forth national standards for organic food and to assure consumers that food labeled organic was produced according to those standards. In this case, defendant Herb Thyme argues that, in passing that Act, Congress preempted state-law claims based on false labeling of conventionally-grown food as "organic," thereby immunizing deceptive food producers from state-law claims and leaving consumers who paid a premium for falsely labeled food without a remedy for their injuries.

Congress did no such thing. OFPA and implementing regulations issued by the United States Department of Agriculture (USDA) establish a national certification program and require states that want to establish their own organic certification programs to receive federal approval. But the federal law is silent as to claims under state consumer laws. Accordingly, such state-law claims are not expressly preempted.

Moreover, state-law claims are not preempted under a conflict-preemption theory. Claims based on deceptive "organic" labeling of conventionally-grown food do not frustrate any of Congress's three stated goals in enacting OFPA: "to establish national standards governing the marketing of certain agricultural products as organically produced"; "to assure consumers that organically produced products meet a consistent

standard"; and "to facilitate interstate commerce in fresh and processed food that is organically produced." (7 U.S.C. § 6501.) Nor do such claims conflict with the national certification process. As demonstrated by *Wyeth v. Levine* (2009) 555 U.S. 555, in which the United States Supreme Court held that the federal government's approval of drug labels does not preempt state-law failure-to-warn claims alleging a drug label is inadequate, a federal system permitting certain language on product labels can co-exist with state-law claims based on that language.

In our federalist system, federal and state laws can exist and be enforced side by side. "Preemption of state law by federal statute or regulation is not favored 'in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that Congress has unmistakably so ordained.'" (*Chicago & N. W. Transp. Co. v. Kalo Brick & Tile Co.* (1981) 450 U.S. 311, 317 [quoting *Fla. Lime & Avocado Growers, Inc. v. Paul* (1963) 373 U.S. 132, 142].) Here, where Congress has not explicitly indicated an intent to preempt state-law claims based on deceptive labeling of conventionally-grown food as "organic," and where such claims pose no obstacle to the national certification program, state-law consumer deception claims are not preempted and should be allowed to proceed.

BACKGROUND

Recognizing that the majority of "Americans want to purchase organically grown produce and half of them are willing to pay more for such products," (S. Rep. No. 101-357, 101st Cong., 2d Sess. (1990), *reprinted in* 1990 U.S. Code Cong. & Admin. News 4656, 4943), Congress passed OFPA (7 U.S.C. § 6501 *et seq*.) "so that farmers know the rules, so that consumers are sure to get what they pay for, and so that national and international trade in organic foods may prosper." (S. Rep. 101-357, 1990 U.S.C.C.A.N. at p. 4943). The statute and its implementing regulations establish a national organic program that includes production and handling standards that must be met for food to be sold as "organic." (*See* 7 U.S.C. § 6505(a)(1); 7 C.F.R. § 205.102.) For example, harvested crops can be labelled organic only if the producer, among other things, "implement[s] a crop rotation," (7 C.F.R. § 205.205), avoids "[b]urning as a means of disposal for crop residues," (*id*. § 205.203(e)(3)), and refrains from using any "fertilizer or composted plant and animal material that contains a synthetic substance" not expressly allowed. (*Id*. § 205.203(e)(1).)

To help ensure that the standards are met, OFPA requires agricultural producers that intend to sell products as "organic" to become certified. (7 C.F.R. § 205.100(a).) Under OFPA's certification program, producers must submit organic plans to accredited certifying agents, who determine whether

the plans meet OFPA's requirements. (*See* 7 U.S.C. § 6513; 7 C.F.R. §§ 205.400-404.) Once certified, producers must continue to comply with OFPA's organic production requirements. (*See, e.g.*, 7 C.F.R. § 205.400(a).) A producer that knowingly labels food that does not meet OFPA's national standards as organic can be subject to a $11,000 penalty. (*Id.* § 205.662(g)(1).) In addition, a producer that fails to comply with the Act and does not either correct non-compliance or otherwise resolve the issue can be sent a notification that its certification is being suspended or revoked. (*Id.* § 205.662(e).)

