

1 **GUTRIDE SAFIER LLP**  
 2 ADAM J. GUTRIDE (State Bar No. 181446)  
 3 SETH A. SAFIER (State Bar No. 197427)  
 4 MARIE MCCRARY (State Bar No. 262670)  
 5 KRISTEN G. SIMPLICIO (State Bar No. 263291)  
 6 835 Douglass Street  
 7 San Francisco, California 94114  
 8 Telephone: (415) 639-9090  
 9 Facsimile: (415) 449-6469  
 10 Attorneys for Plaintiff, ROHINI KUMAR

11 UNITED STATES DISTRICT COURT  
 12  
 13 NORTHERN DISTRICT OF CALIFORNIA

14 ROHINI KUMAR, an individual, on behalf  
 15 of herself, the general public and those simi-  
 16 larly situated,  
 17  
 18 Plaintiff,  
 19  
 20 v.  
 21  
 22 SALOV NORTH AMERICA CORP.; and  
 23 ITALFOODS, INC.,  
 24  
 25 Defendants.

26 CASE NO.  
 27  
 28 CLASS ACTION COMPLAINT FOR VIOLA-  
 TION OF THE CALIFORNIA CONSUMERS  
 LEGAL REMEDIES ACT; FALSE ADVER-  
 TISING; BREACH OF CONTRACT;  
 BREACH OF THE COVENANT OF GOOD  
 FAITH AND FAIR DEALING; FRAUD, DE-  
 CEIT, AND/OR MISREPRESENTATION;  
 AND UNFAIR BUSINESS PRACTICES  
 JURY TRIAL DEMANDED

1 Rohini Kumar, by and through her counsel, brings this Class Action Complaint against  
2 Defendants Salov North America Corp. and Italfoods, Inc., on behalf of herself and those  
3 similarly situated, for violations of the Consumer Legal Remedies Act, false advertising, unfair  
4 trade practices, breach of contract, breach of the covenant of good faith and fair dealing, and  
5 fraud, deceit and/or misrepresentation. The following allegations are based upon information and  
6 belief, including the investigation of Plaintiff's counsel, unless stated otherwise.

### 7 INTRODUCTION

- 8 1. This case concerns Defendants' false and deceptive marketing and sale of olive oil.
- 9 a. First, Defendants identically represent that all of their olive oil products are  
10 "**IMPORTED FROM ITALY.**" This leads consumers to reasonably believe that  
11 Defendants' olive oil products are made from olives grown, or at a minimum  
12 pressed, in Italy. In truth, Defendants' olive oil is made from olives that are not  
13 grown, or even pressed, in Italy. Rather, Defendants' olive oil is pressed (from  
14 olives grown) in other countries, and (at best) is trucked or shipped to Italy, bottled  
15 and then exported.
- 16 b. Second, Defendants label their products as a particular grade of olive oil, namely  
17 "**Extra Virgin**" Olive Oil. This representation is also false and misleading  
18 because, among other things, Defendants mix refined oil in with their extra virgin  
19 olive oil and/or bottle their olive oil in clear, non-ultraviolet protective bottles.  
20 The use of clear bottles exposes the oil to sunlight and heat and causes chemical  
21 reactions inside the oil and causes it to oxidize, degrade and degenerate. These  
22 inferior bottles, which are used by Defendants for all of their extra virgin olive oil,  
23 do not preserve the oil as "extra virgin." Rather, the oil degrades during shipping  
24 and while it is on retailer shelves. Even if the oil is "extra virgin" at the time of  
25 bottling, Defendants know tha the oil will not qualify (and cannot be defined) as  
26 "extra virgin" at the time it is sold to consumers. Defendants' deception is  
27 compounded by providing a "**Best By**" date on each bottle that is approximately a  
28 year to 18 months after the date of bottling, even though they know that the oil

1 sold in their defective bottles will not be “extra virgin” through the period  
2 specified.

3 **PARTIES**

4 2. Rohini Kumar (“Plaintiff”) is an individual and has been a resident of Berkeley,  
5 California since 2011. At all other times since the beginning of the class period, Plaintiff was a  
6 resident of El Cerrito, California.

7 3. Defendant Salov North America Corp. (“Salov”) is a corporation incorporated  
8 under the laws of the State of New York, having its principal place of business in Lyndhurst, New  
9 Jersey. Salov is a wholly owned subsidiary of Salov S.p.A.

10 4. Defendant Italfoods, Inc. (“Italfoods”) is a corporation incorporated under the laws  
11 of the State of California, having its principal place of business in San Francisco, California.

12 5. Salov and Italfoods are collectively referred to hereafter as “Defendants.”

13 6. At all times herein mentioned, each of the Defendants was the agent, servant,  
14 representative, officer, director, partner or employee of the other Defendants and, in doing the  
15 things herein alleged, was acting within the scope and course of his/her/its authority as such  
16 agent, servant, representative, officer, director, partner or employee, and with the permission and  
17 consent of each Defendant.

18 7. At all times herein mentioned, Defendants, and each of them, were members of,  
19 and engaged in, a joint venture, partnership and common enterprise, and acting within the course  
20 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

21 8. At all times herein mentioned, the acts and omissions of Defendants, and each of  
22 them, concurred and contributed to the various acts and omissions of each and all of the other  
23 Defendants in proximately causing the injuries and damages as herein alleged.

24 9. At all times herein mentioned, Defendants, and each of them, ratified each and  
25 every act or omission complained of herein. At all times herein mentioned, the Defendants, and  
26 each of them, aided and abetted the acts and omissions of each and all of the other Defendants in  
27 proximately causing the damages, and other injuries, as herein alleged.  
28

**JURISDICTION AND VENUE**

1  
2 10. This Court has jurisdiction over the subject matter of this action pursuant to 28  
3 U.S.C. § 1332(d)(2), because the matter in controversy exceeds \$5,000,000, exclusive of interest  
4 and costs, and is a class action in which at least one member of the class (Plaintiff) is a citizen of  
5 a State different from at least one Defendant (Salov).

6 11. This Court has subject matter jurisdiction over the Defendants because they  
7 regularly conduct and/or solicit business in, engage in other persistent courses of conduct in,  
8 and/or derive substantial revenue from products and/or services provided to persons in this  
9 District and in this State.

10 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a  
11 substantial part of the events or omissions giving rise to the claims occurred in the State of  
12 California, including this District. Defendants, in fact, sell more olive oil in the State of  
13 California than in any other state in the United States.

14 13. In accordance with California Civil Code Section 1780(d), Plaintiff concurrently  
15 files herewith a declaration establishing that, at various times throughout the class period, she  
16 purchased bottles of Filippo Berio Extra Virgin Olive Oil in Berkeley, California. (Plaintiff's  
17 declaration is attached hereto as Exhibit A.)

18 14. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

19 **SUBSTANTIVE ALLEGATIONS**

20 **A. The Defendants**

21 15. Defendants are importers, marketers, distributors, and sellers of Mediterranean  
22 food products in the United States.

23 16. Defendants import, market, distribute, and sell, in the United States, the Filippo  
24 Berio brand of olive oil.

