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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANTHONY BUSO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

VIGO IMPORTING CO., a Florida
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. '18CV1328 WQHBGS

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

JURY TRIAL DEMAND

INTRODUCTION

1. The average consumer spends a mere 13 seconds making an in-store purchasing decision, or between 10 to 19 seconds for an online purchase.¹ That decision is heavily dependent on a product's packaging, and particularly the package dimensions: "Most of our studies show that 75 to 80 percent of consumers don't even bother to look at any label information, no less the net weight Faced with a large box and a smaller box, both with the same amount of product inside . . . consumers are apt to choose the larger box because they think it's a better value."² This lawsuit charges Defendant with unlawfully and unfairly packaging its Alessi Autentico Premium Risotto products in opaque containers that contain more than 70% empty space. Most consumers purchased the products without knowing that the containers were substantially empty.

2. Anthony Buso ("Plaintiff"), individually and on behalf of all others similarly situated, brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the unlawful actions of Vigo Importing Co. ("Defendant") with respect to the packaging of its Alessi Autentico Premium Risotto products. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

3. Plaintiff purchased Defendant's Alessi Autentico Premium Risotto with Porcini Mushrooms product in September 2017 in San Diego, California. He purchased the product for the dual purpose of enjoying its contents and determining

¹ <http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-yourbrands-20-second-window.html> (citing the Ehrenberg-Bass Institute of Marketing Science's report "Shopping Takes Only Seconds...In-Store and Online").

² <http://www.consumerreports.org/cro/magazinearchive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm> (quoting Brian Wansink, professor and director of the Cornell Food and Brand Lab, who studies shopping behavior of consumers).

1 whether the container was lawfully filled. Plaintiff was surprised when he opened the
2 product that the container had **more than 70% empty space**, or slack-fill.

3 4. Defendant's conduct violates consumer protection and labeling laws.

4 **JURISDICTION AND VENUE**

5 5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332,
6 because this is a class action, as defined by 28 U.S.C. § 1332(d)(1)(B), in which a
7 member of the putative class is a citizen of a different state than Defendant, and the
8 amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and
9 costs. See 28 U.S.C. § 1332(d)(2).

10 6. The Court has jurisdiction over the state law claims because they form part
11 of the same case or controversy under Article III of the United States Constitution.

12 7. The Court has personal jurisdiction over Defendant because its Alessi
13 Autentico Premium Risotto products are advertised, marketed, distributed and sold
14 through the State of California; Defendant engaged in the wrongdoing alleged in this
15 Complaint throughout the United States, including in the State of California; Defendant
16 is authorized to do business in the State of California; and Defendant has sufficient
17 minimum contacts with the State of California, rendering the exercise of jurisdiction by
18 the Court permissible under traditional notions of fair play and substantial justice.
19 Moreover, Defendant is engaged in substantial activity with the State of California.

20 8. Venue is proper in the United States District Court for the Southern
21 District of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the
22 events giving rise to the claims occurred within this judicial district, Defendant has
23 marketed and sold the Alessi Autentico Premium Risotto products at issue in this action
24 in this judicial district, and it conducts business within this judicial district.

25 **PARTIES**

26 9. Plaintiff Anthony Buso is a citizen of the State of California and resides in
27 San Diego, California. Plaintiff purchased Defendant's Alessi Autentico Premium
28

1 Risotto with Porcini Mushrooms product for personal consumption during the last four
2 years in San Diego, California.

3 10. Plaintiff is informed and believes, and upon such information and belief
4 alleges, that Defendant Vigo Importing Co. is a Florida corporation with its principal
5 place of business located in Tampa, Florida. Plaintiff is informed and believes, and
6 upon such information and belief alleges, that Defendant, at all times relevant,
7 conducted business in the State of California and within the Southern District of
8 California.

9 11. The true names and capacities of the Defendants sued herein as DOES 1
10 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such
11 Defendants by fictitious names. Each of the Defendants designated herein as a DOE is
12 legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
13 Court to amend this Complaint to reflect the true names and capacities of the DOE
14 Defendants when such identities become known.

