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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 ROHINI KUMAR, an individual, on  
16 behalf of herself, the general public and  
17 those similarly situated,

18 Plaintiff,

19 v.

20 SALOV NORTH AMERICA CORP.,

21 Defendant.

CASE NO. 4:14-cv-02411

FIRST AMENDED CLASS ACTION  
COMPLAINT FOR FALSE ADVERTISING;  
FRAUD, DECEIT, AND/OR  
MISREPRESENTATION; AND UNFAIR  
BUSINESS PRACTICES

JURY TRIAL DEMANDED

1 Rohini Kumar, by and through her counsel, brings this First Amended Class Action  
2 Complaint against Defendant SALOV North America Corp. on behalf of herself and those  
3 similarly situated, for false advertising, unfair trade practices, and fraud, deceit and/or  
4 misrepresentation. The following allegations are based upon information and belief, including  
5 the investigation of Plaintiff's counsel, unless stated otherwise.

### 6 **INTRODUCTION**

7 1. This case concerns Defendant's false and deceptive marketing and sale of olive oil.  
8 At the time this litigation was initiated, Defendant represented on the front label that all of its  
9 olive oil products were "**IMPORTED FROM ITALY.**" The statement on the front label led  
10 consumers to reasonably believe that Defendant's olive oil products are made exclusively from  
11 100% Italian oil from olives exclusively grown, or at a minimum exclusively pressed, in Italy. In  
12 truth, Defendant's olive oil is comprised primarily of olives that are not grown or pressed in Italy.  
13 Rather, many of the olive oils in Defendant's products are pressed from olives grown in other  
14 countries, and trucked or shipped to Italy, bottled, and then exported.

### 15 **PARTIES**

16 2. Rohini Kumar ("Plaintiff") is an individual. During the class period, she was a a  
17 resident of El Cerrito or Berkeley, California.

18 3. Defendant Salov North America Corp. ("SNA" or "Defendant") is a corporation  
19 incorporated under the laws of the State of New York, having its principal place of business in  
20 Lyndhurst, New Jersey. SNA is a wholly owned subsidiary of Salov S.p.A.

21 4. On information and belief, all or substantially all, of the advertising and marketing  
22 decisions complained of in this Complaint were made in New Jersey where Defendant resides and  
23 has its principal place of business.

### 24 **JURISDICTION AND VENUE**

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



1 ITALY” on the front label, Defendant led consumers to believe that these Products are made  
2 exclusively from Italian olives or, at a minimum, exclusively from olives pressed in Italy. This is  
3 false and deceptive. In fact, none of the Products is made exclusively from olives grown or  
4 pressed in Italy. Rather, the Products are made from oil pressed in many different countries, not  
5 just Italy, and trucked or shipped to Italy, bottled and then exported.

6 13. Part 134, Chapter 1 of Title 19 of the Code of Federal Regulations sets forth  
7 regulations implementing the country of origin marking requirements and exceptions of section  
8 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking  
9 provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

10 14. 19 C.F.R. § 134.46 requires that:

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

18 15. All of the front labels of Defendant’s Products were marketed with labels that state  
19 “IMPORTED FROM ITALY,” when the oil, in fact, originates from several countries, not just  
20 Italy. Yet, Defendant, in violation of 19 C.F.R. § 134.46, did not include on the Products, “in  
21 close proximity” to the “IMPORTED FROM ITALY” representation, any indication of the true  
22 country of origin of the olive oil preceded by “Made in,” “Product of,” or other words of similar  
23 meaning. Instead, Defendant stated on the back of the Products: “Packed in Italy with select extra  
24 virgin olive oils from Italy, Spain, Greece & Tunisia.”

25 16. The United States Food and Drug Administration (the “FDA”) has also  
26 promulgated regulations governing misbranding of food and providing that food is misbranded if  
27 its label expresses or implies a geographical origin of the food or any ingredient of the food  
28 except when such representation is “[a] truthful representation of geographical origin.” *See* 21  
CFR § 101.18. Because the “IMPORTED FROM ITALY” representation is not truthful,  
Defendant’s labels violate 21 CFR § 101.18.

17. Although Defendant contends that the Products always contain some olive oil from

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

9 18. The country of origin claims Defendant made on the Product bottles misled  
10 consumers, as they misled Plaintiff, by making an Italian origin claim on the front of the bottle.  
11 The disclosure on the back of the bottle does not lessen Defendant’s deception because, as the  
12 Ninth Circuit has stated, “reasonable consumers...should [not] be expected to look beyond  
13 misleading representations on the front of the box to discover the truth from the...small print on  
14 the side of the box.” *Williams v. Gerber Products Co.*, 552 F.3d 934, 939 (9th Cir. 2008).

