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9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

11
12 SYVONNE BURGIE, and EDRIE
13 SCHADE, individually and on behalf of
14 all others similarly situated,

CGC-24-617504

15 Plaintiffs,

16 - against -

Class Action Complaint

17 UPFIELD US INC.,

Jury Trial Demanded

18 Defendant.

19 Syvonne Burgie (“Plaintiff Burgie”), and Edrie Schade (“Plaintiff Schade”)
20 (“Plaintiffs”), through Counsel, allege upon information and belief, except for
21 allegations about Plaintiffs, which are based on personal knowledge:

22 1. In response to a butter shortage in the late nineteenth century, a French
23 chemist created an emulsion of vegetable fats and water, dyed yellow.

24 2. Where the fat content is equal to or greater than 80 percent, its formal
25 name is margarine.

26 3. Today, these butter substitutes are comprised mainly of palm oil,
27 soybean oil, and canola oil.

28 4. According to the United States Department of Agriculture (“USDA”),

1 consumption of these vegetable oil blends recently hit its lowest level since 1942,
2 while butter has reached its highest level in fifty years.

3 5. This is due to several factors.

4 6. First, according to research firm Mintel, “consumers [are] increasingly
5 turn[ing] to butter over margarine/[and vegetable oil] spreads for its natural appeal,”
6 and a “preference for less processed foods.”

7 7. Butter is made by gently churning cream and milk from cows, without
8 chemicals or additives.

9 8. In contrast, vegetable oils are heavily refined, in the presence of chemical
10 catalysts, such as nickel and cadmium.

11 9. Second, consumers are more aware of the healthier profile of butter
12 compared to vegetable oil alternatives.

13 10. Butter contains heart-healthy fats, while vegetable oils contain harmful
14 trans fats, a result of hydrogenation and interesterification.

15 11. Butter contains protein, calcium and vitamins A and D, while vegetable
16 oils have no comparable nutritional value, due to the intense processing needed to
17 render them palatable.

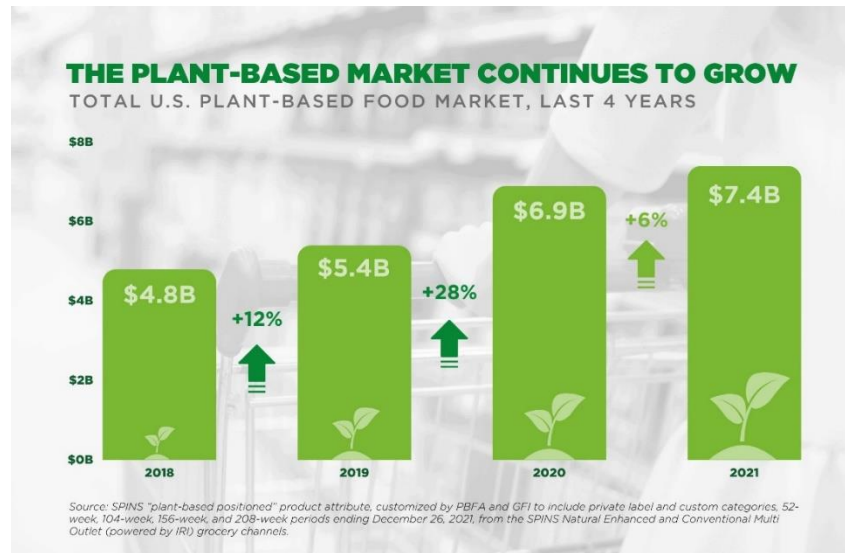
18 12. Third, vegetable oil spreads are considered ultra-processed foods
19 (“UPF”), frowned upon by nutrition authorities and public health bodies.

20 13. The decline in traditional vegetable oil spreads has contributed to “plant
21 butters [] [] popping up in dairy aisles in increasing numbers.”¹

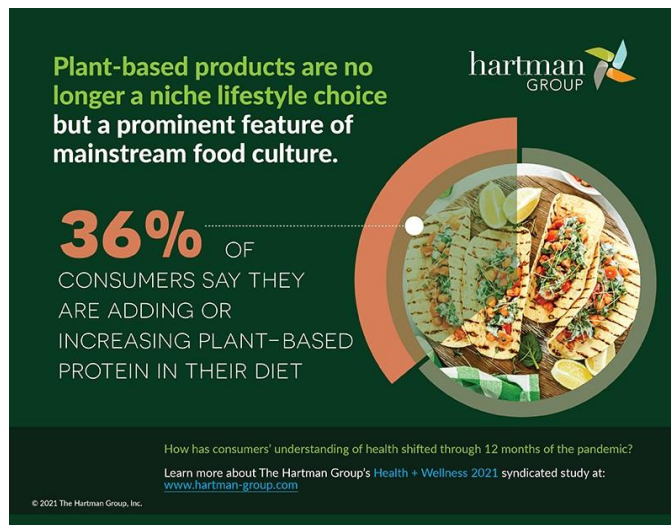
22 14. This is consistent with the overall growth in foods that are “plant-based,”
23 which exceed \$7 billion annually.²

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26 ¹ Ile Kauppila, [Plant butters on the ascent](#), Oils & Fats International, May 2021.

27 ² Plant Based Foods Association, [2021 U.S. Retail Sales Data for the Plant-Based](#)
28 [Foods Industry](#).



15. According to the Hartman Group, at least thirty-six percent of consumers are turning to foods described as “plant-based,” due in part to a “focus on health and wellness.”³



16. The Good Food Institute (“GFI”) reports that in recent years, “plant-based butter grew 12 times faster than conventional butter.”⁴

17. While many have decried “plant butter [as] basically ‘new-age

³ Hartman Group, [Plant-based Products: No Longer a Niche Lifestyle Choice](#), Feb. 25, 2021.

⁴ Good Foods Institute, [2021 U.S. Retail Market Insights: Plant-based foods](#), Mar. 2023; Plant Based Foods Association, [2021 U.S. Retail Sales Data for the Plant-Based Foods Industry](#).

1 margarine,”⁵ others have described how these “new plant butters use real, whole
2 minimally processed ingredients,” as their main components, instead of “cheaper
3 ingredients that were refined and highly processed,” like palm oil, soybean oil, and
4 canola oil.⁶

5 18. The most popular of these alternative, “minimally processed” ingredients
6 is olive oil, discovered thousands of years ago by ancient civilizations, in the
7 Mediterranean basin.

8 19. The reasons why global olive oil consumption doubled in the past three
9 decades, now exceeding three million tons per year, are several.⁷

10 20. First, numerous studies have confirmed the beneficial impacts of the
11 Mediterranean diet, centered around olive oil.⁸

12 21. In this context, “a switch from butter or margarine to olive oil is probably
13 the change that comes easiest to most Americans,” seeking to improve their health
14 outcomes.⁹

15 22. Unlike the harmful trans fats of palm, soybean, and canola oils, olive oil
16 has high levels of heart-healthy fats, which help control cholesterol.

17 23. Whereas standard vegetable oils have no flavor or aroma, due to the
18 intense processing required to render them palatable, olive oil is known for its
19

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21 ⁵ Lindsay Champion, [Plant Butter is Everywhere Right Now. But is it Healthy? A Nutritionist Weighs In](#), Pure Wow, May 11, 2020; [Plant-Based butter: the new star in the dairy aisle](#), Ingredients Network, May 8, 2020.

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23 ⁶ Ile Kauppila, [Plant butters on the ascent](#), Oils & Fats International, May 2021.

24 ⁷ Food & Beverage Application Bulletin, [Olive Oil Trends](#), PALL Corporation, Feb. 2022.

25 ⁸ Florence Fabricant, [Mediterranean Gold: An Olive Oil Invasion](#), New York Times, June 7, 1989.

26
27 ⁹ Bethany E. Blalock, [“How to Buy, Store and Eat Olive Oil,”](#) Practical
28 Gastroenterology, 39.10 (2015): 32-38.

1 “distinct peppery or grassy taste and flavor.”¹⁰

2 24. Olive oil also contains immunity-promoting antioxidants, like
3 polyphenols, which help slow down the aging process.

4 25. Second, in contrast to highly processed and refined palm, soybean, and
5 canola oils, olive oil is extracted from the olive fruit, through cold-pressing, a natural
6 process, without additives or harsh processing.¹¹

7 26. The downside of olive oil’s “high commercial value” is that much of its
8 production is controlled by European organized crime syndicates.¹²

9 27. These groups make billions of dollar per year by “cut[ting] the pure,
10 pressed olive oil with cheaper oils,” adding harmful green dyes to create the
11 appearance of olive oil, and substituting lower quality pomace oils, yet labeling such
12 foods as olive oil and made with olive oil.