15 12. At all relevant times, each and every Defendant was acting as an agent
16 and/or employee of each of the other Defendants and was acting within the course
17 and/or scope of said agency and/or employment with the full knowledge and consent of
18 each of the Defendants. Each of the acts and/or omissions complained of herein were
19 alleged and made known to, and ratified by, each of the other Defendants (Vigo
20 Importing Co. and DOE Defendants will hereafter collectively be referred to as
21 “Defendant”).

22 **FACTUAL ALLEGATIONS**

23 **California Law Prohibits Non-functional Slack-Fill**

24 13. Many federal and state consumer protection and labeling laws prohibit
25 deceptive packaging and labeling of products and commodities. In California, the Fair
26 Packaging and Labeling Act (“CFPLA”) “is designed to protect purchasers of any
27 commodity within its provisions against deception or misrepresentation. Packages and
28 their labels should enable consumers to obtain accurate information as to the quantity of

1 the contents and should facilitate value comparisons.” (California Business &
2 Professions Code § 12601.)

3 14. In this context, the CFPLA provides: “No food containers shall be made,
4 formed, or filled as to be misleading.” (California Business & Professions Code §
5 12606.2(b).) “A container that does not allow the consumer to fully view its contents
6 shall be considered to be filled as to be misleading if it contains nonfunctional slack
7 fill.” (California Business & Professions Code § 12606.2(c).) Section 12606.2(c)
8 defines “slack fill” as “the difference between the actual capacity of a container and the
9 volume of product contained therein.” Similarly, section 12606.2(c) defines
10 “nonfunctional slack fill” as “the empty space in a package that is filled to substantially
11 less than its capacity for reasons other than any one or more of the following:

12 (1) Protection of the contents of the package.

13 (2) The requirements of machines used for enclosing the contents of the package.

14 (3) Unavoidable product settling during shipping and handling.

15 (4) The need for the package to perform a specific function, such as where packaging
16 plays a role in the preparation or consumption of a food, if that function is inherent to
17 the nature of the food and is clearly communicated to consumers.

18 (5) The fact that the product consists of a food packaged in a reusable container where
19 the container is part of the presentation of the food and has value that is both significant
20 in proportion to the value of the product and independent of its function to hold the
21 food, such as a gift product consisting of a food or foods combined with a container that
22 is intended for further use after the food is consumed or durable commemorative or
23 promotional packages.

24 (6) Inability to increase the level of fill or to further reduce the size of the package, such
25 as where some minimum package size is necessary to accommodate required food
26 labeling exclusive of any vignettes or other nonmandatory designs or label information,
27 discourage pilfering, facilitate handling, or accommodate tamper-resistant devices.”
28 (California Business & Professions Code § 12606.2(c)(1)-(6).)

1 15. None of the above safe-harbor provisions applies to the Alessi Autentico
2 Premium Risotto products. Defendant intentionally incorporated non-functional slack-
3 fill in its packaging of the Alessi Autentico Premium Risotto products. As such, the
4 packaging is per se illegal, and reliance upon the packaging by absent class members is
5 presumed.

6 **Defendant's Products Contain Non Functional Slack-Fill**

7 16. Defendant's Alessi Autentico Premium Risotto products are, and at all
8 relevant times were, sold in non-transparent containers. The containers have significant
9 slack-fill, as described below.

10 17. More than 70% of the interior of the Alessi Autentico Premium Risotto
11 product containers, which concern the Alessi Autentico Premium Risotto with Porcini
12 Mushrooms product purchased by Plaintiff, is comprised of empty space, or non-
13 functional slack fill.



22. Defendant's product packaging is presumed to be a material factor in absent Class Members' decisions to purchase the Alessi Autentico Premium Risotto products. Based on Defendant's illegal packaging, there is a presumption that product

1 packaging, reasonable Class Members expected to receive more Alessi Autentico
2 Premium Risotto product than was actually being sold.

3 23. There is no practical reason for the non-functional slack-fill used to
4 package the Alessi Autentico Premium Risotto products.

5 24. As a result of Defendant's illegal packaging, thousands of consumers
6 purchased the Products and have been damaged by Defendant's illegal conduct.

