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Generation, Inc.

12
13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA
15

16 GARY HOFMANN,

17 Plaintiff,

18 v.

19 FIFTH GENERATION, INC., a Texas
20 corporation; and DOES 1 through 100,
inclusive,

21 Defendants.
22
23
24

CASE NO.: '14CV2569 JM JLB

NOTICE OF REMOVAL BY
DEFENDANT FIFTH
GENERATION, INC. PURSUANT
TO 28 U.S.C. § 1332(d)(2)

Action filed: Sept. 30, 2014
Trial date: none set

PLEASE TAKE NOTICE that Defendant Fifth Generation, Inc. (“Defendant”) hereby removes the above-captioned action, *Hofmann v. Fifth Generation, Inc.*, Case No. 37-2014-00031150-CU-NP-CTL (the “Action”) from the California Superior Court for the County of San Diego to the United States District Court for the Southern District of California pursuant to 28 U.S.C. §§ 1332(d), 1441(a), and 1446(b) on the grounds articulated below. Defendant provides this “short and plain statement of the grounds for removal” pursuant to 28 U.S.C. § 1446(a). In the event that the Court requires that Defendant prove the facts alleged in this pleading, or to otherwise establish jurisdiction, Defendant is prepared to do so.¹

STATEMENT OF JURISDICTION

1. This Court has original jurisdiction over this action under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). In relevant part, CAFA grants District Courts original jurisdiction over civil class actions filed under federal or state law in which any member of a class of plaintiffs is a citizen of a state different from any defendant and where the amount in controversy for the putative

¹ If a removing party’s “allegations of jurisdictional facts are challenged by his adversary in any appropriate manner, [then the removing party] must support them by competent proof.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th Cir. 1992) (quoting *McNutt v. Gen. Motors Acceptance Corp. of Indiana*, 298 U.S. 178, 189, 56 S. Ct. 780 (1936)); *see also Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008) (“The removing party, as the proponent of federal jurisdiction, bears the burden of describing how the controversy exceeds \$5 million ... This is a pleading requirement, not a demand for proof.”); *McNutt*, 298 U.S. at 189 (defendants must put forth competent proof “[i]f his allegations of jurisdictional facts are challenged by his adversary in any appropriate manner”). In the response to such a challenge, the District Court may consider the “contents of the removal petition,” as well as any “supplemental evidence later proffered by the removing defendant.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (quoting *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) and citing *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 n.1 (9th Cir. 2002)); *see also Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335-36 (5th Cir. 1995) (same); *Singer v. State Farm Mut. Auto Ins.*, 116 F.3d 373, 374 (9th Cir. 1997) (in response to motion to remand, “defense counsel submitted declarations to show that the amount in controversy exceeded \$50,000”).

1 class members in the aggregate exceeds the sum or value of \$5,000,000, exclusive of
2 interest and costs. As set forth below, this case meets all of CAFA's requirements for
3 removal and is timely and properly removed by the filing of this Notice. The sole
4 named defendant, Fifth Generation, Inc., initiates, and consents to, removal.

5 VENUE

6 2. The Action was filed in the Superior Court of the State of California for
7 the County of San Diego. Therefore, venue properly lies in the United States District
8 Court for the Southern District of California pursuant to 28 U.S.C. §§ 84(a), 1391(a),
9 and 1441(a).

10 PLEADINGS, PROCESS, AND ORDERS

11 3. On or about September 15, 2014, plaintiff Gary Hofmann ("Plaintiff"),
12 on behalf of himself and others similarly situated, initiated the Action by filing a
13 complaint in the Superior Court for the State of California, San Diego County. The
14 original complaint wrongly named "Fifth Dimension, Inc." as the defendant.

15 4. On or about September 25, 2014, Plaintiff filed a document with the
16 Superior Court seeking to correct the name of the defendant at-issue.

17 5. Prior to serving Defendant with the Summons and Complaint, on or
18 about September 30, 2014, Plaintiff filed a First Amended Complaint (hereafter
19 "Complaint") with the Superior Court. According to the Complaint, Plaintiff and the
20 members of the nationwide putative class he purports to represent are retail
21 purchasers of Tito's Handmade Vodka, a product manufactured by Defendant.
22 (Exhibit A, Complaint ¶¶ 1, 19.)

23 6. Plaintiff contends he served Defendant with the Summons and
24 Complaint on October 2, 2014.

25 7. In accordance with 28 U.S.C. §1446(a), a true and correct copy of the
26 Summons and Complaint (together with the civil case cover sheet, affidavit of venue,
27 ADR information packet, notice of case assignment, e-filing notice, and General
28

1 Order of the Presiding Department No. 051414) filed in the San Diego Superior
2 Court and served on Defendant is attached hereto as Exhibit A.

3 8. The Complaint alleges four causes of action for: (1) violation of
4 California's Unfair Competition Law, Business and Professions Code §§ 17200, et
5 seq.; (2) violation of California's False Advertising Law, Business and Professions
6 Code §§ 17500 et seq.; (3) violation of the Consumers Legal Remedies Act, Civil
7 Code §§ 1750 et seq.; and (4) negligent misrepresentation.

8 **SERVICE ON THE STATE COURT**

9 9. Pursuant to 28 U.S.C. § 1446(d), contemporaneously with the filing of
10 this Notice of Removal in the United States District Court for the Southern District of
11 California, written notice of such filing will be given by the undersigned to Plaintiff's
12 counsel of record, and a copy of the Notice of Removal will be filed with the Clerk of
13 the San Diego County Superior Court.

14 **TIMELINESS OF THE REMOVAL**

15 10. This removal is timely because this Notice is being filed within 30 days
16 after the receipt by Defendant, through service of process, of a copy of the Summons
17 and Complaint. *See* 28 U.S.C. § 1446(b)(1); *Roth v. CHA Hollywood Med. Center,*
18 *L.P.*, 720 F.3d 1121, 1125 (9th Cir. 2013).

19 **ORIGINAL JURISDICTION PURSUANT TO CAFA**

20 11. This Court has jurisdiction over this case under CAFA, 28 U.S.C.
21 § 1332(d), and this case may be removed pursuant to the provisions of 28 U.S.C.
22 § 1441(a), in that it is a civil putative class action and: (1) the proposed class
23 contains at least 100 members; (2) no defendant is a state, state official, or other
24 governmental entity; (3) the total amount in controversy for all class members
25 exceeds \$5 million, as stipulated by the named plaintiff; and, (4) there is diversity
26 between at least one class member—*e.g.*, the named plaintiff, who is a citizen of the
27 State of California—and the sole defendant, which is a citizen of the State of Texas.

1 CAFA authorizes removal of such actions in accordance with 28 U.S.C. § 1446. As
2 discussed below, this case meets each CAFA requirement for removal.

