

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  
 San Francisco, California 94114  
 Telephone: (415) 639-9090  
 Facsimile: (415) 449-6469

7 **TYCKO & ZAVAREEI LLP**  
 8 HASSAN A. ZAVAREEI (State Bar No. 181547)  
 9 JEFFREY D. KALIEL (State Bar No. 238293)  
 10 2000 L St. N.W., Suite 808  
 Washington, DC 20036  
 Telephone: (202) 973-0900  
 Facsimile: (202) 973-0950

11 Attorneys for Plaintiff, SCOTT KOLLER

12 UNITED STATES DISTRICT COURT  
 13  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15  
 16 SAN FRANCISCO

16 SCOTT KOLLER, an individual, on behalf  
 17 of himself, the general public and those  
 similarly situated,

18 Plaintiff,

19 v.

20 DEOLEO USA, INC.; and MED FOODS,  
 21 INC.,

22 Defendants.

CASE NO. 3:14-cv-02400-RS

FIRST AMENDED CLASS ACTION COM-  
 PLAINT FOR VIOLATION OF THE CALI-  
 FORNIA CONSUMERS LEGAL REMEDIES  
 ACT; FALSE ADVERTISING; FRAUD, DE-  
 CEIT, AND/OR MISREPRESENTATION;  
 AND UNFAIR BUSINESS PRACTICES

JURY TRIAL DEMANDED

23  
 24  
 25  
 26  
 27  
 28

1 Scott Koller, by and through his counsel, brings this First Amended Class Action  
2 Complaint (“Class Action Complaint”) against Defendants Deoleo USA, Inc. and Med Foods,  
3 Inc., on behalf of himself and those similarly situated, for violations of the Consumer Legal  
4 Remedies Act, false advertising, unfair trade practices, and fraud, deceit and/or misrepresentation.  
5 The following allegations are based upon information and belief, including the investigation of  
6 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 and pressed in Italy,  
12 and contain no (or a negligible amount of) olives grown or pressed in other  
13 countries. In truth, Defendants’ olive oil is not made entirely from olives that are  
14 grown, or even pressed, in Italy. Rather, Defendants’ olive oil includes a non-  
15 negligible amount of oils pressed (from olives grown) in other countries, and (at  
16 best) are trucked or shipped to Italy, bottled and then exported.
- 17 b. Second, Defendants label some of their products as a particular grade of olive oil,  
18 namely “**Extra Virgin**” Olive Oil. This representation is also false and  
19 misleading because, among other things, Defendants mix refined oil in with their  
20 extra virgin olive oil and/or bottle their olive oil in clear, non-ultraviolet protective  
21 bottles. The use of clear bottles exposes the oil to sunlight and heat and causes  
22 chemical reactions inside the oil and causes it to oxidize, degrade and degenerate.  
23 These inferior bottles, which are used by Defendants for all of their extra virgin  
24 olive oil, do not preserve the oil as “extra virgin.” Rather, the oil degrades during  
25 shipping and while it sits on retailer shelves. Even if the oil is “extra virgin” at the  
26 time of bottling, Defendants know that the oil will not qualify (and cannot be  
27 defined) as “extra virgin” at the time it is sold to consumers. Defendants’  
28 deception is compounded by providing a “**Best if Used By**” date on each bottle

1 that is approximately 18 months to 2 years after the date of bottling, even though  
2 they know that the oil sold in their defective bottles will not be “extra virgin”  
3 through the period specified.

4 **PARTIES**

5 2. Scott Koller (“Plaintiff”) is, and at all times alleged in this Class Action Complaint  
6 was, an individual and a resident of Brentwood, California.

7 3. Defendant Deoleo USA, Inc. (“Deoleo USA”) is a corporation incorporated under  
8 the laws of the State of Delaware, having its principal place of business in Houston, Texas.  
9 Deoleo USA is a wholly owned subsidiary of Deoleo S.A.

10 4. Defendant Med Foods, Inc. (“Med Foods”) is a corporation incorporated under the  
11 laws of the State of Delaware, having its principal place of business in Houston, Texas. Med  
12 Foods is a wholly owned subsidiary of Deoleo S.A.

13 5. The Parties identified in paragraphs 3 - 4 of this Class Action Complaint are  
14 collectively referred to hereafter as “Defendants.”

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

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

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

26 9. At all times herein mentioned, Defendants, and each of them, ratified each and  
27 every act or omission complained of herein. At all times herein mentioned, the Defendants, and  
28 each of them, aided and abetted the acts and omissions of each and all of the other Defendants in

1 proximately causing the damages, and other injuries, as herein alleged.

2 **JURISDICTION AND VENUE**

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

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

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

15 13. In accordance with California Civil Code Section 1780(d), Plaintiff has filed a  
16 declaration establishing that, in or around October of 2013, he purchased a bottle of Bertolli extra  
17 virgin olive oil in Brentwood, California. (Plaintiff's declaration is attached as Exhibit A to his  
18 original class action complaint. (Dkt.# 1).)

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

20 **SUBSTANTIVE ALLEGATIONS**

21 **A. The Defendants**

22 15. Med Foods and Deoleo USA are importers, marketers and sellers of Mediterranean  
23 food products in the United States.

24 16. Med Foods and Deoleo USA are wholly owned subsidiaries of Deoleo S.A.,  
25 which claims to be the "No. 1 olive oil company in the world."

26 17. Defendants import, market and sell, in the United States, three brands of olive oil:  
27 Bertolli, Carapelli, and Carbonell.