25 **B. Defendants' False and Deceptive Product Packaging**

26 17. This case concerns Defendants' marketing and sale of their Filippo Berio brand  
27 olive oil products. The specific products at issue in this case are:

- 28 a. Filippo Berio Robusto Extra Virgin Olive Oil;

- 1 b. Filippo Berio Extra Virgin Olive Oil;
- 2 c. Filippo Berio Delicato Extra Virgin Olive Oil;
- 3 d. Filippo Berio Organic Extra Virgin Olive Oil;
- 4 e. Filippo Berio Olive Oil; and
- 5 f. Filippo Berio Extra Light Olive Oil.

6 These products are collectively referred to as the “Mock Italian Products” or simply the  
7 “Products.”

8 18. The subset of the Products that are marketed and sold as “Extra Virgin Olive  
9 Oil”—namely those listed in subparagraphs (a), (b), (c), and (d)—are collectively referred to  
10 herein as the “Mock EVOO Products.”

11 19. This case focuses on Defendants’ representations (1) on all the Products, that the  
12 oil is “**IMPORTED FROM ITALY**” and (2) on all the Mock EVOO Products, that the oil  
13 qualifies (or is graded) as “**EXTRA VIRGIN**.”

14 20. Through Defendants’ use of intentional misrepresentations and selective omission,  
15 each of the above representations deceives and misleads consumers.

- 16 a. First, by stating “IMPORTED FROM ITALY,” Defendants lead consumers to  
17 believe that these Products are made from Italian olives or, at a minimum, are  
18 pressed in Italy. This is false and deceptive. In fact, none of the Mock Italian  
19 Products are made from olives grown in Italy. Nor are they pressed in Italy.  
20 Rather, the Mock Italian Products are made from oil pressed in many different  
21 countries, trucked or shipped to Italy, mixed with oil from other countries, bottled  
22 and then exported.
- 23 b. Second, Defendants mislead and deceive consumers by representing (and  
24 labelling) the Mock EVOO Products as “EXTRA VIRGIN”—i.e., the highest  
25 grade/quality of olive oil—when they know that, due to their use of substandard,  
26 clear (non-light protective) bottles, unprotected transport methods and storage  
27 procedures, the oil invariably degrades, and does not qualify as (or can be defined  
28 as) “extra virgin” olive oil at the time of sale and/or well before the “Best By”

1 date. All of Defendants' Mock EVOO Products are deceptively misbranded.

2 **(1) Defendants' False Origin Representations**

3 21. Part 134, Chapter 1 of Title 19 of the Code of Federal Regulations sets forth  
4 regulations implementing the country of origin marking requirements and exceptions of section  
5 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking  
6 provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

7 22. 19 C.F.R. § 134.46 requires that:

8 In any case in which...the name of any foreign country or locality other than the  
9 country or locality in which the article was manufactured or produced appear on  
10 an imported article or its container, and those words, letters or names may mislead  
11 or deceive the ultimate purchaser as to the actual country of origin of the article,  
12 there shall appear legibly and permanently in close proximity to such words, let-  
13 ters or name, and in at least a comparable size, the name of the country of origin  
14 preceded by "Made in," "Product of," or other words of similar meaning.

15 23. All of Defendants' Products are marketed with labels in bold font that states  
16 "IMPORTED FROM ITALY," when the oil is, in fact, the product of countries other than Italy.  
17 Yet, Defendants, in violation of 19 C.F.R. § 134.46, do not include on the Products, "in close  
18 proximity" to the "IMPORTED FROM ITALY" representation, any indication of the true  
19 country of origin of the olive oil preceded by "Made in," "Product of," or other words of similar  
20 meaning. Instead, Defendants state only on the back of the Mock Italian Products, in much  
21 smaller font, the notation: "Packed in Italy with select extra virgin olive oils from Italy, Spain,  
22 Greece & Tunisia."

23 24. The United States Food and Drug Administration (the "FDA") has also  
24 promulgated regulations governing misbranding of food and providing that food is misbranded if  
25 its label expresses or implies a geographical origin of the food or any ingredient of the food  
26 except when such representation is "[a] truthful representation of geographical origin." *See* 21  
27 CFR § 101.18. Because the "IMPORTED FROM ITALY" representation is not truthful,  
28 Defendants' labels violate 21 CFR § 101.18, which has been independently adopted as part of the  
29 Sherman Food, Drug and Cosmetic Law, California Health and Safety Code ("Cal. Health & Saf.  
30 Code") § 109875, *et. seq.* *See* Cal. Health & Saf. Code §§ 110100(a), 110380, 110505 (adopting  
31 FDA standards).

1           25.     Though Defendants may contend that in some instances the Products contain some  
2 olive oil from Italy, U.S. Customs and Border Protection (“CBP”), Department of Homeland  
3 Security, has consistently held that a manufacturer cannot claim that a product is “from” a  
4 particular country if it merely blends some product from that country with the same product from  
5 another country, as that process does not constitute a “substantial transformation” of the product  
6 from the other country which would justify a “country of origin” claim based on the  
7 manufacturing location. With specific regard to olive oil, in HQ 560944, dated April 27, 1998,  
8 CBP determined that the blending of Spanish olive oil with Italian olive oil in Italy does not result  
9 in a “substantial transformation” of the Spanish product that would allow it to become an Italian  
10 product.

11           26.     The country of origin claims Defendants make on the Mock Italian Product bottles  
12 mislead consumers, as they misled Plaintiff, by prominently making an Italian origin claim on the  
13 front of the bottle, while placing in small print on the back of the bottle, cryptic information as to  
14 the actual non-Italian origin of the olive oil. The disclaimer on the back of the bottle does not  
15 lessen Defendants’ deception because, as the Ninth Circuit has stated, “reasonable  
16 consumers...should [not] be expected to look beyond misleading representations on the front of  
17 the box to discover the truth from the...small print on the side of the box.” *Williams v. Gerber*  
18 *Products Co.*, 552 F.3d 934, 939 (9th Cir. 2008).

19           **(2) Defendants’ False “Extra Virgin” Respresentations**

20           27.     “Extra Virgin” olive oil is widely understood to mean the best (or highest)  
21 grade/quality of olive oil. The term “Extra Virgin” is defined by the International Olive Council  
22 (“IOC”),<sup>1</sup> the United States Department of Agriculture (“USDA”), and the State of California, the  
23 United States’ largest domestic olive oil producer. The IOC, USDA, and State of California  
24

---

25 <sup>1</sup> The IOC — an intergovernmental organization based in Madrid, Spain, with 16 member states  
26 plus the European Union — promotes olive oil around the world by tracking production, defining  
27 quality standards, and monitoring authenticity. The IOC officially governs 95% of international  
28 production and holds great influence over the rest. The USDA’s olive oil standards are generally  
based upon the IOC’s standards.

1 established chemistry and sensory standards for “extra virgin” olive oil. Under each of these  
2 standards, “extra virgin” olive oil must have zero sensory defects and greater than zero fruitiness.  
3 Defendants’ Mock EVOO Products inevitably fail each of these standards for “extra virgin” olive  
4 oil at the time of sale to consumers and/or prior to the “best by” date on the bottle.

5 28. The IOC defines “Extra Virgin Olive Oil” as: virgin olive oil which has a free  
6 acidity, expressed as oleic acid, of not more than 0.8 grams per 100 grams. The IOC utilizes a  
7 protocol for its sensory testing, which includes, but is not limited to, perception, sensation, and  
8 sensitivity.

