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10 Simpson Imports, Ltd.

11
12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 ANDREA VALIENTE, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 SIMPSON IMPORTS, LTD.,

20 Defendant.

Case No.

**NOTICE OF REMOVAL OF
STATE COURT CIVIL ACTION
UNDER 28 U.S.C. §§ 1332, 1441,
AND 1446 [DIVERSITY
JURISDICTION]**

(Removed from the Superior Court of
the State of California, County of
Santa Clara, Case No. 23CV411463)

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT, PLAINTIFF, AND THEIR**
2 **ATTORNEY OF RECORD:**

3 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446,
4 Defendant Simpson Imports, Ltd. (“Defendant” or “Simpson Imports”) hereby removes the
5 above-captioned state court action currently pending in the Superior Court of the State of
6 California for the County of Santa Clara to the United States District Court for the Northern
7 District of California. Removal of the action is proper for the reasons listed below.

8 Defendant removes this action expressly reserving its rights to assert any and all defenses
9 and objections available to it as to any issue or matter relating to this litigation.

10 **I. BACKGROUND**

11 1. On February 8, 2023, Plaintiff Andrea Valiente (“Plaintiff”) filed this class action
12 civil action in the Superior Court of California, County of Santa Clara, captioned *Andrea Valiente*
13 *v. Simpson Imports, Ltd.* (the “State Court Action”). Plaintiff’s Complaint alleges that she
14 purchased Defendant’s canned tomatoes under the mistaken belief that they were San Marzano
15 tomatoes. Plaintiff brought suit on behalf of herself and individuals similarly situated alleging:
16 (1) Violation of California’s Unfair Competition Law; (2) Violation of California’s Consumer
17 Legal Remedies Act; (3) Violation of California’s False Advertising Law; (4) Fraud; (5) Breach
18 of Express Warranty; and (6) Unjust Enrichment.

19 2. Defendant was served with the Complaint and Summons on April 5, 2023. True
20 and correct copies of all process, pleadings, and orders that have been served on Defendant in this
21 action pursuant to 28 U.S.C. § 1446(a) are attached hereto collectively as **Exhibit A**.

22 3. The Parties filed a Stipulation and [Proposed] Order for Extension of Time for
23 Defendant to Answer or Otherwise Respond to Plaintiff’s Complaint and Summons in the State
24 Court Action on April 20, 2023. On April 28, 2023, the stipulation was granted and the deadline
25 for Defendant to answer was set at June 7, 2023. A true and correct copy of the parties stipulation
26 is attached hereto as **Exhibit B**.

27 **II. REMOVAL IS TIMELY**

28 4. Plaintiff served Defendant with the Summons and Complaint on April 5, 2023, and

1 Defendant acknowledged receipt on April 6, 2023.

2 5. This Notice is proper and timely pursuant to 28 U.S.C. § 1446(b) because it has
3 been filed within 30 days after Defendant was served with a copy of the Summons and
4 Complaint.

5 **III. VENUE IS PROPER IN THIS COURT**

6 6. This action is properly removable to the United States District Court for the
7 Northern District of California pursuant to 28 U.S.C. § 1446(a) because the Superior Court of
8 California, County of Santa Clara, in which this case was brought, lies within this district.

9 **IV. PROCEDURAL REQUIREMENTS**

10 7. Simpson Imports is the only named defendant and, therefore, no other defendant
11 must join in this removal. *See* 28 U.S.C. § 1446(b)(2)(A).

12 8. Defendant will promptly serve a copy of this Notice on counsel for Plaintiff and
13 will file a copy of this Notice with the Clerk of the Superior Court of California, County of
14 Santa Clara, pursuant to 28 U.S.C. § 1446(d).

15 **IV. BASIS FOR THE COURT'S JURISDICTION**

16 9. Original jurisdiction over this matter exists pursuant to 28 U.S.C. § 1332(a)(1)
17 because it is a civil action between citizens of different states where the matter in controversy
18 exceeds the sum or value of \$75,000.

19 **a. DIVERSITY OF CITIZENSHIP**

20 10. Plaintiff alleges that she is a resident of California. (Compl. ¶ 40). There is a
21 “longstanding principle” that “the place where a person lives is taken to be his domicile until facts
22 adduced establish the contrary.” *Boone v. FCA US LLC*, No. 21-cv-01591-JD, 2021 WL
23 5331440, at *2 (N.D. Cal. Nov. 16, 2021) (quoting *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606,
24 614 (9th Cir. 2016)). Plaintiff is therefore a citizen of the State of California.

25 11. Defendant is now, and was at the time the action was commenced, a citizen of a
26 state other than California within the meaning of 28 U.S.C. § 1332(c)(1). Defendant is now, and
27 was at the time this action was commenced, incorporated in the Commonwealth of Pennsylvania.
28 (Compl. ¶ 41.) Defendant’s principal place of business is now, and was at the time this action

1 was commenced, in Jenkintown, Pennsylvania. Accordingly, Defendant is a citizen of
2 Pennsylvania.

3 12. Because Plaintiff is a citizen of the State of California and Defendant is a citizen of
4 the Commonwealth of Pennsylvania, complete diversity existed and continues to exist between
5 Plaintiff and Defendant, both at the time the State Court Action was filed and at the time of
6 removal to this Court.

7 **b. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000**

8 13. Pursuant to 28 U.S.C. § 1332(a), this Court has “original jurisdiction of all civil
9 actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest
10 and costs,” Defendant avers—without admitting that it engaged in any improper conduct,
11 that Plaintiff’s claims have any merit, or that Plaintiff is entitled to recover from Defendant any of
12 the relief requested—that the matter in controversy exceeds the jurisdictional minimum of
13 \$75,000. Defendant does not concede that it is actually liable to Plaintiff in any amount. Indeed,
14 Defendant contends that Plaintiff is entitled to recover nothing.

15 14. Plaintiff’s Complaint expressly seeks “compensatory, statutory, and punitive
16 damages,” along with “restitution and all other forms of equitable monetary relief” and attorneys’
17 fees in an unspecified amount. (Compl., Relief Demanded.)

18 15. Where, as here, the Complaint does not specify the amount of damages sought, a
19 defendant can establish the amount in controversy by an unchallenged, plausible assertion of the
20 amount in controversy in its Notice of Removal. “[A] defendant’s notice of removal need include
21 only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”
22 *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014); *see Ibarra v.*
23 *Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015). No submission of evidence
24 accompanying the removal notice is required. *Dart Cherokee Basin Operating Co.*, 135 S. Ct. at
25 554.

26 16. If defendant’s assertions are challenged, the defendant bears the burden of
27 establishing the amount in controversy by a “preponderance of the evidence.” *Foster v. Aramark*
28 *Sports, LLC*, No. C 08-01336 MHP, 2008 WL 2025063, at *2 (N.D. Cal. May 8, 2008). This

1 burden is not daunting and only requires that the defendant show, through its own affidavit,
2 declaration, or other documentation that the amount in controversy at the time of removal “more
3 likely than not” exceeds the statutory minimum. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d
4 398, 404 (9th Cir. 1996).

5 17. Plaintiff’s request for restitution places more than \$75,000 in controversy.
6 Plaintiff seeks “restitution in the form of the revenue derived from Defendant’s sale of the
7 Products.” (Compl. ¶ 103.)

8 18. Based on Defendant’s sales data, Defendant has sold more than \$75,000 worth of
9 the San Merican Tomato products (“the Tomato Products”) at issue to distributors, and other third
10 parties within the past four years nationwide, and estimates that it sold more than \$75,000 worth
11 of the Tomato Products in California during the same timeframe. (Ruth Levi Decl. ¶¶ 7-8.)

12 19. Moreover, Plaintiff’s remaining requests for relief increase the amount in
13 controversy. Plaintiff requests an injunction that would include an order requiring Defendant to
14 alter the packaging on all of its Tomato Products. Such an order would require Simpson Imports
15 to replace or redesign its packaging at substantial cost, and allegedly bring value to Plaintiff, who
16 alleges that she would “not have purchased” the Tomato Products or “would pay significantly less
17 for them” absent Defendant’s alleged misrepresentations. (Compl. ¶ 6.) The value of this
18 potential injunctive relief to Plaintiffs is properly considered part of the amount in controversy.
19 *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018) (“The amount in
20 controversy may include ‘damages (compensatory, punitive, or otherwise) and the cost of
21 complying with an injunction, as well as attorneys’ fees awarded under fee shifting statutes.’”)
22 (quoting *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644, 648-49 (9th Cir. 2016)).

23 20. Finally, Plaintiff seeks attorneys’ fees and costs, which add to the amount in
24 controversy where, as here, the underlying statute provides for an attorneys’ fee award. *Id.*; *see*
25 *also In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. MDL 2672
26 CRB (JSC), 2019 WL 693220, at *9 (N.D. Cal. Feb. 19, 2019) (“If Plaintiffs prevail on . . . their
27 CLRA . . . claim[], they may obtain attorneys’ fees.”)

28 21. In total, the amount in controversy in this action exceeds the jurisdictional

1 threshold.

2 **IV. REMOVAL IS APPROPRIATE**

3 22. For the reasons stated above, this Court has diversity jurisdiction over this action
4 pursuant to 28 U.S.C. § 1332(a), so this action is removable pursuant to 28 U.S.C. § 1441(b).

5 23. By filing this Notice of Removal, Defendant does not waive and expressly reserves
6 all rights, objections, and defenses in this case.

7
8 Dated: May 5, 2023

MORRISON & FOERSTER LLP

9 By: /s/ Claudia M. Vetesi
10 Claudia M. Vetesi (Bar No. 233485)
11 CVetesi@mof.com
12 *Attorneys for Defendant*

Exhibit A

E-FILED
2/8/2023 4:51 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV411463
Reviewed By: R. Cachux

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

23CV411463

ANDREA VALIENTE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SIMPSON IMPORTS, LTD.,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT FOR

- (1) **Violation of California’s Unfair Competition Law**
- (2) **Violation of California’s Consumers Legal Remedies Act**
- (3) **Violation of California’s False Advertising Law**
- (4) **Fraud**
- (5) **Breach of Express Warranty**
- (6) **Unjust Enrichment**

DEMAND FOR JURY TRIAL

1 Plaintiff Andrea Valiente (“Plaintiff” or “Ms. Valiente”), by and through her attorneys,
2 makes the following allegations pursuant to the investigation of her counsel and based upon
3 information and belief, except as to allegations specifically pertaining to herself and her counsel,
4 which are based on personal knowledge, against Defendant Simpson Brands, Ltd., d/b/a San
5 Merican Tomatoes (“SMT” or “Defendant”).

