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23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
24 **COUNTY OF ALAMEDA**

25 ALAN DUCORSKY, on behalf of himself,  
26 all others similarly situated and the general  
27 public,

28 Plaintiff,

v.

PREMIER ORGANICS,

Defendant.

Case No: **HG16801566**

CLASS ACTION

**COMPLAINT FOR:**

**VIOLATIONS OF CAL. BUS. &  
PROF. CODE §§17200 et seq.; CAL.  
BUS. & PROF. CODE §§17500 et seq.;**  
**CAL. CIV. CODE §§ 1750 et seq.; and**

**BREACH OF EXPRESS & IMPLIED  
WARRANTIES.**

DEMAND FOR JURY TRIAL

**BY FAX**

ENDORSED  
FILED  
ALAMEDA COUNTY

JAN 26 2016

CLERK OF THE SUPERIOR COURT  
By DEBRA HUNTER

1 Plaintiff Alan Ducorsky, on behalf of himself, all others similarly situated, and the  
2 general public, by and through his undersigned counsel, hereby sues defendant Premier  
3 Organics (“Premier”), and alleges the following upon his own knowledge, or where he lacks  
4 personal knowledge, upon information and belief, including the investigation of his counsel.

### 5 **INTRODUCTION**

6 1. Premier falsely markets its Artisana Virgin Coconut Oil as both inherently  
7 healthy, and as a healthy alternative to butter and margarine, despite that it is actually  
8 inherently *unhealthy*, and a *less healthy* option to these alternatives.

9 2. Plaintiff read, believed, and relied upon Premier’s claims when purchasing  
10 Artisana Virgin Coconut Oil and was damaged as a result.

11 3. Plaintiff brings this action challenging Premier’s claims relating to Artisana  
12 Virgin Coconut Oil, on behalf of himself, all others similarly situated in the United States,  
13 and the general public, alleging violations of the California Consumer Legal Remedies Act,  
14 Cal. Civ. Code §§ 1750 *et seq.* (“CLRA”), Unfair Competition Law, Cal. Bus. & Prof. Code  
15 §§ 17200 *et seq.* (“UCL”), and False Advertising Law, *id.* §§ 17500 *et seq.* (“FAL”). Plaintiff  
16 further alleges that Premier breached express and implied warranties under state law.

17 4. Plaintiff seeks an order compelling Premier to (a) cease marketing the coconut  
18 products using the misleading tactics complained of herein, (b) conduct a corrective  
19 advertising campaign, (c) destroy all misleading and deceptive materials, (d) restore the  
20 amounts by which it has been unjustly enriched, and (e) pay restitution, damages, and punitive  
21 damages as allowed by law.

### 22 **JURISDICTION & VENUE**

23 5. The California Superior Court has jurisdiction over this matter as a result of  
24 Premier’s violations of the California Business and Professions Code, California Civil Code,  
25 and California common law principles.

1 6. The aggregate monetary damages and restitution sought herein exceed the  
2 minimum jurisdictional limits for the Superior Court and will be established at trial, according  
3 to proof.

4 7. The California Superior Court also has jurisdiction in this matter because there  
5 is no federal question at issue, as the issues herein are based solely on California statutes and  
6 law.

7 8. The Court has personal jurisdiction over Premier Organics because it is  
8 headquartered in California, has its principal place of business in California, and has  
9 purposely availed itself of the benefits and privileges of conducting business activities within  
10 California.

11 9. Venue is proper in Alameda because Premier resides in Alameda, California,  
12 and a substantial part of the events or omissions giving rise to the claims occurred in Alameda.

13 **PARTIES**

14 10. Plaintiff Alan Ducorsky is a resident of Island Park, New York.

15 11. Defendant Premier Organics is a California corporation with its principal place  
16 of business at 810 81st Avenue, Ste. B, Oakland, California.

17 **FACTS**

18 **I. Saturated Fat Consumption Increases the Risk of Cardiovascular Heart Disease**  
19 **and Other Morbidity**

20 **A. The Role of Cholesterol in the Human Body**

21 12. Cholesterol is a waxy, fat-like substance found in the body's cell walls. The body  
22 uses cholesterol to make hormones, bile acids, vitamin D, and other substances. The body  
23 synthesizes all the cholesterol it needs, which circulates in the bloodstream in packages called  
24 lipoproteins, of which there are two main kinds—low density lipoproteins, or LDL  
25 cholesterol, and high density lipoproteins, or HDL cholesterol.

26 13. LDL cholesterol is sometimes called “bad” cholesterol because it carries  
27 cholesterol to tissues, including the arteries. Most cholesterol in the blood is LDL cholesterol.

1 14. HDL cholesterol is sometimes called “good” cholesterol because it takes excess  
2 cholesterol away from tissues to the liver, where it is removed from the body.

3 **B. High Total and LDL Blood Cholesterol Levels are Associated with**  
4 **Increased Risk of Morbidity, Including Coronary Heart Disease and Stroke**

5 15. Total and LDL cholesterol blood levels are two of the most important risk factors  
6 in predicting coronary heart disease (CHD), with higher total and LDL cholesterol levels  
7 associated with increased risk of CHD.<sup>1</sup>

8 16. High LDL cholesterol levels are dangerous because “[e]levated blood LDL  
9 cholesterol increases atherosclerotic lipid accumulation in blood vessels.”<sup>2</sup> That is, if there is  
10 too much cholesterol in the blood, some of the excess may become trapped along artery walls.  
11 Built up formations of cholesterol on arteries and blood vessels are called plaque. Plaque  
12 narrows vessels and makes them less flexible, a condition called atherosclerosis.

13 17. This process can happen to the coronary arteries in the heart and restricts the  
14 provision of oxygen and nutrients to the heart, causing chest pain or angina. When  
15 atherosclerosis affects the coronary arteries, the condition is called coronary heart disease.

16 18. Cholesterol-rich plaques can also burst, causing a blood clot to form over the  
17 plaque, blocking blood flow through arteries, which in turn can cause an often-deadly or  
18 debilitating heart attack or stroke.

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21 <sup>1</sup> See, e.g., Dr. Dustin Randolph, *Coconut Oil Increases Cardiovascular Disease Risk and*  
22 *Possible Death Due to Heart Attacks and Stroke* (Sept. 19, 2015) (“Heart attack and stroke  
23 risk can be largely predicted based on total and LDL cholesterol levels in people” because “as  
24 cholesterol levels increase so does one’s risk of symptomatic and deadly heart disease.”),  
available at <http://www.pursueahealthyyou.com/2015/04/coconut-oil-increases-cardiovascular.html>.

25 <sup>2</sup> USDA Center for Nutrition Policy and Promotion, *Dietary Saturated Fat and*  
26 *Cardiovascular Health: A Review of the Evidence*, Nutrition Insight 44 (July 2011)  
27 [hereinafter, “USDA, Review of the Evidence”], available at  
[http://www.cnpp.usda.gov/sites/default/files/nutrition\\_insights\\_uploads/Insight44.pdf](http://www.cnpp.usda.gov/sites/default/files/nutrition_insights_uploads/Insight44.pdf).

1 19. Thus, “[f]or the health of your heart, lowering your LDL cholesterol is the single  
2 most important thing to do.”<sup>3</sup>

3 **C. Saturated Fat Consumption Causes Increased Total and LDL Blood**  
4 **Cholesterol Levels, Increasing the Risk of CHD and Stroke**

5 20. The consumption of saturated fat negatively affects blood cholesterol levels  
6 because the body reacts to saturated fat by producing cholesterol. More specifically, saturated  
7 fat consumption causes CHD, among other things, “increas[ing] total cholesterol and low  
8 density lipoprotein (LDL) cholesterol.”<sup>4</sup>

9 21. Moreover, “[t]here is a positive linear trend between total saturated fatty acid  
10 intake and total and low density lipoprotein (LDL) cholesterol concentration and increased  
11 risk of coronary heart disease (CHD).”<sup>5</sup>

12 22. This linear relationship between saturated fat intake and risk of coronary heart  
13 disease is well established and accepted in the scientific community.