28 18. Defendants contend that they systematically document and certify the origin and

1 production of all of the olive oil that they sell. They specifically state: “we are able to trace our  
2 products from the grove to the shelf. This ensures quality and consistency at every stage of  
3 production.”

4 **B. Defendants’ False and Deceptive Product Packaging**

5 19. This case concerns Defendants’ marketing and sale of their Bertolli and Carapelli  
6 brand olive oil products. The specific products as issue in this case are:

- 7 a. Bertolli Extra Virgin Olive Oil;
- 8 b. Bertolli Organic Extra Virgin Olive Oil;
- 9 c. Bertolli Classico Olive Oil;
- 10 d. Bertolli Extra Light Tasting Olive Oil;
- 11 e. Carapelli Il Numerato Extra Virgin Olive Oil;
- 12 f. Carapelli Organic Extra Virgin Olive Oil;
- 13 g. Carapelli Extra Light in Taste Olive Oil; and
- 14 h. Carapelli Extra Virgin Olive Oil.

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

17 20. Certain allegations in this case pertain only to a subset of the Products that are or  
18 were both (1) marketed and sold in clear glass bottles and (2) listed in subparagraphs (a), (b), (h).  
19 That subset of products is referred to herein as the “Mock EVOO Products.”

20 21. This case focuses on Defendants’ representations (1) on all the Mock Italian  
21 Products that the oil is “**IMPORTED FROM ITALY**” and (2) on all the Mock EVOO Products  
22 that the oil qualifies (or is graded) as “**EXTRA VIRGIN.**”

23 22. Through Defendants’ use of intentional misrepresentations and selective omission,  
24 each of the above representations deceives and misleads consumers.

- 25 a. First, by stating “IMPORTED FROM ITALY,” Defendants lead consumers to  
26 believe that these Products are made from olives grown and pressed in Italy, and  
27 contain no (or a negligible amount of) olives grown or pressed in other countries. .  
28 Defendants’ conduct is false and deceptive, because the Mock Italian Products are

1 made from a substantial amount of olives grown and oil pressed in many countries  
2 other than Italy. Although the olives and/or oil from those other countries may be  
3 trucked or shipped to Italy, blended with the oil from other countries and oil from  
4 Italy, bottled and then exported, the oil is not “Imported from Italy” but rather is  
5 imported from a variety of countries and at best “packed” or “bottled” in Italy.  
6 Defendants charge a premium by deceiving customers into believing that their oil  
7 is of Italian origin.

8 b. Second, Defendants mislead and deceive consumers by representing (and  
9 labelling) the Mock EVOO Products as “EXTRA VIRGIN”—i.e., the highest  
10 grade/quality of olive oil—when they know that due to their use of substandard,  
11 clear (non-light protective) bottles, unprotected transport methods and storage  
12 procedures, the oil will degrade such that it will not qualify as (or can be defined  
13 as) “extra virgin” olive oil at the time of sale and/or well before the “Best if Used  
14 By” date. All of Defendants’ Mock EVOO Products are deceptively misbranded.  
15 Defendants charge a premium by deceiving customers into believing that their oil  
16 is of “extra virgin” grade.

17 **(1) Defendants’ False Origin Representations**

18 23. Part 134, Chapter 1 of Title 19 of the Code of Federal Regulations sets forth  
19 regulations implementing the country of origin marking requirements and exceptions of section  
20 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking  
21 provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

22 24. 19 C.F.R. § 134.46 requires that:

23 In any case in which...the name of any foreign country or locality other than the  
24 country or locality in which the article was manufactured or produced appear on  
25 an imported article or its container, and those words, letters or names may mislead  
26 or deceive the ultimate purchaser as to the actual country of origin of the article,  
27 there shall appear legibly and permanently in close proximity to such words, let-  
28 ters or name, and in at least a comparable size, the name of the country of origin  
preceded by “Made in,” “Product of,” or other words of similar meaning.

25 25. All of Defendants’ Mock Italian Products are marketed with labels in bold font  
28 that state “IMPORTED FROM ITALY,” when the oil used in all of the Mock Italian Products is,

1 in fact, the product of many countries. Yet, Defendants, in violation of 19 C.F.R. § 134.46, do  
2 not include on the Mock Italian Products, “in close proximity” to the ““IMPORTED FROM  
3 ITALY” representation, any indication of the true country of origin of the olive oil preceded by  
4 “Made in,” “Product of,” or other words of similar meaning. Instead, Defendants state only on  
5 the back labels appearing on all the Mock Italian Products, in much smaller font, a notation such  
6 as: “Product contains select high quality [olive oils] from the countries indicated by the letters  
7 below. I=Italy, GR=Greece, E=Spain, TU=Tunisia, MA=Morocco, CL=Chile, AG=Argentina,  
8 AU=Australia” along with a dot matrix print of one or more country codes. At no time do  
9 Defendants disclose the percentages of oil from the listed countries or state that the percentage of  
10 oil from countries other than Italy is substantial.

11 26. The United States Food and Drug Administration (the “FDA”) has also  
12 promulgated regulations governing misbranding of food and providing that food is misbranded if  
13 its label expresses or implies a geographical origin of the food or any ingredient of the food  
14 except when such representation is “[a] truthful representation of geographical origin.” *See* 21  
15 CFR § 101.18. Because the “IMPORTED FROM ITALY” representation is not truthful,  
16 Defendants’ labels violate 21 CFR § 101.18, which has been independently adopted as part of the  
17 Sherman Food, Drug and Cosmetic Law, California Health and Safety Code (“Cal. Health & Saf.  
18 Code”) § 109875, *et. seq.* *See* Cal. Health & Saf. Code §§ 110100(a), 110380, 110505 (adopting  
19 FDA standards).