13 28. The Congressional Research Service (“CRS”) confirmed this type of
14 “economically motivated adulteration” is especially significant for olive oil products,
15 “depriv[ing] the food buyer of the product they think they are getting [] [by]
16 substitute[ing] [] a high-value product with a less expensive or lower quality
17 alternative.”¹³

18 29. Not only is it reported that “seventy percent of olive oil is actually fake,”
19 numerous plant-based “buttery spread[s] [described] [] [a]s made of ‘olive oil’” are
20 mainly highly processed vegetable oils, like palm oil, soybean oil, and canola oil,
21 preventing consumers from making informed choices.¹⁴

22 ¹⁰ Brightland, [Olive Oil vs. Vegetable Oil](#).

23 ¹¹ Spanish Olive Oil Interprofessional Organization, [The history of Olive Oil \(I\)](#), Olive
24 Oils from Spain, Feb. 24, 2016.

25 ¹² Casadei, Enrico, et al. “[Emerging trends in olive oil fraud and possible
26 countermeasures](#),” Food Control 124 (2021): 107902.

27 ¹³ Renée Johnson, [Food Fraud and “Economically Motivated Adulteration” of Food
28 and Food Ingredients](#), Congressional Research Service, R43358, Jan. 10, 2014.

¹⁴ Bridget Chambers, [What Is Olive Oil Fraud? An Expert Explains How to Identify](#)

1 30. Over one hundred years ago, consumers were similarly concerned about
2 the replacement of high value and healthy oils, like olive oil, with lower quality oils
3 of the time, such as cottonseed oil.

4 31. The result was the Federal Food, Drug and Cosmetic Act (“FFDCA”) of
5 1938, adopted in this State as the Sherman Food, Drug, and Cosmetic Law (“Sherman
6 Law”), which prohibited “misbranding” and adulteration not just with respect to oils
7 but across the sources of nourishment for American families. 21 U.S.C. § 301 *et seq.*¹⁵
8 Cal. Health & Safety Code (“HSC”) § 109875, *et seq.*; HSC § 110100(a) (adopting
9 federal regulations).

10 32. The newly established Food and Drug Administration (“FDA”) sought
11 to establish “honesty and fair dealing,” because it knew “consumers initially [] rely
12 on extrinsic cues such as visual information on labels and packaging,” in deciding
13 what to buy.¹⁶

14 33. To appeal to consumers who (1) try and avoid traditional vegetable oil
15 spreads and margarine, based on commonly used, yet unhealthy, and highly processed
16 ingredients, like palm oil, soybean oil, and canola oil, (2) consider “plant-based”
17 foods healthier than non-plant-based alternatives, because they are more natural

18 _____
19 [It, and Where to Buy the Good Stuff](#), Camile Styles, June 21, 2021; Lucy Danziger,
20 Watch Out for These Harmful Ingredients in Vegan Butter, Says This Doctor, The
21 Beet, May 10, 2021.

22 ¹⁵ “Misbranded” is the statutory term for labeling that is false and/or misleading, while
23 adulteration means to “render (something) poorer in quality by adding another
24 substance, typically an inferior one.”

25 ¹⁶ Lancelot Miltgen et al., “Communicating Sensory Attributes and Innovation
26 through Food Product Labeling,” *Journal of Food Products Marketing*, 22.2 (2016):
27 219-239; Helena Blackmore et al., “A Taste of Things to Come: The Effect of
28 Extrinsic and Intrinsic Cues on Perceived Properties of Beer Mediated by
Expectations,” *Food Quality and Preference*, 94 (2021): 104326; Okamoto and
Ippaita, “Extrinsic Information Influences Taste and Flavor Perception: A Review
from Psychological and Neuroimaging Perspectives,” *Seminars in Cell &
Developmental Biology*, 24.3, Academic Press, 2013.

1 and/or less processed, (3) are aware of butter’s superior attributes, with respect to
2 health, nutrition, and/or taste, compared to margarine and traditional vegetable oil
3 spreads, and/or (4) are aware of olive oil’s status as a “superfood,” known for
4 providing a range of nutrition and other benefits, Upfield US Inc. (“Defendant”)
5 manufactures, labels, markets, packages, and/or sells, a (i) water-in-oil emulsion, (ii)
6 described as “Plant Butter,” (iii) promoted as “Made With Olive Oil” and “With Olive
7 Oil,” (iv) across a front label depicting three ripening olives, gradually turning from
8 their initial yellow-green, to rose, and then to red-brown, attached to characteristic
9 oblong, olive leaves, (v) in olive green packaging, (vi) shown applied to a piece of
10 fresh toast, (vii) claiming to be “Dairy Free,” (viii) favorably compared to butter,
11 through the statement, “Cooks, Bakes, & Tastes Like Butter,” and “Great for Cooking
12 & Baking,” (ix) above a small, pencil-thin statement in the lower right corner
13 identifying it as a “79% Vegetable Oil Spread,” and/or “79% Plant-Based Oil Spread,”
14 (x) under the Country Crock brand (“Product”).



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1 34. Even the sides of the containers and packaging promote olive oil,
2 describing how this “Plant Butter [is] Made With Ingredients Like Olive Oil.”



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13 35. In-store display cases are replete with full size olives and olive leaves.

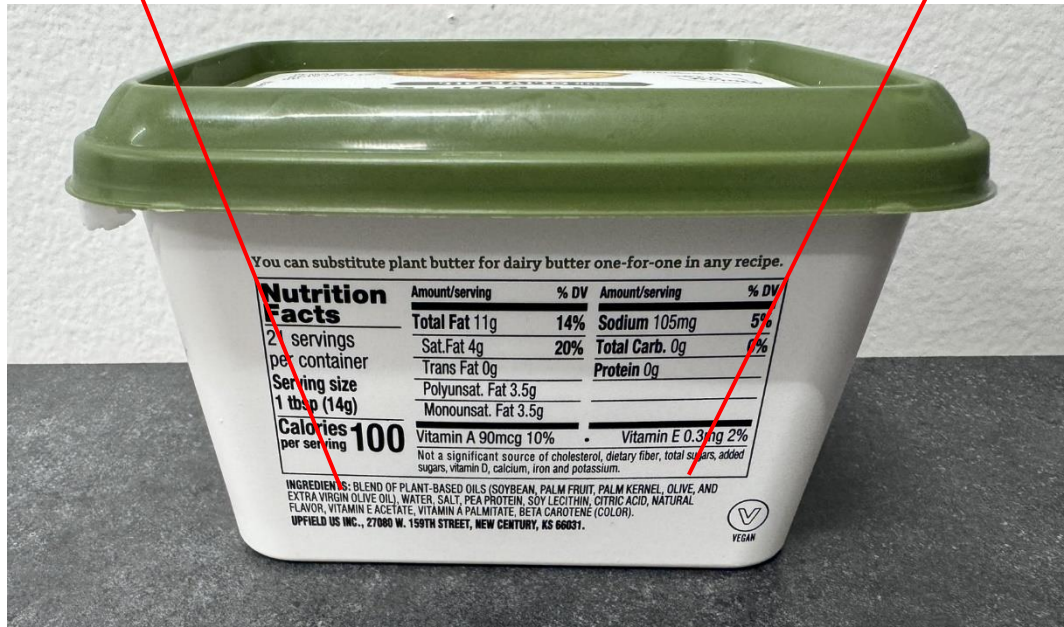


24 36. Despite the emphasis on olives and olive oil, and its description as “Plant
25 Butter,” causing consumers to expect the Product will contain a predominant or
26 significant amount of olive oil, it consists predominantly of the traditional vegetable
27 oils consumers are seeking to avoid, and a negligible or de minimis amount of olive
28 oil.

1 37. This is confirmed by the fine print of the ingredients, on the back of the
2 packaging, which lists the components of the “Blend of Plant-Based Oils,” in order
3 of predominance by weight. 21 C.F.R. § 101.4(a)(1); 21 C.F.R. § 101.4(b)(14).