OFPA also allows each state to implement its own organic program for agricultural products produced and handled within the state. Such a program must ensure that organic products produced in the state meet the national standards set forth in OFPA, but may also include more restrictive requirements. (*See* 7 U.S.C. § 6507.) State programs must be approved by the Secretary of Agriculture before being implemented. (*Ibid.*; 7 C.F.R. § 205.620(e).) A state that has its own organic program must also assume enforcement obligations within the state for the national organic program. (7 C.F.R. § 205.620(d).) California has a state organic program that has been approved by the Secretary of Agriculture. (*See* Appellant's Appendix (AA) 123; Health & Saf. Code, § 110810 *et seq*.)

ARGUMENT

Federal law preempts state law under only three circumstances. (*English v. Gen. Elec. Co.* (1990) 496 U.S. 72, 78-79.) First, Congress can expressly preempt state law by "explicitly stat[ing] that it is preempting state authority." (*Bronco Wine Co. v. Jolly* (2004) 33 Cal. 4th 943, 955.) Second, state law is subject to field preemption if "it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively." (*English*, 496 U.S. at p. 79.) Finally, "state law is preempted to the extent that it actually conflicts with federal law." (*Ibid*.) Actual conflict can exist "where it is impossible for a private party to comply with both state and federal requirements" or where "state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Ibid*. [internal quotation marks and citations omitted].)

Here, Herb Thyme argues that the plaintiff's claims are both expressly preempted and preempted under conflict preemption because they would obstruct OFPA's objectives. But there is no applicable express preemption provision, and the claims do not stand as an obstacle to OFPA's goals. Accordingly, the case should be allowed to proceed on the merits.

I. Express Preemption Does Not Apply.

As the Court of Appeal correctly concluded, the plaintiff's claims are not expressly preempted. For express preemption to apply, Congress must

have "made its intent [to preempt] known through explicit statutory language." (*English*, *supra*, 496 U.S. at p. 79.) Yet the OFPA has no preemption provision expressing intent to preempt state-law consumer claims.

Herb Thyme cites an OFPA provision stating that "[t]he governing State official may prepare and submit a plan for the establishment of a State organic certification program to the Secretary for approval" and that "[a] State organic certification program must meet the requirements of this chapter to be approved by the Secretary." (7 U.S.C. § 6507(a).) Herb Thyme asserts that this provision preempts "all State activity . . . *unless* it is submitted to, and *approved by*, the federal government." (Herb Thyme Br. at p. 26.) By its terms, however, § 6507(a) applies only to a "State organic certification program." It says nothing about consumer laws and claims.

Herb Thyme also relies on statements in the Federal Register notice that accompanied issuance of OFPA's regulations. That preamble stated that states are "preempted under sections 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA," and that OFPA and its regulations "do preempt State statutes and regulations related to organic agriculture." (65 Fed. Reg. 80548, 80682 (Dec.

21, 2000).) As an initial matter, preamble statements are not themselves statutes or regulations that can preempt state law, nor are they determinative of whether OFPA and its regulations preempt state law. (*See Wyeth, supra*, 555 U.S. at p. 576 [giving no weight to statements in preamble to drug labeling rule declaring that Food and Drug Administration (FDA) approval of drug labels preempted state law].) Moreover, this case does not concern state "certification programs" or "organic statutes," but state consumer laws. (65 Fed. Reg. at p. 80682.) The preamble statements are therefore irrelevant. Likewise irrelevant is the requirement that "a State's enforcement and appeal procedures" be approved (Herb Thyme Br. at p. 25), because this case is not seeking to enforce or appeal a certification decision.

In short, express preemption applies only if there is explicit statutory language exhibiting an intent to preempt, and no such language is present here. Because OFPA contains no language exhibiting an explicit intent to preempt state-law claims, this case is not expressly preempted.

II. Conflict Preemption Does Not Apply.

State-law false labeling claims are also not preempted under a conflict preemption theory. Such claims do not stand as an obstacle to any of Congress's goals in enacting OFPA, and Congress's creation of an exclusive federal certification program does not demonstrate a desire to immunize food

producers from being held accountable under state law if they mislead their customers about the methods they use to produce their products.

A. Consumer Claims Do Not Frustrate Any of OFPA's Purposes.

OFPA lists three purposes for the Act, none of which would be frustrated by plaintiff's claims. (7 U.S.C. § 6501.) First, OFPA's purpose is "to establish national standards governing the marketing of certain agricultural products as organically produced products." (*Id.* § 6501(a).) State-law claims based on an agricultural operation's labeling of food as organic when the food has not been produced according to OFPA's standards do not challenge those standards or attempt to impose differing obligations on agricultural operations. Rather, they further OFPA's goal of establishing national standards by helping ensure that products will be marketed as organic only if they were produced according to the established national standards. As the U.S. Supreme Court has recognized in the context of pesticide regulation, "[p]rivate remedies that enforce federal misbranding requirements would seem to aid, rather than hinder, the functioning" of the federal law. (*Bates v. Dow Agrosciences LLC* (2005) 544 U.S. 431, 451.)