9 29. Since 1948, the USDA has regulated olive oil grades and, like the IOC, utilizes  
10 both chemical and sensory standards to determine quality. USDA standards define “U.S. Extra  
11 Virgin Olive Oil” as: “virgin olive oil which has excellent flavor and odor (median of defects  
12 equal to zero and median of fruitiness greater than zero) and a free fatty acid content, expressed  
13 as oleic acid, of not more than 0.8 grams per 100 grams.” The USDA additionally requires that  
14 the oil meets the additional requirements outlined in the United States Standards for Grades of  
15 Olive Oil and Olive-Pomace Oil, 75 FR 22363 (April 28, 2010), which sets forth the criteria to  
16 ascertain the grades of the oil using both chemical and sensory standards.

17 30. The State of California defines “Extra Virgin Olive Oil” as: “virgin olive oil that  
18 has excellent flavor and odor expressed as a median of defects equal to zero and a median of  
19 fruitiness greater than zero, has a free fatty acid content, expressed as oleic acid, of not more than  
20 0.8 grams per 100 grams oil, has a peroxide value of not more than 20 milliequivalent peroxide  
21 oxygen per kilogram oil” and meets the additional chemical and sensory requirements for ‘United  
22 States Extra Virgin Olive Oil’ outlined in the United States Standards for Grades of Olive Oil and  
23 Olive-Pomace Oil published in the Federal Register that are in effect on October 25, 2010.” Cal.  
24 Health & Safety Code §§ 112877(a).<sup>2</sup>

25 \_\_\_\_\_  
26 <sup>2</sup> Other states similarly define “extra virgin.” *See, e.g.*, Connecticut (Regs. Conn. State Agencies  
27 § 21a-100-8 (stating “‘extra virgin olive oil’ means virgin olive oil which has a free acidity, ex-  
28 pressed as oleic acid, of not more than 0.8 grams per hundred grams.”)); New York (N.Y. Agric.  
& Mkts. Law § 204-a stating “‘extra virgin olive oil’ means virgin olive oil which has a free acid-  
ity, expressed as oleic acid, of not more than 0.8 grams per hundred grams.”)); Oregon (ORS  
2011 vol. 13, § 616716 (adopting USDA standard).)



1           31.     In March of 2014, Plaintiff’s counsel had several bottles of Defendants’ Mock  
2 EVOO Products tested by an independent, IOC-accredited laboratory and organoleptic evaluation  
3 panel. Each bottle was purchased at well-known California retail stores, packed, and immediately  
4 shipped to an IOC-accredited laboratory and sensory panel for analysis. The olive oil was tested  
5 prior to the “best by” date indicated by Defendants on the bottles.

6           32.     The IOC-accredited laboratory and organoleptic evaluation panel determined that,  
7 contrary to Defendants’ representations, none of the bottles of olive oil tested contained oil that  
8 qualified as “extra virgin,” under both the chemical analysis and sensory assessment. Each bottle  
9 tested contained an inferior grade of olive oil that did not qualify as “extra virgin” under the IOC,  
10 USDA, or State of California definitions.

11           33.     Defendants know, or should have known, that the Mock EVOO Products they sell  
12 and market, and which are labeled as “extra virgin,” do not meet the state, national, or  
13 international standards for “extra virgin” when sold to consumers and/or during the entire “best  
14 by” period indicated on the bottles.

15           34.     Defendants have been aware of the fact that their olive oils are not adequately  
16 preserved and do not maintain the quality of “extra virgin” since at least June of 2010, when the  
17 University of California at Davis’ Olive Oil Center released its report entitled “Tests indicate that  
18 imported ‘extra virgin’ olive oil often fails international and USDA standards” (the “Report”).  
19 The Report<sup>3</sup> evaluated olive oils, including those sold by Defendants, based on standards and  
20 testing methods established by the IOC and USDA, as well as several newer standards and testing  
21 methods adopted in Germany and Australia. The Report went on to note that the “samples failed  
22 extra virgin standards for reasons that include one or more of the following:

- 23           •     oxidation by exposure to elevated temperatures, light, and/or aging;
- 24           •     adulteration with cheaper refined olive oil;
- 25           •     poor quality oil made from damaged and overripe olives, processing flaws, and/or

---

27           <sup>3</sup> The tests relied upon in the Report were conducted by scientists at UC Davis and at the Australia  
28           Oils Research Laboratory, a governmental research center accredited by the IOC (the “Aus-  
          tralian Laboratory”).

1           improper oil storage.”

2           35.     With specific regard to the Filippo Berio brand olive oil that was tested, the Report  
3 found that two of the three samples tested by UC Davis failed the sensory qualifications for “extra  
4 virgin” olive oil.

5           36.     In April of 2011, UC Davis released a follow-up study. UC Davis again worked  
6 with the Australian Laboratory to evaluate the quality of extra virgin olive oils sold on retail  
7 shelves in California. UC Davis and the Australian Laboratory evaluated the oils based on the  
8 standards and testing methods established by the IOC. Additionally, the two laboratories  
9 analyzed the oils using two testing methods adopted in Germany and Australia. The Australian  
10 Olive Association adopted these tests to help detect extra virgin olive oils that were old and  
11 oxidized and not up to “extra virgin” olive oil standards. The follow-up study found that 39% of  
12 the 18 samples of Filippo Berio extra virgin olive oil tested failed at least one chemical test for  
13 “extra virgin” and 83% of the samples failed both sensory assessments.

14           37.     It is a well-known in the olive oil industry that all olive oil must be stored in a cool  
15 and dark environment to preseve “extra virgin” qualities. Heat and light cause chemical reactions  
16 inside the oil and causes it to degenerate into undesirable chemical products, thereby adulterating  
17 and degrading the oil. For example, a 2007 study by researchers at the National Agricultural  
18 Research Foundation, Institute of Technology of Agricultural Products, Greece and the Higher  
19 Technical Educational School, Department of Food Science, Thermi, Thessaloniki, Greece, which  
20 Defendants are aware of, concluded that olive oil exposed to light had significantly lower  
21 tocopherol, carotenoid and chlorophyll contents than did the same oils kept in the dark. Overall,  
22 the results obtained showed that the shelf life of the oils exposed to light is shorter than that of  
23 oils kept in the dark, and that after only *two months* of exposure to light the oils examined could  
24 no longer be considered as “extra virgin.”

25           38.     Defendants continue to pack their olive oil in clear bottles and do not take steps to  
26 adequately protect the Mock EVOO Products from light degradation once they reach stores.  
27 Indeed, Defendants do not have a policy for removing the Mock EVOO Products from store  
28 shelves after they have become degraded by light or other conditions. Further, Defendants

1 indicate a “best by” date on the Mock EVOO Products that is a year to eighteen months after the  
2 oil is bottled – well beyond the two months it takes oil exposed to light to degrade such that it is  
3 no longer “extra virgin.” Defendants know that the Mock EVOO Products are not “extra virgin”  
4 when they are sold to consumers and/or through the entire “best by” period indicated the bottles,  
5 but they label and price the oil as “extra virgin” and include the “best by” date even though they  
6 know it to be untrue.

