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11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14 SCOTT KOLLER, on behalf of himself, the
 15 general public and those similarly situated,

16 Plaintiff,

17 v.

18 MED FOODS, INC., AND DEOLEO USA,
 19 INC.

20 Defendants.
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CASE NO. 14-cv-2400 (RS)

**MOTION FOR PRELIMINARY
 APPROVAL OF CLASS ACTION
 SETTLEMENT**

Date: May 10, 2018
 Time: 1:30 p.m.
 Courtroom 3, 17th Floor
 Judge: Hon. Richard Seeborg

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NOTICE OF MOTION AND MOTION

1
2 **PLEASE TAKE NOTICE** that on Thursday, May 10, 2018, at 1:30 p.m. or as soon
3 thereafter as the matter may be heard, in Courtroom 3, 17th Floor, before the Honorable Richard
4 Seeborg, Plaintiff shall and hereby does move the Court for an order of:

5 (1) Preliminarily approving the settlement of this class action as set forth in the class
6 action settlement agreement dated March 27, 2018, attached as Exhibit 1 to the Declaration of
7 Adam Gutride (“Gutride Declaration” or “Gutride Decl.”) filed herewith;

8 (2) Preliminarily approving, for settlement purposes only, settlement classes defined as
9 “all persons who, between: (i) May 23, 2010 and the date of Preliminary Approval, purchased, in
10 the United States, any of the Extra Virgin Olive Oil Products except for resale and/or (ii) between
11 May 23, 2010 and December 31, 2015, purchased, in the United States, any of the Other Olive
12 Oil Products.” “Extra Virgin Olive Oil Product” means bottles of Bertolli Extra Virgin olive oil,
13 except for those bearing labels “Organic,” “Robusto,” “Gentile,” or “Fragrante.” “Other Olive Oil
14 Product” means the liquid Bertolli Extra Light or Classico olive oil products. “Excluded Persons”
15 from the Settlement Classes are: (1) the Honorable Richard Seeborg; the Honorable Joseph C.
16 Spero; the Honorable Edward Infante (ret.); (2) any member of their immediate families; (3) any
17 government entity, (4) Defendant; (5) any entity in which Defendant has a controlling interest; (6)
18 any of Defendant’s subsidiaries, parents, affiliates, and officers, directors, employees, legal
19 representatives, heirs, successors, or assigns; (7) counsel for the Parties; and (8) any persons who
20 timely opt-out of the Settlement Class.

21 (3) Directing the dissemination of notice in the form and manner set forth in the
22 settlement agreement; and

23 (4) Setting a date for a final approval hearing.

24 A copy of the [Proposed] Order for Preliminary Approval is attached to the settlement
25 agreement as Exhibit C.

26 This Motion is based on Federal Rule of Civil Procedure 23, this Notice of Motion, the
27 supporting Memorandum of Points and Authorities, the Gutride Declaration, the Declaration of
28 Hassan Zavareei (“Zavareei Declaration” or “Zavareei Decl.”), the Declaration of Steve Weisbrot

1 (“Weisbrot Decl.”), the pleadings and papers on file in this action, and any other matter of which
2 this Court may take notice.

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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

The parties have reached a nationwide settlement of the putative class action filed by Plaintiff Scott Koller against Defendant Deoleo USA, Inc. As the Court will recall, Deoleo markets and sells olive oil products under the Bertolli brand, including Bertolli Extra Virgin Olive Oil (“Bertolli EVOO”), Bertolli Classico Olive Oil, and Bertolli Extra Light Tasting Olive Oil. In May of 2014, Plaintiff filed a complaint in this Court alleging that Deoleo had (1) marketed and sold those Bertolli Olive Oil Products with the representation “Imported from Italy,” although most of the oil was extracted in countries other than Italy from olives grown outside Italy; and (2) mislabeled the Bertolli EVOO because its procurement, bottling, and distribution practices did not adequately ensure that the oil would meet the “extra virgin” standard through the date of retail sale or the “best by” date on the bottles. In the Second Amended Complaint, the seven plaintiffs from six states (California, Florida, New York, New Jersey, Arkansas, and North Carolina) allege claims for violations of deceptive practices statutes in all states and for unjust enrichment. The Court previously certified classes of California consumers, when Koller was the only named plaintiff. It is appropriate to certify a nationwide class, because Deoleo’s misrepresentations and challenged practices are uniform for all purchasers, and the elements of the legal claims are nearly identical in all states. The minor differences among state laws are immaterial to certification, particularly because the laws of all 50 states state are substantively identical to those in at least one of the seven states represented by a named Plaintiff, i.e., California, Florida, New York, New Jersey, Arkansas or North Carolina.

Due to this litigation, Deoleo has already removed the phrase “Imported from Italy” from its products and has agreed to refrain from using similar phrases, such as “Made in Italy,” unless the oil is entirely from olives grown and pressed in Italy. Deoleo also began to bottle its EVOO in dark green bottles to protect it from light degradation and has agreed to continue to use such bottles. It has agreed to stricter testing protocols at the time of bottling and to shorten the “best by” period and disclose the date of harvest on every bottle of Bertolli EVOO, to better ensure that the oil remains “extra virgin” at time of sale and use.

1 Deoleo also will pay \$7 million into a common fund. Each class member who makes a
2 claim may obtain a cash refund of up to \$7.25 per bottle purchased. A class member may submit
3 claims for an unlimited number of purchases. Up to five claims, for a total of \$25, will be paid
4 without Proof of Purchase. Plaintiffs may apply for reasonable incentive awards from the common
5 fund, and their counsel may apply for an award from the common fund to reimburse their costs,
6 and to pay their attorneys' fees not exceeding 30 percent of the fund.

7 Notice is to be provided to the class via several methods, including (1) print publication,
8 (3) online advertising, (4) a press release, and (5) sponsored blog posts. A well-known third-party
9 claim administrator had designed the notice plan and has attested that notice will reach a
10 substantial majority of likely class members.

11 A copy of the settlement agreement is attached as Exhibit 1 to the Declaration of Adam
12 Gutride filed herewith. The proposed class notices can be found at Exhibits B1-B3.

13 The settlement falls within the standard for preliminary approval because it is "within the
14 range of reasonableness." *See Ross v. Trex Co., Inc.*, 2009 U.S. Dist. LEXIS 69633 at *9 (N.D.
15 Cal. July 30, 2009). There is a presumption of fairness because the settlement was reached after
16 substantial discovery and arms-length negotiations. *See Nat'l Rural Telecomm. Coop. v.*
17 *DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). Numerous other factors also strongly favor
18 the settlement, including the risks of further litigation and the informed opinion of experienced
19 counsel on all sides who have negotiated and approved it based upon their views of the strengths
20 and weaknesses of the claims and defenses. *See id.* (finding that experienced counsel's views
21 regarding settlement are entitled to great weight).

22 Accordingly, Plaintiffs request that the Court preliminarily approve the settlement, order
23 that the proposed notice be disseminated, and schedule a final approval hearing.

24 **II. BACKGROUND FACTS AND DETAILS OF SETTLEMENT**

25 **A. Litigation History**

26 On May 23, 2014, Plaintiff Scott Koller filed his complaint. He alleged that the labeling
27 and marketing of the Bertolli Olive Oil Products as "Imported from Italy" and "Extra Virgin"
28 violated the Tariff Act of 1930, as amended, 19 U.S.C. 1304, and its implementing regulations, 19

1 C.F.R. section 134.46; the Food Drug and Cosmetic Act, 21 U.S.C. sections 301 *et seq.*, and its
2 implementing regulations, 21 C.F.R. sections 101.18 *et seq.*; the U.S. Department of Agriculture
3 regulations regarding Olive Oil and Olive-Pomace Oil, 75 Fed. Reg. 22363 (Apr. 28, 2010); and
4 various California consumer laws; breach of contract; breach of the covenant of good faith and fair
5 dealing; and fraud, deceit and/or misrepresentation. Plaintiff Koller sought to pursue these claims
6 on behalf of himself and all purchasers of the Bertolli Olive Oil Products in California between
7 May 23, 2010 and the present. Plaintiff Koller alleged that the false labeling caused people to
8 purchase the Olive Oil Products who would not otherwise have done so, and that the Olive Oil
9 Products were sold at a higher retail price than they would have been sold without the
10 misstatements. He sought to recover, on behalf of the class, the dollar amount of the “premium”
11 price that she contended was attributable to the alleged misrepresentations.

12 **B. Motion to Dismiss**

13 On September 25, 2014, after Plaintiff Koller filed an amended complaint narrowing his
14 causes of action, Deoleo moved to dismiss the amended complaint. Deoleo argued, *inter alia*, that
15 Plaintiff Koller lacked standing to sue and that he had failed to plead a claim for relief. Plaintiff
16 Koller opposed the motions. On January 6, 2015, the Court issued an order denying Deoleo’s
17 motion, allowing Plaintiff Koller’s CLRA, FAL, common law fraud, and UCL claims to proceed.

18 **C. Stay Pending Ninth Circuit Decisions**

19 On November 12, 2015, while Plaintiff Koller’s class certification motion was pending,
20 Deoleo filed a motion to stay this litigation pending the Ninth Circuit’s review of certain class
21 certification decisions. The Court granted Deoleo’s request on December 12, 2014. Plaintiff Koller
22 filed a motion seeking to lift the stay on September 23, 2016, which the Court denied on
23 November 3, 2016. Following rulings by the Ninth Circuit, the stay was ultimately lifted on
24 January 19, 2017, at which time briefing on Plaintiff Koller’s class certification motion resumed.

25 **D. Class Certification**

26 On October 30, 2015, after substantial discovery, Plaintiff Koller moved for class
27 certification. Defendant opposed the motion. On August 24, 2017, the Court certified two classes:
28 an “Imported from Italy” class (“IFI Class”) and an “Extra Virgin Olive Oil” class (“EVOO

1 Class”), defined as follows:

2 **IFI Class:** All purchasers in California of liquid Bertolli Extra Light, Classico, or
3 Extra Virgin olive oil, between May 23, 2010 and May 30, 2014, except for those
4 bearing labels “Organic,” “Robusto,” “Gentile,” or “Fragrante.”

5 **EVOO Class:** All purchasers in California of bottles of Bertolli Extra Virgin olive
6 oil, between May 23, 2010 and August 15, 2015, except for those bearing labels
7 “Organic,” “Robusto,” “Gentile,” or “Fragrante.”

8 The parties resumed settlement discussions following class certification and agreed to
9 proceed to mediation.

10 **E. New Class Representatives and Settlement Negotiations**

11 During the litigation, Koller’s counsel was contacted by numerous other consumers from
12 around the country who had purchased Deoleo’s Bertolli brand olive oil believing it to be
13 “Imported from Italy” and “extra virgin.” Six of these consumers retained Koller’s counsel, but
14 complaints were not immediately filed. Deoleo was made aware of these individuals in September
15 2017, and a tolling agreement was signed pending settlement negotiations. (Gutride Decl. ¶ 6.)

16 The proposed settlement was reached following significant, hard fought litigation and
17 several rounds of arms-length settlement discussions between capable counsel, most recently
18 before Judge Edward A. Infante (retired) of JAMS ADR, Inc. (“JAMS”) in San Francisco,
19 California, on November 6, 2017. (*Id.*)

20 **F. The Proposed Settlement**

21 The settlement class is to be comprised of all persons, other than Excluded Persons, who,
22 (i) during the Extra Virgin Class Period, purchased, in the United States, any of the Extra Virgin
23 Olive Oil Products, except for purpose of resale and/or (ii) during the Imported from Italy Class
24 Period, purchased, in the United States, any of the Other Olive Oil Products, except for purpose of
25 resale. (*Id.* Ex. 1, ¶ 2.40.) The Extra Virgin Class Period runs from May 23, 2010, through the date
26 of Preliminary Approval, and the Imported from Italy Class Period runs from May 23, 2010,
27 through December 31, 2015, after which time the “Imported from Italy” language no longer
28 appeared on the bottles. (*Id.* ¶¶ 2.17, 2.21) Excluded Persons are the Deoleo’s affiliates, the Court,
the mediator, government entities, and those who opt out of the class.

1. Monetary Relief

1 Class members can file a claim for cash refunds pertaining to their purchases of the
2 Products during the Extra Virgin Class Period and the Imported from Italy Class Period. The
3 refund amount is (i) \$1.75 per Extra Virgin Olive Oil Product purchased between May 23, 2010
4 and December 31, 2015, (ii) \$0.75 per Extra Virgin Olive Oil Product purchased between
5 January 1, 2016 and the date of preliminary approval, and (iii) \$1.50 for each Other Olive Oil
6 Product purchased between May 23, 2010 and December 31, 2015. These amounts are subject to
7 being increased pro rata, up to five times the initial amounts, depending on the number of claims
8 made against the common fund. There is no cap on the total amount to be paid to any class
9 member for claimed purchases that are corroborated by Proof of Purchase. However, claims not
10 corroborated by Proof of Purchase are limited to five purchases, and a total of \$25 refund, per
11 Household. “Proof of Purchase” means an itemized retail sales receipt showing, at a minimum, the
12 purchase of a Product, the purchase price, and the date and place of the purchase. (Id. Ex. 1, ¶
13 2.35.) “Household” means any number of persons occupying the same dwelling unit.

14 The claim form is a simple one-page form that can be completed in a few minutes. It can
15 be completed online or submitted by mail. Proof of Purchase can also be submitted electronically
16 or in hard copy.

2. Changed Practices

18 The Settlement Agreement also contemplates changed practices, some of which have
19 already occurred, as well as injunctive relief. As a result of the Litigation, Deoleo removed the
20 phrase “Imported from Italy” from all olive oil products imported into the United States. (Id. Ex. 1,
21 ¶¶ 1.9, 3.12, 3.14.) It started using dark green bottles on some Bertolli EVOO to protect the oil
22 from degradation by light. (Id. ¶¶ 3.13, 3.14.) Deoleo has also agreed that, for a period of three
23 years after the Effective Date, it shall be enjoined by the Court as follows:

- 24 1. Not to use the phrases “Imported from Italy,” “Made in Italy,” “Product of
25 Italy,” or a phrase suggesting that olive oil in a bottle originates exclusively
26 from olives grown in Italy on the labeling of any olive oil product sold in the
27 United States, until at least three years after the Effective Date, unless the
28 product so labeled is composed entirely of oil from olives grown and pressed in
Italy.
2. If Defendant uses the phrase “Extra Virgin” or term “EVOO” on any Product,
it must do all of the following:

- Package the Product in a non-transparent (UV filtering) container, e.g., a green or brown glass container.
- For extra virgin olive oil bottled on or after June 1, 2018, include a “best by” or “use by” date not later than sixteen months after the date of bottling and include the date(s) of harvest of the olives used to manufacture the olive oil in proximity to the “best by” date.
- Implement the following chemical parameter testing requirements at the time of bottling (which are stricter than the current limits set forth in the preceding column under “IOC Limit”):

Parameter	IOC Limit	Target Limit
Acidity (%)	≤ 0.8	≤ 0.5
Peroxide value (mEq) /2/kg)	≤ 20	≤ 10
K270	≤ 0.22	≤ 0.15
K232	≤ 2.50	≤ 2.1
Delta-K	≤ 0.01	≤ 0.005

(Id. ¶¶ 3.12-13.)

Class Counsel believes that the provision of the above benefits adequately compensates Class Members for the harm they suffered, in light of the risks of litigation. (Gutride Decl., ¶¶ 9-20.) In particular, there may be substantial difficulties establishing that: (1) Deoleo’s marketing of the Olive Oil Products was likely to deceive reasonable persons as to their true geographic origin; (2) the country of origin of the products was material to reasonable persons; (3) Deoleo failed to employ adequate procedures to ensure that the EVOO was extra virgin at the time of bottling and through its “Best By” date; (4) that Deoleo should be held liable for procedures employed by third-party suppliers from whom its European parent company purchased olive oil; or (5) the amount of damages or restitution that should be awarded, if any. (Id. ¶ 16.)

Even if Plaintiff’s claims were successful, the “best case” recovery may not be better than the settlement remedy. Plaintiff’s expert Colin Weir has performed a detailed regression analysis to calculate the price premiums attributable to the claims. Those price premiums are equal to between 3.76 and 17.34 percent of the purchase price of each bottle of olive oil, depending on the product type. (Supplemental Declaration of Colin Weir in Support of Plaintiff’s Reply in Support of Motion for Class Certification (“Weir Decl”) (dkt. # 112-13) at ¶ 107.) Deoleo sold approximately 150 million Products nationwide during the relevant periods, at an average retail price of \$9 a bottle. (Gutride Decl. at ¶ 11.) Thus, even if successful at trial, class members would

1 be eligible to recover between 33 cents and \$1.56 per average-priced bottle, upon submitting a
2 claim. The cash recovery in this settlement is thus close to if not greater, on a per-bottle basis, than
3 the amount class members could obtain after trial.

4 **3. Administrative Expenses, Attorneys' Fees and Costs, Incentive 5 Awards**

6 All costs of notice and administration of the settlement will be paid from the common fund.
7 In addition, Plaintiff's counsel will request payment from the common fund of incentive awards of
8 \$5,000 for Plaintiff Koller, and \$1,000 for the other named Plaintiffs. The incentive fee is designed
9 to compensate Plaintiffs for (1) the time and risk they took in prosecuting this action (including the
10 risk of liability for Defendant's costs) and (2) agreeing to a release broader than the one that will
11 bind settlement class members. (Id. Ex. 1, ¶¶ 6.2, 8.1)

12 Plaintiffs also will request payment from the common fund of their out of pocket expenses
13 (approximately \$150,000) plus attorneys' fees equal to 30% of the fund (\$2,100,000). This request
14 will be justified by a lodestar-multiplier analysis and is in line with standard awards under other
15 common fund settlements, under which fees are awarded as percentage of the fund. *See, e.g.,*
16 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (upholding award of 28% of the
17 common fund); *Miller v. Ghirardelli Chocolate Co.*, 2015 WL 758094, at *5 (N.D. Cal. Feb. 20,
18 2015) (awarding 30% of the common fund in fees in food labeling class action). The request for
19 fees, costs and incentive awards will be the subject of a separate motion to be filed, and posted on
20 the settlement website, at least 42 days before the final approval hearing, which is 14 days before
21 the deadline for class member objections.

22 **4. Notice**

23 The claim administrator (Angeion Group) will establish a settlement website, which shall
24 contain the settlement notices, a contact information page that includes address and telephone
25 numbers for the claim administrator and the parties, the settlement agreement, the signed order of
26 preliminary approval, online and printable versions of the claim form and the opt out forms,
27 answers to frequently asked questions, a Product list, and (when it becomes available) Plaintiffs'
28 counsel's application for attorneys' fees, costs, expenses and incentive awards and motion for final
approval.

1 Notice will be published in several places, all of which will refer class members to the
2 settlement website. (Gutride Decl. Ex. B.) The Published Notice will appear in *People Magazine*
3 and the *San Francisco Chronicle*; and be distributed as a press release through PR NewsWire.
4 Online Notice linking to the Settlement Website will be published for a total of 39 million
5 combined impressions on various websites targeted to individuals interested in such things as olive
6 oils, cooking oils, dressings, recipes, and Bertolli. There will also be a sponsored blog post on
7 www.topclassactions.com and www.classaction.org. (*Id.*) Finally, the claims administrator will
8 operate a toll-free information line to provide information about the case and settlement, and it will
9 provide printed copies of the Long Form Notice and Claim Form by first class mail to individuals
10 who request them. (*Id.*)

11 **G. Plaintiff's Analysis of Settlement**

12 Based on their reasoned judgment, Plaintiff's counsel believes the proposed Settlement is
13 fair and reasonable. (Gutride Decl., ¶¶ 9-20.) Plaintiffs believe that the evidence obtained in
14 discovery showed that the Bertolli Olive Oil Products' labels were likely to (and did) deceive
15 unsuspecting consumers and that Defendant knew of the deceptive nature of the Bertolli
16 packaging. (*Id.* ¶ 15.) However, there were serious risks to continuing with the litigation. First,
17 Plaintiffs would have been required to prove that the Bertolli Olive Oil Products' "Imported from
18 Italy" labeling violated 19 C.F.R. section 134.46, and was therefore unlawful under the UCL,
19 and/or that the representation was likely to deceive or confuse reasonable persons. They would
20 have also had to prove that Deoleo did, in fact, fail to maintain adequate practices to ensure that
21 Bertolli EVOO remained extra virgin through the sale and "best by" dates. Defendant disputed that
22 consumers would understand "Imported from Italy" to mean what Plaintiffs allege, and the
23 adequacy of Deoleo's "extra virgin" practices was hotly contested and likely to come down to a
24 battle of experts. It could be difficult to obtain monetary relief, because Deoleo was likely to
25 present evidence that the challenged labeling had no or little effect on pricing or sales volume. It
26 was unclear how the arguments would be resolved at summary judgment or trial. (*Id.* at ¶ 16.)
27 Thus, there was a substantial risk that class members would recover only nominal damages, or
28 nothing at all. Finally, any judgment in Plaintiffs' favor would likely be appealed, so even in the

1 best case, it could take years to get relief. (*Id.*)

2 Plaintiffs and counsel believe that a refund to claimants of \$0.75 to \$1.75 per bottle (and
3 possibly more), with no cap on claims with proof of purchase, and a cap of five bottles and a
4 maximum of \$25 for claims without proof of purchase, is a good result, as good or better than the
5 likely recovery at trial. (*Id.* ¶ 12.) Indeed, in a contested proceeding, class members who lacked
6 proof of purchase—which is likely the majority of class members—might get nothing at all. *See,*
7 *e.g., Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1132 (9th Cir.), *cert. denied sub*
8 *nom. ConAgra Brands, Inc. v. Briseno*, 138 S. Ct. 313 (2017) (explaining that the post-trial claims
9 process by which each consumers’ affidavits would “force a liability determination” as to that
10 consumer). The \$0.75 to \$1.75 per bottle is a favorable settlement amount in light of the per-bottle
11 price premiums of between 3.76 and 17.34 percent of the purchase price per bottle, as determined
12 by Plaintiff’s expert. (Weir Decl. at ¶ 51.) Further, in addition to the monetary relief, the changed
13 practices will benefit class members and other consumers. (Gutride Decl. at ¶ 14.)

14 Defendant, while continuing to deny all allegations of wrongdoing, also believes the
15 settlement is in its interest to avoid further expense, inconvenience, and interference with its
16 ongoing business operations.

17 **III. ARGUMENT**

18 **A. PRELIMINARY APPROVAL IS WARRANTED**

19 Although Rule 23(e) requires court approval of a class settlement, there is a “strong
20 judicial policy that favors settlements, particularly where complex class action litigation is
21 concerned.” *Class Plaintiff v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). “In most
22 situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to
23 lengthy and expensive litigation with uncertain results.” *DIRECTV*, 221 F.R.D. at 526, citing 4
24 Conte & Newberg, *NEWBERG ON CLASS ACTIONS* (“Newberg”) § 11.50 at 155 (4th ed. 2002). At
25 the preliminary approval stage, the Court’s role is to determine, on a preliminary basis, whether
26 the settlement is within the range of what might be considered “fair, reasonable, and adequate” to
27 allow notice to the proposed settlement class to be given and a hearing for final approval to be set.
28 *See Ross*, 2009 U.S. Dist. LEXIS 69633 at *9.

1. The Settlement is Presumed Fair

1 Class settlements are presumed fair when they are reached “following sufficient discovery
2 and genuine arms-length negotiation.” *DIRECTV*, 221 F.R.D. at 528; 4 Newberg at § 11.24.
3 Before reaching the settlement, the parties engaged in extensive, highly adversarial factual
4 investigation, which included numerous depositions, document production, and interrogatories,
5 including third-party and expert discovery. (Gutride Decl., ¶ 4.) At time of settlement, there had
6 been extensive briefing and argument on various significant legal issues, with two California
7 classes having already been certified, and Plaintiff’s motion for partial summary judgment pending
8 as to the California IFI Class. The parties were fully informed as to the viability of the claims and
9 the risks to both sides if the case did not settle. (*Id.*)

10 The parties negotiated the proposed settlement in good faith, including months of intense
11 negotiations. (*Id.* ¶¶ 6-7.) Counsel for both sides are experienced class action attorneys and have
12 fully evaluated the strengths, weaknesses, and equities of their positions. (*Id.* ¶ 3, Ex. 2;
13 Declaration of Hassan Zavareei, Ex. A.) Class Counsel believes the settlement to be in the Class’
14 best interests, taking into account the costs and risks of continued litigation. (Gutride Decl. ¶¶ 9-
15 20.) The opinion of experienced counsel supporting the settlement is entitled to considerable
16 weight. *See, e.g., DIRECTV*, 221 F.R.D. at 528 (“Great weight is accorded to the recommendation
17 of counsel, who are the most closely acquainted with the facts of the underling litigation.”)
18 (internal citation omitted); *see also In re NVIDIA Corp. Derivative Litig.*, (N.D. Cal. Dec. 22,
19 2008) 2008 WL 5382544 at *4 (“[S]ignificant weight should be attributed to counsel’s belief that
20 settlement is in the best interest of those affected by the settlement”).

2. Other Factors Also Demonstrate the Fairness of the Settlement

22 Rule 23(e) does not require the Court to consider “fairness” criteria until final approval, but
23 a preliminary review shows that these criteria will be satisfied. *See Churchill Village, LLC v. Gen.*
24 *Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

a. The Strength of Plaintiff’s Case and the Risks of Further Litigation

27 These factors survey the potential risks and rewards of proceeding with litigation. The
28 settlement is appropriate under these factors for the reasons explained *supra*. See section II(F)(1)-

1 (2), (G).

2 **b. The Amount Offered in Settlement**

3 This factor “assess[es] the consideration obtained by the class members in a class action
4 settlement.” *DIRECTV*, 221 F.R.D. at 527. “[I]t is the complete package taken as a whole, rather
5 than the individual component parts, that must be examined for overall fairness.” *Officers for
6 Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982). “In this regard, it is well-settled
7 law that a proposed settlement may be acceptable even though it amounts to only a fraction of the
8 potential recovery that might be available to the class members at trial.” *DIRECTV*, 221 F.R.D. at
9 527 (citing *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998)).

10 Plaintiffs’ best-case recovery would be the average “premium” demonstrated by a
11 regression analysis for (1) olive oil labeled “Imported from Italy” versus olive oil not containing
12 that label, and (2) olive oil labeled “extra virgin” versus olive oil not containing that label.
13 Plaintiffs believe that their likely “best case” recovery at trial would be approximately \$151
14 million, based on applying Mr. Weir’s regression analysis (dkt. # 112-13) to nationwide sales
15 figures. (Gutride Decl. at ¶¶ 10-12.) At final approval, Plaintiffs will provide further testimony
16 from Mr. Weir to support this damages estimate. However, Deoleo disputes that any such
17 premium exists, and expert testimony on the subject is likely to diverge wildly.

18 The settlement amount of \$7 million, which does not include the value of the changed
19 practices, may appear to be a small portion of the total amount of damages at trial, but Plaintiffs
20 believe this recovery to be fair in light of the risks discussed above, as well as the risk of not being
21 able to collect such a large award. (Id. ¶¶ 18.) Further, the per-claim amount of \$0.75 to \$1.75 (or
22 more) per bottle of Bertolli Olive Oil Products, with no cap on claims with Proof of Purchase, and
23 a five-bottle/\$25 cap on claims without Proof of Purchase, is good result compared to the possible
24 result in a contested proceeding, as discussed above. (Id. ¶ 12.) Indeed, these per-bottle amounts
25 approach could result in recoveries on a per-bottle basis in excess of the price premium damages
26 calculated to Plaintiff’s expert to be available at trial. (*See supra*, section II(G).)

27 Deoleo’s changed practices are also likely to benefit class members. At the time of final
28 approval, Plaintiff’s economic expert, Colin Weir, will opine as to some amounts class members

1 will save due to the label changes. The value of injunctive relief—including the benefit to
2 consumers in the form of an improved marketplace that is not skewed by false advertising—can
3 properly be considered when evaluating a settlement’s fairness. *See, e.g., Allen v. Bedolla*, 787
4 F.3d 1218, 1224 (9th Cir. 2015)(explaining that in evaluating the fairness of a settlement, district
5 courts should “make express findings about the value of the injunctive relief”); *Lane v. Facebook,*
6 *Inc.*, 696 F.3d 811, 825 (9th Cir. 2012) (noting that a “judicially-enforceable agreement” to
7 maintain changed practices may be considered in a fairness inquiry).

8 **c. The Cy Pres Awards**

9 In their motion for final approval, Plaintiffs will ask the Court to approve the charitable
10 organizations Center for Food Safety and the Consumers Union to receive any balance remaining
11 in the settlement fund, after payment of notice, administration, fees, costs, incentives and valid
12 claims. (Gutride Decl, Ex. 1, ¶ 3.4.) *See Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir.
13 2011) (holding that courts “may employ the *cy pres* doctrine to ‘put the unclaimed fund to its next
14 best compensation use, *e.g.*, for the aggregate, indirect, prospective benefit of the class’”) (citing
15 *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir.2007)); *see also Bolton v.*
16 *U.S. Nursing Corp.*, 2013 WL 2456564, *2 (N.D. Cal. June 6, 2013) (in order granting preliminary
17 approval, deferring approval of proposed *cy pres* recipients until final approval). Consumers Union
18 is reasonably connected to this litigation, in that it works on advancing the rights of consumers and
19 the information available to food consumers. It has been approved as a *cy pres* recipient in other
20 food labeling class actions. *See, e.g., Nigh v. Humphreys Pharmacol, Inc.*, 2013 WL 5995382, *9
21 (S.D. Cal. Oct. 23, 2013) (“the Court finds that this *cy pres* distribution to Consumers Union
22 reflects the objectives of the UCL and CLRA; reflects the interests of silent Class Members; and
23 benefits the Plaintiff Class, who are consumers that purchased Products based on false and
24 misleading representations”); *Miller*, 2015 WL 758094, at *8 (approving Consumers Union as
25 a *cy pres* recipient in food-labeling class action); *Dennis v. Kellogg Co.*, 2013 WL 6055326, *1
26 (S.D. Cal. Nov. 14, 2013), *appeal dismissed* (May 15, 2014) (same). The Center for Food Safety,
27 which advocates for and educates consumer about more healthy and environmentally sustainable
28 food production, also has a strong nexus to the class. Similar organizations connected to food

1 safety issues have been approved as cy pres recipients in other food labeling cases. *See, e.g.*,
 2 *Miller*, 2015 WL 758094, at *8 (approving the University of California, Davis – Food Science &
 3 Technology Department); *Dennis v. Kellogg Co.*, 2013 WL 6055326, *2 (S.D.Cal. Nov. 14,
 4 2013), *appeal dismissed* (May 15, 2014) (approving the Food Safety Program of the University of
 5 Georgia as a cy pres recipient).

6 **3. Attorneys’ Fees, Costs and Incentives**

7 In a separate motion to be filed with the motion for final approval and posted on the
 8 settlement website, Plaintiffs will ask the Court to approve payment of no more than \$2,100,000
 9 from the common fund of their reasonable attorneys’ fees, plus out-of-pocket costs and incentive
 10 awards. As of the filing of this motion, Plaintiff’s counsel has spent in excess of 2500 hours
 11 working on this litigation. Its lodestar is greater than the amount it will seek in attorneys’ fees.
 12 Counsel has additionally incurred approximately \$150,000 in unreimbursed expenses. (Gutride
 13 Decl., ¶ 5; Zavareei Decl. ¶ 4.) The Court need not consider these issues at present; rather it is
 14 appropriate to defer them until the final approval hearing, after class members have had an
 15 opportunity to comment.

16 **B. THE SETTLEMENT CLASS SHOULD BE PRELIMINARILY** 17 **CONDITIONALLY CERTIFIED**

18 This Court previously certified two California classes on August 24, 2017. (Dkt. # 116.)
 19 Plaintiffs now seek preliminary approval, for settlement purposes only, of two expanded
 20 Settlement Classes so that nationwide relief can be afforded. As set forth below, the same common
 21 questions of fact and predominate nationwide, and certification of nationwide classes is consistent
 22 with *In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d 679, 689 (9th Cir. 2018) (“*Hyundai*”).

23 **1. The Nationwide Settlement Classes Should Be Conditionally** 24 **Certified.**

25 Koller is a California resident who is now joined by six more proposed class
 26 representatives from five other states (New York, New Jersey, Florida, North Carolina, and
 27 Arkansas). The proposed Second Amended Complaint (dkt. # 145), in which all seven plaintiffs
 28 join, pleads violations of statutory consumer protection laws and unjust enrichment on behalf of
 the nationwide classes. Common questions of law and fact predominate on these claims. To the

1 extent there are variations in state laws, the variations are immaterial, and in any event, the six
2 states from which the named Plaintiffs hail are representative of all variations among the states.

3 **a. Nationwide Class Members Are Victims of the Same**
4 **Misconduct as the California Class Members.**

5 Deoleo sold the same product nationwide with the same labelling, using the same
6 manufacturing and distribution practices. Just as was the case for all Californians, the basis for the
7 alleged misconduct is the violation of two federal regulations: the USDA definition of “extra
8 virgin” and the CPB regulations under the Tariff Act for statements of origin. And just as was the
9 case for all Californians, the claim of false advertising will present uniform issues of material fact
10 for class members nationwide, including whether the labelling was likely to deceive, whether
11 Deoleo’s practices were sufficient to protect oil quality, and whether a price premium can be
12 demonstrated using the hedonic regression model. (See dkt. # 118, at pp. 2-10, 118-37.)

13 **b. A Fifty-State Consumer Protection Class Can Be**
14 **Certified.**

15 In light of the uniform alleged misconduct, the elements that need to be proven under the
16 consumer protection laws of the fifty states and the District of Columbia (collectively, “states”) are
17 substantively identical. To the extent differences exist, they are immaterial. At a minimum,
18 subclasses can be created to resolve whether Plaintiffs have proved elements of their causes of
19 action required by certain states, as the Plaintiffs hail from six states that represent all the
20 permutations extent in the 50 states. Were this case to proceed to trial, the jury could be asked to
21 provide special verdicts as to whether Plaintiffs had proved various facts—for example, that the
22 alleged conduct was likely to deceive reasonable consumers, or that defendants had
23 misrepresented the geographic origin of the products. It would then be a relatively simple matter
24 to compare the proven elements to the required elements in each state, to determine whether the
25 case had been successful. To put it another way, the seven Plaintiffs collectively have the
26 incentive, in proving the violations of their own state laws, to prove all the elements of all the state
27 laws. Filed herewith as Appendix A and B are, respectively, (1) a summary chart of the elements
28 of the relevant state laws and (2) a more detailed discussion of the same, including statutory and
case citations in support thereof. These charts demonstrate predominance of common issues. To

1 wit:

2 **Right of Action.** All states have established a private right of action to challenge false
3 advertising.¹ In addition, class treatment is available for violations of all the state laws.²

4 **Prohibition of Deceptive Conduct.** All the states prohibit the alleged misconduct in one
5 of two ways. Forty-five states have statutes similar to the California UCL in that they have broad
6 and general prohibitions against any kind of deceptive conduct.³ Consumers in these states will
7 have their interests represented by all Plaintiffs. The remaining five states—Colorado, Mississippi,
8 Oregon, Tennessee, and Texas—have narrower statutes that, like the CLRA, prohibit specific
9 deceptive acts, including misrepresentations as to “the source . . . or certification” of the goods,
10 “using deceptive representations or designations of geographic origin in connection with goods or
11 services” and “representing that goods are of a particular grade when they are not.” *See, e.g.* Cal.
12 Civ. Code 1770(a)(2), (4), (7); Colo. Rev. Stat. § 6-1-105 (1)(b), (d), (g); MS Code § 75-24-5(b),

13 ¹ Alabama, California, Florida, Illinois Indiana, Louisiana, Maine, Maryland, Minnesota, and
14 Tennessee require pre-suit notice. Before suing under the laws of any of the states other than
California, all plaintiffs provided notice.