7 **CLASS ACTION ALLEGATIONS**

8 25. Plaintiff brings this action as a class action pursuant to Rule 23 of the
9 Federal Rules of Civil Procedure on behalf of herself and the following class
10 (collectively, the "Class" or "Classes"), defined as:

11 **All California residents who made retail purchases of Defendant's Alessi**
12 **Autentico Premium Risotto products with non-functional slack-fill, as**
13 **defined by California Business & Professions Code § 12606.2, during the**
14 **applicable limitations period up to and including final judgment in this**
15 **action.**

16 26. The proposed Class excludes current and former officers and directors of
17 Defendant, Members of the immediate families of the officers and directors of
18 Defendant, Defendant's legal representatives, heirs, successors, assigns, and any entity
19 in which it has or has had a controlling interest, and the judicial officer to whom this
20 lawsuit is assigned.

21 27. Plaintiff reserves the right to revise the Class definition based on facts
22 learned in the course of litigating this matter.

23 28. The Alessi Autentico Premium Risotto products sold by Defendant suffer
24 from illegal product bottling, labeling and nonfunctional slack-fill.

25 29. Numerosity: This action has been brought and may properly be maintained
26 as a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3) of the Federal
27 Rules of Civil Procedure. While the exact number and identities of other Class
28 Members are unknown to Plaintiff at this time, Plaintiff is informed and believes that

1 there are hundreds of thousands of Members in the Class. Based on sales of the Alessi
2 Autentico Premium Risotto products it is estimated that the Class is composed of more
3 than 10,000 persons. Furthermore, even if subclasses need to be created for these
4 consumers, it is estimated that each subclass would have thousands of Members. The
5 Members of the Class are so numerous that joinder of all Members is impracticable and
6 the disposition of their claims in a class action rather than in individual actions will
7 benefit the parties and the courts.

8 30. Typicality: Plaintiff's claims are typical of the claims of the Members of
9 the Class as all Members of the Class are similarly affected by Defendant's wrongful
10 conduct, as detailed herein.

11 31. Adequacy: Plaintiff will fairly and adequately protect the interests of the
12 Members of the Class in that he has no interests antagonistic to those of the other
13 Members of the Class. Plaintiff has retained experienced and competent counsel.

14 32. Superiority: A class action is superior to other available methods for the
15 fair and efficient adjudication of this controversy. Since the damages sustained by
16 individual Class Members may be relatively small, the expense and burden of
17 individual litigation makes it impracticable for the Members of the Class to individually
18 seek redress for the wrongful conduct alleged herein. Furthermore, the adjudication of
19 this controversy through a class action will avoid the potentially inconsistent and
20 conflicting adjudications of the claims asserted herein. There will be no difficulty in the
21 management of this action as a class action. If Class treatment of these claims were not
22 available, Defendant would likely unfairly receive thousands of dollars or more in
23 improper revenue.

24 33. Common Questions Predominate: Common questions of law and fact exist
25 as to all Members of the Class and predominate over any questions solely affecting
26 individual Members of the Class. Among the common questions of law and fact
27 applicable to the Class are:

28 ///

i. Whether Defendant labeled, packaged, marketed, advertised and/or sold Alessi Autentico Premium Risotto products using illegal packaging and labeling;

ii. Whether Defendant's actions constitute violations of the CFPLA, California Business & Professions Code § 12606.2;

iii. Whether Defendant omitted and/or represented that its Alessi Autentico Premium Risotto products have quantities that they do not have;

iv. Whether Defendant's labeling, packaging, marketing, advertising and/or selling of Alessi Autentico Premium Risotto products constituted an unfair or unlawful practice;

v. Whether Defendant's packaging of the Alessi Autentico Premium Risotto products constituted nonfunctional slack-fill;

vi. Whether, and to what extent, injunctive relief should be imposed on Defendant to prevent such conduct in the future;

vii. Whether the Members of the Class have sustained damages as a result of Defendant's wrongful conduct;

viii. The appropriate measure of damages and/or other relief; and

ix. Whether Defendant should be enjoined from continuing its unlawful practices.

34. The class is readily definable, and prosecution of this action as a Class action will reduce the possibility of repetitious litigation. Plaintiff knows of no difficulty which will be encountered in the management of this litigation which would preclude his maintenance of this matter as a Class action.

35. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

///

36. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual Members; and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

37. The prosecution of separate actions by Members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interest of all Members of the Class, although certain Class Members are not parties to such actions.