7 **C. Defendants Compound Their Deception With Targeted Marketing and Advertising**  
8 **Campaigns**

9 39. Over the past twenty years, extra virgin olive oil has become increasingly popular  
10 among consumers. The media has reported extensively on the health benefits of olive oil, with  
11 numerous media outlets covering studies suggesting that olive oil can lower cholesterol and risks  
12 of cancer. Often these articles advise consumers that *extra virgin* olive oil is healthier than other  
13 kinds of olive oil. *See, e.g.* [http://www.npr.org/blogs/thesalt/2013/09/30/226844915/to-get-the-](http://www.npr.org/blogs/thesalt/2013/09/30/226844915/to-get-the-benefits-of-olive-oil-fresh-may-be-best)  
14 [benefits-of-olive-oil-fresh-may-be-best](http://www.mindbodygreen.com/0-12906/6-great-reasons-to-fall-in-love-with-olive-oil.html) and [http://www.mindbodygreen.com/0-12906/6-great-](http://www.mindbodygreen.com/0-12906/6-great-reasons-to-fall-in-love-with-olive-oil.html)  
15 [reasons-to-fall-in-love-with-olive-oil.html](http://www.mindbodygreen.com/0-12906/6-great-reasons-to-fall-in-love-with-olive-oil.html), last accessed April 21, 2014.

16 40. Because real extra virgin olive oil has a distinct flavor profile, chefs and food  
17 writers often recommend it for cooking over regular olive oil. Its popularity surged over the last  
18 two decades, in part, because of the popularity of the Food Network channel, and the fact that  
19 many chefs appearing on that channel recommend it. For example, Rachel Ray, a well known  
20 celebrity chef famous for easy to prepare meals, uses extra virgin olive oil so frequently in her  
21 television programs that she was credited with coining the “EVOO” acronym. *See*  
22 [http://en.wikipedia.org/wiki/Rachael\\_Ray](http://en.wikipedia.org/wiki/Rachael_Ray), last accessed April 21, 2014. Giada De Laurentiis,  
23 another popular Food Network host and celebrity chef, uses Italian extra virgin olive oil in her  
24 recipes, and regularly advises viewers and home cooks to buy *Italian extra virgin olive oil* in  
25 order to recreate her Italian dishes at home. Mario Batali, a former Food Network chef, cookbook  
26 author, and current host of a popular daytime talk show, *The Chew*, has stated in his cookbooks  
27 and in numerous television programs that the best olive oil in the world comes from Italy. He  
28 accordingly counsels consumers to only use extra virgin olive oil from Italy when cooking.

1 41. Extra virgin olive oil is so frequently recommended by chefs that a search for  
2 “extra virgin olive oil” on [www.foodnetwork.com](http://www.foodnetwork.com), the website operated by the Food Network,  
3 brings up more than 8,500 recipes that call for extra virgin olive oil as an ingredient in the recipe.  
4 [http://www.foodnetwork.com/search/search-](http://www.foodnetwork.com/search/search-results.recipes.html?searchTerm=%22extra+virgin+olive+oil%22&lastFilter=tab&_charset_=UTF-8)  
5 [results.recipes.html?searchTerm=%22extra+virgin+olive+oil%22&lastFilter=tab&\\_charset\\_=UT](http://www.foodnetwork.com/search/search-results.recipes.html?searchTerm=%22extra+virgin+olive+oil%22&lastFilter=tab&_charset_=UTF-8)  
6 F-8, last accessed April 21, 2014. Other popular recipe websites, such as [allrecipes.com](http://allrecipes.com) and  
7 [epicurious.com](http://epicurious.com) similarly feature thousands of recipes calling for “extra virgin olive oil.”

8 42. Defendants unfairly and unlawfully attempt to capitalize on consumers’ desire for  
9 Italian and extra virgin olive oil. Defendants, in fact, have employed a variety of long-term  
10 marketing and advertising campaigns and strategies to deceive consumers into believing that that  
11 Products are Italian and the Mock EVOO Products are high quality extra virgin olive oil. For  
12 example, Defendants have a partnership with a popular Italian celebrity chef Mary Ann Esposito.  
13 Esposito has designed recipes and cooking videos for Defendants’ consumers to encourage them  
14 to use the (more expensive) “Extra Virgin Olive Oil” in recipes, particularly those for Italian  
15 food.

16 43. Defendants also rely on their website, to further their deception. For example,  
17 their website includes a tab titled “Our Olive Grove.” They inform their consumers, falsely, that  
18 Defendants’ Products come from an olive grove in Italy:

19  
20 The largest olive grove in Italy, La Traversagna is located at the foot of the Tuscan  
21 hills in the Lucca Province near Pisa. Nestled in this picturesque, sun-drenched  
22 valley, La Traversagna is the site of our family’s century-old farmhouse, the  
23 epicenter of the Filippo Berio® tradition.

24  
25 A walk through La Traversagna is like a step back in time, when olives were  
26 grown and hand picked in much the same way they are today. Our trees enjoy full  
27 and prosperous flowering due to year-round care, which allows the olives to reach  
28 optimal size and maturity just before harvesting.

With 45,000 olive trees planted across 250 acres of beautiful green meadows, La Traversagna is truly an olive oil paradise.



1 **D. Defendants' Conduct Differs From That Of Their Competitors**

2 **(1) Defendants' Competitors' Disclosures Related to the Origin of Their Products**

3 44. Unlike Defendants who claim their Products are "IMPORTED FROM ITALY,"  
4 certain of their competitors state that their olive oil products are "PACKED IN ITALY" or  
5 "BOTTLED IN ITALY" or make no claim on the front of the package about the place of  
6 manufacture. For example, one of Defendants' competitors in the olive oil market is Violi brand  
7 olive oil. Violi sells its olive oil for lower prices than Defendants' comparable products. It states  
8 "PACKED IN ITALY" on its bottles. Trader Joe's bottles of olive oil, which the company also  
9 sells for a lower cost than Defendants' olive oils, too state "PACKED IN ITALY." Other of  
10 Defendants' olive oil competitors, including Rizzoli, state on bottles that the olive oil is  
11 "BOTTLED IN ITALY." Other companies, such as Star brand olive oil, make no reference on  
12 the front of the package of the geographic origin of their olive oil, unless the oil is, in fact, made  
13 from olives that are grown and pressed in that country, state or region. Other of Defendants'  
14 competitors, like Pompeian olive oil, simply state, on the primary label panel, that the olive oil is  
15 "IMPORTED" without reference to any geographical region.

16 **(2) Defendants' Competitors Use Bottles Designed to Prevent Degradation of**  
17 **Their Olive Oil**

18 45. Unlike Defendants, many of their competitors bottle their olive oils in bottles that  
19 are designed to better maintain the quality of the oil inside the bottles. For example, California  
20 Olive Ranch olive oils are bottled in green glass to prevent exposure to light. Castillo de Piñar  
21 Olive Oil is bottled in violet glass bottles, which preserve the "organoleptic qualities" of the  
22 company's olive oils. And, Colavita, a large manufacturer of olive oil, and one of Defendants'  
23 main competitors, bottles its olive oil in dark greenish glass. Indeed, following the release of the  
24 results of the UC Davis Report, Colavita, unlike Defendants, made the decision to change to dark  
25 glass bottles, even if it cost them more and reduced sales. Its CEO, Enrico Colavita, stated:  
26 "Even if consumers want to see the color of the olive oil, we are moving to all dark bottles." See  
27 <http://www.oliveoiltimes.com/olive-oil-basics/world/colavita-davis-olive-oil-study/7186> (last  
28 visited, April 21, 2014.)