20 27. Under the Tariff Act and implementing regulations, in situations where a product  
21 sold to consumers is composed of ingredients from various countries of origin, all the countries of  
22 origin must be disclosed, and must appear in close proximity to any representation that the  
23 product is “imported from” or “made in.” § 19 C.F.R. 134.46. For example, in Letter N130295,  
24 dated November 24, 2010, the CBP explained that a tin of olive oil, which stated “Imported from  
25 Italy” prominently on the side panel, was in violation of the Tariff Act, because the olives were  
26 pressed and grown elsewhere, and the company had only disclosed that fact by printing a key  
27 identifying the true countries of origin in small font (similar to the key used by Defendants)  
28 towards the bottom of the side panel.

1           28.     An exception exists if the ingredients from various countries are “substantially  
2 transformed” into a new product in a single country, in which case the country where the  
3 substantial transformation occurred can be claimed as the country of origin. 19 C.F.R. 134.1(b).  
4 However, the blending or mixing together of ingredients from multiple countries does not  
5 constitute a “substantial transformation.” See, e.g. Letter HQ 560944, dated April 27, 1998 (“it is  
6 our opinion that the refining process in Italy does not result in a substantial transformation of the  
7 crude olive oil imported into Italy from Spain”); Letter HQ 735085, dated June 4, 1993  
8 (explaining that a package containing produce grown in various countries, transported to Mexico,  
9 where it is mixed with produce grown in Mexico, did not undergo a substantial transformation in  
10 Mexico and must identify the countries of origin of all the components).

11           29.     In addition to violating the Tariff Act, the “Imported from Italy” statement on all  
12 the Mock Italian Product bottles mislead consumers, as they misled Plaintiff, by prominently  
13 making an Italian origin claim on the front of the bottle, while placing in small print on the back  
14 of the bottle, cryptic information as to the actual non-Italian origin of the olive oil. The  
15 disclaimer on the back of the bottle does not lessen Defendants’ deception because, as the U.S.  
16 Court of Appeals for the Ninth Circuit has stated, “reasonable consumers...should [not] be  
17 expected to look beyond misleading representations on the front of the box to discover the truth  
18 from the...small print on the side of the box.” *Williams v. Gerber Products Co.*, 552 F.3d 934,  
19 939 (9th Cir. 2008).

20           **(2) Defendants’ False “Extra Virgin” Representations**

21           30.     “Extra Virgin” olive oil is widely understood to mean the best (or highest)  
22 grade/quality of olive oil. The term “Extra Virgin” is defined by the International Olive Council  
23 (“IOC”),<sup>1</sup> the United States Department of Agriculture (“USDA”), and the State of California, the  
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 United States' largest domestic olive oil producer. The IOC, USDA, and State of California  
2 established chemistry and sensory standards for "extra virgin" olive oil. Under each of these  
3 standards, "extra virgin" olive oil must have zero sensory defects and greater than zero fruitiness.  
4 Defendants' Mock EVOO Products inevitably fail each of these standards for "extra virgin" olive  
5 oil at the time of sale to consumers and/or prior to the "Best if Used By" date on the bottle.

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

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

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

26  
27 <sup>2</sup> Other states similarly define "extra virgin." *See, e.g.*, Connecticut (Regs. Conn. State Agencies  
28 § 21a-100-8 (stating "'extra virgin olive oil' means virgin olive oil which has a free acidity, ex-  
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-

1           34.     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, in the Bay Area, at well-known California retail stores,  
4 packed, and immediately shipped to that testing firm for analysis. The olive oil was tested prior  
5 to the “Best if Used By” date indicated by Defendants on the bottles.

6           35.     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 the IOC, USDA, or State of California definitions.

9           36.     Defendants participated in the development of the IOC standards and are well  
10 aware of what they require. Indeed, Defendants have influenced the rule-making within the IOC  
11 to make it easier for Defendants to meet the “extra virgin” requirements. Nevertheless, as shown  
12 by the testing, by the IOC-accredited laboratory and organoleptic evaluation panel, the Mock  
13 EVOO Products they sold to Plaintiff and class members still do not satisfy those standards.

14           37.     Defendants know, or should have known, that the Mock EVOO Products they sell  
15 and market, and which are labeled as “extra virgin,” do not meet the state, national, or  
16 international standards for “extra virgin” when sold to consumers and/or during the entire “Best if  
17 Used By” period indicated on the bottles.

18           38.     Defendants have been aware of the fact that their olive oils do not meet the quality  
19 of “extra virgin” since at least June of 2010, when the University of California at Davis’ Olive Oil  
20 Center released its report entitled “Tests indicate that imported ‘extra virgin’ olive oil often fails  
21 international and USDA standards” (the “Report”). The Report<sup>3</sup> evaluated olive oils, including  
22 those sold by Defendants, based on standards and testing methods established by the IOC and  
23 USDA, as well as several newer standards and testing methods adopted in Germany and  
24 Australia. The Report went on to note that the “samples failed extra virgin standards for reasons  
25 \_\_\_\_\_  
26 ity, expressed as oleic acid, of not more than 0.8 grams per hundred grams.”); Oregon (ORS  
27 2011 vol. 13, § 616716 (adopting USDA standard).)

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

1 that include one or more of the following:

- 2 • oxidation by exposure to elevated temperatures, light, and/or aging;
- 3 • adulteration with cheaper refined olive oil;
- 4 • poor quality oil made from damaged and overripe olives, processing flaws, and/or
- 5 improper oil storage.”

