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ANIMAL LAW & POLICY CLINIC

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**Re: Docket No. FDA-2023-D-0451, “Labeling of Plant-based Milk Alternatives and Voluntary Nutrient Statements; Draft Guidance for Industry”**

The Harvard Law School Animal Law & Policy Clinic writes to commend the U.S. Food and Drug Administration (FDA) for its draft guidance to industry on the labeling of plant-based milk alternatives and to suggest an alternative approach to voluntary nutrient statements. The Animal Law & Policy Clinic (ALPC) undertakes work in the field of animal law and policy, domestically and internationally, and focuses on high impact opportunities to improve the treatment of animals through advocacy, policy, and litigation. As part of this work, ALPC closely monitors technological and regulatory developments within the food sector that have the potential to affect animals. Plant-based alternatives to animal food products are innovations with tremendous potential to improve human health, positively impact animals, and advance environmental sustainability. Accordingly, ALPC commends FDA for outlining in its draft guidance to industry a labeling approach to plant-based milk alternatives that promotes public health, transparency, and innovation while respecting the First Amendment right of all producers to truthful, non-misleading commercial speech on products that are safe, wholesome, and properly labeled.<sup>1</sup>

In its request for comments, FDA specifically encourages input regarding the placement of and possible space constraints for the voluntary nutrient statement on product labels. ALPC applauds FDA for clarifying that producers may include comparative nutrient claims on product labels that are truthful and not misleading. In light, however, of the nutritional differences across different types and brands of fluid milk from cows,<sup>2</sup> ALPC recommends that FDA suggest, as an alternative to voluntary nutrient statements, that any food product label using the term “milk” in its statement of identity include an expanded Nutrition Facts label that provides compositional information for nutrients of public health concern commonly found in fluid milk from cows. Research indicates that consumers already use the Nutrition Facts label when making food product purchase and consumption decisions.<sup>3</sup> By suggesting the inclusion of information regarding

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<sup>1</sup> U.S. FOOD & DRUG ADMIN, LABELING OF PLANT-BASED MILK ALTERNATIVES AND VOLUNTARY NUTRIENT STATEMENTS: GUIDANCE FOR INDUSTRY, DRAFT GUIDANCE 8–9 (Feb. 2023). *See also* Comment on U.S. Food & Drug Admin, Horizontal Approaches to Food Standards of Identity Modernization, Docket No. FDA-2018-N-2381, Harvard Law School Animal Law & Policy Clinic (Nov. 14, 2019).

<sup>2</sup> *See, e.g.*, U.S. DEP’T AGRIC., 2020-2025 DIETARY GUIDELINES AND ONLINE MATERIALS, FOOD SOURCES OF SELECT NUTRIENTS (showing different levels of calcium, potassium, and Vitamin D in fat-free and low-fat milk).

<sup>3</sup> *See, e.g.*, Theodore K. Kyle & Diana M. Thomas, *Consumers believe nutrition facts labeling for added sugar will be more helpful than confusing*, 22 J. OBESITY 2481, 2483 (2014) (stating that three-quarters of consumers self-

additional nutrients on the Nutrition Facts label for products labeled with the term “milk,” FDA can help ensure that producers provide consumers with sufficient information to make informed purchasing decisions and to compare nutritional levels across different products that may be used in similar ways.

If FDA recommends the adoption of voluntary nutrient statements on plant-based milk alternative product labels using the term “milk,” ALPC suggests that FDA expand its placement guidelines for voluntary nutrient statements to include the entire package label of a food product bearing the term “milk” in its statement of identity. As FDA acknowledges, space is limited on product packaging and the principal display panel (PDP) may not be appropriate for longer comparative statements, particularly those that may include more than one nutrient comparison. Further, consumers are accustomed to searching entire product labels for critical compositional information, including vital safety information. For example, it is common for allergen statements to appear only as required on the information panel alongside the ingredient list and not on the PDP.<sup>4</sup> Because consumers are able to locate important information on product labels beyond the PDP, voluntary nutrient statements could appropriately be placed and found on a product label outside the PDP, such as on the information panel. Accordingly, FDA should consider expanding its recommendation for the placement of voluntary nutrient statements to include the entire product package label. Given that consumers already regularly look at package labels beyond the PDP to find key information regarding allergens, ingredients, and nutrition facts,<sup>5</sup> other label areas beyond the PDP are also appropriate for comparative voluntary nutrient statements.

The Harvard Law School Animal Law & Policy Clinic thanks FDA for this opportunity to provide comment related to the draft guidance to industry on the labeling of plant-based milk alternatives and voluntary nutrient statements. As outlined above, ALPC commends FDA’s confirmation to industry that plant-based milk alternative labels may bear the word “milk” when paired with appropriate qualifying terms. Mindful of the nutritional differences that commonly exist between different types and brands of milk products, ALPC suggests that FDA recommend inclusion of expanded Nutrition Facts labels that detail levels of nutrients of public health concern commonly found in fluid milk from cows on all food products bearing the term “milk” in their statements of identity. In the alternative, ALPC suggests that FDA expand its guidance on the placement of voluntary comparative nutrient statements to include the entire package label. ALPC is grateful to FDA for its efforts to ensure that products are safe, wholesome, and properly labeled and for advancing public health, transparency, and innovation while respecting the First Amendment rights of producers.

Respectfully,



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report reading nutrition labels); Sara N. Bleich & Julia A. Wolfson, *Differences in consumer use of food labels by weight loss strategies and demographic characteristics*, 15 BMC PUB. HEALTH 1275 (2015) (finding that 76% of adults use the Nutrition Facts label).

<sup>4</sup> See U.S. FOOD & DRUG ADMIN, GUIDANCE FOR INDUSTRY: A FOOD LABELING GUIDE, 23 (2013).

<sup>5</sup> See *supra* note 3.