4 38. In the container, olive oil is the present in the smallest amount, with
5 “SOYBEAN, PALM FRUIT, [AND] PALM KERNEL [OIL]” before “OLIVE AND
6 EXTRA VIRGIN OLIVE OIL.”¹⁷

7 **INGREDIENTS: BLEND OF PLANT-BASED OILS (SOYBEAN, PALM FRUIT, PALM KERNEL, OLIVE, AND**
8 **EXTRA VIRGIN OLIVE OIL), WATER, SALT, PEA PROTEIN, SOY LECITHIN, CITRIC ACID, NATURAL**
9 **FLAVOR, VITAMIN E ACETATE, VITAMIN A PALMITATE, BETA CAROTENE (COLOR).**

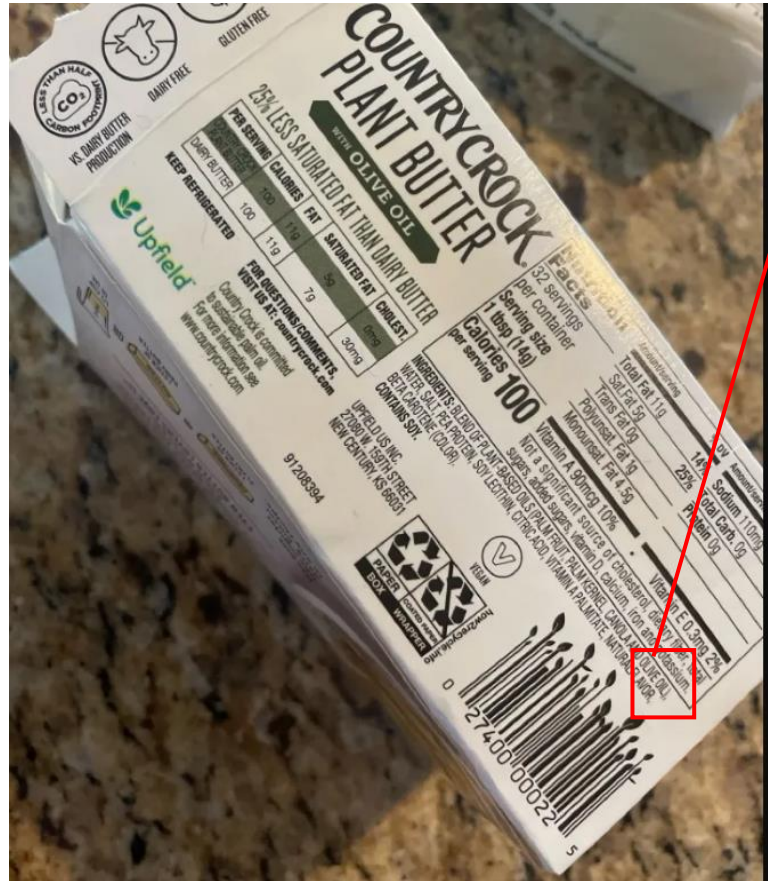


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21 39. In the sticks, olive oil is the present in the smallest amount, with “PALM
22 FRUIT, PALM KERNEL, [AND] CANOLA OIL” before “OLIVE OIL.”¹⁸

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24 ¹⁷ **INGREDIENTS: BLEND OF PLANT-BASED OILS (SOYBEAN, PALM**
25 **FRUIT, PALM KERNEL, OLIVE AND EXTRA VIRGIN OLIVE OIL), WATER,**
26 **SALT, PEA PROTEIN, SOY LECITHIN, CITRIC ACID, NATURAL FLAVOR,**
27 **VITAMIN E ACETATE, VITAMIN A PALMITATE, BETA CAROTENE**
28 **(COLOR).**

¹⁸ **INGREDIENTS: BLEND OF PLANT-BASED OILS (PALM FRUIT, PALM**
KERNEL, CANOLA AND OLIVE OIL), WATER, SALT, PEA PROTEIN, SOY

INGREDIENTS: BLEND OF PLANT-BASED OILS (PALM FRUIT, PALM KERNEL, CANOLA AND OLIVE OIL), WATER, SALT, PEA PROTEIN, SOY LECITHIN, CITRIC ACID, VITAMIN A PALMITATE, NATURAL FLAVOR, BETA CAROTENE (COLOR).



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40. The Product is “adulterated” and misleads consumers, because despite the labeling and packaging, (i) a water-in-oil emulsion, (ii) described as “Plant Butter,” (iii) promoted as “Made With Olive Oil” and “With Olive Oil,” (iv) across a front label depicting three ripening olives, gradually turning from their initial yellow-green, to rose, and then to red-brown, attached to characteristic oblong, olive leaves, (v) in olive green packaging, (vi) shown applied to a piece of fresh toast, (vii) claiming to be “Dairy Free,” (viii) favorably compared to butter, through the statement, “Cooks, Bakes, & Tastes Like Butter,” and “Great for Cooking & Baking,” (ix) above a small, pencil-thin statement in the lower right corner identifying it as a “79% LECITHIN, CITRIC ACID, VITAMIN A PALMITATE, NATURAL FLAVOR, BETA CAROTENE (COLOR).

1 Vegetable Oil Spread,” and/or “79% Plant-Based Oil Spread,” (x) under the Country
2 Crock brand, causing consumers to expect that olive oil is present beyond a de
3 minimis or negligible amount, in absolute and relative terms, “[the] valuable
4 constituent [of olive oil] has been in whole or in part omitted or abstracted.” HSC §
5 110585(a); 21 U.S.C. § 342(b)(1).

6 41. The Product is “adulterated” and misleads consumers, because despite
7 the labeling and packaging, (i) a water-in-oil emulsion, (ii) described as “Plant
8 Butter,” (iii) promoted as “Made With Olive Oil” and “With Olive Oil,” (iv) across a
9 front label depicting three ripening olives, gradually turning from their initial yellow-
10 green, to rose, and then to red-brown, attached to characteristic oblong, olive leaves,
11 (v) in olive green packaging, (vi) shown applied to a piece of fresh toast, (vii) claiming
12 to be “Dairy Free,” (viii) favorably compared to butter, through the statement,
13 “Cooks, Bakes, & Tastes Like Butter,” and “Great for Cooking & Baking,” (ix) above
14 a small, pencil-thin statement in the lower right corner identifying it as a “79%
15 Vegetable Oil Spread,” and/or “79% Plant-Based Oil Spread,” (x) under the Country
16 Crock brand, causing consumers to expect that olive oil is present beyond a de
17 minimis or negligible amount, in absolute and relative terms, “[canola oil, palm fruit
18 oil, palm kernel oil, and/or soybean oil] ha[ve] been substituted wholly or in part []
19 for [olive oil].” HSC § 110585(b); 21 U.S.C. § 342(b)(2).

20 42. The Product is “adulterated” and misleads consumers, because despite
21 the labeling and packaging, (i) a water-in-oil emulsion, (ii) described as “Plant
22 Butter,” (iii) promoted as “Made With Olive Oil” and “With Olive Oil,” (iv) across a
23 front label depicting three ripening olives, gradually turning from their initial yellow-
24 green, to rose, and then to red-brown, attached to characteristic oblong, olive leaves,
25 (v) in olive green packaging, (vi) shown applied to a piece of fresh toast, (vii) claiming
26 to be “Dairy Free,” (viii) favorably compared to butter, through the statement,
27 “Cooks, Bakes, & Tastes Like Butter,” and “Great for Cooking & Baking,” (ix) above
28 a small, pencil-thin statement in the lower right corner identifying it as a “79%

1 Vegetable Oil Spread,” and/or “79% Plant-Based Oil Spread,” (x) under the Country
2 Crock brand, causing consumers to expect that olive oil is present beyond a de
3 minimis or negligible amount, in absolute and relative terms, “[canola oil, palm fruit
4 oil, palm kernel oil, and/or soybean oil] ha[ve] been added thereto or mixed or packed
5 therewith so as to increase its bulk or weight.” HSC § 110585(d); 21 U.S.C. §
6 342(b)(4).

7 43. The use and/or addition of canola oil, palm fruit oil, palm kernel oil,
8 and/or soybean oil, allows the Product to use mainly lower valued oils, and use a
9 small, absolute and relative amount of olive oil, which is more valued by consumers.

