

SUM. ONS  
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: E & J GALLO WINERY, INC.; AIMERY  
(AVISO AL DEMANDADO): SIEUR D'ARQUES; DUCASSE COMPANY;  
and DOES 1 to 50 Inclusive

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

FEB 25 2010

John A. Clarke, Executive Officer/Clerk  
By SHAUNYA WESLEY, Deputy

YOU ARE BEING SUED BY PLAINTIFF: MARK ZELLER, on behalf  
(LO ESTÁ DEMANDANDO EL DEMANDANTE): of himself and  
others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

CALIFORNIA SUPERIOR COURT, COUNTY OF LOS ANGELES  
111 NORTH HILL STREET

LOS ANGELES, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

KINGSLEY & KINGSLEY, APC

GEORGE R. KINGSLEY, ESQ. SBN-38022

ERIC B. KINGSLEY, ESQ. SBN-185123

16133 VENTURA BLVD., SUITE 1200, ENCINO, CA 91436 BRIAN LEVINE, ESQ. SBN-251416

DATE: \_\_\_\_\_ Clerk, by S. WESLEY, Deputy  
(Fecha) \_\_\_\_\_ (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

NOTICE TO THE PERSON SERVED: You are served

- 1.  as an individual defendant.
- 2.  as the person sued under the fictitious name of (specify):
- 3.  on behalf of (specify):

- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)
- CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)
- other (specify):

- 4.  by personal delivery on (date):

(SEAL)



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KINGSLEY & KINGSLEY, APC  
ERIC B. KINGSLEY, ESQ., SBN-185123  
BRIAN LEVINE, ESQ., SBN-251416  
KELSEY PETERSON-MORE, ESQ., SBN-260264  
16133 VENTURA BL., SUITE 1200  
ENCINO, CA 91436  
(818) 990-8300, FAX (818) 990-2903

Attorneys for Plaintiff

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OF ORIGINAL FILED**  
Los Angeles Superior Court

FEB 25 2010

John A. Clarke, Executive Officer/Clerk  
By SHAUNYA WESLEY, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

**BC 432711**

MARK ZELLER, on behalf of  
of himself and others similarly situated,

Plaintiffs,

v.

E & J GALLO WINERY, INC.;  
AIMERY SIEUR D'ARQUES;  
DUCASSE COMPANY; and  
DOES 1 to 50 Inclusive,

Defendants.

Case No.:

CLASS ACTION COMPLAINT FOR:

- (1) VIOLATION OF THE UNFAIR COMPETITION LAW (Business and Professions Code §17200 *et seq.*)
- (2) VIOLATION OF THE FALSE ADVERTISING LAW (Business and Professions Code §17500 *et seq.*)
- (3) FRAUD
- (4) NEGLIGENT MISREPRESENTATION
- (5) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
- (6) MONEY HAD AND RECEIVED

**JURY TRIAL DEMANDED**

Plaintiff, Mark Zeller ("Plaintiff"), complaining of the above-named Defendants, alleges as follows, which allegations are upon information and belief insofar as they pertain to the conduct of the Defendants:

**I**

**INTRODUCTION**

1. This is a civil action brought under the Unfair Competition Law (Business and Professions Code §17200 *et seq.*) and the False Advertising Law (Business and Professions Code §17500 *et seq.*) to redress Defendants' unlawful, unfair and fraudulent business acts and practices and deceptive

1 advertising in the marketing and sale of its falsely labeled Pinot Noir wine to consumers. Millions of  
2 bottles of red wine labeled, marketed, distributed, and sold by Defendants as Pinot Noir, were, in fact,  
3 not Pinot Noir wine.

4 2. Upon information and belief, Defendants labeled, marketed, distributed, and sold millions  
5 of bottles of Pinot Noir under the label Red Bicycleette, among others. These bottles of falsely labeled  
6 Pinot Noir wine were illegally cut with cheaper Syrah and Merlot grapes.

## 7 II

### 8 JURISDICTION AND VENUE

9 3. Each of the Defendants has headquarters in, or does substantial business in, the State of  
10 California.

11 4. Each of the business acts and practices described herein was performed, in whole or in part,  
12 in the State of California.

13 5. Venue as to each defendant is proper in this judicial district, pursuant to Code of Civil  
14 Procedure §395. Defendants is headquartered in California, operates in California, and sells its Pinot  
15 Noir wines nationwide, including within the State of California and the County of Los Angeles. The  
16 unlawful, unfair, and fraudulent business acts and practices and false advertising alleged herein have  
17 a direct effect on Plaintiff and those similarly situated within the State of California and Los Angeles  
18 County.