15 ² While seven states’ statutes (Arkansas, Alabama, Georgia, Louisiana, Tennessee, Montana, and
16 South Carolina) prohibit class actions, numerous district courts have found that that these
17 prohibitions are not enforceable in federal court and that classes may still be certified under Rule
23 in light of *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010). *See,*
18 *e.g., Lisk v. Lumber One Wood Preserving, LLC*, 792 F.3d 1331 (11th Cir. 2015) (allowing
Alabama class actions); *Mounce v. CHSPSC, LLC*, 2017 WL 4392048, at *7 (W.D. Ark. Sept. 29,
19 2017) (allowing Arkansas class actions); *In re Hydroxycut Marketing & Sales Practices Litig.*, 299
F.R.D. 648 (S.D. Cal. 2014) (allowing Georgia, Louisiana, Montana, South Carolina, and
20 Tennessee class actions) *In re Cast Iron Soil Pipe & Fittings Antitrust Litig.*, 2015 WL 5166014
(E.D. Tenn. June 24, 2015) (allowing South Carolina and Montana class actions); *Wittman v. CBI,*
21 *Inc.*, 2016 WL 3093427 (D. Mont. June 1, 2016) (allowing Montana class actions); *In re Optical*
Disk Drive Antitrust Litig., 2012 WL 1366718 (N.D. Cal. Apr. 19, 2012) (allowing South Carolina
22 class actions); *Reed v. Dynamic Pet Prods.*, 2016 WL 3996715 (S.D. Cal. July 21, 2016) (allowing
Louisiana class actions); *Andren v. Alere, Inc.*, 2017 WL 6509550 (S.D. Cal. Dec. 20, 2017)
(allowing Georgia class action). *But see Bearden v. Honeywell Int’l, Inc.*, 2010 WL 3239285
(M.D. Tenn. Aug. 16, 2010) (disallowing Tennessee class actions); *Fejzulai v. Sam’s West, Inc.*,
23 205 F. Supp. 3d 723 (D.S.C. 2015) (disallowing South Carolina class actions). To the extent this
24 Court has concerns about any states’ inclusion in the class with respect to consumer protection
25 statutory claims, they can be included in the nationwide class solely with respect to unjust
enrichment claims.

26 ³ These states are Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware,
27 District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky,
Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska,
28 Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota,
Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont,
Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

1 (d), (g); OR Rev. Stat. § 646.608(b), (d), (g); Tenn. Com. Code § 47-18-104(b)(2), (4), (7); Tex.
 2 Bus. & Com. Code § 17.46(2), (4), (7).⁴ All Plaintiffs will prove the elements of these claims as
 3 they are at the heart of the allegations about the “source” and “origin” of the oil and as to whether
 4 it was properly certified or graded as EVOO. At a minimum, California plaintiff Koller will do so
 5 to prove his CLRA claim.

6 **Knowledge and Intent.** Thirty-three states, including California, Florida, New York, and
 7 North Carolina do not require a showing of either knowledge or intent, and thus, Plaintiffs from
 8 those states can represent the interests of the class members from 28 other states that also impose
 9 no such requirement.⁵ New Jersey requires a showing of knowledge and intent in cases involving a
 10 concealment of a material fact; Plaintiff Freiman can represent class members in two other
 11 states—Arizona and Delaware—which have a similar standard. Plaintiff Gibbs of Arkansas will
 12 need to prove Deoleo knowingly and intended to deceive consumers⁶ and can represent class
 13 members in the other fifteen states that also require proof knowledge and/or intent for some or all
 14 of the violations at issue.⁷

15 **Reliance.** Differing state rules on reliance also pose no bar to certification. The statutes in
 16 New York and New Jersey, like 29 other states, do not require a showing of “reliance” but instead

17 _____
 18 ⁴Arkansas’ statute also specifically prohibits most of these same activities, but goes on to note that
 19 the practices made unlawful under the act are “not limited to” the specific activities identified in
 20 the statute. Ark. Bus. & Com. Code § 4-88-107(a).

21 ⁵ These additional states are Alabama, Alaska, Connecticut, District of Columbia, Georgia,
 22 Hawaii, Idaho, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri,
 23 Montana, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota,
 24 Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin. Similarly,
 25 neither the UCL nor the CLRA require proof that a violation was knowing. The UCL also does not
 26 require a showing of intent, while the CLRA requires it for some of its prohibited activities, but
 27 not all.

28 ⁶ Arkansas’s consumer protection statute forbids “knowingly making a false representation. . . .”
 Ark. Code § 4-88- 107(a)(1). Like California, it also forbids “advertising goods or services with
 intent not to sell them as advertised.” *Id.*, subd. (a)(3); Cal. Civ. Code § 1770(a)(7).

⁷ Colorado, Indiana, Kansas, Maryland, Nevada, New Hampshire, New Mexico, South Carolina,
 Utah, and Wyoming have statutes similar to the CLRA and like Arkansas, requiring a showing of
 knowledge and/or intent for some or all of the key provisions at issue in this case. Arizona,
 Illinois, Iowa, Minnesota, and North Dakota require a showing that the defendant intended for the
 plaintiff to rely on the misrepresentation, which is a lesser level of intent and thus would be
 necessarily proven if there is violation of the Arkansas law.

1 only proximate causation (which some states refer to as “ascertainable loss”). Here, Plaintiffs’
 2 theory of loss causation is the same for each class member, namely that Defendants’ misconduct
 3 led to a price premium. Plaintiffs from New York and New Jersey (Plaintiffs Castoro and Freiman)
 4 can thus represent class members on this question in the other similar 29 states.⁸

5 The laws of California, North Carolina and Arkansas (where three Plaintiffs live) all
 6 require reliance by the named plaintiffs, as do eleven other states.⁹ Two of those eleven—Colorado
 7 and Maryland—have expressly held, as have California and North Carolina, that there need not be
 8 any showing of reliance by absent class members.¹⁰ The other nine, like Arkansas, either have held
 9 that proof of reliance by absent class members *is* required¹¹ or have not answered the question.¹²
 10 The Arkansas plaintiff will ask the Court to certify a class despite the possible need for individual
 11 proof of reliance, and will be able to do so under this Court’s ruling in *Gold v. Lumber*
 12 *Liquidators, Inc.*, 323 F.R.D. 280 (N.D. Cal. 2017). There, this Court certified a class under
 13 Pennsylvania law despite the need to prove reliance for each class member, holding that this “‘does
 14 not outweigh the predominantly common issues,’ including whether [the] conduct constitutes an
 15 unfair or deceptive practice and whether that conduct harmed class members.” *Id.* at 292 (quoting
 16 *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1121–22 (9th Cir. 2017)).¹³

17 _____
 18 ⁸ Alaska, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Kentucky,
 19 Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey,
 20 New Mexico, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota,
 21 Tennessee, Utah, Vermont, Washington, and Wisconsin.

22 ⁹ These states are Colorado, Georgia, Indiana, Maryland, Nevada, Pennsylvania, Texas, Virginia,
 23 West Virginia, and Wyoming. In addition, Michigan requires a showing of reliance for some kinds
 24 of violations.

25 ¹⁰ *In re Tobacco II Cases*, 207 P.3d 20 (Cal. 2009); *Patterson v. BP Am. Prod. Co.*, 240 P.3d 456,
 26 469 (Colo. App. 2010), *aff’d*, 263 P.3d 103 (Colo. 2011); *Luskin’s, Inc. v. Consumer Prot.*
 27 *Div.*, 353 Md. 335, 358–59, 726 A.2d 702 (1999); *Pitts v. Am. Sec. Ins. Co.*, 144 N.C. App. 1, 14
 28 (2001), *aff’d*, 356 N.C. 292 (2002).

¹¹ See *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 657–59 (D. Nev. 2009); *Weinberg v. Sun*
Co., 565 Pa. 612, 617–18 (2001); *Peltier Enters., Inc. v. Hilton*, 51 S.W.3d 616, 624
 (Tex.App.2000).

¹² These states are Georgia, Indiana, Virginia, West Virginia, and Wyoming.

¹³ Alternatively, consumers in these states can be excluded from the consumer protection class,
 and permitted to pursue only their unjust enrichment claims.

1 Finally, six states are undecided on the issue of whether reliance is required for named
2 plaintiffs, absent class members, or both,¹⁴ but even assuming the most strenuous requirements (as
3 in Pennsylvania), common issues will still predominate and a class can be certified, as the
4 Arkansas plaintiff will argue under *Gold*.

5 **Remedies.** Differences among the states' remedial schemes also do not bar certification.
6 Once the jury answers the special verdict questions, the Court can easily determine whether a
7 violation has been proven under each state's laws, and if so, it can order the Defendant to provide
8 the residents of that state the remedy authorized by the state law. For example, all states provide
9 for compensatory damages, the amount of which here will be the price premium determined by the
10 jury, i.e., the percentage by which the price was inflated due to the misconduct. Some states also
11 provide for minimum damages, double or triple damages, or punitive or special statutory damages,
12 but at least one Plaintiff hails from a state in each group of such states.¹⁵ All but twelve state
13 statutes (including those in all states from which the Plaintiffs hail other than Arkansas) also
14 provide for injunctive relief; thus, if the elements found by the jury equate to a violation of these
15 states' laws, and Plaintiffs additionally show the likelihood of future harm to consumers, the Court

16 ¹⁴ These states are Alabama, Louisiana, Maine, Massachusetts, Oregon, and South Dakota.

17 ¹⁵ Some states allow consumers to obtain a specific monetary amount per violation, often where
18 the amount specified is greater than actual damages. New York is one such state, thus the Plaintiff
19 there (Plaintiff Castoro) may represent consumers in Alaska, District of Columbia, Indiana
20 Massachusetts, Oregon, Pennsylvania, Rhode Island, and Virginia. Likewise, the Plaintiffs from
21 New Jersey and North Carolina (Plaintiffs Freiman and Williams) can represent class members in
22 the states permitting double or treble actual damages upon a showing of a violation of the statute,
i.e., Hawaii, Kansas, and Wisconsin. The Plaintiffs from California, Arkansas and Florida
(Plaintiffs Koller, Bissonette, Glidewell, and Gibbs) can represent class members in the remaining
states. For purposes of this analysis, Plaintiff looked only states with statutory damages for which
all consumers were eligible, and did not consider special provisions providing additional statutory
damages to special groups of citizens, such as senior citizens and the disabled.

23 Some states also permit awards of either punitive damages or per-violation amounts upon showing
24 the actions were willful, knowing, or reckless, in most cases per the court's discretion. New York
25 is one such state, as are Alabama, Arizona, Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa,
26 Louisiana, Massachusetts, Missouri, Montana, Nevada, North Dakota, Oregon, Pennsylvania,
27 Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and Washington. Other states
28 do not specify preconditions for the award of punitive damages. These include California's CLRA
and the statutes of Vermont, Wisconsin, and the District of Columbia. Finally there are states
where where additional damages have not been authorized; these include Arkansas, Florida, and
New Jersey, as well as Alaska, Colorado, Hawaii, Kansas, Maine, Maryland, Michigan,
Minnesota, Mississippi, Nebraska, New Mexico, Ohio, Oklahoma, South Dakota, Utah, West
Virginia, and Wyoming.

1 can fashion an injunction to prohibit the challenged conduct in these 38 states.¹⁶

2 **c. The Plaintiffs’ Unjust Enrichment Claims Can Be**
 3 **Pursued on a Nationwide Basis.**

4 Most courts agree that the laws of the fifty states regarding unjust enrichment do not differ
 5 materially, so a nationwide class may be certified. *See, e.g., In re Abbott Labs. Norvir Anti-Tr.*
 6 *Litig.*, 2007 WL 1689899, at *9 (N.D. Cal. June 11, 2007) (certifying nationwide class; holding
 7 that the “variations among some States’ unjust enrichment laws do not significantly alter the
 8 central issue or the manner of proof”); *In re Checking Account Overdraft Litig.*, 307 F.R.D. 630,
 9 647 (S.D. Fla. 2015) (“There is general agreement among courts that the “minor variations in the
 10 elements of unjust enrichment under the laws of the various states . . . are not material and do not
 11 create an actual conflict.”) (quoting *Pennsylvania Emp., Benefit Trust Fund v. Zeneca, Inc.*, 710
 12 F.Supp.2d 458, 477 (D. Del. 2010)); *In re Mercedes–Benz Tele Aid Contract Litig.*, 257 F.R.D. 46
 13 (D.N.J. 2009) (“While there are minor variations in the elements of unjust enrichment under the
 14 laws of the various states, those differences are not material and do not create an actual conflict.”);
 15 *Schumacher v. Tyson Fresh Meats, Inc.*, 221 F.R.D. 605, 612 (D.S.D. 2004) (“In looking at claims
 16 for unjust enrichment, we must keep in mind that the very nature of such claims requires a focus
 17 on the gains of the defendants, not the losses of the plaintiffs. That is a universal thread throughout
 18 all common law causes of action for unjust enrichment.”).

19 In distilling the various states’ laws down to two common elements, one court explained:

20 At the core of each state’s law are two fundamental elements—***the defendant***
 21 ***received a benefit from the plaintiff and it would be inequitable for the defendant***
 22 ***to retain that benefit without compensating the plaintiff.*** The focus of the inquiry
 23 is the same in each state. Application of another variation of the cause of action
 than that subscribed to by a state will not frustrate or infringe upon that state’s
 interests. In other words, regardless of which state’s unjust enrichment elements are
 applied, the result is the same. Thus, there is no real conflict surrounding the
 elements of the cause of action.

24 *Powers v. Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa. 2007) (emphasis added), *rev’d on*
 25 *other grounds*, 2009 WL 826842, 328 Fed. Appx. 121 (3d Cir. 2009). These two elements are the

26 _____
 27 ¹⁶ The state statutes that do not provide for injunctive relief in a consumer action are Alabama,
 28 Arkansas, Colorado, Louisiana, Maryland, Mississippi, Montana, North Dakota, Oregon, South
 Carolina, Virginia, and Wyoming. The other 38 states’ statutes specifically authorize consumers to
 obtain injunctions.

1 same for all class members, regardless of their state of residence, as all paid a price premium to
2 Deoleo to purchase its olive oil products—thus, all conferred a benefit on Deoleo—and none
3 received olive oil that was “Imported from Italy” or guaranteed to be extra virgin, therefore
4 rendering it inequitable for Deoleo to retain the benefit. Thus, the same legal questions
5 predominate for all class members’ unjust enrichment claims.

6 There are no material differences among state laws regarding unjust enrichment. Plaintiff is
7 aware of one case that found a material difference in that half the states “do not allow claims for
8 unjust enrichment where the plaintiff has received the benefit of the bargain.” *Andren v. Alere,*
9 *Inc.*, 2017 WL 6509550, at *17 (S.D. Cal. Dec. 20, 2017). But that court did not explain the basis
10 for its holding, and it was mistaken, because the “benefit of the bargain” test is no different from
11 the determination in every state of whether it would be “inequitable for the defendant to retain [the
12 amount received from plaintiff] without compensating the plaintiff.”¹⁷ *See, e.g., Peterson v. Cellco*
13 *P’ship*, 164 Cal. App. 4th 1583, 1591 (2008) (“Rather, they received the benefit of their bargain,
14 having obtained the bargained for insurance at the bargained for price.”); *One Step Up, Ltd. v.*
15 *Webster Bus. Credit Corp.*, 87 A.D.3d 1, 14 (N.Y. App. Div. 2011) (“Moreover, defendant was in
16 no way unjustly enriched. It merely received what it was entitled to under the express contracts at
17 issue, while plaintiff received the benefit of its bargain.”). The lack of any difference is especially
18 evident here, as the essence of the claim by all Plaintiffs is that no purchaser got the bargained-for
19 product at the bargained-for price, because of the price premium. *Cf. In re Anthem, Inc. Data*
20 *Breach Litig.*, 162 F. Supp. 3d 953, 985 (N.D. Cal. 2016) (explaining that “benefit of the bargain”
21 losses are the difference between the price you paid and the value of what you received)
22 (citing *Kwikset v. Superior Court*, 51 Cal. 4th 310, 321-22 (2011)).¹⁸

23 There may be one difference among the laws in that seven states, including Florida, have
24 limited the remedy of unjust enrichment to situations where the victim has no other remedy, but

25 ¹⁷ Instead, the Court merely relied upon a lengthy chart prepared by the Defendant, that also did
26 not contain any discussion. *See* Case No. 16-cv-1255, Dkt. 100-2, pp. 95-122.

27 ¹⁸ Alternatively, if this Court chose to include “did not receive benefit of the bargain” as an
28 independent element of the unjust enrichment claim, the Plaintiffs from Arkansas, California,
Florida, New York, and North Carolina would prove that element on behalf of class members in
all states with such a requirement.

1 again, this difference does not matter. Courts in those states have barred enrichment claims only
 2 where there is a contract between the parties that would give rise to claims for breach of contract.¹⁹
 3 Here, there is no contract. *Cf. Ham v. Hain Celestial Grp., Inc.*, 70 F. Supp. 3d 1188, 1195 (N.D.
 4 Cal. 2014) (explaining that the absence of privity prevents a plaintiff from alleging breach of
 5 contract in a food labeling lawsuit). Moreover, all Plaintiffs who fail to prove the elements of their
 6 consumer law claim will have “no other remedy” and thus will be left with their unjust enrichment
 7 claims. Likewise, if the Court concludes, based on the jury’s special verdict answers, that the
 8 elements for the consumer claim in a particular state have not been proven, then there is “no other
 9 remedy” for the class members in that state.

10 **2. Nationwide Settlement Classes Are Still Permitted After** 11 ***Hyundai.***

12 This Court may be concerned that 50-state settlement classes are no longer available under
 13 the Ninth Circuit’s recent ruling in *Hyundai*. It need not have that concern. *Hyundai* did not bar
 14 nationwide settlement classes; and it reversed certification of the class there only because of
 15 myriad and profound factual and legal differences among class members that do not exist here.

16 In *Hyundai*, the plaintiffs challenged allegedly fraudulent representations made by
 17 hundreds of independent new and used car dealers across the country, in connection with 76
 18 different models of cars. 881 F.3d at 704. The evidence showed wide variations among the
 19 statements made by the dealers and among the true features of the car models. Prior to settlement,
 20 the plaintiff had moved to certify a California class, and the district court denied certification due
 21 to these differences. *Id.* at 695. Around the same time, numerous other class actions were filed

22 ¹⁹ See, e.g., *In re Horizon Organic Milk Plus DHA Omega-3 Mktg. & Sales Practice Litig.*, 955 F.
 23 Supp. 2d 1311, 1338 (S.D. Fla. 2013) (holding that Florida plaintiffs may pursue claims for unjust
 24 enrichment and false advertising because there was not “an express contract between the parties
 25 that precludes recovery”); *Metcap Sec. LLC v. Pearl Senior Care, Inc.*, 2009 WL 513756, at *6
 26 (Del. Ch. Feb. 27, 2009), *aff’d sub nom. Metcap Sec. LLC v. Pearl Sr. Care, Inc.*, 977 A.2d 899
 27 (Del. 2009) (holding that in Delaware, “[b]ecause there is no contract. . . [plaintiff] does not have
 28 an adequate remedy at law”). See also *Trustmark Ins. Co. v. Bank One, Arizona, NA*, 202 Ariz.
 535, 542 (Ct. App. 2002), *as corrected* (June 19, 2002) (holding that the doctrine of unjust
 enrichment does not apply in Arizona where there is “a specific contract”). *Accord Porter v. Hu*,
 116 Haw. 42, 54 (Ct. App. 2007); *Am. Towers Owners Ass’n, Inc. v. CCI Mech., Inc.*, 930 P.2d
 1182, 1193 (Utah 1996); *Daugherty v. Sony Elecs., Inc.*, 2006 WL 197090, at *6 (Tenn. Ct. App.
 Jan. 26, 2006); *Schroeder v. Buchholz*, 622 N.W.2d 202, 207–08 (N.D. 2001).

1 around the country alleging similar misconduct under their own states' laws. *Id.* at 697. In
2 response, plaintiffs' counsel in the California action, where certification had been denied,
3 conspired with the Defendant to settle out from under the plaintiffs and counsel from other states,
4 by agreeing to a nationwide settlement class, under California law. *Id.* at 697-700. Although the
5 plaintiffs and counsel from the other states objected, the district court certified the nationwide
6 settlement class, without making any new findings about commonality or predominance, let alone
7 why California law should apply to class members in all states when it had previously held that it
8 could not even apply uniformly to class members in California. *Id.* at 700. The objector plaintiffs
9 from the other states appealed, and the Ninth Circuit reversed.

10 Notably, *Hyundai* does not hold that a nationwide class can never be certified. Rather, as
11 the Ninth Circuit explained, the district court must consider "whether the consumer-protection
12 laws of the affected States vary in *material* ways." *Id.* at 702 (internal citations omitted) (emphasis
13 added). While the district court must undertake a choice of law analysis and look to whether
14 "common questions outweigh individual questions," *id.*, the Ninth Circuit reconfirmed that when
15 "[c]onfronted with a request for settlement-only class certification, a district court need not inquire
16 whether the case, if tried, would present intractable management problems, for the proposal is that
17 there be no trial." *Id.* at 693 (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 624, 117
18 S.Ct. 2231, 138 L.Ed.2d 689 (1997)).

19 This case presents none of the problems that led the Ninth Circuit to reject the approval of
20 a nationwide settlement class in *Hyundai*. Here, unlike *Hyundai*, the Court *did* certify a California
21 class. *Cf. id.* at 696. The Court here found that there *was* uniform conduct by Defendant (including
22 uniform labels, bottling and distribution practices). *Cf. id.* The Ninth Circuit *denied* Deoleo's 23(f)
23 petition, before the settlement was reached. There *was* a substantial risk of nationwide litigation in
24 this case, because plaintiffs from five other states had subsequently retained the same counsel to
25 challenge the same conduct. *Cf. id.* at 703 (noting that "there was little risk that they would face a
26 nationwide litigation class action if they did not reach a settlement agreement"). As there were not
27 competing lawsuits filed against Deoleo over this issue, there was no pressure or incentive to
28 settle this case at a low price. *Cf. id.* at 697 (noting that the settlement was reached one week after

1 the Judicial Panel on Multidistrict Litigation issued its order transferring 56 other actions to the
 2 settling plaintiff’s district). And Plaintiffs are not seeking to apply California law to class members
 3 in all states, but to apply the law of each state to the residents of that state; which is possible
 4 because the laws are substantively identical, and to the extent there are differences, the seven
 5 named plaintiffs from six different states represent all permutations. *Cf. id.* at 692.²⁰

6 **C. THE PROPOSED NOTICE IS ADEQUATE**

7 The proposed notice plan and claim form comport with the procedural and substantive
 8 requirements of Rule 23. Under Rule 23, due process requires that class members receive notice of
 9 the settlement and an opportunity to be heard and participate in the litigation. *See* Fed. R. Civ.
 10 Proc., Rule 23(c)(2)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985); *Eisen v. Carlisle*
 11 *and Jacquelin*, 417 U.S. 156, 175-76 (1974) (“individual notice must be provided to those class
 12 members who are identifiable through reasonable effort”). The mechanics of the notice process are
 13 left to the discretion of the Court, subject only to the broad “reasonableness” standards imposed by
 14 due process. *See* 7A Wright & Miller, FEDERAL PRACTICE & PROCEDURE § 1786 (3d ed. 2008);
 15 *see also Rosenberg v. I.B.M.*, 2007 WL 128232 at *5 (N.D. Cal. 2007) (notice should inform class
 16 members of essential terms of settlement including claims procedure and their rights to accept,
 17 object or opt-out of settlement).

18 Notice of the settlement is to be provided to the class as follows: (1) weekly publication in
 19 the San Francisco Chronicle for four weeks; (2) publication in the national edition of *People*
 20 *Magazine*; (3) over a 30-day period, 39 million combined impressions of online ads containing
 21 links to the settlement website, on websites targeting individuals interested in such things as olive
 22 oils, cooking oils, dressings, recipes, and Bertolli; (4) a press release through a national wire
 23 service; and (5) sponsored blog posts on class action websites. (Gutride Decl., Ex. B.) In addition,
 24 the claim administrator will establish the Settlement Website, which shall contain the Long Form

25 ²⁰ Nor is certification here inconsistent from the Ninth Circuit’s earlier decision in *Mazza v. Am.*
 26 *Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012). That was another case involving myriad car
 27 dealers and individualized representataions. The defendant opposed certification and
 28 demonstrated material differences of fact and law, particularly regarding scienter, reliance, and the
 remedial structure. *Id.* at 591. For the reasons above, those differences do not exist here. And even
 if a defendant *could* assert differing defenses to claims in various states—for example, asserting
 different limitations periods—Deoleo decided not to assert such defenses but instead to settle.

1 Notice in both downloadable PDF format and HTML format with a clickable table of contents;
2 answers to frequently asked questions; a Contact Information page that includes the address for the
3 Claim Administrator and addresses and telephone numbers for Plaintiffs' Counsel and Defendant's
4 Counsel; the Agreement; the signed order of Preliminary Approval and the publicly filed motion
5 papers and declarations in support thereof; a downloadable and online version of the Claim Form;
6 a downloadable and online version of the form by which Settlement Class Members may exclude
7 themselves from the Settlement Class; and (when they become available) the publicly filed motion
8 for final approval and Plaintiff's application for Attorneys' Fees, Costs and an Incentive Award,
9 with supporting declarations. (Id. Ex. 1, ¶ 4.1.)

10 As explained in the declaration from the claim administrator, this multi-communication
11 method is the best notice practicable and is reasonably designed to reach the settlement class
12 members. (Weisbrot Decl. ¶¶ 26-28.) *See, e.g., Simpaio v. Gov't of Guam*, 369 Fed. Appx. 837, 838
13 (9th Cir. 2010) (notice plan was "best notice practicable" where direct notice was mailed to class
14 members and supplemented by published notice); *In re Google Referrer Header Privacy Litig.*,
15 2014 WL 1266091, *7 (N.D. Cal. Mar. 26, 2014) (where direct individual notice not practical,
16 "publication or something similar is sufficient to provide notice to the individuals that will be
17 bound by the judgment"); *see also; In re Netflix Privacy Litig.*, 2012 WL 2598819, *5 (N.D. Cal.
18 July 5, 2012) (approving notice procedure that included emailing customers at last known email
19 address, publication in People Magazine, and advertising on Facebook.com).

20 The proposed notices inform class members about the proposed settlement; their right to
21 opt out or object; the need to file a claim; a summary of settlement benefits; the prospective
22 request for attorneys' fees, costs and incentives; and the fact that they will be bound by the
23 judgment if they do not opt out. The notices refer class members to the settlement website where
24 they can obtain the long-form notice, which provides more details about the case and the
25 settlement, the procedures for opting out or objecting, and methods to obtain additional
26 information. The settlement website will also contain a copy of the full settlement agreement and
27 will contain the fee application when filed. (Gutride Decl. Ex. 1, ¶ 4.1.)

28 Settlement class members who seek benefits under the Settlement need to fill out a simple

1 Claim Form online. They also have the option to print copies and mail the Claim Form to the
 2 Claim Administrator. The claim form requires them to certify under the penalty of perjury (1) their
 3 name and address and (2) basic information about the Products purchased, including types,
 4 quantity, price paid, time and place of purchase and that the purchases were not made for purposes
 5 of resale. (Id. ¶¶ 3.6-3.7.) The claim form can be completed in a few minutes.

6 **IV. DATES FOR THE FINAL APPROVAL PROCESS**

7 Plaintiffs request that in connection with preliminary approval, this Court set a date for a
 8 final approval hearing to consider the fairness of the Settlement and to hear any comments from
 9 the Settlement Class Members, as well as dates for mailing and publishing Notice and deadlines
 10 for objections and opting out of the settlement class. Plaintiffs propose the following schedule:

<u>Item</u>	<u>Proposed Due Date</u>
Initiate Notice	As set forth in Notice Plan
Motion for final approval; Plaintiff's Motion for Attorneys' Fees, Costs and Incentive Award	42 days before final approval hearing
Objections, Requests to Appear, opt-outs	28 days before final approval hearing
Replies in support of final approval and motion for attorneys' fees, costs and incentive awards; response to objections	14 days before final approval hearing
Final approval Hearing	August 9, 2018
End of Claim Period	30 days after final approval

19 **V. CONCLUSION**

20 For the reasons stated above, Plaintiffs respectfully request that this Court grant
 21 preliminary approval to the proposed class action settlement.
 22

23 Dated: April 3, 2018

Respectfully submitted,
GUTRIDE SAFIER LLP

By: /s/ Adam Gutride
 Adam J. Gutride

TYCKO & ZAVAREEI LLP
 Hassan A. Zavareei

Counsel for Plaintiff

Appendix A

	Must Consumers Provide Pre-Suit Notice?	Does the Statute Permit Consumers to Sue for Any Deceptive Practice or Only Enumerated Prohibited Deceptive Practices?	What Are The Reliance Requirements?	Are Knowledge and Intent Required?	Can Consumers Seek to Enjoin Deceptive Practices?	Can Consumers Obtain Monetary Relief?	Can Class Action Consumers Seek Per-Violation Statutory Damages?	Can Class Action Consumers Seek Additional Damages Upon a Showing of Willfulness, Knowledge, and/or Recklessness?
Alabama	Yes	Broad	Undecided	No	No	Yes	No	Judicial discretion
Alaska	No	Broad	Not required	No	Yes	Yes	Greater of \$500 or treble for violation	No
Arizona	No	Broad	Proximate cause or ascertainable loss	Only for concealment /omissions	Yes	Yes	No	Judicial discretion
Arkansas	No	Broad	Yes/class undecided	Only for some types of violations	No	Yes	No	No
California (UCL)	No	Broad	Yes/keys off plaintiff	No	Yes	Yes	No	No
California (CLRA)	Yes	Enumerated	Yes/objective inquiry	Only for some types of violations	Yes	Yes	No	Punitives permitted without heightened requirement
Colorado	No	Enumerated	Yes/objective inquiry	Only for some types of violations	No	Yes	No	No
Connecticut	No	Broad	Proximate cause or ascertainable loss	No	Yes	Yes	No	Judicial discretion

	Must Consumers Provide Pre-Suit Notice?	Does the Statute Permit Consumers to Sue for Any Deceptive Practice or Only Enumerated Prohibited Deceptive Practices?	What Are The Reliance Requirements?	Are Knowledge and Intent Required?	Can Consumers Seek to Enjoin Deceptive Practices?	Can Consumers Obtain Monetary Relief?	Can Class Action Consumers Seek Per-Violation Statutory Damages?	Can Class Action Consumers Seek Additional Damages Upon a Showing of Willfulness, Knowledge, and/or Recklessness?
Delaware	No	Broad	Proximate cause or ascertainable loss	Only for concealment /omissions	Yes	Yes	No	Judicial discretion
District of Columbia	No	Broad	Not required	No	Yes	Yes	Greater of \$1500 or treble	Punitive permitted without heightened requirement
Florida	No	Broad	Not required	No	Yes	Yes	No	No
Georgia	No	Broad	Yes/class undecided	No	Yes	Yes	No	Treble for willful
Hawaii	No	Broad	Not required	No	Yes	Yes	treble	No
Idaho	No	Broad	Not required	No	Yes	Yes	No	Judicial discretion
Illinois	Yes	Broad	Proximate cause or ascertainable loss	Intent to induce reliance	Yes	Yes	No	Judicial discretion
Indiana	Yes	Broad	Yes/class undecided	Only for some types of violations	Yes	Yes	Greater of \$500 or actual	If willful, greater of three times actual damages or \$1000

	Must Consumers Provide Pre-Suit Notice?	Does the Statute Permit Consumers to Sue for Any Deceptive Practice or Only Enumerated Prohibited Deceptive Practices?	What Are The Reliance Requirements?	Are Knowledge and Intent Required?	Can Consumers Seek to Enjoin Deceptive Practices?	Can Consumers Obtain Monetary Relief?	Can Class Action Consumers Seek Per-Violation Statutory Damages?	Can Class Action Consumers Seek Additional Damages Upon a Showing of Willfulness, Knowledge, and/or Recklessness?
Iowa	No	Broad	Proximate cause or ascertainable loss	Intent to induce reliance	Yes	Yes	No	If willfull or reckless, treble damages
Kansas	No	Broad	Proximate cause or ascertainable loss	Only for some types of violations	Yes	Yes	Double actual	No
Kentucky	No	Broad	Proximate cause or ascertainable loss	No	Yes	Yes	No	Yes
Louisiana	Yes	Broad	Undecided	No	No	Yes	No	If knowing, treble damages
Maine	Yes	Broad	Undecided	No	Yes	Yes	No	No
Maryland	Yes	Broad	Yes/objective inquiry	Only for some types of violations	No	Yes	No	No
Massachusetts	No	Broad	Undecided	No	Yes	Yes	Greater of actual or \$25	If willful, 2-3 times actual
Michigan	No	Broad	Provision-dependent/objective inquiry	No	Yes	Yes	No	No

	Must Consumers Provide Pre-Suit Notice?	Does the Statute Permit Consumers to Sue for Any Deceptive Practice or Only Enumerated Prohibited Deceptive Practices?	What Are The Reliance Requirements?	Are Knowledge and Intent Required?	Can Consumers Seek to Enjoin Deceptive Practices?	Can Consumers Obtain Monetary Relief?	Can Class Action Consumers Seek Per-Violation Statutory Damages?	Can Class Action Consumers Seek Additional Damages Upon a Showing of Willfulness, Knowledge, and/or Recklessness?
Minnesota	Yes	Broad	Proximate cause or ascertainable loss	Intent to induce reliance	Yes	Yes	No	No
Mississippi	No	Enumerated	Proximate cause or ascertainable loss	No	No	Yes	No	No
Missouri	No	Broad	Not required	No	Yes	Yes	No	Judicial discretion
Montana	No	Broad	Not required	No	No	Yes	No	Judicial discretion
Nebraska	No	Broad	Not required	No	Yes	Yes	No	No
Nevada	No	Broad	Yes/individualized	Only for some types of violations	Yes	Yes	No	Judicial discretion
New Hampshire	No	Broad	Proximate cause or ascertainable loss	Yes	Yes	Yes	No	Yes
New Jersey	No	Broad	Proximate cause or ascertainable loss	Only for concealment/omissions	Yes	Yes	treble	No

	Must Consumers Provide Pre-Suit Notice?	Does the Statute Permit Consumers to Sue for Any Deceptive Practice or Only Enumerated Prohibited Deceptive Practices?	What Are The Reliance Requirements?	Are Knowledge and Intent Required?	Can Consumers Seek to Enjoin Deceptive Practices?	Can Consumers Obtain Monetary Relief?	Can Class Action Consumers Seek Per-Violation Statutory Damages?	Can Class Action Consumers Seek Additional Damages Upon a Showing of Willfulness, Knowledge, and/or Recklessness?
New Mexico	No	Broad	Proximate cause or ascertainable loss	Yes	Yes	Yes	No	No
New York	No	Broad	Proximate cause or ascertainable loss	No	Yes	Yes	Greater of actual or \$50	If willful, greater of treble actual or \$1000
North Carolina	No	Broad	Yes/objective inquiry	No	Yes	Yes	treble	No
North Dakota	No	Broad	Not required	Intent to induce reliance	No	Yes	No	If knowing violation, treble damages
Ohio	No	Broad	Proximate cause or ascertainable loss	No	Yes	Yes	No	No
Oklahoma	No	Broad	Not required	No	Yes	Yes	No	No
Oregon	No	Enumerated	Undecided	No	No	Yes	Greater of actual or \$200	Judicial discretion
Pennsylvania	No	Broad	Yes/individualized	No	Yes	Yes	Greater of actual or \$100	Judicial discretion

	Must Consumers Provide Pre-Suit Notice?	Does the Statute Permit Consumers to Sue for Any Deceptive Practice or Only Enumerated Prohibited Deceptive Practices?	What Are The Reliance Requirements?	Are Knowledge and Intent Required?	Can Consumers Seek to Enjoin Deceptive Practices?	Can Consumers Obtain Monetary Relief?	Can Class Action Consumers Seek Per-Violation Statutory Damages?	Can Class Action Consumers Seek Additional Damages Upon a Showing of Willfulness, Knowledge, and/or Recklessness?
Rhone Island	No	Broad	Proximate cause or ascertainable loss	No	Yes	Yes	Greater of actual damages or \$200	Judicial discretion
South Carolina	No	Broad	Proximate cause or ascertainable loss	Only for some types of violations	No	Yes	No	If willful, three times actual damages
South Dakota	No	Broad	Undecided	No	No	Yes	No	No
Tennessee	Yes	Enumerated	Proximate cause or ascertainable loss	No	Yes	Yes	No	If willful, Judicial discretion to award
Texas	No	Enumerated	Yes/individualized	No	Yes	Yes	No	If knowing, treble damages
Utah	No	Broad	Proximate cause or ascertainable loss	Only for some types of violations	Yes	Yes	No	No
Vermont	No	Broad	Not required	No	Yes	Yes	No	Punitive permitted without heightened requirement

	Must Consumers Provide Pre-Suit Notice?	Does the Statute Permit Consumers to Sue for Any Deceptive Practice or Only Enumerated Prohibited Deceptive Practices?	What Are The Reliance Requirements?	Are Knowledge and Intent Required?	Can Consumers Seek to Enjoin Deceptive Practices?	Can Consumers Obtain Monetary Relief?	Can Class Action Consumers Seek Per-Violation Statutory Damages?	Can Class Action Consumers Seek Additional Damages Upon a Showing of Willfulness, Knowledge, and/or Recklessness?
Virginia	No	Broad	Yes/class undecided	No	No	Yes	Greater of actual or \$500	If willful, greater of treble actual or \$1000
Washington	Yes	Broad	Proximate cause or ascertainable loss	No	Yes	Yes	No	Judicial discretion
West Virginia	No	Broad	Yes/class undecided	No	Yes	Yes	No	No
Wisconsin	Yes	Broad	Proximate cause or ascertainable loss	No	Yes	Yes	Double damages	Punitive permitted without heightened requirement
Wyoming	Yes	Broad	Yes/class undecided	Yes	No	Yes	No	No

Appendix B

Alabama

Pre-Suit Notice: Ala. Code § 8-19-10(e) requires advance notice.