6 39. With specific regard to the Bertolli brand olive oil that was tested, the Report  
7 found that all three samples tested by UC Davis failed the chemical analysis and sensory  
8 assessment.

9 40. It is a well-known in the olive oil industry that all olive oil must be stored in a cool  
10 and dark environment to preseve “extra virgin” qualities. Heat and light cause chemical reactions  
11 inside the oil and causes it to degenerate into undesirable chemical products, thereby adulterating  
12 and degrading the oil. The ideal temperature at which to store EVOO is approximately 57 degrees  
13 Farhenheint, with degredation occuring even when stored at room temperature. In a 2012 study  
14 commissioned by the government of Australia, researchers found that the higher the temperature  
15 at which a bottle of EVOO was stored, the faster it deteriorated. For example, the Australian  
16 study found that for EVOO stored in the dark at room temperature, the oil’s diacylglycerol  
17 content fell below the established limit after six to twenty-four months, with the rate of  
18 deterioration increasing with exposure to higher temperatures. The study also found that heat  
19 exposure had a similar impact on other attributes of the EVOO tested.

20 41. For all of their Mock EVOO Products, Defendants do not take adequate steps to  
21 ensure the products remain at a safe temperature during transport or while on store shelves.  
22 Between the pressing stage and the time at which the consumer purchases the olive oil, all the  
23 Mock EVOO Products will have been subject to temperatures much higher than 57 degrees,  
24 further increasing the likelihood that the Mock EVOO Products cease to become EVOO at the  
25 time of purchase and/or through the “Best if Used By” date. For example, because Defendants’  
26 Mock EVOO Products are shipped and stored at temperatures much higher than room  
27 temperature prior to sale, the Mock EVOO Products’ diacylglycerol content will not meet proper  
28 standards for the entirety of the 18 month “Best if Used By” period.

1           42.     Exposure to light also causes EVOO to degrade faster. For example, the 2012  
2 Australian study found that light exposure had a significant effect of the sensory profile of EVOO  
3 stored in clear glass bottles. And a 2007 study by researchers at the National Agricultural  
4 Research Foundation, Institute of Technology of Agricultural Products, Greece and the Higher  
5 Technical Educational School, Department of Food Science, Themi, Thessaloniki, Greece, of  
6 which Defendants are aware, concluded that olive oil exposed to light had significantly lower  
7 tocopherol, carotenoid and chlorophyll contents than did the same oils kept in the dark. Overall,  
8 the results obtained showed that the shelf life of the oils exposed to light is shorter than that of  
9 oils kept in the dark, and that after only *two months* of exposure to light the oils examined could  
10 no longer be considered as “extra virgin.”

11           43.     Defendants continue to pack their some or all of their Mock EVOO Products in  
12 clear bottles and do not take steps to adequately protect the Mock EVOO Products from light  
13 degradation during shipping and once they reach stores.

14           44.     Indeed, Defendants do not have a policy for removing the Mock EVOO Products  
15 from store shelves after they have become degraded by light and heat, as well as other conditions.  
16 Further, Defendants indicate a “Best if Used By” date on the Mock EVOO Products that is  
17 eighteen months to two years after the oil is bottled – well beyond the two months it takes oil  
18 exposed to light and heat to degrade such that it is no longer “extra virgin.” As a result, all of the  
19 Mock EVOO Products are not “extra virgin” when they are sold to consumers and/or through the  
20 entire “Best if Used By” period indicated the bottles. That is because: (1) it the Mock EVOO  
21 Products were and/or are sold in clear bottles; (2) Defendants have failed to adopt policies and  
22 procedures to ensure that their Mock EVOO Products are protected from light and heat  
23 degradation during transport and while on store shelves; and/or (3) Defendants do not take  
24 proactive steps to remove old bottles of Mock EVOO Products from store shelves. Defendants  
25 know that the Mock EVOO Products are not “extra virgin” when they are sold to consumers  
26 and/or through the entire “Best if Used By” period indicated the bottles, but they label and price  
27 the oil as “extra virgin” and include the “Best if Used By” date even though they know it to be  
28 untrue.

1 **C. Defendants Compound Their Deception With Targeted Marketing and Advertising**  
2 **Campaigns**

3 45. Over the past twenty years, extra virgin olive oil has become increasingly popular  
4 among consumers. Defendants have advertised about, and the media has reported extensively on,  
5 the health benefits of olive oil, with numerous media outlets covering studies suggesting that  
6 olive oil can lower cholesterol and risks of cancer. Often these articles advise consumers that  
7 *extra virgin* olive oil is healthier than other kinds of olive oil. *See, e.g.*

8 [http://www.npr.org/blogs/thesalt/2013/09/30/226844915/to-get-the-benefits-of-olive-oil-fresh-](http://www.npr.org/blogs/thesalt/2013/09/30/226844915/to-get-the-benefits-of-olive-oil-fresh-may-be-best)  
9 [http://www.mindbodygreen.com/0-12906/6-great-reasons-to-fall-in-love-with-](http://www.mindbodygreen.com/0-12906/6-great-reasons-to-fall-in-love-with-olive-oil.html)  
10 [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.