3 ***The Proposed Class Contains At Least 100 Members***

4 12. Plaintiff's class consists of all persons who purchased Tito's Handmade
5 Vodka in the United States during the last four years. (Exhibit A, Complaint ¶¶ 10,
6 19.) In the past four years, more than 100,000 cases of Tito's Handmade Vodka have
7 been sold in the United States, which corresponds to more than 1 million bottles of
8 product. (See Declaration of Katherine White ("White Decl."), ¶ 4.) Therefore, it
9 appears that there are well over 100 retail purchasers who would comprise the
10 putative class since, if the class comprised of 100 or less persons, each putative class
11 member would have had to purchase on average over 10,000 bottles of product. See
12 *Mullins v. Harry's Mobile Homes, Inc.*, 861 F. Supp. 22, 24 (S.D.W.V. 1994) (stating
13 that when analyzing the propriety of removal: "The court ... is not required to leave
14 its common sense behind."); see also *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d
15 744, 770 (11th Cir. 2010) ("[V]iewing facts through the lens of common sense is not
16 star gazing.").

17 ***Defendant Is Not A Governmental Entity***

18 13. Defendant is not a state, state official, or other governmental entity.

19 ***A Putative Class Member's State of Citizenship Is Diverse From Defendant's***
20 ***Citizenship***

21 14. CAFA's diversity requirement is satisfied when at least one plaintiff is a
22 citizen of a state in which the defendant is not a citizen. 28 U.S.C. §§ 1332(d)(2)(A),
23 1453. Here, Plaintiff alleges that he resides in San Diego, California. (Exhibit A,
24 Complaint ¶ 2.) Further, Plaintiff has stipulated, through counsel, that he is a
25 California citizen.

26 15. For diversity purposes, a corporation "shall be deemed to be a citizen of
27 every State and foreign state by which it has been incorporated and of the State or
28 foreign state where it has its principal place of business...." 28 U.S.C. § 1332(c)(1);

1 *see Hertz Corp. v. Friend*, 559 U.S. 77, 80-81, 130 S. Ct. 1181, 1185-86 (2010).
 2 Here, Defendant was, at the time of the filing of this action, and remains, a Texas
 3 corporation with its corporate headquarters in Austin, Texas. (Exhibit A, Complaint
 4 ¶ 3; *see* White Decl., ¶ 3.) All of its administrative and executive functions are
 5 performed at those headquarters. (White Decl., ¶ 3.) And all of Defendant's
 6 production facilities are located in Austin, Texas. Texas is therefore Defendant's
 7 principal place of business. (*Id.*) Thus, Defendant is a citizen of Texas and is not a
 8 citizen of the State of California.

9 16. The "DOE" defendants named in Plaintiff's Complaint are fictitious.
 10 (Exhibit A, Complaint ¶ 4.) The Complaint does not set forth the identity or status of
 11 these fictitious defendants, nor does it set forth any charging allegation against any
 12 fictitious defendants. The citizenship of such fictitious defendants sued under
 13 fictitious names must be disregarded for the purposes of determining diversity
 14 jurisdiction and cannot destroy the diversity of citizenship between the parties in this
 15 action. *See* 28 U.S.C. § 1441(b)(1); *Newcombe v. Adolf Coors Co.*, 157 F.3d 686,
 16 690-91 (9th Cir. 1998).

17 17. In sum, because Plaintiff is a citizen of California, and Defendant is a
 18 citizen of Texas, at least one putative class member is diverse from the Defendant,
 19 and thus CAFA's minimal diversity requirement is met.

20 ***The Amount In Controversy On Class Claims Exceeds \$5,000,000***

21 18. Though Defendant concedes no liability on Plaintiff's claims, assuming
 22 Plaintiff's allegations to be true, Plaintiff's class claims place in controversy a sum
 23 greater than \$5,000,000. Specifically, Plaintiff alleges that he and the putative class
 24 members (in a putative nationwide class), among other things, are entitled to recover
 25 from Defendant "a refund of the monies Class Members paid to purchase the
 26 offending Vodka plus sales taxes." (Exhibit A, Complaint, Prayer ¶ 6.) Plaintiff
 27 further alleges the relevant statutory time period is four years. (Exhibit A, Complaint
 28 ¶ 10.) Accordingly, because the total nationwide sales for Tito's Handmade Vodka

1 exceeds \$5,000,000 (*see* White Decl., ¶ 5), the amount-in-controversy requirement is
2 satisfied here. *See Watkins v. Vital Pharm., Inc.*, 720 F.3d 1179, 1181 (9th Cir.
3 2013). Plaintiff has also stipulated, through counsel, that his class claims place in
4 controversy a sum greater than \$5,000,000.

5 19. On top of this, Plaintiff and his putative class also seeks to recover
6 attorneys' fees, costs, and interest. (Exhibit A, Complaint, Prayer ¶¶ 8-10.) None of
7 these additional recoveries are included in the foregoing calculation.

8 20. At issue "is what amount is put 'in controversy' by the plaintiff's
9 complaint, not what a defendant will actually owe." *See Korn*, 536 F. Supp. 2d at
10 1205 (quoting *Rippee v. Boston Market Corp.*, 408 F. Supp. 2d 982, 986 (S.D.
11 Cal.2005)). "In measuring the amount in controversy, a court must assume that the
12 allegations of the complaint are true and that a jury will return a verdict for the
13 plaintiff on all claims made in the complaint." *Id.* at 1205 (citing *Kenneth Rothschild*
14 *Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002).
15 Further, defenses that a defendant may assert are not considered in assessing the
16 amount placed in controversy. *See Riggins v. Riggins*, 415 F.2d 1259, 1262 (9th Cir.
17 1969) ("None of these facts are disclosed by the complaint; the court must resolve
18 them in determining the validity of the defense of the statute of limitations; and the
19 possibility of such a defense being valid does not affect the jurisdiction of the district
20 court to hear and determine the controversy"); *Hernandez v. Towne Park, Ltd.*, No.
21 CV 12-02972 MMM (JCGx), 2012 WL 2373372, *10 (C.D. Cal. June 22, 2012)
22 ("[T]he fact that [defendant] may assert a limitations defense does not limit the relief
23 sought in the complaint."); *Lara v. Trimac Transp. Svcs. (W.) Inc.*, No. CV 10-4280-
24 GHK (JCx), 2010 WL 3119366, *3 (C.D. Cal. Aug. 6, 2010) ("affirmative defenses
25 ... may not be invoked to demonstrate that the amount in controversy is actually less
26 than the jurisdictional minimums.").

27 21. Defendant denies that it has any liability to Plaintiff or to the putative
28 class that he seeks to represent, and denies that Plaintiff or the putative class

1 members are entitled to recover any damages, punitive damages, injunctive relief,
2 attorney fees, or the other relief requested in the Complaint. Defendant also submits
3 that this action does not satisfy the requirements for class certification under Fed. R.
4 Civ. P. 23. Nevertheless, amount in controversy is not a merits issue, but, instead is
5 measured simply by the nominal value of the claims asserted in the Complaint. Here,
6 that value exceeds \$5 million, based upon nationwide sales of Tito's Handmade
7 Vodka over the past few years.

8 22. Removing Defendant hereby reserves the right to amend this notice of
9 removal.