14 23. For example, the Institute of Medicine’s Dietary Guidelines Advisory  
15 Committee “concluded there is strong evidence that dietary SFA [saturated fatty acids]  
16 increase serum total and LDL cholesterol and are associated with increased risk of CVD  
17 [cardiovascular disease].”<sup>6</sup>

18 24. In addition, “[s]everal hundred studies have been conducted to assess the effect  
19 of saturated fatty acids on serum cholesterol concentration. In general, the higher the intake  
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21 <sup>3</sup> Pritikin Longevity Center, *Is Coconut Oil Bad for You?*, available at  
22 <https://www.pritikin.com/your-health/healthy-living/eating-right/1790-is-coconut-oil-bad-for-you.html>.

23 <sup>4</sup> USDA Review of the Evidence, *supra* n.2.

24 <sup>5</sup> Institute of Medicine, *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat,*  
25 *Fatty Acids, Cholesterol, Protein, and Amino Acids*, at 422 (2005) [hereinafter “IOM, Dietary  
26 Reference Intakes”], available at [http://www.nap.edu/catalog.php?record\\_id=10490](http://www.nap.edu/catalog.php?record_id=10490).

27 <sup>6</sup> USDA Review of the Evidence, *supra* n.2.

1 of saturated fatty acids, the higher the serum total and low density lipoprotein (LDL)  
2 cholesterol concentrations.”<sup>7</sup>

3 25. Importantly, there is “no safe level” of saturated fat intake because “any  
4 incremental increase in saturated fatty acid intake increases CHD risk.”<sup>8</sup>

5 26. For this reason, while the Institute of Medicine sets tolerable upper intake levels  
6 (UL) for the highest level of daily nutrient intake that is likely to pose no risk of adverse  
7 health effects to almost all individuals in the general population, “[a] UL is not set for  
8 saturated fatty acids.”<sup>9</sup>

9 27. In addition, “[t]here is no evidence to indicate that saturated fatty acids are  
10 essential in the diet or have a beneficial role in the prevention of chronic diseases.”<sup>10</sup>

11 28. Further, “[i]t is generally accepted that a reduction in the intake of SFA will  
12 lower TC [total cholesterol] and LDL-cholesterol.”<sup>11</sup>

13 29. For these reasons, “reduction in SFA intake has been a key component of dietary  
14 recommendations to reduce risk of CVD.”<sup>12</sup>

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20 <sup>7</sup> IOM, Dietary Reference Intakes, *supra* n.5, at 481.

21 <sup>8</sup> *Id.* at 422.

22 <sup>9</sup> *Id.*

23 <sup>10</sup> *Id.* at 460.

24 <sup>11</sup> Shanthi Mendis et al., *Coconut fat and serum lipoproteins: effects of partial replacement*  
25 *with unsaturated fats*, 85 Brit. J. Nutr. 583, 583 (2001) [hereinafter “Mendis, Coconut fat”].

26 <sup>12</sup> USDA Review of the Evidence, *supra* n.2.

1 30. The Institute of Medicine’s Dietary Guidelines for Americans, for example,  
2 “recommend reducing SFA intake to less than 10 percent of calories.”<sup>13</sup> And “lowering the  
3 percentage of calories from dietary SFA to 7 percent can further reduce the risk of CVD.”<sup>14</sup>

4 31. In short, consuming saturated fat increases the risk of CHD and stroke.<sup>15</sup>

5 **D. In Contrast to Saturated Fat Consumption, the Consumption of Dietary**  
6 **Cholesterol has No Impact on Blood Cholesterol Levels**

7 32. For many years, there has been a common misperception among consumers that  
8 dietary cholesterol affects blood cholesterol levels. According to the USDA and Department  
9 of Health and Human Services (DHHS), however, “available evidence shows no appreciable  
10 relationship between consumption of dietary cholesterol and serum cholesterol.”<sup>16</sup>

11 33. In fact, the USDA and DHHS have concluded that “Cholesterol is not a nutrient  
12 of concern for overconsumption.”<sup>17</sup>

13 34. In contrast, the USDA and DHHS state that “[s]trong and consistent evidence  
14 from [randomized control trials] shows that replacing [saturated fats] with unsaturated fats,  
15 especially [polyunsaturated fats], significantly reduces total and LDL cholesterol.”<sup>18</sup>

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19 <sup>13</sup> *Id.*

20 <sup>14</sup> *Id.*

21 <sup>15</sup> *See* Mendis, Coconut fat, *supra* n.11, at 583.

23 <sup>16</sup> USDA & DHHS, *Dietary Guidelines for Americans*, Part D., Chapter 1, at 17 (2015)  
24 [hereinafter “USDA & DHHS, Dietary Guidelines”], *available at*  
25 <http://health.gov/dietaryguidelines/2015-scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf>.

26 <sup>17</sup> *Id.*

27 <sup>18</sup> *Id.* Part D, Chapter 6, at 12.

1 35. Therefore, the USDA and DHHS specifically recommend replacing “tropical  
2 oils (e.g., palm, palm kernel, *and coconut oils*)” with “vegetable oils that are high in  
3 unsaturated fats and relatively low in SFA (e.g., soybean, corn, olive, and canola oils).”<sup>19</sup>

4 **II. Because of its High Saturated Fat Content, the Consumption of Coconut Oil**  
5 **Increases the Risk of Cardiovascular Heart Disease and Other Morbidity**

6 36. Although it is well established that diets generally high in saturated fatty acids  
7 increase the risk of CHD,<sup>20</sup> several studies have specifically shown that consuming coconut  
8 oil—which is approximately 90 percent saturated fat—increases the risk of CHD and stroke.

9 37. For example, in 2001 the British Journal of Nutrition published a 62-week  
10 intervention study that examined the “effect of reducing saturated fat in the diet . . . on the  
11 serum lipoprotein profile of human subjects.”<sup>21</sup> The study had two intervention phases. In  
12 Phase 1 (8 weeks), “the total fat subjects consumed was reduced from 31 to 25 % energy . . .  
13 by reducing the quantity of coconut fat (CF) in the diet from 17.8 to 9.3 % energy intake.”<sup>22</sup>  
14 “At the end of Phase 1, there was a 7.7 % reduction in cholesterol and 10.8 % reduction in  
15 LDL and no significant change in HDL and triacylglycerol.”<sup>23</sup>

16 38. In Phase 2 (52 weeks), the total fat consumed by subjects was reduced from 25  
17 to 20 % energy by reducing the coconut fat consumption from 9.3 to 4.7 % energy intake.<sup>24</sup>

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21 <sup>19</sup> *Id.* (emphasis added).

22 <sup>20</sup> See Mendis, Coconut fat, *supra* n.11, at 583.

23 <sup>21</sup> *Id.*

24 <sup>22</sup> *Id.*

25 <sup>23</sup> *Id.*

26 <sup>24</sup> *Id.*



1 At the end of phase 2, these subjects exhibited a 4.2% mean reduction of total cholesterol and  
2 an 11% mean reduction in LDL cholesterol.<sup>25</sup>

3 39. The authors of the study noted that “[a] sustained reduction in blood cholesterol  
4 concentration of 1 % is associated with a 2-3 % reduction of the incidence of CHD (Law et  
5 al. 1994).” Further, “[i]n primary prevention, a reduction of cholesterol by 20% has produced  
6 a 31% reduction in recurrent coronary morbidity, a 33% reduction in coronary mortality, and  
7 22% less total mortality (Grundy, 1997).”<sup>26</sup>

8 40. Based on these relationships, researchers estimated that “the reduction in  
9 coronary morbidity and mortality brought about by the current dietary intervention would be  
10 of the order of about 6-8 %.”<sup>27</sup>

11 41. Simply put, the results of the yearlong study showed that reducing coconut oil  
12 consumption “results in a lipid profile that is associated with a low cardiovascular risk.”<sup>28</sup>

13 42. The detrimental health effects of consuming coconut oil are not limited to long-  
14 term consumption. To the contrary, a 2006 study published in the Journal of the American  
15 College of Cardiology found that consuming a single high-fat meal containing fat from  
16 coconut oil “reduces the anti-inflammatory potential of HDL and impairs arterial endothelial  
17 function.”<sup>29</sup> In the study, researchers examined the effect of consuming a single isocaloric  
18 meal that contained “1 g of fat/kg of body weight,” with “coconut oil (fatty acid composition:  
19 89.6% saturated fat, 5.8% monounsaturated, and 1.9% polyunsaturated fat)” as the source of  
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21 <sup>25</sup> *Id.* at 586.