Prohibited Acts: Ala. Code § 8-19-5(27)

Reliance: Undecided

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: Ala. Code § 8-19-10(a)(1) (actual damages)

Punitive Damages: Ala. Code § 8-19-10(a)(2)

Alaska

Pre-Suit Notice: Alaska Stat. § 45.50.531 requires pre-suit notice only when the consumer seeks an injunction.

Prohibited Acts: Alaska Stat. § 45.50.471(a)

Reliance: The statute does not require reliance. In *Odom v. Fairbanks Memorial Hosp.*, 999 P.2d 123, 132 (Alaska 2000), the Supreme Court of Alaska stated that actual injury as a result of the deception is not required. All that is required is a showing that the acts and practices were capable of being interpreted in a misleading way.”

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Alaska Stat. § 45.50.535(a)

Monetary Relief: Alaska Stat. § 45.50.531(a) (actual damages; greater of \$500 or treble damages)

Punitive Damages: Alaska Stat. § 45.50.531(a) (treble damages)

Arizona

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Ariz. Rev. Stat. § 44-1522

Reliance: Ariz. Rev. Stat. § 44-1522(A) states that a deceptive act is a violation “whether or not any person has in fact been misled, deceived or damaged thereby.” With respect to classwide reliance, one court has stated that all that is required is that all class members purchased the product. *Siemer v. Assocs. First Capital Corp.*, 2001 WL 35948712 (D. Ariz. Mar. 30, 2001).

Knowledge and Intent: When the claim is based on concealment, suppression, or omission of a material fact, Ariz. Rev. Stat. § 44-1522(A) requires a showing of intent that others rely on the concealment, suppression, or omission, but otherwise intent to induce reliance need not be shown. *State ex rel. Babbitt v. Goodyear Tire & Rubber Co.*, 626 P.2d 1115, 1118 n. 1 (Ariz. App. 1981).

Injunctive Relief: Ariz. Rev. Stat. § 44-1528(A). The Arizona Supreme Court has interpreted the statute to provide for a private right of action to seek the same remedies as the attorney general. *See Sellinger v. Freeway Mobile Home Sales, Inc.* 521 P.2d 1119 (Ariz. 1974)).

Monetary Relief: Ariz. Rev. Stat. § 44-1528(A)

Punitive Damages: Although the statute is silent, the state supreme court has held that punitive damages can be awarded. *Sellinger v. Freeway Motor Home Sales, Inc.*, 521 P.2d 1119 (Ariz. 1974).

Arkansas

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Ark. Code § 4-88-107

Reliance: As amended in 2017, Arkansas’s statute requires a showing of reliance as a precondition to the private cause of action that the statute provides. Ark. Code § 4-88-113(f). Plaintiff is not aware of any cases addressing the question of classwide reliance.

Knowledge and Intent: Many of the most commonly-applicable substantive prohibitions of Ark. Code § 4-88-107 require intent or knowledge, but the general prohibitions in § 4-88-107(a) and (a)(10) do not.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief. *See Baptist Health v. Murphy*, 2010, 373 S.W.3d 269 (Ark. 2010).

Monetary Relief: Ark. Code § 4-88-113(f)(1)(A) (actual financial loss)

Punitive Damages: The statute has no provision for punitive damages.

California CLRA

Pre-Suit Notice: Cal. Civil Code § 1782 requires pre-suit notice for damages.

Prohibited Acts: Cal. Civil Code § 1770

Reliance: Reliance is required and an inference of classwide reliance arises if representations are material, as judged by an objective standard. *Massachusetts Mut. Life Ins. Co. v. Superior Court*, 97 Cal. App. 4th 1282, 1293 (2002), *as modified on denial of reh'g* (May 29, 2002).

Knowledge and Intent: Some of the enumerated prohibited activities require intent, *see*, e.g., Cal. Civil Code § 1770(a)(9), but most do not.

Injunctive Relief: Cal. Civil Code § 1780(a)(2).

Monetary Relief: Cal. Civil Code § 1780(a)(1) (actual damages); Cal. Civil Code § 1780(a)(3) (restitution).

Punitive Damages: Cal. Civ. Code § 1780(a)(4) allows punitive damages.

California UCL

Pre-Suit Notice: The statute does not require pre-suit notice.

Prohibited Acts: Cal. Bus. & Prof. Code § 17200

Reliance: In a class action, only the named plaintiffs need establish reliance, and reliance can be established by a showing that the misrepresentation was a substantial factor in the purchasing decision. *In re Tobacco II Cases*, 207 P.3d 20 (Cal. 2009).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Cal. Bus. & Prof. Code § 17203

Monetary Relief: Cal. Bus. & Prof. Code § 17203 (restitution)

Punitive Damages: The statute has no provision for punitive damages.

Colorado

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Colo. Rev. Stat. § 6-1-105.

Reliance: Classwide reliance may be presumed where the class challenges uniform, written representations viewed by all. *See, e.g., Patterson v. BP Am. Prod. Co.*, 240 P.3d 456, 469 (Colo. App. 2010), *aff'd*, 263 P.3d 103 (Colo. 2011); *In re ConAgra Foods, Inc.*, 90 F. Supp. 3d 919, 988 (C.D. Cal. 2015) (interpreting Colorado law), *aff'd sub nom. Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017), and *aff'd sub nom. Briseno v. ConAgra Foods, Inc.*, 674 F. App'x 654 (9th Cir. 2017).

Knowledge and Intent: Many of the most commonly-applicable substantive prohibitions, such as Colo. Rev. Stat. § 6-1-105(1)(a), (b), (c), (e), (f), (g), and (o), require knowledge. *See, e.g., State ex rel. Suthers v. Mandatory Poster Agency, Inc.*, 260 P.3d 9, 14 (Colo. App. 2009).

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: Colo. Rev. Stat. § 6-1-113(2)(a)(II) (actual damages)

Punitive Damages: Colo. Rev. Stat. § 6-1-113(2)(b). but this is an unusually narrow provision, allowing multiple damages only if bad faith is shown by clear and convincing evidence

Connecticut

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Conn. Gen. Stat. § 42-110b(a)

Reliance: *Hinchliffe v. American Motors Corporation*, 440 A.2d 810 (Conn. 1981) holds that the consumer need not prove reliance.

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Conn. Gen. Stat. § 42-110g(d)

Monetary Relief: Conn. Gen. Stat. § 42-110g(a) (actual damages)

Punitive Damages: Courts have the discretion to award punitive damages. Conn. Gen. Stat. § 42-110g(a).

Delaware

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Del. Code Ann. tit. 6, § 2513(a).

Reliance: The Delaware Supreme Court has held that the plaintiff does not need to show reliance but must show that the defendant's conduct caused the injury. *Teamsters Local 237 Welfare Fund v. AstraZeneca Pharmaceuticals LP*, 136 A.3d 688, 694 (Del. 2016).

Knowledge and Intent: Del. Code Ann. tit. 6, § 2513 requires a showing of intent that others rely on the concealment, suppression, or omission, but otherwise there is no requirement in the statute to prove that the defendant acted intentionally.

Injunctive Relief: Del. Code Ann. tit. 6, § 2523 (injunction), § 2525 (private right of action)

Monetary Relief: Del. Code Ann. tit. 6, § 2524 (damages), § 2525 (private right of action)

Punitive Damages: Courts have the discretion to award punitive damages. *See Stephenson v. Capano Development, Inc.*, 462 A.2d 1069, 1076-1077 (Del. 1983).

District of Columbia

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: D.C. Code § 28-3904

Reliance: Reliance is not required. *See Athridge v. Aetna Cas. & Sur. Co.*, 351 F.3d 1166, 1175 (D.D.C. 2003).

Knowledge and Intent: There is no requirement to show knowledge or intent. *See Fort Lincoln Civic Ass'n v. Fort Lincoln New Town Corp.*, 944 A.2d 1055 (D.C. 2008).

Injunctive Relief: D.C. Code § 28-3905(k)(2)(D)

Monetary Relief: D.C. Code § 28-3909(k)(2)(A) (only specifies treble and statutory damages, but actual implicitly available)

Punitive Damages: D.C. Code § 28-3905(k)(1)(A), (C) authorizes punitive damages.

Florida

Pre-Suit Notice: Fla. Stat. Ann. § 501.98 only requires pre-suit notice for suits against motor vehicle dealers.

Prohibited Acts: Fla. Stat. Ann. § 501.204

Reliance: *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 985 (11th Cir. 2016) holds that reliance is not a requirement, and that common issues predominate if the advertisement was likely to deceive an “objectively reasonable observer.”

Knowledge and Intent: Nothing in the statute requires a showing of the defendant’s intent or knowledge.

Injunctive Relief: Fla. Stat. Ann. § 501.211(1)

Monetary Relief: Fla. Stat. Ann. § 501.211(2) (damages)

Punitive Damages: The statute has no provision for punitive damages.

Georgia

Pre-Suit Notice: Ga. Code § 10-1-399(b) requires pre-suit notice except when the claim is brought as a counterclaim.

Prohibited Acts: Ga. Code § 10-1-393(a)

Reliance: The Georgia Supreme Court has held that a showing of reliance is required for an individual claim, at least as to deception claims. *Tiismann v. Linda Martin Homes Corp.*, 637 S.E.2d 14 (Ga. 2006). Plaintiff is not aware of any cases addressing the question of classwide reliance.

Knowledge and Intent: Nothing in the statute requires a showing of the defendant’s intent or knowledge.

Injunctive Relief: Ga. Code § 10-1-399(a)

Monetary Relief: Ga. Code § 10-1-399(a) (general damages)

Punitive Damages: Ga. Code § 10-1-399(c) allows treble damages for willful violations. This section also authorizes punitive damages.

Hawaii

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Haw. Rev. Stat. § 480-2(a), (d).

Reliance: Reliance is not required, but the plaintiff must show the deceptive practice is objectively misleading to reasonable consumers. *See, e.g., Courbat v. Dahana Ranch, Inc.*, 111 Haw. 254, 262 (2006); *Yokoyama v. Midland Nat’l Life Ins. Co.*, 594 F.3d 1087, 1093 (9th Cir. 2010).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Haw. Rev. Stat. § 487-13(a)(2)

Monetary Relief: Haw. Rev. Stat. § 487-13(a)(1) (treble damages)

Punitive Damages: The statute has no provision for punitive damages.

Idaho

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Idaho Code § 48-603

Reliance: The Idaho Supreme Court has held that a showing of individual reliance is not required under the statute. *State ex rel. Kidwell v. Master Distribs., Inc.*, 615 P.2d 116, 122-123 (Idaho 1980).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Idaho Code § 48-608(1)

Monetary Relief: Idaho Code § 48-608(1) (actual damages; restitution)

Punitive Damages: Idaho Code § 48-608 authorizes punitive damages. In addition, Idaho Code § 48-608(2), as amended effective July 1, 2008, allows elderly consumers to recover an enhanced penalty of \$15,000 or treble damages, whichever is greater, for certain violations.

Illinois

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: 815 Ill. Comp. Stat. Ann. § 505/2

Reliance: The Seventh Circuit has held that reliance is not required under the statute. *Cozzi Iron & Metal, Inc. v. U.S. Office Equip., Inc.*, 250 F.3d 570, 576 (7th Cir. 2001). For purposes of class certification, plaintiffs must show that defendant proximately caused the injuries of the class. *In re Synthroid Mktg. Litig.*, 188 F.R.D. 287, 292 (N.D. Ill. 1999).

Knowledge and Intent: 815 Ill. Comp. Stat. Ann. § 505/2 requires a showing that the defendant acted with "intent that others rely" on the concealment of a material fact.

Nothing in the statute requires a showing of knowledge or intent for any other type of claim.

Injunctive Relief: 815 Ill. Comp. Stat. Ann. § 505/10a(c)

Monetary Relief: 815 Ill. Comp. Stat. Ann. § 505/10a(a) (actual damages)

Punitive Damages: 815 Ill. Comp. Stat. Ann. § 505/10a. *See Martin v. Heinold Commodities, Inc.*, 643 N.E.2d 734 (Ill. 1994) (punitive damages).

Indiana

Pre-Suit Notice: Pre-suit notice is required by Ind. Code §§ 24-5-0.5-5 and 24-5-0.5-2(a)(5)-(8) (with an exception for deceptive acts done as part of scheme, artifice, or device with intent to defraud or mislead).

Prohibited Acts: Ind. Code § 24-5-0.5-3(a) prohibits deceptive acts, broadly defined.

Reliance: Ind. Code § 24-5-0.5-4 requires a showing of reliance, in that it provides a private right of action for “a person relying upon an uncured or incurable deceptive act.” Plaintiff is not aware of any cases addressing the question of classwide reliance.

Knowledge and Intent: Ind. Code § 24-5-0.5-3(b) requires intent or knowledge for most substantive violations, but the general prohibition of deception at § 24-5-0.5-3(a) does not.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: Ind. Code § 24-5-0.5-4(a) (actual damages; greater of \$500 or actual). *See also* Ind. Code § 24-5-0.5-4(i) (allowing seniors to recover treble damages without the need to show willfulness).

Punitive Damages: Ind. Code § 24-5-0.5-4(1) (greater of treble damages or \$1000 upon a showing of willfulness)

Iowa

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Iowa Code § 714H.3(1)

Reliance: The Eighth Circuit has held that Section 714H.5(1) does not require individual reliance, but simply that the plaintiff lost money “as a result of the prohibited practice.” *Brown v. Louisiana-Pacific Corp.*, 820 F.3d 339, 348-349 (8th Cir. 2016).

Knowledge and Intent: Iowa Code § 714.16(7) requires a private plaintiff to show that the defendant acted with intent to cause reliance.

Injunctive Relief: Iowa Code § 714H.5(1)

Monetary Relief: Iowa Code § 714H.5(1) (actual damages)

Punitive Damages: Iowa Code § 714H.5(4) provides for treble damages in cases of willful and wanton disregard for the rights and safety of others.

Kansas

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Kan. Stat. § 50-626(a)

Reliance: Courts have held that Kan. Stat. §§ 50-626 does not require reliance, but simply a showing of a casual connection between the challenged act and the consumer's injuries. *See, e.g., Finstad v. Washburn Univ. of Topeka*, 845 P.2d 685, 474 (Kan. 1993).

Knowledge and Intent: While almost all of the specific prohibitions at § 50-626(b) require intent or knowledge, the general prohibition of deceptive acts and practices at Kan. Stat. § 50-626(a) does not.

Injunctive Relief: Kan. Stat. § 50-634(a)(2)

Monetary Relief: Kan. Stat. § 50-634(d) (damages; double actual damages)

Punitive Damages: The statute's punitive damages provision does not apply in class actions.

Kentucky

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Ky. Rev. Stat. § 367.170

Reliance: In *Corder v. Ford Motor Co.*, 869 F. Supp. 2d 835, 838 (W.D. Ky. 2012), the court held that the statute requires proof of a causal nexus between plaintiff's loss and defendant's allegedly deceitful practices, but reliance is not required.

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: Ky. Rev. Stat. § 367.220(1) (actual damages)

Punitive Damages: Ky. Rev. Stat. § 367.220 permits punitive damages.

Louisiana

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: La. Rev. Stat. Ann. § 51:1405(A)

Reliance: Louisiana courts have not reached the question whether reliance is required.

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: La. Rev. Stat. Ann. § 51:1409(A) (actual damages)

Punitive Damages: La. Rev. Stat. Ann. § 51:1409(A) permits treble damages if the violation is knowing and the Attorney General is given notice.

Maine

Pre-Suit Notice: Me. Rev. Stat. Ann. tit. 5 § 213(1-A).

Prohibited Acts: Me. Rev. Stat. Ann. tit. 5 § 207

Reliance: Courts are undecided as to whether reliance is required. *Compare* Tungate v. MacLean-Stevens Studios, 714 A. 2d 792, 797 (Me. 1998) (noting that a showing of loss or money is required) *with* GxG Management, LLC v. Young Bros. and Co., Inc., 457 F. Supp. 2d 47 (D. Me. 2006) (granting summary judgment because reliance was not shown).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Me. Rev. Stat. Ann. tit. 5 § 213(1)

Monetary Relief: Me. Rev. Stat. Ann. tit. 5 § 213(1) (actual damages or restitution)

Punitive Damages: The statute has no provision for punitive damages.

Maryland

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Md. Code Comm. Law § 13-301.

Reliance: A showing of reliance is typically required. *See, e.g., Healy v. BWW Law Group, LCC*, 2017 WL 281997, at *3-4 (D. Md. Jan. 23, 2017); *Green v. Wells Fargo Bank*, 927 F. Supp. 2d 244, 254 n.8 (D. Md. 2013) (showing of reliance required for private suit), *aff'd*, 582 Fed. Appx. 246 (4th Cir. 2014). The Maryland Supreme Court however has held that the question of whether a practice is deceptive and materially is an objective standard. *See Luskin's, Inc. v. Consumer Prot. Div.*, 353 Md. 335, 358–59, 726 A.2d 702 (1999).

Knowledge and Intent: Some provisions of Md. Code Comm. Law § 13-301 require a showing of knowledge and intent, but many do not.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: Md. Code Comm. Law § 13-408(a)

Punitive Damages: The statute has no provision for punitive damages.

Massachusetts

Pre-Suit Notice: Mass. Gen. Laws ch. 93A, § 9(3) requires pre-suit notice, with limited exceptions.

Prohibited Acts: Mass. Gen. Laws Ch. 93A, § 2(a)

Reliance: While the Massachusetts Supreme Court has said that only a showing of a loss is required, not reliance, *Hershenow v. Enter. Rent-A-Car Co. Of Boston, Inc.*, 445 Mass. 790, 799 (2006), some federal courts have held that in some instances, that loss can only be shown by establishing reliance. *See, e.g., Rodi v. Southern New England Sch. of Law*, 532 F.3d 11 (1st Cir. 2008). For purposes of a class action predicated on a price premium theory, individualized evidence is not required. *See, e.g., Olson v. Energy N., Inc.*, No. 9800228, 1999 WL 1332362, at *5 (Mass. Super. Jan. 14, 1999).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Mass. Gen. Laws Ch. 93A, § 9(1)

Monetary Relief: Mass. Gen. Laws Ch. 93A, § 9(1) (damages; greater of actual damages or \$25)

Punitive Damages: Mass. Gen. Laws ch. 93A, § 9(3) permits punitive damages if the violation was willful, knowing, in bad faith, or committed with knowledge of violations in refusing to grant relief in response to consumer's demand.

Michigan

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Mich. Comp. Laws Ann. § 445.903

Reliance: Whether reliance is required depends on the specific statutory provision under which the plaintiff sues. That said, where it is required, the Michigan Supreme Court has held that class action plaintiffs need only show that a reasonable person would have relied on the representations to satisfy predominance. *Dix. v. Am. Bankers Life Assurance Co.*, 415 N.W.2d 206, 209 (Mich. 1987).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Mich. Comp. Laws Ann. § 445.911(1)(b)

Monetary Relief: Mich. Comp. Laws Ann. § 445.911(2) (actual damages or \$250, whichever is greater)

Punitive Damages: The statute has no provision for punitive damages.

Minnesota

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Minn. Stat. § 325F.69(1)

Reliance: In *Wiegand v. Walser Automotive Groups, Inc.*, 683 N.W.2d 807, 811 (Minn. 2004), the Minnesota Supreme Court held that it was not necessary to plead individual reliance, but to recover, the consumer had to prove a causal nexus.

Knowledge and Intent: Although it is a less demanding standard than proof of intent to deceive, Minn. Stat. § 325F.69(1) requires a showing of intent that others rely on the defendant's deception.

Injunctive Relief: Minn. Stat. §§ 8.31(3a)

Monetary Relief: Minn. Stat. § 8.31(3a) (damages)

Punitive Damages: The statute has no provision for punitive damages.

Mississippi

Pre-Suit Notice: Miss. Code § 75-24-15(2) requires pre-suit participation in AG-approved informal dispute settlement program, which necessarily entails a presuit notice.

Prohibited Acts: Miss. Code § 75-24-5

Reliance: Mississippi courts have not imposed an explicit requirement of reliance, but one court has noted that individuals must plead allegations of a causal connection between the defendants' deception and the plaintiffs' injuries. *Mayberry v. Bristol-Meyers Squibb Co.*, 2009 WL 5216968, at *8-9 (D.N.J. Dec. 30, 2009) (Miss. law). Plaintiff is not aware of any cases addressing the question of classwide reliance.

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: Miss. Code § 75-24-15 (recovery of the purchase price)

Punitive Damages: The statute has no provision for punitive damages.

Missouri

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Mo. Rev. Stat. § 407.020(1)

Reliance: A showing of reliance is not required under Missouri's statute. *See* Mo. Code Regs. Ann. tit. 15, § 60-9.020(2) (“[r]eliance, actual deception, knowledge of deception, intent to mislead or deceive, or any other culpable mental state such as recklessness or negligence, are not elements of deception as used in section 407.020.1”).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Mo. Rev. Stat. § 407.025(2)

Monetary Relief: Mo. Rev. Stat. § 407.025(1) (actual damages)

Punitive Damages: Courts have the discretion to award punitive damages. Mo. Rev. Stat. § 407.025.

Montana

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Mont. Code § 30-14-103

Reliance: Nothing in the statute requires a showing of reliance, and the only court to address the question holds that a showing of reliance is not required. *PNC Bank v. Wilson*, 2015 WL 3887602, *7-8 (D. Mont. June 23, 2015).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: Mont. Code § 30-14-133(1) (actual damages)

Punitive Damages: Courts have the discretion to award punitive treble damages. Mont. Code § 30-14-133(1)

Nebraska

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Neb. Rev. Stat. § 59-1602

Reliance: Neb. Rev. Stat. § 56-1609 creates a private cause of action for a violation, and makes no mention of reliance. Plaintiff is not aware of any cases addressing the question of classwide reliance.

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Neb. Rev. Stat. § 59-1609

Monetary Relief: Neb. Rev. Stat. § 59-1609 (actual damages)

Punitive Damages: The statute has no provision for punitive damages.

Nevada

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Nev. Rev. Stat. § 598.0915(15) defines deceptive trade practices to include "knowingly mak[ing] any other false representation in a transaction." In addition,

Nev. Rev. Stat. § 598.0923(2) and (3) prohibit “knowingly ... (2) fail[ing] to disclose a material fact in connection with the sale or lease of goods or services” and (3) violat[ing] a state or federal statute or regulation relating to the sale or lease of goods or services.”

Reliance: While Nevada state courts have not yet ruled on the issue, one federal court held that in a food labeling class action, reliance is both required and an individualized inquiry. *See Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 657–59 (D. Nev. 2009).

Knowledge and Intent: Many of the most significant prohibitions require that the act be knowing, knowing and willful, or intentional. *See generally* Nev. Rev. Stat. § 598.0915.

Injunctive Relief: Nev. Rev. Stat. §§ 41.600(3)(b) (equitable relief)

Monetary Relief: Nev. Rev. Stat. §§ 41.600(3)(a) (damages)

Punitive Damages: Although the statute does not explicitly authorize multiple or punitive damages, other state laws authorize punitive damages, Nev. Rev. Stat. § 41.600(3)(a) and Nev. Rev. Stat. § 42.005, makes punitive damages available for breach of an obligation not arising from contract.

New Hampshire

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: N.H. Rev. Stat. § 358-A:2

Reliance: The statute does not require a showing of reliance, and in a class action, plaintiffs must show a causal connection between the misrepresentation and the injuries of the class. *Mulligan v. Choice Mortgage Corp.*, 1998 WL 544431, *12 (D.N.H. 1998).

Knowledge and Intent: The New Hampshire Supreme Court has held that the statute does not impose strict liability; the plaintiff must show some level of “rascality,” and a misrepresentation made without knowledge or any reason to suspect that it is untrue is not a violation. *Kelton v. Hollis Ranch, LLC*, 927 A.2d 1242 (N.H. 2007).

Injunctive Relief: N.H. Rev. Stat. § 358-A:10(I)

Monetary Relief: N.H. Rev. Stat. § 358-A:10(I) (actual damages)

Punitive Damages: N.H. Rev. Stat. § 358-A:10(1) if willful or knowing

New Jersey

Pre-Suit Notice: The statute does not impose a pre-suit notice requirement

Prohibited Acts: N.J. Stat. Ann. § 56:8-2

Reliance: The New Jersey Supreme Court has held that a showing of reliance is not required. *Gennari v. Weichert Co. Realtors*, 691 A.2d 350, 366 (N.J. 1997). In a class action, the plaintiff must show the class suffered an ascertainable loss as a result of the defendant's conduct. *See, e.g., Thiedemann v. Mercedes-Benz USA, LLC*, 183 N.J. 234, 248 (2005).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge, except that concealment of a material fact is a violation only if knowing.

Injunctive Relief: N.J. Stat. Ann. § 56:8-19 (equitable relief)

Monetary Relief: N.J. Stat. Ann. §§ 56:8-19 (treble damages)

Punitive Damages: The statute has no provision for punitive damages.

New Mexico

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: N.M. Stat. Ann. §§ 57-12-2(D), 57-12-3

Reliance: Reliance is not required to sustain a claim in New Mexico, but in a class action, the plaintiff must show a causal link between the injuries of the class and the defendant's conduct. *See, e.g., Mulford v. Altria Group, Inc.*, 242 F.R.D. 615, 622 (D.N.M. 2007).

Knowledge and Intent: N.M. Stat. Ann. §§ 57-12-2(D) requires knowledge as an element of a deceptive practice. This requirement was held applicable to all deceptive practices listed in the statute by *Stevenson v. Louis Dreyfus Corp.*, 811 P.2d 1308 (N.M. 1991). That decision also holds, however, that the requirement is satisfied if the party knows or should know of the deceptive nature of a statement.

Injunctive Relief: N.M. Stat. Ann. § 57-12-10(A)

Monetary Relief: N.M. Stat. Ann. § 57-12-10(B) (actual damages)

Punitive Damages: The statute has no provision for punitive damages.

New York

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: N.Y. Gen. Bus. Law §§ 349(a), 350-a(1)

Reliance: Reliance is not required to sustain a claim in New Mexico, but in a class action, the plaintiff must show a causal link between the injuries of the class and the defendant's conduct. *See, e.g., Kurtz v. Kimberly-Clark Corp.*, 321 F.R.D. 482, 549 (E.D.N.Y. 2017).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: N.Y. Gen. Bus. Law § 349(h)

Monetary Relief: N.Y. Gen. Bus. Law § 349(h) (greater of \$50 or actual damages)

Punitive Damages: Upon a showing of willfulness, N.Y. Gen. Bus. Law § 349(h) permits treble damages (not more than \$1,000).

North Carolina

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: N.C. Gen. Stat. § 75-1.1(a)

Reliance: The North Carolina Supreme Court has held that, when a claim stems from an alleged misrepresentation, the plaintiff must show reasonable reliance in order to demonstrate proximate causation. *Bumpers v. Cmty. Bank*, 747 S.E.2d 220 (N.C. 2013). Reliance can be proven on a classwide basis where representations to the class are substantially the same. *See, e.g., Pitts v. Am. Sec. Ins. Co.*, 144 N.C. App. 1, 14 (2001), *aff'd*, 356 N.C. 292 (2002).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: The statute does not explicitly authorize individuals to obtain injunctive relief, although the Fourth Circuit affirmed an injunction under the statute in *Shell Oil Co. v. Commercial Petroleum, Inc.*, 928 F.2d 104, 108 (4th Cir. 1991).

Monetary Relief: N.C. Gen. Stat. § 75-16 (treble damages)

Punitive Damages: N.C. Gen. Stat. § 75-16

North Dakota

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: N.D. Century Code §§ 51-15-02, 51-15-02.3.

Reliance: N.D. Cent. Code § 51-15-02 does not require reliance. Plaintiff is not aware of any cases addressing the question of classwide reliance.

Knowledge and Intent: N.D. Century Code § 51-15-02 requires a showing of intent that others rely on the defendant's deception.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: N.D. Century Code § 51-15-09 (actual damages)

Punitive Damages: N.D. Century Code § 51-15-09 permits an award of treble damages if the violation was knowing.

Ohio

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Ohio Rev. Code § 1345.02

Reliance: A number of decisions hold that plaintiff need not prove reliance, just a causal connection or ascertainable loss. *See, e.g., Nessel v. Whirlpool Corp.*, 2008 WL 2967703, *3 (N.D. Ohio July 25, 2008). In class actions, the question of whether an advertisement deceived the class can be established without proof of individual reliance. *See, e.g., Blankenship v. CFMOTO Powersports, Inc.*, 166 Ohio Misc. 2d 21, 45 (Com. Pl. 2011).

Knowledge and Intent: Ohio Rev. Code § 1345.02 does not require a showing of knowledge or intent.

Injunctive Relief: Ohio Rev. Code § 1345.09(D)

Monetary Relief: Ohio Rev. Code § 1345.09(A) (actual economic damages)

Punitive Damages: Ohio Rev. Code § 1345.09(B) permits punitive damages in limited situations.

Oklahoma

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Okla. Stat. Ann. tit. 15, §§ 753, 752(13)

Reliance: The statute does not include an explicit reliance requirement, but Oklahoma courts have not directly addressed the question whether a showing of reliance is required.

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: Okla. Stat. Ann. tit. 15, § 761.1(A) (actual damages)

Punitive Damages: The statute has no provision for punitive damages.

Oregon

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Or. Rev. Stat. § 646.608

Reliance: While reliance is not required for most types of claims under the statute, Oregon courts have not defined what is actually required to satisfy predominance in a class action. In *Pearson v. Philip Morris, Inc.*, 361 P.3d 3, 26-33 (Or. 2015), the Oregon Supreme Court discussed the state of the case law and noted in dicta that consumers might be able to show predominance on a classwide basis through a price premium supported by expert testimony.

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Or. Rev. Stat. § 646.638

Monetary Relief: Or. Rev. Stat. § 646.638 (actual damages)

Punitive Damages: Courts have the discretion to award punitive damages. Or. Rev. Stat. § 646.638.

Pennsylvania

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: 73 Pa. Stat. § 201-2(4)

Reliance: The Pennsylvania Supreme Court has held that reliance is an element of the claim. *Toy v. Metropolitan Life Ins. Co.*, 928 A.2d 186, 201-202 (Pa. 2007); *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425 (Pa. 2004). The Pennsylvania Supreme Court has stated that the issue of whether the class relied on a false advertisement is an individualized inquiry. *See Weinberg v. Sun Co.*, 565 Pa. 612, 617-18 (2001).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: 73 Pa. Stat. § 201-9.2(a) states that a court “may provide such additional relief as it deems necessary or proper.”

Monetary Relief: 73 Pa. Stat. § 201-9.2(a) (actual damages)

Punitive Damages: Courts have the discretion to award punitive, treble damages of an amount not less than \$100. 73 Pa. Stat. § 201-9.2(a).

Rhode Island

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: R.I. Gen. Laws §§ 6-13.1-1(6)(xii), (xiii), (xiv), 6-13.1-2

Reliance: R.I. Gen. Laws §§ 6-13.1-5.2 requires an ascertainable loss. In *Long v. Dell, Inc.*, 93 A.3d 988, 1003 (R.I. 2014), the Rhode Island Supreme Court adopted the FTC standard and did not require that reliance be shown.