10 44. The Product is “adulterated” and misleads consumers, because despite
11 the labeling and packaging, (i) a water-in-oil emulsion, (ii) described as “Plant
12 Butter,” (iii) promoted as “Made With Olive Oil” and “With Olive Oil,” (iv) across a
13 front label depicting three ripening olives, gradually turning from their initial yellow-
14 green, to rose, and then to red-brown, attached to characteristic oblong, olive leaves,
15 (v) in olive green packaging, (vi) shown applied to a piece of fresh toast, (vii) claiming
16 to be “Dairy Free,” (viii) favorably compared to butter, through the statement,
17 “Cooks, Bakes, & Tastes Like Butter,” and “Great for Cooking & Baking,” (ix) above
18 a small, pencil-thin statement in the lower right corner identifying it as a “79%
19 Vegetable Oil Spread,” and/or “79% Plant-Based Oil Spread,” (x) under the Country
20 Crock brand, causing consumers to expect that olive oil is present beyond a de
21 minimis or negligible amount, in absolute and relative terms, “substance[s] [including
22 ‘Natural Flavor’] ha[ve] been added thereto or mixed or packed therewith so as
23 to...make it appear better or of greater value than it is.” HSC § 110585(d); 21 U.S.C.
24 § 342(b)(4).

25 45. Based on information and belief, and/or investigation of Counsel, the
26 added “Natural Flavor” contributes to, enhances, and/or simulates the taste of olive
27 oil, causing consumers to believe what they are tasting is due to a greater amount of
28 olive oil than there is, and this allegation will likely have evidentiary support after a

1 reasonable opportunity for further investigation or discovery. HSC § 110585(d); 21
2 U.S.C. § 342(b)(4).

3 46. The Product is “misbranded” and misleads consumers, because despite
4 the labeling and packaging, (i) a water-in-oil emulsion, (ii) described as “Plant
5 Butter,” (iii) promoted as “Made With Olive Oil” and “With Olive Oil,” (iv) across a
6 front label depicting three ripening olives, gradually turning from their initial yellow-
7 green, to rose, and then to red-brown, attached to characteristic oblong, olive leaves,
8 (v) in olive green packaging, (vi) shown applied to a piece of fresh toast, (vii) claiming
9 to be “Dairy Free,” (viii) favorably compared to butter, through the statement,
10 “Cooks, Bakes, & Tastes Like Butter,” and “Great for Cooking & Baking,” (ix) above
11 a small, pencil-thin statement in the lower right corner identifying it as a “79%
12 Vegetable Oil Spread,” and/or “79% Plant-Based Oil Spread,” (x) under the Country
13 Crock brand, causes purchasers to expect that olive oil is present beyond a de minimis
14 or negligible amount, in absolute and relative terms, even though the predominant
15 vegetable oil ingredients are the highly processed canola oil, palm fruit oil, palm
16 kernel oil, and/or soybean oil, which lack the benefits of olive oil. HSC § 110660; 21
17 U.S.C. § 343(a)(1).

18 47. While canola oil, palm fruit oil, palm kernel oil, and/or soybean oil, may
19 technically come from plants, few if any consumers have ever seen, and fewer have
20 consumed, the source crop for canola, palm oil, and industrially produced soybeans.

21 48. As an increasing percentage of consumers replace animal-based fats,
22 such as dairy and meat, with those from plants, they are learning about olive oil’s
23 “good fat” as a replacement source, based on having the “highest percentage of
24 monounsaturated fat.”

25 49. Consumers will expect a vegetable oil spread, promoted as “Plant
26 Butter,” based on olive oil, to contain olive oil in a predominant, or meaningful
27 amount, relative to other oils used.

28 50. This is because “[C]onsumers describe plant-based products and plant-

1 based diets as healthy, natural, and sustainable,” and olive oil is the epitome of such
2 a food.¹⁹

3 51. The Product is “misbranded” and misleads consumers, because despite
4 the labeling and packaging, (i) a water-in-oil emulsion, (ii) described as “Plant
5 Butter,” (iii) promoted as “Made With Olive Oil” and “With Olive Oil,” (iv) across a
6 front label depicting three ripening olives, gradually turning from their initial yellow-
7 green, to rose, and then to red-brown, attached to characteristic oblong, olive leaves,
8 (v) in olive green packaging, (vi) shown applied to a piece of fresh toast, (vii) claiming
9 to be “Dairy Free,” (viii) favorably compared to butter, through the statement,
10 “Cooks, Bakes, & Tastes Like Butter,” and “Great for Cooking & Baking,” (ix) above
11 a small, pencil-thin statement in the lower right corner identifying it as a “79%
12 Vegetable Oil Spread,” and/or “79% Plant-Based Oil Spread,” (x) under the Country
13 Crock brand, causing purchasers to expect that olive oil is present beyond a de
14 minimis or negligible amount, in absolute and relative terms, this “fails to reveal facts
15 material in the light of such representations,” because it has substituted canola oil,
16 palm fruit oil, palm kernel oil, and/or soybean oil for olive oil. HSC § 110660; 21
17 U.S.C. § 343(a)(1); 15 U.S.C. § 55(a)(1).

18 52. Substituting canola oil, palm fruit oil, palm kernel oil, and/or soybean
19 oil, for olive oil, is of material interest to consumers, because olive oil costs more than
20 these traditional, and lower quality alternatives.

21 53. Substituting canola oil, palm fruit oil, palm kernel oil, and/or soybean
22 oil, for olive oil is of material interest to consumers, because olive oil contains more
23 nutrients than these traditional, and lower quality alternatives.

24 54. Substituting canola oil, palm fruit oil, palm kernel oil, and/or soybean
25 oil, for olive oil is of material interest to consumers, because olive oil is a natural
26

27 ¹⁹ [Emerging Plant-Based Trends: Insights from the US and Canada](#), Innova Market
28 Insights.

1 ingredient, made with minimal processing, because it is cold pressed, compared to
2 traditional vegetable oils, which are highly processed, through hydrogenation and/or
3 interesterification, in the presence of chemical catalysts, through industrial
4 manufacturing.

5 55. The Product is “misbranded” and misleads consumers, because despite
6 the labeling and packaging, (i) a water-in-oil emulsion, (ii) described as “Plant
7 Butter,” (iii) promoted as “Made With Olive Oil” and “With Olive Oil,” (iv) across a
8 front label depicting three ripening olives, gradually turning from their initial yellow-
9 green, to rose, and then to red-brown, attached to characteristic oblong, olive leaves,
10 (v) in olive green packaging, (vi) shown applied to a piece of fresh toast, (vii) claiming
11 to be “Dairy Free,” (viii) favorably compared to butter, through the statement,
12 “Cooks, Bakes, & Tastes Like Butter,” and “Great for Cooking & Baking,” (ix) above
13 a small, pencil-thin statement in the lower right corner identifying it as a “79%
14 Vegetable Oil Spread,” and/or “79% Plant-Based Oil Spread,” (x) under the Country
15 Crock brand, which includes and suggests the ingredient of olive oil, it does not
16 include canola oil, palm fruit oil, palm kernel oil, and/or soybean oil, even though
17 these are identified on the ingredient list, in fine print, on the back of the packaging.
18 HSC § 110660; 21 U.S.C. § 343(a)(1); 21 C.F.R. § 101.18(b); HSC § 110100(a).

19 56. The Product is “misbranded” and misleads consumers because it does
20 not contain a truthful and non-misleading “common or usual name.” HSC § 110720;
21 21 U.S.C. § 343(i).

22 57. First, neither “Plant Butter Made With Olive Oil,” “Plant Butter With
23 Olive Oil,” “Vegetable Oil Spread,” or “Plant-Based Oil Spread,” “accurately
24 identif[ies] or describe[s], in as simple and direct terms as possible, the basic nature
25 of the food or its characterizing properties or ingredients,” in a way which
26 distinguishes it from other vegetable oil spreads, without olive oil. 21 C.F.R. §
27 102.5(a); HSC § 110100(a).

28 58. Second, though “79% Vegetable Oil Spread,” and/or “79% Plant-Based

1 Oil Spread,” purport to be the Product’s “statement of identity,” (1) because it is the
2 only statement on the front label that alludes to ingredients other than olive oil, and
3 (2) it is “in lines generally parallel to the base on which the package rests as it is
4 designed to be displayed,” this term is not “in a size reasonably related to the most
5 prominent printed matter on such panel,” such as “Plant Butter,” promoted as “Made
6 With Olive Oil” and/or “With Olive Oil,” across a front label depicting three ripening
7 olives, gradually turning from their initial yellow-green, to rose, and then to red-
8 brown, attached to characteristic oblong, olive leaves. 21 C.F.R. § 101.3(d); HSC §
9 110100(a).

10 59. Nor is “79% Vegetable Oil Spread,” and/or “79% Plant-Based Oil
11 Spread,” one of the “principal features” of the front label, as it is not in bold type, but
12 in pencil thin gray font, not highly contrasted with its white background, making it
13 inconspicuous and unlikely to attract the purchaser’s gaze, and is significantly
14 overshadowed by the statements and images about olive oil and olives, in the center
15 of the package. 21 C.F.R. § 101.3(a); 21 C.F.R. § 101.3(d); HSC § 110100(a).