Second, OFPA's purpose is "to assure consumers that organically produced products meet a consistent standard." (7 U.S.C. § 6501(b).) Once again, state-law consumer claims further, rather than frustrate, this purpose, providing food producers with an incentive to meet the national organic

standards and providing consumers a remedy if the standards are not met. In contrast, holding plaintiff's claims preempted would undermine Congress's purpose, removing an incentive for food producers to be honest about whether their products were organically produced and rendering consumers powerless when they are misled about the standards used to produce their food.

Finally, consumer claims do not interfere with OFPA's purpose of "facilitat[ing] interstate commerce in fresh and processed food that is organically produced." (*Id.* § 6501(c).) Claims such as the plaintiff's claims here are not concerned with food that has been organically produced, but with food that has not been. Moreover, providing consumers with a remedy if producers fail to meet the national standards in OFPA does not impede interstate commerce.

B. Consumer Claims Do Not Contradict or Undermine OFPA's Certification Process.

Herb Thyme asserts that this lawsuit is preempted because it seeks to hold Herb Thyme liable for "doing exactly what the USDA, applying its expertise and investigatory oversight, has authorized Respondent to do—to use the terms 'USDA organic' and 'Fresh Organic' on its label." (Herb Thyme Br. at p. 1.) The Court of Appeal similarly asserted, in holding the claims here preempted, that it would be "incongruous" for a court to find that

food was misbranded as organic if the government had not suspended or revoked its producers' organic certification. *Quesada v. Herb Thyme Farms, Inc.*, 222 Cal. App. 4th 642, 166 Cal. Rptr. 3d 346, 355. Allowing Herb Thyme to be held liable for misleading consumers, however, would not challenge or otherwise undermine OFPA's certification program.

As an initial matter, whether or not any of Herb Thyme's operations have organic certification, federal law does *not* allow Herb Thyme to label conventionally grown herbs as organic. Federal law specifies that "[a]ny agricultural product that is sold, labeled, or represented as '100 percent organic,' 'organic,' or 'made with organic (specific ingredient or food group(s))' must be . . . produced in accordance with the . . . applicable requirements of [OFPA's production and handling regulations]." (7 C.F.R. § 205.102.) Thus, even if an agricultural operation has been certified organic under OFPA's certification system, federal law prohibits that operation from labeling its food organic unless the food was produced and handled according to organic specifications. (*See id.* § 205.100(a) [explaining that every operation that produces agricultural products to be labeled as organic must both "be certified according to the provisions of [OFPA's implementing regulations] *and* must meet all other applicable requirements of [OFPA's implementing regulations]" (emphasis added)].) Accordingly,

this lawsuit does not challenge anything "organic certification under federal law allows [Herb Thyme] to do." (Herb Thyme Br. at p. 29.)

Moreover, false and deceptive labeling claims would not frustrate federal objectives even if federal law permitted Herb Thyme to use the label "organic." Although Herb Thyme analogizes the federal government in a federal certification program to an "appointed expert-umpire" whose calls cannot be "challenged" by consumers (Herb Thyme Br. at p. 10), it is simply not the case, as a matter of federal preemption law, that federal approval of use of a term on a label means that state-law claims based on that label are preempted as conflicting with the federal scheme. *Wyeth*, *supra*, 555 U.S. 555, directly addresses this issue. In *Wyeth*, the U.S. Supreme Court considered whether the FDA's approval of drug labels preempted state-law failure-to-warn claims alleging that a drug label was inadequate. Similar to Herb Thyme's argument here, the defendant drug manufacturer argued, among other things, that the state-law claims were preempted because they would "interfere with 'Congress's purpose to entrust an expert agency to make drug labeling decisions that strike a balance between competing objectives.'" (*Id*. at p. 573 [quoting Br. for Petitioner, *Wyeth v. Levine*, at p. 46].) The Supreme Court rejected this argument as having "no merit." (*Id*. at p. 573.)