## 19 III

### 20 PARTIES

#### 21 A. Plaintiff

22 6. Plaintiff **MARK ZELLER** is a resident of California.

23 7. Plaintiff **ZELLER** has purchased Defendants' Pinot Noir wine.

24 8. Defendants failed to provide Plaintiff and all others similarly situated with the Pinot Noir  
25 wine that it advertised and sold as Pinot Noir wine. Instead, Defendants illegally provided Plaintiff and  
26 others similarly situated with an inferior wine made from less expensive grapes.

#### 27 B. Defendants

28 9. Defendant **E & J GALLO WINERY** is a California corporation operating in California.

1 Defendant owns and operates several locations in the State of California. Defendant's corporate address  
2 is 600 Yosemite Blvd., Modesto, CA 95353. Defendant has sold bottles of falsely labeled wine to  
3 Plaintiff and similarly situated persons throughout the State of California.

4 10. Defendant **AIMERY SIEUR D'ARQUES** is a French cooperative that grew the grapes  
5 that were used to make the fake Pinot Noir wine sold by Defendant E & J Gallo Winery, Inc.  
6 Defendant's principle place of business is located at Avenue du Carcassonne BP 30, 11300 Limoux,  
7 France.

8 11. Defendant **DUCASSE COMPANY** is a French entity that sold the wine to Defendant E  
9 & J Gallo Winery, Inc. Defendant's principle place of business is located at 23 Quai Bellevue 11000,  
10 Caracassonne, France.

11 12. The true names and capacities, whether individual, corporate, associate, or otherwise, of  
12 Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore  
13 sues defendants by such fictitious names under Code of Civil Procedure §474. Plaintiff is informed and  
14 believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally  
15 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court  
16 to amend this Complaint to reflect the true names and capacities of the defendants designated  
17 hereinafter as DOES when such identities become known.

18 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in  
19 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,  
20 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally  
21 attributable to the other Defendants.

#### 22 IV

#### 23 OVERVIEW OF APPLICABLE LAW

##### 24 A. The Unfair Competition Law

25 14. The Unfair Competition Law ("UCL") prohibits "unfair competition," which is defined by  
26 Business and Professions Code §17200 as including "any unlawful, unfair or fraudulent business act  
27 or practice . . ."

28 15. As the California Supreme Court has noted, the UCL's "purpose is to protect both

1 consumers and competitors by promoting fair competition in commercial markets for goods and  
2 services." (*Kasky v. Nike Inc.* (2002) 27 Cal.4th 939, 949.) The UCL is broadly worded, leading the  
3 California Supreme Court to observe that the UCL "was intentionally framed in its broad, sweeping  
4 language, precisely to enable judicial tribunals to deal with the innumerable new schemes which the  
5 fertility of man's invention would contrive." (*Barquis v. Merchants Collection Association* (1972) 7  
6 Cal.3d 94, 112 [citations and internal quotation marks omitted].) The UCL contains no express intent,  
7 knowledge, or negligence requirement, and therefore has been construed as "impos[ing] strict liability."  
8 (*Searle v. Wyndham International, Inc.* (2002) 102 Cal.App.4th 1327, 1333.)

9 16. "Because Business and Professions Code §17200 is written in the disjunctive, it establishes  
10 three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent."  
11 (*Podolsky v. First Healthcare Corp.* (1996) 50 Cal.App.4th 632, 647.)

12 17. The unlawful prong of §17200 proscribes "anything that can properly be called a business  
13 practice and that at the same time is forbidden by law." (*People v. McKale* (1979) 25 Cal.3d 626, 632;  
14 see also *Podolosky v. First Healthcare Corp.*, *supra*, 50 Cal.App.4th at p. 647 ["Virtually any state,  
15 federal or local law can serve as the predicate for an action under Business and Professions Code section  
16 17200."]; *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839 ["The 'unlawful' practices  
17 prohibited by §17200 are any practices forbidden by law, be it civil or criminal, federal, state, or  
18 municipal, statutory, regulatory, or court-made."].)