16 60. Neither “79% Vegetable Oil Spread,” nor “79% Plant-Based Oil Spread”
17 “accurately identif[ies] or describe[s], in as simple and direct terms as possible, the
18 basic nature of th[is] food or its characterizing properties or ingredients.” 21 C.F.R. §
19 102.5(a); HSC § 110100(a).

20 61. Based on the labeling and packaging, (i) a water-in-oil emulsion, (ii)
21 described as “Plant Butter,” (iii) promoted as “Made With Olive Oil” and “With Olive
22 Oil,” (iv) across a front label depicting three ripening olives, gradually turning from
23 their initial yellow-green, to rose, and then to red-brown, attached to characteristic
24 oblong, olive leaves, (v) in olive green packaging, (vi) shown applied to a piece of
25 fresh toast, (vii) claiming to be “Dairy Free,” (viii) favorably compared to butter,
26 through the statement, “Cooks, Bakes, & Tastes Like Butter,” and “Great for Cooking
27 & Baking,” (ix) above a small, pencil-thin statement in the lower right corner
28 identifying it as a “79% Vegetable Oil Spread,” and/or “79% Plant-Based Oil Spread,”

1 (x) under the Country Crock brand, olive oil is the characterizing ingredient in the
2 Product. 21 C.F.R. § 102.5(b).

3 62. First, olive oil is the characterizing ingredient because “the proportion of
4 [olive oil] in the food has a material bearing on [the Product’s] price.” 21 C.F.R. §
5 102.5(b).

6 63. This is shown by data obtained from the Vegetable Oil Price Index,
7 listing olive oil as \$2.61/kg, compared to palm oil at \$1.49/kg, canola (rapeseed) oil
8 at \$1.23/kg, and soybean oil at \$1.83/kg.²⁰

Vegetable oil price October 2023

- Global:US\$1.52/KG, unchanged
- Coconut Oil:US\$1.38/KG, 0.7% up
- Olive Oil:US\$2.61/KG, 0.4% up
- Palm Oil:US\$1.49/KG, unchanged
- Rapeseed Oil:US\$1.23/KG, unchanged
- Soybean Meal:US\$1.35/KG, unchanged
- Soybeans:US\$1.56/KG, unchanged
- Soybean Oil:US\$1.83/KG, unchanged
- Sunflower Oil:US\$1.34/KG, unchanged

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16 64. The price of olive oil is seventy-five (75) percent higher than palm oil,
17 one hundred and ten (110) percent higher than canola oil, and forty-two (42) percent
18 higher than soybean oil.

19 65. Therefore, the proportion of olive oil in the Product “has a material
20 bearing on [its] price.” 21 C.F.R. § 102.5(b).

21 66. Second, olive oil is a characterizing ingredient because its usage has a
22 material bearing on consumer acceptance of vegetable oil blends marketed as “Plant
23 Butter,” described as “Made With Olive Oil,” and “With Olive Oil.”

24 67. Olive oil is recognized as the most popular edible oil in this country and
25 globally.

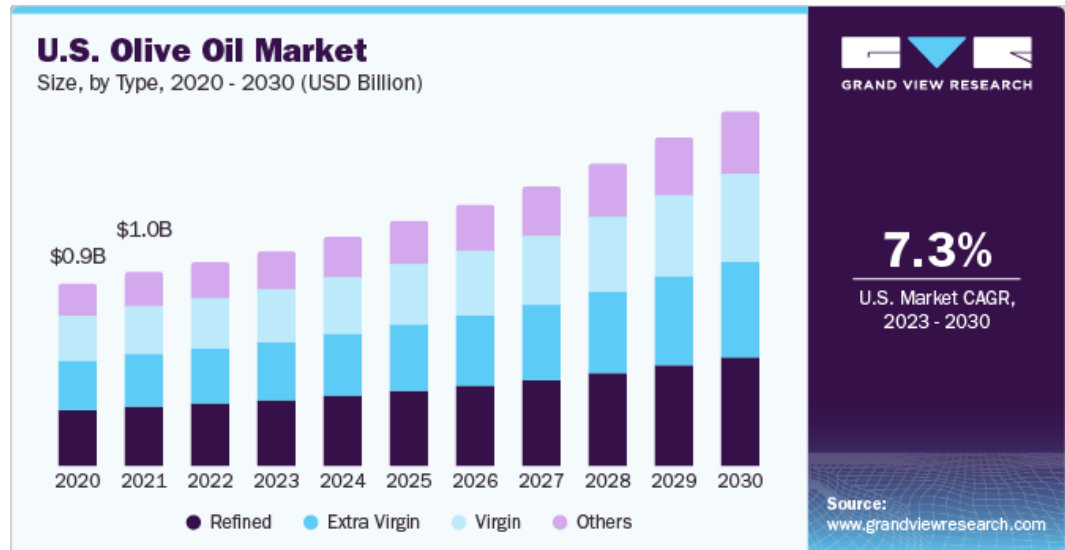
26 68. According to a 2016 article in The New York Times, “Americans
27

28 ²⁰ [Vegetable oil price index](#), BusinessAnalytIQ.

1 recognize olive oil as one of the top foods when it comes to healthy eating.”²¹

2 69. This is confirmed by “Cargill’s 2020 FATitudes survey, with olive []
3 oil[] [one of the] tops for impact on purchase and perceptions of healthfulness.”²²

4 70. Further, the United States recently surpassed Spain as the second largest
5 consumer of olive oil.²³



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

71. The demand for olive oil coincides with how “nearly two-thirds (61%) of U.S. consumers report avoiding [traditional vegetable] oils,” such as palm oil soybean oil, and canola oil, known to contain harmful trans fats, with negative health effects.²⁴

72. Third, olive oil is a characterizing ingredient because “the [Product’s] labeling [and] appearance,” “Plant Butter,” described as “Made With Olive Oil,” and “With Olive Oil,” across a front label depicting three ripening olives, gradually turning from their initial yellow-green, to rose, and then to red-brown, attached to

²¹ Joseph R. Profaci, [The keys to increasing the consumption of olive oil in the US](#), AboutOliveOil.org.

²² Elizabeth Brewster, [Fats and Oils: Attitudes Evolve, Options Expand](#), Food Technology Magazine, IFT.org, July 1, 2021.

²³ Daniel Dawson, [US Surpasses Spain as Second-Largest Olive Oil Consumer](#), Olive

²⁴ Sam Danley, [Consumers monitoring fats, oils in packaged foods](#), Food Business News, May 27, 2020.

1 characteristic oblong, olive leaves, in olive green packaging, described as “Dairy
2 Free,” and “Tastes Like Butter,” “create[s] an erroneous impression that [olive oil] is
3 present in an amount greater than is actually the case.” 21 C.F.R. § 102.5(b).

4 73. The result is that purchasers will expect the Product’s primary or
5 predominant oil ingredient is olive oil, or at least that it is present in more than a de
6 minimis amount, instead of the traditional vegetable oils, like the highly processed
7 canola oil, palm fruit oil, palm kernel oil, and/or soybean oil.

8 74. Since olive oil is a characterizing ingredient, the Product’s common or
9 usual name, whether “Plant Butter Made With Olive Oil,” “Plant Butter With Olive
10 Oil,” “79% Vegetable Oil Spread,” and/or “79% Plant-Based Oil Spread,” is required
11 to “include the percentage(s) of [olive oil]” “on the basis of its quantity in the finished
12 product,” so consumers will not be misled about the relative and absolute amount of
13 olive oil used. 21 C.F.R. § 102.5(b) and 21 C.F.R. § 102.5(b)(1).

14 75. The amount of olive oil was required to “be declared by the words
15 ‘containing (or contains) __ percent (or %) _____’ or ‘__ percent (or %) _____,’
16 with the first blank filled in with the percentage expressed as a whole number not
17 greater than the actual percentage of [olive oil]...and the second blank filled in with
18 the common or usual name of [olive oil].” 21 C.F.R. § 102.5(b)(2).

19 76. One person who appeared to agree that “Country Crock Plant Butter
20 [Made] With Olive Oil” was not the Product’s “common or usual name” was Dr. Ken
21 D. Berry, MD, who called it “FALSE ADVERTISING.”