10
11 WHEREFORE, Defendant removes the Action from the Superior Court of the
12 State of California, County of San Diego, to this Court.

13 DATED: October 28, 2014

Respectfully submitted,

14 COOLEY LLP

15
16 /s/ Michelle C. Doolin
17 Attorneys for Defendant Fifth
18 Generation, Inc.
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EXHIBIT A

**AMENDED
SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

FIFTH GENERATION, INC., a Texas corporation; and DOES 1 through 100, inclusive,

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

GARY HOFMANN, an individual and on behalf of all others similarly situated,

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/30/2014 at 04:20:00 PM

Clerk of the Superior Court
By Lee Wb Alister, Deputy Clerk

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 o 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):

San Diego Superior Court - Central Division
330 W. Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

37-2014-00031150-CU-NP-CTL

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):
John H. Donboli, Esq. - 12250 El Camino Real, Ste. 120, San Diego, CA 92130; (858) 793-6244

DATE: 10/01/2014
(Fecha)

Clerk, by
(Secretario)

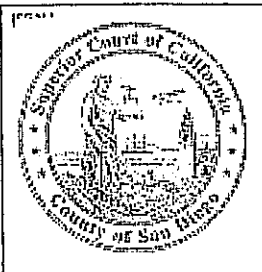
L. McAlister

L. McAlister

, Deputy
(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): *Fifth Generation Inc. a Texas Corporation*

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/30/2014 at 04:20:00 PM
Clerk of the Superior Court
By Lee Ibbotson, Deputy Clerk

JOHN H. DONBOLI (SBN: 205218)
JL SEAN SLATTERY (SBN: 210965)
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Attorneys for Plaintiff: GARY HOFMANN, an individual and on behalf
of all others similarly situated

SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO

GARY HOFMANN, an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

FIFTH GENERATION, INC., a Texas
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. 37-2014-00031150-CU-NP-CTL

CLASS ACTION

FIRST AMENDED *NATIONWIDE*
COMPLAINT FOR:

- (1) VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200 *ET*
SEQ. (CALIFORNIA UNFAIR
COMPETITION LAW);
- (2) VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17500 *ET*
SEQ. (FALSE AND MISLEADING
ADVERTISING);
- (3) VIOLATION OF CONSUMERS
LEGAL REMEDIES ACT (CIVIL
CODE § 1750 *ET SEQ.*);
- (4) NEGLIGENT
MISREPRESENTATION

Dept.: 67
Judge: Eddie C Sturgeon

COMES NOW, plaintiff GARY HOFMANN ("Plaintiff"), as an individual and on behalf of the general public and all others similarly situated, by his undersigned attorneys, alleges as follows:

NATURE OF THE CASE

1. This is a nationwide class action case brought on behalf of all purchasers of vodka ("Vodka") manufactured, distributed, marketed, and/or sold by FIFTH GENERATION, INC. dba Tito's Handmade Vodka (hereinafter "TITO'S"). Through a fraudulent, unlawful, deceptive and unfair course of conduct, TITO'S, and DOES 1 through 100 (collectively "Defendants"), manufactured, marketed, and/or sold their "TITO'S HANDMADE" Vodka to the general public with the false representation that the Vodka was "handmade" when, in actuality, the Vodka is made via a highly-mechanized process that is devoid of human hands. There is simply nothing "handmade" about the Vodka, under any definition of the term,¹ because the Vodka is: (1) made from commercially manufactured "neutral grain spirit" ("NGS") that is trucked and pumped into TITO's industrial facility; (2) distilled in a large industrial complex with modern, technologically advanced stills; and (3) produced and bottled in extremely large quantities (i.e., it is "mass produced"). The Vodka is sold through various retailers in California and throughout the nation.

PARTIES

2. Plaintiff is an individual residing in San Diego, California.

3. Defendant FIFTH GENERATION, INC. is a corporation that is organized and exists under the laws of the State of Texas. Its business address (as listed on the Texas Secretary of State website) is 12101 Moore Road, Austin, Texas 78719. FIFTH GENERATION, INC. can be served via its registered agent for service of process: Bert Beveridge, 12101 Moore Road, Austin, Texas 78719.

4. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1-100, inclusive; therefore, Plaintiff sues these defendants by such fictitious names.

¹ The Oxford Dictionary defines the term "handmade" as "[m]ade by hand, not by machine, and typically therefore of superior quality."

1 Plaintiff is informed and believes that each of the fictitious named defendants are legally
2 responsible in some manner for the occurrences herein alleged, assisted in and about the wrongs
3 complained herein by providing financial support, advice, resources or other assistance. Plaintiff
4 will amend the complaint to allege their true names and capacities when ascertained.

5 5. Plaintiff is informed and believes that all defendants were agents, servants and
6 employees of their co-defendants, and in doing the things hereinafter mentioned, were acting
7 within the scope of their authority as such agents, servants and employees with the permission
8 and consent of their co-defendants.

9 **JURISDICTION AND VENUE**

10 6. This Court has jurisdiction in this matter because Defendants routinely transact
11 business in San Diego County.

12 7. Venue in this Court is proper pursuant to Code of Civil Procedure §§ 395 and
13 395.5 and Business & Professions Code §§ 17203 and 17204 because Defendants do business in
14 San Diego County and Plaintiff's transaction took place in San Diego County.

15 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

16 8. Plaintiff realleges and incorporates herein by reference all of the allegations
17 contained in paragraphs 1 through 7, inclusive, of this complaint as though fully set forth herein.

18 9. During the relevant statutory time period, Defendants manufactured, marketed,
19 and/or sold Vodka with printed labels that prominently claimed the Vodka was "Handmade."

20 10. During the relevant four year statutory time period, Defendants manufactured,
21 marketed, and/or sold Vodka with printed bottle labels that also prominently claimed that the
22 Vodka was "Crafted in an Old Fashioned Pot Still by America's Original Microdistillery." An

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 exemplar image of the label is as follows:



15 11. On information and belief, the Vodka was made, manufactured and/or produced
16 in "massive buildings containing ten floor-to-ceiling stills and bottling 500 cases an hour"² using
17 automated machinery that is the antithesis of "handmade" and that is in direct contradiction to
18 both the "Handmade" representation and the "Crafted in an Old Fashioned Pot Still"
19 representation on the product. Discovery will further reveal the specific automated manner in
20 which the Vodka is made.

21 12. Defendants marketed and represented to the general public that the Vodka was
22 "Handmade" and, in doing so, concealed the highly automated nature of the Vodka
23 manufacturing and bottling process. Defendants also concealed the fact that the Vodka is no
24 longer made in old fashioned pot stills of the variety TITO's proudly displayed in the 2013

25 ² A 2013 article in Forbes magazine noted that the Forbes photographer was purposefully directed
26 away by the Tito's brand manager from "massive buildings containing ten floor-to-ceiling stills and
27 bottling 500 cases an hour and into the shack with the original still, cobbled from two Dr. Pepper kegs
28 and a turkey-frying rig to cook bushels of corn into booze."