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: R.I. Gen. Laws § 6-13.1-5.2(a)

Monetary Relief: R.I. Gen. Laws § 6-13.1-5.2(a) (greater of actual damages or \$100)

Punitive Damages: Courts have the discretion to award punitive damages. R.I. Gen. Laws § 6-13.1-5.2.

South Carolina

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: S.C. Code § 39-5-20(a)

Reliance: Reliance is not required. *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, 777 S.E.2d 176, 191-192 (S.C. 2015) states that a causal connection is sufficient.

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: S.C. Code § 39-5-140(a) (actual damages)

Punitive Damages: S.C. Code § 39-5-140(a) permits an award of treble damages if the violation was willful or knowing.

South Dakota

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: S.D. Codified Laws § 37-24-6

Reliance: S.D. Codified Laws § 37-24-31 allows consumer who is “adversely affected” to sue. In *Nygaard v. Sioux Valley Hospitals & Health System*, 731 N.W.2d 184, 196 (S.D. 2007), the South Dakota Supreme Court held that the law requires a causal connection between the challenged conduct and the injuries. Some courts have interpreted this to mean that reliance is required. *See, e.g., Rainbow Play Sys., Inc. v. Backyard Adventure, Inc.*, 2009 WL 3150984, *7 (D.S.D. Sept. 28, 2009); *Cheval Int'l v. Smartpak Equine, LLC*, No. CV 14-5010, 2016 WL 1064496, at *12 (D.S.D. Mar. 15, 2016). Plaintiff is not aware of any cases addressing the question of classwide reliance.

Knowledge and Intent: The most commonly-applicable substantive prohibition, S.D. Codified Laws § 37-24-6(1), requires knowledge, but most do not.

S.D. Codified Laws § 37-24-8 says that, for actions brought by the Attorney General, “engaging in an act or practice declared to be unlawful by § 37-24-6 shall be prima facie evidence that the act or practice was engaged in knowingly and intentionally.”

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: S.D. Codified Laws § 37-24-31 (actual damages)

Punitive Damages: The statute has no provision for punitive damages.

Tennessee

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Tenn. Code § 47-18-104(b)

Reliance: The statute does not require proof of reliance, just a showing of proximate causation. *See, e.g., Nickell v. Bank of Am.*, 2012 WL 394467, at *7 (W.D. Tenn. Feb. 26, 2002); *Fleming v. Murphy*, 2007 WL 2050930 (Tenn. Ct. App. 2007).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant’s intent or knowledge.

Injunctive Relief: Tenn. Code § 47-18-109(b)

Monetary Relief: Tenn. Code § 47-18-109(1) (actual damages)

Punitive Damages: Tenn. Code § 47-18-109(a)(3) allows an award of treble damages if violation was willful or knowing.

Texas

Pre-Suit Notice: Tex. Bus. & Com. Code § 17.505

Prohibited Acts: Tex. Bus. & Com. Code § 17.46(a) broadly prohibits deception, but Tex. Bus. & Com. Code § 17.46(d) and 17.50(a)(1)(A) deny consumers the ability to enforce this prohibition.

Reliance: The Texas statute expressly requires a consumer to prove reliance. Tex. Bus. & Com. Code § 17.50(a)(1)(B). Texas courts have generally held reliance on deceptive representations is an individualized inquiry. *See, e.g., Peltier Enters., Inc. v. Hilton*, 51 S.W.3d 616, 624 (Tex.App.2000); *Fid. & Guar. Life Ins. Co. v. Pina*, 165 S.W.3d 416, 423 (Tex.App.2005).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Tex. Bus. & Com. Code § 17.50(b)(2)

Monetary Relief: Tex. Bus. & Com. Code § 17.50(b)(1) (economic damages or damages for mental anguish)

Punitive Damages: Tex. Bus. & Com. Code § 17.50(b)(1) permits an award of treble damages if the violation was knowing.

Utah

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Utah Code Ann. § 13-11-4(1)

Reliance: Section 13-11-19 of the statute requires a showing of an ascertainable loss, but not reliance. Utah courts have interpreted this section as requiring a showing of an ascertainable loss. *See Andreason v. Felsted*, 137 P.3d 1, 4 (Utah App. 2006).

Knowledge and Intent: The general prohibition of deception at Utah Code Ann. § 13-11-4(a) does not require a showing of intent or knowledge, but the list of § 13-11-4(b) requires a showing that the specific enumerated prohibited activities was done either knowingly or intentionally.

Injunctive Relief: Utah Code Ann. § 13-11-19(1)

Monetary Relief: Utah Code Ann. § 13-11-19(2)(b)

Punitive Damages: The statute does not provide for multiple or punitive damages.

Vermont

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Vt. Stat. Ann. tit. 9, § 2453(a)

Reliance: Section § 2461(b) of the statute requires either reliance *or* that consumer “sustain damages or injury as a result of” a prohibited practice. *See also Dernier v. Mortgage Network, Inc.*, 87 A.3d 465, 481 (Vt. 2013).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant’s intent or knowledge.

Injunctive Relief: Vt. Stat. Ann. tit. 9, § 2461(b) (equitable relief)

Monetary Relief: Vt. Stat. Ann. tit. 9, § 2461(b) (damages “or the consideration or the value of the consideration given by the consumer”)

Punitive Damages: Vt. Stat. Ann. tit. 9, § 2461(b) permits treble damages.

Virginia

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Va. Code Ann. § 59.1-200(A)(14)

Reliance: A showing of reliance is required. *See Owens v. DRS Automotive Fantomworks, Inc.*, 764 S.E.2d 256, 498 (Va. 2014). Plaintiff is not aware of any cases addressing the question of classwide reliance.

Knowledge and Intent: Except to rebut an affirmative defense under available in limited situations (Va. Code Ann. § 59.1-207), nothing in the statute requires a showing of the defendant’s intent or knowledge.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: Va. Code Ann. § 59.1-204(a) (actual damages)

Punitive Damages: Va. Code Ann. § 59.1-204(A) permits the greater of treble actual

damages or \$1000 if the violation was willful.

Washington

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Wash. Rev. Code § 19.86.020

Reliance: In *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 170 P.3d 10 (Wash. 2007), the Washington Supreme Court held that proximate causation must be shown, and rejected the argument that reliance is required. *See also Thornell v. Seattle Service Bur., Inc.*, 363 P.3d 587, 591-592 (Wash. 2015).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Wash. Rev. Code § 19.86.090

Monetary Relief: Wash. Rev. Code § 19.86.090 (actual damages)

Punitive Damages: Wash. Rev. Code § 19.86.090 provides courts the discretion to award up to treble damages, capped at \$25,000.

West Virginia

Pre-Suit Notice: W. Va. Code § 46A-6-106(b).

Prohibited Acts: W. Va. Code §§ 46A-6-102(7) (prefatory language), 46A-6-104

Reliance: As amended in 2015, W. Va. Code § 46A-6-106(b) requires a plaintiff who bases a claim on an affirmative misrepresentation to show that it "caused him or her to enter into the transaction," and that, for an omission, the plaintiff must show that his or her loss was "proximately caused" by the omission.

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: W. Va. Code § 46A-6-106(a)

Monetary Relief: W. Va. Code § 46A-6-106(a) (actual damages)

Punitive Damages: The statute does not provide for multiple or punitive damages.

Wisconsin

Pre-Suit Notice: Nothing in the statute requires pre-suit notice.

Prohibited Acts: Wis. Stat. Ann. § 100.18

Reliance: Reliance is not required under Wis. Stat. Ann. § 100.18, but plaintiffs must show causation. *Novell v. Migliaccio*, 749 N.W. 2d 554, 550 (Wis. 2007); *Haley v. Kolbe & Kolbe Millwork Co.*, 863 F.3d 600, 615 (7th Cir. 2017).

Knowledge and Intent: Nothing in the statute requires a showing of the defendant's intent or knowledge.

Injunctive Relief: Wis. Stat. Ann. § 100.18(11) is unclear as to whether private individuals may obtain an injunction.

Monetary Relief: Wis. Stat. Ann. §§ 100.18(11)(b)(2) (pecuniary loss); Wis. Stat. Ann. § 100.20(5) allows double damages

Punitive Damages: Wis. Stat. Ann. § 100.19(3)(b)(4) permits an award of punitive damages not to exceed the greater of \$50,000 per violation or three times the aggregate amount awarded for all violations under the statute.

Wyoming

Pre-Suit Notice: Wyo. Stat. Ann. §§ 40-12-102(a)(ix), 40-12-108(a)

Prohibited Acts: Wyo. Stat. Ann. § 40-12-105(a)(xv)

Reliance: Wyo. Stat. Ann. § 40-12-108(a) explicitly requires a showing of reliance: “a person relying upon an uncured unlawful deceptive practice may bring an action under this act for the damages he has actually suffered.” Plaintiff is not aware of any cases addressing the question of classwide reliance.

Knowledge and Intent: The definition of unlawful practices at Wyo. Stat. Ann. § 40-12-105 requires that the defendant act knowingly.

Injunctive Relief: The statute does not authorize individuals to obtain injunctive relief.

Monetary Relief: Wyo. Stat. Ann. § 40-12-108(a) (actual damages)

Punitive Damages: The statute does not provide for multiple or punitive damages.

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10 *Attorneys for Plaintiff Scott Koller*

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14 SCOTT KOLLER, on behalf of himself, the
 15 general public and those similarly situated,

16 Plaintiff,

17 v.

18 MED FOODS, INC., AND DEOLEO USA,
 19 INC.

20 Defendants.

CASE NO. 14-cv-2400 (RS)

21 **DECLARATION OF ADAM J. GUTRIDE**
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

22 Date: May 10, 2018
 Time: 1:30 p.m.
 Courtroom 3, 17th Floor
 Judge: Hon. Richard Seeborg

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1 I, Adam Gutride, declare and state that:

2 1. I am an attorney licensed to practice law in the State of California and in this Court,
3 and am counsel of record for Plaintiff and the certified classes in the above captioned matter. I am a
4 partner at Gutride Safier LLP. I submit this declaration in support of Plaintiff's Unopposed Motion
5 for Preliminary Approval of Class Settlement. Unless otherwise noted, I have personal knowledge
6 of the facts set forth in this declaration and could and would testify competently to them if called
7 upon to do so.

8 2. After nearly four years of hard-fought litigation, an all-day mediation, and further
9 settlement negotiations, Plaintiff Scott Koller, Class Counsel, and Defendant entered into a
10 Settlement Agreement¹ in this matter, a true and correct copy of which is attached hereto as Exhibit
11 1 including all exhibits. Plaintiff Koller is now joined by six additional Plaintiffs.

12 3. A true and correct copy of my firm's resume is attached as Exhibit 2. As can be seen
13 from this resumé, Gutride Safier has substantial experience in the litigation, certification, and
14 settlement of class action cases. Based on my experience, Defendant's counsel are also highly
15 experienced in this type of litigation. It is thus my considered opinion that counsel for each side
16 have fully evaluated the strengths, weaknesses, and equities of the parties' respective positions and
17 believe that the proposed settlement fairly resolves their respective differences.

18 4. This Litigation involved sharply opposed positions on several fundamental legal and
19 factual issues. The parties engaged in extensive, highly adversarial discovery, including numerous
20 fact and expert depositions, document production of over 300,000 pages of documents,
21 interrogatories and requests for admission, and third-party discovery. The record was thus
22 sufficiently developed that the parties were fully informed as to the viability of the claims and able
23 to adequately evaluate the strengths and weaknesses of their respective positions and risks to both
24 sides if the case did not settle.

25 5. Class Counsel has already spent well in excess of 2500 hours working on this

26 ¹ The capitalized terms used herein are defined in and have the same meaning as used in the
27 Settlement Agreement unless otherwise stated.

1 litigation, resulting in a lodestar that is greater than the amount Plaintiff will seek in attorneys' fees.
2 My firm has additionally incurred almost \$100,000 in unreimbursed expenses. Details about our
3 lodestar and expenses will be provided in connection with our motion for final approval, which will
4 be filed at least two weeks before the objection deadline, and a copy of which will be posted on the
5 Settlement Website.

6 6. The Settlement in this case is the product of arms-length negotiations between
7 experienced attorneys who are familiar with class action litigation and with the legal and factual
8 issues in this Litigation. The parties began seriously discussing settlement shortly after this Court's
9 hearing on the motion for class certification in April 2017 and continued throughout the summer
10 and fall. In September 2017, my partner, Seth Safier, notified Deoleo that GSELLP and our co-
11 counsel in this matter, Tycko & Zavareei LLP, had been retained by additional plaintiffs in other
12 states. A tolling agreement pending settlement negotiations was signed shortly thereafter.

13 7. On November 6, 2017, the parties engaged in an all-day mediation conducted by
14 Honorable Edward A. Infante (retired) of JAMS ADR, an independent, well respected, and
15 experienced mediator, in San Francisco, California. The parties did not negotiate about attorneys'
16 fees or expenses until they had reached agreement on all other material terms of the Settlement,
17 including the class benefit and notice.

18 8. Plaintiff maintains that his claims are meritorious; that he would establish liability
19 and recover substantial damages if the case proceeded to trial; and that the final judgment recovered
20 in favor of Plaintiff and the certified California class would be affirmed on an appeal. But Plaintiff's
21 ultimate success would require his to prevail, in whole or in part, at all of these junctures and even
22 then, would not provide the nationwide relief afforded under the Settlement Agreement.
23 Conversely, Defendant's success at any one of these junctures could or would have spelled defeat
24 for Plaintiff and the California class. Thus, continued litigation posed significant risks and countless
25 uncertainties, as well as the time, expense and delays associated with trial and appellate
26 proceedings.

27 9. On the basis of my investigation into this case and experience with and knowledge of

1 the law and procedure governing the claims of the Plaintiffs and the Settlement Classes, it is my
2 belief that it is in the best interests of the Settlement Class to enter into this Settlement. Indeed, in
3 light of the risks, uncertainties and delays associated with continued litigation, the Settlement
4 represents a significant achievement by providing guaranteed benefits to Settlement Class Members
5 in the form of changed practices and direct cash compensation.

6 10. With this Settlement, Plaintiff achieved his desired goal in this litigation—i.e.,
7 obtaining cash refunds for class members and changed practices. The recovery provided by the
8 Settlement—changed practices and refunds is considerably better than the anticipated per purchase
9 recovery in the event of trial. Class members may make claims to receive (i) \$1.75 per Extra Virgin
10 Olive Oil Product purchased between May 23, 2010 and December 31, 2015, (ii) \$0.75 per Extra
11 Virgin Olive Oil Product purchased between January 1, 2016 and the date of preliminary approval,
12 and (iii) \$1.50 for each Other Olive Oil Product. Those without a proof of purchase can receive up
13 to \$25 back, and there is no cap for those who do submit a proof of purchase.

14 11. Using information provided by Deoleo in connection with settlement discussions and
15 point of sale data obtained from Information Resources Inc. in connection with this litigation, I have
16 determined that Deoleo sold approximately 150 million Products nationwide during the relevant
17 periods, at an average retail price of \$9 a bottle.

18 12. At trial, Plaintiff might, in the best-case scenario, obtain a 100% refund of the price
19 “premium” charged by Defendant for each Product, calculated as the difference between the retail
20 price of Products with and without the alleged “Imported from Italy” misrepresentations, or the
21 difference between the retail price of EVOO Products and other olive oil products. Based on the
22 April 3, 2017 Reply Declaration of Colin Weir, Plaintiff’s economics expert, the associated price
23 premiums are equal to between 3.76 and 17.34 percent of the purchase price of each bottle of olive
24 oil, depending on the product type. Thus, even if successful at trial, class members would be
25 eligible to between 33 cents and \$1.56 per average priced bottle, upon submitting a claim. The per
26 product recovery of between \$.75 and \$1.75 accordingly could exceed the “premium” attributable to
27 the two challenged representations.

1 13. Deoleo has agreed to pay \$7 million under the settlement into a non-reverting
2 common fund. These funds made available under the Settlement takes into account the expanded
3 nationwide Settlement Class.

4 14. The \$7 million figure cited above, moreover, does not include the value of
5 Defendant’s changed practices. These include removing the “Imported from Italy” phrase from its
6 Bertolli labeling starting in 2015 and continuing for at least three years after the Effective Date.
7 They also include shortening the “best by” period from 18 to 16 months after bottling, listing on
8 each bottle the date(s) of harvest of the olives from which the oil was made, and using stricter
9 testing protocols at the time of bottling—all of which are likely to improve oil quality and address
10 the problems alleged in the complaint about degraded oil. In addition to the monetary relief
11 provided by the Settlement, Defendant’s changed practices will benefit class members and other
12 consumers.

13 15. I believe that the evidence obtained in discovery showed that the Bertolli Olive Oil
14 Products’ labels were likely to (and did) deceive unsuspecting consumers and that Defendant knew
15 of the deceptive nature of the Bertolli packaging. But while I am confident in the strength of the
16 Plaintiffs’ case, I am also pragmatic regarding the risks in continuing with this Litigation, including
17 the possibility of losing on summary judgment or at trial.

18 16. For example, Plaintiff would have been required to prove that the “Imported from
19 Italy” phrase was unlawful or likely to mislead reasonable persons. Deoleo disputed that consumers
20 would understand “Imported from Italy” to mean what Plaintiffs allege, and the adequacy of
21 Deoleo’s “extra virgin” practices was hotly contested and likely to come down to a battle of experts.
22 It could be difficult to obtain monetary relief, because Deoleo was likely to present evidence that
23 the challenged labeling had no or little effect on pricing or sales volume. And in a contested
24 proceeding, class members who lacked proof of purchase—which is likely the majority of class
25 members—might get nothing at all.

26 17. Each of these risks, by itself, could have impeded Plaintiff’s and the Settlement
27 Class’ successful prosecution of their claims at trial and in an eventual appeal. While Plaintiff

1 disputes and has adduced evidence to undermine Defendant's arguments, it was unclear how the
2 arguments would be resolved at summary judgment or trial. Thus, there was a substantial risk that
3 class members would recover only nominal damages, or nothing at all.

4 18. Moreover, even if Plaintiff prevailed at trial, any recovery could be delayed by an
5 appeal or challenges in collecting a very large award. Thus, even in the best case, it could take years
6 to get relief for class members. The Settlement provides substantial relief to the Settlement Class
7 without further delay.

8 19. Under the circumstances, Plaintiff and Class Counsel appropriately determined that
9 the Settlement outweighs the gamble of continued litigation. While I firmly believe in the merits of
10 this litigation and that Plaintiff would ultimately win at trial, I also believe that recovery is far from
11 guaranteed and that the benefits of settlement in this case outweigh the risks and uncertainties of
12 continued litigation, as well as the attendant time and expenses associated with possible
13 interlocutory appellate review, pretrial motion practice, trial, and final appellate review.

14 20. On balance, given the risks associated with this litigation, I believe that the recovery
15 offered in this Settlement is excellent.

16 I declare under penalty of perjury under the laws of the state of California that the foregoing
17 is true of my own personal knowledge.

18 Executed at San Diego, California, this 3rd day of April, 2018.

19 /s/ Adam J. Gutride
20 Adam J. Gutride, Esq.

EXHIBIT 1

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement is entered into this 26th day of March, 2018, between Plaintiffs and Defendant, as defined herein.

I. RECITALS

1.1. This Litigation commenced on May 23, 2014 when Scott Koller filed a complaint against Defendant Deoleo USA, Inc. (fka Med Foods, Inc.) in the United States District Court, Northern District of California, Case No. 3:14-cv-02400-RS. In his complaint, Koller alleged that Defendant had marketed and sold its Bertolli brand of olive oil with the representation “Imported from Italy,” although most of the oil was extracted in countries other than Italy, from olives grown in those countries. Koller also alleged that Defendant had marketed and sold a subset of the Bertolli brand olive oil with the representation “Extra Virgin,” although Defendant’s procurement, bottling, and distribution practices did not adequately ensure that the oil would meet the “extra virgin” standard through the date of retail sale or the “best by” date on the bottles. Koller alleged that Defendant's labeling and marketing of the oil violated the Tariff Act of 1930, as amended, 19 U.S.C. 1304, and its implementing regulations, 19 C.F.R. section 134.46; the Food Drug and Cosmetic Act, 21 U.S.C. sections 301, *et seq.*, and its implementing regulations, 21 C.F.R. sections 101.18, *et seq.*; the U.S. Department of Agriculture regulations regarding Olive Oil and Olive-Pomace Oil, 75 Fed. Red. 22363 (Apr. 28, 2010); the Sherman Food, Drug and Cosmetic Law, California Health and Safety Code (“Cal. Health & Saf. Code”) sections 109875, *et seq.*; and California law regarding grades of olive oil, Cal. Health & Saf.

Code § 112877. He made claims for violations of the California Consumer Legal Remedies Act, Civil Code sections 1780 et seq. (“CLRA”), false advertising under California Business and Professions Code sections 17500, *et seq.*; unfair business practices under California Business and Professions Code sections 17200, *et seq.*; and fraud, deceit and/or misrepresentation.

1.2. On July 17, 2014, Defendant moved to dismiss. Koller filed a first amended complaint, and Defendant again moved to dismiss. On January 6, 2015, the Court denied Defendant’s second motion to dismiss in its entirety.

1.3. On March 24, 2015, Defendant answered Koller’s first amended complaint, denying Koller’s allegations and asserting several affirmative defenses.

1.4. On December 14, 2015, the Court stayed the case pending decisions in two cases pending before the Ninth Circuit. On January 19, 2017, the Court lifted the stay.

1.5. Koller moved for class certification. Defendant opposed the motion. On August 24, 2017, the Court certified two California classes: an “Imported from Italy Class” and an “Extra Virgin Olive Oil Class,” which were defined as follows: (i) Imported From Italy Class: All purchasers in California of liquid Bertolli Extra Light, Classico, or Extra Virgin olive oil, between May 23, 2010 and May 30, 2014, except for those bearing labels “Organic,” “Robusto,” “Gentile,” or “Fragrante;” and (ii) Extra Virgin Olive Oil Class: All purchasers in California of bottles of Bertolli Extra Virgin olive oil, between May 23, 2010 and August 15, 2015, except for those bearing labels “Organic,” “Robusto,” “Gentile,” or “Fragrante.”

1.6. Notice of the pendency of the action has not yet been provided to the class members.

1.7. In September 2017, Plaintiffs’ Counsel provided notice to Defendant that they had been retained by additional purchasers of the Products outside of California, who

intended to bring actions similar to that by Koller under the laws of the various states and to represent similarly situated persons in those states and nationwide.

1.8. On November 6, 2017, the Parties participated in an all-day mediation conducted by Honorable Justice Edward Infante (retired) at JAMS in San Francisco, California. That mediation, and the discussions that followed, resulted in the settlement memorialized in this Agreement.

1.9. In December 2013, Defendant began to modify the labels for certain of the Products to no longer state “Imported from Italy;” these modifications were completed by the end of 2015. As a result of this litigation, Defendant has agreed to maintain these changes to its labeling, and to make additional changes to the labeling and packaging of the products as discussed in more detail below in Sections 3.12 and 3.13, for at least three years following the Effective Date.

1.10. Defendant denies all of Plaintiffs’ allegations and charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendant also denies that Plaintiffs, the Settlement Class, or any member of the Settlement Class have suffered damage or harm by reason of any alleged conduct, statement, act or omission of Defendant. Defendant further denies that the Litigation meets the requisites for certification as a class action under Rule 23 of the Federal Rules of Civil Procedure, except for purposes of settlement, or that the evidence is sufficient to support a finding of liability on any of Plaintiff’s claims in the Litigation.

1.11. Before and during this Litigation, Plaintiffs’ Counsel conducted a thorough examination and investigation of the facts and law relating to the matters in the Litigation, including, but not limited to, engaging in intensive fact discovery, both formal and

informal, including: examining more than 200,000 pages of Defendant's documents; deposing five of Defendant's "persons most knowledgeable" pursuant to Federal Rule of Civil Procedure 30(b)(6); requesting and receiving written discovery responses from Defendant and more than 20 third parties; and engaging in expert discovery including depositions of technical and economic experts.

1.12. Plaintiffs' Counsel has analyzed and evaluated the merits of all the Parties' contentions and this Settlement as it impacts all the Parties and the Settlement Class Members. Among the risks of continued litigation for Plaintiff are the risks of failing to prove liability or restitution and damages on a class-wide or individual basis. In particular, there may be difficulties establishing: (1) that Defendant's statements on the product labels (and other advertising and marketing materials), as challenged by Plaintiffs, were likely to deceive reasonable persons; (2) that the alleged misrepresentations and omissions were material to reasonable persons; and (3) that damages or restitution should be awarded or, if so, that the amount of the award would be more than nominal. Furthermore, with respect to members of the Settlement Class outside of California, no lawsuit is currently pending, nor has any class been certified. Plaintiffs and Plaintiffs' Counsel, after taking into account the foregoing along with other risks and the costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate and equitable, and that a settlement of the Litigation and the prompt provision of effective relief to the Settlement Class are in the best interest of the Settlement Class Members.

1.13. Defendant agrees that the settlement is fair and reasonable in light of the merits and risks of the case. While continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims, Defendant considers it desirable to

resolve the Litigation on the terms stated herein, in order to avoid further burden, expense, inconvenience, and interference with its ongoing business operations. Therefore, Defendant has determined that settlement of this Litigation on the terms set forth herein is in its best interests.

1.14. This Agreement reflects a compromise between the Parties, and shall in no event be construed as or be deemed an admission or concession by any Party of the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Litigation, or of any fault on the part of Defendant, and all such allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.

1.15. The undersigned Parties agree, subject to approval by the Court, that the Litigation between Plaintiffs, on the one hand, and Defendant, on the other hand, shall be fully and finally compromised, settled and released on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims described below, the Parties agree to this settlement, subject to Court approval, under the following terms and conditions:

II. DEFINITIONS

Capitalized terms in this Agreement shall be defined as follows:

2.1. “Agreement” means this Class Action Settlement Agreement, including all exhibits thereto.

2.2. “Allegations” means the allegations described in Section 1.1 above and claims that could be pursued under the laws of the United States or any state on the basis of one or more of those allegations.

2.3. “California Litigation Extra Virgin Olive Oil Class” means all purchasers in California of bottles of Bertolli Extra Virgin olive oil, between May 23, 2010 and August 15, 2015, except for those bearing labels “Organic,” “Robusto,” “Gentile,” or “Fragrante.”

2.4. “California Litigation Imported From Italy Class” means all purchasers in California of liquid Bertolli Extra Light, Classico, or Extra Virgin olive oil, between May 23, 2010 and May 30, 2014, except for those bearing labels “Organic,” “Robusto,” “Gentile,” or “Fragrante.”

2.5. “Claim Administrator” means, subject to Court approval, Angeion Group.

2.6. “Claim Filing Deadline” means 30 days after Final Approval.

2.7. “Claim Period” means the period beginning on the Notice Date and continuing until the Claim Filing Deadline.

2.8. “Claim Form” means a claim form in substantially the same form as Exhibit A.

2.9. “Class Representatives” means Plaintiffs.

2.10. “Common Fund” or “Settlement Fund” means the Seven Million Dollars (\$7,000,000.00) that is discussed further in Sections 3.1 and 3.2 below.

2.11. “Defendant” means Deoleo USA, Inc.

2.12. “Defendant’s Counsel” means the law firm of Norton Rose Fulbright US LLP.

2.13. “Effective Date” means the later of: (i) the expiration date of the time for filing a notice of appeal from the Final Approval or (ii) if a notice of appeal is filed, but the Final Approval is affirmed or the appeal is dismissed, the date upon which the mandate of the Court of Appeals is issued.

2.14. “Email Notice” means a notice by email in substantially the same form as Exhibit B2.

2.15. “Excluded Persons” means (1) Honorable Richard Seeborg, Joseph C. Spero, and Edward Infante (ret.), and any member of their immediate families; (2) any government entity, (3) Defendant; (4) any entity in which Defendant has a controlling interest; (5) any of Defendant’s subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; and (6) any persons who timely opt-out of the Settlement Class.

2.16. “Exclusion Deadline” means twenty-eight (28) days prior to the initially scheduled hearing date on Final Approval.

2.17. “Extra Virgin Class Period” means May 23, 2010 through the date of Preliminary Approval, inclusive.

2.18. “Extra Virgin Olive Oil Product” means bottles of Bertolli Extra Virgin olive oil, except for those bearing labels “Organic,” “Robusto,” “Gentile,” or “Fragrante.”

2.19. “Final Approval” means entry of a judgment, substantially in the form of Exhibit D, granting final approval of this Agreement as binding upon the Parties, which shall constitute a judgment respecting the Litigation.

2.20. “Household” means any number of persons occupying the same dwelling unit.

2.21. “Imported from Italy Class Period” means May 23, 2010 through December 31, 2015, inclusive.

2.22. “Incentive Award” means any award sought by application to and approval by the Court that is payable to any Plaintiff to compensate him or her for efforts in bringing this Litigation and/or achieving the benefits of this settlement on behalf of the Settlement Class, as further discussed in section 6.2.

2.23. “Litigation” means *Koller v. Deoleo USA, Inc.*, United States District Court for the Northern District of California, Case No. 3:14-cv-02400-RS.

2.24. “Long Form Notice” means a notice in substantially the same form as Exhibit B1.

2.25. “Notice Date” means the day on which the Claim Administrator initiates the Online Notice, the Summary Published Notice, or the Press Release, whichever comes first.

2.26. “Notice Plan” means the procedure for providing notice to the Settlement Class, as set forth in Exhibit B.

2.27. “Objection Deadline” means twenty-eight (28) days prior to the initially scheduled hearing date on Final Approval.

2.28. “Online Notice” means notice to Settlement Class Members in substantially the same form as Exhibit B3.

2.29. “Other Olive Oil Product” means the liquid Bertolli Extra Light or Classico olive oil products.

2.30. “Parties” means Plaintiff and Defendant, collectively.

2.31. “Party” means either Plaintiff or Defendant.

2.32. “Plaintiffs” means Scott Koller, Carolyn Bissonnette, Cece Castoro, Diane Gibbs, Darlene Williams, Robert Glidewell, and Stephen Freiman, collectively.

2.33. “Plaintiffs’ Counsel,” “Class Counsel” or “Settlement Class Counsel” mean the law firms of Gutride Safier LLP and Tycko & Zavareei LLP, collectively.

2.34. “Preliminary Approval” means issuance of an order, substantially in the form of Exhibit C, granting preliminary approval of the settlement described in this Agreement.

2.35. “Proof of Purchase” means an itemized retail sales receipt showing, at a minimum, the date and place of purchase, name of products(s) purchased, and amount paid.

2.36. “Published Notice” means a notice substantially in the form of Exhibit B3.

2.37. “Released Claims” means the claims released as set forth in Part VIII of this Agreement.

2.38. “Released Parties” means Defendant and its present and former subsidiaries, parents, affiliates, divisions, officers, directors, members, managers, shareholders, insurers, suppliers, manufacturers, re-sellers, distributors, brokers, service providers, employees, agents, legal representatives, heirs, predecessors, successors, or assigns.

2.39. “Settlement” means the terms of this Agreement.

2.40. “Settlement Class” or “Settlement Class Members” means all persons, other than Excluded Persons, who, (i) during the Extra Virgin Class Period, purchased, in the United States, any of the Extra Virgin Olive Oil Products, except for purpose of resale and/or (ii) during the Imported from Italy Class Period, purchased, in the United States, any of the Other Olive Oil Products, except for purpose of resale.

2.41. “Settlement Website” means an internet website created and maintained by the Claim Administrator. The URL of the Settlement Website shall be provided in the Notice Plan.

2.42. “Undertaking” means an undertaking, substantially in the form of Exhibit E.

2.43. “Valid Claim” means a claim submitted in compliance with Part III of this Agreement, and as further described in that Part.

III. SETTLEMENT BENEFITS, CLAIMS ADMINISTRATION AND CHANGED PRACTICES

3.1. The Settlement Fund shall be maintained as a qualified settlement fund pursuant to 26 CFR 1.468B-1 *et seq.*, in an interest-bearing account at a financial institution approved by Plaintiffs’ Counsel and subject to the oversight of the Claim Administrator (the “Settlement Fund Account”).

3.2. Defendant shall pay the amount of the Settlement Fund into the Settlement Fund Account, by wire transfer, according to the following schedule: (a) the costs of notice and administration through the date of final approval, as estimated by the Claim Administrator, within seven (7) days of an Order granting Preliminary Approval; (b) the balance of the Settlement Fund within seven (7) days of Final Approval. The Settlement Fund is the Defendant’s sole and exclusive monetary obligation under the Settlement.

3.3. The Settlement Fund shall be applied to pay, in the following order: (i) all costs and payments associated with the Notice Plan and administration of the Settlement, including all payments to the Claim Administrator; (ii) any necessary taxes and tax expenses on the Settlement Fund; (iii) any award of attorneys’ fees and costs made by the Court to Plaintiffs’ Counsel under this Agreement, (iv) any Incentive Awards made by the Court; and (v) Valid Claims.

3.4. If after payment of items (i) through (iv) in Section 3.3, the total amount of Valid Claims exceeds the balance remaining in the Settlement Fund, then each Valid Claim in item (v) shall be reduced pro-rata. If after payment of items (i) through (iv) in Section 3.3, money remains in the Settlement Fund, then the amount paid for each Valid Claim in item (v) shall be increased pro-rata, up to a maximum of five times the amounts set forth in section 3.8. If after such pro-rata increase in the payment of Valid Claims, there still remains money in the Settlement Fund, then upon approval by the Court, pursuant to the cy pres doctrine, the remaining amount shall be paid in equal shares to:

- (a) Consumers Union, Yonkers, NY;
- (b) Center for Food Safety, Washington, DC.

Cy pres payments shall be used for purposes consistent with the aims of the Litigation, and shall not be used by the recipients to fund any litigation activities against Defendant or other parties.

3.5. Every Settlement Class Member shall have the right to submit a claim for settlement benefits. A Claim shall be a Valid Claim only if submitted on the Claim Form pursuant to, and in compliance with, the procedures set forth herein.

3.6. At the election of the Settlement Class Member, Claim Forms may be submitted in paper via first class mail or online at the Settlement Website. Claim Forms must be received by the Claim Administrator (not just postmarked) or submitted online no later than the Claim Filing Deadline, and Claim Forms submitted after that date will not be Valid Claims. For Claim Forms that are submitted online, the Class Member shall have the opportunity to upload Proof of Purchase image files (e.g. jpg, tif, pdf); to review, prior to submitting the claim, a page that redisplay all information entered in the Claim Form and the names of image files uploaded; and to print, immediately after the Claim Form has been submitted, a page showing

the information entered, the names of image files uploaded, and the date and time the Claim Form was received. In addition, for Claim Forms that are submitted online, the Class Member shall be sent an email confirmation of the submitted claim that shows the information entered, the names of image files uploaded, and the date and time the Claim Form was submitted.

