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16 *Attorneys for Plaintiff*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 BARRY N. KAY, individually and on behalf of
20 all others similarly situated,

21 Plaintiff,

22 v.

23 COPPER CANE, LLC d/b/a COPPER CANE
24 WINES & PROVISIONS, a California
corporation,

25 Defendant.

Case No.:

CLASS ACTION

COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Barry N. Kay (“Plaintiff”), individually and on behalf of all others similarly situated,
2 brings this class action complaint against Copper Cane, LLC d/b/a Copper Cane Wines & Provisions
3 (“Defendant”), and alleges upon personal knowledge as to Plaintiff’s acts and experiences, and, as to all
4 other matters, upon information and belief, including investigation conducted by Plaintiff’s attorneys.

5 **INTRODUCTION**

6 1. Defendant distributes wines under various brand names, including pinot noir varieties
7 labeled as “Elouan” (“Elouan” or the “Product”).

8 2. The labels on the Product indicates that this wine originates from and is produced in various
9 wine growing American Viticultural Areas¹ (“AVAs”) within the State of Oregon, as well as indicating
10 in a more general way that the wine is produced within the wine growing regions of the State of Oregon
11 (the “Oregon Appellation²”).

12 3. Specifically, Elouan wine bottles have a label referencing the Oregon Appellation, and the
13 boxes in which Elouan bottles are shipped mention the Willamette, Umpqua, and Rogue valleys, all of
14 which are AVAs within the State of Oregon.

15 4. However, contrary to the representations made on the labels, boxes, and marketing
16 materials for Elouan, the wine is not actually made in the state of Oregon, much less in the specific AVAs
17 listed on the Product’s packaging. Instead, the wine is vinified³ and bottled at Defendant’s facilities in
18 the Napa Valley in the State of California.

19 5. Rules promulgated by the Oregon Winegrowers Association (“OWA”) require that for a
20 wine to be labeled with one of the Oregon AVAs, at least 95 percent of the grapes used in making that
21 wine must come from that specific AVA, and the wine must be fully finished within the state.

22 6. In this way, wines from specific Oregon AVAs are similar to Kobe beef, which can only
23 be produced according to specifications within a certain region (Kobe) in Japan, or champagne, which can
24 only be produced in a specific region of France and by using certain techniques.

25
26 ¹ An “AVA” is a designated wine grape-growing region in the United States, providing an official
27 appellation for the mutual benefit of wineries and consumers.

28 ² An “appellation” is a legally defined and protected geographical indication used to identify where the
grapes for a wine were grown.

1 advocacy, legal compliance, and standardization. By extension, these activities protect the valuable
2 branding of Oregon wines.

3 25. The standards set by the OWA provide enhanced protection for the branding of wines with
4 Oregon AVAs than what is provided by the Federal rules, which require that 85% of the grapes used in
5 making a wine to be from a specific AVA in order for that AVA to be listed on the wine's labels and
6 packaging. Thus, consumers who seek out wines from Oregon AVAs know that more stringent standards
7 have been met in order for the Oregon AVAs to be listed on a wine's labeling, packaging, or marketing
8 materials.

9 26. Defendant's Product, though marked with the names of one or more of the Oregon AVAs,
10 does not meet these standards.

11 27. Oregon pinot noir varieties are considered to have different characteristics of flavor, body,
12 nose, etc., which many buyers regard as more desirable than wines from other regions.

13 28. Rightly or wrongly, consumers believe that these superior characteristics stem from
14 performing every step of the winemaking process in the cool, coastal climate of the Oregon AVAs.

15 29. No portion of any of the Oregon AVAs, including the Willamette Valley, Umpqua Valley,
16 or Rogue Valley, is located in the State of California.

17 30. Because Defendant vinifies, finishes, and bottles all of its wines in the State of California,
18 these wines can never be marketed using the name of one or more of the Oregon AVAs, as these processes
19 must be completed within the State of Oregon in order to label the wines with an Oregon AVA.

20 31. Defendant attempts to confuse buyers by stating that its grapes come from one or more of
21 the Oregon AVAs.

22 32. However, it is not simply where the grapes are grown, but rather, where the entire
23 winemaking process is conducted that determines whether a winemaker may claim that a wine is produced
24 in an Oregon AVA. Defendant's Product does not meet the requirements to make such a claim.

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