1 Forbes article (i.e., in a shack containing a pot still cobbled from two Dr. Pepper kegs and a
2 turkey-frying rig to cook bushels of corn). The disclosure of this information was necessary in
3 order to make Defendants' representations truthful and not misleading. Defendants possess
4 superior knowledge of the true facts that were not disclosed, thereby tolling the running of any
5 applicable statute of limitations.

6 13. Consumers are particularly vulnerable to these kinds of false and deceptive
7 labeling practices. Most consumers possess very limited knowledge of the likelihood that
8 products, including the Vodka at issue herein, that are claimed to be "Handmade" are in fact: (1)
9 made from commercially manufactured NGS that is trucked and pumped into TITO's industrial
10 facility; (2) distilled in a large industrial complex with modern, technologically advanced stills;
11 and (3) produced and bottled in extremely large quantities (i.e., it is "mass produced"). This
12 entire process is devoid of the caring touch of human hands. This is a material factor in many
13 individuals' purchasing decisions, as they believe they are purchasing a product made in small
14 amounts that is of inherently superior quality.

15 14. Consumers generally believe that "Handmade" products are of higher quality than
16 their non-handmade counterparts. Due to Defendants' scheme to defraud the market, members
17 of the general public were fraudulently induced to purchase Defendants' Vodka at inflated
18 prices. California laws are designed to protect consumers from this type of false representation
19 and predatory conduct. Defendants' scheme to defraud consumers is ongoing and will victimize
20 consumers each and every day until altered by judicial intervention.

21 THE PLAINTIFF TRANSACTION

22 15. In August 2014, Plaintiff purchased TITO's Vodka at a San Diego BevMo! store.
23 At the time of purchase, the product itself was prominently marked with a "Handmade" label
24 when in fact there was nothing "Handmade" about the product. The product was also labeled as
25 being "Crafted in an Old Fashioned Pot Still by America's Original Microdistillery."

26 16. When Plaintiff, and Class Members, purchased the Vodka they saw and relied
27 upon the "Handmade" representation that is prominently displayed on all of TITO's Vodka
28

1 products. This reliance on the "Handmade" label to make their purchasing decisions is typical of
2 most California consumers.

3 17. Simply stated, Plaintiff and Class Members were deceived as a result of
4 Defendants' false labeling. Their purchasing decisions were supported by the "Handmade"
5 representation made by Defendants, which is absent from most (if not all) of Defendants'
6 competitors. Plaintiff believed at the time he purchased the Vodka that he was in fact buying a
7 high-quality product made by human hands that was not made in large industrial vats in mass
8 quantities, etc.

9 18. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by
10 Defendants as a result of Defendants' false "Handmade" claim set forth on the offending
11 product. Furthermore, he suffered an "injury in fact" by paying for something he believed was
12 genuinely "Handmade," when it was not. Essentially, the Vodka is not worth the purchase price
13 paid. Plaintiff and Class Members are entitled to monetary damages; the specific measure of
14 which is the subject of expert testimony. Plaintiff and Class Members were undoubtedly injured
15 as a result of Defendants' false "Handmade" representations that are at issue in this litigation.

16 CLASS ALLEGATIONS

17 19. Plaintiff brings this action on behalf of himself as an individual and on behalf of
18 all other persons similarly situated in the United States who purchased Defendants' Vodka (the
19 "Class"). Specifically excluded from the Class are any persons who have a controlling interest in
20 Defendants, any of Defendants' parent companies, subsidiaries, and Defendants' officers,
21 directors, managers, shareholders and members of their immediate families, and their heirs,
22 successors and assigns, pursuant to Code of Civil Procedure § 382 and Business & Professions
23 Code § 17200 *et seq.* The Class also does not include any persons who previously filed suit
24 against Defendants for similar violations of California law and/or the Hon. Judge presiding over
25 this matter and his or her judicial staff.

26 20. Pursuant to *Osborne v. Subaru of America, Inc.* (1988) 198 Cal. App. 3d 646 and
27 *Canon U.S.A., Inc. v. Superior Court* (1988) 68 Cal. App. 4th 1, it would be of benefit to the
28

1 Court and Plaintiff for California to host this nationwide class action. California claimants will
2 benefit from this Court's hosting of a nationwide class action because resolution by California
3 courts of the claims of class members outside of California, along with those of class members
4 residing within California, will aid California claimants in their recovery and in the prosecution
5 of this litigation. The pool of discoverable documents relating to the issues set out in the
6 complaint will be larger, the pool of deponents will be larger and the financial consequences to
7 Defendant of an adverse ruling will be more significant. All of these things can only act to
8 benefit the California claimants in their collective prosecution of this litigation, while adding
9 little if any additional burden on the California Courts due to the form contract aspect of the
10 litigation.

11 21. It would be a waste of class resources and to the detriment of class members to
12 require nationwide class members to litigate the issues set out in this complaint in forums all
13 over the nation, having to retain and compensate multiple attorneys, experts and the like, and
14 compensate those multiple attorneys and experts for their services, when one nationwide class
15 counsel can oversee the entire nationwide litigation to their benefit at a fraction of the cost.

16 22. The hosting of a nationwide class would confer a substantial benefit on the
17 California Courts. The nationwide class will promote judicial economy by preventing a
18 multiplicity of litigation in different states and inconsistent judgments on identical issues. A
19 nationwide class is beneficial to California courts for reasons of comity. The adjudication of a
20 nationwide class may increase the damages claimed, but does not amend the legal theories at
21 issue in this case.

22 23. A nationwide class would also produce a beneficiary result as a large number of
23 the Class members reside in California and the adjudication of all claims will have a therapeutic
24 effect on manufacturers outside of California who engage in fraudulent conduct within the state;
25 will aid business enterprises in California by curtailing illegitimate competition; and will avoid
26 the burden of multiple cases involving identical claims.

27 24. In addition, California has a special obligation and a compelling interest to control
28

1 the litigation and ensure the protection of its residents who make up the largest portion of the
2 nationwide class.

3 25. As to class members residing in California, the injury or damages from
4 Defendants' acts arise within the State of California.

5 26. As to class members residing outside of California, claims for the injury or
6 damage from Defendants' acts do not present a significant additional burden to the California
7 courts, as there are no known material variations in laws governing the claims. State law issues
8 will not swamp common issues and defeat predominance.

9 27. This is not a case where as in *Canon* it was found that certification of a
10 nationwide class will require the trial court to adjudicate issues by application of numerous
11 different rules of law from various states and would result in numerous individual adjudications
12 of fact. Instead, the California Unfair Competition Law can be extended to a nationwide class as
13 will be demonstrated with additional evidence at the time of class certification.

14 28. The parties have a substantial connection with California as they routinely
15 transact business in California and, on information and belief, the greatest number of class
16 members per state reside in California. Discovery will confirm the exact numbers on these
17 issues.

18 29. On information and belief, more offending Vodka was sold in California than in
19 any other state. On information and belief, Defendants collected and continue to collect more
20 revenue in California than in any other state and more of the ill-gotten gains were collected in
21 California than in any other state and more of the material misrepresentations were made here.
22 Thus California has a compelling interest to proceed as to the nationwide class action claims. No
23 state has a more compelling interest than California in the prosecution of this action.