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

24 47. Extra virgin olive oil is so frequently recommended by chefs that a search for  
25 “extra virgin olive oil” on [www.foodnetwork.com](http://www.foodnetwork.com), the website operated by the Food Network,  
26 brings up more than 8,500 recipes that call for extra virgin olive oil as an ingredient in the recipe.  
27 [http://www.foodnetwork.com/search/search-](http://www.foodnetwork.com/search/search-results.recipes.html?searchTerm=%22extra+virgin+olive+oil%22&lastFilter=tab&_charset_=UT)  
28 [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_=UT)

1 F-8, last accessed April 21, 2014. Other popular recipe websites, such as allrecipes.com and  
2 epicurious.com similarly feature thousands of recipes calling for “extra virgin olive oil.”

3 48. Defendants unfairly and unlawfully attempt to capitalize on consumers’ desire for  
4 Italian and extra virgin olive oil. Defendants, in fact, have employed a variety of long-term  
5 marketing and advertising campaigns and strategies to deceive consumers into believing that that  
6 the Mock Italian Products are Italian and the Mock EVOO Products are high quality extra virgin  
7 olive oil. For example, Defendants have a partnership with a popular Italian celebrity chef Fabio  
8 Viviani, who they have named as their “brand ambassador.” Viviani has designed recipes and  
9 cooking videos for Defendants’ consumers to encourage them to use the (more expensive) “Extra  
10 Virgin Olive Oil” in recipes, particularly those for Italian food.

11 49. Defendants also rely on social media to further their deception. For example, they  
12 operate a Facebook page—<https://www.facebook.com/BertolliOliveOil/>— that features pictures  
13 of Italy. The additionally inform their consumers, again falsely, that Defendants’ Mock Italian  
14 Products are “made in a small town near Milan.”



## Recent Posts by Others

**Debbie Gordon**

Where is Bertolli Oil made, I am going to Italy and was wondering where

Like · Comment · January 14 at 9:04pm



Write a comment...

**Bertolli Olive Oil** Hi Debbie, Bertolli Olive Oil is made in a small town near Milan. Milan is a beautiful city, rich with history, culture and fashion. Enjoy your trip to Italy!

Like · Reply · January 14 at 9:18pm

50. Defendants also maintain a Twitter account, which also falsely advertises to consumers that their olive oils are from Lucca, Italy:



51. Because of the false and misleading country of origin claims, Defendants are able to charge, and consumers pay, a higher price for all of the Mock Italian Products than would exist if those products were labeled in a truthful, non-deceptive manner. Oil that is perceived to be Italian commands a higher price in the market than oil from other countries in Europe, North Africa, South America, Australia, and the Middle East, which are the true source of the most of the olives and oil in the Mock Italian Products. Because of the false “extra virgin” claims, Defendants are able to charge, and consumers pay, a higher price for all of the Mock EVOO Products than would exist if those products were labeled in a truthful, non-deceptive manner. Oil that is perceived to be extra virgin commands a higher price in the market than oil that is of lower

1 grades, such as ordinary olive oil. For example, on Amazon.com, the seller Neptuns sells two 44  
2 ounce bottles of Carapelli Extra Virgin Olive Oil for \$59.99, but charges just \$44.99 for the same  
3 amount of Carapelli Extra Light Olive Oil. See [http://www.amazon.com/Carapelli-Extra-Light-  
4 44-Ounce-Bottles/dp/B001EPQSY2/ref=sr\\_1\\_2?s=grocery&ie=UTF8&qid=1410459577&sr=1-2](http://www.amazon.com/Carapelli-Extra-Light-44-Ounce-Bottles/dp/B001EPQSY2/ref=sr_1_2?s=grocery&ie=UTF8&qid=1410459577&sr=1-2)  
5 (last accessed September 11, 2014) and [http://www.amazon.com/Carapelli-Virgin-44-Ounce-  
6 Plastic-Bottles/dp/B001EPQRUC/ref=sr\\_1\\_1?s=grocery&ie=UTF8&qid=1410464136&sr=1-1](http://www.amazon.com/Carapelli-Virgin-44-Ounce-Plastic-Bottles/dp/B001EPQRUC/ref=sr_1_1?s=grocery&ie=UTF8&qid=1410464136&sr=1-1)  
7 (last accessed September 11, 2014). When the oil in the Mock EVOO Products is sufficiently  
8 degraded, it would not even be salable as a food item as it would not meet standards for human  
9 consumption.

#### 10 **D. Defendants' Conduct Differs From That Of Its Competitors**

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

12 52. Unlike Defendants who claim their Products are "IMPORTED FROM ITALY,"  
13 certain of their competitors state that their olive oil products are "PACKED IN ITALY" or  
14 "BOTTLED IN ITALY" or make no claim on the front of the package about the place of  
15 manufacture. For example, one of Defendants' competitors in the olive oil market is Violi brand  
16 olive oil. Violi sells its olive oil for lower prices than Defendants' comparable products. It states  
17 "PACKED IN ITALY" on its bottles. Trader Joe's bottles of olive oil, which the company also  
18 sells for a lower cost than Defendants' olive oils, too state "PACKED IN ITALY." Other of  
19 Defendants' olive oil competitors, including Rizzoli, state on bottles that the olive oil is  
20 "BOTTLED IN ITALY." Other companies, such as Star brand olive oil, make no reference on  
21 the front of the package of the geographic origin of their olive oil, unless the oil is, in fact, made  
22 from olives that are grown and pressed in that country, state or region. At Safeway in Berkeley,  
23 California, a bottle of Bertolli Extra Virgin Olive Oil sells for \$9.79, whereas a bottle of Star  
24 brand Extra Virgin Olive Oil sells for \$8.99. Other of Defendants' competitors, like Pompeian  
25 olive oil, simply state, on the primary label panel, that the olive oil is "IMPORTED" without  
26 reference to any geographical region.