3.7. On the Claim Form and Settlement Website, the Settlement Class Member must certify the truth and accuracy of the following under the penalty of perjury:

- (a) The Settlement Class Member's name and mailing address;
- (b) The Settlement Class Member's email address, if the Settlement Class Member elects to provide the information;
- (c) For each Product purchase on which a claim is submitted, that the Settlement Class member purchased the products as shown in Proofs of Purchase submitted with the Claim Form, or in the alternative:

- The type or name of the Products purchased;
- The quantity purchased;
- The place of purchase; and
- The approximate month and year of purchase
- That the claimed purchases were not made for purposes of resale.

A Claim not complying with all of the elements listed in this Section 3.7 is not a Valid Claim. Only Valid Claims will be paid.

3.8. Valid Claims shall be paid as follows: For each Extra Virgin Olive Oil Product purchased during the portion of the Extra Virgin Class Period that overlaps with the Imported from Italy Class Period, the Class Member shall receive one dollar seventy-five cents

(\$1.75). For each Extra Virgin Olive Oil Product purchased during the portion of the Extra Virgin Class Period that does not overlap with the Imported from Italy Class Period, the Class Member shall receive seventy-five cents (\$0.75). For each Other Olive Oil Product purchased during the the Imported from Italy Class Period, the Class Member shall receive one dollar fifty cents (\$1.50). All the amounts set forth in this paragraph shall be subject to being increased pro rata, pursuant to the terms of Section 3.4.

3.9. A Settlement Class Member may submit claims for an unlimited number of purchases. There shall be no cap on the total amount paid for claimed purchases that are corroborated by Proof of Purchase. However, for purchases not corroborated by Proof of Purchase, (a) payments shall be made for a maximum of five Products per Household, and (b) the combined total amount paid for all such purchases shall not exceed \$25 per Household.

3.10. The Claim Administrator shall be responsible for processing Claim Forms and administering the Settlement Website, opt-out process, and Settlement Benefit claims process described herein. The Claim Administrator will follow its ordinary course of practice regarding approval of claims, subject to all Parties' right to audit claims and challenge the Claim Administrator's decision. If the Parties and the Claim Administrator cannot collectively agree how to resolve disputed claims, then such disputes shall be resolved by the Court. Within thirty (30) days after the Effective Date, the Claim Administrator shall email all Class Members whose claims are denied to state the reasons for denial, at the email address (if any) provided by the Class Member on the Claim Form. If no email address is provided by the Class Member on the Claim Form, the Administrator shall not have an obligation to provide the class member any notification of the reasons for denial of the claim. The Claim Administrator's determination of whether a claim is a Valid Claim, if not disputed by the Parties, shall be final and not subject to

further review. No person shall have any claim against Plaintiffs, Defendant, Plaintiffs' Counsel, Defendant's Counsel, or the Claim Administrator based on any determination of a Valid Claim, distributions, or awards made in accordance with this Agreement and the Exhibits hereto.

3.11. Claims shall be paid by check mailed to the Settlement Class Member, or at the election of the Settlement Class Member on the Claim Form, by direct deposit into the Class Member's bank account. The Claim Administrator also is authorized to offer the Settlement Class Member the option to obtain payment through another form of electronic transfer (such as Paypal, Venmo, Google Wallet, or Square Cash). All Valid Claims shall be paid by the Claim Administrator within sixty (60) days after the Effective Date.

3.12. Defendant agrees not to use the phrases "Imported from Italy," "Made in Italy," "Product of Italy," or a phrase suggesting that olive oil in a bottle originates exclusively from olives grown in Italy on the labeling of any olive oil product sold in the United States, until at least three years after the Effective Date, unless the product so labeled is composed entirely of oil from olives grown and pressed in Italy.

3.13. For a period of at least three years after the Effective Date, Defendant agrees that if it uses the phrase "Extra Virgin" or term "EVOO" on the product label of any olive oil, it must do all of the following:

(a) Package the olive oil in a non-transparent (UV filtering) container, e.g., a green or brown glass container;

(b) For extra virgin olive oil bottled on or after June 1, 2018, Include a "best by" or "use by" date not later than sixteen months after the date of bottling;

(c) Include the date(s) of harvest of the olives used to manufacture the olive oil in proximity to the “best by” date; and-

(d) Implement the following chemical parameter testing requirements set forth under “Target Limit” at the time of bottling (which are stricter than the current limits set forth in the preceding column under “IOC Limit”):

Parameter	IOC Limit	Target Limit
Acidity (%)	≤ 0.8	≤ 0.5
Peroxide value (mEq)2/kg)	≤ 20	≤ 10
K270	≤ 0.22	≤ 0.15
K232	≤ 2.50	≤ 2.1
Delta-K	≤ 0.01	≤ 0.005

3.14. To the extent Defendant has already implemented the requirements in sections 3.12 or 3.13 for any of its olive oils, it will agree to represent that it made these changes during the pendency of this litigation.

3.15. The injunctions set forth in Section 3.12 and 3.13 shall be subject to modification based on changes in law.

IV. NOTICE

4.1. Prior to the Notice Date, the Claim Administrator shall establish a toll-free number to call to obtain additional information and to request a mailed version of the Long Form Notice Claim Form. Prior to the Notice Date, the Claim Administrator also shall establish the Settlement Website, which shall contain the Long Form Notice in both downloadable PDF format and HTML format with a clickable table of contents; answers to frequently asked questions; a Contact Information page that includes the address for the Claim Administrator and addresses and telephone numbers for Plaintiffs’ Counsel and Defendant’s Counsel; the

Agreement; the signed order of Preliminary Approval and the publicly filed motion papers and declarations in support thereof; a downloadable and online version of the Claim Form; a downloadable and online version of the form by which Settlement Class Members may exclude themselves from the Settlement Class; and (when they become available) the publicly filed motion for final approval and Plaintiff's application(s) for Attorneys' Fees, Costs and an Incentive Award, with supporting declarations.

4.2. The Settlement Website shall remain accessible until one hundred eighty (180) days after all settlement benefits are distributed.

4.3. Notice shall be provided as provided in the Notice Plan.

4.4. The Parties shall supervise the Claim Administrator in the performance of the notice functions set forth in this Section IV.

4.5. CAFA Notice. The Claim Administrator shall provide notice in compliance with 28 U.S.C. § 1715.

4.6. At least fourteen (14) days prior to the final approval hearing referenced in Section VII of this Agreement, the Claim Administrator shall certify to the Court that it has complied with the notice requirements set forth herein.

4.7. All costs of notice as set forth in this Section IV and all costs of the Claim Administrator in processing objections and exclusion requests as set forth in Sections 7.4 through 7.10 shall be paid from the Settlement Fund and Defendant shall have no responsibility for paying such costs other than as required in Section 3.2.

V. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS AND FILING OF SECOND AMENDED COMPLAINT

5.1. Solely for the purpose of effectuating the Settlement set forth in this Agreement and subject to Court approval, the Parties stipulate that a Settlement Class shall be certified in accordance with the definition set forth in this Agreement, that the Class Representatives shall represent the Settlement Class for settlement purposes, and that Plaintiffs' Counsel shall be appointed as the attorneys for the Settlement Class.

5.2. In the event that the Court declines to enter the Preliminary Approval order or to grant Final Approval (or enters any order that increases the cost or burden of the settlement to Defendant beyond what is set forth in this Agreement), the Parties may, but are not required to, modify this Agreement. Such a modification shall be binding only if it is in writing and executed by Plaintiffs' Counsel and Defendant's Counsel.

5.3. In the event that this Agreement (including the settlement provided for herein) is not finally approved, or is terminated or cancelled or fails to become effective for any reason whatsoever, the conditional class certification and leave to file a second amended complaint, to which the Parties have stipulated solely for the purpose of the settlement of the Litigation, shall be null and void, and the Litigation shall revert to its status as it existed prior to the date of this Agreement, and the Claim Administrator shall return to Defendant such portion of the amounts deposited pursuant to Section 3.2 that are not required to pay for notice and administration then-completed. In such event, neither this Agreement nor any document filed or created in connection with this Settlement may be used as an admission or as evidence for any purpose.

VI. ATTORNEYS' FEES, COSTS, AND EXPENSES, AND INCENTIVE AWARDS

6.1. Plaintiffs' Counsel may apply to the Court for payment from the Settlement Fund of their out-of-pocket expenses. Plaintiffs' Counsel may additionally apply to the Court for payment from the Settlement Fund of an amount equal to 30% of the Settlement Fund, as their attorneys' fees. Any motion for attorneys' fees and costs and expenses must be filed at least fourteen (14) days before the deadline for objecting to the Settlement. Any award of attorneys' fees, costs, or expenses, shall come solely from the Settlement Fund, and Defendant shall have no obligation to pay any portion of Plaintiffs' or Plaintiffs' Counsel's fees, costs, or expenses.

6.2. Each Plaintiff may additionally apply to the Court for an Incentive Award as compensation for the time and effort undertaken in and risks of pursuing this Litigation, including the risk of liability for the Parties' costs of suit, and for agreeing to the general release set forth in Section 8.1. The Incentive Award to Koller shall not exceed \$5000, and the Incentive Award to each of other Plaintiffs shall not exceed \$1000. Such Incentive Awards shall come solely from the Settlement Fund. Defendant shall have no obligation to pay any portion of the Incentive Awards.

6.3. Defendant agrees not to oppose or to submit any evidence or argument challenging or undermining Plaintiff's application for Attorneys' Fees and Costs or Incentive Awards, provided such application is consistent with Sections 6.1 and 6.2. Plaintiffs' Counsel and Plaintiffs agree that the denial of, reduction or downward modification of, or failure to grant any application for attorneys' fees, costs, and expenses or incentive awards shall not constitute grounds for modification or termination of this Agreement, including the settlement and releases provided for herein.

6.4. Upon an award of attorneys' fees, costs and incentives by the Court, Plaintiffs' Counsel shall provide the Claim Administrator a statement signed by authorized representatives of Gutride Safier LLP and Tycko & Zavareei LLP that indicates how the award is to be apportioned between each of those two law firms. The Claim Administrator shall pay the apportioned amount of the awarded attorneys' fees, costs and expenses from the Settlement Fund to each respective law firm within seven (7) days thereafter, provided that the firm to which the distribution is being made and its principals have executed the Undertaking and such further documentation as Defendant may request in accordance with the Undertaking in order to enforce Defendant's security interests pursuant to the Undertaking, including identification of assets deemed sufficient to secure any repayment obligations due to reversal or downward modification of the award on appeal. If Final Approval or the award of attorneys' fees, costs or expenses is later reversed on appeal then, within seven (7) days of such order, all such distributions shall be repaid to the Claim Administrator, along with interest as stated in the Undertaking. If the law firm that receives such a distribution fails to make such repayment in full, the Claim Administrator may recover the amount owed plus interest as set forth in the Undertaking. The Parties agree that Plaintiffs' Counsel shall be responsible for any and all reasonable fees, costs, and expenses incurred by the Claim Administrator or Defendant in connection with (i) the perfection of any security interest in the assets granted in the Undertaking and (ii) the exercise of remedies in respect of the security interests granted pursuant to the Undertaking.

6.5. Within seven (7) days after the Effective Date, the Claim Administrator shall pay the Court-approved Incentive Awards from the Settlement Fund to the respective Plaintiffs.

6.6. Except as set forth in this Agreement, each Party shall bear his, her or its own fees, costs and expenses.

VII. CLASS SETTLEMENT PROCEDURES

7.1. Amendment of Complaint. Within fourteen (14) days of the execution of this Agreement, the Parties shall sign, and Plaintiff shall file in the Court, a stipulation that, upon Preliminary Approval, Plaintiff should be granted leave to file a second amended complaint, to amend the class definition to correspond with the definition of the Settlement Class and to assert claims on behalf of that class of the same type as previously asserted, under the laws of the United States and all states and territories thereof. The stipulation shall provide that Defendant's deadlines and any other obligations to respond to the second amended complaint shall be held in abeyance and, if Preliminary Approval is denied, Final Approval is denied, or a mandate is issued reversing an award of Final Approval, the second amended complaint shall be immediately and automatically deemed withdrawn, and the Litigation shall continue on the first amended complaint as if the second amended complaint were never filed and the Settlement Class never certified, and no reference to the second amended complaint or Settlement Class or any documents related thereto shall be made or used against Defendant for any purpose in this Litigation or any other action, lawsuit, or proceeding of any kind whatsoever.

7.2. Settlement Approval. As soon as practicable after the signing of this Agreement, Plaintiff shall move, with the support of Defendant, for a Preliminary Approval order, substantially in the form of Exhibit C, conditionally certifying the Settlement Class; preliminarily approving this Agreement and this Settlement as fair, just, reasonable and adequate; approving Class Notice to the Settlement Class Members as described in Part IV

above; and setting a hearing to consider Final Approval of the Settlement and any objections thereto.

7.3. Final Approval Order and Judgment. At or before the hearing on Final Approval, Plaintiffs, with the support of Defendant, shall move for entry of an order of Final Approval, substantially in the form of Exhibit D, granting final approval of this Settlement and adjudging this Agreement to be final, fair, reasonable, adequate, and binding on all Settlement Class Members who have not excluded themselves from the Settlement Class as provided below; ordering that the settlement relief be provided as set forth in this Agreement and giving effect to the releases as set forth in Part VIII, below; and entering judgment in the Litigation. The parties shall request a hearing on final approval to occur in late summer or early fall of 2018.

7.4. Exclusions and Objections. The Long Form Notice and the Print Publication Notice shall advise prospective Settlement Class Members of their rights to forego the benefits of this settlement and pursue an individual claim; to object to this settlement individually or through counsel; and to appear at the final approval hearing.

7.5. If any Settlement Class Member wishes to object to the Settlement and/or to be heard at the Final Approval hearing, the Settlement Class Member may submit a written objection, in compliance with the requirements set forth in the Long Form Notice and the Preliminary Approval Order.

7.6. If any Settlement Class Member wishes to be excluded from this Settlement and the Settlement Class, the Settlement Class Member may do so by completing and submitting the online form at the Settlement Website or by mailing a valid request to opt out, as described in the Long Form Notice, to the Claim Administrator. Requests to exclude must be submitted online by the Exclusion Deadline, or if mailed must be *received* by the Claim

Administrator (not just postmarked) by the Exclusion Deadline, or they shall not be valid. For exclusion requests that are submitted online, the Class Member shall have the opportunity to print a page immediately after submission showing the information entered and the date and time the request for exclusion was received. A Settlement Class Member who elects to opt out of this Settlement and the Settlement Class shall not be permitted to object to this Settlement or receive any of the benefits of the Settlement. Settlement Class Members shall be encouraged, but not required, to provide their email addresses in their requests for exclusion.

7.7. At least fourteen (14) days prior to the hearing on Final Approval, the Claim Administrator shall prepare a list of the names of the persons who have excluded themselves from the Settlement Class in a valid and timely manner, and Plaintiffs' Counsel shall file that list with the Court, with service on Defendant's Counsel.

7.8. Right To Terminate Settlement Agreement. If more than 1000 persons submit a timely and valid request to opt out of the Settlement Class, Defendant shall have the unilateral right to terminate this Agreement (and any obligations thereunder) within three (3) business days of the filing with the Court of the opt-out list described in Section 7.7 of this Agreement. Furthermore, except for changes to the time periods set forth in Parts IV and VII, and except as set forth in Section 6.3 of this Agreement, all other terms and limitations set forth in this Agreement and in the documents referred to or incorporated herein (including but not limited to the Long Form Notice, the Print Publication Notice, the Online Notice and the Claim Form) shall be deemed material to the Parties' agreement, and in the event any such other term is altered or amended by the Court (including if the Court refuses to certify the Settlement Class and/or modifies the definition of the class), or any other court, or if any federal or state authority objects to or requires modifications to the Agreement, any Party whose rights or obligations are

affected by the alteration or amendment may terminate this Agreement upon written notice to the other Party.

7.9. Effect if Settlement Not Approved or Agreement is Terminated. This Agreement was entered into only for purposes of settlement. In the event that Preliminary or Final Approval of this Agreement does not occur for any reason, including without limitation termination of this Agreement pursuant to Section 7.8, or if Final Approval is reversed on appeal, then no term or condition of this Agreement, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Litigation, or in any other proceeding; the Litigation may continue as if the settlement had not occurred; and any orders granting leave to file the second amended complaint and conditionally certifying or approving certification of the Settlement Class shall be vacated, and the second amended complaint shall be stricken from the Court file. The Parties agree that all drafts, discussions, negotiations, documentation or other information prepared in relation to this Agreement, and the Parties' settlement discussions, shall be treated as strictly confidential and may not, absent a court order, be disclosed to any person other than the Parties' counsel, and only for purposes of the Litigation. In such event, the Claim Administrator shall return to Defendant such portion of the amounts deposited pursuant to Section 3.2 that are not required to pay for notice and administration then-completed, plus accrued interest.

7.10. The Long Form Notice and the Print Publication Notice shall advise members of the California Litigation Class that, if the settlement is not approved, or if the Effective Date does not occur for any other reason, then the Litigation will continue on behalf of the California Litigation Class only. Members of the California Litigation Class who do not

wish to be bound by a judgment in favor of or against the California Litigation Class must exclude themselves from the Litigation. The Parties shall request that, in the order of Preliminary Approval, the Court order that the process and time limits for members of the California Litigation Class to exclude themselves from the Litigation are identical to those set forth in the prior paragraph with regard to the Settlement Class, except as follows. If the settlement is not approved or the Effective Date does not occur, members of the California Litigation Class who submitted timely objections to the settlement or timely claims under the settlement (whether or not such claims are deemed Valid Claims) shall have an additional forty-five (45) days from the date they are provided notice of the termination to exclude themselves from the California Litigation Class, and members of the California Litigation Class who submitted timely requests to exclude themselves from the settlement shall have an additional forty-five (45) days from the date they are provided notice of the termination to revoke their requests for exclusion and to rejoin the California Litigation Class. To effectuate this right, in the event of termination, notice shall be provided by email to all members of the California Litigation Class who submitted timely objections to the Settlement or timely claims under the Settlement (whether or not such claims are deemed Valid Claims) and who provided an email address in connection with their objections or claims, informing such persons of an additional period to exclude themselves from the Litigation and linking to an exclusion form on the Settlement Website. In addition, in the event that termination occurs, notice shall be provided by email to all members of the California Litigation Class who submitted timely request to exclude themselves from the Settlement and Litigation and who provided an email address in connection with their request for exclusion, informing such persons of an additional period to revoke their request for exclusion and to rejoin the California Litigation Class for purposes of the continued

Litigation. Within ten (10) days of any event causing termination, the Parties shall meet and confer in good faith regarding the content of such notice and to obtain Court approval for distribution of the notice, and shall agree to an appropriate schedule to afford members of the California Litigation Class forty-five days to respond to it; provided, however, that in the event of termination, Defendant does not agree to bear any expenses relating to the costs of providing the post-termination notice to, and administration of post-termination exclusion requests (and revocation of exclusion requests) for, the California Litigation Class, as described in this Section 7.10. Members of the California Litigation Class who did not file an objection by the Objection Deadline or a claim by the Claim Filing Deadline shall have no further right after the Exclusion Date to exclude themselves from the Litigation, even if the Settlement is not approved or the Effective Date does not occur.

7.11. The proposed Preliminary Approval order and Long Form Notice will provide that any Settlement Class Members wishing to object or exclude themselves who fail to properly or timely file or serve any of the requested information and/or documents will be precluded from doing so.

7.12. If any objection is received by the Claim Administrator, the Claim Administrator shall forward the objection and all supporting documentation to counsel for the Parties. At least fourteen (14) days prior to the hearing on Final Approval, Plaintiff's Counsel shall file all such objections and supporting documentation with the Court. The failure of the Settlement Class Member to comply with the filing requirements of Section 7.5 shall be grounds for striking and/or overruling the objection, even if the objection is submitted to the Claim Administrator.

7.13. If a Settlement Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion request shall be deemed to have been sent by mistake and rejected.

7.14. A Settlement Class Member who objects to the settlement may also submit a Claim Form on or before the Claim Filing Deadline, which shall be processed in the same way as all other Claim Forms. A Settlement Class Member shall not be entitled to an extension to the Claim Filing Deadline merely because the Settlement Class Member has also submitted an objection.

VIII. RELEASES

8.1. Releases Regarding Named Plaintiffs (Class Representatives) and Released Parties. Upon Final Approval, Plaintiffs on the one hand, and Defendant on the other hand, shall have unconditionally, completely, and irrevocably released and forever discharged each other from and shall be forever barred from instituting, maintaining, or prosecuting (1) any and all claims, liens, demands, actions, causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or unknown, that actually were, or could have been, asserted in the Litigation, whether based upon any violation of any state or federal statute or common law or regulation or otherwise, or arise directly or indirectly out of, or in any way relate to, the allegations, claims, or contentions that Plaintiffs, on the one hand, and Defendant, on the other hand, have had in the past, or now have, related in any manner to the Defendant's products, services or business affairs; and (2) any and all other claims, liens, demands, actions, causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or unknown,

that Plaintiffs, on the one hand, and Defendant, on the other hand, have had in the past or now have, related in any manner to any and all Released Parties' products, services or business affairs, or otherwise.

8.2. Releases Regarding Settlement Class Members and Released Parties.

Upon Final Approval, Settlement Class Members shall have unconditionally, completely, and irrevocably released and discharged the Released Parties from any and all claims, liens, demands, actions, causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or unknown, whether arising under any international, federal, state or local statute, ordinance, common law, regulation, principle of equity or otherwise, that that were, or could have been, asserted in the Litigation and that arise out of or relate to the Allegations, or to any similar allegations or claims that the Products were marketed or labeled as "Imported From Italy" and/or "Extra Virgin" or in any other way misrepresented as to the country of origin of the olive oils used to produce Bertolli olive oils during the Class Period (the Released Claims"), except that there shall be no release of claims for personal injury allegedly arising out of use of the Products. Upon Final Approval, Settlement Class Members shall be forever barred from initiating, maintaining, or prosecuting any Released Claims against Released Parties.

8.3. Waiver of Provisions of California Civil Code § 1542. Plaintiffs and

Defendant shall, by operation of Final Approval, be deemed to have waived the provisions, rights and benefits of California Civil Code § 1542, and any similar law of any state or territory of the United States or principle of common law. In addition, Settlement Class Members shall, by operation of Final Approval, be deemed to have waived the provisions, rights and benefits of California Civil Code § 1542, and any similar law of any state or territory of the United States or

principle of common law, but only with respect to the matters released as set forth section 8.2.

Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

8.4. Effectuation of Settlement. None of the above releases includes releases of claims to enforce the terms of the Settlement provided for in this Agreement.

8.5. No Admission of Liability. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party. Defendant expressly denies the allegations of the complaints in the Litigation. Neither this Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by the Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Parties in any proceeding, except that this Agreement may be offered or received in evidence in such proceedings as may be necessary to consummate, interpret, or enforce this Agreement.

IX. ADDITIONAL PROVISIONS

9.1. Best Efforts. The Parties' counsel shall use their best efforts to cause the Court to grant Preliminary Approval of this Agreement and settlement as promptly as

practicable, to take all steps contemplated by this Agreement to effectuate the settlement on the stated terms and conditions, and to obtain Final Approval of this Agreement.

9.2. Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiffs' Counsel and Defendant's Counsel, without notice to Settlement Class Members.

9.3. Time for Compliance. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

9.4. Governing Law. This Agreement is intended to and shall be governed by the laws of the State of California, without regard to conflicts of law principles.

9.5. Representations Regarding Changed Practices. Plaintiffs' Counsel represent that the labeling and quality changes required in sections 3.12 and 3.13 satisfy their concerns regarding the country of origin and quality claims as alleged in the complaints.

9.6. Entire Agreement. The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties hereto relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitute the complete and exclusive statement of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving the interpretation of this

Agreement. Any amendment or modification of the Agreement must be in writing signed by Plaintiffs' Counsel and Defendant's Counsel.

9.7. Advice of Counsel. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. The presumption found in California Civil Code section 1654 that uncertainties in a contract are interpreted against the party causing an uncertainty to exist is hereby waived by all Parties.

9.8. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the Parties.

9.9. No Waiver. The waiver by any Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

9.10. Requirement of Execution. This Agreement shall be valid and binding as to Plaintiffs, Plaintiffs' Counsel, the Settlement Class and Defendant upon (1) signature by Plaintiffs, (2) signature by an authorized representative of Defendant, and (3) signature as to form by an authorized representative of each of the law firms defined as Plaintiffs' Counsel and Defendant's Counsel.

9.11. Execution in Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

9.12. Extensions of Time. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

9.13. Enforcement of this Agreement. The Court shall retain jurisdiction to enforce, interpret, and implement this Agreement.

9.14. Notices. All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail and fax or email to the following addresses:

If to Plaintiffs or Plaintiffs' Counsel:

Adam Gutride, Esq.
Seth Safier, Esq.
Gutride Safier LLP
100 Pine Street, Suite 1250
San Francisco, CA 94111
Telephone: (415) 639-9090
Fax: (415) 449-6469
Email: adam@gutridesafier.com
and seth@gutridesafier.com

and

Hassan A. Zavareei, Esq.
Anna C. Haac, Esq.
Tycko & Zavareei LLP
1828 L Street, N.W., Suite 1000
Washington, DC 20036
Telephone: (202) 973-0900
Fax: (202) 973-0950
Email: hzavareei@tzlegal.com and ahaac@tzlegal.com,

If to Defendant or Defendant's Counsel:

Jeffrey Margulies, Esq.
Norton Rose Fulbright US LLP
555 South Flower Street
Forty-First Floor
Los Angeles, CA 90071
Telephone: (213) 892-9286
Fax: (213) 892-9494
Email : jeff.margulies@nortonrosefulbright.com

9.15. Confidentiality. The Parties, Plaintiffs' Counsel, and Defendant's Counsel agree to keep this Agreement confidential until the filing of the motion for Preliminary Approval.

9.16. Exhibits. The Exhibits to the Agreement are an integral part of the Settlement and are hereby incorporated and made part of the Agreement.

9.17. Complete Resolution. The Parties intend for this Agreement to be a complete and final resolution of all disputes between them with respect to the Litigation.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the first date it has been executed by all of the undersigned.

APPROVED AS TO FORM:

DATED: March ___, 2018

GUTRIDE SAFIER LLP

Adam Gutride, Esq.
Seth Safier, Esq.
Attorneys for Plaintiffs

DATED: March ___, 2018

TYCKO AND ZAVAREEI LLP

Hassan A. Zavareei, Esq.
Anna C. Haac, Esq.
Attorneys for Plaintiff

DATED: March ____, 2018

NORTON ROSE FULBRIGHT US LLP

Jeffrey Margulies, Esq.

APPROVED AND AGREED:

DATED: March ____, 2018

SCOTT KOLLER

Scott Koller

DATED: March ____, 2018

CAROLYN BISSONNETTE

Carolyn Bissonnette

DATED: March ____, 2018

CECE CASTORO

Cece Castoro

DATED: March ____, 2018

DIANE GIBBS

Diane Gibbs

DATED: March ____, 2018

DARLENE WILLIAMS

Darlene Williams

DATED: March ____, 2018

ROBERT GLIDEWELL

Robert Glidewell

DATED: March ____, 2018

STEPHEN FRIEMAN

Stephen Freiman

DATED: March ____, 2018

DEOLEO USA, INC.

By: _____

Name: _____

Its: _____

Exhibit A

**Koller v. Deoleo USA, Inc. Class Action Settlement
Online {additions for Paper version in brackets} Claim Form**

To make a claim under the Settlement, you must complete this form {and mail it to the address at the bottom of this form. (Alternatively, you can complete and submit a claim form online at www._____/claimform.)}. The claim form is due by [30 days after Final Approval] {which means it must be **received** by the Claim Administrator (not just postmarked) by that date}. The information will not be disclosed to anyone other than the Court, the Claim Administrator, and the Parties in this case, and will be used only for purposes of administering this Settlement (such as to audit and review a claim for completeness, truth, and accuracy).

To submit a claim, your purchase cannot have been for purpose of resale. You must have purchased your product in the United States on or after May 23, 2010. Your purchase must have occurred prior to [date of preliminary approval] if you purchased a Bertolli Extra Virgin Olive Oil Product, and prior to December 31, 2015, if you purchased a Bertolli Classico or Extra Light Olive Oil Product. The amount you will receive depends on which products you purchased at what time, as well as on the number of other claims filed in the settlement.

You can make claim for up to five Products purchased, unless you submit Proof of Purchase. There is no limit on the number of Products that can be claimed for which you provide Proof of Purchase. Proof of Purchase means an itemized retail sales receipt showing, at a minimum, the purchase of an eligible Product, and the date, place and amount of purchase. All claims from the same household shall be treated as a single claim.

Payments will be issued only if the Court approves the Settlement and the Effective Date of the Settlement occurs. {Please save a copy of this completed form and your Proof of Purchase for your records.} **For further information, visit [URL].**

First Name: _____ Last Name: _____

Email Address: {optional*} _____

Mailing Address: _____

City _____ State _____ Zip Code _____

I wish to receive my payment by:

Check made out to me as an individual at the address above.

Direct deposit to Bank Name: _____ ABA Routing No. _____ Account No. _____

(other payment methods enabled by Claim Administrator, if any; e.g. PayPal, Venmo, Google Wallet, Square Cash)

I made the following purchases. These purchases were not for purpose of resale.

Bertolli Product	Approximate Month & Year of Purchase	Place of Purchase	Number of Bottles Purchased
[drop-down of Classico, Light, Extra Virgin]	[drop-down]	[text field]	[drop-down 1-10]
		TOTAL	

{(Attach additional sheets if necessary)}

I certify the foregoing under penalty of perjury under the laws of the United States

Signed: _____ Date: _____

{*Please note that email is the only way to receive written notice if the settlement is terminated, or if your claim is denied with the reason(s) for the denial. It is also the only way to receive further notice of your rights to opt out of the litigation if you made your purchase in California and the settlement does not become effective. Providing your email address also will help the Claim Administrator contact you, including if your settlement payment is mailed and returned as undeliverable.

{Mail your completed Claim Form, WITH YOUR PROOF OF PURCHASE, IF ANY, to: Koller v. Deoleo Settlement Claim Administrator, [address]}

{Claim Forms must be RECEIVED BY THE CLAIM ADMINISTRATOR (not just postmarked) by [30 days after Final Approval].}

Exhibit B

EXHIBIT B - NOTICE PLAN

SETTLEMENT WEBSITE

Prior to the Notice Date, the Claim Administrator shall establish the Settlement Website, in compliance with the Settlement Agreement

NOTICE PROGRAM

The notice described herein shall be designed to reach at least 75 percent of the Settlement Class Members, on average notice two times each. Such reach and frequency shall be measured using reasonably relied upon media research data, validation and reach and frequency tools such as GfK Mediamark Research and Intelligence LLC, comScore, or their equivalents.

All notices shall point to (and in the case of online notices shall hyperlink to) the Settlement Website.

PRINT ADVERTISEMENTS

As soon as reasonably practicable, but not later than twenty-one (21) days following Preliminary Approval, the Claim Administrator will cause the Published Notice, in the form attached hereto as Exhibit B2, to be published once each week for four successive weeks as 1/6 page each in the Legal Notices section of the San Francisco Chronicle.

As soon as reasonably practicable, but not later than forty-two (42) days following Preliminary Approval, the Claim Administrator will cause the Published Notice, in the form attached hereto as Exhibit B2, to be published once, as ½ page black and white advertisement, in the national edition of *People Magazine* (circulation of 3,510,533 with approximately 7,346,000 readers).

INTERNET ADVERTISEMENT

As soon as reasonably practicable, but beginning not later than twenty-one (21) days following Preliminary Approval, and continuing for at least twenty-eight (28) days

EXHIBIT B - NOTICE PLAN

thereafter, the Claim Administrator shall cause the Online Notice, in the form attached hereto as Exhibit B3, to be published on internet sites through an appropriate programmatic network, for a total of at least 55 million combined impressions (including both desktop and mobile impression, utilizing standard IAB sizes (160x600, 300x250, 728x90, 300x600, 320x50, 300x50).

The online notice program shall include the following:

--Initial A/B testing of versions of the advertisements to determine versions that generate highest click-through rate and conversion rate (i.e., completion of a claim form or request for exclusion), using the higher performing versions for subsequent impressions.

--Tracking which webpages and times of day are generating the highest click-through rate and conversion rate, and to the extent practicable, redirecting future impressions to those higher-performing locations instead of lower-performing locations.

--Multiple targeting layers will be implemented to help ensure delivery to the most appropriate users, inclusive of search targeting, category contextual targeting, keyword contextual targeting, and site retargeting.

--Search terms will be relevant to olive oils, cooking oils, dressings, and Bertolli. Targeting users who are currently browsing or have recently browsed content in categories such as cooking, recipes, and olive oils will also help qualify impressions to ensure messaging is served to the most relevant audience. Where available, purchase data will be utilized to further qualify the audience.

--Using cookies or similar technology to identify persons who have visited the Settlement Website but not completed the Claim Form or Exclusion Form, and targeting additional impressions or other communications to such persons to encourage them to return to the Settlement Website to complete a Claim Form.

PRESS RELEASE

The Published Notice will be issued as a press release through PR News Wire's network.

SPONSORED BLOG POST

Five Thousand Dollars (\$5000) shall be allocated for a sponsored blog/newsletter post on www.topclassactions.com which shall link to the Settlement Website.

EXHIBIT B - NOTICE PLAN

The claims administrator will also cause the settlement to be listed on www.classaction.org

TOLL FREE INFORMATION LINE

A toll free telephone helpline will be established and maintained by the Claim Administrator. It will be available 24-hours a day where callers may obtain information about the class action. Those who call the toll-free information line or who write to Claim Administrator may request a printed copy of the Long Form Notice and Claim Form, which the Claim Administrator shall provide by first class mail.

NOTICES

Within ten (10) days after this settlement is filed in court, the Claim Administrator shall provide the notices to the appropriate state and federal officials as required by the Class Action Fairness Act, 28 U.S.C. § 1715, et seq.

At least fourteen (14) days prior to the hearing on Final Approval, the Claim Administrator and Defendant shall certify to the Court that they have complied with the notice requirements set forth herein.

Exhibit B1

**Attention purchasers of Bertolli Brand Olive Oil
Between May 23, 2010 and [Date of Preliminary Approval]**

This notice may affect your rights. Please read it carefully.

A court authorized this notice. This is not a solicitation from a lawyer.