24 30. The benefit of a nationwide class action to the parties and the courts will be
25 substantial because a nationwide class will result in one judgment. It would be a waste of
26 judicial resources nationwide to require courts all over the nation to entertain identical actions
27 when one action could dispose of the litigation. A nationwide class will be beneficial to
28

1 Defendants in that it will not have to defend itself with respect to the same allegations in
2 numerous forums.

3 31. On information and belief, Defendants and/or their retail customers, have
4 documents and other information in their collective possession that will demonstrate the special
5 interest that California has in hosting a nationwide class action.

6 Definition of the Subclass

7 32. Subclass members as to Plaintiff's First, Second, Third, and Fourth Causes of
8 Action are all of Defendants' customers who reside in California and/or California individuals
9 who purchased offending Class Products from September 15, 2010 to the present.

10 Other Class Allegations:

11 33. Plaintiff alleges no federal claims.

12 34. The members of the Class are so numerous that joinder of all members is
13 impracticable. The disposition of their claims in a class action will provide substantial benefits
14 to the parties and the Court. On information and belief, the exact number and identities of the
15 members of the Class are ascertainable from the records in Defendants' possession or that of
16 Defendants' retail customers (e.g., BevMo!).

17 35. There is a well-defined community of interest in the questions of law and fact
18 involved in this case.

19 36. All causes of action herein have been brought and may properly be maintained as
20 a class action pursuant to the provisions of Code of Civil Procedure § 382 because there is a
21 well-defined community of interest in the litigation and the proposed class is easily
22 ascertainable:

23 a. Numerosity: On information and belief, the Class is so numerous that the
24 individual joinder of all members would be impracticable.

25 b. Common Questions Predominate: Common questions of law and fact
26 exist as to all members of the Class, and those questions clearly predominate over any questions
27 that might affect members individually. These common questions of law and fact include, for
28

1 example, whether Defendants violated Business & Professions Code § 17500 *et seq.* by
2 misrepresenting the “Handmade” nature of the Vodka because of the highly automated nature of
3 the manufacturing of the Vodka and whether Defendants’ actions in this regard constitute an
4 unfair, unlawful, or fraudulent business practice pursuant to Business & Professions Code §
5 17200 *et seq.*

6 c. Typicality: On information and belief, Plaintiff’s claims are typical of the
7 claims of the members of the Class. Plaintiff and all members of the Class sustained damages
8 arising out of Defendants’ common course of conduct complained herein.

9 d. Adequacy: Plaintiff will fairly and adequately protect the interests of the
10 members of the Class because Plaintiff has no interests which are adverse to the interests of
11 absent class members and because Plaintiff has retained counsel who possesses significant
12 litigation experience regarding alleged violations of consumer statutes.

13 e. Superiority: A class action is superior to other available means for the fair
14 and efficient adjudication of this controversy since individual joinder of all members would be
15 impracticable. Class action treatment will permit a large number of similarly situated persons to
16 prosecute their common claims in a single forum simultaneously, efficiently and without the
17 unnecessary duplication of effort and expense that numerous individual actions would engender.
18 Furthermore, since most class members’ individual claims for damages are likely to be modest,
19 the expenses and burdens of litigating individual actions would make it difficult or impossible
20 for individual members of the Class to redress the wrongs done to them. An important public
21 interest will be served by addressing the matter as a class action, substantial economies to the
22 litigants and to the judicial system will be realized and the potential for inconsistent or
23 contradictory judgments will be avoided.

24 FIRST CAUSE OF ACTION

25 (Violation of Business & Professions Code § 17200 *et seq.* Against All Defendants)

26 37. Plaintiff realleges and incorporates herein by reference all of the allegations
27 contained in Paragraphs 1 through 36, inclusive, of this complaint as though fully set forth
28

1 herein.

2 38. Business & Professions Code § 17200 *et seq.* provides that unfair competition
3 means and includes “any unlawful, unfair or fraudulent business act or practice and unfair,
4 deceptive, untrue or misleading marketing.”

5 39. By and through their conduct, including the conduct detailed above, Defendants
6 engaged in activities which constitute unlawful, unfair, and fraudulent business practices
7 prohibited by Business & Professions Code § 17200 *et seq.*

8 40. Beginning at an exact date unknown as yet and continuing up through the present,
9 Defendants committed acts of unfair competition that are prohibited by Business & Professions
10 Code § 17200 *et seq.* Defendants engaged in a pattern of “unfair” business practices that violate
11 the wording and intent of the statutes, by engaging in practices that threaten an incipient
12 violation of law, or violate the policy or spirit of laws because its effects are comparable to or the
13 same as a violation of the law by manufacturing, distributing, and marketing Vodka with a false
14 “Handmade” label when the product is in fact: (1) made from commercially manufactured NGS
15 that is trucked and pumped into TITO’s industrial facility; (2) distilled in a large industrial
16 complex with modern, technologically advanced stills; and (3) produced and bottled in extremely
17 large quantities (i.e., it is “mass produced”).

18 a. Alternatively, Defendants engaged in a pattern of “unfair” business
19 practices that violate the wording and intent of the statutes, by engaging in practices that are
20 immoral, unethical, oppressive or unscrupulous, the utility (if any) of which conduct is far
21 outweighed by the harm done to consumers and public policy by manufacturing, distributing,
22 marketing, and advertising Vodka with a false “Handmade” label when the product is in fact: (1)
23 made from commercially manufactured NGS that is trucked and pumped into TITO’s industrial
24 facility; (2) distilled in a large industrial complex with modern, technologically advanced stills;
25 and (3) produced and bottled in extremely large quantities (i.e., it is “mass produced”).

26 b. Alternatively, Defendants engaged in a pattern of “unfair” business
27 practices that violate the wording and intent of the statutes, by engaging in practices wherein: (1)
28

1 the injury to the consumer was substantial; (2) the injury was not outweighed by any
2 countervailing benefits to consumers or competition; and (3) the injury was of the kind that the
3 consumers themselves could not reasonably have avoided by manufacturing, distributing,
4 marketing, and advertising Vodka with a false "Handmade" label when the product is in fact: (1)
5 made from commercially manufactured NGS that is trucked and pumped into TITO's industrial
6 facility; (2) distilled in a large industrial complex with modern, technologically advanced stills;
7 and (3) produced and bottled in extremely large quantities (i.e., it is "mass produced").

8 41. Beginning at an exact date unknown as yet and continuing up through the present,
9 Defendants committed acts of unfair competition, including those described above, prohibited by
10 Business & Professions Code § 17200 *et seq.* by engaging in a pattern of "fraudulent" business
11 practices within the meaning of Business & Professions Code § 17200 *et seq.*, by manufacturing,
12 distributing, marketing, and/or selling Vodka products with a false "Handmade" representation
13 when the product is in fact: (1) made from commercially manufactured NGS that is trucked and
14 pumped into TITO's industrial facility; (2) distilled in a large industrial complex with modern,
15 technologically advanced stills; and (3) produced and bottled in extremely large quantities (i.e., it
16 is "mass produced").