22 <sup>26</sup> *Id.* at 588.

23 <sup>27</sup> *Id.*

24 <sup>28</sup> *Id.* at 587.

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26 <sup>29</sup> Stephen J. Nicholls et al., *Consumption of Saturated Fat Impairs the Anti-Inflammatory*  
27 *Properties of High-Density Lipoproteins and Endothelial Function*, 48 J. Am. Coll. Cardio.  
28 715 (2006).

1 fat.<sup>30</sup> They found that consuming the coconut oil meal significantly “reduces the anti-  
2 inflammatory potential of HDL and impairs arterial endothelial function.”<sup>31</sup> In contrast, when  
3 the fat from the same isocaloric meal came from “safflower oil (fatty acid composition: 75%  
4 polyunsaturated, 13.6% monounsaturated, and 8.8% saturated fat),” “the anti-inflammatory  
5 activity of HDL improve[d].”<sup>32</sup>

6 43. Other studies have similarly demonstrated that coconut oil consumption  
7 negatively affects blood plasma markers when compared to other fats.

8 44. A 2011 study published in the American Journal of Clinical Nutrition found that  
9 consuming coconut oil, unlike consuming palm olein and virgin olive oil, decreased  
10 postprandial lipoprotein(a), which is associated with an increased the risk of cardiovascular  
11 disease.<sup>33</sup>

12 45. Similarly, a study comparing the effects of consuming coconut oil, beef fat, and  
13 safflower oil found that coconut oil consumption had the worst effect on subjects’ blood lipid  
14 profiles.<sup>34</sup> The authors noted that “[o]f these fats, only CO [coconut oil] appears to  
15 consistently elevate plasma cholesterol when compared with other fats.”<sup>35</sup>

16 46. Finally, in another study, researchers found that that subjects who consumed 30  
17 percent of energy from fat, with 66.7% coming from coconut oil, had “increased serum  
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19 <sup>30</sup> *Id.*

20 <sup>31</sup> *Id.*

21 <sup>32</sup> *Id.* at 715.

22 <sup>33</sup> P.T. Voon et al., *Diets high in palmitic acid (16:0), lauric and myristic acids (12:0 + 14:0),*  
23 *or oleic acid (18:1) do not alter postprandial or fasting plasma homocysteine and*  
24 *inflammatory markers in healthy Malaysian adults*, 94 Am. J. Clin. Nutr. 1451 (2011).

25 <sup>34</sup> Raymond Reiser et al., *Plasma lipid and lipoprotein response of humans to beef fat,*  
26 *coconut oil and safflower oil*, 42 Am. J Clin. Nutr. 190, 190 (1985).

27 <sup>35</sup> *Id.*

1 cholesterol, LDL, and apo B.”<sup>36</sup> (Apo B is a protein involved in the metabolism of lipids and  
2 is the main protein constituent of VLDL (very low-density lipoproteins) and LDL.  
3 Concentrations of apo B tend to mirror those of LDL, so the higher the level of apo B, the  
4 greater the risk of heart disease.) In sum, the study found that consuming coconut oil  
5 increased all three cholesterol markers, signifying an increased risk of cardiovascular  
6 disease.<sup>37</sup>

### 7 **III. Premier’s Artisana Virgin Coconut Oil**

#### 8 **A. Premier’s Sale of Artisana Virgin Coconut Oil**

9 47. Premier is based in Oakland California, where it “occupies a 44,000 + sq. ft.  
10 facility.”<sup>38</sup> Premier has distributed, marketed, and sold its Coconut Oil on a nationwide basis  
11 for at least the past several years.

12 48. According to Premier’s website, its coconut oil products are sold nationally at  
13 major grocery retailers such as Whole Foods Market and Sprouts Farmers Market, as well as  
14 at numerous local health stores.<sup>39</sup>

15 49. Artisana Virgin Coconut Oil is also available online at iHerb.com,  
16 TheRawFoodWorld.com, LuckyVitamin.com, Amazon.com, and many more websites.

17 50. Artisana Virgin Coconut Oil is available in several sizes including 14- and 16-  
18 fluid-ounce jars, which retail for approximately \$12 to \$16.

19 51. In addition, Artisana Virgin Coconut Oil is also available in packs of 10  
20 individual packets, each 1.06 ounces, which sells for approximately \$16 to \$19.

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23 <sup>36</sup> V. Ganji & C.V. Kies, *Psyllium husk fiber supplementation to the diets rich in soybean or*  
24 *coconut oil: hypercholesterolemic effect in healthy humans*, 47 Int. J. Food Sci. Nutr. 103  
(Mar. 1996).

25 <sup>37</sup> *Id.*

26 <sup>38</sup> Premier Organics, About, <http://www.premierorganics.org/about>.

27 <sup>39</sup> Artisana Organics, Store Locator, <http://www.artisanaorganics.com/store-locator>.

1           **B.    The Composition of Artisansa Virgin Coconut Oil**

2           52.    Artisansa Virgin Coconut Oil’s Nutrition Facts box is as follows.

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<b>Nutrition Facts</b>	
Serv Size: 1 Tbsp. (14ml)	
Servings Per Container 29	
Amount Per Serving	
<b>Calories</b> 135	<b>Fat Cal</b> 135
%Daily Value*	
<b>Total Fat</b> 15g	24%
<b>Sat Fat</b> 14g	68%
<b>Trans Fat</b> 0g	
<b>Cholesterol</b> 0mg	0%
<b>Sodium</b> 0mg	0%
<b>Total Carb</b> 0g	0%
<b>Dietary Fiber</b> 0g	0%
<b>Sugars</b> 0g	
<b>Protein</b> 0g	
Vitamin A 0% • Vitamin C 0%	
Calcium 0% • Iron 0%	
*Percent Daily Values are based on a 2,000 calorie diet.	

22           53.    As shown above, each 1 tablespoon or 15mL serving of Artisansa Virgin Coconut  
23 Oil contains 135 calories—all of which come from fat. In each 15-gram serving there are 15  
24 grams of fat.

25           54.    Further, each 15-gram serving contains 14 grams of saturated fat.

26           55.    In other words, Artisansa Virgin Coconut Oil 100 percent fat, 93 percent of which  
27 is saturated fat.

1 **IV. Premier Markets Artisana Virgin Coconut Oil with Misleading Health and**  
2 **Wellness Claims**

3 **A. Premier Strategically Markets Artisana Virgin Coconut Oil as a Health**  
4 **Product**

5 56. It is well known that the average consumer is willing to pay more for healthier  
6 foods. Nielsen’s 2015 Global Health & Wellness Survey, for instance, found that “88% of  
7 those polled are willing to pay more for healthier foods.”<sup>40</sup>

8 57. Premier is well aware of this reality, and therefore employs a strategic marketing  
9 campaign intended to convince consumers that Artisana Virgin Coconut Oil is “healthy,”  
10 despite that it is unhealthy, composed almost entirely of saturated fat.

11 **B. Premier Places Misleading Health and Wellness Claims Directly On its**  
12 **Artisana Virgin Coconut Oil Packaging**

13 58. Through statements placed directly on the Products’ labels, Premier markets and  
14 advertises Artisana Virgin Coconut Oil as being inherently healthy and as being a healthy  
15 alternative to butter or margarine, despite that its total and saturated fat content make it  
16 unhealthy and worse than butter and margarine for human health.