**PLAINTIFF'S EXPERIENCE**

1  
2 46. Plaintiff regularly purchases extra virgin olive oil for home use. At various times  
3 throughout the class period, she purchased Defendants' Filippo Berio Extra Virgin Olive Oil at a  
4 Safeway in Berkeley, California.

5 47. Prior to purchasing Defendants' Filippo Berio brand extra virgin olive oil, Plaintiff  
6 reviewed the packaging to satisfy herself that she was purchasing extra virgin olive oil from Italy.  
7 Plaintiff specifically reviewed Defendants' statements on the package that the product was "extra  
8 virgin" and "Imported from Italy." Plaintiff relied on Defendants' affirmative disclosures to  
9 believe she was purchasing olive oil that was both extra virgin and made from olives that were  
10 grown and pressed in Italy. Plaintiff also relied on Defendants' failure to adequately disclose that  
11 by "Imported from Italy" it meant that it was "packed" or "bottled" in Italy and that it was not  
12 either pressed in or made (exclusively) from olives that had been grown in Italy.

13 48. Plaintiff purchased Defendants' Filippo Berio extra virgin olive oil from a  
14 Safeway supermarket in Berkeley, California for approximately \$6 a bottle.

15 49. Plaintiff later learned that the product she purchased was not extra virgin. Plaintiff  
16 also later learned that the product she purchased was not made from olives grown and pressed in  
17 Italy. Had Defendants not misrepresented (by omission and commission) the true nature of the  
18 olive oil, Plaintiff would not have purchased Defendants' product or, at a very minimum, she  
19 would have paid less for the product that she purchased.

20 50. Plaintiff intends to make additional purchases of olive oil, including brands that  
21 are or may be owned by Defendants. Plaintiff has no way to determine prior to her purchases  
22 whether oil sold by Defendants was made from olives grown and/or pressed in Italy and whether  
23 oils labelled "extra virgin" actually meet the standards of that grade. Thus, in the absence of the  
24 injunctive relief requested in this Complaint, Plaintiff is likely to be deceived in the future and to  
25 suffer additional harm.

26 **CLASS ALLEGATIONS**

27 51. Plaintiff brings this action against Defendants on behalf of herself and all others  
28 similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure,

1 section 382 of the California Code of Civil Procedure, and section 1781 of the California Civil  
2 Code. Plaintiff seeks to represent the following groups of similarly situated persons, defined as  
3 follows:

4 All persons who, between May 23, 2010 and the present, purchased, in Cali-  
5 fornia, any of Defendants' Mock Italian Products (the "California Italian  
6 Class");

7 All persons who, between May 23, 2010 and the present, purchased, in the  
8 United States, any of Defendants' Mock EVOO Products (the "EVOO  
9 Class"); and

10 All members of the EVOO Class who made their Fake EVOO Product pur-  
11 chases in California (the "California EVOO Subclass").

12 52. This action has been brought and may properly be maintained as a class action  
13 against Defendants pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure,  
14 California Code of Civil Procedure section 382 because there is a well-defined community of  
15 interest in the litigation and the proposed class is easily ascertainable.

16 53. Numerosity: Plaintiff does not know the exact size of the classes or subclass, but  
17 it is estimated that each is composed of more than 100 persons. The persons are so numerous that  
18 the joinder of all such persons is impracticable and the disposition of their claims in a class action  
19 rather than in individual actions will benefit the parties and the courts.

20 54. Common Questions Predominate: This action involves common questions of law  
21 and fact to the potential classes and subclass because each class and subclass member's claim  
22 derives from the deceptive, unlawful and/or unfair statements and omissions that led Defendants'  
23 customers to believe that the Products were (or at a minimum contained olives) from Italy, and/or  
24 extra virgin. The common questions of law and fact predominate over individual questions, as  
25 proof of a common or single set of facts will establish the right of each member of the classes and  
26 subclass to recover. Among the common questions of law and fact are:

27 a) Whether Defendants' Products were pressed in Italy and/or made from Italian  
28 olives;

b) Whether Defendants' Mock EVOO Products qualify as "extra virgin olive oil" as  
that term is commonly understood and/or legally defined;

c) Whether Defendants unfairly, unlawfully and/or deceptively failed to inform class

1 members that their Products were not Italian or “extra virgin,” as of the purchase date and/or the  
2 “best by” date on the labels;

3 d) Whether Defendants misled class members by, *inter alia*, representing that their  
4 Products were “Imported from Italy” and “Extra Virgin” Olive Oil;

5 e) Whether Defendants’ advertising and marketing regarding their Products sold to  
6 class members was likely to deceive class members or was unfair;

7 f) Whether Defendants’ bottles for distributing the Mock EVOO Products were  
8 inadequate or defective to preseve the “extra virgin” quality of the oil;

9 g) Whether Defendants engaged in the alleged conduct knowingly, recklessly, or  
10 negligently;

11 h) The amount of revenues and profits Defendants received and/or the amount of  
12 monies or other obligations lost by class members as a result of such wrongdoing;

13 i) Whether class members are entitled to injunctive and other equitable relief and, if  
14 so, what is the nature of such relief; and

15 j) Whether class members are entitled to payment of actual, incidental,  
16 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the  
17 nature of such relief.

18 55. Typicality: Plaintiff’s claims are typical of the class and subclass members  
19 because, in California, throughout the class period, she purchased at least one of Defendants’  
20 Products, Defendants’ Filippo Berio Extra Virgin Olive Oil, in reliance on Defendants’  
21 misrepresentations and omissions that it was “extra virgin” and “Imported from Italy.” Thus,  
22 Plaintiff and the class members sustained the same injuries and damages arising out of  
23 Defendants’ conduct in violation of the law. The injuries and damages of each class member  
24 were caused directly by Defendants’ wrongful conduct in violation of law as alleged.

25 56. Adequacy: Plaintiff will fairly and adequately protect the interests of all class  
26 members because it is in her best interests to prosecute the claims alleged herein to obtain full  
27 compensation due to her for the unfair and illegal conduct of which she complains. Plaintiff also  
28 has no interests that are in conflict with or antagonistic to the interests of class and subclass



1 members. Plaintiff has retained highly competent and experienced class action attorneys to  
2 represent her interests and that of the classes and subclass. By prevailing on her own claim,  
3 Plaintiff will establish Defendants' liability to all class and subclass members. Plaintiff and her  
4 counsel have the necessary financial resources to adequately and vigorously litigate this class  
5 action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the class and  
6 subclass members and are determined to diligently discharge those duties by vigorously seeking  
7 the maximum possible recovery for class members.

8 57. Superiority: There is no plain, speedy, or adequate remedy other than by  
9 maintenance of this class action. The prosecution of individual remedies by members of the  
10 classes and subclass will tend to establish inconsistent standards of conduct for the Defendants  
11 and result in the impairment of class members' rights and the disposition of their interests through  
12 actions to which they were not parties. Class action treatment will permit a large number of  
13 similarly situated persons to prosecute their common claims in a single forum simultaneously,  
14 efficiently, and without the unnecessary duplication of effort and expense that numerous  
15 individual actions would engender. Furthermore, as the damages suffered by each individual  
16 member of the class may be relatively small, the expenses and burden of individual litigation  
17 would make it difficult or impossible for individual members of the class to redress the wrongs  
18 done to them, while an important public interest will be served by addressing the matter as a class  
19 action.