17 42. Defendants engaged in these unlawful, unfair and fraudulent business practices
18 for the primary purpose of collecting unlawful and unauthorized monies from Plaintiff and all
19 others similarly situated, thereby unjustly enriching Defendants.

20 43. As a result of the repeated violations described herein, Defendants received
21 unearned commercial benefits at the expense of their competitors and the public.

22 44. Defendants' unlawful, unfair and fraudulent business practices present a
23 continuing threat to the public in that Defendants continue to engage in unlawful conduct.

24 45. Such acts and omissions are unfair and/or fraudulent and constitute a violation of
25 Business & Professions Code § 17200 *et seq.* Plaintiff reserves the right to identify additional
26 violations by Defendants as may be established through discovery.

27 46. As a direct and legal result of their unlawful, unfair and fraudulent conduct
28

1 described herein, Defendants have been and will be unjustly enriched by the receipt of ill-gotten
2 gains from customers, including Plaintiff, who unwittingly provided their money to Defendants
3 based on Defendants' fraudulent "Handmade" representation.

4 47. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by
5 Defendants as a result of Defendants' false "Handmade" claim set forth on the Vodka.

6 48. In prosecuting this action for the enforcement of important rights affecting the
7 public interest, Plaintiff seeks the recovery of attorneys' fees pursuant to Code of Civil
8 Procedure § 1021.5, which is available to a prevailing plaintiff who wins relief for the general
9 public.

10 **SECOND CAUSE OF ACTION**

11 **(Violation of Business & Professions Code § 17500 *Et Seq.* Against All Defendants)**

12 49. Plaintiff realleges and incorporates herein by reference all of the allegations
13 contained in Paragraphs 1 through 48, inclusive, of this complaint as though fully set forth
14 herein.

15 50. Business & Professions Code § 17500 *et seq.* provides that it is "unlawful for any
16 person, firm [or other party] . . . to make or disseminate before the public . . . any statement
17 which is untrue or misleading" in connection with the sale or disposition of goods or services.

18 51. Beginning at an exact date unknown as yet and continuing up through the present,
19 Defendants committed acts of unfair competition, including those set forth above, prohibited by
20 Business & Professions Code § 17500 *et seq.* by engaging in a pattern of false and misleading
21 advertising and business practices that violate the wording and intent of the statutes.

22 52. On information and belief, Defendants engage in unlawful advertising practices
23 with the intent to induce members of the public to purchase goods that they believe to be of a
24 particular quality.

25 53. Defendants' deceptive advertising practices, including the "Handmade"
26 representations detailed herein, present a continuing threat to members of the public in that
27 Defendants continue to engage in the conduct described above.

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9 56. In prosecuting this action for the enforcement of important rights affecting the
10 public interest, Plaintiff seeks the recovery of attorneys' fees pursuant to Code of Civil
11 Procedure § 1021.5, which is available to a prevailing plaintiff who wins relief for the general
12 public.

(Violation of Consumers Legal Remedies Act Against Defendants)

58. California Civil Code § 1750 *et seq.* (entitled the Consumers Legal Remedies Act) provides a list of “unfair or deceptive” practices in a “transaction” relating to the sale of “goods” or “services” to a “consumer.” The Legislature’s intent in promulgating the Consumers Legal Remedies Act is expressed in Civil Code § 1760, which provides, *inter alia*, that its terms are to be:

59. Defendants' products constituted "goods" as defined in Civil Code § 1761(a).

-14-

1 § 1761(d).

2 61. Plaintiff's purchase of Defendants' Vodka constituted a "transaction" as defined
3 in Civil Code § 1761(e).

4 62. Civil Code § 1770(a)(5) prohibits a defendant from "[r]epresenting that goods or
5 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities
6 which they do not have or that a person has a sponsorship, approval, status, affiliation, or
7 connection which he or she does not have."

8 63. Civil Code § 1770(a)(7) also prohibits a defendant from "[r]epresenting that
9 goods or services are of a particular standard, quality, or grade, or that goods are of a particular
10 style or model, if they are of another."

11 64. Defendants violated Civil Code § 1770(a)(5) and (7) by marketing and
12 representing that their Vodka products are "Handmade" when they are actually: (1) made from
13 commercially manufactured NGS that is trucked and pumped into TITO's industrial facility; (2)
14 distilled in a large industrial complex with modern, technologically advanced stills; and (3)
15 produced and bottled in extremely large quantities (i.e., it is "mass produced") such that there is
16 nothing "Handmade" about the Vodka.

17 65. It is alleged on information and belief that Defendants' violation(s) of the
18 Consumer Legal Remedies Act set forth herein was done with awareness of the fact that the
19 conduct alleged was wrongful and was motivated solely for increased profit. It is also alleged on
20 information and belief that Defendants did these acts knowing the harm that would result to
21 Plaintiff and Class Members and that Defendants did these acts notwithstanding that knowledge.

22 66. Plaintiff provided a notice to TITO'S pursuant to the Consumer Legal Remedies
23 Act. Plaintiff and Class Members, however, are not seeking actual and/or statutory damages
24 against TITO's pursuant to Civil Code § 1780.

25 67. As a direct and proximate result of Defendants' violations of the Consumers Legal
26 Remedies Act, Plaintiff and Class members are entitled to the following remedies: (a) a
27 declaration that Defendants violated the Consumers Legal Remedies Act; and (b) an injunction
28

1 preventing Defendants' unlawful actions.

2 68. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by
3 Defendants as a result of Defendants' false "Handmade" claims set forth on its Vodka.
4 Furthermore, he suffered an "injury in fact" by paying for a Vodka product that he believed was
5 genuinely "Handmade," when it was not.

6 69. Plaintiff is filing an Affidavit of Venue along with this Complaint to be in
7 compliance with the requirement set forth in Civil Code § 1780(d).

8 **FOURTH CAUSE OF ACTION**

9 **(For Negligent Misrepresentation Against All Defendants)**

10 70. Plaintiff realleges and incorporates herein by reference all of the allegations
11 contained in Paragraphs 1 through 69, inclusive, of this complaint as though fully set forth
12 herein.

13 71. During the relevant statutory time period, Defendants made false "Handmade"
14 representations to Plaintiff and Class Members as it pertains to the sale of their Vodka.

15 72. The representation that Defendants' Vodka was "Handmade" was false. The true
16 facts are that the Vodka is: (1) made from commercially manufactured NGS that is trucked and
17 pumped into TITO's industrial facility; (2) distilled in a large industrial complex with modern,
18 technologically advanced stills; and (3) produced and bottled in extremely large quantities (i.e., it
19 is "mass produced").

20 73. When Defendants made the representations set forth above, they had no
21 reasonable grounds for believing them to be true.

22 74. Defendants made the representations with the intention of inducing Plaintiff and
23 Class Members to act in reliance upon these representations in the manner hereafter alleged, or
24 with the expectation that they would so act.