38. Defendant's conduct is generally applicable to the Class as a whole and Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT,

Cal. Civ. Code § 1750, *et seq.*

39. Plaintiff realleges and incorporates herein by reference the allegations contained in all preceding paragraphs, and further alleges as follows:

40. Plaintiff brings this claim individually and on behalf of the Class for Defendant's violations of California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code 1761(d).

41. Plaintiff and the Class Members are consumers who purchased the Alessi Autentico Premium Risotto products for personal, family or household purposes. Plaintiff and the Class Members are "consumers" as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).

42. The Alessi Autentico Premium Risotto products that Plaintiff and other Class Members purchased from Defendant were "goods" within the meaning of Cal. Civ. Code § 1761(a).

1 43. Defendant's actions, representations, and conduct have violated, and
2 continue to violate the CLRA, because they extend to transactions that intended to
3 result, or which have resulted in, the sale of goods to consumers.

4 44. Defendant violated California law because the Alessi Autentico Premium
5 Risotto products are packaged in containers made, formed or filled to contain non-
6 functional slack-fill.

7 45. California's Consumers Legal Remedies Act, Cal. Civ. Code § 1770(a)(5),
8 prohibits "Representing that goods or services have sponsorship, approval,
9 characteristics, ingredients, uses, benefits, or quantities which they do not have or that a
10 person has a sponsorship, approval, status, affiliation, or connection which he or she
11 does not have." By engaging in the conduct set forth herein, Defendant violated and
12 continues to violate Section 1770(a)(5) of the CLRA, because Defendant's conduct
13 constitutes illegal and unlawful competition.

14 46. Cal. Civ. Code § 1770(a)(9) further prohibits "[a]dvertising goods or
15 services with intent not to sell them as advertised." By engaging in the conduct set
16 forth herein, Defendant violated and continues to violate Section 1770(a)(9), because
17 Defendant's conduct constitutes illegal and unfair methods of competition.

18 47. Given the materiality of Defendant's misrepresentations, absent Class
19 Members are entitled to a presumption of reliance.

20 48. Plaintiff and the Class suffered injuries caused by Defendant because the
21 Alessi Autentico Premium Risotto product did not have the qualities as promised and
22 were unlawfully packaged.

23 49. On or about September 19, 2017, prior to filing this action, Plaintiff sent a
24 CLRA notice letter to Defendant which complies with California Civil Code 1782(a).
25 Plaintiff sent Vigo Importing Co., individually and on behalf of the proposed Class, a
26 letter via Certified Mail, advising Defendant that it is in violation of the CLRA and
27 demanding that it cease and desist from such violations and make full restitution by
28

1 refunding the monies received therefrom. A true and correct copy of the letter is
2 attached hereto as Exhibit 1.

3 50. Wherefore, Plaintiff seeks injunctive relief for these violations of the
4 CLRA.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for relief and judgment against Defendant as
7 follows:

8 (A) For an Order certifying the Class pursuant to Federal Rule of Civil
9 Procedure 23, appointing Plaintiff as class representatives, and designating
10 Plaintiff's counsel as counsel for the Class;

11 (B) For an Order declaring that Defendant's conduct violated the CLRA,
12 Cal. Civ. Code § 1750, *et seq.*;

13 (C) For injunctive relief as pleaded or as the Court may deem proper;

14 (D) For an order of restitution and all other forms of equitable monetary
15 relief, as pleaded;

16 (E) For compensatory damages in amounts to be determined by the Court
17 and/or jury;

18 (F) For punitive damages;

19 (G) For prejudgment interest on all amounts awarded;

20 (H) For an Order awarding Plaintiff and the Class their reasonable
21 attorneys' fees and expenses and costs of suit as pleaded pursuant to, *inter alia*,
22 Cal. Civ. Code § 1780(e) and Cal. Civ. Proc. Code § 1021.5; and

23 (I) For such other and further relief as the Court deems just and proper.

24 Date: June 19, 2018

Respectfully submitted,

25 PACIFIC TRIAL ATTORNEYS
26 A Professional Corporation

27 By: /s/Scott J. Ferrell
28 Scott J. Ferrell
Attorneys for Plaintiff

DEMAND FOR TRIAL BY JURY

Plaintiff, individually and on behalf of all others similarly situated, hereby demands a jury trial on all claims so triable.