17 **1. Premier Places Misleading Health and Wellness Claims Directly on**  
18 **Artisana Virgin Coconut Oil Jars**

19 59. Below is an exemplar of the back of the label of a jar of Artisana’s Virgin  
20 Coconut Oil.

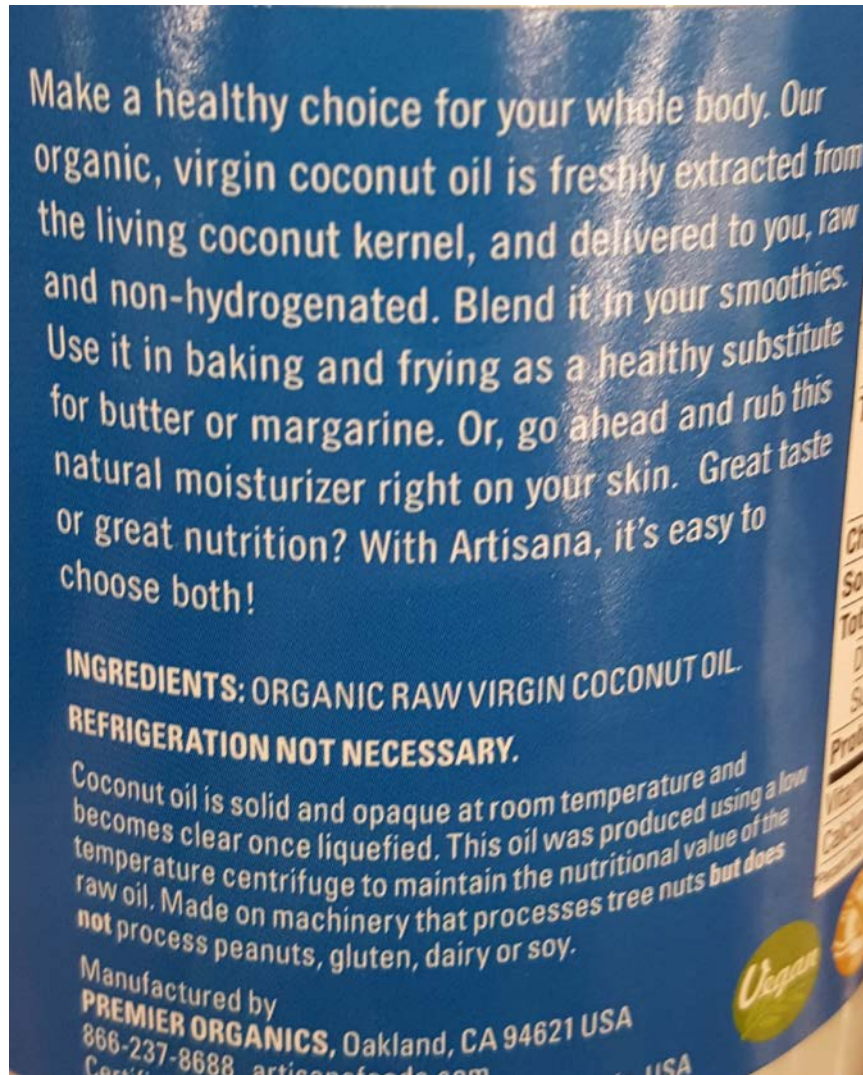
21 ///

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26 \_\_\_\_\_  
27 <sup>40</sup> Nancy Gagliardi, Forbes, *Consumers Want Healthy Foods--And Will Pay More For Them*,  
28 (Feb. 18, 2015) (citing Neilson, *We are what we eat, Healthy eating trends around the world*,  
at 11 (Jan. 2015)).



60. Premier deceptively markets Artisana Virgin Coconut Oil with a variety of labeling claims intended to convince consumers that it is healthy, and to conceal and/or distract from the fact that the product is pure fat, almost all of which is saturated fat.

61. Premier prominently labels Artisana Virgin Coconut Oil with the phrase “a healthy choice for your whole body.” This claim, taken individually and in context of the label as a whole, is false and misleading because Artisana Virgin Coconut Oil is unhealthy and contains dangerous amounts of saturated fat, the consumption of which causes morbidity including heart disease and stroke.

62. To reinforce this misleading health message, Premier emphasizes that the coconut oil is “non-hydrogenated” and “was produced using a low temperature centrifuge to

1 maintain the nutritional value of the raw oil.” These claims, taken individually and in context  
2 of the label as a whole, are false and misleading because the Artisana Virgin Coconut Oil  
3 does not provide health benefits or help maintain a healthy diet due to its saturated fat content.

4 63. To convince consumers that Artisana Virgin Coconut Oil is healthy, Premier  
5 further labels the oil with the phrase, “Great taste or great nutrition? With Artisana, it’s easy  
6 to choose both!” This claim, taken individually and in context of the label as a whole, is false  
7 and misleading because Artisana Virgin Coconut Oil is unhealthy and contains dangerous  
8 amounts of saturated fat, the consumption of which causes morbidity including heart disease  
9 and stroke.

10 64. Premier further claims that Artisana Virgin Coconut Oil is “a healthy substitute  
11 for butter or margarine.” This misleadingly suggests that replacing butter or margarine with  
12 Artisana Virgin Coconut Oil is a healthy choice despite that doing so would increase  
13 consumption of saturated fat and decrease consumption unsaturated fat<sup>41</sup> and despite that  
14 “Strong and consistent evidence from RCTs and statistical modeling in prospective cohort  
15 studies shows that replacing SFA with PUFA reduces the risk of CVD events and coronary  
16 mortality.”<sup>42</sup>

17 65. These claims, taken individually and in context of the label as a whole,  
18 misleadingly imply that Artisana Virgin Coconut Oil is healthy, when it is not, and that the  
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21 <sup>41</sup> The USDA’s National Nutrient Database for Standard Reference lists a 14 gram serving of  
22 butter as being composed of 12 grams of fat, 7 grams of which are saturated, 3 of which are  
23 monounsaturated, and .5 of which are polyunsaturated and lists a 14 gram serving of  
24 margarine as being composed of 11 grams of fat, 2 grams of which are saturated, 5 of which  
25 are monounsaturated, and 4 of which are polyunsaturated. *See* USDA Agricultural Research  
26 Service, *National Nutrient Database for Standard Reference Release 28*, NDB No. 01001,  
27 Butter, salted, NDB No. 04611, Margarine, regular, available at  
28 <http://ndb.nal.usda.gov/ndb/foods>.

<sup>42</sup> USDA & HHS, Dietary Guidelines for Americans, Part D, Chapter 6 at 12, available at  
<http://health.gov/dietaryguidelines/2015-scientific-report/pdfs/scientific-report-of-the-2015-dietary-guidelines-advisory-committee.pdf>.

1 product is healthier or more nutritious than butter and margarine, which it is not. Premier  
2 intended consumers to rely upon this overarching message, which is false and misleading for  
3 the reasons stated herein.

4 **2. Premier Places Misleading Health and Wellness Claims Directly on**  
5 **Artisana Virgin Coconut Oil Packets’ Labeling**

6 66. Premier uses similar misleading health claims on the boxes in which the packets  
7 of Artisana Virgin Coconut Oil are sold.

8 67. Below is an exemplar of the labeling Artisana’s coconut oil packets.



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21 68. Premier prominently labels the packaging of Artisana Virgin Coconut Oil  
22 packets with the phrase “Our passion is to create foods in the healthiest way possible – from  
23 the healthiest ingredients available.” This misleadingly conveys that Artisana Virgin Coconut  
24 Oil is a healthy product that has healthy qualities, rather than a product that adversely affects  
25 cholesterol levels and increases risk of CHD, stroke, and other morbidity.

26 69. To reinforce this misleading health message, Premier claims that “We never  
27 compromise on quality, you shouldn’t either,” which is misleading because Artisana Virgin  
28



1 Coconut Oil is composed almost entirely of saturated fat, the consumption of which increases  
2 risk of cardiovascular disease, rather than benefiting health.