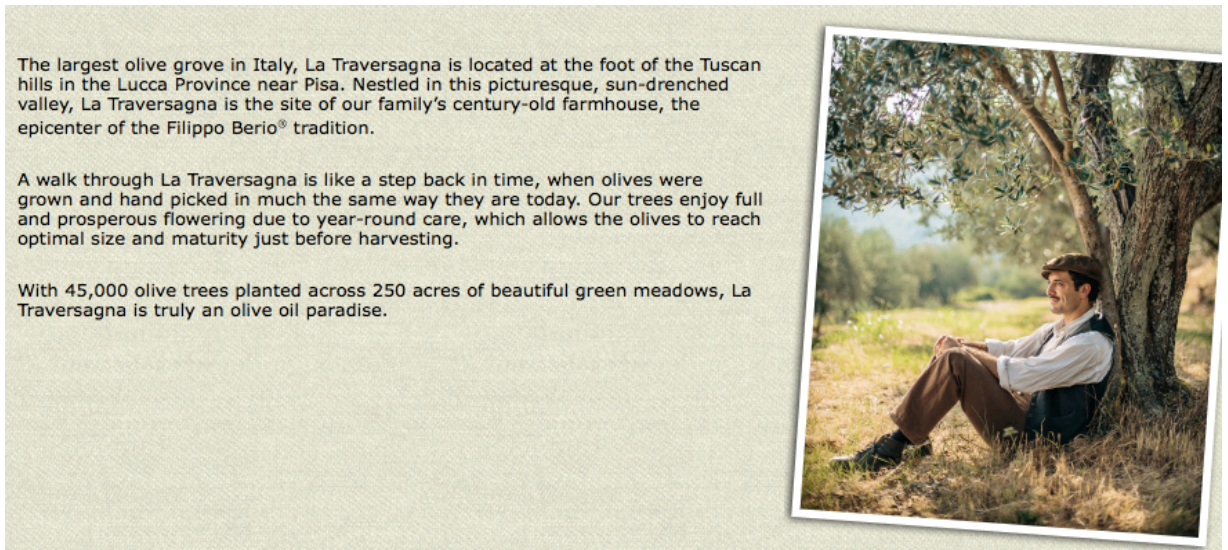
15 **C. Defendant Compound Its Deception With Targeted Marketing and Advertising**  
16 **Campaigns**

17 19. Over the past twenty years, extra virgin olive oil has become increasingly popular  
18 among consumers. Its popularity surged over the last two decades, in part, because of the  
19 popularity of the Food Network channel, and the fact that many chefs appearing on that channel  
20 recommend it. Many of the Food Network chefs make a point of especially recommending  
21 Italian extra virgin olive oils. For example, Giada De Laurentiis, a popular Food Network host  
22 and celebrity chef, uses Italian extra virgin olive oil in her recipes, and regularly advises viewers  
23 and home cooks to buy *Italian extra virgin olive oil* in order to recreate her Italian dishes at home.  
24 Mario Batali, a former Food Network chef, cookbook author, and current host of a popular  
25 daytime talk show, *The Chew*, has stated in his cookbooks and in numerous television programs  
26 that the best olive oil in the world comes from Italy. He accordingly counsels consumers to only  
27 use extra virgin olive oil from Italy when cooking.

28 20. Defendant unfairly and unlawfully attempts to capitalize on consumers’ desire for

1 Italian olive oil. Defendant, in fact, has employed a variety of long-term marketing and  
2 advertising campaigns and strategies to deceive consumers into believing that that Products are  
3 Italian. For example, Defendant has a partnership with a popular Italian celebrity chef Mary Ann  
4 Esposito. Esposito has designed recipes and cooking videos for Defendant’s consumers to  
5 encourage them to use the (more expensive) “Extra Virgin Olive Oil” in recipes, particularly  
6 those for Italian food.

7 21. Defendant also relies on its website to further its deception. For example, its  
8 website has included a tab titled “Our Olive Grove.” The page informed consumers, falsely or  
9 misleadingly, that Defendant’s Products come from an olive grove in Italy.