20 58. Plaintiff is unaware of any difficulties that are likely to be encountered in the  
21 management of this action that would preclude its maintenance as a class action.

### 22 **CAUSES OF ACTION**

23 59. Plaintiff does not plead, and hereby disclaims, causes of action under the Food  
24 Drug and Cosmetic Act ("FDCA") and regulations promulgated thereunder by the FDA. If  
25 failure to do so would cause any of her claims to be preempted, Plaintiff also disclaims causes of  
26 action under the Tariff Act and regulations promulgated by the USDA, IOC and/or CBP.  
27 Plaintiff relies on these regulations only to the extent such laws and regulations have been  
28 separately enacted as state law or regulations or provide a predicate basis of liability under the

1 state and common laws cited in the following causes of action.

2 **PLAINTIFF'S FIRST CAUSE OF ACTION**

3 **(Violation of the Consumers Legal Remedies Act, California Civil Code § 1750, *et. seq.*)**  
4 **On Behalf of Herself and the California Italian Class and the California EVOO Subclass**

5 60. Plaintiff realleges and incorporates the paragraphs of this Class Action Complaint  
6 as if set forth herein.

7 61. This cause of action is brought pursuant to the California Consumers Legal  
8 Remedies Act, California Civil Code § 1750, *et. seq.* ("CLRA").

9 62. Defendants' actions, representations and conduct have violated, and continue to  
10 violate the CLRA, because they extend to transactions that are intended to result, or which have  
11 resulted, in the sale or lease of goods or services to consumers.

12 63. Plaintiff and other California Subclass members are "consumers" as that term is  
13 defined by the CLRA in California Civil Code § 1761(d).

14 64. The Products that Plaintiff (and others similarly situated class members) purchased  
15 from Defendants were "goods" within the meaning of California Civil Code § 1761(a).

16 65. By engaging in the actions, representations and conduct set forth in this Class  
17 Action Complaint, Defendants have violated, and continue to violate, § 1770(a)(2), § 1770(a)(4),  
18 § 1770(a)(5), § 1770(a)(7), and § 1770(a)(9) of the CLRA. In violation of California Civil Code  
19 §1770(a)(2), Defendants' acts and practices constitute improper representations regarding the  
20 source, sponsorship, approval, or certification of the goods they sold. In violation of California  
21 Civil Code §1770(a)(4), Defendants' acts and practices constitute improper representations  
22 representations or designations of geographic origin in connection with goods or service. In  
23 violation of California Civil Code §1770(a)(5), Defendants' acts and practices constitute  
24 improper representations that the goods they sell have sponsorship, approval, characteristics,  
25 ingredients, uses, benefits, or quantities, which they do not have. In violation of California Civil  
26 Code §1770(a)(7), Defendants' acts and practices constitute improper representations that the  
27 goods they sell are of a particular standard, quality, or grade, when they are of another. In  
28 violation of California Civil Code §1770(a)(9), Defendants have advertised goods or services  
with intent not to sell them as advertised.

1 66. Specifically, Defendants' acts and practices led customers to falsely believe that  
2 that their Products were Italian and "extra virgin" when they knew all such representations to be  
3 false and/or misleading. Plaintiff requests that this Court enjoin Defendants from continuing to  
4 employ the unlawful methods, acts and practices alleged herein pursuant to California Civil Code  
5 § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the  
6 future, Plaintiff and the other members of the California Italian Class and California EVOO  
7 Subclass will continue to suffer harm.

8 67. CLRA § 1782 NOTICE. **Irrespective of any representations to the contrary in**  
9 **this Class Action Complaint, Plaintiff specifically disclaims, at this time, any request for**  
10 **damages under any provision of the CLRA.** Plaintiff, however, hereby provides Defendants  
11 with notice and demand that within thirty (30) days from that date, Defendants correct, repair,  
12 replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of  
13 herein. Defendants' failure to do so will result in Plaintiff amending this Class Action Complaint  
14 to seek, pursuant to California Civil Code § 1780(a)(3), on behalf of herself and those similarly  
15 situated class members, compensatory damages, punitive damages and restitution of any ill-gotten  
16 gains due to Defendants' acts and practices.

17 68. Plaintiff also requests that this Court award her costs and reasonable attorneys'  
18 fees pursuant to California Civil Code § 1780(d).

19 **PLAINTIFF'S SECOND CAUSE OF ACTION**

20 **(False Advertising, Business and Professions Code § 17500, et. seq. ("FAL"))**  
21 **On Behalf Of Herself and the California Italian Class and the California EVOO Subclass**

22 69. Plaintiff realleges and incorporates by reference the paragraphs of this Class  
23 Action Complaint as if set forth herein.

24 70. Beginning at an exact date unknown to Plaintiff, but within three (3) years  
25 preceding the filing of the Class Action Complaint, Defendants made untrue, false, deceptive  
26 and/or misleading statements in connection with the advertising and marketing of their Products.

27 71. Defendants made representations and statements (by omission and commission)  
28 that led reasonable customers to believe that they were purchasing olive oil that: (1) originated in  
Italy and (2) was "extra virgin" grade or quality at the time of sale and up until the "best by" date

1 on the bottle. Defendants deceptively failed to inform Plaintiff, and those similarly situated, that  
2 their Products did not actually originate in Italy, and because the Mock EVOO Products were  
3 packaged in defective bottles, they would not quality as “extra virgin” at the time of sale and/or  
4 up until the “best by” date.

5 72. Plaintiff and those similarly situated relied to their detriment on Defendants’ false,  
6 misleading and deceptive advertising and marketing practices, including without limitation each  
7 of the misrepresentations and omissions set forth in paragraphs 1, 20-43 and 47, above. Had  
8 Plaintiff and those similarly situated been adequately informed and not intentionally deceived by  
9 Defendants, they would have acted differently by, without limitation, refraining from purchasing  
10 Defendants’ Products, paying less for them or purchasing smaller quantities.

11 73. Defendants’ acts and omissions are likely to deceive the general public.

12 74. Defendants engaged in these false, misleading and deceptive advertising and  
13 marketing practices to increase their profits. Accordingly, Defendants have engaged in false  
14 advertising, as defined and prohibited by section 17500, *et. seq.*, of the California Business and  
15 Professions Code.

16 75. The aforementioned practices, which Defendants used, and continue to use, to  
17 their significant financial gain, also constitute unlawful competition and provide an unlawful  
18 advantage over Defendants’ competitors as well as injury to the general public.

19 76. Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as  
20 necessary and according to proof, to restore any and all monies acquired by Defendants from  
21 Plaintiff, the general public, or those similarly situated by means of the false, misleading and  
22 deceptive advertising and marketing practices complained of herein, plus interest thereon.

23 77. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit  
24 Defendants from continuing to engage in the false, misleading and deceptive advertising and  
25 marketing practices complained of herein. The acts complained of herein occurred, at least in  
26 part, within three (3) years preceding the filing of this Class Action Complaint.