19 18. The *unfair* prong of §17200 "provides an independent basis for relief"; in other words, "[i]t  
20 is not necessary for a business practice to be 'unlawful' in order to be subject to an action under the  
21 unfair competition law." (*Smith v. State Farm Mutual Automobile Insurance Co.* (2001) 93 Cal.App.4th  
22 700, 718.) "In general the 'unfairness' prong 'has been used to enjoin deceptive or sharp practices. . .'  
23 [Citation.]" (*South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861,  
24 887.)

25 19. The courts of this State have adopted several tests for determining whether a business act  
26 or practice is *unfair*:

27 20. A business practice is unfair "when that practice 'offends an established public policy or  
28 when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious.'" (*State*

1 *Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1102 [quoting *People v.*  
2 *Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d 509, 530].)

3 21. Another "test of whether a business practice is unfair involves an examination of [that  
4 practice's] impact on its alleged victim, balanced against the reasons, justifications and motives of the  
5 alleged wrongdoer. In brief, the court must weigh the utility of the defendant's conduct against the  
6 gravity of the harm to the alleged victim. . ." (*State Farm Fire & Casualty Co. v. Superior Court, supra*,  
7 45 Cal.App.4th at pp. 1103-1104.)

8 22. It also is an unfair business practice when the defendant's conduct "threatens an incipient  
9 violation of [a law], or violates the policy or spirit of [a law] because its effects are comparable to or  
10 the same as a violation of the law, or otherwise significantly threatens or harms competition."  
11 (*Cel-Tech Communication, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 187; see  
12 also *Scripps Clinic v. Superior Court (Thompson)* (2003) 108 Cal.App.4th 917, 940.)

13 23. More recently, one Court of Appeal has fashioned a test for determining whether a practice  
14 is unfair based upon section 5 of the Federal Trade Commission Act (United States Code, title 15,  
15 section 41 *et seq.*). Under this test, "[a]n act or practice is unfair if [1] the consumer injury is  
16 substantial, [2] is not outweighed by any countervailing benefits to consumers or to competition, and  
17 [3] is not an injury the consumers themselves could reasonably have avoided." (*Daugherty v. American*  
18 *Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 839 [bracketed numbers added].)

19 24. The fraudulent prong of §17200 "affords protection against the probability or likelihood  
20 as well as the actuality of deception or confusion." (*Payne v. United California Bank* (1972) 23  
21 Cal.App.3d 850, 856.) "The test is whether the public is likely to be deceived." (*South Bay Chevrolet*  
22 *v. General Motors Acceptance Corp., supra*, 72 Cal.App.4th at p. 888.)

### 23 **B. The False Advertising Law**

24 25. Business and Professions Code §17500, a provision of the False Advertising Law ("FAL"),  
25 provides in relevant part that it is: (a) "unlawful for any person, firm, corporation or association," (b)  
26 "to make or disseminate or cause to be made or disseminated before the public in this state," (c) "in any  
27 newspaper or other publication, or any advertising device, . . . or in any other manner or means," (d) "any  
28 statement, concerning, . . . [the performance of] services, . . . which is untrue or misleading," (e) "which is

1 known, or which by the exercise of reasonable care should be known, to be untrue or misleading," and  
2 (f) "with intent directly or indirectly to . . .perform services, professional or otherwise. . .or to induce the  
3 public to enter into any obligation relating thereto. . ."

4 26. The False Advertising Law applies broadly to commercial speech and includes within its  
5 purview not merely advertisements specific to products or services being sold, but also to more general  
6 statements intended to burnish a corporation's image in the eyes of the public. (See *Kasky v. Nike, Inc.*,  
7 *supra*, 27 Cal.4th 939.)

8 27. A statement is "untrue or misleading" for purposes of §17500 "if members of the public  
9 are likely to be deceived." (*Chern v. Bank of America* (1976) 15 Cal.3d 866, 876.)

10 28. While §17200 can be violated with no showing that the defendant acted intentionally,  
11 knowingly, or negligently, §17500 requires proof that the statement was "known, or which by the  
12 exercise of reasonable care should be known, to be untrue or misleading" (Business and Professions  
13 Code §17500), which creates a negligence standard. (See *Khan v. Medical Board* (1993) 12  
14 Cal.App.4th 1834, 1846.) Under this standard, a seller has "a duty of investigation," such that the  
15 seller's "failure to verify and investigate breaches the duty of care when facts are present which would  
16 put a reasonable person on notice of possible misrepresentations." (*People v. Superior Court (Forest*  
17 *E. Olson, Inc.*) (1982) 137 Cal.App.3d 137, 139.)