19 **D. Defendant’s Conduct Differs From That Of Its Competitors**

20  
21 22. Unlike Defendant, who claims its Products are “IMPORTED FROM ITALY,”  
22 certain of its competitors state that their olive oil products are “PACKED IN ITALY” or  
23 “BOTTLED IN ITALY” or make no claim on the front of the package about the place of  
24 manufacture. For example, one of Defendant’s competitors in the olive oil market is Violi brand  
25 olive oil. Violi sells its olive oil for lower prices than Defendant’s comparable products. It states  
26 “PACKED IN ITALY” on its bottles. Trader Joe’s bottles of olive oil, which the company also  
27 sells for a lower cost than Defendant’s olive oils, too state “PACKED IN ITALY.” Other of  
28 Defendant’s olive oil competitors, including Rizzoli, state on bottles that the olive oil is

1 “BOTTLED IN ITALY.” Other companies, such as Star brand olive oil, make no reference on  
2 the front of the package of the geographic origin of their olive oil, unless the oil is, in fact, made  
3 from olives that are grown and pressed in that country, state or region. Other of Defendant’s  
4 competitors, like Pompeian olive oil, simply state, on the primary label panel, that the olive oil is  
5 “IMPORTED” without reference to any geographical region.

6 **PLAINTIFF’S EXPERIENCE**

7 23. Plaintiff regularly purchases extra virgin olive oil for home use. At various times  
8 throughout the class period, she purchased Defendant’s Filippo Berio Extra Virgin Olive Oil at a  
9 Safeway in Berkeley, California.

10 24. Prior to purchasing Defendant’s Filippo Berio brand extra virgin olive oil, Plaintiff  
11 reviewed the packaging to satisfy herself that she was purchasing extra virgin olive oil from Italy.  
12 Plaintiff specifically reviewed Defendant’s statements on the package that the product was  
13 “Imported from Italy.” Plaintiff relied on Defendant’s affirmative disclosures to believe she was  
14 purchasing olive oil that was 100% Italian olive oil made from olives that were exclusively grown  
15 and pressed in Italy. Plaintiff also relied on Defendant’s failure to adequately disclose that by  
16 “Imported from Italy” it meant that it was “packed” or “bottled” in Italy and that it was not either  
17 pressed in or made (exclusively) from olives that had been grown in Italy.

18 25. Plaintiff purchased Defendant’s Filippo Berio extra virgin olive oil from a  
19 Safeway supermarket in Berkeley, California for approximately \$6 a bottle.

20 26. Plaintiff later learned that the product she purchased was not made exclusively  
21 from olives grown and pressed in Italy. Had Defendant not misrepresented (by omission and  
22 commission) the true nature of the olive oil on the front label, Plaintiff would not have purchased  
23 Defendant’s product or, at a very minimum, she would have paid less for the product that she  
24 purchased.

25 27. Plaintiff intends to make additional purchases of olive oil, including brands that  
26 are or may be owned by Defendant. Thus, in the absence of the injunctive relief requested in this  
27 Complaint, Plaintiff is likely to be deceived in the future and to suffer additional harm.

28

**CLASS ALLEGATIONS**

1  
2 28. Plaintiff brings this action against Defendant on behalf of herself and all others  
3 similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.  
4 Plaintiff seeks to represent the following groups of similarly situated persons, defined as follows:

5 All natural persons in the United States who purchased Filippo Berio brand  
6 olive oil of any grade except ‘Organic’ between May 23, 2010 and June 30,  
2015, except for purposes of resale.

7 29. This action has been brought and may properly be maintained as a class action  
8 against Defendant pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure  
9 because there is a well-defined community of interest in the litigation and the proposed class is  
10 easily ascertainable.

11 30. Numerosity: Plaintiff does not know the exact size of the class, but it is estimated  
12 that each is composed of more than 10,000 persons. The persons are so numerous that the joinder  
13 of all such persons is impracticable and the disposition of their claims in a class action rather than  
14 in individual actions will benefit the parties and the courts.

15 31. Common Questions Predominate: This action involves common questions of law  
16 and fact to the potential class because each class and subclass member’s claim derives from the  
17 deceptive, unlawful and/or unfair statements and omissions that led Defendant’s customers to  
18 believe that the Products were (or at a minimum contained olives) from Italy, and/or extra virgin.  
19 The common questions of law and fact predominate over individual questions, as proof of a  
20 common or single set of facts will establish the right of each member of the class to recover.