6 **NATURE OF THE ACTION**

7 1. This is a class action lawsuit on behalf of purchasers of SMT brand canned tomatoes
8 (the “Tomatoes” or the “Products”) in the United States.¹

9 2. San Marzano tomatoes are a highly sought-after variety of tomato – generally
10 considered the best for making sauces. As a result, both San Marzano “style” and San Marzano
11 D.O.P. tomatoes command a significantly higher asking price than standard plum or Roma
12 tomatoes, and consumers are willing to pay for it.

13 3. Defendant does not sell San Marzano tomatoes – it sells inferior Roma tomatoes.
14 But Defendant utilizes highly misleading tomato packaging to trick consumers into believing that
15 they are purchasing genuine San Marzano tomatoes, at San Marzano prices.

16 4. As described in further detail below, the label used for all of Defendant’s tomato
17 Products bears several features which make it highly misleading. As a result, consumers have
18 purchased hundreds of thousands of Defendant’s Products under the false, but reasonable,
19 impression that they were purchasing a San Marzano varietal of tomato, when they were not.

20 5. Because cans of tomatoes are opaque, consumers can only examine the label when
21 they are deciding which can of tomatoes to purchase.

22 6. Defendant has known or should have known about its misleading packaging for
23 years, but has taken no action to fix it. Instead, Defendant continues to rely on deception to reap
24 much greater profits than it would otherwise. If consumers knew the truth about Defendant’s
25 Tomatoes, they would not have purchased them or would pay significantly less for them than they
26 did.

27 _____
28 ¹ The Products include, but are not limited to, SMT brand crushed, diced, whole peeled, or pureed
tomatoes. The Tomatoes can come in a can or a box.

1 **Background on San Marzano tomatoes:**

2 7. Tomatoes come in many different varieties such as cherry, beefsteak, or Roma, each
3 of which have unique flavors and uses. The San Marzano is one such tomato varietal.

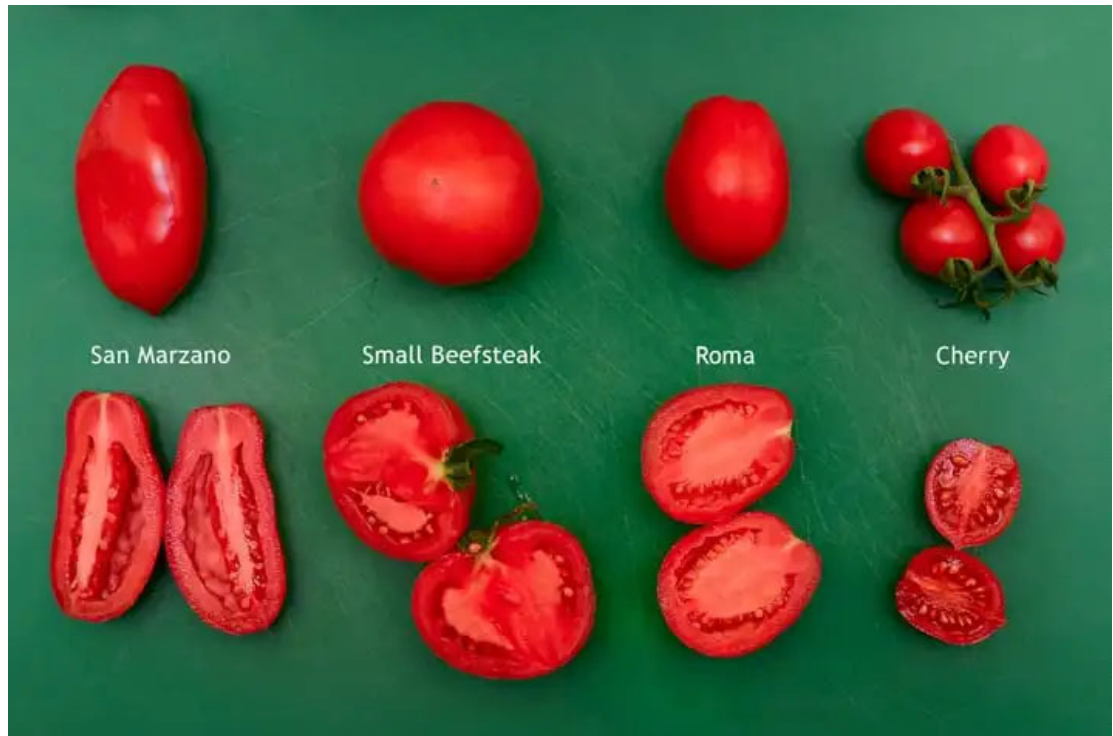


12 8. The San Marzano varietal of tomatoes originates from the town of San Marzano sul
13 Sarno, near Naples, Italy. It was first grown in the volcanic soil around Mount Vesuvius.

14 9. Some San Marzano tomatoes are still grown within proximity to Mount Vesuvius.
15 These specific San Marzano varietals bear a special designation: D.O.P. (*Denominazione d'Origine*
16 *Protetta*, “Protected Designation of Origin”), which certifies that they were grown in the San
17 Marzano region of Italy.

18 10. But not all San Marzano tomatoes are D.O.P. Many San Marzano tomatoes
19 varietals are grown in the United States, in which case they are labeled as “San Marzano style” or
20 just San Marzano without the D.O.P. designation.

21 11. Compared to the Roma tomato, San Marzano tomatoes are thinner and more
22 pointed. The flesh is much thicker with fewer seeds, and a stronger, sweeter, less acidic taste.



13
14 12. The unique characteristics of the San Marzano tomato mean that they are perfectly
15 suited for making sauces. Indeed, they are widely considered the best tomato in the world for the
16 task.

17 13. Blind taste testing has shown that the difference between sauces made with Roma
18 tomatoes and sauces made with San Marzano tomatoes is significant, with Roma tomatoes
19 consistently producing a less desirable sauce.

20 14. Roma tomatoes are considered worse because they are more acidic and have thinner
21 flesh, producing a more watery and sour tasting sauce.

22 15. Due to these differences, chefs and home cooks alike seek out canned San Marzano
23 tomatoes and are willing to pay for them. San Marzano tomatoes routinely command double or
24 triple the asking price of regular canned Roma or generic tomatoes.

1 16. By way of example, below is a comparison between regular and San Marzano
2 tomatoes sold by Safeway:

PRODUCT	PRICE
Signature SELECT Tomatoes Peeled Whole – 28oz	\$2.59
Hunt’s Crushed Tomatoes – 28oz	\$3.29
Take Root Organics Whole Tomatoes – 28oz	\$3.79
SMT Whole Peeled Tomatoes – 28oz	\$5.99
Italbrand Tomatoes Peeled Italian San Marzano D.O.P. – 28oz	\$5.99
Cento Tomatoes San Marzano D.O.P. – 28oz	\$8.99

15 17. Accordingly, the type of tomato in the can is a material fact to consumers, because
16 they are willing to pay significantly more for San Marzano tomatoes than those of other varieties.
17 No reasonable consumer would spend two or three times as much for tomatoes that offer nothing
18 over their cheaper counterparts.

19 **SMT Brand Tomatoes are Labeled to Mislead Consumers**

20 18. Defendant Simpson Imports, Ltd., markets and sells its tomatoes under the “SMT”
21 brand.

22 19. Defendant sells boxed tomatoes, canned tomatoes, tomato sauces, and tomato
23 pastes. Defendant’s deceptive labeling is substantially similar across all of its Products.

24 20. Defendant’s Tomatoes are all packaged with the same visually distinct and eye-
25 catching label, an example of which is depicted below, subject to minor and inconsequential
26 variation:



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14 21. The label features large illustrations of a San Marzano varietal tomato against a
15 white background, with a thin ribbon of text around the top and bottom stating what kind of tomato
16 preparation is in the can (*i.e.*, whole, crushed, diced, pureed). In the middle of each tomato
17 illustration are the letters SMT.

18 22. Consumers looking for a San Marzano varietal tomato have only this label to work
19 from when making their purchasing decision, they cannot see inside of the package.

20 23. SMT’s labeling is misleading to reasonable consumers.

21 24. First, the illustration is unmistakably that of a San Marzano tomato. So, consumers
22 who are seeking out San Marzano tomatoes, are predictably misled into believing Defendant’s
23 package contains them.

24 25. Defendant knows that this image is of a San Marzano tomato because Defendant
25 used to sell actual San Marzano varietal tomatoes, using nearly identical packaging. The only
26 difference was that Defendant’s package used to have “San Marzano” written where “SMT” is
27 now. Defendant’s old label is depicted below.

1 26. Though Defendant no longer sells true San Marzano tomatoes, its packaging still
2 bears the image of one.



12 27. Second, the SMT lettering can reasonably be understood as an abbreviation for “San
13 Marzano Tomato.” After Defendant stopped selling true San Marzano varietal tomatoes, it
14 changed to “San Marzano” to “SMT,” ostensibly to avoid false advertising. However, the letters
15 SMT, while not literally false, are highly misleading, because a consumer looking for San Marzano
16 tomatoes in the tomato aisle is primed to think that SMT stands for the San Marzano tomato.

17 28. Defendant attempts to skirt around this potential for misunderstanding by writing
18 out what SMT stands for within the “SMT” lettering on its Products’ packaging. The result is
19 lettering so comically miniscule that it is almost impossible to see with the naked eye.