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

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

14                                 **PLAINTIFF'S EXPERIENCE**

15           54. In or around October of 2013, Plaintiff desired to purchase imported extra virgin  
16 olive oil from Italy.

17           55. Prior to purchasing Defendants' Bertolli brand extra virgin olive, Plaintiff  
18 reviewed the packaging to satisfy himself that he was purchasing extra virgin olive oil from Italy.  
19 Plaintiff specifically reviewed Defendants' statements on the front of the package that the product  
20 was "extra virgin" and "Imported from Italy." Plaintiff relied on Defendants' affirmative  
21 disclosures to believe he was purchasing olive oil that was both extra virgin and made from olives  
22 that were grown and pressed in Italy. Plaintiff also relied on Defendants' failure to adequately  
23 disclose that by "Imported from Italy" it meant merely that it was "packed" or "bottled" in Italy  
24 and that in fact, the oil was made in and imported from various countries other than Italy. As  
25 Plaintiff saw nothing on the front of the bottle to arouse his suspicion that the oil was anything  
26 other than purely of Italian origin, Plaintiff did not look for or see additional information about  
27 the country of origin on the back of the bottle.

28           56. Plaintiff purchased Defendants' Bertolli extra virgin olive oil from a Safeway

1 supermarket in Brentwood, California for approximately \$12.00.

2 57. The bottle of olive oil Plaintiff purchased was marked on the back of the bottle  
3 “Best if Used By” March 31, 2015. Plaintiff does not specifically recall reviewing this statement  
4 before purchase but he did intend to use the oil for a period of several months after purchase.

5 58. The product that Plaintiff purchased was not extra virgin at the time of purchase  
6 and certainly not for the period through the “Best if Used By” date or even during the period  
7 during which he reasonably expected or would be likely to use it. The product Plaintiff purchased  
8 also was not of Italian origin but rather was substantially made from olives grown and pressed  
9 outside Italy. Had Defendants not misrepresented (by omission and commission) the true nature  
10 of the olive oil, Plaintiff would not have purchased Defendants’ product or, at a very minimum,  
11 he would have paid less for the product that he purchased.

12 59. Plaintiff intends to make additional purchases of olive oil, including brands that  
13 are or may be owned by Defendants. Plaintiff has no way to determine prior to his purchases  
14 whether the oil sold and labeled “Imported from Italy” is in fact Italian or rather has a substantial  
15 amount of oil from olives grown and/or pressed in other countries. He also has no way to  
16 determine Italy and whether oils labelled “extra virgin” actually meet the standards of that grade.  
17 Thus, in the absence of the injunctive relief requested in this Complaint, Plaintiff is likely to be  
18 deceived in the future and to suffer additional harm.

### 19 CLASS ALLEGATIONS

20 60. Plaintiff brings this action against Defendants on behalf of himself and all others  
21 similarly situated, as a class action pursuant to Rule 23, section 382 of the California Code of  
22 Civil Procedure and section 1781 of the California Civil Code. Plaintiff seeks to represent the  
23 following groups of similarly situated persons, defined as follows:

24 All persons who, between May 23, 2010 and the present, purchased, in Cali-  
25 fornia, any of Defendants’ Mock Italian Products (the “California Italian  
Class”);

26 All persons who, between May 23, 2010 and the present, purchased, in the  
27 United States, any of Defendants’ Mock EVOO Products (the “EVOO  
Class”); and

28 All members of the EVOO Class who made a Mock EVOO Product purchase  
in California (the “California EVOO Subclass”).

1           61.     This action has been brought and may properly be maintained as a class action  
2 against Defendants pursuant to the provisions of Rule 23, California Code of Civil Procedure  
3 section 382 and section 1781 of the California Civil Code because there is a well-defined  
4 community of interest in the litigation and the proposed class is easily ascertainable.

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

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

16           a)     Whether Defendants' Products a) were pressed in Italy and/or made from olives  
17 grown and pressed in Italy, and contain no (or a negligible amount of) olives grown or pressed in  
18 other countries;

19           b)     Whether Defendants' Mock EVOO Products qualify at time of sale and through  
20 the "Best if Used By" date as "extra virgin olive oil" as that term is commonly understood and/or  
21 legally defined;

22           c)     Whether Defendants unfairly, unlawfully and/or deceptively failed to inform class  
23 members that their Products were not Italian or "extra virgin," as of the purchase date and/or the  
24 "Best if Used By" date on the labels;

25           d)     Whether Defendants misled class members by, *inter alia*, representing that their  
26 Products were "Imported from Italy" and "Extra Virgin" Olive Oil;

27           e)     Whether Defendants' advertising and marketing regarding their Products sold to  
28 class members was likely to deceive class members or was unfair;

1 f) Whether Defendants' practices for distributing the Mock EVOO Products were  
2 inadequate or defective to preseve the "extra virgin" quality of the oil;

3 g) Whether Defendants engaged in the alleged conduct knowingly, recklessly, or  
4 negligently;

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

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

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

12 64. Typicality: Plaintiff's claims are typical of the class and subclass members  
13 because, in California in October of 2013, he purchased one of the Products, namely Defendants'  
14 Bertolli Extra Virgin Olive Oil, in reliance on Defendants' misrepresentations and omissions that  
15 it was "extra virgin" and "Imported from Italy." Thus, Plaintiff and the class members sustained  
16 the same injuries and damages arising out of Defendants' conduct in violation of the law. The  
17 injuries and damages of each class member were caused directly by Defendants' wrongful  
18 conduct in violation of law as alleged.