18 29. A violation of §17500 may be the subject of a civil action seeking an injunction and/or  
19 restitution. (Business and Professions Code §§17535 and 17536.)

## 20 V

### 21 CLASS ACTION ALLEGATIONS

22 30. Plaintiff is seeking to represent a class of similarly situated Californians defined as follows:

23 All persons who purchased wine labeled as Pinot Noir that was sold and/or  
24 distributed by E & J GALLO WINERY including, but not limited to, Red  
25 Bicycleette label, within the State of California that can be traced to the  
26 18,000,000 bottles of wine subject to the French criminal proceeding in  
Carcassonne, France that culminated in 12 convictions in February 2010.  
("Proposed Class")

27 31. This action is brought as a class action and may properly be so maintained pursuant to the  
28 provisions of the Code of Civil Procedure §382. Plaintiff reserves the right to modify the class

1 definition and the class period based on the results of discovery pursuant to Rule 3.765 of the California  
2 Rules of Court.

3 **A. Numerosity**

4 32. The potential members of the proposed class as defined are so numerous that joinder of  
5 all the members of the proposed class is impracticable. While the precise number of proposed class  
6 members has not been determined at this time, Plaintiff is informed and believes that at least 300,000  
7 bottles of Pinot Noir wine were sold in the State of California.

8 33. Plaintiff alleges Defendants' records would provide information as to the total number of  
9 bottles of wine sold. Joinder of all members of the proposed class is not practicable.

10 **B. Commonality**

11 34. There are questions of law and fact common to the proposed class that predominate over  
12 any questions affecting only individual class members. These common questions of law and fact  
13 include, without limitation:

14 (a) Whether the Pinot Noir wine labeled, marketed, promoted, distributed, and sold  
15 by Defendants violates the Unfair Competition Law;

16 (b) Whether Defendants violated the False Advertising Law by promoting the wines  
17 it labeled, marketed, promoted, distributed, and sold as Pinot Noir;

18 (c) Whether Defendant knew or should have known that the wine it labeled,  
19 marketed, promoted, distributed, and sold as Pinot Noir was made from grapes other than those used  
20 to make Pinot Noir wine;

21 (d) Whether Plaintiff and Similarly Situated Class Members justifiably relied on  
22 Defendants' representation that the wine it sold was Pinot Noir;

23 **C. Typicality**

24 35. The claims of the named Plaintiff are typical of the claims of the proposed class. Plaintiff  
25 and all members of the proposed class sustained injuries and damages arising out of and caused by  
26 Defendants' unlawful, unfair and fraudulent business acts and practices and deceptive advertising in the  
27 marketing and sale of its Pinot Noir to consumers as alleged herein.

28 **D. Adequacy of Representation**

1 36. Plaintiff will fairly and adequately represent and protect the interests of the members of  
2 the proposed class. Counsel who represents Plaintiff are competent and experienced in litigating large  
3 class actions.

4 **E. Superiority of Class Action**

5 37. A class action is superior to other available means for the fair and efficient adjudication  
6 of this controversy. Individual joinder of all proposed class members is not practicable, and questions  
7 of law and fact common to the proposed class predominate over any questions affecting only individual  
8 members of the proposed class. Each member of the proposed class has been damaged and is entitled  
9 to recovery by reason of Defendants' unlawful, unfair and fraudulent business acts and practices and  
10 deceptive advertising in the marketing and sale of its Pinot Noir.

11 38. Class action treatment will allow those similarly situated persons to litigate their claims  
12 in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is  
13 unaware of any difficulties that are likely to be encountered in the management of this action that would  
14 preclude its maintenance as a class action.

15 **VI**

16 **FIRST CAUSE OF ACTION**

17 **UNFAIR, MISLEADING AND DECEPTIVE BUSINESS PRACTICES**

18 **PURSUANT TO BUSINESS & PROFESSIONS CODE §17200**

19 39. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs  
20 as if fully set forth herein.

21 40. This is a Representative Private Attorney General Action and Class Action for Unfair  
22 Business Practices. Plaintiff on behalf of himself, the general public, and others similarly situated, bring  
23 this claim pursuant to Business and Professions Code §17200 *et seq.* The conduct of all Defendants  
24 as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the  
25 general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public  
26 interest within the meaning of Code of Civil Procedure §1021.5.

27 41. Plaintiff is a "person" within the meaning of Business and Professions Code §17204, and  
28 therefore has standing to bring this cause of action for restitution and other appropriate equitable relief.