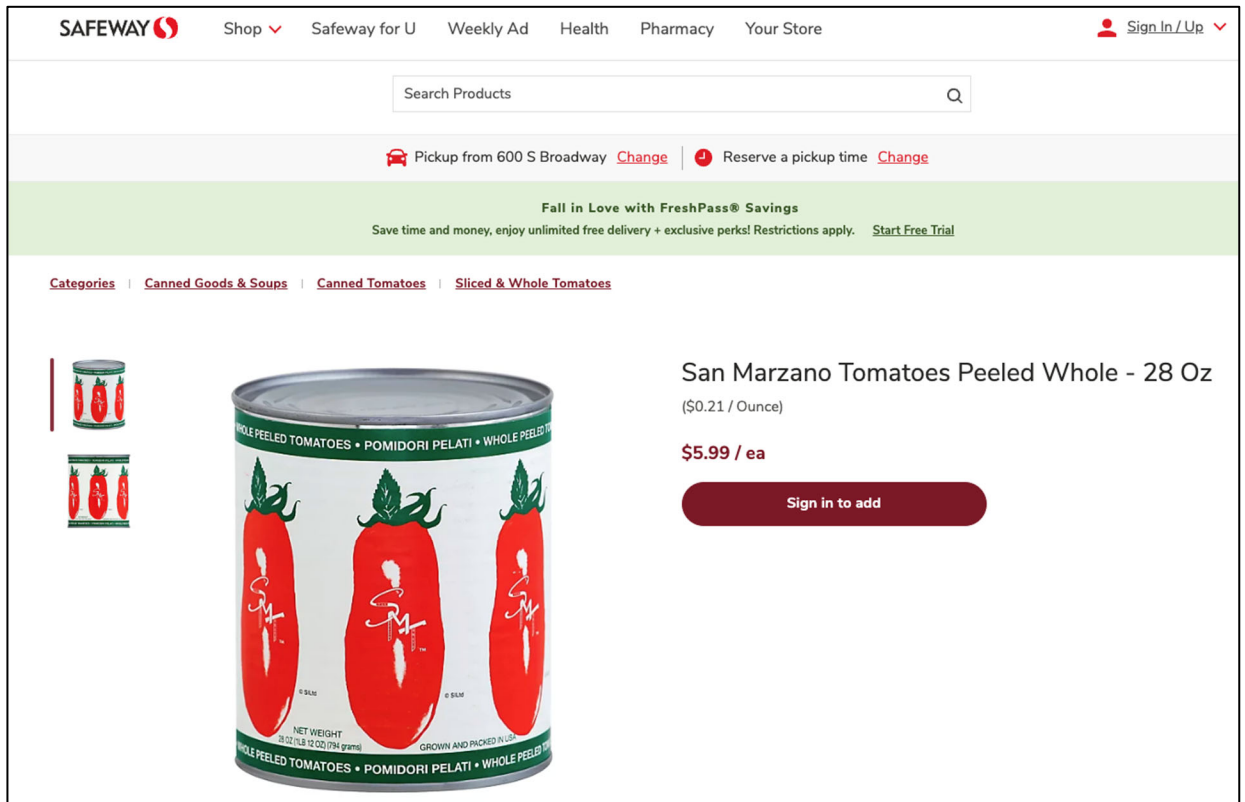


29. As it turns out, SMT stands for “San Merican Tomato.” That is not curative. In the exceedingly unlikely event a consumer even notices the term, a reasonable consumer would understand “San Merican Tomato” to mean “San Marzano varietal tomatoes grown in North America.”

30. Finally, Defendant sells its Products at San Marzano prices. A 28oz can of SMT tomatoes sells for \$5.99. Consumers expect to pay more for San Marzano tomatoes, and as such are primed to interpret Defendant’s pricing as being in line with what a San Marzano should cost.

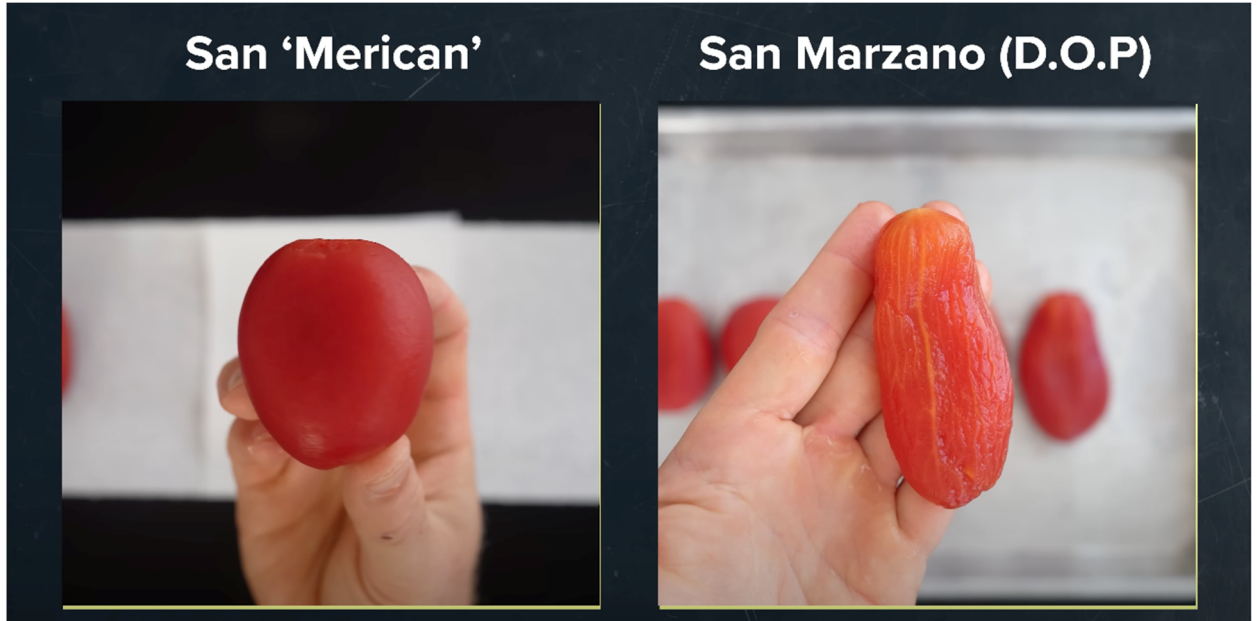
31. Each of these factors, on their own, is enough to mislead reasonable consumers into believing that Defendant’s Tomatoes are San Marzano style – in the aggregate they create an unshakeable impression that Defendant is relying on its Products’ capacity to mislead for the purpose of reaping inflated profits.

32. Even grocery stores are misled by Defendant’s packaging, with retailers consistently mislabeling its Products as “San Marzano Tomatoes” on its Products’ barcodes and price labels. The below screenshot is from the Safeway website, which has labeled Defendant’s Tomatoes as “San Marzano Tomatoes”:



1 33. The reality is, Defendant’s tomatoes are not San Marzano tomatoes, not even close.

2 34. When consumers open a can of SMT tomatoes, they are greeted with a round, firm,
3 acidic Roma tomato. Comparing a true San Marzano with the SMT tomato, the difference is stark.



14 35. The difference is not just cosmetic. In blind taste testing by a prominent YouTube
15 chef, SMT tomatoes were consistently ranked alongside generic plum tomatoes at the bottom of the
16 pile, far below San Marzano tomatoes, both in flavor and consistency.

17 36. Consumers purchase Defendant’s Products under the reasonable belief that the
18 lettering, images, and price is indicative of a San Marzano tomato, only to receive an inferior Roma
19 tomato.

20 37. Had consumers known the truth about Defendant’s Tomatoes, they would not have
21 purchased them or would have paid less for them than they did.

22 38. Consumers are not likely to learn the truth about Defendant’s Tomatoes on their
23 own accord. For one, many times consumers purchase the tomatoes in a crushed, diced, or pureed
24 form, making it impossible to see the tomato’s original shape. Second, it is difficult to see the
25 shape of even whole tomatoes because they are covered in juice and tomato puree, and often
26 dumped into a pot and immediately crushed to form a sauce. Reasonable consumers would not
27 think to take each tomato out of its can, wash it off, and compare it with other brands. The result is
28

1 that consumers rely on the label of the can or box to communicate truthfully the variety of tomato
2 that they are purchasing.

3 39. Plaintiff is a purchaser of SMT canned Tomatoes who asserts claims for breach of
4 express warranty and fraud, and violations of the consumer protection laws of the state of
5 California, on behalf of herself and all similarly situated purchasers of the Tomatoes.

6 **THE PARTIES**

7 40. Plaintiff Andrea Valiente is a resident and domiciliary of Campbell, California. Ms.
8 Valiente makes tomato sauces at home and prefers to use San Marzano style tomatoes when she
9 cooks. Ms. Valiente purchased Defendant's canned Tomatoes from Whole Foods in San Jose,
10 California in 2022. Ms. Valiente purchased Defendant's Whole Peeled Tomatoes because she was
11 under the impression that the illustration on the front of the can was of a San Marzano tomato and
12 understood the SMT abbreviation to mean "San Marzano Tomato." Furthermore, the price of the
13 Products was in line with what she expected genuine San Marzano style tomatoes to cost. If Ms.
14 Valiente knew that the Tomatoes she was purchasing from Defendant were not San Marzano
15 varietal tomatoes, but in fact were regular Roma tomatoes, she would not have purchased the
16 Tomatoes or would have paid less for them than she did.

17 41. Defendant Simpson Imports, Ltd., is a Pennsylvania corporation with its principal
18 place of business in Jenkintown, Pennsylvania. Defendant is a very well-known and popular
19 tomato seller, with presence on grocery store shelves nationwide.

20 **JURISDICTION AND VENUE**

21 42. This Court has subject matter jurisdiction pursuant to California Business and
22 Professions Code, Sections 17203, 17204 and 17535, and Civil Code, Section 1780.

23 43. This Court has personal jurisdiction over the parties because Plaintiff resides in
24 California, is a citizen of California, and submits to the jurisdiction of the Court, and because
25 Defendant has, at all times relevant hereto, systematically and continually conducted, and
26 continues to conduct, business in this State. Defendant therefore has sufficient minimum contacts
27 with this state, including within this County, and/or intentionally availed itself of the benefits and
28 privileges of the California consumer market through the promotion, marketing, and sale of its

1 products to residents within this County and throughout this State. Additionally, Defendant
2 marketed and sold its Tomatoes to Plaintiff in this County.

3 44. Pursuant to Civil Code § 1780(d), this Court is the proper venue for this action
4 because Defendant regularly does business in this County, and the same misrepresentations,
5 omissions, and injures giving rise to the claims alleged herein have occurred in this County.

6 CLASS ACTION ALLEGATIONS

7 45. Plaintiff seeks to represent a class defined as all persons in California who
8 purchased the Tomatoes (the “Class”). Excluded from the Class are persons who made such
9 purchase for purpose of resale.

10 46. **Numerosity.** Members of the Class are so numerous that their individual joinder
11 herein is impracticable. On information and belief, members of the Class number in the millions.
12 The precise number of Class members and their identities are unknown to Plaintiff at this time but
13 may be determined through discovery. Class members may be notified of the pendency of this
14 action by mail and/or publication through the distribution records of Defendant and third-party
15 retailers and vendors.

16 47. **Commonality.** Common questions of law and fact exist as to all Class members and
17 predominate over questions affecting only individual Class members. Common legal and factual
18 questions include, but are not limited to whether Defendant’s labeling, marketing and promotion of
19 the Tomatoes is false and misleading.

20 48. **Typicality.** The claims of the named Plaintiff are typical of the claims of the
21 Class in that the named Plaintiff was exposed to Defendant’s false and misleading labels,
22 marketing and promotional materials and representations, purchased the Tomatoes, and suffered a
23 loss as a result of that purchase.

24 49. **Adequacy.** Plaintiff is an adequate representative of the Class because her
25 interests do not conflict with the interests of the Class members she seeks to represent, she has
26 retained competent counsel experienced in prosecuting class actions, and she intends to prosecute
27 this action vigorously. The interests of Class members will be fairly and adequately protected by
28 Plaintiff and her counsel.