- The notice concerns a case called *Koller v. Deoleo USA, Inc.*, Case No. 3:14-cv-02400-RS (United States District Court for the Northern District of California).
- This class action settlement will completely resolve the lawsuit against Deoleo USA, Inc. (“Deoleo” or “Defendant”).
- The lawsuit contends that certain “Bertolli” brand olive oil products (the “Products”) were inappropriately marketed as “Imported from Italy” and/or “Extra Virgin.” It seeks a court order to preclude that marketing and to provide payments to purchasers.
- Deoleo denies any wrongdoing. It contends that the Products have always been truthfully marketed and labeled.
- To settle the case, Deoleo will pay \$7,000,000.00 into a settlement fund. Each member of the class who submits a valid claim form will receive a cash payment from the fund for each Product purchased during the applicable time period. Your total recovery will depend on the number of Products you purchased and the number of Products purchased by other class members who submit a claim. You can make a claim for up to five products purchased by your household, unless you submit Proof of Purchase, in which case there is no limit. Any leftover funds after payment of attorneys’ fees, payments to the class representatives, class notice and administration expenses, and payment of valid claims will go to charitable organizations.
- The lawyers who brought the lawsuit will ask the Court for reimbursement of their out-of-pocket expenses of approximately \$150,000.00 and up to \$2,100,000.00 fees for investigating the facts, litigating the case, and negotiating the settlement. They will additionally ask for up to \$10,000.00 for the Plaintiffs who brought this lawsuit, as class representative awards. If the Court approves, these amounts would be paid to Plaintiffs and the lawyers out of the settlement fund.
- Your legal rights are affected whether you act or don’t act. Read this notice carefully.
- This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at _____. Alternatively, you can contact the claim administrator at _____ or class counsel at Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S
OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM
PROCESS.**

YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
SUBMIT A CLAIM FORM	The only way to receive payment under the Settlement for your purchases.	[30 days after Final Approval]
EXCLUDE YOURSELF	Get out of the lawsuit and the settlement. This is the only option that allows you to ever bring or join another lawsuit that raises the same legal claims released by this settlement. You will receive no payment.	[28 days before initially scheduled Final Approval Hearing]
OBJECT	Write to the Court about why you do not like the settlement, the amount of attorneys' fees and expenses, or the payment to the Plaintiffs.	[28 days before initially scheduled Final Approval Hearing]
GO TO A HEARING	Speak in Court about the settlement. (If you object to any aspect of the settlement, you must submit a written objection by the Objection Deadline.)	[Final Approval Hearing]
DO NOTHING	You will receive no payment and have no right to sue later for the claims released by the settlement.	

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement. If there are appeals, payment will not be sent until the appeals are resolved and the settlement becomes effective. Please be patient and continue to check the settlement website for updates.

Final Approval Fairness Hearing

On _____, at [a.m.], the Court will hold hearings to determine (1) whether the proposed settlement is fair, reasonable and adequate and should receive final approval; (2) whether to grant the applications for attorneys' fees and/or expenses brought by the Plaintiffs' Counsel; and (3) whether to grant the application for a class representative payment to the Plaintiffs who brought the lawsuit. The hearing will be held in the San Francisco Courthouse, Courtroom 3 - 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102. The hearing will be held in the courtroom of the Honorable Richard Seeborg. This hearing date may change without further notice to you. Consult the settlement website at www._____.com, for updated information on the hearing date and time.

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How Do I Know If I Am Affected By The Litigation and Settlement?

This case involves three types of Bertolli brand olive oil sold in the United States during specified time periods:

- o Bertolli Extra Virgin Olive Oil: May 23, 2010 and [date of preliminary approval].
- o Bertolli Extra Light Olive Oil: May 23, 2010 and December 31, 2015
- o Bertolli Classico Olive Oil: May 23, 2010 and December 31, 2015

The Extra Virgin products shall be referred to as the “Extra Virgin Olive Oil Products.” The Extra Light and Classico Olive Oil Categories shall be referred to as the “Other Olive Oil Products.” The word “Products” by itself means both the Extra Virgin Olive Oil Products and the Other Olive Oil Products.

For purposes of settlement only, the Court has conditionally certified the following settlement class: All persons who, between: (i) May 23, 2010 and the date of Preliminary Approval, purchased, in the United States, any of the Extra Virgin Olive Oil Products except for resale and/or (ii) between May 23, 2010 and December 31, 2015, purchased, in the United States, any of the Other Olive Oil Products.

The following are not members of the Settlement Class: (1) the Honorable Richard Seeborg; the Honorable Joseph C. Spero; the Honorable Edward Infante (ret.); (2) any member of their immediate families; (3) any government entity, (4) Defendant; (5) any entity in which

Defendant has a controlling interest; (6) any of Defendant's subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (7) counsel for the Parties; and (8) any persons who timely opt-out of the Settlement Class.

If the settlement does not become effective (for example, because it is not finally approved, or the approval is reversed on appeal), then this litigation will continue, but only on behalf of purchasers in California. California classes of the purchasers have already been certified by the Court. Those classes were defined as follows: the "(i) Imported From Italy Class: All purchasers in California of liquid Bertolli Extra Light, Classico, or Extra Virgin olive oil, between May 23, 2010 and May 30, 2014, except for those bearing labels "Organic," "Robusto," "Gentile," or "Fragrante;" and the "(ii) Extra Virgin Olive Oil Class: All purchasers in California of bottles of Bertolli Extra Virgin olive oil, between May 23, 2010 and August 15, 2015, except for those bearing labels "Organic," "Robusto," "Gentile," or "Fragrante." In this notice, these groups will be referred to as the California Litigation Classes. Members of the California Litigation Classes have the same rights as all Settlement Class members as explained in this notice, except that they will remain part of the case even if the Settlement is rejected, as specified in the section "Special Notice for Members of the California Litigation Classes."

What Is The Lawsuit About?

A lawsuit was brought against Deoleo USA Inc. The lawsuit alleges that that Deoleo marketed and sold its Bertolli brand of olive oil with the representation "Imported from Italy," although most of the oil was extracted in countries other than Italy, from olives grown in those countries. The lawsuit also alleged that, with respect to the olive oil labeled "Extra Virgin," Deoleo's procurement, bottling, and distribution practices did not adequately ensure that the oil would meet the "extra virgin" standard through the date of retail sale or the "best by" date on the bottles. The lawsuit challenged the alleged misrepresentations on behalf of himself and consumers who bought the Products.

Deoleo denies that there is any factual or legal basis for the lawsuit. Deoleo contends that

its labeling is accurate, not misleading, and in compliance with all applicable rules and regulations. Deoleo further contends that at all times it identified all countries of origin of the olive oil on the label of the bottles. It also contends that its Extra Virgin Olive Oil met or exceeded extra virgin standards when bottled and sold. Deoleo therefore denies any liability. It further denies that the Plaintiffs or any other members of the Settlement Classes have suffered injury or are entitled to monetary or other relief. Deoleo also denies that this case can be certified as a class action, except for purposes of settlement.

The Court has not determined whether Plaintiffs or Defendant are correct.

What Do Plaintiffs Seek To Recover In The Lawsuit?

Plaintiffs allege that by marketing the Products as “Imported from Italy” and/or “extra virgin,” Defendant caused people to purchase the Products who would not otherwise have done so. They also contend that the Products were sold at a higher price than they would have been sold without the representations “Imported from Italy” and/or “extra virgin.” The complaint seeks to recover the dollar volume of extra sales, and the dollar amount of the “premium” price, that is attributable to the alleged misrepresentations. Plaintiffs contend that, based on their economics expert’s regression analysis, the retail premium attributable to the “extra virgin” representation on the Extra Virgin Olive Oil Products averages 14.37% of the purchase price; the retail premium attributable to the “Imported from Italy” representation on the Extra Virgin Olive Oil Products averages an additional 3.76% of the purchase price; the retail premium attributable to the “Imported from Italy” representation on the Classico Olive Oil Products averages 17.34% of the purchase price; and the retail premium attributable to the “Imported from Italy” representation on the Extra Light Olive Oil Products averages 13.45% of the purchase price.

Defendant denies that it did anything wrong, denies that the its olive oil products were sold at a price premium or that consumers were economically harmed by purchasing the Products as claimed by Plaintiffs, and denies that anyone is entitled to any monetary or other relief.

Why Is This Case Being Settled?

This case has been pending since May 23, 2014. Since then, Plaintiffs' Counsel has investigated the manufacturing, marketing, and labeling of the Products. Plaintiffs' Counsel has reviewed hundreds of thousands of pages of documents produced by Defendant. In addition, Plaintiffs' Counsel has taken five depositions of Defendant's employees and served subpoenas on third parties. The parties also have exchanged written responses, under oath, to questions posed by the other party. Plaintiffs' Counsel has also retained experts and deposed experts retained by Deoleo. On August 24, 2017, the Court certified the California Litigation Classes.

Based on its investigation, Plaintiff's Counsel has determined that there are significant risks of continuing the litigation. In particular, there may be difficulties establishing: (1) that Defendant's marketing and advertising of the Products were false or likely to deceive or confuse reasonable persons; (2) that the "Imported from Italy" and/or "extra virgin" representations were material to reasonable consumers; (3) that any premium can be attributed to the representations, and/or (4) that damages or restitution should be awarded or, if so, that any such award should be more than nominal. In particular, it may be difficult to establish that the volume of sales, or the pricing of Products, would have differed had the marketing and labeling been different.

On November 6, 2017, the Parties participated in an all-day mediation conducted by Honorable Justice Edward Infante (retired) at JAMS in San Francisco, California. After the mediation, the parties agreed to this settlement.

After taking into account the risks and costs of further litigation, Plaintiffs and their counsel believe that the terms and conditions of the settlement are fair, reasonable, adequate, and equitable, and that the settlement is in the best interest of the Settlement Class members.

What Is The Settlement?

During the pendency and as a result of the lawsuit, Deoleo removed the phrase "Imported from Italy" from all Products imported into the United States, and it began bottling its extra virgin olive oil in dark glass bottles. Deoleo has agreed not to use the phrases "Imported from

Italy,” “Made in Italy,” “Product of Italy,” or a phrase suggesting that olive oil in a bottle originates exclusively from olives grown in Italy on the labeling of any olive oil product sold in the United States, until at least three years after the Effective Date, unless the product so labeled is composed entirely of oil from olives grown and pressed in Italy. Deoleo has also agreed, for least three years after the Effective Date, that if it uses the phrase “Extra Virgin” or term “EVOO” on the product label of any olive oil, it must do all of the following: (i) package the olive oil in a non-transparent (UV filtering) container, e.g., a green or brown glass container; (ii) include a “best by” or “use by” date not later than sixteen months after the date of bottling; (iii) include the date(s) of harvest of the olives used to manufacture the olive oil in proximity to the “best by” date; and (iv) implement the following chemical parameter testing requirements set forth under “Target Limit” at the time of bottling (which are stricter than the current limits set forth in the preceding column under “IOC Limit”):

Parameter	IOC Limit	Target Limit
Acidity (%)	≤ 0.8	≤ 0.5
Peroxide value (mEq)2/kg)	≤ 20	≤ 10
K270	≤ 0.22	≤ 0.15
K232	≤ 2.50	≤ 2.1
Delta-K	≤ 0.01	≤ 0.005

In addition, as part of the settlement, Deoleo will pay \$7,000,000.00, which will be used to pay claims of settlement class members and the costs of administering the settlement, plus amounts awarded by the Court to Plaintiffs and their attorneys. That amount paid by Deoleo will be held in an account managed by the Claim Administrator. The settlement fund will pay, in the following order: (i) all costs and payments associated with sending notice to the settlement class and administering the settlement, including payments to the claim administrator; (ii) any necessary taxes and tax expenses on the escrow fund; (iii) any award of attorneys’ fees and costs made by the Court to the lawyers for Plaintiffs; (iv) any incentive awards made by the Court to Plaintiffs for their service as class representatives; (v) the valid claims submitted by settlement class members.

If after payment of items (i) through (iv), the total amount remaining in the settlement fund is insufficient to pay the valid claims under item (v), then each such valid claim shall be proportionately reduced. If after payment of items (i) through (v), there remains money in the settlement fund, then each such valid claim under (v) shall be proportionately increased as set forth in the next section.

If after the proportional increase, there is still money in the settlement fund, it shall be paid to charities approved by the Court, who are currently proposed to be the Consumers Union, Yonkers NY and the Center for Food Safety, Washington, DC

What Can I Get In The Settlement?

If you timely file a claim that complies with the instructions on the claim form and in this notice, you will receive a refund per Product purchased. The amounts that you can receive are set forth in the following table:

Product	Purchase Date	Minimum Payment per Product Purchased (subject to pro-rata reduction if large number of claims are received)	Maximum Payment per Product Purchased (if small number of claims received)
Extra Virgin Olive Oil	May 23, 2010 through December 31, 2015	\$1.75	\$8.75
Extra Virgin Olive Oil	January 1, 2016 through [date of preliminary approval]	\$0.75	\$3.75
Classico or Extra Light Olive Oil	May 23, 2010 through December 31, 2015	\$1.50	\$7.50

Your household can make a claim for only up to five Product purchases and will receive a maximum combined recovery of \$25 for all claimed purchases, unless you submit proof of

purchase. There is no limit on the total recovery for items for which you submit proof of purchase. “Proof of purchase” means itemized retail sales receipts showing, at a minimum, the name of the product, and the date, place and amount of purchase. “Household” means one or more persons living at the same address.

Cash payments will be distributed only if the Court gives final approval to the proposed settlement and only after any appeals are resolved. If the Court does not approve the settlement, if the settlement is overturned on appeal, or if the settlement is terminated, no cash payments will be distributed.

How Do I Make A Claim?

To make a claim, you must fill out the claim form available on this settlement website, www._____.com. You can submit the claim form online, or you can print it and mail it to the claim administrator at: [address]. If submitted online, claim forms must be submitted no later than [30 days after final approval]. If mailed, claim forms must be *received by the Claim Administrator* (not just postmarked), no later than [30 days after final approval].

What Do Plaintiffs And Their Lawyers Get?

To date, Plaintiff’s lawyers have not been compensated for any of their work on this case. Plaintiff’s lawyers will present evidence to the Court that they have spent more than 2750 hours litigating this case. In addition, Plaintiff’s lawyers will present evidence that they have paid out-of-pocket expenses (including deposition transcript fees, court reporter fees, filing fees, service costs, copying costs, and travel expenses) of more than \$100,000.00. None of these expenses has yet been reimbursed. As part of the settlement, Plaintiff’s lawyers may apply to the Court to award them up to \$2,100,000.00 to pay their attorneys’ fees and up to \$150,000.00 in out-of-pocket expenses.

In addition, the named Plaintiffs in this case may apply to the Court for incentive awards of between \$1,000 and \$5,000 each, for a combined total of not more than \$11,000.00. These

payments are designed to compensate the Plaintiffs for the time, effort, and risks they undertook in pursuing this litigation and for executing a broader release of claims than other Settlement Class members.

Plaintiffs and their lawyers will file a motion with the Court on or before [42 days before final approval hearing, i.e., 14 days before objection deadline] in support of their applications for attorneys' fees, costs, and expenses and payments to the Plaintiffs. A copy of that motion will be available on the settlement website. The Court will determine what amounts of fees, costs, expenses, and class representative payments to award.

The award of attorneys' fees, costs and expenses will be paid to Plaintiffs' lawyers within seven days after the Court grants final approval to the settlement. If the order finally approving the settlement is later reversed on appeal, Plaintiffs' lawyers will be required to repay to the settlement fund the previously awarded fees, costs and expenses, plus interest.

What Claims Are Released By The Settlement?

The settlement releases all claims by members of the Settlement Classes against Deoleo and its affiliates that were or could have been asserted by Plaintiffs in this litigation, and that relate to the allegations that the Products were improperly labeled, marketed, or advertised as "Imported from Italy" and/or "extra virgin." This release includes claims that may not yet be known or suspected. This means that, in exchange for being eligible for the cash benefits as a Settlement Class member, you will not be able to sue, continue to sue, or be part of any other lawsuit against Deoleo and/or any of its affiliates that involves the settled claims. For further information, please see Section 8.2 of the Settlement Agreement.

How Do I Exclude Myself From The Settlement And Litigation?

You can exclude yourself from the settlement class if you wish to retain the right to sue Deoleo separately for the claims released by the settlement. If you exclude yourself, you cannot file a claim or object to the settlement. You need **not** exclude yourself if you merely want to

retain a right to sue for personal injury arising out of your use of the Products.

To exclude yourself, you must complete and submit the online form at the settlement website or mail a request to exclude yourself from the settlement to the claim administrator at [address]. If mailed, the exclusion request must contain your name, address, the words “I wish to be excluded from the Deoleo Olive Oil Class Action Settlement,” and your signature.

If submitted online, exclusion requests must be submitted by [28 days before initially scheduled Final Approval Hearing]. If mailed, exclusion requests must be *received by the Claim Administrator* (not postmarked) by [28 days before initially scheduled Final Approval Hearing].

How Do I Object To The Settlement?

You can ask the Court to deny approval of the settlement or of the award to the Plaintiffs and their attorneys by timely submitting an objection to the Claim Administrator. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement or reduce the amount awarded to the Plaintiffs and their attorneys. If the Court denies approval to the entire settlement, no cash payments will be sent out, and the lawsuit will continue.

You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. If you want to raise an objection to the settlement at the Final Approval hearing, you must first submit that objection in writing.

Any objection must include (1) the case name and number *Koller v. Deoleo*, Case No. 3:14-cv-02400-RS (N.D. Cal.); (2) your name, address, and telephone number; (3) documents or testimony sufficient to establish that you are a member of the Settlement Class; (4) a detailed statement of your objection(s), including the grounds for those objection(s); (5) a statement as to whether you are requesting the opportunity to appear and be heard at the final approval hearing; (6) the name(s) and address(es) of all lawyers (if any) who (a) are representing you in making the objection, (b) may be entitled to compensation in connection with your objection, and/or (c) will appear on your behalf at the final approval hearing; (7) the name(s) and address(es) of all persons

(if any) who will be called to testify in support of your objection; (8) copies of any papers, briefs, or other documents upon which your objection is based if not already in the court file; (9) a detailed list of any other objections you or your counsel have submitted to any class action in any state or federal court in the United States in the previous five years (or affirmatively stating that no such prior objection has been made); and (10) your signature as objector, in addition to the signature of your attorney, if an attorney is representing you with the objection. Failure to include this information and documentation may be grounds for overruling and rejecting your objection.

All the information listed above must be electronically filed via the Court's ECF system, or delivered to the Clerk of the Court by mail, express mail, or personal delivery such that the objection is *received* by the Clerk of the Court (not just postmarked or sent) on or before [28 days before initially scheduled Final Approval Hearing]. By filing an objection, you consent to the jurisdiction of the Court, including to any order of the Court to produce documents or provide testimony prior to the Final Fairness Hearing.

If you object to the settlement but still want to submit a claim in the event the Court approves the settlement, you must still submit a timely claim according to the instructions described above.

When Will The Court Decide If The Settlement Is Approved?

The Court will hold a hearing on [hearing date] to consider whether to approve the settlement. The hearing will be held in the in the courtroom of the Honorable Richard Seeborg, San Francisco Courthouse, Courtroom 3 - 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102. The hearing is open to the public. This hearing date may change without further notice to you. Consult the Settlement Website at www._____ or PACER, at ecf.cacd.uscourts.gov, for updated information on the hearing date and time.

Special Notice for Members of the California Litigation Classes

As noted above, the California Litigation Classes are: (1) “All purchasers in California of liquid Bertolli Extra Light, Classico, or Extra Virgin olive oil, between May 23, 2010 and May 30, 2014, except for those bearing labels “Organic,” “Robusto,” “Gentile,” or “Fragrante;” and (2) “All purchasers in California of bottles of Bertolli Extra Virgin olive oil, between May 23, 2010 and August 15, 2015, except for those bearing labels “Organic,” “Robusto,” “Gentile,” or “Fragrante.” This section provides further information about the rights of the members of the California Litigation Classes.

All sections of this notice apply to you. You have the right to make a claim under this settlement, object to the settlement or exclude yourself, just like other members of the Settlement Class.

If the settlement is not approved, or if the Effective Date does not occur for any other reason, as further explained in the Settlement Agreement, and you have not excluded yourself from the litigation, the litigation will continue on your behalf as a member of the California Litigation Classes. The Court has appointed Plaintiff Scott Koller and Plaintiffs’ Counsel to represent your interests.

If the litigation continues, and a judgment is obtained against the California Litigation Class in favor of Deoleo, that judgment will prevent you from bringing a separate lawsuit against Deoleo for the claims that were or could have been litigated in this case. If judgment is obtained against Deoleo in favor of the California Litigation Class, and you are entitled to any portion of that judgment, you will receive further notification about your rights.

How Do I Get More Information?

You can inspect many of the court documents connected with this case on the settlement website. Other papers filed in this lawsuit are available through PACER, the online service for the United States District Courts, at ecf.cacd.uscourts.gov. Alternatively you may visit the office of the Clerk of the Court for the United States District Court for the Northern District of

California, 450 Golden Gate Ave, San Francisco, CA from 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

You can contact the Claim Administrator by calling 1-8__-__-____ or writing to [address].

You can also obtain additional information by contacting Plaintiff's Counsel at Deoleo Settlement, Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111, www.gutridesafier.com.

Do not call or contact the Court concerning this notice, the settlement or the lawsuit.

Exhibit B2

**To All Purchasers of Bertolli Olive Oil (the “Products”):
A Class Action Settlement May Affect Your Rights**

WHO IS AFFECTED

You are affected by this class action settlement if, between: (i) May 23, 2010 and [date of Preliminary Approval], you purchased, in the United States, a bottle of Bertolli Extra Virgin Olive Oil and/or (ii) May 23, 2010 and December 30, 2015, you purchased, in the United States, a bottle of Bertolli Classico or Extra Light Olive Oil. A complete list of covered products is included on the website _____ (the “Products”).

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see www._____.com or contact the Claim Administrator at the telephone number or address below.

WHAT DOES THE SETTLEMENT PROVIDE

To settle the case, Defendant will create a settlement fund of \$7,000,000.00. If you make a valid claim in the settlement, you will receive a cash payment for each bottle of olive oil that you purchased. The amounts paid to for each purchase will vary depending on the Product type, date of purchase, and number of claims received. The amounts to be paid are expected to be at least \$0.75 to \$1.75 per Product, and may be as much as \$3.75 to \$8.75 per Product. You may make a claim without proof of purchase, but only for up to five products purchased by your household, for which you will receive a maximum combined recovery of \$25.00. There is no limit on the number for items you can claim for which you submit proof of purchase. Proof of purchase means itemized retail sales receipts showing, at a minimum, the name of the product, and the date, place, and amount of purchase

HOW TO GET THE REFUND

To get your refund, visit the settlement website at www._____.com and download or complete a claim form. You can also obtain a claim form by contacting the Claim Administrator.

HOW TO OPT OUT OF THE SETTLEMENT

The settlement will release all claims related to Plaintiffs’ contentions that Defendant’s marketing, advertising, and sale of Bertolli brand olive oil with the representations “Imported from Italy” and “Extra Virgin” were false or misleading. If you wish to preserve your right to bring a separate lawsuit on these claims, you must exclude yourself from the class.

OBJECTING TO THE SETTLEMENT

You can also object to the settlement. For details on how to exclude yourself or object, please visit www._____.com or contact the Claim Administrator.

COURT HEARING AND ATTORNEYS’ FEES

The Court will hold a hearing on [hearing date] to consider whether to approve the settlement. The attorneys for the class will ask the court to award them up to \$2,100,000.00 in fees and approximately \$150,000.00 in out of pocket expenses and up to \$10,000.00 in incentives to the individuals who pursued the suit, out of the settlement fund. If any balance remains in the settlement fund after payment of claims, costs of settlement notice and administration, and court-awarded fees, costs and incentives, the attorneys will ask the Court to give the remaining balance to various charitable organizations as further described at www._____.com. Note that the hearing date may change without further notice to you. Consult the settlement website at www._____.com or PACER, at ecf.cacd.uscourts.gov, for updated information on the hearing date and time.

The case is *Koller v. Deoleo USA, Inc., et al.*, United States District Court for the Northern District of California, Case No. 3:14-cv-02400-RS.

For further information, please visit the settlement website: _____. You may contact the Claim Administrator by phone at _____ or by writing to _____. You may also contact class counsel at Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111, access the Court docket on PACER available at <https://ecf.cand.uscourts.gov>, or visit the office of the Clerk of the Court for the United States District

**EXHIBIT B2 – SUMMARY PUBLISHED
NOTICE**

Court for the Northern District of California, 450 Golden Gate Ave, San Francisco, CA from 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Exhibit B3

Online Banner Ad

**Bertolli Olive Oil Purchasers:
A Class Action Settlement May Affect You
Click Here To Learn About Your Rights and
Get A Cash Refund**

Mobile Banner Ad

**Bertolli Olive Oil Purchasers: Class Action Settlement
Get Cash Refunds**

Exhibit C

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

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

Plaintiff,

v.

MED FOODS, INC., AND DEOLEO USA,
INC.

Defendants.

CASE NO. 3:14-CV-2400-RS

[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND JUDGMENT

Hon. Judge Richard Seeborg

1 Plaintiff Scott Koller and new plaintiffs Carolyn Bissonnette, Cece Castoro, Diane Gibbs,
2 Darlene Williams, Robert Glidewell, and Stephen Freiman (collectively, “Plaintiffs” or “Class
3 Representatives”) have moved the Court for preliminary approval of a proposed class action
4 settlement with Defendant Deoleo USA, Inc. (“Deoleo” or “Defendant”), the terms and
5 conditions of which are set forth in the Settlement Agreement filed with the Court on March __,
6 2018 (“Settlement Agreement”).

7 This case concerns the marketing and labeling of Bertolli Extra Virgin Olive Oil, Bertolli
8 Extra Light Olive Oil, and/or Bertolli Classico Olive Oil (the “Products”).

9 Plaintiffs contend that the Products are mislabeled as “extra virgin” and/or as “Imported
10 from Italy.” In particular, Plaintiffs allege the representation “Imported from Italy” is misleading
11 because most of the oil was extracted in countries other than Italy from olives grown in those
12 countries. Plaintiffs also allege that the representation “Extra Virgin,” is also misleading because
13 Defendant’s procurement, bottling, and distribution practices did not adequately ensure that the
14 oil would meet the “extra virgin” standard through the date of retail sale or the “best by” date on
15 the bottles. Plaintiffs allege that the Extra Virgin Product has been mislabeled as “Extra Virgin”
16 and/or as “Imported from Italy” since at least four years prior to the filing of the complaint (i.e.,
17 since March 23, 2010).

18 Plaintiff Koller alleged claims for violations of the California Consumer Legal Remedies
19 Act (“CLRA”); false advertising under California Business and Professions Code sections 17500,
20 *et seq.*; and unfair business practices under California Business and Professions Code sections
21 17200, *et seq.*; and misrepresentation. Koller sought to pursue these claims on behalf of himself
22 and all purchasers of the Products in California. The other plaintiffs seek, in a second amended
23 complaint, to prosecute similar claims under the laws of various states, on behalf of purchasers
24 nationwide.

25 Plaintiffs contend that, by marketing the olive oil as “extra virgin” and/or as “imported
26 from Italy,” Defendant caused people to purchase the Products who would not otherwise have
27 done so. They also contend that the Products were sold at a higher price than they would have
28 been sold without the misstatements. Plaintiffs seek to recover, on behalf of a class of all

1 purchasers other than re-sellers, the dollar volume of extra sales, and the dollar amount of the
2 “premium” price that is attributable to the alleged misrepresentations. Plaintiffs assert that
3 approximately 150 million Products have been sold nationwide during the relevant periods at an
4 average retail price of \$9. Plaintiffs believe that, if they was successful at trial on all of their
5 claims, they could win damages or restitution of up to approximately 14 to 18 percent of the
6 purchase price (or on average, approximately \$1.26 to \$1.62 per bottle).

7 Defendant denies that there is any factual or legal basis for Plaintiffs’ allegations. It
8 contends that the labeling of the Products was truthful and non-misleading, and that purchasers
9 did not pay a “premium” for the Products as the result of any misrepresentations. Defendant
10 therefore denies any liability. It also denies that Plaintiffs or any other members of the settlement
11 class have suffered injury or are entitled to monetary or other relief. Defendant finally denies that
12 this case should have been certified as a class action, except for purposes of settlement.

13 The history of this litigation is summarized in Part I of the Settlement Agreement. In brief,
14 this case was filed on May 23, 2014. Substantial discovery was taken by both parties. Plaintiffs’
15 Counsel reviewed hundreds of thousands of pages of documents produced by Defendant and
16 deposed five of Defendants’ employees. They also requested and received written discovery
17 responses from Defendant and several third parties. Plaintiff Koller moved for and was granted
18 certification of a California Class. The settlement was negotiated with the assistance of the
19 Honorable Edward A. Infante (Ret.).

20 The terms of the settlement are summarized in the proposed Long Form Notice to
21 Settlement Class Members, which is attached as Exhibit B1 to the Settlement Agreement. In brief,
22 Deoleo has changed the packaging and labeling of the Products. These changes will be
23 incorporated in a court injunction. In addition, all Settlement Class Members may submit a claim
24 for a cash refund per Bertolli Extra Virgin Olive Oil purchased between May 23, 2010 and the
25 date of preliminary approval, inclusive; and Bertolli Classico or Extra Light Olive Oil bottle
26 purchased between May 23, 2010 and December 30, 2105, inclusive. Claims will be paid even
27 without proof of purchase, but persons who do not present proof of purchase can recover only for
28 up to five Product purchases, with a maximum combined recovery of \$25 per household. There is

1 no limit on the number of claims for which proof of purchase is submitted.

2 As part of the settlement, Plaintiff's attorneys may apply to this Court to award them up to
3 \$2,100,000.00 from the Settlement Fund to pay their attorneys' fees, plus their actual expenses of
4 approximately \$150,000.00, plus up to \$11,000.00 from the Settlement Fund as payments to the
5 Class Representative. Such amounts must be approved by the Court, and the Court will defer any
6 ruling on the appropriateness of such awards until the final approval hearing.

7 Notice is to be provided by on a Settlement Website. In addition, a black and white
8 version of the Print Publication Notice will be published once per week for four successive weeks
9 in the San Francisco Chronicle. Additional notice will be published in People Magazine. A press
10 release will be issued on a nationwide service. Additional online notice shall be provided on
11 websites accessible to desktop and mobile users, so that overall notice of the Settlement
12 (including the Online Notice and Print Publication Notice) is reasonably calculated to apprise the
13 Settlement Class Members of the settlement. An appropriate online platform has been chosen
14 based on reliable demographic information about those media and about likely Settlement Class
15 Members, and advertisements will be retargeted to those websites that generate the highest
16 response, as well as to persons who visit the Settlement Website but do not complete a Claim
17 Form or Exclusion Form. There will be a toll-free number for people to obtain more information
18 and request a printed version of the claim form and notice. No later than forty-two (42) days
19 prior to the hearing on Final Approval, the Claim Administrator shall submit a declaration to the
20 Court attesting to the number of impressions delivered and the number of click-throughs to the
21 Settlement Website.

22 All of the notices will link or point to the Settlement Website, which contains a detailed
23 class notice, including the procedures for class members to exclude themselves from the
24 settlement or object, as well as a copy of the Settlement Agreement and motion papers filed in
25 connection with the settlement.

26 The parties have proposed Angeion Group as Claim Administrator, a well-known and
27 experienced class action administrator, to send the notices and receive and process claim forms.

28 Having considered all matters submitted to it at the hearing on the motion and otherwise,

1 including the complete record of this action, and good cause appearing therefore, the Court grants
2 preliminary approval and hereby finds and concludes as follows:

3 1. The capitalized terms used in this Order shall have the same meaning as defined
4 in the Settlement Agreement except as otherwise expressly provided.

5 2. The Court preliminarily approves the Settlement Agreement as within the range
6 of possible final approval, and as meriting submission to the Settlement Class for its
7 consideration. The parties' Agreement was reached as a result of arm's length negotiations
8 between the parties and their counsel and involved a well-respected and experienced mediator.
9 Additionally, before entering into the Agreement, Plaintiff's Counsel reviewed hundreds of
10 thousands of pages of documents produced by Defendant, took depositions of Defendant's
11 employees, requested and received written discovery responses from Defendant and several third
12 parties, and conducted expert discovery. Thus, Plaintiff and her counsel had sufficient
13 information to evaluate the strengths and weaknesses of the case and to conduct informed
14 settlement discussions.

15 3. For purposes of the settlement only, the Court provisionally certifies the
16 Settlement Class, which consists of all persons who between May 23, 2010 and the date of
17 Preliminary Approval, purchased, in the United States, any of the Extra Virgin Olive Oil Products
18 and/or who between May 23, 2010 and December 30, 2015, purchased, in the United States, any
19 of the Other Olive Oil Products. "Extra Virgin Olive Oil Product" means bottles of Bertolli Extra
20 Virgin olive oil, except for those bearing labels "Organic," "Robusto," "Gentile," or "Fragrante."
21 "Other Olive Oil Product" means the liquid Bertolli Extra Light or Classico olive oil products.
22 "Excluded Persons" from the Settlement Classes are: (1) the Honorable Richard Seeborg; the
23 Honorable Joseph C. Spero; the Honorable Edward Infante (ret.); (2) any member of their
24 immediate families; (3) any government entity, (4) Defendant; (5) any entity in which Defendant
25 has a controlling interest; (6) any of Defendant's subsidiaries, parents, affiliates, and officers,
26 directors, employees, legal representatives, heirs, successors, or assigns; (7) counsel for the
27 Parties; and (8) any persons who timely opt-out of the Settlement Class.

28 4. The Court preliminarily finds, solely for purposes of considering this settlement,

1 that the requirements of Rule 23 of the Federal Rules of Civil Procedure are conditionally
2 satisfied, including requirements that the Settlement Class Members are too numerous to be
3 joined in a single action; that common issues of law and fact exist and predominate; that the
4 claims of the Class Representatives are typical of the claims of the Settlement Class Members;
5 that the Class Representatives and Class Counsel can adequately protect the interests of the
6 Settlement Class Members; and that a settlement class is superior to alternative means of
7 resolving the claims and disputes at issue in this Litigation.

8 5. The Court conditionally designates the law firm of Gutride Safier LLP and
9 Tycko & Zavareei LLP as Settlement Class Counsel and Scott Koller, Carolyn Bissonnette, Cece
10 Castoro, Diane Gibbs, Darlene Williams, Robert Glidewell, and Stephen Freiman as Class
11 Representatives for purposes of this settlement. The Court preliminarily finds that the Class
12 Representatives and Class Counsel fairly and adequately represent and protect the interests of the
13 absent Settlement Class Members. The Court designates, and approves, Angeion Group to serve
14 as Claim Administrator.

15 6. Since the Settlement Agreement is within the range of reasonableness and
16 possible final approval, notice shall be provided to the Settlement Class pursuant to the
17 Settlement Agreement as set forth in the Notice Plan. The Claim Administrator shall provide
18 notice in compliance with 28 U.S.C. § 1715. As set forth in the Notice Plan, the Claim
19 Administrator shall do the following:

20 a. The Claim Administrator shall establish the Settlement Website,
21 which shall contain the Long Form Notice in both downloadable PDF format and HTML format
22 with a clickable table of contents; answers to frequently asked questions; a Contact Information
23 page that includes the address for the Claim Administrator and addresses and telephone numbers
24 for Plaintiff's Counsel and Defendant's Counsel; the Settlement Agreement; the signed order of
25 Preliminary Approval and publicly filed motion papers and declarations in support thereof; a
26 downloadable and online version of the Claim Form; a downloadable and online version of the
27 form by which Settlement Class Members may exclude themselves from the Settlement Class;
28 and (when they become available) the publicly filed motion for final approval and Plaintiff's

1 application(s) for Attorneys' Fees, Costs and an Incentive Award and supporting declarations.