1 Defendants represented to Plaintiff and the Proposed Class that the wine it sold was of a higher quality  
2 than was actually the case.

3 50. In making and disseminating the statements herein alleged, Defendants knew, or by the  
4 exercise of reasonable care should have known, that the statements were untrue or misleading and so  
5 acted in violation of §17500 of the Business and Professions Code.

6 51. Pursuant to Business and Professions Code §17535, this Court should make such orders  
7 or judgments, including the appointment of a receiver, as may be necessary to restore Plaintiff and  
8 members of the Proposed Class, money paid to or acquired by Defendants in connection with the sales  
9 of the falsely labeled Pinot Noir.

## 10 VIII

### 11 THIRD CAUSE OF ACTION

### 12 FRAUD AND INTENTIONAL DECEIT

### 13 PURSUANT TO CIVIL CODE §1709

14 52. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs  
15 as if fully set forth herein.

16 53. Civil Code §1709 provides in relevant part: tortious fraud or deceit occurs when a party  
17 "willfully deceives another with the intent to induce him to alter his position to his injury or risk.

18 54. The unlawful, unfair, and fraudulent business acts and practices of Defendants constitute  
19 fraud under Civil Code §1709 in that Defendants materially misrepresented the falsely labeled wine as  
20 Pinot Noir when they knew that the wine they labeled, marketed, promoted, distributed, and sold was  
21 not actually Pinot Noir wine. This substantially increased their profits.

22 55. Defendants knowingly concealed and failed to disclose material facts with the intent to  
23 induce reliance upon this material misrepresentation. Specifically, Defendants misrepresented to  
24 Plaintiff and the Proposed Class that the wine it sold was of a higher quality than was actually the case  
25 in an effort to induce Plaintiff, and all others similarly situated, to buy the cheaper, falsely labeled wine.

26 56. Plaintiff and similarly situated class members justifiably relied upon this material  
27 misrepresentation that the wine labeled, marketed, promoted, distributed, and sold by Defendants was  
28 Pinot Wine when, in fact, it was not. This fraud was only revealed by happenstance and the hard work

1 of the French authorities.

2 57. As a result of Defendants' fraudulent acts, Plaintiff, and all others similarly situated, were  
3 harmed. Defendants caused damage to Plaintiff and the proposed Class as they were induced to buy  
4 a falsely labeled wine from Defendants when the actual wine purchased was of inferior quality.  
5 Because of defendant's fraudulent conduct, plaintiff seeks punitive damages in an amount as may be  
6 proven.

7 **IX**

8 **FOURTH CAUSE OF ACTION**

9 **NEGLIGENT MISREPRESENTATION**

10 **PURSUANT TO CIVIL CODE §§1572(2), 1709, 1710**

11 58. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs  
12 as if fully set forth herein.

13 59. Negligent misrepresentation occurs if a party to the contract makes a positive assertion,  
14 in a manner not warranted by the information of the person making it, of that which is not true, though  
15 he believes it to be true, with an intent to deceive another party thereto, or to induce him to enter into  
16 the contract. Civ. Code §1572. Negligent misrepresentation may also occur if a person willfully  
17 deceives another person with intent to induce him to alter his position to his injury or risk, is liable for  
18 any damage which he thereby suffers. Civ. Code §§1709, 1710.

19 60. Defendants negligently misrepresented and concealed from Plaintiff, and all others  
20 similarly situated, the true nature of their falsely labeled Pinot Noir wine.

21 61. These material misrepresentations were negligently made to Plaintiff, and all others  
22 similarly situated, through uniform mislabeling, non-disclosure, concealment, and through mass media,  
23 point-of-sale advertising, and other information disseminated by Defendants.

24 62. Defendants knew at all times that Plaintiff and the proposed Class relied upon its labeling.  
25 Defendants materially misrepresented the falsely labeled wine as Pinot Noir when they knew, or by the  
26 exercise of reasonable care should have known, that the wine they labeled, marketed, promoted,  
27 distributed, and sold was not actually Pinot Noir wine.

28 63. Defendants materially misrepresented the falsely labeled wine as Pinot Noir without any

1 reasonable ground for believing that the wine was actually Pinot Noir.