1 50. **Superiority.** The class mechanism is superior to other available means for the fair
 2 and efficient adjudication of the claims of Class members. Each individual Class member may
 3 lack the resources to undergo the burden and expense of individual prosecution of the complex and
 4 extensive litigation necessary to establish Defendant’s liability. Individualized litigation increases
 5 the delay and expense to all parties and multiplies the burden on the judicial system presented by
 6 the complex legal and factual issues of this case. Individualized litigation also presents a potential
 7 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
 8 management difficulties and provides the benefits of single adjudication, economy of scale, and
 9 comprehensive supervision by a single court on the issue of Defendant’s liability. Class treatment
 10 of the liability issues will ensure that all claims and claimants are before this Court for consistent
 11 adjudication of the liability issues.

12
 13 **FIRST COUNT**
 14 **Violation of California’s Unfair Competition Law (“UCL”),**
 Cal. Bus. & Prof. Code §§ 17200, *et seq.*

15 51. Plaintiff re-alleges and incorporates by reference every allegation set forth in the
 16 preceding paragraphs as though alleged in this Count.

17 52. Plaintiff brings this claim individually and on behalf of the members of the
 18 proposed Class against Defendant.

19 53. The UCL prohibits unfair competition in the form of “any unlawful, unfair, or
 20 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any
 21 act.” Cal. Bus. & Prof. Code § 17200. A practice is unfair if it (1) offends public policy; (2) is
 22 immoral, unethical, oppressive, or unscrupulous; or (3) causes substantial injury to consumers.
 23 The UCL allows “a person who has suffered injury in fact and has lost money or property” to
 24 prosecute a civil action for violation of the UCL. Cal. Bus. & Prof. Code § 17204. Such a person
 25 may bring such an action on behalf of himself or herself and others similarly situated who are
 26 affected by the unlawful and/or unfair business practice or act.

27 54. As alleged above, Defendant has committed unlawful, fraudulent, and/or unfair
 28 business practices under the UCL by: (a) representing that Defendant’s Products have certain

1 characteristics that they do not, in violation of Cal. Civil Code § 1770(a)(5); (b) advertising goods
2 and services with the intent not to sell them as advertised, in violation of Cal. Civil Code §
3 1770(a)(9).

4 55. Defendant's conduct has the capacity to mislead a significant portion of the general
5 consuming public or of targeted consumers, acting reasonably in the circumstances.

6 56. Defendant's conduct has injured Plaintiff and the Class she seeks to represent in that
7 she paid money for a product that she would not have purchased or paid more than she would have
8 but for Defendant's failure to accurately label and market its Products. Such injury is not
9 outweighed by any countervailing benefits to consumers or competition. Indeed, no benefit to
10 consumers or competition results from Defendant's conduct.

11 57. Pursuant to California Business and Professional Code § 17203, Plaintiff and the
12 Class members seek an order of this Court that includes, but is not limited to, an order requiring
13 Defendant to (a) provide restitution to Plaintiff and the other Class members; (b) disgorge all
14 revenues obtained as a result of violations of the UCL; and (c) pay Plaintiff and the Class
15 members' attorneys' fees and costs.

16 58. Here, equitable relief is appropriate because Plaintiff may lack an adequate remedy
17 at law if, for instance, damages resulting from their purchase of the Product is determined to be an
18 amount less than the premium price of the Product. Without compensation for the full premium
19 price of the Product, Plaintiff would be left without the parity in purchasing power to which they
20 are entitled.

21 59. Injunctive relief is also appropriate, and indeed necessary, to require Defendant to
22 provide full and accurate disclosures regarding the Product so that Plaintiff and Class members can
23 reasonably rely on Defendant's packaging as well as those of Defendant's competitors who may
24 then have an incentive to follow Defendant's deceptive practices, further misleading consumers.

25 60. Restitution and/or injunctive relief may also be more certain, prompt, and efficient
26 than other legal remedies requested herein. The return of the full premium price, and an injunction
27 requiring Defendant to disclose on its Products' packaging that the Tomatoes are not San Marzano
28 varietal tomatoes, but in fact are regular Roma tomatoes, will ensure that Plaintiff is in the same

1 place they would have been in had Defendant’s wrongful conduct not occurred, *i.e.*, in the position
2 to make an informed decision about the purchase of the Products absent omissions with the full
3 purchase price at their disposal.

4 **SECOND COUNT**
5 **Violation of California’s Consumers Legal Remedies Act,**
6 **Cal. Civ. Code §§ 1750, *et seq.***

6 61. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

7 62. Plaintiff brings this claim individually and on behalf of the Class against Defendant.

8 63. Plaintiff and Class Members are consumers within the meaning of Cal. Civ. Code
9 § 1761(d).

10 64. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services have
11 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not
12 have or that a person has a sponsorship, approval, status, affiliation, or connection which she or she
13 does not have.”

14 65. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a
15 particular standard, quality, or grade, or that goods are of a particular style or model, if they are of
16 another.”

17 66. Cal. Civ. Code § 1770(a)(9) prohibits “advertising goods or services with intent not
18 to sell them as advertised.”

19 67. Defendant violated Cal. Civ. Code §§ 1770(a)(5), (a)(7), and (a)(9) by intentionally
20 and misleadingly representing that its Products are San Marzano tomatoes, a fact which is material
21 to reasonable consumers.

22 68. Defendant’s misrepresentations and omissions deceive and have a tendency and
23 ability to deceive the general public.

24 69. Defendant has exclusive or superior knowledge of the contents of its canned
25 Tomatoes, which was not known to Plaintiff or Class Members.

26 70. Plaintiff and Class Members have suffered harm as a result of these violations of the
27 California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”) because
28 they have incurred charges and/or paid monies for the Products that they otherwise would not have

1 incurred or paid. Had Plaintiff and Class Members known that the Tomatoes sold by Defendant
2 were not San Marzano varietal tomatoes, but in fact were regular Roma tomatoes, they would not
3 have purchased the Tomatoes or would have paid less for them than they did. As a result, Plaintiff
4 and the Classes are entitled to actual damages in an amount to be proven at trial, reasonable
5 attorneys' fees and costs, declaratory relief, and punitive damages.

6 71. On January 5, 2023, Plaintiff's counsel sent Defendant a CLRA notice letter, which
7 complies in all respects with Cal. Civ. Code § 1782(a). The letter was sent via certified mail,
8 return receipt requested, advising Defendant that it was in violation of the CLRA and demanding
9 that it cease and desist from such violations and make full restitution by refunding the monies
10 received therefrom. The letter stated that it was sent on behalf of all other similarly situated
11 purchasers. A true and correct copy of that letter is attached hereto as **Exhibit 1**.

12 **THIRD COUNT**
13 **Violation of California's False Advertising Law,**
14 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

14 72. Plaintiff realleges and reincorporates by reference all paragraphs alleged above.

15 73. Plaintiff brings this claim individually and on behalf of the Class against Defendant.

16 74. Defendant's acts and practices, as described herein, have deceived and/or are likely
17 to continue to deceive Class Members and the public. As described above, and throughout this
18 Complaint, Defendant misrepresented that its Tomatoes were the San Marzano varietal. Such
19 representation is not true.

20 75. By its actions, Defendant disseminated uniform advertising regarding its Products to
21 and across California. The advertising was, by its very nature, unfair, deceptive, untrue, and
22 misleading within the meaning of California's False Advertising Law, Cal. Bus. & Prof. Code §§
23 17500, *et seq.* (the "FAL"). Such advertisements were intended to and likely did deceive the
24 consuming public for the reasons detailed herein.

25 76. The above-described false, misleading, and deceptive advertising Defendant
26 disseminated continues to have a likelihood to deceive in that Defendant continues to misrepresent,
27 without qualification, that the Tomatoes are San Marzano.
28

1 the one at issue in this action. Nonetheless, Defendant continues to sell its Tomatoes to
2 unsuspecting consumers using these false and misleading representations and omissions.

3 86. Defendant is aware how San Marzano tomatoes are perceived by consumers
4 because they used to sell them.

5 87. The false and misleading representations and omissions were made by Defendant,
6 upon which Plaintiff and members of the proposed Class reasonably and justifiably relied, and
7 were intended to induce and actually induced Plaintiff and members of the proposed Class to
8 purchase the Tomatoes.

9 88. The fraudulent actions of Defendant caused damage to Plaintiff and members of the
10 proposed Class, who are entitled to damages and other legal and equitable relief as a result.

11 **FIFTH COUNT**
12 **Breach of Express Warranty**

13 89. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
14 above as though fully set forth herein.

15 90. Plaintiff brings this claim individually and on behalf of members of the Class
16 against Defendant.

17 91. In connection with the sale of the Tomatoes, Defendant, as the producer, marketer,
18 distributor, and/or seller issued written warranties by representing that the Tomatoes are “SMT”
19 and/or “San Merican Tomatoes.” The packaging similarly contained misleading images of San
20 Marzano varietal tomatoes, as alleged above.

21 92. In fact, the Tomatoes do not conform to the above-referenced representations
22 because the Tomatoes sold by SMT are not San Marzano varietal tomatoes at all. They are inferior
23 Roma varietal tomatoes.

24 93. Plaintiff and the members of the proposed Class and the Class were injured as a
25 direct and proximate result of Defendant’s breach because (a) they would not have purchased the
26 Tomatoes if they had known that the representation made on Defendant’s Products’ labels were
27 false, and (b) they overpaid for the Tomatoes on account of the misrepresentation.
28

1 94. Plaintiff's counsel notified Defendant of her claims in a demand letter shortly after
2 learning about its breach of warranty, sent via certified mail, with return receipt requested, on
3 January 5, 2023.

4 95. The demand letter was sent within a reasonable time after Plaintiff discovered
5 Defendant's breach and learned of the nature of Defendant's practices. The letter therefore
6 complied with all respects of U.C.C. § 2-607.

7
8 **SIXTH COUNT**
Unjust Enrichment/Restitution

9 96. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if
10 fully stated herein.

11 97. Plaintiff brings this claim individually and on behalf of the members of the Class
12 against Defendant under the laws of California.

13 98. Plaintiff and the Class members conferred a benefit on Defendant in the form of the
14 gross revenues Defendant derived from the money Plaintiff and the Class paid for the Tomatoes.

15 99. Defendant had an appreciation or knowledge of the benefit conferred on it by
16 Plaintiff and the Class members.

17 100. Defendant has been unjustly enriched in retaining the revenues derived from
18 Plaintiff and the Class members' purchases of the Products, which retention of such revenues under
19 these circumstances is unjust and inequitable because Defendant misleadingly marketed the
20 Tomatoes as San Marzano varieties when in fact they were inferior Roma tomatoes. This caused
21 injuries to Plaintiff and members of the Classes because they would not have purchased the
22 Products or would have paid less for them if the true facts concerning the Products had been
23 known.