22 77. Dr. Berry asked his Facebook followers rhetorically, if “‘With Olive Oil’
23 – that means it’s made with Olive Oil?,” answering “No. Check the ingredient list!
24 SOYBEAN OIL & Palm Oil are what this Margarine is made of. They added a drop
25 of Olive Oil.”²⁵

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27 ²⁵ Dr. Ken Berry, [This is the kind of false advertising...](#), Facebook, Aug. 9, 2020; Dr.
28 Ken Berry, [Please don’t let your family...](#), Facebook, Dec. 18, 2019.

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78. Another online advocate, Vani Hari, known as “The Food Babe,” asked her over one million Instagram followers, “Can you spot the lie?” about Country Crock’s “Plant Butter With Olive Oil.”²⁶



79. Hari lamented that “This is such a shady trick! People are not buying ‘Plant Butter With Olive Oil’ for the unhealthy soybean oil and palm kernel oil, natural flavors, and processed ingredients like soy lecithin.”

80. She continued, “They put ‘With Olive Oil’ on the front of the container

²⁶ The Food Babe, [Plant Butter With Olive Oil](#), Instagram.

1 because olive oil is healthy and they know that most people will see this and assume
2 Country Crock Plant Butter is good for you.”

3 81. However, “The truth is that this spread contains more soybean oil than
4 olive oil [and] Soybean oil is one of the most unhealthy oils to eat. It’s refined and
5 heavily processed. It’s known to increase the risk of obesity, inflammation,
6 cardiovascular disease, cancer, and autoimmune diseases.”

7 82. As a result of the false and misleading representations and omissions,
8 the Product is sold at a premium price, approximately \$3.49 for four sticks (16 oz)
9 and \$3.29 for a 10.5 oz container, excluding tax and sales, higher than similar
10 products, represented in a non-misleading way, and higher than it would be sold for
11 absent the misleading representations and omissions.

12 **JURISDICTION**

13 83. Plaintiff Burgie is a citizen of California.

14 84. The Court has jurisdiction over Defendant because it transacts business
15 within California and sells the Product to consumers within California, through its
16 sale and/or distribution by grocery stores, big box stores, gas stations, warehouse club
17 stores, drug stores, convenience stores, specialty grocery stores, and/or online, to
18 citizens of this State.

19 85. Defendant transacts business in California, through the sale of the
20 Product to citizens of California, from grocery stores, big box stores, gas stations,
21 warehouse club stores, drug stores, convenience stores, specialty grocery stores,
22 and/or online, to citizens of this State.

23 86. Defendant has committed tortious acts within this State through the
24 distribution and sale of the Product, which is misleading to consumers in this State.

25 87. Defendant has committed tortious acts outside this State by labeling,
26 packaging, representing, and selling the Product in a manner which causes injury to
27 consumers within this State, by misleading them as to its contents, production
28 practices, type, origins, quantity, amount, and/or quality, by regularly doing or

1 soliciting business, or engaging in other persistent courses of conduct to sell the
2 Product to consumers in this State, and/or derives substantial revenue from the sale
3 of the Product in this State.

4 88. Defendant has committed tortious acts outside this State by labeling the
5 Product in a manner which causes injury to consumers within this State by misleading
6 them as to its contents, ingredients, production practices, type, origins, amount, and/or
7 quality, through causing the Product to be distributed throughout this State, such that
8 it expects or should reasonably expect such acts to have consequences in this State
9 and derives substantial revenue from interstate or international commerce.

10 **VENUE**

11 89. Plaintiff Burgie resides in San Francisco County.

12 90. Venue is in this Court because Plaintiff Burgie's residence is in San
13 Francisco County.

14 91. Venue is in this Court because a substantial or entire part of the events
15 or omissions giving rise to Plaintiff Burgie's claims occurred in San Francisco
16 County.

17 92. This is because Plaintiff Burgie purchased, applied, used, and/or
18 consumed the Product in San Francisco County, in reliance on the packaging and
19 labeling identified here, and/or learned the representations and omissions identified
20 here were false and/or misleading in San Francisco County.

21 **PARTIES**

22 93. Plaintiff Burgie is a citizen of San Francisco County, California.

23 94. Plaintiff Schade is a citizen of Alameda County, California.

24 95. Defendant Upfield US Inc. is a Delaware corporation with a principal
25 place of business in New Jersey and Kansas.

26 96. Defendant was formed following the spinoff of the margarine business
27 from global conglomerate Unilever.

28 97. The Product is sold in several sizes and forms, with uniform or very

1 similar representations, omissions, labeling, and packaging.

2 98. Plaintiffs are like most consumers, and look and/or cannot avoid viewing
3 the front label of foods, to see what they are buying, and to learn basic information
4 about them.

5 99. Plaintiffs are like most consumers and are accustomed to the front label
6 of packaging telling them about a food's predominant or significant ingredients.

7 100. Plaintiffs expected the Product to have a predominant or significant
8 amount of olive oil, compared to other vegetable oils used.

9 101. Plaintiffs did not expect that olive oil was present in a de minimis or
10 negligible amount.

11 102. Plaintiffs did not expect that the Product was practically equivalent to
12 margarine, because it was a 79% vegetable oil blend, compared to margarine, which
13 is an 80% vegetable oil blend.

14 103. Plaintiffs are like most consumers who seek to avoid margarine, because
15 it is made mainly from traditional vegetable oils, such as palm oil, soybean oil, and/or
16 canola oil, which are highly processed, and known for their detrimental health effects.

17 104. Plaintiffs are like most consumers, who seek to consume olive oil and/or
18 more olive oil, due to its known health benefits, nutritive value, because it is a natural
19 ingredient, and/or its taste.

20 105. Plaintiffs read, saw, and relied on the packaging and labeling, including
21 "Plant Butter," promoted as "Made With Olive Oil" and "With Olive Oil," across a
22 front label depicting three ripening olives, gradually turning from their initial yellow-
23 green, to rose, and then to red-brown, attached to characteristic oblong, olive leaves,
24 in olive green packaging, shown applied to a piece of fresh toast, claiming to be
25 "Dairy Free," favorably compared to butter, through the statement, "Cooks, Bakes, &
26 Tastes Like Butter," and "Great for Cooking & Baking," to mean olive oil was the
27 predominant ingredient, or at least present in a significant amount, when this was false
28 and misleading, because the predominant oils used were canola oil, palm fruit oil,

1 palm kernel oil, and/or soybean oil.

2 106. Plaintiffs bought the Product with the labeling and packaging identified
3 here, (i) a water-in-oil emulsion, (ii) described as “Plant Butter,” (iii) promoted as
4 “Made With Olive Oil” and “With Olive Oil,” (iv) across a front label depicting three
5 ripening olives, gradually turning from their initial yellow-green, to rose, and then to
6 red-brown, attached to characteristic oblong, olive leaves, (v) in olive green
7 packaging, (vi) shown applied to a piece of fresh toast, (vii) claiming to be “Dairy
8 Free,” (viii) favorably compared to butter, through the statement, “Cooks, Bakes, &
9 Tastes Like Butter,” and “Great for Cooking & Baking,” (ix) above a small, pencil-
10 thin statement in the lower right corner identifying it as a “79% Vegetable Oil
11 Spread,” and/or “79% Plant-Based Oil Spread,” (x) under the Country Crock brand, at
12 or around the above-referenced price.

13 107. Plaintiffs purchased the Product between October 2019 and July 2024,
14 at grocery stores, big box stores, gas stations, warehouse club stores, drug stores,
15 convenience stores, and/or specialty grocery stores, in this State.

16 108. Plaintiffs did not expect olive oil was not the Product’s predominant
17 ingredient, nor that it was not present in a significant amount, compared to canola oil,
18 palm fruit oil, palm kernel oil, and/or soybean oil.

19 109. Plaintiffs paid more for the Product than they would have, had they
20 known olive oil was not the Product’s predominant ingredient, nor was it present in a
21 significant amount, compared to canola oil, palm fruit oil, palm kernel oil, and/or
22 soybean oil.

23 110. The Product was worth less than what Plaintiffs paid, and they would not
24 have paid as much absent Defendant’s false and misleading statements and/or
25 omissions.

26 111. Plaintiffs chose between Defendant’s Product and products represented
27 similarly, but which did not misrepresent their attributes, quality, type, features,
28 and/or components.

1 112. Plaintiffs intend to, seek to, and will purchase the Product again when
2 they can do so with the assurance its representations are consistent with its attributes,
3 features, quality, type, ingredients, quantity, and/or composition.

4 113. Plaintiffs are unable to rely on the representations not only of this
5 Product, but other similar vegetable oil spreads promoted with valuable oil
6 ingredients, like olive oil, because they are unsure whether those representations are
7 truthful.