3 70. To convince consumers to that Artisana Virgin Coconut Oil is healthy, Premier  
4 labels the oil with the phrase “Our taste tells you this is the real food for your body craves.  
5 It’s a promise fulfilled by how good you feel after making a wholesome choice.” This claim  
6 is misleading because Artisana Virgin Coconut Oil is not a “wholesome choice,” but rather  
7 contains 13 grams of saturated fat per serving, such that its consumption increases risk of  
8 cardiovascular disease, rather than benefiting health.

9 71. Premier further claims that “Our coconut products contain all the richness, great  
10 flavor and health benefits of the living coconuts they came from. That’s because we create  
11 them in small batches, using low temperatures to protect the raw goodness. Then we add -  
12 absolutely nothing!” This claim, taken individually and in context of the label as a whole, is  
13 false and misleading because the Artisana Virgin Coconut Oil does not provide “health  
14 benefits” given its saturated fat content.

15 72. In sum, the totality of Artisana Virgin Coconut Oil packets’ labeling conveys  
16 the concrete message to a reasonable consumer that the product is healthy. Premier intended  
17 consumers to rely upon this message, which is false and misleading for the reasons stated  
18 herein.

19 **3. Premier’s Websites Contain Misleading Health and Wellness Claims**

20 73. The labels of the Artisana Virgin Coconut Oil products direct consumers to  
21 Premier’s website ([www.artisanafoods.com](http://www.artisanafoods.com)), which Premier uses as a platform to repeat and  
22 bolster its health and wellness marketing campaign.

23 74. On the Artisana foods web page, for example, Premier claims that “Creating  
24 uniquely delicious, healthy, gourmet food is a work of passion for us,”<sup>43</sup> and that “Our goal  
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26 <sup>43</sup> Premier Organics, Artisana – The Art of Healthy Foods,  
27 <http://www.premierorganics.org/artisanafoods>.

1 is to make available to everyone the healthiest, freshest, best-tasting, Organic, all-natural food  
2 choices.”<sup>44</sup>

3 75. Premier’s website further lauds the health benefits of coconut oil, claiming that  
4 “The coconut provides a nutritious source of . . . oil” and that “Coconut is highly nutritious  
5 and rich in fiber, vitamins, and minerals. It is classified as a ‘functional food’ because it  
6 provides many health benefits beyond its nutritional content. Coconut oil is of special interest  
7 because it possesses healing properties far beyond that of any other dietary oil.”<sup>45</sup>

8 76. Premier even states that “Pacific Islanders consider coconut oil to be the cure for  
9 all illness. The coconut palm is so highly valued by them as both a source of food and  
10 medicine that it is called ‘The Tree of Life.’”<sup>46</sup>

11 77. The home page for Artisana prominently bears the phrase “The art of healthy  
12 food.”<sup>47</sup>

13 78. In addition, Premier uses testimonials that encourage customers to consume  
14 unhealthy amounts of its coconut oil, for example the following testimonial: “I love LOVE  
15 Artisana Virgin Coconut Oil, butter and superfoods!! I am a USA National Rowing Team  
16 athlete training on the Oakland estuary for the 2013 World Championships, and I use your  
17 products as part of my nutrition program.”<sup>48</sup>

18 79. Premier has benefited tremendously from this health marketing strategy.  
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22 <sup>44</sup> Premier Organics, About, <http://www.premierorganics.org/about>.

23 <sup>45</sup> Premier Organics, Coconut – Tree of Life, <http://www.premierorganics.org/coconu>.

24 <sup>46</sup> *Id.*

25 <sup>47</sup> Premier Organics, Artisana – The Art of Healthy Foods,  
26 <http://www.premierorganics.org/artisana-foods>.

27 <sup>48</sup> Premier Organics, Testimonials, <http://www.artisanaorganics.com/testimonials>.  
28

1 80. Premier brags that “Premier Organics has been in the ‘Top 50 Fastest Growing  
2 Inner City Companies’ in the US for the past 5 years and frequently in the top 10.”<sup>49</sup>

3 81. Premier further states that it was listed in “2010 Businessweek Magazine Fastest  
4 Growing,” “2011 Bloomberg Fastest Growing Companies,” “2013 San Francisco Business  
5 Times Top 25,” and “2013 Fortune 500 Fast Growing,” among others.<sup>50</sup>

6 **V. The Labeling of Artisana Virgin Coconut Oil Violates California and Federal**  
7 **Law**

8 **A. Any violation of federal food labeling statutes or regulations is a violation**  
9 **of California law**

10 82. Pursuant to the California Sherman Food, Drug, and Cosmetic Law, Cal. Health  
11 & Safety Code §§ 109875 *et. seq.* (the “Sherman Law”), California has adopted the federal  
12 food labeling requirements as its own, *see id.* § 110665 (“Any food is misbranded if its  
13 labeling does not conform with the requirements for nutrition labeling as set forth in Section  
14 403(q) (21 U.S.C. Sec. 343(q)) of the federal act and the regulation adopted pursuant  
15 thereto.”).

16 83. The Federal Food Federal Food, Drug, and Cosmetic Act expressly authorizes  
17 state regulations, such as the Sherman Law, that are “identical to the requirement[s]” of the  
18 FDCA and federal regulations. *See* 21 U.S.C. § 343-1.

19 84. Because the Sherman Law’s requirements are identical to the requirements of  
20 the Federal Food, Drug, and Cosmetic Act and FDA regulations the Sherman law is explicitly  
21 authorized by the FDCA.

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27 <sup>49</sup> Premier Organics, About, <http://www.premierorganics.org/about>.

28 <sup>50</sup> Premier Organics, Awards, <http://www.premierorganics.org/awards>.

1           **B. The Artisana Virgin Coconut Oil’s False and Misleading Labeling Claims**  
2           **Render it Misbranded Under California and Federal Law**

3           85. Premier’s deceptive statements violate Cal. Health & Safety Code § 109875 and  
4 21 U.S.C. § 343(a), which deem a food product misbranded when its label contains any  
5 statement that is “false or misleading in any particular.”

6           86. In addition, Artisana Virgin Coconut Oil’s labeling is misleading, and thus  
7 misbranded, because “it fails to reveal facts that are material in light of other representations.”  
8 21 C.F.R § 1.21.

9           **C. Artisana Virgin Coconut Oil is Misbranded Because it Bears Unauthorized**  
10           **Nutrient Content Claims**

11           87. Artisana Virgin Coconut Oil is misbranded because its labeling bears nutrient  
12 content claims, but it does not meet the requirements to make such claims.

13           88. Under 21 U.S.C. § 343(r)(1)(A), a claim that characterizes the level of a nutrient  
14 which is of the type required to be in the labeling of the food must be made in accordance  
15 with a regulation promulgated by the Secretary (or, by delegation, FDA) authorizing the use  
16 of such a claim. *See also* Cal. Health & Safety Code § 110670 (“Any food is misbranded if  
17 its labeling does not conform with the requirements for nutrient content or health claims” set  
18 by federal law.).

19           89. Characterizing the level of a nutrient on food labels and labeling of a product  
20 without complying with the specific requirements pertaining to nutrient content claims for  
21 that nutrient renders a product misbranded under 21 U.S.C. § 343(r)(1)(A).

22           90. The phrase “non-hydrogenated” meets the definition of a nutrient content claim  
23 because it characterizes the level of trans fat in Artisana Virgin Coconut Oil, which is a  
24 nutrient of the type required to be in nutrition labeling. *See* 21 C.F.R. § 101.13(b)(1).

25           91. The labels of Artisana Virgin Coconut Oil bear an implied nutrient content  
26 claim, because it contains a statement suggesting that because of its nutrient content the  
27 product may help consumers maintain healthy dietary practices, and that statement is made  
28

1 in connection with an implicit claim or statement about nutrients, specifically: “this oil was  
2 produced using a low temperature centrifuge to maintain the nutritional value of the raw oil.”