24 101. Defendant accepted and retained the benefit in the amount of the gross revenues it
25 derived from sales of the Products to Plaintiff and the Class members.

26 102. Defendant has thereby profited by retaining the benefit under circumstances which
27 would make it unjust for Defendant to retain the benefit.
28

1 g. For an order awarding Plaintiff and the Class their reasonable attorneys' fees
2 and expenses and costs of suit.

3 **JURY TRIAL DEMANDED**

4 Plaintiff demands a trial by jury on all claims so triable.

5
6 Dated: February 8, 2023

Respectfully submitted,

7 **BURSOR & FISHER, P.A.**

8 By: 2. Timothy Fisher

9
10 L. Timothy Fisher (State Bar No. 191626)
11 Luke Sironski-White (State Bar No. 348441)
12 1990 North California Boulevard, Suite 940
13 Walnut Creek, CA 94596
14 Telephone: (925) 300-4455
15 Facsimile: (925) 407-2700
16 E-Mail: ltfisher@bursor.com
17 lsironski@bursor.com

18 **BURSOR & FISHER, P.A.**

19 Matthew A. Girardi (*pro hac vice* forthcoming)
20 888 Seventh Avenue
21 New York, NY 10019
22 Telephone: (646) 837-7150
23 Facsimile: (212) 989-9163
24 E-Mail: mgirardi@bursor.com

25 *Attorneys for Plaintiff*

CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, L. Timothy Fisher, declare as follows:

1. I am counsel for Plaintiff, and I am a partner at Bursor & Fisher, P.A. I make this declaration to the best of my knowledge, information, and belief of the facts stated herein.

2. The complaint filed in this action is filed in the proper place for trial because many of the acts and transactions giving rise to this action occurred in this District, and because Plaintiff resides in this District.

3. Plaintiff Andrea Valiente is a resident of Campbell, California.

4. Defendant Simpson Imports, Ltd. is a Pennsylvania corporation with its principal place of business in Jenkintown, Pennsylvania.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct, executed on February 8, 2023, at Walnut Creek, California.

/s/ L. Timothy Fisher
L. Timothy Fisher



1990 N. CALIFORNIA BLVD.
SUITE 940
WALNUT CREEK, CA 94596
www.bursor.com

L. TIMOTHY FISHER
Tel: 925.300.4455
Fax: 925.407.2700
ltfisher@bursor.com

January 5, 2023

Via Certified Mail - Return Receipt Requested

William Toll, President
Simpson Brands, Ltd.
PO Box 41
New Milford, NJ 07646

Simpson Brands, Ltd.
93 Old York Rd
Suite I-560
Jenkintown, PA 19046

*Re: Notice and Demand Letter Pursuant to U.C.C. §§ 2-313, 2-314, 2-607;
California's Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, et seq.;
and all other applicable consumer protection statutes.*

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by Simpson Brands, Ltd., d/b/a San Merican Tomatoes ("you"), pursuant to U.C.C. § 2-607(3)(a) concerning breaches of express and implied warranties on behalf of our client, Andrea Valiente, and a class of all similarly situated purchasers of San Merican Tomatoes tomatoes (the "Products").¹ This letter also serves as notice of violation of the California's Legal Remedies Act ("CLRA"), Cal. Civil Code §§ 1750, *et seq.*, including but not limited to subsections 1770(a)(5), (7), and (9); California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* (the "FAL"), and all other applicable federal and state laws. Should we not receive a response to our offer of resolution set forth below, this letter provides statutory notice of our client's intent to file a class action lawsuit.

As you know, San Marzano tomatoes are a highly sought-after variety of tomato – widely considered the best for making sauces. As a result, both San Marzano "style" and San Marzano D.O.P. tomatoes command a significantly higher asking price than standard plum tomatoes, and consumers are willing to pay for it. You are well aware of this, because you used to sell true San Marzano tomatoes. However, for decades you have not sold San Marzano style or D.O.P. tomatoes, yet you continue to label your Products as if they contain San Marzano style tomatoes, when in fact they do not. In a recent blind taste comparison between San Marzano style and

¹ The tomato Products include: diced, crushed, whole peeled, and pureed tomatoes sold in boxes or cans.

D.O.P. tomatoes and regular plum tomatoes, your Products were consistently ranked at the bottom of the pile, next to the store-brand plum tomatoes. This is because your tomatoes are inferior plum tomatoes.

Accordingly, the labeling of your products is materially misleading, and you rely on this deception to dupe consumers into paying significantly more for your Products than they otherwise would if they knew that the tomatoes they were receiving were not San Marzano style. First, your Products all bear an illustration of a San Marzano tomato. San Marzano tomatoes have a distinctive elongated shape which is recognizable to consumers. You are aware that this image is of a San Marzano tomato because it is the exact same image that you used to use in your older packaging, when you still sold true San Marzano tomatoes. As such, consumers who are browsing grocery store shelves for San Marzano style tomatoes are predictably misled into believing that your Products contain them. In reality, the spherical plum tomato consumers take out of the can looks nothing like the San Marzano style tomato illustration on the Product packaging. Second, the letters of your brand, SMT, can reasonably be understood as an abbreviation for “San Marzano Tomato,” further augmenting your Products’ capacity to mislead. Third, the company name “San Merican Tomato” is displayed within the SMT abbreviation in letters so small that they cannot be reasonably apprehended by consumers when they inspect the Products’ packaging and labels. Finally, you charge San Marzano prices for your standard plum tomatoes. Consumers are aware that San Marzano style and D.O.P. tomatoes are significantly more expensive than regular tomatoes, and as such are primed to interpret your pricing as a further representation that your tomatoes are San Marzano style.

Each of these factors, on their own, is enough to mislead reasonable consumers into believing that your tomatoes are San Marzano style – in aggregate they create an unshakeable impression that you are relying on your Products’ capacity to mislead for the purpose of reaping inflated profits. Even grocery stores are misled by your packaging, with retailers consistently mislabeling your Products as “San Marzano Tomatoes” on your Products’ barcodes and price labels.

Our client Andrea Valiente, a resident of Campbell, CA regularly purchased SMT brand crushed and whole peeled tomatoes from Whole Foods in San Jose, California. Ms. Valiente makes tomato sauces at home and prefers to use San Marzano style tomatoes when she cooks. Ms. Valiente purchased your Products because she recognized the illustration as a San Marzano tomato and understood the SMT abbreviation to mean “San Marzano Tomato.” Furthermore, the price of your Products was in line with what she expected genuine San Marzano style tomatoes to cost. Accordingly, your false claims and warranties were material to our client’s purchase, and had you disclosed that the tomatoes contained within your Products were not San Marzano style, our client would not have purchased the Products or would have paid less for them than she did.

Accordingly, your conduct constitutes a breach of implied warranty (*see* U.C.C. § 2-314), and common law fraud, and violates numerous consumer protection statutes, including but not limited to the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*; California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and California’s

False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* As a result of your violation of the above-referenced statutes, our clients sustained injury.

These acts and practices as described herein violated, and continue to violate, the CLRA in at least the following respects:

- a. in violation of Section 1770(a)(5), you represented that the Products have characteristics and benefits it does not have;
- b. in violation of Section 1770(a)(7), you represented that the Products are of a particular standard, quality, or grade, when they are not; and
- c. in violation of Section 1770(a)(9), you advertised the Products with an intent not to sell them as advertised.

To cure these defects, we hereby demand that you immediately (1) cease and desist from continuing to label your Products in such a manner as to foreseeably mislead consumers into believing the Products you sell contain San Marzano style tomatoes, and (2) make full restitution to all purchasers of the Products of all purchase money obtained from sales thereof. If you do not, we will commence a putative class action seeking monetary relief on behalf of Plaintiff Valiente, and all others similarly situated.

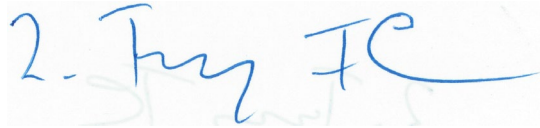
We also demand that you promptly take all reasonable steps to preserve all documents, data, and information, including without limitation, all “Writings,” as defined in California Evidence Code § 250 (collectively, “Documents”), and all “Electronically Stored Information,” as defined in California Code of Civil Procedure § 2016.020(e), which refer or relate to any of the above-described practices, including, but not limited to, the following:

1. All documents concerning the advertisement, labeling, marketing, or sale of the Products.
2. All documents concerning communications with purchasers of the Products, including but not limited to customer complaints.
3. All documents concerning your total revenue derived from sales of the Products in California and the United States.
4. All documents concerning the identity of individual purchasers of the Products.
5. All documents concerning any communications with any governmental entity regarding the Products.

If you contend that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter.

Please contact me right away if you wish to discuss an appropriate way to remedy this matter. If I do not hear from you promptly, I will take that as an indication that you are not interested in doing so.

Very truly yours,

A handwritten signature in blue ink, appearing to read "L. Timothy Fisher". The signature is written in a cursive style with a long horizontal stroke at the end.

L. Timothy Fisher

SUMMONS
(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

SIMPSON IMPORTS, LTD.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ANDREA VALIENTE, individually and on behalf of all others similarly situated.

E-FILED
2/8/2023 4:51 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV411463
Reviewed By: R. Cachux
Envelope: 11148476

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), 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), the California Courts Online Self-Help Center (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), 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), en el Centro de Ayuda de las Cortes de California, (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): Superior Court of California, County of Santa Clara, 191 North First Street, San Jose, CA 95113

CASE NUMBER:
(Número del Caso): 23CV411463

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): L. Timothy Fisher, Bursor and Fisher, P.A., 1990 N. California Blvd., Ste 940, Walnut Creek CA 94596 Tel: (925) 300-4455

DATE: 2/8/2023 4:51 PM Clerk of Court R. Cachux, Deputy
(Fecha) 2/8/2023 4:51 PM Clerk of Court (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): Simpson Imports, Ltd.
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):

ATTORNEY OR PARTY WITH RIGHTS TO FILE THIS COVER SHEET (Name, State Bar Number, and address):
L. Timothy Fisher (SBN 191626) Bursor & Fisher, P.A., 1990 N. California Blvd.
Suite 940, Walnut Creek CA 94596

TELEPHONE NO.: (925) 300-4455 FAX NO. (Optional): (925) 407-2700
E-MAIL ADDRESS: ltfisher@bursor.com
ATTORNEY FOR (Name): Plaintiff Andrea Valiente

FOR COURT USE ONLY

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 2/8/2023 4:51 PM
Reviewed By: R. Cachux
Case #23CV411463
Envelope: 11148476**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
STREET ADDRESS: 191 North First Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Jose, 95113
BRANCH NAME: Old Courthouse

CASE NAME:
Andrea Valiente v. Simpson Imports, Ltd.