8 114. If Defendant's labeling were to be truthful, Plaintiffs could rely on the
9 labeling of other such products.

10 **CLASS ALLEGATIONS**

11 115. Plaintiffs seek to represent the following class:

12 All persons in California who purchased the Product in
13 California during the statutes of limitations for each cause
14 of action alleged.

15 116. Excluded from the Class are (a) Defendant, Defendant's board members,
16 executive-level officers, members, attorneys, and immediate family members of any
17 of the foregoing persons; (b) governmental entities; (c) the Court, the Court's
18 immediate family, and Court staff and (d) any person that timely and properly
19 excludes himself or herself from the Class.

20 117. Common questions of issues, law, and fact predominate and include
21 whether Defendant's representations and omissions were and are misleading and if
22 Plaintiffs and class members are entitled to damages.

23 118. Plaintiffs' claims and basis for relief are typical to other members
24 because all were subjected to the same unfair, misleading, and deceptive
25 representations, omissions, and actions.

26 119. Plaintiffs are adequate representatives because their interests do not
27 conflict with other members.
28

1 120. No individual inquiry is necessary since the focus is only on Defendant’s
2 practices, and the class is definable and ascertainable.

3 121. Individual actions would risk inconsistent results, be repetitive and are
4 impractical to justify, as the claims are modest relative to the scope of the harm.

5 122. The class is sufficiently numerous, with over 100 members, because the
6 Product has been sold throughout the State for several years with the representations,
7 omissions, packaging, and/or labeling identified here, from third parties, including
8 grocery stores, big box stores, gas stations, warehouse club stores, drug stores,
9 convenience stores, specialty grocery stores, and/or online, to citizens of this State.

10 123. Plaintiffs’ Counsel is competent and experienced in complex class action
11 litigation and intends to protect class members’ interests adequately and fairly.

12 124. Plaintiffs seek injunctive relief because the practices continue.

13 **CLAIMS FOR RELIEF**

14 **FIRST CAUSE OF ACTION**

15 Unfair Competition Law (“UCL”),

16 Business and Professions Code (“BPC”) § 17200, et seq.

17 125. To the extent required, Plaintiffs incorporate by reference other
18 paragraphs.

19 126. Defendant’s conduct is “unlawful” because it violates the False
20 Advertising Law (“FAL”), BPC § 17500, et seq. (“FAL”), and Consumer Legal
21 Remedies Act (“CLRA”), Cal. Civ. Code § 1750, et seq.

22 127. Each of the challenged statements and omissions violates the FFDCA,
23 Sherman Law, and/or FAL, and therefore violates the “unlawful” prong of the UCL.

24 128. The purpose of the UCL is to protect consumers against unfair and
25 deceptive practices.

26 129. This includes making state consumer protection and enforcement
27 consistent with established policies of federal law relating to consumer protection.

28 130. The UCL considers false advertising, unfair acts, and deceptive practices

1 in the conduct of any trade or commerce to be unlawful.

2 131. Violations of the UCL can be based on other laws and standards related
3 to consumer deception.

4 132. Violations of the UCL can be based on the principles of the Federal
5 Trade Commission Act (“FTC Act”) and FTC decisions with respect to those
6 principles. 15 U.S.C. § 45 et seq.

7 133. A UCL violation can occur whenever any rules promulgated pursuant to
8 the FTC Act, 15 U.S.C. § 41 et seq., are violated.

9 134. A UCL violation can occur whenever the standards of unfairness and
10 deception set forth and interpreted by the FTC or the federal courts relating to the
11 FTC Act are violated.

12 135. A UCL violation can be based on public policy, established through
13 statutes, laws, or regulations.

14 136. A UCL violation can occur whenever any law, statute, rule, regulation,
15 or ordinance, which proscribes unfair, deceptive, or unconscionable acts or practices
16 is violated.

17 137. In considering whether advertising is misleading in a material respect,
18 the FTC Act recognizes that the effect of advertising includes not just representations
19 made or suggested by words and images, “but also the extent to which [it] fails to
20 reveal facts material in the light of such representations.” 15 U.S.C. § 55(a)(1).

21 138. In considering whether a product’s label is misleading, it is required to
22 consider not only representations made or suggested by statements, images, and/or
23 design, but also the extent to which it fails to prominently and conspicuously reveal
24 facts relative to the proportions or absence of certain components, ingredients, and/or
25 other relevant facts, which are of material interest to consumers.

26 139. Defendant’s false and deceptive representations and omissions with
27 respect to the Product’s contents, origins, ingredients, flavoring, type, functionality,
28 and/or quality, (i) a water-in-oil emulsion, (ii) described as “Plant Butter,” (iii)

1 promoted as “Made With Olive Oil” and “With Olive Oil,” (iv) across a front label
2 depicting three ripening olives, gradually turning from their initial yellow-green, to
3 rose, and then to red-brown, attached to characteristic oblong, olive leaves, (v) in olive
4 green packaging, (vi) shown applied to a piece of fresh toast, (vii) claiming to be
5 “Dairy Free,” (viii) favorably compared to butter, through the statement, “Cooks,
6 Bakes, & Tastes Like Butter,” and “Great for Cooking & Baking,” (ix) above a small,
7 pencil-thin statement in the lower right corner identifying it as a “79% Vegetable Oil
8 Spread,” and/or “79% Plant-Based Oil Spread,” (x) under the Country Crock brand,
9 are material in that they are likely to influence consumer purchasing decisions.

10 140. The replacement of olive oil, with traditional vegetable oils, such as
11 canola oil, palm fruit oil, palm kernel oil, and/or soybean oil, is of material interest to
12 consumers, because (1) olive oil costs more than these traditional vegetable oils, (2)
13 they seek to avoid ingredients that are highly processed, made through industrial
14 manufacturing, (3) consider olive oil to be “plant-based,” because it is from a food
15 they are aware of, in its whole form, in contrast to how most consumers are not aware
16 of palm fruits, canola, or industrial soy, (4) they expect olive oil will be the basis for
17 the Product’s “good fat” content, similar to butter, (5) they associate the term, “plant-
18 based” with foods that are known to be healthy, and/or (6) they are aware of olive
19 oil’s status as a “superfood,” known for providing a range of nutrition and other
20 benefits.

21 141. The labeling of the Product violated the FTC Act and thereby violated
22 the UCL because the representations, omissions, packaging, and/or labeling, (i) a
23 water-in-oil emulsion, (ii) described as “Plant Butter,” (iii) promoted as “Made With
24 Olive Oil” and “With Olive Oil,” (iv) across a front label depicting three ripening
25 olives, gradually turning from their initial yellow-green, to rose, and then to red-
26 brown, attached to characteristic oblong, olive leaves, (v) in olive green packaging,
27 (vi) shown applied to a piece of fresh toast, (vii) claiming to be “Dairy Free,” (viii)
28 favorably compared to butter, through the statement, “Cooks, Bakes, & Tastes Like

1 Butter,” and “Great for Cooking & Baking,” (ix) above a small, pencil-thin statement
2 in the lower right corner identifying it as a “79% Vegetable Oil Spread,” and/or “79%
3 Plant-Based Oil Spread,” (x) under the Country Crock brand, caused consumers to
4 expect olive oil was the predominant ingredient, or at least present in a significant
5 amount, even though the predominant oils used were canola oil, palm fruit oil, palm
6 kernel oil, and/or soybean oil, was unfair and deceptive to consumers.

7 142. The labeling of the Product violates laws, statutes, rules and regulations
8 which proscribe unfair, deceptive, or unconscionable acts or practices, thereby
9 violating the UCL.

10 143. The labeling of the Product violates laws, statutes, rules and regulations
11 that are intended to protect the public.

12 144. The labeling of the Product violated the UCL because the
13 representations, omissions, labeling, and/or packaging, (i) a water-in-oil emulsion, (ii)
14 described as “Plant Butter,” (iii) promoted as “Made With Olive Oil” and “With Olive
15 Oil,” (iv) across a front label depicting three ripening olives, gradually turning from
16 their initial yellow-green, to rose, and then to red-brown, attached to characteristic
17 oblong, olive leaves, (v) in olive green packaging, (vi) shown applied to a piece of
18 fresh toast, (vii) claiming to be “Dairy Free,” (viii) favorably compared to butter,
19 through the statement, “Cooks, Bakes, & Tastes Like Butter,” and “Great for Cooking
20 & Baking,” (ix) above a small, pencil-thin statement in the lower right corner
21 identifying it as a “79% Vegetable Oil Spread,” and/or “79% Plant-Based Oil Spread,”
22 (x) under the Country Crock brand, caused consumers to expect olive oil was the
23 predominant ingredient, or at least present in a significant amount, even though the
24 predominant oils used were canola oil, palm fruit oil, palm kernel oil, and/or soybean
25 oil.