3 92. The labeling of Artisana Virgin Coconut Oil packets bear an implied nutrient  
4 content claim, because it bears a statement suggesting that because of its nutrient content the  
5 product may help consumers maintain healthy dietary practices, and that statement is made  
6 in connection with an implicit claim or statement about nutrients. Specifically, the labeling  
7 contains the phrases: “Our passion is to create foods in the healthiest way possible – from the  
8 healthiest ingredients available,” and “Our coconut products contain all the richness, great  
9 flavor and health benefits of the living coconuts they came from. That’s because we create  
10 them in small batches, using low temperatures to protect the raw goodness. Then we add -  
11 absolutely nothing!”

12 93. Under 21 C.F.R. § 101.13(h), a food that bears a nutrient content claim, express  
13 or implied, that contains more than 13 grams of total fat or 4 grams of saturated fat per  
14 serving, must also bear a disclosure statement on the label, immediately adjacent to the claim,  
15 referring the consumer to nutrition information for that nutrient, e.g., “See nutrition  
16 information for total fat and saturated fat content.” 21 C.F.R. § 101.13(h)(1).

17 94. Despite that Artisana Virgin Coconut Oil contains 15 grams of total fat and 14  
18 grams of saturated fat, its label fails to bear these mandatory disclosure statements, which  
19 provide consumers with material nutrition information. Therefore, Artisana Virgin Coconut  
20 Oil is misbranded, and consumers misled as a result.

21 95. Plaintiff and members of the Class would not have purchased Artisana Virgin  
22 Coconut Oil if they knew the product is misbranded pursuant to California and federal law  
23 because its label contains nutrient content claims when it does not meet the requirements, and  
24 omits material information and disclosures. Further, as set forth in the applicable regulations,  
25 Premier’s misbranding the oil renders its label misleading.

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1           **D. Artisana Virgin Coconut Oil is Misbranded Because its Label Bears**  
2           **Prohibited Claims that it is Healthy**

3           96. In addition, Artisana Virgin Coconut Oil’s label is misbranded (and also  
4 misleading), because the label claims that the product is healthy based its nutrient content,  
5 but the product does not meet the requirements for making such claims as set forth in 21  
6 C.F.R. § 101.65(d).

7           97. To “use the term “healthy” or related terms (e.g., “health,” “healthful,”  
8 “healthfully,” “healthfulness,” “healthier,” “healthiest,” “healthily,” and “healthiness”)”  
9 foods must satisfy specific “conditions for fat, saturated fat, cholesterol, and other nutrients.”  
10 21 C.F.R § 101.65(d)(2).

11           98. Artisana Virgin Coconut Oil, which is a food “not specifically listed” in the table  
12 contained in 21 C.F.R § 101.65(d)(2)(i), is therefore governed by section (F) of the table. *See*  
13 101.65(d)(2)(i)(F).

14           99. Under 21 C.F.R. § 101.65(d)(2)(i)(F), a food must (1) be “Low fat as defined in  
15 § 101.62(b)(2),” (2) be “Low saturated fat as defined in § 101.62(c)(2),” and (3) contain “At  
16 least 10 percent of the RDI or the DRV per RA of one or more of vitamin A, vitamin C,  
17 calcium, iron, protein or fiber.” *See* 21 C.F.R. § 101.65(d)(2)(i)(F) (incorporating by  
18 reference total fat requirement, 21 C.F.R. § 101.62(b)(2), and saturated fat requirement, 21  
19 C.F.R. § 101.62(c)(2)).

20           100. In addition, the food must comply “with the definition and declaration  
21 requirements in this part 101 for any specific nutrient content claim on the label or in  
22 labeling.” 21 C.F.R. § 101.65(d)(2)(iii).

23           101. Section 101.62(b)(2)(i)(B) provides the applicable definition of “low fat” for the  
24 Artisana Virgin Coconut Oil because it has a RACC of less than 30 grams.

25           102. Under § 101.62(b)(2)(i)(B), a food is low fat only if it “contains 3 g or less of  
26 fat per reference amount customarily consumed and per 50 g of food.”

1 103. Artisana Virgin Coconut Oil contains 15 grams of total fat per RACC and 50  
2 grams of total fat per 50 grams. Thus Artisana Virgin Coconut Oil does not meet the total fat  
3 requirement in § 101.65(d)(2)(i)(F).

4 104. Under § 101.62(c)(2), a food is “low saturated fat” only if it “contains 1 g or less  
5 of saturated fatty acids per reference amount customarily consumed and not more than 15  
6 percent of calories from saturated fatty acids.”

7 105. Artisana Virgin Coconut Oil contains 14 grams of saturated fat per RACC and  
8 approximately 92 percent of calories come from saturated fat. Thus Artisana Virgin Coconut  
9 Oil does not meet the saturated fat requirement in § 101.65(d)(2)(i)(F).

10 106. Further, Artisana Virgin Coconut Oil does not contain “at least 10 percent of the  
11 RDI or the DRV per RA of one or more of vitamin A, vitamin C, calcium, iron, protein or  
12 fiber.” 21 C.F.R. § 101.65(d)(2)(i)(F).

13 107. Finally, Artisana Virgin Coconut Oil, as explained above, fails to comply “with  
14 the definition and declaration requirements in this part 101 for any specific nutrient content  
15 claim on the label or in labeling,” 21 C.F.R. § 101.65(d)(2)(iii).

16 108. Therefore, Artisana Virgin Coconut Oil cannot bear the term healthy on its label.

17 109. Artisana Virgin Coconut Oil does not meet these clear and specific criteria for  
18 using the term healthy (and variations) to describe a food. Premier’s use of the term healthy  
19 (and variations) to describe Artisana Virgin Coconut Oil not only violates 21 C.F.R. § 101.65,  
20 rendering the product misbranded, but also misleads consumers regarding the nature of  
21 Artisana Virgin Coconut Oil in the specific manner the regulations are intended to prevent.

22 **VI. Plaintiff’s Purchase, Reliance, and Injury**

23 110. As best he recalls, Mr. Ducorsky has purchased the Artisana Virgin Coconut Oil  
24 approximately two times. Mr. Ducorsky believes he first purchased a jar of Artisana Virgin  
25 Coconut Oil in or around in June 2015 from the Whole Foods Market located at 429 N  
26 Broadway, Jericho, New York 11753. Mr. Ducorsky believes he paid approximately \$15 to  
27 \$20 for the jar. Mr. Ducorsky believes he most recently purchased a jar of Artisana Virgin  
28

1 Coconut Oil in or around August 2015, from the same Whole Foods, and paid approximately  
2 the same price.

3 111. When deciding to purchase Artisana Virgin Coconut Oil, plaintiff read and relied  
4 on at least the following claims contained on the product’s packaging:

5 a. “Make a healthy choice for your whole body.”

6 b. “This oil was produced using a low temperature centrifuge to maintain  
7 the nutritional value of the raw oil.”

8 c. “Our organic, virgin coconut oil is freshly extracted from the living  
9 coconut kernel, and delivered to you, raw and non-hydrogenated.”

10 d. “Use it in baking and frying as a healthy substitute for butter or  
11 margarine.”

12 e. “Great taste or great nutrition? With Artisana, it’s easy to choose both!”

13 112. Based on these representations, and the overall message conveyed by the label  
14 as a whole, plaintiff believed Artisana Virgin Coconut Oil was healthy, healthier than butter  
15 and margarine, and would not harm his blood cholesterol levels.

16 113. When purchasing Artisana Virgin Coconut Oil, plaintiff was seeking a product  
17 that had the qualities described on the Artisana Virgin Coconut Oil’s label, namely, a  
18 nourishing, nutritious, healthy food that was healthier than butter and margarine, and which  
19 would not increase his risk of CHD and stroke.

20 114. Premier’s representations concerning Artisana Virgin Coconut Oil, however,  
21 were false and misleading, and had the capacity, tendency, and likelihood to confuse or  
22 confound plaintiff and other consumers acting reasonably (including the putative Class)  
23 because, as described in detail herein, the product is not healthy, but rather increases the risk  
24 of CHD, stroke, and other morbidity.