CIVIL CASE COVER SHEET		Complex Case Designation	CASE NUMBER: 23CV411463
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	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:

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case is 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. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Six
5. This case 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 8, 2023

L. Timothy Fisher
(TYPE OR PRINT NAME)


(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.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 North First St., San José, CA 95113

CASE NUMBER: 23CV411463

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): **You must do each of the following to protect your rights:**

1. You must file a **written response** to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within **30 days** of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of <_CountyName_> Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 201 North First Street, San José (408-882-2900 x-2926).

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: _____	Chung, Frederick S	10
Department: _____		
The 1 st CMC is scheduled for: (Completed by Clerk of Court)		
Date: _____	Time: _____	10
in Department: _____		
The next CMC is scheduled for: (Completed by party if the 1 st CMC was continued or has passed)		
Date: _____	Time: _____	_____
in Department: _____		

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 191626 NAME: L. Timothy Fisher FIRM NAME: Bursor & Fisher P.A. STREET ADDRESS: 1990 North California Blvd. Suite 940 CITY: Walnut Creek STATE: CA ZIP CODE: 94596 TELEPHONE NO.: (925) 300-4455 FAX NO.: (925) 407-2700 E-MAIL ADDRESS: ltfisher@bursor.com ATTORNEY FOR (Name): Plaintiff Andrea Valiente	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, 95113 BRANCH NAME: Old Courthouse	
Plaintiff/Petitioner: Andrea Valiente Defendant/Respondent: Simpson Imports, Ltd.	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: 23CV411463

TO (insert name of party being served): Simpson Imports Ltd. c/o Claudia M. Vetesi

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: April 5, 2023

L. Timothy Fisher <small>(TYPE OR PRINT NAME)</small>	<small>(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)</small>
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ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of **(to be completed by sender before mailing)**:

1. A copy of the summons and of the complaint.
2. Other (specify):

Civil Lawsuit Notice

(To be completed by recipient):

Date this form is signed: _____

<small>(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)</small>	<small>(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)</small>
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ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 191626 NAME: L. Timothy Fisher FIRM NAME: Bursor & Fisher P.A. STREET ADDRESS: 1990 North California Blvd. Suite 940 CITY: Walnut Creek STATE: CA ZIP CODE: 94596 TELEPHONE NO.: (925) 300-4455 FAX NO.: (925) 407-2700 E-MAIL ADDRESS: ltfisher@bursor.com ATTORNEY FOR (Name): Plaintiff Andrea Valiente	FOR COURT USE ONLY Electronically Filed by Superior Court of CA, County of Santa Clara, on 4/7/2023 2:05 PM Reviewed By: R. Fleming Case #23CV411463 Envelope: 11655015
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, 95113 BRANCH NAME: Old Courthouse	
Plaintiff/Petitioner: Andrea Valiente Defendant/Respondent: Simpson Imports, Ltd.	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: 23CV411463

TO (insert name of party being served): Simpson Imports Ltd. c/o Claudia M. Vetesi

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: April 5, 2023

 L. Timothy Fisher
 (TYPE OR PRINT NAME)


 (SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of *(to be completed by sender before mailing)*:

- A copy of the summons and of the complaint.
- Other (specify):

Civil Lawsuit Notice

(To be completed by recipient):

Date this form is signed: April 6, 2023

 Claudia Vetesi
 (TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)


 (SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

1 Claudia M. Vetesi (State Bar No. 233485)
CVetesi@mofo.com
2 **Morrison & Foerster LLP**
425 Market Street
3 San Francisco, California 94105
Telephone: 415.268.7000
4 Facsimile: 415.268.7522

5 *Attorneys for Defendant*

6 **BURSOR & FISHER, P.A.**
L. Timothy Fisher (State Bar No. 191626)
7 Luke W. Sironski-White (State Bar No. 348441)
1990 North California Boulevard, Suite 940
8 Walnut Creek, CA 94596
9 Telephone: (925) 300-4455
Facsimile: (925) 407-2700
10 E-Mail: ltfisher@bursor.com
11 lsironski@bursor.com

12 *Attorneys for Plaintiff*

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SANTA CLARA**

15 ANDREA VALIENTE, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 SIMPSON IMPORTS, LTD.,

20 Defendant.

Case No. 23CV411463

**STIPULATION AND [PROPOSED]
ORDER FOR EXTENSION OF
TIME FOR DEFENDANT TO
ANSWER OR OTHERWISE
RESPOND TO PLAINTIFF'S
COMPLAINT AND SUMMONS**

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1 Dated: April 12, 2023

BURSOR & FISHER, P.A.

2 By: /s/L. Timothy Fisher
3 L. Timothy Fisher

4 L. Timothy Fisher (State Bar No. 191626)
5 Luke W. Sironski-White (State Bar No. 348441)
6 1990 North California Boulevard, Suite 940
7 Walnut Creek, CA 94596
8 Telephone: (925) 300-4455
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10 E-Mail: ltfisher@bursor.com
11 lsironski@bursor.com

12 *Attorneys for Plaintiff*

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[PROPOSED] ORDER

Upon consideration of Plaintiff and Defendant’s foregoing Joint Stipulation, and for good cause shown, IT IS HEREBY ORDERED THAT that Defendant shall have until June 7, 2023 to answer or otherwise respond to Plaintiff’s complaint.

IT IS SO ORDERED.

DATED: _____
Honorable Frederick S. Chung
Judge of the Superior Court

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PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on April 12, 2023, I served a copy of:

STIPULATION AND [PROPOSED] ORDER FOR EXTENSION OF TIME FOR DEFENDANT TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFF’S COMPLAINT AND SUMMONS

BY U.S. MAIL [Code Civ. Proc sec. 1013(a)] by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP’s ordinary business practices.

I am readily familiar with Morrison & Foerster LLP’s practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP’s business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.


BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6; CRC 2.251] by electronically mailing a true and correct copy through Morrison & Foerster LLP’s electronic mail system from COrtega@mof.com to the email address(es) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251.

BURSOR & FISHER, P.A. *Attorneys for Plaintiff*
L. Timothy Fisher
Luke W. Sironski-White
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
E-Mail: ltfisher@bursor.com
lsironski@bursor.com

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

Executed at San Francisco, California, this 12th day of April, 2023.

Christina Ortega
(typed)


(signature)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 233485 NAME: Claudia M. Vetesi FIRM NAME: Morrison & Foerster LLP STREET ADDRESS: 425 Market Street CITY: San Francisco STATE: CA ZIP CODE: 94105 TELEPHONE NO.: 415-268-7000 FAX NO.: 415-268-7522 E-MAIL ADDRESS: CVetesi@mofo.com ATTORNEY FOR (name): Defendant Simpson Imports, LTD.	<i>FOR COURT USE ONLY</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, 95113 BRANCH NAME: Downtown Superior Court (DTS)	CASE NUMBER: 23CV411463
PLAINTIFF/PETITIONER: ANDREA VALIENTE DEFENDANT/RESPONDENT: SIMPSON IMPORTS, LTD. OTHER:	JUDICIAL OFFICER: Honorable Frederick S. Chung
PROPOSED ORDER (COVER SHEET)	DEPT: 10

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Defendant Simpson Imports, LTD.

2. Title of the proposed order:
Stipulation and [Proposed] Order for Extension of Time for Defendant to Answer or Otherwise Respond

3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding:
 - b. Date and time:
 - c. Place:

4. The proposed order was served on the other parties in the case.

Claudia M. Vetesi

(TYPE OR PRINT NAME)



/s/ Claudia M. Vetesi

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: Valiente v. Simpson Imports Ltd.	CASE NUMBER: 23CV411463
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**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**
- a. My residence or business address is (*specify*):
425 Market Street, San Francisco, CA 94105
- b. My electronic service address is (*specify*): *cortega@mofo.com*
2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:
- a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
L. Timothy Fisher
Luke W. Sironski-White
Attorneys for Plaintiff
- b. To (*electronic service address of person served*): *ltfisher@bursor.com; lsironski@bursor.com*
- c. On (*date*): *4/20/2023*
- Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: *4/20/2023*

Christina Ortega

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

1 Claudia M. Vetesi (State Bar No. 233485)
CVetesi@mofo.com
2 **Morrison & Foerster LLP**
425 Market Street
3 San Francisco, California 94105
Telephone: 415.268.7000
4 Facsimile: 415.268.7522

5 *Attorneys for Defendant*

6 **BURSOR & FISHER, P.A.**
L. Timothy Fisher (State Bar No. 191626)
7 Luke W. Sironski-White (State Bar No. 348441)
1990 North California Boulevard, Suite 940
8 Walnut Creek, CA 94596
9 Telephone: (925) 300-4455
Facsimile: (925) 407-2700
10 E-Mail: ltfisher@bursor.com
11 lsironski@bursor.com

12 *Attorneys for Plaintiff*

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SANTA CLARA**

15 ANDREA VALIENTE, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 SIMPSON IMPORTS, LTD.,

20 Defendant.

Case No. 23CV411463

**STIPULATION AND [PROPOSED]
ORDER FOR EXTENSION OF
TIME FOR DEFENDANT TO
ANSWER OR OTHERWISE
RESPOND TO PLAINTIFF'S
COMPLAINT AND SUMMONS**

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1 **PLEASE TAKE NOTICE THAT** Plaintiff Andrea Valiente (“Plaintiff”), and Defendant
2 Simpson Imports, LTD., (“Defendant”) (collectively with Plaintiff, the “Parties”), by and through
3 their undersigned counsel, hereby stipulate and agree to as follows:

4 WHEREAS, Plaintiff Andrea Valiente filed the Complaint initiating this action on
5 February 8, 2023 (Dkt. No. 1);

6 WHEREAS, Plaintiff’s counsel served the complaint, summons, and a civil lawsuit notice
7 on Defendant’s counsel on April 5, 2023;

8 WHEREAS, Defendant’s current deadline to answer or otherwise respond to the
9 Summons and Complaint is May 7, 2023;

10 WHEREAS, having conferred on the subject, the Parties agree to extend Defendant’s
11 deadline to answer or otherwise respond to the Summons and Complaint until June 7, 2023;

12 WHEREAS, this stipulation is not made for the purpose of delay, and no Party will be
13 prejudiced by the extensions agreed to herein;

14 NOW THEREFORE, THE PARTIES HEREBY STIPULATE, and respectfully request
15 that the Court extend the time for Defendant to answer or otherwise respond to Plaintiff’s
16 Complaint to June 7, 2023.