The Court explained that "all evidence of Congress's purposes," contradicted the defendant's argument that "[o]nce the FDA has approved a drug's label, a state-law verdict may not deem the label inadequate." (*Wyeth, supra*, 555 U.S. at pp. 573-74.) Specifically, the Court pointed out that "Congress enacted the [federal Food, Drug, and Cosmetic Act (FDCA)] to bolster consumer protection," (*id*. at p. 574), that Congress "did not provide a federal remedy for consumers harmed by unsafe or ineffective drugs . . . [evidently determining] that widely available state rights of action provided appropriate relief for injured consumers," (*ibid.*), and that "[i]f Congress thought state-law suits posed an obstacle to its objectives, it surely would have enacted an express pre-emption provision" preempting such actions. (*Ibid.*) Similarly, here, Congress enacted OFPA to protect consumers, did not provide a remedy for consumers misled by "organic" on labels, and did not include state-law consumer claims within any express preemption provision. Just as allowing state-law claims for drug labeling does not interfere with the FDA's role in approving drug labels, allowing state-law claims for labeling of food made in violation of organic production requirements does not interfere with the USDA's role in certifying operations as organic. USDA can continue certifying operations as organic and providing permission under federal law for food producers to use the term organic regardless of whether consumers are able to hold food producers accountable under state

law when those producers market as organic products that were not produced according to national organic standards.

C. Consumer Claims Based on the Labeling As "Organic" of Foods That Were Not Produced According to OFPA's National Standards Do Not Undermine Those Standards.

Below, the Court of Appeal suggested that state-law claims could undermine OFPA's goal of creating national organic standards because state courts might adopt diverging interpretations of those standards. *Quesada*, *supra*, 166 Cal. Rptr. 3d at p. 354. However, although the claims in this case arise under state law, they look to the national standards to determine whether the herbs were organically grown, and the application of those standards by the state courts would not undermine their role as national standards.

The United States Supreme Court has recognized in several cases that the fact that state-law claims based on state standards that parallel federal standards are decided by courts, on a case-by-case basis, does not mean that states are enforcing standards different from the national standards. In *Bates*, for example, the Court considered whether an express preemption provision that preempted any state "requirements for labeling or packaging in addition to or different from those required under" the federal pesticide statute preempted state-law claims by farmers whose crops were damaged by application of a pesticide. (*Bates*, *supra*, 544 U.S. at p. 436 [quoting 7 U.S.C.

§ 136v(b)].) The Court held that state-law labeling claims would not be preempted if they were "equivalent to, or fully consistent with, [the pesticide statute's] misbranding requirements." (*Id*. at p. 447.) Although the standards in the state-law claims at issue in *Bates* would be enforced by a court, the Supreme Court did not consider the fact that a state court would interpret and apply the standards sufficient to keep those standards from being "equivalent to" the federal standards. (*See also, e.g.*, *Medtronic v. Lohr* (1996) 518 U.S. 470, 495 [holding that express preemption provision that preempted state requirements that were "different from, or in addition to" federal requirements did not preempt state-law claims based on state-law duties that paralleled federal duties, and explaining that the "presence of a damages remedy [under state law] does not amount to the additional or different 'requirement'"]; *In re Farm Raised Salmon Cases* (2008) 42 Cal. 4th 1077, 1090 [holding that provision allowing states to establish laws that are "identical to" to federal laws did not "proscrib[e] the range of available remedies states might choose to provide for the violation of those laws, such as private actions"].) Likewise, here, that a state court will apply the standards at issue does not make those standards different from the federal standards such that allowing the claims to continue would undermine Congress's goal of creating national standards.

The United States Supreme Court's recent decision in *POM Wonderful LLC v. Coca-Cola Co.* (2014) 134 S. Ct. 2228, demonstrates that minor differences that may arise as courts interpret and apply identical standards do not undermine national standards. In that case, the defendant in a Lanham Act case based on the deceptive labeling of its fruit juice argued that the FDCA precluded the Lanham Act claim "because Congress intended national uniformity in food and beverage labeling." (*Id.* at p. 2239.) In rejecting that argument, the Court explained that "Congress not infrequently permits a certain amount of variability by authorizing a federal cause of action even in areas of law where national uniformity is important." (*Id.* at p. 2240.) In other words, uniformity is not inconsistent with the variation that comes from court decisions.