27 78. Plaintiff and those similarly situated are further entitled to and do seek both a  
28 declaration that the above-described practices constitute false, misleading and deceptive

1 advertising, and injunctive relief restraining Defendants from engaging in any such advertising  
2 and marketing practices in the future. Such misconduct by Defendants, unless and until enjoined  
3 and restrained by order of this Court, will continue to cause injury in fact to Plaintiff and the  
4 general public and the loss of money and property in that the Defendants will continue to violate  
5 the laws of California, unless specifically ordered to comply with the same. This expectation of  
6 future violations will require current and future customers to repeatedly and continuously seek  
7 legal redress in order to recover monies paid to Defendants to which Defendants are not entitled.  
8 Plaintiff, those similarly situated and/or other consumers nationwide have no other adequate  
9 remedy at law to ensure future compliance with the California Business and Professions Code  
10 alleged to have been violated herein.

11 79. As a direct and proximate result of such actions, Plaintiff and the other members of  
12 the California Italian Class and the California EVOO Subclass have suffered, and continue to  
13 suffer, injury in fact and have lost money and/or property as a result of such false, deceptive and  
14 misleading advertising in an amount which will be proven at trial, but which is in excess of the  
15 jurisdictional minimum of this Court.

16 **PLAINTIFF'S THIRD CAUSE OF ACTION**

17 **(Breach of Contract)**

18 **On Behalf of Herself and the EVOO Class (and the California EVOO Subclass)**

19 80. Plaintiff realleges and incorporates by reference the paragraphs of this Class  
20 Action Complaint as if set forth herein.

21 81. At various times throughout the class period, Plaintiff entered into a contract with  
22 Defendants for the purchase of Defendants' Filippo Berio Extra Virgin Olive Oil.

23 82. The terms of the contract were contained on the labels of the olive oil and  
24 specified, *inter alia*, that Defendants' olive oil was "extra virgin" and that it would remain so for  
25 approximately eighteen months. Persons similarly situated to Plaintiff entered into contracts with  
26 the same language, other than varying best by dates, when purchasing olive oil from Defendants.

27 83. Defendants breached the contract by providing to Plaintiff, and those similarly  
28 situated, olive oil that, due to Defendants' low quality, defective bottles, was not "extra virgin" at  
the time of purchase and/or would not remain "extra virgin" (i.e., best in flavor and quality) for

1 the period stated.

2 84. As a direct and proximate result of the breaches set forth herein, Plaintiff, and  
3 those similarly situated, have suffered, and continue to suffer, damages in an amount which will  
4 be proven at trial, but which are in excess of the jurisdictional minimum of this Court.

5 **PLAINTIFF'S FOURTH CAUSE OF ACTION**  
6 **(Breach of the Covenant of Good Faith and Fair Dealing)**  
7 **On Behalf of Herself and the California EVOO Subclass**

8 85. Plaintiff realleges and incorporates by reference the paragraphs of this Class  
9 Action Complaint as if set forth herein.

10 86. The written agreement entered into between Plaintiff and Defendants included an  
11 implied covenant of good faith and fair dealing. The same implied covenant existed in the  
12 agreement between Defendants and the members of the California EVOO Subclass, as they made  
13 their purchases in California.

14 87. Defendant breached the covenant of good faith and fair dealing by knowingly and  
15 intentionally providing to Plaintiff, and those similarly situated, olive oil that, due to Defendants'  
16 low quality, defective bottles, was not "extra virgin" at the time of sale and/or would not remain  
17 "extra virgin" (i.e., best in flavor and quality) for the period stated.

18 88. As a direct and proximate result of the breaches set forth herein, Plaintiff, and  
19 those similarly situated, have suffered, and continue to suffer, damages in an amount which will  
20 be proven at trial, but which are in excess of the jurisdictional minimum of this Court.

21 **PLAINTIFF'S FIFTH CAUSE OF ACTION**  
22 **(Fraud, Deceit and/or Misrepresentation)**  
23 **On Behalf of Herself and the EVOO Class (and the California EVOO Subclass)**

24 89. Plaintiff realleges and incorporates by reference the paragraphs of this Class  
25 Action Complaint as if set forth herein.

26 90. At various times throughout the class period, Defendants fraudulently and  
27 deceptively led Plaintiff to believe that Defendants' olive oil was of a certain quality or grade—  
28 i.e., extra virgin—when it was sold and would maintain its quality until the "best by" date.  
29 Defendants failed to inform Plaintiff that due to their use of defective and low-quality bottles: (a)  
30 the olive oil's quality would degrade; (b) the olive oil did not qualify as "extra virgin" at the time

1 of sale and/or would not qualify as “extra virgin” up until the “best by” date; (c) and the olive oil  
2 would not maintain the “extra virgin” flavor and quality until the “best by” date.

3 91. These omissions were material at the time they were made. They concerned  
4 material facts that were essential to the analysis undertaken by Plaintiff as to whether to purchase  
5 Defendants’ olive oil.

6 92. Defendants made identical misrepresentations and omissions to members of the  
7 EVOO Class regarding Defendants’ Mock EVOO Products.

8 93. In not so informing Plaintiff and the members of the EVOO Class, Defendants  
9 breached their duty to them. Defendants also gained financially from, and as a result of, their  
10 breach.

11 94. Plaintiff and those similarly situated relied to their detriment on Defendants’  
12 fraudulent omissions. Had Plaintiff and those similarly situated been adequately informed and  
13 not intentionally deceived by Defendants, they would have acted differently by, without  
14 limitation, not purchasing (or paying less for) Defendants’ Mock EVOO Products.

15 95. Defendants had a duty to inform class members at the time of their purchase of  
16 that the Mock EVOO Products that the product they were purchasing were not “extra virgin”  
17 quality, were best used sooner, and would degrade to a lower quality or grade over a short time.  
18 Defendants failed to provide this information to class members. Class members relied to their  
19 detriment on Defendants’ omissions. These omissions were material to the decisions of the class  
20 members to purchase Defendants’ Mock EVOO Products. In making these omissions,  
21 Defendants breached their duty to class members. Defendants also gained financially from, and  
22 as a result of, their breach.

23 96. By and through such fraud, deceit, misrepresentations and/or omissions,  
24 Defendants intended to induce Plaintiff and those similarly situated to alter their position to their  
25 detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiff and those  
26 similarly situated to, without limitation, to purchase their Mock EVOO Products.

27 97. Plaintiff and those similarly situated justifiably and reasonably relied on  
28 Defendants’ omissions, and, accordingly, were damaged by the Defendants.

1 98. As a direct and proximate result of Defendants’ misrepresentations, Plaintiff and  
2 those similarly situated have suffered damages, including, without limitation, the amount they  
3 paid for the Mock EVOO Products.

4 99. Defendants’ conduct as described herein was willful and malicious and was  
5 designed to maximize Defendants’ profits even though Defendants knew that it would cause loss  
6 and harm to Plaintiff and those similarly situated.

7 **PLAINTIFF’S SIXTH CAUSE OF ACTION**  
8 **(Unfair, Unlawful and Deceptive Trade Practices, Business and Professions Code § 17200,**  
9 ***et. seq.*)**  
10 **On Behalf of Herself and the California Italian Class and the California EVOO Subclass**

11 100. Plaintiff realleges and incorporates by reference the paragraphs of this Class  
12 Action Complaint as if set forth herein.