17 **IT IS SO STIPULATED.**

18 Dated: April 12, 2023

MORRISON & FOERSTER LLP

By: /s/ Claudia M. Vetesi

Claudia M. Vetesi (Bar No. 233485)
CVetesi@mofo.com
425 Market Street
San Francisco, California 94105
Telephone: 415.268.7000
Facsimile: 415.268.7522

Attorneys for Defendant

1 Dated: April 12, 2023

BURSOR & FISHER, P.A.

2 By: /s/L. Timothy Fisher
3 L. Timothy Fisher

4 L. Timothy Fisher (State Bar No. 191626)
5 Luke W. Sironski-White (State Bar No. 348441)
6 1990 North California Boulevard, Suite 940
7 Walnut Creek, CA 94596
8 Telephone: (925) 300-4455
9 Facsimile: (925) 407-2700
10 E-Mail: ltfisher@bursor.com
11 lsironski@bursor.com

12 *Attorneys for Plaintiff*

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[PROPOSED] ORDER

Upon consideration of Plaintiff and Defendant’s foregoing Joint Stipulation, and for good cause shown, IT IS HEREBY ORDERED THAT that Defendant shall have until June 7, 2023 to answer or otherwise respond to Plaintiff’s complaint.

IT IS SO ORDERED.

DATED: _____
Honorable Frederick S. Chung
Judge of the Superior Court

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PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on April 12, 2023, I served a copy of:

STIPULATION AND [PROPOSED] ORDER FOR EXTENSION OF TIME FOR DEFENDANT TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFF’S COMPLAINT AND SUMMONS

BY U.S. MAIL [Code Civ. Proc sec. 1013(a)] by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP’s ordinary business practices.

I am readily familiar with Morrison & Foerster LLP’s practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP’s business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.


BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6; CRC 2.251] by electronically mailing a true and correct copy through Morrison & Foerster LLP’s electronic mail system from COrtega@mof.com to the email address(es) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251.

BURSOR & FISHER, P.A. *Attorneys for Plaintiff*
L. Timothy Fisher
Luke W. Sironski-White
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
E-Mail: ltfisher@bursor.com
lsironski@bursor.com

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

Executed at San Francisco, California, this 12th day of April, 2023.

Christina Ortega
(typed)


(signature)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 233485 NAME: Claudia M. Vetesi FIRM NAME: Morrison & Foerster LLP STREET ADDRESS: 425 Market Street CITY: San Francisco STATE: CA ZIP CODE: 94105 TELEPHONE NO.: 415-268-7000 FAX NO.: 415-268-7522 E-MAIL ADDRESS: CVetesi@mofo.com ATTORNEY FOR (name): Defendant Simpson Imports, LTD.	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p>on 4/24/2023 12:28 PM Reviewed By: R. Burciaga Case #23CV411463 Envelope: 11787356</p> <p>CASE NUMBER: 23CV411463</p> <p>JUDICIAL OFFICER: Honorable Frederick S. Chung</p> <p>DEPT: 10</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, 95113 BRANCH NAME: Downtown Superior Court (DTS)	
PLAINTIFF/PETITIONER: ANDREA VALIENTE DEFENDANT/RESPONDENT: SIMPSON IMPORTS, LTD. OTHER:	
PROPOSED ORDER (COVER SHEET)	

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Defendant Simpson Imports, LTD.

2. Title of the proposed order:
Stipulation and [Proposed] Order for Extension of Time for Defendant to Answer or Otherwise Respond

3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding:
 - b. Date and time:
 - c. Place:

4. The proposed order was served on the other parties in the case.

Claudia M. Vetesi _____
 (TYPE OR PRINT NAME)

 _____
 /s/ Claudia M. Vetesi
 (SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: Valiente v. Simpson Imports Ltd.	CASE NUMBER: 23CV411463
--	----------------------------

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action**.
- a. My residence or business address is (*specify*):
425 Market Street, San Francisco, CA 94105
- b. My electronic service address is (*specify*): *cortega@mofo.com*
2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:
- a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
L. Timothy Fisher
Luke W. Sironski-White
Attorneys for Plaintiff
- b. To (*electronic service address of person served*): *ltfisher@bursor.com; lsironski@bursor.com*
- c. On (*date*): *4/20/2023*

Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: *4/20/2023*

Christina Ortega
(TYPE OR PRINT NAME OF DECLARANT)



Christina Ortega
(SIGNATURE OF DECLARANT)

1 Claudia M. Vetesi (State Bar No. 233485)
CVetesi@mofo.com
2 **Morrison & Foerster LLP**
425 Market Street
3 San Francisco, California 94105
Telephone: 415.268.7000
4 Facsimile: 415.268.7522

5 *Attorneys for Defendant*

6 **BURSOR & FISHER, P.A.**
L. Timothy Fisher (State Bar No. 191626)
7 Luke W. Sironski-White (State Bar No. 348441)
1990 North California Boulevard, Suite 940
8 Walnut Creek, CA 94596
9 Telephone: (925) 300-4455
Facsimile: (925) 407-2700
10 E-Mail: ltfisher@bursor.com
11 lsironski@bursor.com

12 *Attorneys for Plaintiff*

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SANTA CLARA**

15 ANDREA VALIENTE, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 SIMPSON IMPORTS, LTD.,

20 Defendant.

Case No. 23CV411463

**STIPULATION AND [PROPOSED]
ORDER FOR EXTENSION OF
TIME FOR DEFENDANT TO
ANSWER OR OTHERWISE
RESPOND TO PLAINTIFF'S
COMPLAINT AND SUMMONS**

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1 Dated: April 12, 2023

BURSOR & FISHER, P.A.

2 By: /s/L. Timothy Fisher
3 L. Timothy Fisher

4 L. Timothy Fisher (State Bar No. 191626)
5 Luke W. Sironski-White (State Bar No. 348441)
6 1990 North California Boulevard, Suite 940
7 Walnut Creek, CA 94596
8 Telephone: (925) 300-4455
9 Facsimile: (925) 407-2700
10 E-Mail: ltfisher@bursor.com
11 lsironski@bursor.com

12 *Attorneys for Plaintiff*

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[PROPOSED] ORDER

Upon consideration of Plaintiff and Defendant’s foregoing Joint Stipulation, and for good cause shown, IT IS HEREBY ORDERED THAT that Defendant shall have until June 7, 2023 to answer or otherwise respond to Plaintiff’s complaint.

IT IS SO ORDERED.

DATED: _____

Honorable Frederick S. Chung
Judge of the Superior Court

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PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on April 12, 2023, I served a copy of:

STIPULATION AND [PROPOSED] ORDER FOR EXTENSION OF TIME FOR DEFENDANT TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFF’S COMPLAINT AND SUMMONS

BY U.S. MAIL [Code Civ. Proc sec. 1013(a)] by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP’s ordinary business practices.

I am readily familiar with Morrison & Foerster LLP’s practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP’s business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6; CRC 2.251] by electronically mailing a true and correct copy through Morrison & Foerster LLP’s electronic mail system from COrtega@mof.com to the email address(es) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251.

BURSOR & FISHER, P.A. *Attorneys for Plaintiff*
L. Timothy Fisher
Luke W. Sironski-White
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
E-Mail: ltfisher@bursor.com
lsironski@bursor.com

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

Executed at San Francisco, California, this 12th day of April, 2023.

Christina Ortega
(typed)


(signature)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 233485 NAME: Claudia M. Vetesi FIRM NAME: Morrison & Foerster LLP STREET ADDRESS: 425 Market Street CITY: San Francisco STATE: CA ZIP CODE: 94105 TELEPHONE NO.: 415-268-7000 FAX NO.: 415-268-7522 E-MAIL ADDRESS: CVetesi@mofo.com ATTORNEY FOR (name): Defendant Simpson Imports, LTD.	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p>on 4/24/2023 12:28 PM Reviewed By: R. Burciaga Case #23CV411463 Envelope: 11787356</p> <p>CASE NUMBER: 23CV411463</p> <p>JUDICIAL OFFICER: Honorable Frederick S. Chung</p> <p>DEPT: 10</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, 95113 BRANCH NAME: Downtown Superior Court (DTS)	
PLAINTIFF/PETITIONER: ANDREA VALIENTE DEFENDANT/RESPONDENT: SIMPSON IMPORTS, LTD. OTHER:	
PROPOSED ORDER (COVER SHEET)	

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Defendant Simpson Imports, LTD.

2. Title of the proposed order:
Stipulation and [Proposed] Order for Extension of Time for Defendant to Answer or Otherwise Respond

3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding:
 - b. Date and time:
 - c. Place:

4. The proposed order was served on the other parties in the case.

Claudia M. Vetesi _____
 (TYPE OR PRINT NAME)

 _____
 /s/ Claudia M. Vetesi
 (SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: Valiente v. Simpson Imports Ltd.	CASE NUMBER: 23CV411463
--	----------------------------

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):
425 Market Street, San Francisco, CA 94105

b. My electronic service address is (*specify*): cortega@mofo.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
L. Timothy Fisher
Luke W. Sironski-White
Attorneys for Plaintiff

b. To (*electronic service address of person served*): ltfisher@bursor.com; lsironski@bursor.com

c. On (*date*): 4/20/2023

Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: 4/20/2023

Christina Ortega

(TYPE OR PRINT NAME OF DECLARANT)




(SIGNATURE OF DECLARANT)

1 Claudia M. Vetesi (State Bar No. 233485)
CVetesi@mofo.com
2 **Morrison & Foerster LLP**
425 Market Street
3 San Francisco, California 94105
Telephone: 415.268.7000
4 Facsimile: 415.268.7522

5 *Attorneys for Defendant*

6 **BURSOR & FISHER, P.A.**
L. Timothy Fisher (State Bar No. 191626)
7 Luke W. Sironski-White (State Bar No. 348441)
1990 North California Boulevard, Suite 940
8 Walnut Creek, CA 94596
9 Telephone: (925) 300-4455
Facsimile: (925) 407-2700
10 E-Mail: ltfisher@bursor.com
11 lsironski@bursor.com

12 *Attorneys for Plaintiff*

Filed
April 28, 2023
Clerk of the Court
Superior Court of CA
County of Santa Clara
23CV411463
By: raragon

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SANTA CLARA**

15 ANDREA VALIENTE, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 SIMPSON IMPORTS, LTD.,

20 Defendant.

Case No. 23CV411463

**STIPULATION AND [~~PROPOSED~~]
ORDER FOR EXTENSION OF
TIME FOR DEFENDANT TO
ANSWER OR OTHERWISE
RESPOND TO PLAINTIFF'S
COMPLAINT AND SUMMONS**

1 Dated: April 12, 2023

BURSOR & FISHER, P.A.