25 75. Plaintiff and Class Members, at the time the representations were made by
26 Defendants, and at the time Defendants took the actions herein alleged, were ignorant of the
27 falsity of the representations and believed them to be true. In reliance on these representations,
28

1 Plaintiff and Class Members were induced to and did pay monies to purchase Defendants'
2 Vodka.

3 76. Had Plaintiff and Class Members known the actual facts, they would not have
4 taken such action. Furthermore, Plaintiff and other California consumers had no reason to
5 believe that Defendants would act otherwise than as to rely on the "Handmade" representation.

6 77. Without knowledge, Plaintiff and Class Members acted on the false "Handmade"
7 representation and purchased the Vodka products they did not truly want (in hindsight). Had
8 Plaintiff and Class Members known the actual facts, they would not have taken such action.

9 78. As a proximate result of the fraudulent conduct of Defendants as herein alleged,
10 Plaintiff and Class Members paid monies to Defendants, through Defendants' regular retail sales
11 channels, to which Defendants are not entitled, and have been damaged in an amount to be
12 proven at trial.

13 79. Plaintiff and Class Members seek the recovery of a large portion of their purchase
14 monies, plus prejudgment interest, and reasonable attorneys' fees (pursuant to Code of Civil
15 Procedure § 1021.5) and costs as will be determined at time of trial. The specific amount of
16 Class Members' recovery is the realm of expert testimony and will be established at trial.

17 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, as follows:

18 **PRAYER**

19 1. For a judgment declaring this action to be a proper class action;

20 2. A declaration that Defendants violated the provisions of California Business &
21 Professions Code § 17200 *et seq.*;

22 3. A declaration that Defendants violated the provisions of California Business &
23 Professions Code § 17500 *et seq.*;

24 4. A declaration that Defendants violated Civil Code § 1750 *et seq.*;

25 5. Pursuant to Business & Professions Code § 17204 and pursuant to the equitable
26 powers of this Court, a judgment enjoining Defendants, their subsidiaries, affiliates, and their
27 successors, agents, servants, officer, directors, employees, and all persons, acting in concert with
28

1 them, directly or indirectly, from engaging in conduct violative of Business & Professions Code
2 § 17200 *et seq.* as more fully described above;

3 6. Pursuant to Business & Professions Code § 17204, a judgment requiring
4 Defendants to provide restitution to compensate, and to restore all persons in interest, including
5 all Class Members, with all monies acquired by means of Defendants' unfair competition,
6 including a refund of the monies Class Members paid to purchase the offending Vodka plus sales
7 taxes;

8 7. Plaintiff and each of the other members of the Class recover the amounts by
9 which Defendants have been unjustly enriched;

10 8. Plaintiff's reasonable attorneys' fees as it relates to all causes of action pursuant
11 to Code of Civil Procedure § 1021.5;

12 9. For costs of suit incurred herein;

13 10. For prejudgment interest as allowed by law; and

14 11. For such other and further relief as this Court finds just, equitable and proper,
15 including, but not limited to, the remedy of disgorgement.

16 Dated: September 30, 2014

DEL MAR LAW GROUP, LLP

17
18 By: /s/John H. Donboli

John H. Donboli

19 JL Sean Slattery

20 Attorneys for: GARY HOFMANN, an
individual and on behalf of all others similarly
21 situated
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) John H. Donboli (SBN: 205218) JL Scan Slattery (SBN: 210965) DEL MAR LAW GROUP, LLP 12250 El Camino Real, Ste. 120, San Diego, CA 92130 TELEPHONE NO: (858) 793-6244 FAX NO: (858) 793-6005 ATTORNEY FOR (Name): Plaintiff Gary Hofmann		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 09/15/2014 at 03:05:13 PM Clerk of the Superior Court By Andrea Santiago, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central		
CASE NAME: HOFMANN v. FIFTH DIMENSION, INC.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	CASE NUMBER: 37-2014-00031150-CU-NP-CTL
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT: Judge Eddie C Sturgeon

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

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/D/W/D (23) Non-PIP/D/W/D (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/D/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <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) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <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)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <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) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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 type="checkbox"/> Large number of witnesses |
| b. <input 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 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): Four
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: September 15, 2014

John H. Donboli

(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.

Page 1 of 2

CM-010

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	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)	Claims Involving Mass Tort (40)
	Negligent Breach of Contract/Warranty	Securities Litigation (26)
Other PI/PD/AWD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Asbestos (04)	Collections (e.g., money owed, open book accounts) (09)	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Asbestos Property Damage	Collection Case—Seller Plaintiff	Enforcement of Judgment
Asbestos Personal Injury/Wrongful Death	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Product Liability (not asbestos or toxic/environmental) (24)	Insurance Coverage (not provisionally complex) (18)	Abstract of Judgment (Out of County)
Medical Malpractice (45)	Auto Subrogation	Confession of Judgment (non-domestic relations)
Medical Malpractice—Physicians & Surgeons	Other Coverage	Sister State Judgment
Other Professional Health Care Malpractice	Other Contract (37)	Administrative Agency Award (not unpaid taxes)
Other PI/PD/AWD (23)	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Premises Liability (e.g., slip and fall)	Other Contract Dispute	Other Enforcement of Judgment Case
Intentional Bodily Injury/PD/AWD (e.g., assault, vandalism)	Real Property	Miscellaneous Civil Complaint
Intentional Infliction of Emotional Distress	Eminent Domain/Inverse Condemnation (14)	RICO (27)
Negligent Infliction of Emotional Distress	Wrongful Eviction (33)	Other Complaint (not specified above) (42)
Other PI/PD/AWD	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
Non-PI/PD/AWD (Other) Tort	Writ of Possession of Real Property	Injunctive Relief Only (non-harassment)
Business Tort/Unfair Business Practice (07)	Mortgage Foreclosure	Mechanics Lien
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Quiet Title	Other Commercial Complaint Case (non-tort/non-complex)
Defamation (e.g., slander, libel) (13)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Other Civil Complaint (non-tort/non-complex)
Fraud (16)	Unlawful Detainer	Miscellaneous Civil Petition
Intellectual Property (19)	Commercial (31)	Partnership and Corporate Governance (21)
Professional Negligence (25)	Residential (32)	Other Petition (not specified above) (43)
Legal Malpractice	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Civil Harassment
Other Professional Malpractice (not medical or legal)	Judicial Review	Workplace Violence
Other Non-PI/PD/AWD Tort (35)	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Employment	Petition Re: Arbitration Award (11)	Election Contest
Wrongful Termination (36)	Writ of Mandate (02)	Petition for Name Change
Other Employment (15)	Writ—Administrative Mandamus	Petition for Relief From Late Claim
	Writ—Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

1 JOHN H. DONBOLI (SBN: 205218)
2 JL SEAN SLATTERY (SBN: 210965)
3 DEL MAR LAW GROUP, LLP
4 12250 El Camino Real, Suite 120
San Diego, CA 92130
Telephone: (858) 793-6244
Facsimile: (858) 793-6005