13 101. Within four (4) years preceding the filing of this Class Action Complaint, and at  
14 all times mentioned herein, Defendants have engaged, and continue to engage, in unfair, unlawful  
15 and deceptive trade practices in California by engaging in the unfair, deceptive and unlawful  
16 business practices outlined in this Class Action Complaint. In particular, Defendants have  
17 engaged, and continue to engage, in unfair, unlawful and deceptive trade practices by, without  
18 limitation, the following:

19 a. deceptively representing to Plaintiff, and those similarly situated, the Products  
20 were “Imported From Italy,” thereby implying that they contained Italian olive oil and/or were  
21 pressed in Italy;

22 b. deceptively representing to Plaintiff, and those similarly situated, the Mock EVOO  
23 Products were of a certain quality or grade—i.e., extra virgin—at the time of sale and would  
24 remain “extra virgin” until the “best by” date;

25 c. failing to adequately inform Plaintiff, and those similarly situated, that the  
26 Products were not and did not exclusively contain oil from Italian olives;

27 d. failing to adequately inform Plaintiff, and those similarly situated, that the  
28 Products were not and did not exclusively contain oil that was pressed in Italy;

e. failing to adequately inform Plaintiff, and those similarly situated, that the



1 Products were merely bottled or packed in Italy;

2 f. failing to inform Plaintiff, and those similarly situated, that due to Defendants'  
3 defective and inferior bottles, the Mock EVOO Products were not the represented quality or  
4 grade—i.e., they were no longer extra virgin olive oil—at the time of sale and/or would not  
5 maintain “extra virgin” quality until the “best by” date on the bottle;

6 g. engaging in fraud, deceit, and misrepresentation as described herein;

7 h. violating the CLRA as described herein;

8 i. violating the FAL as described herein;

9 j. violating the California Health and Safety Act §§ 112875, *et. seq.*; and

10 k. violating the Sherman Food, Drug and Cosmetic Act, Cal. Health & Saf. Code,  
11 including, without limitation, sections 110300, 110380, 110385, 110390, 110395, 110398,  
12 110400, 110660, 110680, 110760, 110765, and 110770.

13 102. Plaintiff and those similarly situated relied to their detriment on Defendants'  
14 unfair, deceptive and unlawful business practices. Had Plaintiff and those similarly situated been  
15 adequately informed and not deceived by Defendants, they would have acted differently by not  
16 purchasing (or paying less for) Defendants' Products.

17 103. Defendants' acts and omissions are likely to deceive the general public.

18 104. Defendants engaged in these unfair practices to increase their profits.

19 Accordingly, Defendants have engaged in unlawful trade practices, as defined and prohibited by  
20 section 17200, *et. seq.* of the California Business and Professions Code.

21 105. The aforementioned practices, which Defendants have used to their significant  
22 financial gain, also constitute unlawful competition and provide an unlawful advantage over  
23 Defendants' competitors as well as injury to the general public.

24 106. Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as  
25 necessary and according to proof, to restore any and all monies acquired by Defendants from  
26 Plaintiff, the general public, or those similarly situated by means of the unfair and/or deceptive  
27 trade practices complained of herein, plus interest thereon.

28 107. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit

1 Defendants from continuing to engage in the unfair trade practices complained of herein.

2 108. The acts complained of herein occurred, at least in part, within four (4) years  
3 preceding the filing of this Class Action Complaint.

4 109. Plaintiff and those similarly situated are further entitled to and do seek both a  
5 declaration that the above-described trade practices are unfair, unlawful and/or fraudulent, and  
6 injunctive relief restraining Defendants from engaging in any of such deceptive, unfair and/or  
7 unlawful trade practices in the future. Such misconduct by Defendants, unless and until enjoined  
8 and restrained by order of this Court, will continue to cause injury in fact to the general public  
9 and the loss of money and property in that Defendants will continue to violate the laws of  
10 California, unless specifically ordered to comply with the same. This expectation of future  
11 violations will require current and future customers to repeatedly and continuously seek legal  
12 redress in order to recover monies paid to Defendants to which Defendants are not entitled.  
13 Plaintiff, those similarly situated and/or other consumers nationwide have no other adequate  
14 remedy at law to ensure future compliance with the California Business and Professions Code  
15 alleged to have been violated herein.

16 110. As a direct and proximate result of such actions, Plaintiff and the other members of  
17 the Class and Subclasses have suffered and continue to suffer injury in fact and have lost money  
18 and/or property as a result of such deceptive, unfair and/or unlawful trade practices and unfair  
19 competition in an amount which will be proven at trial, but which is in excess of the jurisdictional  
20 minimum of this Court. Among other things, Plaintiff and the Class and Subclasses lost the  
21 amount they paid for the Products.

22 111. As a direct and proximate result of such actions, Defendants have enjoyed, and  
23 continue to enjoy, significant financial gain in an amount which will be proven at trial, but which  
24 is in excess of the jurisdictional minimum of this Court.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for judgment as follows:

27 A. On Cause of Action Number 1 against Defendants and in favor of Plaintiff and the  
28 other members of the California Italian Class and the California EVOO Subclass:

- 1 1. for restitution and injunctive relief pursuant to California Civil Code sec-
- 2 tion 1780;
- 3 2. [Reserved]; and
- 4 3 [Reserved].
- 5 B. On Causes of Action Numbers 2 and 6 against Defendants and in favor of Plaintiff
- 6 and the other members of the California Italian Class and the California EVOO
- 7 Subclass:
- 8 1. for restitution pursuant to, without limitation, the California Business &
- 9 Professions Code §§ 17200, *et. seq.* and 17500, *et. seq.*; and
- 10 2. for injunctive relief pursuant to, without limitation, the California Business
- 11 & Professions Code §§ 17200, *et seq.* and 17500, *et. seq.*
- 12 C. On Cause of Action Number 3 against Defendants and in favor of Plaintiff and the
- 13 other members of the EVOO Class (including the California EVOO Subclass): an
- 14 award of compensatory damages, the amount of which is to be determined at trial.
- 15 D. On Cause of Action Number 4 against Defendants and in favor of Plaintiff and the
- 16 other members of the California EVOO Subclass: an award of compensatory
- 17 damages, the amount of which is to be determined at trial.
- 18 E. On Cause of Action Number 5 against Defendants and in favor of Plaintiff and the
- 19 other members of the EVOO Class (including the California EVOO Subclass):
- 20 1. an award of compensatory damages, the amount of which is to be deter-
- 21 mined at trial; and
- 22 2. an award of punitive damages, the amount of which is to be determined at
- 23 trial.
- 24 F. On all causes of action against Defendants and in favor of Plaintiff, class members
- 25 and the general public:
- 26 1. for reasonable attorneys' fees according to proof pursuant to, without limi-
- 27 tation, the California Legal Remedies Act and California Code of Civil
- 28 Procedure § 1021.5;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2. for costs of suit incurred; and
3. for such further relief as this Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: May 22 2014

**GUTRIDE SAFIER LLP**



---

Adam J. Gutride, Esq.  
Seth A. Safier, Esq.  
Marie McCrary, Esq.  
Kristen G. Simplicio, Esq.  
835 Douglass Street  
San Francisco, California 94114

Attorneys for Plaintiff