26 145. The labeling of the Product violated the UCL because the
27 representations, omissions, packaging, and/or labeling, (i) a water-in-oil emulsion, (ii)
28 described as “Plant Butter,” (iii) promoted as “Made With Olive Oil” and “With Olive

1 Oil,” (iv) across a front label depicting three ripening olives, gradually turning from
 2 their initial yellow-green, to rose, and then to red-brown, attached to characteristic
 3 oblong, olive leaves, (v) in olive green packaging, (vi) shown applied to a piece of
 4 fresh toast, (vii) claiming to be “Dairy Free,” (viii) favorably compared to butter,
 5 through the statement, “Cooks, Bakes, & Tastes Like Butter,” and “Great for Cooking
 6 & Baking,” (ix) above a small, pencil-thin statement in the lower right corner
 7 identifying it as a “79% Vegetable Oil Spread,” and/or “79% Plant-Based Oil Spread,”
 8 (x) under the Country Crock brand, when these representations and omissions were
 9 false and/or misleading, when these representations and omissions were false and/or
 10 misleading, because the predominant flour ingredient was refined flour, from non-
 11 whole grains, instead of whole wheat flour, from whole grains, was contrary to
 12 statutes and/or regulations below, which prohibit consumer deception by companies
 13 in the labeling of food products.

	<u>Federal</u>	<u>State</u>
	21 U.S.C. § 342(b)(1)	HSC § 110585(a)
	21 U.S.C. § 342(b)(2)	HSC § 110585(b)
	21 U.S.C. § 342(b)(4)	HSC § 110585(d)
	21 U.S.C. § 343(a)(1)	HSC § 110660
	21 U.S.C. § 343(i)	HSC § 110720
	21 C.F.R. § 101.18(b)	
	21 C.F.R. § 102.5(a)	HSC § 110100(a)
	21 C.F.R. § 102.5(b)	

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25 146. Plaintiffs believed the Product contained a predominant and/or
 26 significant amount of olive oil, even though it contained a predominant and/or
 27 significant amount of traditional vegetable oils, such as canola oil, palm fruit oil, palm
 28 kernel oil, and/or soybean oil.

1 147. Plaintiffs paid more for the Product, and would not have paid as much,
2 if they knew that it did not contain a predominant and/or significant amount of olive
3 oil, because it contained a predominant and/or significant amount of traditional
4 vegetable oils, such as canola oil, palm fruit oil, palm kernel oil, and/or soybean oil.

5 148. Plaintiffs seeks to recover for economic injury and/or loss they sustained
6 based on the misleading labeling and packaging of the Product, a deceptive practice
7 under the UCL.

8 149. Plaintiffs will produce evidence showing how they and consumers paid
9 more than they would have paid for the Product, relying on Defendant’s
10 representations, omissions, packaging, and/or labeling, using statistical and economic
11 analyses, hedonic regression, hedonic pricing, conjoint analysis, and/or other
12 advanced methodologies.

13 150. This means the individual damages will be based on the value attributed
14 to the challenged claims and/or omissions, a percentage of the total price paid.

15 151. As a result of Defendant’s misrepresentations and omissions, Plaintiffs
16 were injured and suffered damages by payment of a price premium for the Product,
17 which is the difference between what they paid based on its labeling, packaging,
18 representations, statements, omissions, and/or marketing, and how much it would
19 have been sold for without the misleading labeling, packaging, representations,
20 statements, omissions, and/or marketing identified here.

21 152. Each of the challenged statements and omissions violates the FFDCA,
22 Sherman Law, and FAL, and therefore violates the “unlawful” prong of the UCL.

23 153. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiffs seek an
24 order enjoining Defendant from continuing to conduct business through unlawful,
25 unfair, and/or fraudulent acts and practices, and to commence corrective advertising.

26 **SECOND CAUSE OF ACTION**

27 False Advertising Law (“FAL”),
28 Bus. & Prof. Code § 17500, et seq.

1 154. To the extent required, Plaintiffs incorporate by reference other
2 paragraphs.

3 155. The FAL prohibits false and/or misleading representations and
4 omissions, such as the labeling and packaging of the Product, (i) a water-in-oil
5 emulsion, (ii) described as “Plant Butter,” (iii) promoted as “Made With Olive Oil”
6 and “With Olive Oil,” (iv) across a front label depicting three ripening olives,
7 gradually turning from their initial yellow-green, to rose, and then to red-brown,
8 attached to characteristic oblong, olive leaves, (v) in olive green packaging, (vi)
9 shown applied to a piece of fresh toast, (vii) claiming to be “Dairy Free,” (viii)
10 favorably compared to butter, through the statement, “Cooks, Bakes, & Tastes Like
11 Butter,” and “Great for Cooking & Baking,” (ix) above a small, pencil-thin statement
12 in the lower right corner identifying it as a “79% Vegetable Oil Spread,” and/or “79%
13 Plant-Based Oil Spread,” (x) under the Country Crock brand, because instead of olive
14 oil being the Product’s predominant ingredient, or at least present in a significant
15 amount, the predominant oils used were canola oil, palm fruit oil, palm kernel oil,
16 and/or soybean oil.

17 156. In reliance on this false and misleading advertising, Plaintiffs purchased,
18 used, applied, and/or consumed the Product, without knowledge olive oil was not its
19 predominant ingredient, nor present in a significant amount, and instead contained
20 mostly canola oil, palm fruit oil, palm kernel oil, and/or soybean oil.

21 157. Defendant knew or should have known that these representations,
22 omissions, and/or comparisons, were likely to deceive consumers.

23 158. Plaintiffs seek injunctive and equitable relief, restitution, and an order
24 for the disgorgement of the funds by which Defendant was unjustly enriched.

25 **THIRD CAUSE OF ACTION**

26 Consumers Legal Remedies Act (“CLRA”),

27 Cal. Civ. Code § 1750, et seq.

28 159. To the extent required, Plaintiffs incorporate by reference other

1 paragraphs.

2 160. The CLRA prohibits deceptive practices in connection with the conduct
3 of a business providing goods, property, or services, primarily for personal, family,
4 or household purposes.

5 161. Plaintiffs are consumers.

6 162. Defendant's policies, acts, and practices were designed to, and did, result
7 in Plaintiffs' purchase, consumption, application, and/or use of the Product, primarily
8 for personal, family, or household purposes, and violated and continue to violate
9 sections of the CLRA, including:

- 10 a. Civil Code § 1770(a)(5), because Defendant represented that
11 the Product had characteristics, attributes, features,
12 capabilities, uses, benefits, and qualities it did not have;
- 13 b. Civil Code § 1770(a)(9), because Defendant advertised the
14 Product with an intent not to sell it as advertised; and
- 15 c. Civil Code § 1770(a)(16), because Defendant represented
16 that the Product had been supplied in accordance with its
17 previous representations, when it was not.

18 163. Pursuant to Cal. Civ. Code § 1782(a), Plaintiffs have sent, or will send,
19 a CLRA Notice to Defendant, concurrently with the filing of this action or shortly
20 thereafter, which details and includes these violations of the CLRA, demand
21 correction of these violations, and provide the opportunity to correct these business
22 practices.

23 164. If Defendant does not correct these business practices, Plaintiffs will
24 amend, or seek leave to amend the Complaint, to add claims for monetary relief,
25 including restitution and actual damages under the CLRA, and injunctive relief, to
26 enjoin the unlawful methods, acts and practices alleged, pursuant to Cal. Civ. Code §
27 1780.

28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief as follows:

- A. Certification of the Class, designating Plaintiffs as representatives and Plaintiffs' Counsel as Counsel for the Class;
- B. A declaration that Defendant has committed the violations alleged;
- C. For injunctive relief the Court deems appropriate;
- D. For restitution and disgorgement pursuant to, without limitation, BPC § 17200, *et seq.*, and Cal Civ. Code § 1780, except for monetary damages under the CLRA;
- E. Compensatory damages, the amount to be determined at trial, except for monetary damages under the CLRA;
- F. For attorneys' fees, costs, and interest;
- G. For such further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all causes of action so triable.

Dated: August 20, 2024

Respectfully submitted,

/s/ Kyle Gurwell

Kyle Gurwell (SBN 289298)

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