25 115. Plaintiff is not a nutritionist, food expert, or food scientist, but rather a lay  
26 consumer who did not have the specialized knowledge that Premier had. Plaintiff acted  
27 reasonably in relying on the health and wellness claims that Premier intentionally placed on  
28



1 the Artisana Virgin Coconut Oil packaging with the intent to induce average consumers into  
2 purchasing the product.

3 116. Artisana Virgin Coconut Oil costs more than similar products without  
4 misleading labeling, and would have cost less absent the false and misleading statements.

5 117. Plaintiff paid more for Artisana Virgin Coconut Oil, and would only have been  
6 willing to pay less, or unwilling to purchase it at all, absent the false and misleading labeling.

7 118. For these reasons, Artisana Virgin Coconut Oil was worth less than what  
8 plaintiff and the Class paid for it.

9 119. Instead of receiving products that had actual healthful qualities, the Artisana  
10 Virgin Coconut Oil that plaintiff and the Class received was not healthy, but rather its  
11 consumption causes increased risk of CHD, stroke, and other morbidity.

12 120. Plaintiff and members of the Class would not have purchased Artisana Virgin  
13 Coconut Oil if they knew that the product is misbranded pursuant to California and federal  
14 regulations, or that its labeling claims were false.

15 121. Plaintiff and the Class lost money as a result of Premier's deceptive claims and  
16 practices in that they did not receive what they paid for when purchasing Artisana Virgin  
17 Coconut Oil.

18 122. Plaintiff and the Class detrimentally altered their position and suffered damages  
19 in an amount equal to the amount they paid for Artisana Virgin Coconut Oil.

20 123. The senior officers and directors of Premier allowed Artisana Virgin Coconut  
21 Oil to be sold with full knowledge or reckless disregard that the challenged claims are  
22 fraudulent, unlawful, and misleading.

23 **CLASS ACTION ALLEGATIONS**

24 124. California Code of Civil Procedure section 382 provides that “when the question  
25 is one of a common or general interest, of many persons, or when the parties are numerous,  
26 and it is impracticable to bring them all before the court, one or more may sue or defend for  
27 the benefit of all.”  
28

1           125. While reserving the right to redefine or amend the class definition prior to  
2 seeking class certification, plaintiff brings this suit as a class action pursuant to Cal. Code  
3 Civ. P. § 382 on behalf of himself and a Class of all persons in the United States who, on or  
4 after from January 25, 2012 (the “Class Period”), purchased, for personal or household use,  
5 and not for resale or distribution purposes, Premier’s Artisana Virgin Coconut Oil products  
6 (the “Class”).

7           126. The members in the proposed Class are so numerous that individual joinder of  
8 all members is impracticable, and the disposition of the claims of all Class Members in a  
9 single action will provide substantial benefits to the parties and Court.

10          127. Questions of law and fact common to plaintiff and the Class include:

- 11           a. Whether Premier communicated a message regarding healthfulness  
12 of Artisana Virgin Coconut Oil through its packaging and advertising;
- 13           b. Whether that message was material, or likely to be material, to a  
14 reasonable consumer;
- 15           c. Whether the challenged claims are false, misleading, or reasonably  
16 likely to deceive a reasonable consumer because of the high total and saturated  
17 fat content of Artisana Virgin Coconut Oil;
- 18           d. Whether Premier’s conduct violates public policy;
- 19           e. Whether Premier’s conduct violates state or federal food statutes or  
20 regulations;
- 21           f. The proper amount of damages, including punitive damages;
- 22           g. The proper amount of restitution;
- 23           h. The proper scope of injunctive relief; and
- 24           i. The proper amount of attorneys’ fees.

25          128. These common questions of law and fact predominate over questions that affect  
26 only individual Class Members.

1 129. Plaintiff's claims are typical of Class Members' claims because they are based  
2 on the same underlying facts, events, and circumstances relating to Premier's conduct.  
3 Specifically, all Class Members, including plaintiff, were subjected to the same misleading  
4 and deceptive conduct when they purchased Artisana Virgin Coconut Oil, and suffered  
5 economic injury because the Artisana Virgin Coconut Oil products were misrepresented.

6 130. Plaintiff will fairly and adequately represent and protect the interests of the  
7 Class, has no interests incompatible with the interests of the Class, and has retained counsel  
8 competent and experienced in class action litigation, and specifically in litigation involving  
9 the false and misleading advertising of foods.

10 131. Class treatment is superior to other options for resolution of the controversy  
11 because the relief sought for each Class Member is small, such that, absent representative  
12 litigation, it would be infeasible for Class Members to redress the wrongs done to them.

13 132. Questions of law and fact common to the Class predominate over any questions  
14 affecting only individual Class Members.

15 133. Premier has acted on grounds applicable to the Class, thereby making  
16 appropriate final injunctive and declaratory relief concerning the Class as a whole.

17 **CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **Violations of the Unfair Competition Law,**

20 **Cal. Bus. & Prof. Code § 17200 *et seq.***

21 134. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
22 as if set forth in full herein.

23 135. The UCL prohibits any "unlawful, unfair or fraudulent business act or practice."  
24 Cal. Bus. & Prof. Code §17200.

25 136. The acts, omissions, misrepresentations, practices, and non-disclosures of  
26 Premier as alleged herein constitute business acts and practices.

1 **Fraudulent**

2 137. A statement or practice is fraudulent under the UCL if it is likely to deceive the  
3 public, applying a reasonable consumer test.

4 138. As set forth herein, the Premier’s claims relating to the Artisana Virgin Coconut  
5 Oil are likely to deceive reasonable consumers and the public.

6 **Unlawful**

7 139. The acts alleged herein are “unlawful” under the UCL in that they violate at least  
8 the following laws:

- 9 • The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.*  
10 • The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*;  
11 • The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*; and  
12 • The California Sherman Food, Drug, and Cosmetic Law, Cal. Health & Safety  
13 Code §§ 110100 *et seq.*

14 **Unfair**

15 140. Premier’s conduct with respect to the labeling, advertising, and sale of Artisana  
16 Virgin Coconut Oil was unfair because Premier’s conduct was immoral, unethical,  
17 unscrupulous, or substantially injurious to consumers and the utility of its conduct, if any,  
18 does not outweigh the gravity of the harm to its victims.

19 141. Premier’s conduct with respect to the labeling, advertising, and sale of Artisana  
20 Virgin Coconut Oil was also unfair because it violated public policy as declared by specific  
21 constitutional, statutory or regulatory provisions, including but not limited to the False  
22 Advertising Law, portions of the Federal Food, Drug, and Cosmetic Act, and portions of the  
23 California Sherman Food, Drug, and Cosmetic Law.

24 142. Premier’s conduct with respect to the labeling, advertising, and sale of Artisana  
25 Virgin Coconut Oil was also unfair because the consumer injury was substantial, not  
26 outweighed by benefits to consumers or competition, and not one consumers themselves  
27 could reasonably have avoided.

1 143. Premier profited from its sale of the falsely, deceptively, and unlawfully  
2 advertised Artisana Virgin Coconut Oil to unwary consumers.

3 144. Plaintiff and Class Members are likely to be damaged by Premier’s deceptive  
4 trade practices, as Premier continues to disseminate misleading information. Thus, injunctive  
5 relief enjoining this deceptive practice is proper.

6 145. Premier’s conduct caused and continues to cause substantial injury to plaintiff  
7 and the other Class Members, who have suffered injury in fact as a result of Premier’s  
8 unlawful conduct.

9 146. In accordance with Bus. & Prof. Code § 17203, plaintiff, on behalf of himself,  
10 the Class, and the general public, seeks an order enjoining Premier from continuing to conduct  
11 business through unlawful, unfair, or fraudulent acts and practices, and to commence a  
12 corrective advertising campaign.

13 147. Plaintiff, on behalf of himself and the Class also seeks an order for disgorgement  
14 or restitution of all monies from the sale of Artisana Virgin Coconut Oil, which were unjustly  
15 acquired through acts of unlawful competition.