2 b. The Claim Administrator shall initiate publication of the Published
3 Notice, to be published once per week for four successive weeks in the San Francisco Chronicle.
4 The Claim Administrator shall also cause the Published Notice, to be published in the
5 aforementioned magazine as soon as practicable after the Notice Date.

6 c. The Claim Administrator shall initiate the process of providing the
7 Online Notice on websites as set forth in the Notice Plan, so that overall notice of the Settlement
8 (including the Online Notice and the Summary Publication Notice) is reasonably calculated to
9 apprise the Settlement Class Members of the Settlement.

10 d. The Claim Administrator shall issue the Published Notice as a press
11 release, as further described in the Notice Plan.

12 e. The Claim Administrator shall set up the toll-free number as further
13 described in the Notice Plan.

14 7. A Final Approval Hearing shall be held before this Court at [] on [], 2018, at
15 the United States District Court for the Northern District of California, Courtroom 3 - 17th Floor,
16 450 Golden Gate Avenue, San Francisco, CA 94102, to address: (a) whether the proposed
17 settlement should be finally approved as fair, reasonable and adequate, and whether the Final
18 Approval Order should be entered, and (b) whether Class Counsel's application for attorneys'
19 fees, costs, and a payment to the Class Representative should be approved.

20 8. The Court approves, as to form and content, the Claim Form and the Notices,
21 substantially similar to the forms attached as Exhibits A and B1 to B3 to the Settlement
22 Agreement. The claim form and all the notices are written in plain English and are easy to
23 comprehend. The Parties shall have discretion to jointly make non-material minor revisions to the
24 claim form and Notices before emailing and publishing. Responsibility regarding settlement
25 administration, including, but not limited to, notice and related procedures, shall be performed by
26 the Claim Administrator, subject to the oversight of the Parties and this Court as described in the
27 Settlement Agreement.

28 9. The Court finds that the Parties' plan for providing notice to the Settlement

1 Class is reasonably calculated to provide notice to the Settlement Class of the pendency of the
2 Litigation, certification of the Settlement Class, the terms of the Settlement Agreement, and the
3 Final Approval hearing, and complies fully with the requirements of the California and United
4 States Constitutions, Rule 23 of the Federal Rules of Civil Procedure, and any other applicable
5 law. The Parties and the Claim Administrator shall comply with the notice plan as set forth in the
6 Settlement Agreement.

7 10. Any member of the Settlement Class who desires to be excluded from the
8 Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must
9 submit a request for exclusion to the Claim Administrator, pursuant to the instructions set forth in
10 the Long Form Notice. The request must be submitted online by no later than [28 days prior to
11 Final Approval] or if mailed, it must be received by the Claim Administrator (not postmarked) by
12 no later than [28 days prior to Final Approval]. No one shall be permitted to exercise any
13 exclusion rights on behalf of any other Person, whether as an agent or representative of another or
14 otherwise, except upon proof of a legal power of attorney, conservatorship, trusteeship, or other
15 legal authorization, and no one may exclude other Persons within the Settlement Class as a group,
16 class, or in the aggregate.

17 11. No later than [14 days prior to Final Approval], the Claim Administrator shall
18 prepare a list of the names of the Persons who, pursuant to the Class Notice described herein,
19 have excluded themselves from the Settlement Class in a valid and timely manner, and Plaintiff's
20 Counsel shall file that list with the Court. The Court retains jurisdiction to resolve any disputed
21 exclusion requests.

22 12. Any member of the Settlement Class who elects to be excluded shall not receive
23 any benefits of the settlement, shall not be bound by the terms of the Settlement Agreement, and
24 shall have no standing to object to the settlement or intervene in the Litigation. If the settlement is
25 granted final approval, all Settlement Class Members who do not timely submit a valid request
26 for exclusion will be bound by the order of final approval and final judgment, and enjoined from
27 bringing or prosecuting any action relating to the released claims.

28 13. If the Settlement is not approved, or if the Effective Date does not occur for any

1 other reason, then the Litigation will continue on behalf of the California Litigation Class.
2 Members of the California Litigation Class who do not wish to be bound by a judgment in favor
3 of or against the California Litigation Class must exclude themselves from the Litigation. The
4 process and time limits for members of the California Litigation Class to exclude themselves
5 from the Litigation are identical to those set forth with respect to the members of the Settlement
6 Class in the Long Form Notice and in paragraphs 10-12 of this Order, except as follows. If the
7 Settlement is not approved or the Effective Date does not occur, members of the California
8 Litigation Class who submitted timely objections to the Settlement or timely claims under the
9 Settlement (whether or not such claims are deemed Valid Claims) shall have an additional forty-
10 five (45) days from notice of termination of the settlement to exclude themselves from the
11 California Litigation Class, and members of the California Litigation Class who submitted timely
12 requests to exclude themselves from the Settlement shall have an additional forty-five (45) days
13 from notice of termination of the settlement to revoke their requests for exclusion and to rejoin
14 the California Litigation Class. To effectuate this right, the all members of the California
15 Litigation Class who submitted timely objections to the Settlement or timely claims under the
16 Settlement (whether or not such claims are deemed Valid Claims) and who provided an email
17 address in connection with their objections or claims shall be provided a further notice by email,
18 informing such persons of an additional period to exclude themselves from the Litigation. In
19 addition, all members of the California Litigation Class who submitted timely request to exclude
20 themselves from the Settlement and Litigation and who provided an email address in connection
21 with their request for exclusion shall be provided a further notice by email, informing such
22 persons of an additional period to revoke their request for exclusion and to rejoin the California
23 Litigation Class for purposes of the continued Litigation. Within ten (10) days of the Termination
24 Date, the Parties shall meet and confer in good faith regarding the content of such notice and then
25 seek to obtain Court approval for the notice. All requests following the Termination Date for
26 exclusion from the Litigation or to revoke a prior request for exclusion must be *received* by the
27 Claim Administrator (not just postmarked) within forty-five days after notice of termination of
28 the settlement, or they shall not be valid. Members of the California Litigation Class who did not

1 file an objection by the Objection Deadline or a claim by the Claim Filing Deadline shall have no
2 further right after the Exclusion Date to exclude themselves from the Litigation, even if the
3 Settlement is not approved or the Effective Date does not occur.

4 14. Any Settlement Class Member who does not submit a valid and timely request
5 for exclusion may submit an objection to the Settlement Agreement (“Objection”). The written
6 objection must satisfy the requirements in the Long Form Notice and be filed with the Clerk of
7 the Court (not postmarked) no later than [28 days before Final Approval Hearing], or it will be
8 rejected.

9 15. Any Settlement Class Member shall have the right to appear and be heard at the
10 Final Approval hearing, either personally or through an attorney retained at the Settlement Class
11 Member’s own expense. However, if the Settlement Class Member wishes to object to the
12 Settlement at the Final Approval Hearing (either personally or through counsel), the Settlement
13 Class Member must submit a written objection as set forth in the prior paragraph of this Order.

14 16. Immediately upon receipt of any objection, the Claim Administrator shall
15 forward to the objection and all supporting documentation to counsel for the Parties. No later than
16 [14 days prior to Final Approval], Plaintiff’s Counsel shall file all such objections and supporting
17 documentation with the Court.

18 17. Plaintiff shall file his motions for Final Approval and for any award of
19 attorneys’ fees, costs and a class representative payment no later than [42 days prior to Final
20 Approval], and the reply in support of that motion and responses to any objections and requests to
21 intervene no later than [14 days prior to Final Approval]. Those motions and all supporting
22 documentation shall simultaneously be posted to the Settlement Website.

23 18. No later than [14 days prior to Final Approval], the Claim Administrator shall
24 provide a declaration to the Court regarding the number and dollar amount of claims received to
25 date.

26 19. In the event that the proposed settlement is not finally approved by the Court, or
27 in the event that the Settlement Agreement becomes null and void or terminates pursuant to its
28 terms, this Preliminary Approval Order and all orders entered in connection herewith (including

Exhibit D

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

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

Plaintiff,

v.

MED FOODS, INC., AND DEOLEO USA,
INC.

Defendants.

CASE NO. 3:14-CV-2400-RS

[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND JUDGMENT

Hon. Judge Richard Seeborg

1 In this case, Plaintiffs alleged that Defendant had marketed and sold its Bertolli brand of
2 olive oil with the representation “Imported from Italy,” although most of the oil was extracted in
3 countries other than Italy, from olives grown in those countries. Plaintiffs also alleged that
4 Defendant had marketed and sold a subset of the Bertolli brand olive oil with the representation
5 “Extra Virgin,” although Defendant’s procurement, bottling, and distribution practices did not
6 adequately ensure that the oil would meet the “extra virgin” standard through the date of retail
7 sale or the “best by” date on the bottles. Plaintiffs alleged that Defendant’s labeling and
8 marketing of the oil violated the Tariff Act of 1930, as amended, 19 U.S.C. 1304, and its
9 implementing regulations, 19 C.F.R. section 134.46; the Food Drug and Cosmetic Act, 21 U.S.C.
10 sections 301 *et seq.*, and its implementing regulations, 21 C.F.R. sections 101.18 *et seq.*; the U.S.
11 Department of Agriculture regulations regarding Olive Oil and Olive-Pomace Oil, 75 Fed. Red.
12 22363 (Apr. 28, 2010). Plaintiffs, who are residents of Arkansas, California, Florida, New Jersey,
13 New York, and North Carolina, alleged that these federal violations also violated laws of the
14 various states including health and safety codes and consumer laws, and constituted false
15 advertising, unfair business practices, breach of contract, breach of the covenant of good faith and
16 fair dealing, and fraud, deceit and/or misrepresentation. The allegations in this paragraph are
17 referred to as the “Allegations.”

18 Defendant denies that there is any factual or legal basis for Plaintiffs’ allegations. It
19 contends that the labeling of the Products was truthful and non-misleading, and that purchasers
20 did not pay a “premium” for the Products as the result of any misrepresentations. Defendant
21 therefore denies any liability. It also denies that Plaintiffs or any other members of the settlement
22 class have suffered injury or are entitled to monetary or other relief. Defendant finally denies that
23 this case should have been certified as a nationwide class action, except for purposes of
24 settlement.

25 On _____, this Court granted preliminary approval of a proposed class action
26 settlement between the parties. In the Preliminary Approval Order, the Court provisionally
27 certified a Settlement Class of all persons, other than Excluded Persons, who, (i) between May
28 23, 2010 and [date of Preliminary Approval], purchased, in the United States, any of the Extra

1 Virgin Olive Oil Products and/or (ii) between May 23, 2010 and December 31, 2015, purchased,
2 in the United States, any of the Other Olive Oil Products. The Court also approved the procedures
3 for giving notice and the forms of notice. Additionally, in the Preliminary Approval Order, the
4 Court concluded that the parties' proposed settlement, as set forth in the Stipulation of Settlement,
5 was within range of possible final approval.

6 Now, pending before the Court is the parties' Motion for Final Approval of Class Action
7 Settlement, and Plaintiffs' Motion for an Award of Attorneys' Fees, Costs, and Incentive Awards.
8 In accordance with the Preliminary Approval Order and the Settlement Agreement, on
9 _____, the Court held a duly noticed Fairness Hearing for purposes of: (a) determining
10 the fairness, adequacy, and reasonableness of the settlement; and (b) ruling upon an application
11 by Class Counsel for a Fee and Expense Award and Plaintiffs' Incentive Awards.

12 The parties and the claim administrator have submitted evidence, which the Court accepts,
13 showing the following. Approximately _____ advertisement impressions were displayed
14 on a variety of websites (both mobile and desktop) targeted at likely members of the Settlement
15 Class. These ads were purchased through []. Notice also was published once a week for four
16 successive weeks in the San Francisco Chronicle and was published one times in People
17 Magazine. These print publications have combined circulation of _____ and combined readership
18 of _____. A press release was issued through the PR News Wire's network which is distributed
19 to more than _____ media outlets, and articles about the settlement appeared in at least _____
20 publications. All of the online notices linked to, and the printed notices referred to, the
21 Settlement Website, which contains a detailed class notice, including the procedures for class
22 members to exclude themselves or object to the settlement, as well as a copy of the Settlement
23 Agreement and motion papers filed in connection with the settlement.

24 A total of _____ persons filed timely requests to opt out of the Settlement Class.

25 In addition, _____ persons filed objections to the settlement. [Discuss substance of
26 objections.]

27 Having considered all matters submitted to it at the hearing on the motion and otherwise,
28 including the complete record of this action, and good cause appearing therefore, the Court

1 hereby grants the Motion for Final Approval and Plaintiff's Motion for an Award of Attorney's
2 Fees, Costs, and Incentive Awards, and finds and concludes as follows:

3 1. The capitalized terms used in this Final Approval Order and Judgment shall have the
4 same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

5 2. The Court has jurisdiction over this case and over all claims raised therein and all
6 Parties thereto.

7 3. The Court finds that the prerequisites of Rule 23 of the Federal Rules of Civil
8 Procedure have been satisfied for certification of the Settlement Class for settlement purposes
9 because: Settlement Class Members are ascertainable and are so numerous that joinder of all
10 members is impracticable; there are questions of law and fact common to the Settlement Class;
11 the claims and defenses of the Class Representatives are typical of the claims and defenses of the
12 Settlement Class they represent; the Class Representatives have fairly and adequately protected
13 the interests of the Settlement Class with regard to the claims of the Settlement Class they
14 represent; common questions of law and fact predominate over questions affecting only
15 individual Settlement Class Members, rendering the Settlement Class sufficiently cohesive to
16 warrant a class settlement; and the certification of the Settlement Class is superior to individual
17 litigation and/or settlement as a method for the fair and efficient resolution of this matter. The
18 Court additionally finds, for the reasons set forth in the parties' motions for preliminary and final
19 approval, that despite any differences among the laws of the various states, common issues of law
20 and fact predominate, making certification of a nationwide class appropriate. In particular, the
21 identical challenged marketing and labelling was provided to all class members; the various states
22 require similar elements of proof with respect to the asserted claims in the Second Amended
23 Complaint and common issues under those laws predominate; to the extent there are differences
24 among the states, plaintiffs have demonstrated that similarly situated states can be combined into
25 subclasses and there exist named plaintiffs in the Second Amended Complaint who can represent
26 each such subclass.

27 4. For purposes of the settlement and this Final Approval Order and Judgment, the Court
28 hereby finally certifies the following Settlement Class: All persons who (i) between May 23, 2010

1 and [date of Preliminary Approval], purchased, in the United States, any of the Extra Virgin Olive
2 Oil Products and/or (ii) between May 23, 2010 and December 31, 2015, purchased, in the United
3 States, any of the Other Olive Oil Products. Purchases for purposes of resale are excluded. “Extra
4 Virgin Olive Oil Product” means bottles of Bertolli Extra Virgin olive oil, except for those
5 bearing labels “Organic,” “Robusto,” “Gentile,” or “Fragrante.” “Other Olive Oil Product” means
6 the liquid Bertolli Extra Light or Classico olive oil products.

7 5. Excluded from the class are (1) the Honorable Richard Seeborg; the Honorable Joseph
8 C. Spero; the Honorable Edward Infante (ret.); (2) any member of their immediate families;
9 (3) any government entity, (4) Defendant; (5) any entity in which Defendant has a controlling
10 interest; (6) any of Defendant’s subsidiaries, parents, affiliates, and officers, directors, employees,
11 legal representatives, heirs, successors, or assigns; and (7) counsel for the Parties. The following
12 persons timely submitted requests to exclude themselves and shall be excluded from the
13 settlement class: [].

14 6. For the purpose of this settlement, the Court hereby finally certifies Plaintiffs Scott
15 Koller, Carolyn Bissonnette, Cece Castoro, Diane Gibbs, Darlene Williams, Robert Glidewell,
16 and Stephen Freiman as Class Representatives, and Gutride Safier LLP and Tycko & Zavareei
17 LLP as Settlement Class Counsel.

18 7. The Parties complied in all material respects with the Notice Plan set forth in the
19 Settlement Agreement. The Court finds that the Notice Plan set forth in the Settlement
20 Agreement, and effectuated pursuant to the Preliminary Approval Order, constituted the best
21 notice practicable under the circumstances and constituted due and sufficient notice to the
22 Settlement Class of the pendency of the Litigation; the existence and terms of the Settlement
23 Agreement; their rights to make claims, exclude themselves, or object; and the matters to be
24 decided at the Final Approval Hearing. Further, the Notice Plan satisfied the requirements of the
25 United States and California Constitutions, Rule 23 of the Federal Rules of Civil Procedure, and
26 any other applicable law.

27 8. The Court has determined that full opportunity has been given to the members of the
28 Settlement Class to exclude themselves from the settlement, object to the terms of the settlement

1 or to Class Counsel's request for attorneys' fees and expenses and a Class Representative
2 incentive payment, and otherwise participate in the Final Approval Hearing held on [],
3 2018. The Court has considered all submissions and arguments made at the final approval hearing
4 provided by Class Members objecting to the settlement as well as the Parties' responses to those
5 objections, and has determined, for all the reasons set forth in the Parties' responses, that none of
6 the objections have any merit or warrant disapproval of the Settlement Agreement. In addition, [
7]. All such objections to the settlement are overruled.

8 9. The Court finds that the settlement is in all respects fair, reasonable, and adequate.
9 The Court therefore finally approves the settlement for all the reasons set forth in the Motion for
10 Final Approval including, but not limited to, the fact that the Settlement Agreement was the
11 product of informed, arms-length negotiations between competent, able counsel and conducted
12 with the oversight and involvement of several independent, well respected, and experienced
13 mediators; the record was sufficiently developed and complete through meaningful discovery and
14 motion proceedings to have enabled counsel for the Parties to have adequately evaluated and
15 considered the strengths and weaknesses of their respective positions; the Litigation involved
16 disputed claims, and this dispute underscores the uncertainty and risks of the outcome in this
17 matter; the settlement provides meaningful remedial and monetary benefits for the disputed
18 claims; and the Parties were represented by highly qualified counsel who, throughout this case,
19 vigorously and adequately represented their respective parties' interests.

20 10. The Settlement is in the best interests of the Settlement Class in light of the degree of
21 recovery obtained in relation to the risks faced by the Settlement Class in litigating the class
22 claims. The relief provided to the Settlement Class Members under the Settlement Agreement is
23 appropriate as to the individual members of the Settlement Class and to the Settlement Class as a
24 whole. All requirements of statute, rule, and Constitution necessary to effectuate the settlement
25 have been met and satisfied. The Parties shall continue to effectuate the Settlement Agreement in
26 accordance with its terms.

27 11. For a period beginning on the Effective Date and continuing for three years thereafter,
28 Deoleo USA, Inc. is enjoined as follows:

- 1 a. Not to use the phrases “Imported from Italy,” “Made in Italy,” “Product of
2 Italy,” or a phrase suggesting that olive oil in a bottle originates exclusively
3 from olives grown in Italy on the labeling of any olive oil product sold in the
4 United States, unless the product so labeled is composed entirely of oil from
5 olives grown and pressed in Italy.
- 6 b. If Defendant uses the phrase “Extra Virgin” or term “EVOO” on the
7 product label of any olive oil, it must do all of the following: (i) package the
8 olive oil in a non-transparent (UV filtering) container, e.g., a green or brown
9 glass container; (ii) include a “best by” or “use by” date not later than sixteen
10 months after the date of bottling; (iii) include the date(s) of harvest of the
11 olives used to manufacture the olive oil in proximity to the “best by” date;
12 and (iv) implement the following chemical parameter testing requirements
13 set forth under “Target Limit” at the time of bottling (which are stricter than
14 the current limits set forth in the preceding column under “IOC Limit”):

Parameter	IOC Limit	Target Limit
Acidity (%)	≤ 0.8	≤ 0.5
Peroxide value (mEq)2/kg)	≤ 20	≤ 10
K270	≤ 0.22	≤ 0.15
K232	≤ 2.50	≤ 2.1
Delta-K	≤ 0.01	≤ 0.005

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20 12. By operation of this Final Approval Order and Judgment, Plaintiffs on the one hand,
21 and the Released Parties on the other hand, shall have unconditionally, completely, and
22 irrevocably released and forever discharged each other from and shall be forever barred from
23 instituting, maintaining, or prosecuting (1) any and all claims, liens, demands, actions, causes of
24 action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal
25 or equitable or otherwise, known or unknown, that actually were, or could have been, asserted in
26 the Litigation, whether based upon any violation of any state or federal statute or common law or
27 regulation or otherwise, or arise directly or indirectly out of, or in any way relate to, the
28 allegations, claims, or contentions that Plaintiffs, on the one hand, and Defendant, on the other

1 hand, have had in the past, or now have, related in any manner to the Defendant's products,
2 services or business affairs; and (2) any and all other claims, liens, demands, actions, causes of
3 action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal
4 or equitable or otherwise, known or unknown, that Plaintiffs, on the one hand, and Defendant, on
5 the other hand, have had in the past or now have, related in any manner to any and all Released
6 Parties' products, services or business affairs, or otherwise.

7 13. By operation of this Final Approval Order and Judgment, Settlement Class Members
8 shall have unconditionally, completely, and irrevocably released and discharged the Released
9 Parties from the Released Claims, including any and all claims, liens, demands, actions, causes of
10 action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal
11 or equitable or otherwise, known or unknown, whether arising under any international, federal,
12 state or local statute, ordinance, common law, regulation, principle of equity or otherwise, that
13 that were, or could have been, asserted in the Litigation and that arise out of or relate to the
14 allegations or claims that the Products were marketed or labeled as "Imported From Italy" and/or
15 "Extra Virgin," except that there shall be no release of (1) claims for personal injury allegedly
16 arising out of use of the Products or (2) any defense, cross-claim or counter-claim in any action
17 initiated by any of the Released Parties against any Settlement Class Member.

18 14. Plaintiffs and Defendant shall, by operation of this Final Approval Order and
19 Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code
20 § 1542, and any similar law of any state or territory of the United States or principle of common
21 law. In addition, Settlement Class Members shall, by operation of this Final Approval Order and
22 Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code
23 § 1542, and any similar law of any state or territory of the United States or principle of common
24 law, but only with respect to the matters released as set forth in paragraph 13 of this Order.
25 Section 1542 provides:

26 A general release does not extend to claims which the creditor does not know or suspect to
27 exist in his or her favor at the time of executing the release, which if known by him or her
28 must have materially affected his or her settlement with the debtor.

1 15. Nothing herein shall bar any action or claim to enforce the terms of the Settlement
2 Agreement.

3 16. No action taken by the Parties, either previously or in connection with the
4 negotiations or proceedings connected with the Settlement Agreement, shall be deemed or
5 construed to be an admission of the truth or falsity of any claims or defenses heretofore made or
6 an acknowledgment or admission by any Party of any fault, liability, or wrongdoing of any kind
7 whatsoever to any other Party. Neither the Settlement Agreement nor any act performed or
8 document executed pursuant to or in furtherance of the settlement: (a) is or may be deemed to be
9 or may be used as an admission of, or evidence of, the validity of any claim made by the
10 Settlement Class Members or Class Counsel, or of any wrongdoing or liability of the persons or
11 entities released under this Final Approval Order and Judgment and the Settlement Agreement, or
12 (b) is or may be deemed to be, or may be used as an admission of, or evidence of, any fault or
13 omission of any of the persons or entities released under this Final Approval Order and Judgment
14 and the Settlement Agreement, in any proceeding in any court, administrative agency, or other
15 tribunal. Defendant's agreement not to oppose the entry of this Final Approval Order and
16 Judgment shall not be construed as an admission or concession by Defendant that class
17 certification was appropriate in the Litigation or would be appropriate in any other action.

18 17. The Claim Administrator has submitted an invoice for its expenses incurred to date
19 and expected to be incurred through the completion of its work, in the amount of \$_____.
20 Included in this invoice is the amount for all taxes due from the Settlement Fund. The Court finds
21 that such amounts are reasonable and authorizes payment of the invoices, in full, from the
22 Settlement Fund.

23 18. For the reasons stated in the separate Order on Class Counsel's Application for an
24 award of attorneys' fees and costs and a class representative payment, the following amounts
25 shall be paid by from the Settlement Fund:

26 a. Fees and expenses to Class Counsel: \$_____

27 b. Class representative payments

28 i. to Plaintiff Scott Koller: \$_____

- 1 ii. to Plaintiff Carolyn Bissonnette: \$_____
- 2 iii. to Plaintiff Cece Castoro: \$_____
- 3 iv. to Plaintiff Diane Gibbs: \$_____
- 4 v. to Plaintiff Darlene Williams: \$_____
- 5 vi. to Plaintiff Robert Glidewell: \$_____
- 6 vii. to Plaintiff Stephen Freiman: \$_____

7 Such amounts shall be paid according to the terms of the Settlement Agreement. Except as
8 provided in this Order, Plaintiffs shall take nothing against Defendant by their Complaint.

9 19. If after payment of the amounts set forth in paragraphs 17 and 18, as well as the
10 payment of Valid Claims (including pro-rata increase of such payment) as set forth in Part III of
11 the Settlement Agreement, money remains in the Settlement Fund, that remainder shall be paid,
12 pursuant to the *cy pres* doctrine, in equal shares to Consumers Union, Yonkers, NY; and Center
13 for Food Safety, Washington, DC. The *cy pres* doctrine is appropriate for a case like this one,
14 where class members who did not make claims cannot be easily located or identified, in order to
15 “put the unclaimed fund to its next best compensation use, *e.g.*, for the aggregate, indirect,
16 prospective benefit of the class.” *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 2011)
17 (citing *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir.2007)). A *cy pres*
18 remedy must “bear[] a substantial nexus to the interests of class members.” *Lane v. Facebook*,
19 696 F.3d 811, 821 (9th Cir. 2012) *cert. denied*, 134 S. Ct. 8 (U.S. 2013). In evaluating a *cy pres*
20 component of a class action settlement, courts look to factors set forth in *Six (6) Mexican Workers*
21 *v. Arizona Citrus Growers*, 904 F.2d 1301, 1305 (9th Cir. 1990). Specifically, the *cy pres* remedy
22 “must account for the nature of the plaintiffs’ lawsuit, the objectives of the underlying statutes,
23 and the interests of the silent class members....” 663 F.3d at 1036 (citing *Six Mexican Workers*,
24 904 F.2d at 1307). The Court finds the *cy pres* recipients appropriate for the following reasons:

25 a. Consumers Union is a non-profit organization with a mission “to work for
26 a fair, just and safe marketplace for all consumers and to empower consumers to protect
27 themselves.” It publishes Consumer Reports magazine and website (www.consumerreports.org),
28 as well as The Consumerist Blog (www.consumerist.com), both of which provide information of

1 interest to consumers, such as product reviews and information about false advertising scams.
2 Consumers Union is also active in educating consumers about food labeling. It operates the
3 website Not In My Food (www.notinmyfood.org), which provides information to consumers
4 about the presence of genetically modified organisms (GMOs) and other controversial ingredients
5 in food, and it lobbies for better food labeling laws. In addition, in September 2012, Consumer
6 Union published an article in Consumers Report entitled “How to Find the Best Extra-Virgin
7 Olive Oil” (See [https://www.consumerreports.org/cro/magazine/2012/09/how-to-find-the-best-](https://www.consumerreports.org/cro/magazine/2012/09/how-to-find-the-best-extra-virgin-olive-oil/index.htm)
8 [extra-virgin-olive-oil/index.htm](https://www.consumerreports.org/cro/magazine/2012/09/how-to-find-the-best-extra-virgin-olive-oil/index.htm), last accessed March 5, 2018.) Consumers Union has also been
9 approved as a cy pres recipient in numerous false advertising lawsuits. See, e.g. *Miller v*
10 *Ghirardelli Chocolate Co.*, 2015 WL 758094, at *8 (N. D. Cal. Feb. 20, 2015); *Nigh v.*
11 *Humphreys Pharmacal, Inc.*, 2013 WL 5995382, at *9 (S.D. Cal. Oct. 23, 2013) (“the Court finds
12 that this *cy pres* distribution to Consumers Union reflects the objectives of the UCL and CLRA;
13 reflects the interests of silent Class Members; and benefits the Plaintiff Class, who are consumers
14 that purchased Products based on false and misleading representations”); *Dennis v. Kellogg Co.*,
15 2013 WL 6055326, at *1 (S.D. Cal. Nov. 14, 2013), *appeal dismissed* (May 15, 2014) (approving
16 Consumers Union as a cy pres recipient in a food labeling class action).

17 b. The Center for Food Safety is a non-profit organization that states that it
18 “is a national non-profit public interest and environmental advocacy organization working to
19 protect human health and the environment by curbing the use of harmful food production
20 technologies and by promoting organic and other forms of sustainable agriculture. CFS also
21 educates consumers concerning the definition of organic food and products. CFS uses legal
22 actions, groundbreaking scientific and policy reports, books and other educational materials,
23 market pressure and grass roots campaigns through our True Food Network. CFS's successful
24 legal cases collectively represent a landmark body of case law on food and agricultural issues.”
25 (See <https://www.centerforfoodsafety.org/about-us>, last accessed March 19, 2018). It advocates
26 for better agricultural and food production practices through legislative advocacy, litigation, and
27 consumer education.

28 20. This order shall constitute a final judgment binding the parties with respect to this

1 Litigation.

2 21. Without affecting the finality of the judgment hereby entered, the Court reserves
3 jurisdiction over the interpretation, implementation and enforcement of the Settlement
4 Agreement. In the event the Effective Date does not occur in accordance with the terms of the
5 Settlement Agreement, then this Order and any judgment entered thereon shall be rendered null
6 and void and shall be vacated, and in such event, all orders and judgments entered and releases
7 delivered in connection herewith shall be null and void and the Parties shall be returned to their
8 respective positions *ex ante*.

9 22. Without further order of the Court, the parties may agree to reasonable extensions of
10 time to carry out any provisions of the Settlement Agreement.

11 There is no just reason for delay in the entry of this Judgment, and immediate entry by the
12 Clerk of the Court is expressly directed.

13 **IT IS SO ORDERED** this ____ day of _____, 2018.

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17 _____
Honorable Richard Seeborg
United States District Court Judge
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Exhibit E

1 GUTRIDE SAFIER LLP
 ADAM J. GUTRIDE (State Bar No. 181446)
 2 SETH A. SAFIER (State Bar No. 197427)
 KRISTEN G. SIMPLICIO (State Bar No. 263291)
 3 100 Pine Street, #1250
 4 San Francisco, California 94111
 Telephone: (415) 336-6545
 5 Facsimile: (415) 449-6469

6 TYCKO & ZAVAREEI LLP
 HASSAN A. ZAVAREEI (State Bar No. 181547)
 7 JEFFREY D. KALIEL (State Bar No. 238293)
 8 ANDREW J. SILVER (*pro hac vice*)
 1828 L Street, N.W., Suite 1000
 9 Washington, DC 20036
 Telephone: (202) 973-0900
 10 Facsimile: (202) 973-0950

11 Attorneys for Plaintiff SCOTT KOLLER

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

16 SCOTT KOLLER, an individual, on behalf
 of himself, the general public and those
 17 similarly situated,
 18 Plaintiff,
 19 v.
 20 MED FOODS, INC., AND DEOLEO USA,
 21 INC.
 22 Defendants.

CASE NO. 3:14-CV-2400-RS
 UNDERTAKING RE ATTORNEYS' FEES
 AND COSTS
 Hon. Judge Richard Seeborg

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1 **WHEREAS**, on _____, the Court awarded \$_____ in attorneys’ fees and
2 expenses (“Fee Award”) to Plaintiff’s Counsel Gutride Safier LLP (the “Gutride Safier Firm”)
3 and Tycko & Zavareei LLP (the “Tycko Zavareei Firm”), collectively, to be distributed according
4 to the terms of the Settlement Agreement; and

5 **WHEREAS**, the Gutride Safier Firm and the Tycko Zavareei Firm have agreed that the
6 Fee Award shall be divided as follows: the amount of \$_____ should be distributed to the
7 Gutride Safier Firm (“Gutride Safier Distribution”) and \$_____ should be distributed to
8 the Tycko Zavareei Firm (“Tycko Zavareei Distribution”); and

9 **WHEREAS**, as required by the Class Action Settlement Agreement (the “Settlement
10 Agreement”) in this matter, Plaintiff’s Counsel Gutride Safier LLP (the “Gutride Safier Firm”)
11 and its principals Adam Gutride, Esq. (“Gutride”) and Seth Safier, Esq. (“Safier”) (collectively
12 the “Gutride Safier Obligor”), and Plaintiff’s Counsel Tycko & Zavareei LLP (the “Tycko
13 Zavareei Firm”) and its principals Jonathan Tycko (“Tycko”) and Hassan Zavareei (“Zavareei”)
14 (collectively the “Tycko Zavareei Obligor”) (each of the six foregoing defined persons and
15 entities being an “Obligor” and collectively being “Obligors”) desire to provide for the benefit of
16 Defendant Deoleo USA, Inc. (“Defendant”) an undertaking for repayment of any award of
17 attorneys’ fees, costs, and expenses (“Fee Award”) that any of the Obligors may be paid as
18 attorneys’ fees, costs or expenses in connection with the Settlement Agreement (the
19 “Undertaking”),

20 **NOW, THEREFORE**, each of the undersigned Obligors, on behalf of himself as an
21 individual and as an agent for his respective law firm, hereby submits himself and the law firm on
22 whose behalf he has executed this Undertaking to the jurisdiction of the Court for the purpose of
23 enforcing the provisions of this Undertaking. Capitalized terms used herein without definition
24 have the meanings given to them in the Settlement Agreement. The Gutride Safier Obligors are
25 jointly and severally obligated with respect to all the terms of this Undertaking, but their
26 collective obligations are limited to the amount of the Gutride Safier Distribution. The Tycko
27 Zavareei Obligors are jointly and severally obligated with respect to all the terms of this
28

1 Undertaking, but their collective obligations are limited to the amount of the Tycko Zavareei
2 Distribution.

3 In the event the Fee Award is vacated in full, then within seven (7) days after the order
4 vacating the Fee Award becomes final, the Gutride Safier Obligors shall repay to the Settlement
5 Fund Account the entire amount of the Gutride Safier Distribution, plus interest, and the Tycko
6 Zavareei Obligors shall repay to the Settlement Fund Account the entire amount of the Tycko
7 Zavareei Distribution, plus interest. In the event the Fee Award is reduced on appeal, then within
8 seven (7) days after the order reducing the Fee Award becomes final, the Gutride Safier Obligors
9 shall repay to the Settlement Fund Account a percentage of the Gutride Safier Distribution, equal
10 to the percentage by which the Fee Award was reduced, plus interest, and the Tycko Zavareei
11 Obligors shall repay to the Settlement Fund Account a percentage of the Tycko Zavareei
12 Distribution, equal to the percentage by which the Fee Award was reduced, plus interest.

13 Interest shall be computed at the Prime Rate on the amount to be repaid to Defendant,
14 from the date that amount was paid to Plaintiff's Counsel until the date of repayment by Obligors
15 to the Settlement Fund.