2 64. Defendants intended to induce reliance upon this material misrepresentation to influence  
3 the purchasing decisions of Plaintiff, and all others similarly situated. Defendants misrepresented to  
4 Plaintiff and the Proposed Class that the wine it sold was of a higher quality than was actually the case  
5 in an effort to induce Plaintiff, and all others similarly situated, to buy the cheaper, falsely labeled wine.

6 65. Plaintiffs justifiably relied upon Defendants' labeling believing that they were purchasing  
7 Pinot Noir wine as labeled.

8 66. As a result of Defendants' negligent misrepresentations, Plaintiff, and all others similarly  
9 situated, were harmed. Defendants caused damage to Plaintiff and the proposed Class as they were  
10 induced to buy a falsely labeled wine from Defendants when the actual wine purchased was of inferior  
11 quality.

12 67. Defendant's conduct as described above and the policy were done with a conscious  
13 disregard of the rights of plaintiff and others similarly situated in clear violation of California Law and  
14 resulted in oppression, and/or malice constituting despicable conduct under California Civil Code §3294  
15 entitling plaintiff to punitive damages in an amount appropriate to punish or set an example of  
16 defendants.

17 **X**

18 **FIFTH CAUSE OF ACTION**

19 **BREACH OF THE IMPLIED COVENANT**

20 **OF GOOD FAITH AND FAIR DEALING**

21 68. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs  
22 as if fully set forth herein.

23 69. In every contract or agreement there is an implied promise of good faith and fair dealing  
24 meaning that each party will not do anything to unfairly interfere with the right of any other party to  
25 receive the benefits of the contract.

26 70. Defendants unfairly interfered with Plaintiff's right, and the rights of all others similarly  
27 situated, to receive the benefits of the contract in that it knew Plaintiff and the proposed Class relied  
28 upon its labeling, yet it unfairly, unlawfully, and fraudulently mislabeled its wine to influence the

1 purchasing decisions of Plaintiff and the proposed Class.

2 71. As a result of Defendants' unfair, unlawful, and fraudulent acts, Plaintiff, and all others  
3 similarly situated, were harmed. Defendants caused damage to Plaintiffs as they were induced to buy  
4 a falsely labeled wine from Defendants when the actual wine purchased was of inferior quality.

5 **XI**

6 **SIXTH CAUSE OF ACTION**

7 **MONEY HAD AND RECEIVED**

8 72. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs  
9 as if fully set forth herein.

10 73. As a result of the conduct described above, Defendants have been and may continue to be  
11 unjustly enriched at the expense of the Plaintiff and the proposed Class. Specifically, Defendants'  
12 unlawful, unfair, and fraudulent conduct have enabled Defendants to label, market, promote, distribute,  
13 and sell a less expensive and falsely labeled Pinot Noir wine to Plaintiff and the proposed Class unjustly  
14 enriching Defendants.

15 74. Defendant received the money of Plaintiff and the proposed for its falsely labeled Pinot  
16 Noir wine. The money was intended for the purchase of Pinot Noir wine. Because the wine was not  
17 Pinot Noir wine, but instead a less expensive vintage, Plaintiff and the proposed Class, did not the  
18 receive the benefit of the purchase money. Defendants have not returned the money to Plaintiff and the  
19 proposed Class.

20 75. It would be unjust and inequitable to allow Defendants to retain their ill gotten profits and  
21 therefore should be required to disgorge profits unlawfully obtained.

22  
23 **RELIEF REQUESTED**

24 **WHEREFORE**, Plaintiff prays for the following relief:

25 1. For compensatory damages for the purchase price of the falsely labeled wine purchased  
26 by Plaintiff and each class member.

27 2. For restitution including an order disgorging profits obtained by Defendants for the  
28 wrongful acts alleged herein.

- 1           3.     For putative damages as may be proven.
- 2           4.     For attorneys fees under California Code of Civil Procedure §1021.5 or other legal basis
- 3 as may be proven.
- 4           5.     For costs of suit.
- 5           6.     For such other relief as the court may deem appropriate.
- 6

7           **DEMAND FOR JURY TRIAL**

8           Plaintiff hereby demands trial of their claims by jury to the extent authorized by law.

9

10          DATED: February 25, 2010

KINGSLEY & KINGSLEY, APC

11

12          By:  \_\_\_\_\_

13                   ERIC B. KINGSLEY  
14                   BRIAN LEVINE  
15                   Attorneys for Plaintiffs