16 **SECOND CAUSE OF ACTION**  
17 **Violations of the False Advertising Law,**  
18 **Cal. Bus. & Prof. Code § 17500 *et seq.***

19 148. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
20 as if set forth in full herein.

21 149. Under the FAL, “[i]t is unlawful for any person, firm, corporation or association,  
22 or any employee thereof with intent directly or indirectly to dispose of real or personal  
23 property or to perform services” to disseminate any statement “which is untrue or misleading,  
24 and which is known, or which by the exercise of reasonable care should be known, to be  
25 untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

1 150. It is also unlawful under the FAL to disseminate statements concerning property  
2 or services that are “untrue or misleading, and which is known, or which by the exercise of  
3 reasonable care should be known, to be untrue or misleading.” *Id.*

4 151. As alleged herein, the advertisements, labeling, policies, acts, and practices of  
5 Premier relating to its Artisana Virgin Coconut Oil misled consumers acting reasonably as to  
6 the healthfulness of Artisana Virgin Coconut Oil.

7 152. Plaintiff suffered injury in fact as a result of Premier’s actions as set forth herein  
8 because plaintiff purchased Artisana Virgin Coconut Oil in reliance on Premier’s false and  
9 misleading marketing claims that the product, among other things, is inherently healthy, is  
10 healthier than butter and margarine, and does not negatively affect blood cholesterol levels.

11 153. Premier’s business practices as alleged herein constitute unfair, deceptive,  
12 untrue, and misleading advertising pursuant to the FAL because Premier has advertised the  
13 Artisana Virgin Coconut Oil in a manner that is untrue and misleading, which Premier knew  
14 or reasonably should have known.

15 154. Premier profited from its sales of the falsely and deceptively advertised Artisana  
16 Virgin Coconut Oil to unwary consumers.

17 155. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, plaintiff and the Class  
18 are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement  
19 of the funds by which Premier was unjustly enriched.

20 **THIRD CAUSE OF ACTION**

21 **Violations of the Consumer Legal Remedies Act,**  
22 **Cal. Civ. Code §§ 1750 *et seq.***

23 156. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
24 as if set forth in full herein.

25 157. The CLRA prohibits deceptive practices in connection with the conduct of a  
26 business that provides goods, property, or services primarily for personal, family, or  
27 household purposes.

1 158. Premier's false and misleading labeling and other policies, acts, and practices  
2 described herein were designed to, and did, induce the purchase and use of Premier's Artisana  
3 Virgin Coconut Oil for personal, family, or household purposes by plaintiff and other Class  
4 Members, and violated and continue to violate at least the following sections of the CLRA:

- 5 • § 1770(a)(5): representing that goods have characteristics, uses, or benefits  
6 which they do not have;
- 7 • § 1770(a)(7): representing that goods are of a particular standard, quality, or  
8 grade if they are of another;
- 9 • § 1770(a)(9): advertising goods with intent not to sell them as advertised; and
- 10 • § 1770(a)(16): representing the subject of a transaction has been supplied in  
11 accordance with a previous representation when it has not.

12 159. Premier profited from its sales of the falsely, deceptively, and unlawfully  
13 advertised Artisana Virgin Coconut Oil to unwary consumers.

14 160. Premier's wrongful business practices regarding the Artisana Virgin Coconut  
15 Oil constituted, and constitute, a continuing course of conduct in violation of the CLRA.

16 161. Pursuant to California Civil Code § 1782, on or around October 28, 2015,  
17 plaintiff notified Premier in writing by certified mail, return receipt requested, of his claims  
18 and of the particular violations of § 1770 of the Act, but Premier failed to remedy the  
19 violations within 30 days thereafter. Because Premier failed to implement remedial measures,  
20 plaintiff, on behalf of himself and the Class, seeks injunctive relief under Civil Code §  
21 1782(d) in the form of modified advertising and a corrective advertising plan, as well as (a)  
22 actual damages in the amount of the total retail sales price of the Artisana Virgin Coconut Oil  
23 sold throughout the Class Period to all Class Members, (b) punitive damages in an amount  
24 sufficient to deter and punish, (c) restitution, and (d) attorneys' fees and costs.

25 162. In compliance with Cal. Civ. Code § 1782(d), plaintiff's affidavit of venue is  
26 filed concurrently herewith, attached to the Complaint.  
27  
28

1 **FOURTH CAUSE OF ACTION**

2 **Breaches of Express Warranties,**

3 **Cal. Com. Code § 2313(1)**

4 163. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
5 as if set forth in full herein.

6 164. Through the Artisana Virgin Coconut Oil labels, Premier made affirmations of  
7 fact or promises, or description of goods, which were “part of the basis of the bargain,” in  
8 that plaintiff and the Class purchased Artisana Virgin Coconut Oil in reasonable reliance on  
9 those statements. Cal. Com. Code § 2313(1).

10 165. Premier breached its express warranties by selling a product that is not healthy,  
11 not healthier than butter or margarine, and that negatively affects cholesterol levels,  
12 increasing risk of CHD, stroke, and other morbidity.

13 166. That breach actually and proximately caused injury in the form of the lost  
14 purchase price that plaintiff and Class members paid for Artisana Virgin Coconut Oil.

15 167. As a result, plaintiff seeks, on behalf of himself and other Class Members, his  
16 actual damages arising as a result of Premier’s breaches of express warranty.

17 **FIFTH CAUSE OF ACTION**

18 **Breach of Implied Warranty of Merchantability,**

19 **Cal. Com. Code § 2314**

20 168. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint  
21 as if set forth in full herein.

22 169. Premier, through its acts set forth herein, in the sale, marketing, and promotion  
23 of Artisana Virgin Coconut Oil, made representations to plaintiff and the Class that, among  
24 other things, the product is healthy.

25 170. Premier is a merchant with respect to the goods of this kind which were sold to  
26 plaintiff and the Class, and there was, in the sale to plaintiff and other consumers, an implied  
27 warranty that those goods were merchantable.



1 171. However, Premier breached that implied warranty in that Artisana Virgin  
2 Coconut Oil is not healthy, is not healthier than butter or margarine, and negatively affects  
3 cholesterol levels, increasing risk of CHD and stroke, as set forth in detail herein.

4 172. As an actual and proximate result of Premier's conduct, plaintiff and the Class  
5 did not receive goods as impliedly warranted by Premier to be merchantable in that they did  
6 not conform to promises and affirmations made on the container or label of the goods.

7 173. Plaintiff and the Class have sustained damages as a proximate result of the  
8 foregoing breach of implied warranty in the amount of Artisana Virgin Coconut Oil's  
9 purchase price.

10 **PRAYER FOR RELIEF**

11 174. Wherefore, plaintiff, on behalf of himself, all others similarly situated and the  
12 general public, prays for judgment against Premier as to each and every cause of action, and  
13 the following remedies:

14 A. An Order declaring this action to be a proper class action, appointing  
15 plaintiff as class representatives, and appointing undersigned counsel as class counsel;

16 B. An Order requiring Premier to bear the cost of class notice;

17 C. An Order enjoining Premier from using any challenged labeling or  
18 marketing claim that is found to be false, misleading, or unlawful;

19 D. An Order compelling Premier to conduct a corrective advertising  
20 campaign;

21 E. An Order compelling Premier to destroy all misleading and deceptive  
22 advertising materials and Artisana Virgin Coconut Oil labels;

23 F. An Order requiring Premier to pay compensatory damages where  
24 permitted by law ;

25 G. An Order requiring Premier to pay restitution to restore all funds acquired  
26 by means of any act or practice declared by this Court to be an unlawful, unfair, or  
27

1 fraudulent business act or practice, or untrue or misleading advertising, plus pre-and  
2 post-judgment interest thereon;

3 H. An award of attorneys' fees and costs; and

4 I. Any other and further relief that Court deems necessary, just, or proper.

5 **JURY DEMAND**

6 Plaintiff hereby demands a trial by jury on all issues so triable.

7  
8 Dated: January 25, 2016

/s/ Paul K. Joseph

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