Date: June 19, 2018

Respectfully submitted,

PACIFIC TRIAL ATTORNEYS
A Professional Corporation

By: /s/Scott J. Ferrell
Scott J. Ferrell
Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ANTHONY BUSO, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Scott J. Ferrell, Pacific Trial Attorneys, APC
4100 Newport Place Drive, Suite 800, Newport Beach, CA 92660
Telephone: 949-706-6464

DEFENDANTS

VIGO IMPORTING CO., a Florida corporation; and DOES 1 through 10, inclusive,

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'18CV1328 WQHBGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C § 1332(d)(1)(B)

Brief description of cause:

Class action complaint for damages and injunctive relief

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/19/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/Scott J. Ferrell

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT 1



September 19, 2017

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Alessi Autentico
Vigo Importing Company
P.O. Box 15584
Tampa, FL 33684
Attention: Legal Department

Re: Violations of California Civil Code § 1782 et seq.

Ladies and Gentlemen:

This law firm has been retained to prosecute a class action lawsuit against you for violation of the Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.* (“CLRA”). As relevant here, the CLRA prohibits unfair and unlawful methods of competition and unfair business practices. This includes packaging products in containers containing non-functional slack-fill or empty space.

As shown below, you have packaged your products in containers containing non-functional slack-fill or empty space. This amounts to a clear, ongoing, and unequivocal violation of the CLRA. Accordingly, you are liable to my client and to the putative class for substantial monetary damages. This letter serves as notice and demand for corrective action within thirty (30) days as further described below.

1. My Client Purchased A Product Containing Non-Functional Slack-Fill.

My client recently purchased your “Risotto With Porcini Mushrooms” packaged in a large, opaque pouch. Upon opening, my client learned that the package contained significant empty space or “slack-fill”; indeed, the pouch was over seventy percent empty.¹ It appears that you have intentionally packaged this product in non-transparent containers with non-functional slack fill; this allows you to increase sales, charge a premium price, and unfairly capture market share.

¹ Upon reasonable request, we will provide you with photographic evidence of the disparity.

Alessi Autentico
Vigo Importing Company
September 19, 2017
Page 2



2. My Client and Each Class Member Are Entitled to Statutory Minimum Damages of \$1,000.00 Per Violation From You.

“The CLRA allows for restitution and injunctive relief, as well as compensatory and punitive damages and attorney fees.” *Broberg v. Guardian Life Ins. Co. of Am.*, 171 Cal. App. 4th 912, 923–924, 90 Cal. Rptr. 3d 225 (2009). Under the CLRA, “in no case shall the total award of damages in a class action be less than one thousand dollars (\$1,000).” Cal. Civ. Code § 1780(a)(1). Thus, if you are found liable for violations of the CLRA, at a minimum, the class would be entitled to damages of \$1,000 for each violation. *See Pickman v. American Exp. Co.*, No. C 11-05326 WHA, 2012 WL 258842, at *2 (N.D. Cal. Jan. 27, 2012).

3. Conclusion

We respectfully request on behalf of our client and the class that you (1) cease and desist from continued sale any products containing non-functional slack-fill; (2) initiate corrective action; and (3) refund the purchase price of all products. If you decline we intend to file a class action lawsuit upon expiration of the aforesaid thirty (30) day period. If you believe that any of the assertions in this letter are inaccurate or would like to discuss a confidential pre-filing resolution of this case, I urge you to retain counsel to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Ferrell'.

Scott J. Ferrell, Esq.
For Pacific Trial Attorneys
A National Litigation Firm

SJF/mkj

EXHIBIT 2

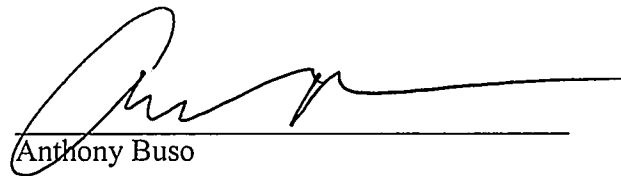
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I, Anthony Buso, declare as follows:

1. I am a Plaintiff in this action, and am a citizen of the State of California. I have personal knowledge of the facts herein and, if called as a witness, I could and would testify competently thereto.

2. The Complaint in this action, filed concurrently with this Declaration, is filed in the proper place for trial under Civil Code Section 1780(d) in that San Diego County is a county in which Defendants are doing business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Anthony Buso