19 65. Adequacy: Plaintiff will fairly and adequately protect the interests of all class  
20 members because it is in his best interests to prosecute the claims alleged herein to obtain full  
21 compensation due to him for the unfair and illegal conduct of which he complains. Plaintiff also  
22 has no interests that are in conflict with or antagonistic to the interests of class and subclass  
23 members. Plaintiff has retained highly competent and experienced class action attorneys to  
24 represent his interests and that of the classes and subclass. By prevailing on his own claim,  
25 Plaintiff will establish Defendants' liability to all class and subclass members. Plaintiff and his  
26 counsel have the necessary financial resources to adequately and vigorously litigate this class  
27 action, and Plaintiff and counsel are aware of their fiduciary responsibilities to the class and  
28 subclass members and are determined to diligently discharge those duties by vigorously seeking

1 the maximum possible recovery for class members.

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

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

#### 16 **CAUSES OF ACTION**

17 68. Plaintiff does not plead, and hereby disclaims, causes of action under the Food  
18 Drug and Cosmetic Act ("FDCA") and regulations promulgated thereunder by the FDA. If  
19 failure to do so would cause any of his claims to be preempted, Plaintiff also disclaims causes of  
20 action under the Tariff Act and regulations promulgated by the USDA, IOC and/or CBP.  
21 Plaintiff relies on these regulations only to the extent such laws and regulations have been  
22 separately enacted as state law or regulations or provide a predicate basis of liability under the  
23 state and common laws cited in the following causes of action.

#### 24 **PLAINTIFF'S FIRST CAUSE OF ACTION**

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

26 69. Plaintiff realleges and incorporates the paragraphs of this Class Action Complaint  
27 as if set forth herein.

28 70. This cause of action is brought pursuant to the California Consumers Legal

1 Remedies Act, California Civil Code § 1750, *et. seq.* (“CLRA”).

2 71. Defendants’ actions, representations and conduct have violated, and continue to  
3 violate the CLRA, because they extend to transactions that are intended to result, or which have  
4 resulted, in the sale or lease of goods or services to consumers.

5 72. Plaintiff and other California Subclass members are “consumers” as that term is  
6 defined by the CLRA in California Civil Code § 1761(d).

7 73. The Products that Plaintiff (and others similarly situated class members) purchased  
8 from Defendants were “goods” within the meaning of California Civil Code § 1761(a).

9 74. By engaging in the actions, representations and conduct set forth in this Class  
10 Action Complaint, Defendants have violated, and continue to violate, § 1770(a)(2), § 1770(a)(4),  
11 § 1770(a)(5), § 1770(a)(7), and § 1770(a)(9) of the CLRA. In violation of California Civil Code  
12 §1770(a)(2), Defendants’ acts and practices constitute improper representations regarding the  
13 source, sponsorship, approval, or certification of the goods they sold, namely that their “source”  
14 is “Italy” and that they meet the “certification” as “extra virgin” . In violation of California Civil  
15 Code §1770(a)(4), Defendants’ acts and practices constitute improper representations  
16 representations or designations of geographic origin in connection with goods or service, namely  
17 that the origin is Italy. In violation of California Civil Code §1770(a)(5), Defendants’ acts and  
18 practices constitute improper representations that the goods they sell have sponsorship, approval,  
19 characteristics, ingredients, uses, benefits, or quantities, which they do not have, namely that they  
20 contain extra virgin olive oil and/or are made from olives grown and pressed in Italy, and contain  
21 no (or a negligible amount of) olives grown or pressed in other countries.. In violation of  
22 California Civil Code §1770(a)(7), Defendants’ acts and practices constitute improper  
23 representations that the goods they sell are of a particular standard, quality, or grade, namely  
24 “extra virgin” and “Italian” when they are of another. In violation of California Civil Code  
25 §1770(a)(9), Defendants have advertised goods or services with intent not to sell them as  
26 advertised.

27 75. Specifically, Defendants’ acts and practices led customers to falsely believe that  
28 that their Mock Italian Products were Italian and their Mock EVOO Products were extra virgin

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

6 76. More than thirty days prior to the filing of this First Amended Class Action  
7 Complaint, Plaintiff gave notice and demand that Defendants correct, repair, replace or otherwise  
8 rectify the unlawful, unfair, false and/or deceptive practices complained of herein. Plaintiff  
9 specifically provided to Defendants written notice, by registered mail, return receipt requested on  
10 or about May 29, 2014. He additionally provided similar notice in his original class action  
11 complaint. Despite receiving the aforementioned notices and demands, Defendants failed to do  
12 so in that, among other things, they failed to identify similarly situated customers, notify them of  
13 their right to correction, repair, replacement or other remedy, and/or to provide that remedy.  
14 Accordingly, Plaintiff seeks, pursuant to California Civil Code § 1780(a)(3), on behalf of himself  
15 and those similarly situated class members, compensatory damages, punitive damages and  
16 restitution of any ill-gotten gains due to Defendants' acts and practices.

17 77. Plaintiff also requests that this Court award him his 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 Himself and the California Italian Class and the California EVOO Subclass**

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

24 79. 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 80. Defendants made representations and statements (by omission and commission)  
28 that led reasonable customers to believe that they were purchasing olive oil that (1) was made  
entirely from olives grown and pressed in Italy and (2) was "extra virgin" grade or quality at the

1 time of sale and up until the “Best if Used By” date on the bottle. Defendants deceptively failed  
2 to inform Plaintiff, and those similarly situated, that their Mock Italian Products did not actually  
3 originate in Italy, and that the Mock EVOO Products did not quality as “extra virgin” at the time  
4 of sale and/or up until the “Best if Used By” date.