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, S. r number, and address):
KINGSLEY & KINGSLEY, APC
GEORGE R. KINGSLEY, ESQ. SBN-38022
ERIC B. KINGSLEY, ESQ. SBN-185123
BRIAN LEVINE, ESQ. SBN-251416
16133 VENTURA BLVD., SUITE 1200, ENCINO, CA 91436
TELEPHONE NO. (818) 990-8300 FAX NO. (818) 990-2903

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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
FEB 25 2010
John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
STREET ADDRESS 111 NORTH HILL STREET
MAILING ADDRESS
CITY AND ZIP CODE LOS ANGELES, CA 90012
BRANCH NAME CENTRAL DISTRICT

CASE NAME MARK ZELLER V. E & J GALLO WINERY, INC.;
AIMERY SIEUR D'ARQUES; DUCASSE COMPANY

CIVIL CASE COVER SHEET
[X] Unlimited (Amount demanded exceeds \$25,000)
[ ] Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER BC432711
JUDGE
DEPT

Items 1-6 below must be completed (see instructions on page 2).

- 1. Check one box below for the case type that best describes this case:
Auto Tort
Contract
Provisionally Complex Civil Litigation
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
Real Property
Enforcement of Judgment
Non-PI/PD/WD (Other) Tort
Unlawful Detainer
Miscellaneous Civil Complaint
Employment
Judicial Review
Miscellaneous Civil Petition

- 2. This case [ ] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. [ ] Large number of separately represented parties
b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. [ ] Substantial amount of documentary evidence
d. [ ] Large number of witnesses
e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. [X] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [ ] punitive

4. Number of causes of action (specify): SIX (6)
5. This case [X] is [ ] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
Date: FEBRUARY 25, 2010
Brian Levine (TYPE OR PRINT NAME)
KINGSLEY & KINGSLEY, APC (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
• File this cover sheet in addition to any cover sheet required by local court rule.
• If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
• Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION  
 (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL?  YES CLASS ACTION?  YES LIMITED CASE?  YES TIME ESTIMATED FOR TRIAL 6-8  HOURS/  DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column B below which best describes the nature of this case.

**Step 3:** In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (See Column C below)**

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 4.
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.	
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.	
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.	
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.	
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	①, 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input checked="" type="checkbox"/> A6013 Fraud (no contract)	①, 2., 3.

SHORT TITLE MARK ZELLER V. E & J GALLO WINERY, INC. ; AIMERY SIEUR D'ARQUES; DUCASSE COMPANY	CASE NUMBER
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A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice	1., 2., 3.
	<input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case	1., 2., 3.
	<input type="checkbox"/> A6109 Labor Commissioner Appeals	10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction)	2., 5.
	<input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2., 5.
	<input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
	<input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff	2., 5., 6.
	<input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud	1., 2., 3., 5.
	<input type="checkbox"/> A6031 Tortious Interference	1., 2., 3., 5.
	<input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure	2., 6.
	<input type="checkbox"/> A6032 Quiet Title	2., 6.
	<input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer - Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.)	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2., 8.
		<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2.
		<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2.
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ / Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
	Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment
<input type="checkbox"/> A6160 Abstract of Judgment			2., 6.
<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)			2., 9.
<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)			2., 8.
<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax			2., 8.
<input type="checkbox"/> A6112 Other Enforcement of Judgment Case			2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
		<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2., 3., 9.
		<input type="checkbox"/> A6123 Workplace Harassment	2., 3., 9.
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
		<input type="checkbox"/> A6190 Election Contest	2.
		<input type="checkbox"/> A6110 Petition for Change of Name	2., 7.
		<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
<input type="checkbox"/> A6100 Other Civil Petition	2., 9.		

SHORT TITLE MARK ZELLER V. L & J GALLO WINERY, INC.; AIMERY SIEUR D'ARQUES; DUCASSE COMPANY	CASE NUMBER
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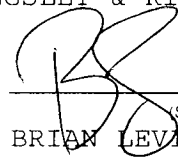
Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			ADDRESS CORPORATE ADDRESS: 600 YOSEMITE BOULEVARD
CITY MODESTO	STATE CA	ZIP CODE: 95353	CLASS ACTION TO BE FILED IN CENTRAL

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the SUPERIOR COURT \_\_\_\_\_ courthouse in the CENTRAL District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

KINGSLEY & KINGSLEY, APC

Dated: FEBRUARY 25, 2010



(SIGNATURE OF ATTORNEY/FILING PARTY)

BRIAN LEVINE

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.