21 Among the common questions of law and fact are:

22 a) Whether Defendant’s Products were exclusively pressed in Italy and/or made  
23 exclusively from Italian olives;

24 b) Whether Defendant misled class members by, *inter alia*, representing that its  
25 Products were “Imported from Italy”;

26 c) Whether Defendant’s advertising and marketing regarding its Products sold to  
27 class members was likely to deceive class members or was unfair;

28 d) Whether Defendant engaged in the alleged conduct knowingly, recklessly, or



1 negligently;

2 e) The amount of revenues and profits Defendant received and/or the amount of  
3 monies or other obligations lost by class members as a result of such wrongdoing;

4 f) Whether class members are entitled to injunctive and other equitable relief and, if  
5 so, what is the nature of such relief; and

6 g) Whether class members are entitled to payment of actual, incidental,  
7 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the  
8 nature of such relief.

9 32. Typicality: Plaintiff's claims are typical of the class members because, throughout  
10 the class period, she purchased at least one of Defendant's Products, in reliance on Defendant's  
11 misrepresentations and omissions that it was "Imported from Italy." Thus, Plaintiff and the class  
12 members sustained the same injuries and damages arising out of Defendant's conduct in violation  
13 of the law. The injuries and damages of each class member were caused directly by Defendant's  
14 wrongful conduct in violation of law as alleged.

15 33. Adequacy: Plaintiff will fairly and adequately protect the interests of all class  
16 members because it is in her best interests to prosecute the claims alleged herein to obtain full  
17 compensation due to her for the unfair and illegal conduct of which she complains. Plaintiff also  
18 has no interests that are in conflict with or antagonistic to the interests of class members. Plaintiff  
19 has retained highly competent and experienced class action attorneys to represent her interests  
20 and that of the classes. By prevailing on her own claim, Plaintiff will establish Defendant's  
21 liability to all class members. Plaintiff and her counsel have the necessary financial resources to  
22 adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their  
23 fiduciary responsibilities to the class members and are determined to diligently discharge those  
24 duties by vigorously seeking the maximum possible recovery for class members.

25 34. Superiority: There is no plain, speedy, or adequate remedy other than by  
26 maintenance of this class action. The prosecution of individual remedies by members of the class  
27 will tend to establish inconsistent standards of conduct for the Defendant and result in the  
28 impairment of class members' rights and the disposition of their interests through actions to

1 which they were not parties. Class action treatment will permit a large number of similarly  
2 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,  
3 and without the unnecessary duplication of effort and expense that numerous individual actions  
4 would engender. Furthermore, as the damages suffered by each individual member of the class  
5 may be relatively small, the expenses and burden of individual litigation would make it difficult  
6 or impossible for individual members of the class to redress the wrongs done to them, while an  
7 important public interest will be served by addressing the matter as a class action.

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

10 **CAUSES OF ACTION**

11 36. Plaintiff does not plead, and hereby disclaims, causes of action under the Food  
12 Drug and Cosmetic Act (“FDCA”) and regulations promulgated thereunder by the FDA. If  
13 failure to do so would cause any of her claims to be preempted, Plaintiff also disclaims causes of  
14 action under the Tariff Act and regulations promulgated by the USDA, IOC and/or CBP.  
15 Plaintiff relies on these regulations only to the extent such laws and regulations have been  
16 separately enacted as state law or regulations or provide a predicate basis of liability under the  
17 state and common laws cited in the following causes of action.

18 **PLAINTIFF’S FIRST CAUSE OF ACTION**  
19 **(False Advertising, New Jersey Consumer Fraud Act, N.J.S.A. 56:8–1 *et. seq.***  
20 **On Behalf Of Herself and the Class**

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

23 38. Beginning at an exact date unknown to Plaintiff, but within four (4) years  
24 preceding the filing of her initial Class Action Complaint, Defendant made untrue, false,  
25 deceptive and/or misleading statements in connection with the advertising and marketing of its  
26 Products.

27 39. Defendant made representations and statements (by omission and commission)  
28 that led reasonable customers to believe that they were purchasing olive oil that originated in Italy.  
Defendant deceptively failed to inform Plaintiff, and those similarly situated, that its Products did

1 not actually originate in Italy.

2 40. Plaintiff and those similarly situated relied to their detriment on Defendant's false,  
3 misleading and deceptive advertising and marketing practices, including without limitation each  
4 of the misrepresentations and omissions set forth in paragraphs 1, 12-24, above. Had Plaintiff  
5 and those similarly situated been adequately informed and not intentionally deceived by  
6 Defendant, they would have acted differently by, without limitation, refraining from purchasing  
7 Defendant's Products, paying less for them or purchasing smaller quantities.

8 41. Defendant's acts and omissions are likely to deceive the general public.