16 In the event the Obligors fail to timely repay any amounts that are owed to the Settlement
17 Fund Account pursuant to this Undertaking, the Court shall, upon application of Claim
18 Administrator and notice to Plaintiffs' Counsel, summarily issue orders, including but not limited
19 to judgments and attachment orders, against the Obligors, jointly and severally, as set forth above,
20 and may make appropriate findings for sanctions for contempt of court. Any such judgments shall
21 accrue interest at the applicable interest rate set forth in 28 U.S.C. § 1961.

22 The Obligors each hereby pledges and grants a continuing security interest to Defendant
23 in all of his or its assets and the assets of his respective undersigned law firm (collectively,
24 "Assets") to secure the obligations set forth in this Undertaking (including the interests accruing
25 thereon), and hereby agrees to execute and deliver such further documentation and take such
26 further action as Defendant may request in order to enforce its security interest. "Assets" means
27 all properties and assets of any nature, including, without limitation, the full extent of each
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1 Obligor's right, title and interest in and to the following property (whether now existing or
2 hereafter arising or acquired, wherever located):

3 (1) All intangible property, including without limitation, all present and future
4 accounts, accounts receivable, agreements, contracts, leases, contract rights, rights to payment
5 (including, without limitation, any award or other legally enforceable payment of attorneys' fees,
6 costs, and expenses for services rendered), interest in litigation, commercial tort claims, choses in
7 actions, instruments, documents, chattel paper, security agreements, guaranties, letters of credit,
8 undertakings, surety bonds, insurance policies, notes and drafts, and all forms of obligations
9 owing to each Obligor or in which each Obligor may have any interest, however created or
10 arising and whether or not earned by performance;

11 (2) All real property interests identified in Exhibit E1, including without
12 limitation, all fee or leasehold interests in such real property and any improvements or fixtures
13 thereon or rights related or appurtenant thereto, which the Gutride Safier Obligors represent have
14 a combined market value, net of all liens and encumbrances, greater than the value of the Gutride
15 Safier Distribution, and the Tycko Zavareei Obligors represent have a combined market value, net
16 of all liens and encumbrances, greater than the value of the Tycko Zavareei Distribution;

17 (3) All goods and equipment now owned or hereafter acquired, including,
18 without limitation, all machinery, fixtures, vehicles, and any interest in any of the foregoing, and
19 all attachments, accessories, accessions, replacements, substitutions, additions, and improvements
20 to any of the foregoing, wherever located;

21 (4) All other contract rights and general intangibles now owned or hereafter
22 acquired, including, without limitation, goodwill, trademarks, service marks, trade styles, trade
23 names, patents, patent applications, leases, license agreements, purchase orders, customer lists,
24 route lists, infringements, claims, computer programs, computer discs, computer tapes, literature,
25 reports, catalogs, design rights, income tax refunds, payments of insurance and rights to payment
26 of any kind;

27 (5) All deposit accounts, securities, securities entitlements, securities
28 accounts, investment property, letters of credit and certificates of deposit now owned or hereafter

1 acquired and each Obligor's books relating to the foregoing, including the accounts identified in
2 Exhibit E2; and

3 (6) Each Obligor's books and records relating to the foregoing and any and all
4 claims, rights and interests in any of the above and all substitutions for, additions and accessions
5 to and proceeds thereof.

6 Each Obligor agrees, as applicable, that he or it will not change its state of organization or
7 locations at which any of the Assets are located without giving Defendant at least thirty (30) days
8 prior written notice thereof. In addition, the Gutride Safier Firm and Tycko & Zavareei Firm
9 agree that they will not (i) change their names, federal employer identification numbers, entity
10 structures or identities, (ii) create or operate under any new fictitious names, without giving
11 Defendant at least thirty (30) days prior written notice thereof, or (iii) pledge or encumber any of
12 the Assets to another person or entity without the prior written consent of Defendant. The
13 Obligors further agree to maintain liquid funds in an account with a domestic bank that is an
14 FDIC member or a domestic brokerage account held by an SPIC member that exceed the amount
15 of the Fee Award until the termination of this Undertaking.

16 Each Obligor hereby authorizes Defendant to file UCC financing statements covering the
17 Assets without Obligor's signature in all applicable jurisdictions. With respect to the Assets
18 identified in Exhibit E1, each Obligor shall, upon request by Defendant, execute (and cause any
19 spouse or domestic partner to execute, if applicable) one or more deeds of trust or mortgages to
20 evidence the security interests granted herein in favor of Defendant by each Obligor to secure
21 their obligations pursuant to this Undertaking, but only if Defendant agrees in writing to cancel
22 and reconvey any such deeds of trusts and mortgages to the Obligors (and any spouses or
23 domestic partners) who executed them, within three (3) days after the expiration of this
24 Undertaking, and to indemnify Obligors for any losses incurred by Obligors as a result of
25 Defendant's failure to do so. With respect to the Assets identified in Exhibit E2, each Obligor
26 shall, upon request by Defendant, execute (and cause any spouse or domestic partner to execute,
27 if applicable) one or more account control agreements to evidence the security interests granted
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herein in favor of Defendant by each Obligor to secure their obligations pursuant to this Undertaking.

In the event of a default by Obligors in their repayment obligations, the Obligors each shall cooperate with Defendant in identifying their respective Assets and shall take no steps to conceal any such Assets or otherwise render them unavailable to satisfy their joint and several obligations pursuant to this Undertaking.

The undersigned stipulate, warrant, and represent that they have both actual and apparent authority to enter into this stipulation, agreement and Undertaking on behalf of their undersigned law firms. This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures by facsimile or email shall be as effective as original signatures. The undersigned declare under penalty of perjury under the laws of the State of California and the United States that they have read and understand the foregoing and that it is true and correct.

This Undertaking and all obligations set forth herein shall expire on the fourteenth (14) day after which the Final Approval and any Fee Award have been affirmed on appeal and are not subject to further judicial review, or if no such appeal is filed, upon the fourteenth (14) day after the expiration of the time in which to bring such an appeal.

ADAM GUTRIDE

DATED: _____, 2018

Adam Gutride

SETH SAFIER

DATED: _____, 2018

Seth Safier

9.15. Confidentiality. The Parties, Plaintiffs’ Counsel, and Defendant’s Counsel agree to keep this Agreement confidential until the filing of the motion for Preliminary Approval.

9.16. Exhibits. The Exhibits to the Agreement are an integral part of the Settlement and are hereby incorporated and made part of the Agreement.

9.17. Complete Resolution. The Parties intend for this Agreement to be a complete and final resolution of all disputes between them with respect to the Litigation.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the first date it has been executed by all of the undersigned.

APPROVED AS TO FORM:

DATED: March ____, 2018

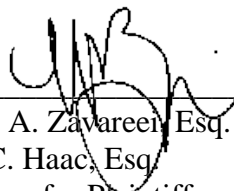
GUTRIDE SAFIER LLP



Adam Gutride, Esq.
Seth Safier, Esq.
Attorneys for Plaintiffs

DATED: March 27, 2018

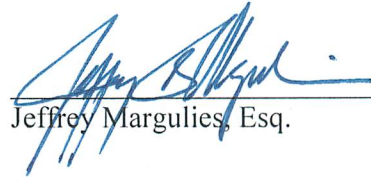
TYCKO AND ZAVAREEI LLP



Hassan A. Zavareei, Esq.
Anna C. Haac, Esq.
Attorneys for Plaintiff

DATED: March 28, 2018

NORTON ROSE FULBRIGHT US LLP



Jeffrey Margulies, Esq.

APPROVED AND AGREED:

DATED: March ___, 2018

SCOTT KOLLER

Scott Koller

DATED: March ___, 2018

CAROLYN BISSONNETTE

Carolyn Bissonnette

DATED: March ___, 2018

CECE CASTORO

Cece Castoro

DATED: March ___, 2018

DIANE GIBBS

Diane Gibbs

DATED: March ___, 2018

DARLENE WILLIAMS

Darlene Williams

DATED: March __, 2018

NORTON ROSE FULBRIGHT US LLP

Jeffrey Margulies, Esq.

APPROVED AND AGREED:

DATED: March 21, 2018

SCOTT KOLLER

Scott Koller

DATED: March __, 2018

CAROLYN BISSONNETTE

Carolyn Bissonnette

DATED: March __, 2018

CECE CASTORO

Cece Castoro

DATED: March __, 2018

DIANE GIBBS

Diane Gibbs

DATED: March __, 2018

DARLENE WILLIAMS

Darlene Williams

DATED: March ____, 2018

NORTON ROSE FULBRIGHT US LLP

Jeffrey Margulies, Esq.

APPROVED AND AGREED:

DATED: March ____, 2018

SCOTT KOLLER

Scott Koller

3/30/2018

DATED: March ____, 2018

CAROLYN BISSONNETTE

DocuSigned by:
C. Bissonette
6A8A5EE545C54DC...

Carolyn Bissonnette

3/27/2018

DATED: March ____, 2018

CECE CASTORO

DocuSigned by:
C. Castoro
6A8A5EE545C54DC...

Cece Castoro

3/27/2018

DATED: March ____, 2018

DIANE GIBBS

DocuSigned by:
Diane Gibbs
6A8A5EE545C54DC...

Diane Gibbs

3/28/2018

DATED: March ____, 2018

DARLENE WILLIAMS

DocuSigned by:
D. Williams
6A8A5EE545C54DC...

Darlene Williams

3/28/2018

DATED: March __, 2018

ROBERT GLIDEWELL


DocuSigned by:

6A8A5EE545C54DC...
Robert Glidewell

3/27/2018

DATED: March __, 2018

STEPHEN FRIEMAN

DocuSigned by:

6A8A5EE545C54DC...
Stephen Freiman

DATED: March __, 2018

DEOLEO USA, INC.

By: _____

Name: _____

Its: _____

DATED: March __, 2018

ROBERT GLIDEWELL

Robert Glidewell

DATED: March __, 2018

STEPHEN FRIEMAN

Stephen Freiman

DATED: March 28, 2018

DEOLEO USA, INC.

By: Pierluigi Tosato

Name: PIERLUIGI TOSATO

Its: PRESIDENT

EXHIBIT 2

GUTRIDE SAFIER LLP

Gutride Safier LLP represents investors, small businesses, consumers and employees in a wide-array of class action litigation throughout the country. The attorneys of Gutride Safier LLP are skilled litigators with years of experience at all levels of federal and state court. Gutride Safier LLP is based in San Francisco.

Gutride Safier LLP has been appointed class counsel to represent consumers, small businesses, employees and investors in the following recent cases:

- *Kumar v. Salov North America Corp.*, Case No. 14-cv-2411-YGR (N.D. Cal.) for violation of California's consumer protection laws;
- *Kumar v. Safeway Inc.*, Case No. RG 14726707 (Alameda County Superior Court) for violation of California's consumer protection laws;
- *Miller v. Fuhu, Inc.*, Case No. 15-bk-12465 (Del. Bankruptcy Court) for violation of California's consumer protection laws;
- *Miller, et al. v. Ghirardelli Chocolate Company*, Case No. 12-cv-04936-LB (N.D. Cal.) for violation of California's consumer protection laws;
- *Just Film et al. v. Merchant Services et al.*, Case No. 4:10-cv-01993-CW (N.D. Cal.) for violation of state and federal laws including violations of the Racketeer Influenced and Corrupt Organizations Act and Fair Credit Reporting Act;
- *Embry v. Acer America Corporation*, 09-cv-01808-JW (N.D. Cal.) for violation of California's consumer protection laws;
- *Withhoff v. Honest Tea, Inc.*, CGC-10-504987 (San Francisco Superior Court) for violation of California's consumer protection laws;
- *Gauss v. Millennium Products, Inc.*, CGC-10-503347 (San Francisco Superior Court) for violation of California's consumer protection laws;
- *Chavez v. Blue Sky Natural Beverage Co., et al.*, 3:06-cv-06609-JSW (N.D. Cal.) for violation of California's consumer protection laws;
- *Deaton v. Hotwire, Inc.*, CGC-05-437631 (San Francisco Superior Court) for violation of California's consumer protection laws;
- *Nelson v. PeoplePC, Inc.*, CGC-07-460240 (San Francisco Superior Court) for violation of California's consumer protection laws;
- *Mancini v. Ticketmaster et al.*, 2:07-cv-01459-DSF-JTL (C.D. Cal.), for violation of the federal Electronic Funds Transfer Act and consumer protection laws;

- *Siemers v. Wells Fargo & Co. et al.*, C-05-4518 WHA (N.D. Cal.) for violation of §12(a)(2) of the Securities Act of 1933 and §10(b) of the Securities Exchange Act of 1934;
- *Cho v. Seagate Technology (US) Holdings, Inc.*, CGC-06-453195 (San Francisco Superior Court) for violation of California's consumer protection laws;
- *Vroegh v. Eastman Kodak Co. et al.*, CGC-04-428953 (San Francisco Superior Court) for violation of California's consumer protection laws;
- *Chavez v. Netflix, Inc.*, CGC-04-434884 (San Francisco Superior Court) for violation of California's consumer protection laws;
- *Haven v Betz & Sons*, CGC-05-438719 (San Francisco Superior Court) for violation of California's wage and hour laws; and
- *Safier v Western Digital*, Case No. 3:05-cv-03353-BZ (N.D. Cal), for violation of California's consumer protection laws.

The Lawyers of Gutride Safier LLP

Adam J. Gutride

Mr. Gutride is a founding partner of Gutride Safier LLP and has served as co-lead counsel in each of the cases listed above. Previously, Mr. Gutride litigated at the San Francisco based law firm of Orrick Herrington & Sutcliffe. In his past endeavors, Mr. Gutride represented the governor of California before the California Supreme Court, handled a nationwide securities class action against Merrill Lynch and tried an insurance case that led to a \$900 million settlement. Mr. Gutride also has served as an Instructor in Legal Research and Writing at the Hastings Law School of the University of California.

Mr. Gutride is a member of the state bar of California and several federal courts. Mr. Gutride received his juris doctorate from Yale Law School and his bachelor of arts from the University of Chicago.

Seth A. Safier

Mr. Safier is a founding partner of Gutride Safier LLP and has served as co-lead counsel in each of the cases listed above. Prior to founding Gutride Safier LLP with Mr. Gutride, Mr. Safier was general counsel at an internet company and also worked as a litigator at Orrick Herrington & Sutcliffe. Mr. Safier also has served as an Instructor of Legal Research and Writing at the Hastings Law School of the University of California.

Mr. Safier is a member of the California State Bar and numerous federal courts. Mr. Safier received his juris doctorate from Harvard Law School and his bachelor of arts from Brandeis University.

Todd Kennedy

Mr. Kennedy is a partner at Gutride Safier LLP. Prior to working with Gutride Safier LLP, Mr. Kennedy conducted complex litigation for Quinn Emanuel Urquhart & Sullivan, LLP. At Quinn, Todd successfully litigated some of the world's largest patent cases, for both plaintiffs and defendants. He helped achieve complete defense jury verdicts for Google in the company's only two patent trials—both of which were in the Eastern District of Texas, the favored venue for plaintiffs. On the plaintiffs' side, Mr. Kennedy successfully represented Sony Electronics in enforcing ten digital television patents in a series of lawsuits spanning five jurisdictions.

Mr. Kennedy clerked for one year on the Eight Circuit U.S. Court of Appeals, and two years on the U.S. District Court for the Western District of Missouri.

Mr. Kennedy is a member of the California State Bar and numerous federal courts. He received his juris doctorate from the Yale Law School. He received his bachelor of arts from University of Missouri.

Anthony J. Patek

Mr. Patek is an attorney at Gutride Safier LLP. Prior to working with Gutride Safier LLP, Mr. Patek conducted complex litigation for Cooley, LLP and HelixIP LLP. At Cooley and HelixIP, Anthony represented Ronald A. Katz Technology Licensing, Inc. and Zenith Electronics in their efforts to enforce their patent portfolios against numerous infringers. He has also represented major pharmaceutical and software companies and prestigious research universities in multi-million dollar lawsuits.

Mr. Patek clerked for the United States District Court for the District of Nevada, the Hon. Edward C. Reed. Anthony is Co-Chair of the American Bar Association's Sub-Committee on Patent Infringement

Mr. Patek is a member of the California State Bar and numerous federal courts. He received his juris doctorate from the University of California, Berkeley, Boalt Hall School of Law. He received a master of science from Stanford University and his bachelor of science from University of Michigan.

Marie McCrary

Marie McCrary is an attorney at Gutride Safier LLP. Prior to working with Gutride Safier LLP, Ms. McCrary conducted complex litigation for Quinn Emanuel Urquhart & Sullivan, LLP. Prior to that, she was an attorney at Bell Nunnally & Martin LLP and Carroll Burdick & McDonough, LLP. Ms. McCrary has experience in complex matters involving contract disputes and business torts, patent and trade dress litigation, class actions, and creditors' rights issues.

Ms. McCrary is a member of the California, Massachusetts and Texas bar associations. She received her juris doctorate from New York University and her bachelor of science degree from Truman State University. Ms. McCrary was the 2004 and 2005 national champion in parliamentary debate (NPDA, NPTE).

Kristen G. Simplicio

Ms. Simplicio is an attorney at Gutride Safier LLP. Prior to working with Gutride Safier LLP, Ms. Simplicio was employed by the United States Department of Labor as an ERISA specialist.

Ms. Simplicio is a member of the California State Bar as well as the bar of the District of Columbia. She received her juris doctorate from American University, Washington College of Law, in 2007. She received her bachelor of commerce from McGill University.

Matthew McCrary

Matthew McCrary is an attorney at Gutride Safier LLP. Prior to working with Gutride Safier LLP, Mr. McCrary conducted complex litigation for McDermott, Will, and Emery, LLP and Baker & McKenzie, LLP. Mr. McCrary has experience litigating complex matters involving contract disputes and business torts, white collar crime, class actions, securities and antitrust issues.

Mr. McCrary is a member of the Massachusetts and Texas bar associations. He received his juris doctorate from the University of Texas at Austin School of Law and his bachelor of arts degree from the University of North Texas. Following law school, Mr. McCrary clerked for the Ninth Circuit Court of Appeals.

1 HASSAN A. ZAVAREEI (State Bar No. 181547)
2 **TYCKO & ZAVAREEI LLP**
3 1828 L Street, N.W., Suite 1000
4 Washington, DC 20036
5 Telephone: (202) 973-0900
6 Facsimile: (202) 973-0950

7 Attorneys for Plaintiff Scott Koller

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11
12 SAN FRANCISCO DIVISION

13 SCOTT KOLLER, on behalf of himself, the
14 general public and those similarly situated,

15 Plaintiff,

16 v.

17 MED FOODS, INC., AND DEOLEO USA,
18 INC.

19 Defendants.

CASE NO. 14-cv-2400 (RS)

**DECLARATION OF HASSAN A.
ZAVAREEI IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 10, 2018
Time: 1:30 p.m.
Courtroom 3, 17th Floor
Judge: Hon. Richard Seeborg

20 I, Hassan A. Zavareei, hereby declare as follows:

21 1. I am competent to testify to the matters stated herein. I submit this declaration in
22 support of Plaintiff's Motion for Certification of a Settlement Class and Preliminary Approval of
23 Class Action Settlement.

24 2. I am a partner at the firm Tycko & Zavareei LLP and a member in good standing of
25 the District of Columbia, Maryland and California bars. Over the past twenty years, I have gained
26 substantial experience handling complex civil litigation and class action litigation. I have taken
27 several cases to trial, including jury trials that have lasted several months. I have argued appeals
28 in both the D.C. Circuit and the Fifth Circuit. I am a graduate of Boalt Hall Law School at the
University of California, Berkeley.

3. Attached hereto as Exhibit A is an updated copy of the Tycko & Zavareei LLP firm
résumé, containing additional information on myself, our firm, and the other attorneys from my

1 firm who worked on this matter.

2 4. To date, my firm has worked over 850 hours on this case, and my firm has incurred
3 approximately \$50,000.00 in unreimbursed expenses. These totals will continue to increase up to
4 and through final settlement approval.

5 5. Based on my reasoned judgment, and for the reasons set forth in the Declaration of
6 my co-counsel Adam Gurtide, I believe the proposed settlement is fair and reasonable.

7
8 On this 3rd day of April, 2018, I declare under penalty of perjury under the laws of the
9 United States of America that the foregoing is true and correct.

10 /s/ Hassan Zavareei
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10 Attorneys for Plaintiff Scott Koller

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

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

17 Plaintiff,

18 v.

19 MED FOODS, INC., AND DEOLEO USA,
 20 INC.

21 Defendants.

CASE NO. 14-cv-2400 (RS)

**DECLARATION OF STEVEN
 WEISBROT IN SUPPORT OF MOTION
 FOR PRELIMINARY APPROVAL OF
 CLASS ACTION SETTLEMENT**

Date: May 10, 2018
 Time: 1:30 p.m.
 Courtroom 3, 17th Floor
 Judge: Hon. Richard Seeborg

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1 I, STEVEN WEISBROT, hereby declare under penalty of perjury as follows:

2 1. I am a partner at the class action notice and settlement administration firm, Angeion Group,
3 LLC (“Angeion”). I am fully familiar with the facts contained herein based upon my personal
4 knowledge.

5
6 2. I have been responsible in whole or in part for the design and implementation of hundreds
7 of class action administration plans and have taught numerous accredited Continuing Legal
8 Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital
9 Media in Class Action Notice Programs, as well as Class Action Claims Administration, generally.
10 Additionally, I am the author of frequent articles on Class Action Notice, Class Action Claims
11 Administration and Notice Design in publications such as *Bloomberg*, *BNA Class Action*
12 *Litigation Report*, *Law360*, the *ABA Class Action and Derivative Section Newsletter* and
13 numerous private law firm publications. I have given public comment and written testimony to the
14 Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail,
15 email, digital media and print publication, in effecting Due Process notice, and I have met with
16 representatives of the Federal Judicial Center, to discuss the proposed amendments to Rule 23 and
17 suggested educational programs for the judiciary concerning class action notice procedures.

18
19 3. Prior to joining Angeion’s executive team, I was employed as Director of Class Action
20 services at Kurtzman Carson Consultants, a nationally recognized class action notice and
21 settlement administrator. Prior to my notice and claims administration experience, I was
22 employed in private law practice and I am currently an attorney in good standing in the State of
23 New Jersey and the Commonwealth of Pennsylvania.

24
25 4. By way of background, Angeion Group is a class action notice and claims administration
26 company formed by a team of executives that have had extensive tenures at five other nationally
27 recognized claims administration companies. Collectively, the management team at Angeion has
28

1 overseen more than 2,000 class action settlements and distributed over \$10 billion to class
2 members. The executive profiles as well as the company overview are available at
3 http://www.angeiongroup.com/meet_the_team.htm.

4 5. My notice work comprises a wide range of class actions that includes product defect, false
5 advertising, employment, antitrust, tobacco, banking, firearm, insurance, and bankruptcy cases.
6 Likewise, I have been instrumental in infusing digital and social media, as well as big data and
7 advanced targeting into class action notice programs. Notice programs that I have designed have
8 been approved in myriad cases under Rule 23, including *In Re Whirlpool Corp. Front Loading*
9 *Washer Products Liability Litigation* (MDL No. 2001) (May 12, 2016) (Boyko, J.); *In Re LG*
10 *Front Loading Washing Machine Class Action Litigation- Civil Action No. 08-SI (MCA)(LDW)*
11 (June 17, 2016) (Cox Arleo, J.); and *In Re: Pool Products Distribution Market Antitrust*
12 *Litigation MDL No. 2328* (December 31, 2014) (Vance, J.).
13

14 6. This declaration will describe the notice program that my colleagues and I suggest using in
15 this matter, including the considerations that informed the development of the plan and why it will
16 provide Due Process of Law to the Class Members.
17

18 SUMMARY OF NOTICE PROGRAM

19 7. The notice program is the best notice that is practicable under the circumstances, as the
20 parties are implementing a robust integrated publication campaign consisting of state of the art,
21 national internet banner advertisements, traditional publication notice in a widely-read consumer
22 magazine, sponsored notice on two leading class action-related websites, a national press release
23 and targeted newspaper publication. The notice program also includes an informational website
24 and toll-free telephone line where Class Members can learn more about their rights and
25 responsibilities in the litigation.
26

27 8. The notice program will deliver an approximate 75.6% reach with an average frequency of
28 2.10 times. What this means in practice, is that separate and apart from the newspaper notice,

1 sponsored websites, and the media earned as a result of the press release (all of which are difficult
 2 to measure in terms of reach percentage but will nonetheless inform the class of their rights and
 3 responsibilities under the settlement) 75.6% of our Target Audience will see an advertisement on
 4 average 2.10 each. The Federal Judicial Center states that a publication notice plan that reaches
 5 70% of class members is one that reaches a “high percentage” and is within the “norm”. Barbara
 6 J. Rothstein & Thomas E. Willging, Federal Judicial Center, “Managing Class Action Litigation:
 7 A Pocket Guide for Judges”, at 27 (3d Ed. 2010).

CLASS DEFINITION

10 9. The “Settlement Classes” here are defined as: all persons who, between: (i) May 23, 2010
 11 and the date of Preliminary Approval, purchased, in the United States, any of the Extra Virgin
 12 Olive Oil Products except for resale and/or (ii) between May 23, 2010 and December 31, 2015,
 13 purchased, in the United States, any of the Other Olive Oil Products.” “Extra Virgin Olive Oil
 14 Product” means bottles of Bertolli Extra Virgin olive oil, except for those bearing labels
 15 “Organic,” “Robusto,” “Gentile,” or “Fragrante.” “Other Olive Oil Product” means the liquid
 16 Bertolli Extra Light or Classico olive oil products.

MEDIA NOTICE TARGET AUDIENCE

19 10. This matter contemplates a nationwide settlement class as defined in the Class
 20 Definition section found *supra* in paragraph 9. To create the media notice program and verify its
 21 effectiveness, our media team analyzed data from 2017 comScore/GfK MRI 2016 Fall Fusion.
 22 “Bertolli” is a measured entity in MRI; as a result, the following target definition was used to
 23 profile Class Members:
 24

- 25 • Salad or Cooking Oil Types Total Users Last 6 Months (Principal Shopper) [Olive Oil] and
- 26 • Salad or Cooking Oil Brands Total Users Last 6 Months (Principal Shopper) [Bertolli]

27 Based on the target definition, the potential audience size is estimated at 39,340,000. This target
 28

1 audience, based on objective syndicated data, will allow the parties to report the reach and
2 frequency to the court with the confidence that the reach within the target audience and the number
3 of exposure opportunities is based on objective data and exceeds the Federal Judicial Center's
4 threshold as to reasonableness in notification programs.

5 11. Understanding the socio-economic characteristics, interests and practices of a target group
6 aids in the proper selection of media to reach that target. Here, the target audience has the
7 following characteristics:

- 8 • Adults ages 35-64 with an average age of 50
- 9 • A large percentage (61.9%) are married
- 10 • 50.4% have a college degree
- 11 • 58.9% live in households with total income above \$75K
- 12 • 64.5% are employed, with most working full time (52.7%)

13 12. To identify the best vehicles to deliver messaging to the Target Audience, we reviewed the
14 media quintiles, which measure the degree to which an audience uses media relative to the general
15 population. Here, it shows that newspaper, magazine, and internet are the strongest platforms
16 through which to reach potential Class Members based on above average usage.

17 13. Given the strength of these mediums and our target audience's heavy reliance on those
18 forms of media, we recommended running a publication in a magazine that resonates well with our
19 target audience and utilizing a robust internet advertising campaign, as well as a limited newspaper
20 campaign to comply with notice requirements of the California Legal Remedies Act ("CLRA")
21 statute. This media schedule will allow us to deliver an effective reach level for notice messaging
22 while maximizing efficiencies. Each form of media notice will be discussed in further detail
23 below as well as those forms of media that we have included to help stimulate claims activity, but
24 which are not capable of precise calculations in terms of reach percentage, such as the sponsored
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1 websites and press release.

2 **ONLINE NOTICE**

3 14. Multiple targeting layers will be implemented to help ensure delivery to the most
4 appropriate users, inclusive of search targeting, category contextual targeting, keyword contextual
5 targeting, and site retargeting. Inventory will run on desktop and mobile devices to reach the most
6 qualified audience. Search terms will be relevant to olive oils, cooking oils, dressings, and
7 Bertolli's. Targeting users who are currently browsing or have recently browsed content in
8 categories such as cooking, recipes, and olive oils will also help qualify impressions to ensure
9 messaging is served to the most relevant audience. Where available, purchase data will be utilized
10 to further qualify the audience.

11
12 15. The internet banner notice portion of the notice program will be implemented using a 4-
13 week desktop and mobile campaign, utilizing standard IAB sizes (160x600, 300x250, 728x90,
14 300x600, 320x50 and 300x50). A 3x frequency cap will be imposed to maximize reach. The banner
15 notice portion of the notice program is designed to result in serving approximately 39,340,000
16 impressions.

17
18 16. To combat the possibility of non-human viewership of the digital advertisements and to
19 verify effective unique placements, Angeion utilizes Integral Ad Science ("IAS"), the leading ad
20 verification company to prevent fraudulent activity¹. IAS has received the Media Rating Council
21

22
23
24
25 ¹ Integral Ad Science (IAS) is a global technology and data company that builds
26 verification, optimization, and analytics solutions to empower the advertising industry to
27 effectively influence consumers everywhere, on every device. They solve the most pressing
28 problems for brands, agencies, publishers, and technology companies by verifying that every
impression has the opportunity to be effective, optimizing towards opportunities to consistently
improve results, and analyzing digital's impact on consumer actions. Built on data science and
engineering, IAS is headquartered in New York with global operations in ten countries.

1 “MRC”² accreditation for Sophisticated Invalid Traffic (SIVT) detection for desktop and mobile
2 web traffic.

3 17. We will perform initial A/B testing of versions of the advertisements to determine which
4 versions generate the highest click-through rate and conversion rate (i.e. completion of a claim
5 form or request for exclusion) and will use the higher performing versions for subsequent
6 impressions. Likewise, we will track which webpages and times of day are generating the highest
7 click-through rate and conversion rate, and to the extent practicable, redirect future impressions to
8 those higher-performing locations instead of lower-performing locations.

9
10 18. To track campaign success, we will implement conversion pixels throughout the case filing
11 website to better understand audience behavior and identify those most likely to convert. The
12 programmatic algorithm will change based on success and failure to generate conversions
13 throughout the process. Successful conversion on the Claim Submission button will be the
14 primary goal, driving optimization of the campaign.

15
16 **PUBLICATION NOTICE**

17 19. To identify the best print vehicle for delivering the message to the target audience, MRI
18 was used to analyze and filter publications to determine the titles with the highest reach against our
19 target audience. *People* was chosen as the best title for this notice program due to its strong reach
20 towards the target audience. One ½ page B&W insertion is recommended in this title and will be
21 distributed on a national level. A chart explaining the circulation in the general public and within
22 our target audience is produced below.
23
24

25 _____
26 ² The Media Rating Council was established in the early 1960’s at the behest of the US
27 congress. The objective or purpose to be promoted or carried on by Media Rating Council is: To
28 secure for the media industry and related users audience measurement services that are valid,
reliable and effective. To evolve and determine minimum disclosure and ethical criteria for media
audience measurement services. To provide and administer an audit system designed to inform
users as to whether such audience measurements are conducted in conformance with the criteria
and procedures developed.

Publication	Circulation	Target Audience
People	3,510,533	7,346,000

20. To comply with the notice requirements of the CLRA, we will also cause the Published Notice, to be published once each week for four successive weeks as 1/6 page each in the Legal Notices section of the San Francisco Chronicle.

PURCHASED AND EARNED MEDIA

21. Angeion will cause the settlement to be listed and promoted through two leading class action settlement websites, www.topclassactions.com and www.classaction.org. These sites, are known to create awareness of pending settlements among consumers and will be instrumental in seeding and disbursing news of the underlying settlement.

22. In order to further boost awareness of the settlement, gain online visibility, and gain media pickup, Angeion will cause a Press Release to be issued via PR Newswire. Issuing a press release will help create earned media via press coverage, which will drive credibility and engagement among Settlement Class Members and beyond.

23. Neither the class action settlement websites nor the press release are capable of precise reach calculations and are thus not included in the reach and frequency figures presented to the court. Nonetheless, all of these mechanisms will serve an important function in that they will help stimulate interest in the settlement and drive Class Members to the dedicated settlement website to read and understand their rights under the settlement agreement.

RESPONSE MECHANISMS

24. The notice program will implement the creation of a case website, www.oliveoilsettlement.com, where Class Members can easily view general information about this class action, review relevant Court documents and view important dates and deadlines

1 pertinent to the Settlement. The website will be designed to be user-friendly and make it easy for
2 Class Members to find information about the case or file a claim. The website will also have a
3 “Contact Us” page whereby Class Members can send an email with any additional questions to a
4 dedicated email address. Likewise, Class Members will be able to file a claim directly on the
5 website.

6 25. A toll-free hotline devoted to this case will be implemented to further apprise Class
7 Members of the rights and options in the Settlement. The toll-free hotline will utilize an
8 interactive voice response (“IVR”) system to provide Class Members with responses to frequently
9 asked questions and provide essential information regarding the Settlement. This hotline will be
10 accessible 24 hours a day, 7 days a week.

12 **REACH AND FREQUENCY**

13 26. The integrated publication notice program incorporates advanced internet notice and
14 publication in a widely read consumer magazine that over-indexes with our Target Audience.
15 This declaration provides the reach and frequency evidence which courts systematically rely
16 upon in reviewing class action publication notice programs for adequacy. The reach
17 percentage and the number of exposure opportunities, meets or exceed the guidelines as set forth
18 in the Federal Judicial Center’s *Judges’ Class Action Notice and Claims Process Checklist and*
19 *Plain Language Guide*.

21 27. Specifically, the publication notice program is designed to deliver a 75.6% reach with
22 an average frequency of 2.1 times each. The newspaper publication, class action settlement
23 websites, press release, informational website and toll-free hotline are not calculable in the reach
24 percentage but will nonetheless aid in informing the Class Members of their rights and options
25 under the settlement.
26

1 28. It is my opinion that the Notice Program is fully compliant with Rule 23 of the Federal
2 Rules of Civil Procedure, provides Due Process of Law and is the best notice that is
3 practicable under the circumstances.

4 **CONCLUSION**

5 29. In my opinion, the Notice Plan will provide full and proper notice to Settlement Class
6 Members before any claims, opt-out and objection deadlines. After the Notice Plan, Angeion will
7 provide a final report verifying its effective implementation.

8 30. It is my opinion that the Notice Program provides Class Members Due Process of Law and
9 is the best notice that is practicable under the circumstances and is fully compliant with Rule 23 of
10 the Federal Rules of Civil Procedure.

11 31. Angeion estimates that the cost for Notice, Claims Administration and distribution will be
12 approximately \$525,000.00 - \$675,000.00. The administration-related expenses will be correlated
13 to the number of overall claims filed and the distribution-related expenses.
14

15 I hereby declare under penalty of perjury that the foregoing is true and correct.

16 Dated: March 28, 2018

17 
18 STEVEN WEISBROT