D. Consumer Law Claims Are Not OFPA Enforcement Proceedings.

Herb Thyme devotes large portions of its brief to describing how certifications under OFPA are enforced and challenged, and to pointing out that the claims here were not brought under those mechanisms. As this Court has explained, however, that state law "imposes obligations identical to those imposed by [federal law] . . . does not substantively transform plaintiffs' action into one seeking to enforce federal law." (*In re Farm Raised Salmon Cases*, *supra*, 42 Cal. 4th at p. 1095.) Although the state-law claims at issue

here look to OFPA's standards to determine if Herb Thyme acted misleadingly, the plaintiff is seeking to enforce state consumer laws, not OFPA or the California state plan. And because she is not seeking to enforce OFPA or the state plan, the consumer laws at issue here do not need to have been approved as part of the state plan and the plaintiff did not need to employ that plan's enforcement mechanisms.

Herb Thyme nonetheless argues that the claims are preempted because the plaintiff "seeks to enforce her view of the standards imposed by OFPA and [the state plan] in a *manner* that is inconsistent with the federal organic regime[]." (Herb Thyme Br. at p. 28 [emphasis added].) But given the different roles played by a certification program and claims that provide remedies to injured consumers, there is no inconsistency in the co-existence of an exclusive national certification program and the continuation of state-law claims that use different procedures. (*See, e.g.*, *Silkwood v. Kerr-McGee Corp.* (1984) 464 U.S. 238, 258 [in the nuclear regulatory context, noting that "Congress did not believe that it was inconsistent to vest the [agency] with exclusive regulatory authority . . . while at the same time allowing plaintiffs . . . to recover for injuries caused by nuclear hazards"].) As the U.S. Supreme Court has explained, there is nothing "anomalous" about Congress preempting states' establishment of positive-law standards, while allowing claims that "perform an important remedial role in

compensating" victims to proceed. (*Sprietsma v. Mercury Marine* (2002) 537 U.S. 51, 64.)

Herb Thyme also argues that allowing state-law claims to continue would "achieve indirectly what Congress has directly foreclosed." (Herb Thyme Br. at p. 28.) But what Congress foreclosed was the creation of state certification programs that have not been approved by the federal government. (7 U.S.C. § 6507.) Deceptive labeling claims neither directly nor indirectly establish such a program. And rather than suggesting that Congress intended state-law claims to be preempted, the fact that OFPA vests the federal government with authority over the creation of organic certification programs but does not mention state-law claims "supports a reasonable inference . . . that Congress did not intend to pre-empt" such claims. (*In re Farm Raised Salmon Cases*, *supra*, 42 Cal. 4th at p. 1092 [quoting *Freightliner Corp. v. Myrick* (1995) 514 U.S. 280, 288].) "While an express clause does not foreclose an inquiry into implied conflict preemption in all cases, deference should be paid to Congress's detailed attempt to clearly define the scope of preemption[.]" (*Ibid*. [internal citation omitted].)

Further, it would be particularly strange to read OFPA's silence about state-law remedies to preempt such remedies "in light of Congress's presumed awareness that virtually every state in the nation permits one or more nongovernmental parties to enforce state . . . laws of general

applicability prohibiting deceptive or unfair acts and practices in the marketplace." (*In re Farm Raised Salmon Cases, supra,* 42 Cal. 4th at p. 1091 [internal quotation marks and citation omitted].) "If Congress had intended to deprive injured parties of a long available form of compensation, it surely would have expressed that intent more clearly." (*Bates, supra,* 544 U.S. at p. 449.) "It is difficult to believe that Congress would, without comment, remove all means of judicial recourse for those injured by illegal conduct." (*Silkwood, supra,* 464 U.S. at p. 251.) Here, there is no indication that Congress intended to immunize food producers who falsely label their conventionally-grown products "organic" from liability under state consumer laws, and the state-law claims should be allowed to proceed.

CONCLUSION

For the foregoing reasons, this Court should hold that the state-law claims against Herb Thyme are not preempted.

Dated: December 11, 2014

Respectfully Submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to California Rule of the Court 8.204(c)(1), I certify that the text in the attached Amicus Brief was prepared in Microsoft Word, is proportionally spaced, and contains 3,933 words, including footnotes but not the caption, the table of contents, the table of authorities, or the application.

Dated: December 11, 2014

Respectfully Submitted,

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Mark A. Chavez