9 42. Defendant engaged in these false, misleading and deceptive advertising and  
10 marketing practices to increase its profits. On information and belief, all or substantially all, of  
11 the advertising and marketing decisions complained of in this Complaint were made in New  
12 Jersey where Defendant resides and has its principal place of business, and thereafter such  
13 advertisements and marketing materials were disseminated nationwide. Accordingly, Defendant  
14 have engaged in false advertising, as defined and prohibited by section 56:8-1, *et. seq.*, of the  
15 New Jersey Consumer Fraud Act.

16 43. The aforementioned practices, which Defendant used, and some of which it  
17 continues to use, to its significant financial gain, also constitute unlawful competition and provide  
18 an unlawful advantage over Defendant's competitors as well as injury to the general public.

19 44. 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 Defendant 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 45. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit  
24 Defendant 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 four (4) years preceding the filing of the initial Class Action Complaint.

27 46. 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 Defendant from engaging in any such advertising and  
2 marketing practices in the future. In the absence of such equitable relief, Defendant could renew  
3 the misconduct alleged herein, and such misconduct by Defendant, unless and until enjoined and  
4 restrained by order of this Court, will continue to cause injury in fact to Plaintiff and the general  
5 public and the loss of money and property in that the Defendant will continue to violate the laws  
6 of New Jersey. This expectation of future violations will require current and future customers to  
7 repeatedly and continuously seek legal redress in order to recover monies paid to Defendant to  
8 which Defendant is not entitled. Plaintiff, those similarly situated and/or other consumers  
9 nationwide have no other adequate remedy at law to ensure future compliance with the New  
10 Jersey Consumer Fraud Act alleged to have been violated herein.

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

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

16  
17 **(Fraud, Deceit and/or Misrepresentation)**  
18 **On Behalf of Herself and the Class**

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

21 49. At various times throughout the class period, Defendant fraudulently and  
22 deceptively led Plaintiff to believe that Defendant's olive oil was "Imported from Italy" when it  
23 did not consist exclusively of oil pressed in Italy from olives grown in Italy.

24 50. These omissions were material at the time they were made. They concerned  
25 material facts that were essential to the analysis undertaken by Plaintiff as to whether to purchase  
26 Defendant's olive oil.

27 51. Defendant made identical misrepresentations and omissions to members of the  
28 Class regarding Defendant's Products.

52. In not so informing Plaintiff and the members of the Class, Defendant breached its

1 duty to them. Defendant also gained financially from, and as a result of, its breach.

2 53. Plaintiff and those similarly situated relied to their detriment on Defendant's  
3 fraudulent omissions. Had Plaintiff and those similarly situated been adequately informed and  
4 not intentionally deceived by Defendant, they would have acted differently by, without limitation,  
5 not purchasing (or paying less for) Defendant's Products.

6 54. Defendant had a duty to inform class members at the time of their purchases of  
7 that the Products that the product they were purchasing were not made exclusively from Italian  
8 olive oil in close proximity to the "Imported from Italy" statement on the front label of the  
9 Products. Defendant failed to provide this information to class members. Class members relied  
10 to their detriment on Defendant's omissions. These omissions were material to the decisions of  
11 the class members to purchase Defendant's Products. In making these omissions, Defendant  
12 breached its duty to class members. Defendant also gained financially from, and as a result of, its  
13 breach.

14 55. By and through such fraud, deceit, misrepresentations and/or omissions, Defendant  
15 intended to induce Plaintiff and those similarly situated to alter their position to their detriment.  
16 Specifically, Defendant fraudulently and deceptively induced Plaintiff and those similarly situated  
17 to, without limitation, to purchase its Products.

18 56. Plaintiff and those similarly situated justifiably and reasonably relied on  
19 Defendant's omissions, and, accordingly, were damaged by Defendant.

20 57. As a direct and proximate result of Defendant's misrepresentations, Plaintiff and  
21 those similarly situated have suffered damages, including, without limitation, the amount they  
22 paid for the Products.

23 58. Defendant's conduct as described herein was willful and malicious and was  
24 designed to maximize Defendant's profits even though Defendant knew that it would cause loss  
25 and harm to Plaintiff and those similarly situated.

26 **PLAINTIFF'S THIRD CAUSE OF ACTION**  
27 **(New Jersey Truth in Consumer Contract, Warranty and Notice Act,**  
28 **N.J.S.A. 56:12-14, *et. seq.*)**  
**On Behalf of Herself and the Class**

1           59. Plaintiff realleges and incorporates by reference the paragraphs of this Class  
2 Action Complaint as if set forth herein.