2 By: /s/L. Timothy Fisher
3 L. Timothy Fisher

4 L. Timothy Fisher (State Bar No. 191626)
5 Luke W. Sironski-White (State Bar No. 348441)
6 1990 North California Boulevard, Suite 940
7 Walnut Creek, CA 94596
8 Telephone: (925) 300-4455
9 Facsimile: (925) 407-2700
10 E-Mail: ltfisher@bursor.com
11 lsironski@bursor.com

12 *Attorneys for Plaintiff*

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~~PROPOSED~~ ORDER

Upon consideration of Plaintiff and Defendant’s foregoing Joint Stipulation, and for good cause shown, IT IS HEREBY ORDERED THAT that Defendant shall have until June 7, 2023 to answer or otherwise respond to Plaintiff’s complaint.

IT IS SO ORDERED.

Signed: 4/25/2023 05:17 PM

DATED: April 25, 2023



Honorable Frederick S. Chung
Judge of the Superior Court

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PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on April 12, 2023, I served a copy of:

STIPULATION AND [PROPOSED] ORDER FOR EXTENSION OF TIME FOR DEFENDANT TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFF’S COMPLAINT AND SUMMONS

BY U.S. MAIL [Code Civ. Proc sec. 1013(a)] by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP’s ordinary business practices.

I am readily familiar with Morrison & Foerster LLP’s practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP’s business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6; CRC 2.251] by electronically mailing a true and correct copy through Morrison & Foerster LLP’s electronic mail system from COrtega@mof.com to the email address(es) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251.

BURSOR & FISHER, P.A. *Attorneys for Plaintiff*
L. Timothy Fisher
Luke W. Sironski-White
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
E-Mail: ltfisher@bursor.com
lsironski@bursor.com

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

Executed at San Francisco, California, this 12th day of April, 2023.

Christina Ortega
(typed)


(signature)

Exhibit B

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 233485 NAME: Claudia M. Vetesi FIRM NAME: Morrison & Foerster LLP STREET ADDRESS: 425 Market Street CITY: San Francisco STATE: CA ZIP CODE: 94105 TELEPHONE NO.: 415-268-7000 FAX NO.: 415-268-7522 E-MAIL ADDRESS: CVetesi@mofo.com ATTORNEY FOR (name): Defendant Simpson Imports, LTD.	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p>on 4/24/2023 12:28 PM Reviewed By: R. Burciaga Case #23CV411463 Envelope: 11787356</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, 95113 BRANCH NAME: Downtown Superior Court (DTS)	
PLAINTIFF/PETITIONER: ANDREA VALIENTE DEFENDANT/RESPONDENT: SIMPSON IMPORTS, LTD. OTHER:	CASE NUMBER: 23CV411463 JUDICIAL OFFICER: Honorable Frederick S. Chung
PROPOSED ORDER (COVER SHEET)	DEPT: 10

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Defendant Simpson Imports, LTD.

2. Title of the proposed order:
Stipulation and [Proposed] Order for Extension of Time for Defendant to Answer or Otherwise Respond

3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding:
 - b. Date and time:
 - c. Place:

4. The proposed order was served on the other parties in the case.

Claudia M. Vetesi _____
 (TYPE OR PRINT NAME)

 _____
 /s/ Claudia M. Vetesi
 (SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: Valiente v. Simpson Imports Ltd.	CASE NUMBER: 23CV411463
--	----------------------------

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):
425 Market Street, San Francisco, CA 94105

b. My electronic service address is (*specify*): cortega@mofo.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
L. Timothy Fisher
Luke W. Sironski-White
Attorneys for Plaintiff

b. To (*electronic service address of person served*): ltfisher@bursor.com; lsironski@bursor.com

c. On (*date*): 4/20/2023

Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: 4/20/2023

Christina Ortega

(TYPE OR PRINT NAME OF DECLARANT)




(SIGNATURE OF DECLARANT)

1 Claudia M. Vetesi (State Bar No. 233485)
CVetesi@mofo.com
2 **Morrison & Foerster LLP**
425 Market Street
3 San Francisco, California 94105
Telephone: 415.268.7000
4 Facsimile: 415.268.7522

5 *Attorneys for Defendant*

6 **BURSOR & FISHER, P.A.**
L. Timothy Fisher (State Bar No. 191626)
7 Luke W. Sironski-White (State Bar No. 348441)
1990 North California Boulevard, Suite 940
8 Walnut Creek, CA 94596
9 Telephone: (925) 300-4455
Facsimile: (925) 407-2700
10 E-Mail: ltfisher@bursor.com
11 lsironski@bursor.com

12 *Attorneys for Plaintiff*

Filed
April 28, 2023
Clerk of the Court
Superior Court of CA
County of Santa Clara
23CV411463
By: raragon

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SANTA CLARA**

15 ANDREA VALIENTE, individually and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 SIMPSON IMPORTS, LTD.,

20 Defendant.
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Case No. 23CV411463

**STIPULATION AND [~~PROPOSED~~]
ORDER FOR EXTENSION OF
TIME FOR DEFENDANT TO
ANSWER OR OTHERWISE
RESPOND TO PLAINTIFF'S
COMPLAINT AND SUMMONS**

1 Dated: April 12, 2023

BURSOR & FISHER, P.A.

2 By: /s/L. Timothy Fisher
3 L. Timothy Fisher

4 L. Timothy Fisher (State Bar No. 191626)
5 Luke W. Sironski-White (State Bar No. 348441)
6 1990 North California Boulevard, Suite 940
7 Walnut Creek, CA 94596
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10 E-Mail: ltfisher@bursor.com
11 lsironski@bursor.com

12 *Attorneys for Plaintiff*

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~~PROPOSED~~ ORDER

Upon consideration of Plaintiff and Defendant’s foregoing Joint Stipulation, and for good cause shown, IT IS HEREBY ORDERED THAT that Defendant shall have until June 7, 2023 to answer or otherwise respond to Plaintiff’s complaint.

IT IS SO ORDERED.

Signed: 4/25/2023 05:17 PM

DATED: April 25, 2023



Honorable Frederick S. Chung
Judge of the Superior Court

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PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on April 12, 2023, I served a copy of:

STIPULATION AND [PROPOSED] ORDER FOR EXTENSION OF TIME FOR DEFENDANT TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFF’S COMPLAINT AND SUMMONS

BY U.S. MAIL [Code Civ. Proc sec. 1013(a)] by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP’s ordinary business practices.

I am readily familiar with Morrison & Foerster LLP’s practice for collection and processing of correspondence for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster LLP’s business practice the document(s) described above will be deposited with the United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully prepaid for collection and mailing.

BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6; CRC 2.251] by electronically mailing a true and correct copy through Morrison & Foerster LLP’s electronic mail system from COrtega@mof.com to the email address(es) set forth below, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6 and CRC Rule 2.251.

BURSOR & FISHER, P.A. *Attorneys for Plaintiff*
L. Timothy Fisher
Luke W. Sironski-White
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
E-Mail: ltfisher@bursor.com
lsironski@bursor.com

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

Executed at San Francisco, California, this 12th day of April, 2023.

Christina Ortega
(typed)


(signature)

1 Claudia M. Vetesi (State Bar No. 233485)
CVetesi@mofo.com
2 Morrison & Foerster LLP
425 Market Street
3 San Francisco, California 94105-2482
Telephone: 415.268.7000
4 Facsimile: 415.268.7522

5 *Attorneys for Defendant*
Simpson Imports, Ltd.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 ANDREA VALIENTE, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 SIMPSON IMPORTS, LTD.,

16 Defendants.

Case No. _____

**DECLARATION OF RUTH LEVI IN
SUPPORT OF DEFENDANT SIMPSON
IMPORTS, LTD.’S NOTICE OF
REMOVAL**

[Superior Court of the State of California,
County of Santa Clara, Case No.
23CV411463]

18 **DECLARATION IN SUPPORT OF NOTICE OF REMOVAL**

19 I, Ruth Levi, declare:

20 1. I am a Treasurer at Simpson Imports, Ltd. (“Simpson Imports” or “Defendant”).

21 My duties and responsibilities as Treasurer include maintaining knowledge and familiarity with
22 the shipment of Simpson Import’s products through distribution channels for retail sale. I make
23 this declaration in support of Simpson Import’s Notice of Removal.

24 2. As part of my duties at Simpson Imports, I am aware of the accounting processes
25 and practices for the company, including for the San Merican Tomato products (“the Tomato
26 Products”) at issue in this case. I also have access to Simpson Import’s sales information on a
27 nationwide basis from 2019 to the present.
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3. I am aware of the allegations made by Plaintiff in the Complaint filed in the above captioned case against Simpson Imports, and that Plaintiff purports to bring this action on behalf of a California class of retail purchasers during the last four years.

4. I understand that Plaintiff seeks unspecified monetary recovery on behalf of herself and a putative class over the past four years. (Compl., Relief Demanded.) I also understand that Plaintiff seeks attorneys' fees and costs, and an injunction.

5. Simpson Imports asserts that Plaintiff is entitled to no recovery or relief for her claims. However, I understand that the Court will accept as true Plaintiff's theories of recovery for the purposes of analyzing the amount Plaintiff's claims put in controversy.

6. Simpson Imports sells the Tomato Products at issue in this case to distributors and other third parties and maintains financial information regarding its sales. I have reviewed Simpson Imports' sales data concerning the national sales of the Tomato Products from 2019 to the present. Simpson Imports' total national sales of the Tomato Products from 2019 to today, are more than \$75,000 and its estimated California sales of the Tomato Products are also more than \$75,000.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 2, 2023, in Jerusalem, Israel.

5


Ruth Levi

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Andrea Valiente

(b) County of Residence of First Listed Plaintiff Santa Clara (EXCEPT IN U.S. PLAINTIFF CASES)

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

L. Timothy Fisher, Bursor & Fisher, P.A., 1990 North California Blvd., Suite 940, Walnut Creek, CA 94596, Tel: (925) 300-4455

DEFENDANTS

Simpson Imports, Ltd.

County of Residence of First Listed Defendant Pennsylvania (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Claudia Vetesi, Morrison & Foerster LLP, 425 Market St., San Francisco, CA 94105, Tel: (415) 268-7000

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

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant X 4 Diversity (Indicate Citizenship of Parties in Item III)

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes options like 'Citizen of This State', 'Citizen of Another State', 'Citizen or Subject of a Foreign Country', 'Incorporated or Principal Place of Business In This State', etc.

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

Large table with columns for CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, and OTHER STATUTES. Each column lists various legal categories and codes.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1332(a), 1441 and 1446.

Brief description of cause:

Violation of California's Unfair Competition Law, California's Consumer Legal Remedies Act; False Advertising Law; Fraud; Breach of Express Warranty, etc.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

X SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 05/05/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ Claudia M. Vetesi

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

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

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
 - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.