5 81. Plaintiff and those similarly situated relied to their detriment on Defendants’ false,  
6 misleading and deceptive advertising and marketing practices, including each of the  
7 “IMPORTED FROM ITALY” and “EXTRA VIRGIN” misrepresentations and omissions set  
8 forth in paragraphs 1, 21-50, 55, and 57 above. Had Plaintiff and those similarly situated been  
9 adequately informed and not intentionally deceived by Defendants, they would have acted  
10 differently by, without limitation, refraining from purchasing Defendants’ Products, paying less  
11 for them or purchasing smaller quantities.

12 82. Defendants’ acts and omissions are likely to deceive the general public.

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

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

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

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

28 87. Plaintiff and those similarly situated are further entitled to and do seek both a



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

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

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

18 **(Fraud, Deceit and/or Misrepresentation)**

19 **On Behalf of Himself and the EVOO Class (and the California EVOO Subclass)**

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

22 90. In or around October of 2013, Defendants fraudulently and deceptively led  
23 Plaintiff to believe that Defendants' olive oil was of a certain quality or grade—i.e., extra  
24 virgin—when it was sold.

25 91. Defendants also failed to inform Plaintiff that: (a) the olive oil did not qualify as  
26 “extra virgin” at the time of sale, (b) due to their use of defective and low-quality bottle, the olive  
27 oil’s quality would degrade; (c) the olive oil would not qualify as “extra virgin” up until the “Best  
28 if Used By” date; and/or (d) the olive oil would not maintain the “extra virgin” flavor and quality  
until the “Best if Used By” date. These omissions were material at the time they were made.

1 They concerned material facts that were essential to the analysis undertaken by Plaintiff as to  
2 whether to purchase Defendants' olive oil.

3 92. Defendants made identical misrepresentations and omissions to members of the  
4 EVOO Class regarding Defendants' Products.

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

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

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

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

24 97. Plaintiff and those similarly situated justifiably and reasonably relied on  
25 Defendants' omissions, and, accordingly, were damaged by the Defendants.

26 98. As a direct and proximate result of Defendants' misrepresentations, Plaintiff and  
27 those similarly situated have suffered damages, including, without limitation, the amount they  
28 paid for the Mock EVOO Products.

1 99. Defendants' conduct as described herein was willful and malicious and was  
2 designed to maximize Defendants' profits even though Defendants knew that it would cause loss  
3 and harm to Plaintiff and those similarly situated.

4 **PLAINTIFF'S FOURTH CAUSE OF ACTION**  
5 **(Unfair, Unlawful and Deceptive Trade Practices,**  
6 **Business and Professions Code § 17200, *et. seq.*)**  
7 **On Behalf of Himself and the California Italian Class and the California EVOO Subclass**

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

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

16 a. deceptively representing to Plaintiff, and those similarly situated, the Products  
17 were "Imported From Italy," thereby implying that they were comprised wholly of olives grown  
18 and pressed in Italy;

19 b. deceptively representing to Plaintiff, and those similarly situated, the Mock EVOO  
20 Products were of a certain quality or grade—i.e., extra virgin—at the time of sale and would  
21 remain "extra virgin" until the "Best if Used By" date;

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

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

26 e. failing to adequately inform Plaintiff, and those similarly situated, that the  
27 Products were merely bottled or packed in Italy;

28 f. failing to inform Plaintiff, and those similarly situated, that due to Defendants'  
defective and inferior bottles, and substandard shipping and handling methods, the Mock EVOO

1 Products were not the represented quality or grade—i.e., they were no longer extra virgin olive  
2 oil—at the time of sale and/or would not maintain “extra virgin” quality until the “Best if Used  
3 By” date on the bottle;

- 4 g. engaging in fraud, deceit, and misrepresentation as described herein;
- 5 h. violating the CLRA as described herein;
- 6 i. violating the FAL as described herein;
- 7 j. violating the Tariff Act of 1930, 19 U.S.C. § 1304(a);
- 8 k. violating 19 C.F.R. Part 134, including §§ 134.11 and 134.46;
- 9 l. violating the California Health and Safety Act §§ 112875, *et. seq.*; and
- 10 m. 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. for restitution and injunctive relief pursuant to California Civil Code section 1780;
2. actual damages, the amount of which is to be determined at trial;
3. punitive damages, the amount of which is to be determined at trial; and
4. statutory damages as provided by Civil Code section 1780(b), the amount of which is to be determined at trial.

B. On Causes of Action Numbers 2 and 4 against Defendants and in favor of Plaintiff and the other members of the California Italian Class and the California EVOO Subclass:

1. for restitution pursuant to, without limitation, the California Business & Professions Code §§ 17200, *et. seq.* and 17500, *et. seq.*; and
2. for injunctive relief pursuant to, without limitation, the California Business & Professions Code §§ 17200, *et seq.* and 17500, *et. seq.*

C. On Cause of Action Number 3 against Defendants and in favor of Plaintiff and the other members of the EVOO Class (including the California EVOO Subclass):

1. an award of compensatory damages, the amount of which is to be determined at trial; and
2. an award of punitive damages, the amount of which is to be determined at trial.

D. On all causes of action against Defendants and in favor of Plaintiff, class members and the general public:

1. for reasonable attorneys' fees according to proof pursuant to, without limitation, the California Legal Remedies Act and California Code of Civil Procedure § 1021.5;
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: September 11, 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

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