3           60. Within four (4) years preceding the filing of this Class Action Complaint, and at  
4 all times mentioned herein, Defendant has engaged, and continues to engage, in unfair, unlawful  
5 and deceptive trade practices in New Jersey (and nationwide) by engaging in the unfair, deceptive  
6 and unlawful business practices outlined in this Class Action Complaint. In particular,  
7 Defendant has engaged, and continue to engage, in unfair, unlawful and deceptive trade practices  
8 by, without limitation, the following:

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

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

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

16           d. failing to adequately inform Plaintiff, and those similarly situated, that the  
17 Products were merely bottled or packed in Italy;

18           e. engaging in fraud, deceit, and misrepresentation as described herein;

19           f. violating the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et. seq.*

20           g. Plaintiff and those similarly situated relied to their detriment on Defendant’s  
21 unfair, deceptive and unlawful business practices. Had Plaintiff and those similarly situated been  
22 adequately informed and not deceived by Defendant, they would have acted differently by not  
23 purchasing (or paying less for) Defendant’s Products.

24           61. Defendant’s acts and omissions are likely to deceive the general public.

25           62. Defendant engaged in these unfair practices to increase its profits. On information  
26 and belief, all or substantially all, of the advertising and marketing decisions complained of in this  
27 Complaint were made in New Jersey where Defendant resides and has its principal place of  
28 business and thereafter such advertisements and marketing materials were disseminated

1 nationwide. Accordingly, Defendant has engaged in unlawful trade practices, as defined and  
2 prohibited by section 56:12-14, *et. seq.* of the New Jersey Truth in Consumer Contract, Warranty  
3 and Notice Act.

4 63. The aforementioned practices, which Defendant has used to its significant  
5 financial gain, also constitute unlawful competition and provide an unlawful advantage over  
6 Defendant's competitors as well as injury to the general public.

7 64. Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as  
8 necessary and according to proof, to restore any and all monies acquired by Defendant from  
9 Plaintiff, the general public, or those similarly situated by means of the unfair and/or deceptive  
10 trade practices complained of herein, plus interest thereon.

11 65. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit  
12 Defendant from continuing to engage in the unfair trade practices complained of herein.

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

15 67. Plaintiff and those similarly situated are further entitled to and do seek both a  
16 declaration that the above-described trade practices are unfair, unlawful and/or fraudulent, and  
17 injunctive relief restraining Defendant from engaging in any of such deceptive, unfair and/or  
18 unlawful trade practices in the future. In the absence of such equitable relief, Defendant could  
19 renew the misconduct alleged herein, and such misconduct by Defendant, unless and until  
20 enjoined and restrained by order of this Court, will continue to cause injury in fact to the general  
21 public and the loss of money and property in that Defendant will continue to violate the laws of  
22 New Jersey, unless specifically ordered to comply with the same. This expectation of future  
23 violations will require current and future customers to repeatedly and continuously seek legal  
24 redress in order to recover monies paid to Defendant to which Defendant is not entitled. Plaintiff,  
25 those similarly situated and/or other consumers nationwide have no other adequate remedy at law  
26 to ensure future compliance with the New Jersey Consumer Fraud Act and the New Jersey Truth  
27 in Consumer Contract, Warranty and Notice Act alleged to have been violated herein.

28 68. As a direct and proximate result of such actions, Plaintiff and the other members of

1 the Class have suffered and continue to suffer injury in fact and have lost money and/or property  
2 as a result of such deceptive, unfair and/or unlawful trade practices and unfair competition in an  
3 amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this  
4 Court. Among other things, Plaintiff and the Class a lost the amount they paid for the Products.

5 69. As a direct and proximate result of such actions, Defendant have enjoyed, and  
6 continue to enjoy, significant financial gain in an amount which will be proven at trial, but which  
7 is in excess of the jurisdictional minimum of this Court.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for judgment as follows:

- 10 1. for restitution, the amount of which is to be determined at trial;
- 11 2. for compensatory and enhanced damages, the amount of which is to be
- 12 determined at trial;
- 13 3. for declaratory and injunctive relief;
- 14 4. for reasonable attorneys’ fees according to proof;
- 15 5. for costs of suit incurred; and
- 16 6. for such further relief as this Court may deem just and proper.

17 **JURY TRIAL DEMANDED**

18 Plaintiff hereby demands a trial by jury.

19 Dated: January 27, 2017

**GUTRIDE SAFIER LLP**

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