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/15/2014 at 03:05:13 PM
Clerk of the Superior Court
By Andrea Santiago, Deputy Clerk

5 Attorneys for Plaintiff: GARY HOFMANN,
6 an individual and on behalf of all others similarly situated

8 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO

10 GARY HOFMANN, an individual and on
11 behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 FIFTH GENERATION, INC., a Texas
15 corporation; and DOES 1 through 100,
inclusive,

16 Defendants.
17
18

CASE NO. 37-2014-00031150-CU-NP-CTL

CLASS ACTION

AFFIDAVIT OF VENUE

19
20 I, Gary Hofmann, declare as follows:

21 1. I am an individual residing in San Diego County. I am the proposed class
22 representative in the above-captioned litigation matter. I have personal knowledge of all matters
23 set forth herein and could competently testify thereto if called to do so at the time of any hearing
24 or trial in this case, except as to those matters averred on information and belief, which I believe
25 to be true. This affidavit is provided in support of what I understand to be statutory requirements
26 under California law (i.e., California Civil Code § 1780(c)).

27 2. The transaction that forms the basis of this action (i.e., my purchase of Tito's
28

1 Handmade Vodka) occurred in San Diego County. This transaction occurred in August 2014.

2 3. The class action Complaint, which I authorized to be filed, contains a cause of
3 action for violation of the Consumers Legal Remedies Act as against defendant Fifth Generation,
4 Inc. and DOES 1 through 100.

5 4. As per the foregoing assertions, this cause of action has been commenced in the
6 proper county or judicial district for trial, which is San Diego County.

7 I declare under penalty of perjury pursuant to the laws of California that the foregoing is
8 true and correct and that this declaration was executed on September 4, 2014, at San Diego,
9 California.

10
11 
12 Gary Hofmann, Plaintiff



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2014-00031150-CU-NP-CTL CASE TITLE:

Gary Hofmann vs. Fifth Dimension Inc [E-FILE]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Gary Hofmann	
DEFENDANT(S): Fifth Dimension Inc	
SHORT TITLE: GARY HOFMANN VS. FIFTH DIMENSION INC [E-FILE]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2014-00031150-CU-NP-CTL

Judge: Eddle C Sturgeon

Department: C-67

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral. (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only). _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets

It is the duty of the parties to notify the court of any settlement pursuant to Cal Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court

IT IS SO ORDERED.

Dated: 09/16/2014

JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7067	
PLAINTIFF(S) / PETITIONER(S): Gary Hofmann	
DEFENDANT(S) / RESPONDENT(S): Fifth Dimension Inc	
GARY HOFMANN VS. FIFTH DIMENSION INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2014-00031150-CU-NP-CTL

CASE ASSIGNMENT

Judge: Eddie C Sturgeon

Department: C-67

COMPLAINT/PETITION FILED: 09/15/2014

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	02/20/2015	08:35 am	C-07	

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order 051414 at www.sdcourt.ca.gov for guidelines and procedures.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

Notice to Filer

Pursuant to California Rules of Court ("CRC"), rules 2.250 et seq., Code of Civil Procedure section 1010.6, and San Diego Superior Court General Order: *In re Procedures Regarding Electronically Imaged Court Records, Electronic Filing, and Access to Electronic Court Records*, this case has been designated as a Mandatory eFile case.

All future documents submitted to the court on this case must be filed electronically. **The clerk will not accept or file any documents in paper form that are required to be filed electronically, absent a court order allowing the filing.**

A party may request to be excused from mandatory electronic filing requirements. This request must be in writing and may be made by ex parte application to the judge or department to whom the case is assigned.

Documents for cases ordered to mandatory eFiling can only be filed through the court's electronic service provider (the "Provider"). See www.onelegal.com, for information on how to file electronically.

ELECTRONIC FILING REQUIREMENTS OF THE
SAN DIEGO SUPERIOR COURT – CIVIL DIVISION

These requirements are issued pursuant to California Rules of Court ("CRC", rules 2.250 et seq., Code of Civil Procedure §1010.6, and San Diego Superior Court General Order: In Re Procedures Regarding Electronic Filing.

Effective November 1, 2013, document that are determined to be unacceptable for eFiling by the Court due to eFiling system restrictions or for failure to comply with these requirements will be rejected subject to being allowed to be filed nunc pro tunc to the original submittal date upon ex-parte application to the court and upon good cause shown.

It is the duty of the plaintiff (and cross-complainant) to serve a copy of the General Order of the Presiding Department, Order No. **010214-24A**, and Electronic Filing Requirements of the San Diego Superior Court with the complaint (and cross-complaint).

PERMISSIVE eFILING

Effective March 4, 2013, documents **may be filed electronically** in non-mandated civil cases in the Central Division where either: (1) the case is first initiated on or after March 4, 2013; or (2) the case is already pending as of March 4, 2013 and has been imaged by the court. **Effective June 30, 2014**, documents **may be filed electronically** in non-mandated civil cases in the North County Division where either: (1) the case is first initiated on or after June 30, 2014; or (2) the case is already pending as of June 29, 2014 and has been imaged by the court.

MANDATORY eFILING

The case types that shall be subject to mandatory eFiling are: civil class actions; consolidated and coordinated actions where all cases involved are imaged cases; and actions that are provisionally complex under CRC 3.40 – 3.403 (as set forth in the Civil Case Cover Sheet, Judicial Council form CM-010 – including Construction Defect actions). "Complex cases" included in mandatory eFiling include Antitrust/Trade Regulation, Mass Tort, Environmental/Toxic Tort, and Securities Litigation cases, as well as insurance coverage claims arising from these case types.

Effective **June 2, 2014** Construction Defect and other cases, currently being electronically filed through File&Serve Xpress (fka LexisNexis File&Serve), must be electronically filed through the court's Electronic Filing and Service Provider, One Legal. Documents electronically filed in Construction Defect and other cases prior to **June 2, 2014** will be maintained in the File&Serve Xpress system and can be viewed via a File&Serve Xpress subscription or on the Court's internal CD/JCCP Document viewer kiosk located in the Civil Business Office, Room 225 of the Hall of Justice (2nd floor).

For cases of the type subject to mandatory eFiling that are initiated on or after March 4, 2013, all documents **must be filed electronically**, subject to the exceptions set forth below. All documents electronically filed in a mandatory eFile Construction Defect / JCCP case must be electronically served on all parties in the case pursuant to CRC 2.251(c).

The court will maintain and make available an official electronic service list in Construction Defect / JCCP cases through One Legal. This is the service list that the court will use to serve documents on the parties. (See CRC 2.251(d).) It is the responsibility of the parties to provide One Legal their correct contact information for the service list in each eFiled case in which they are involved no later than July 7, 2014.

New parties who enter a case must provide One Legal with their electronic service address for that case within 7 days of joining the case. All parties must notify One Legal of any changes to that address, within 7 days of the change, should a change occur during the pendency of the action. (See CRC 2.251(f)(1).) Failure to keep the official list updated may result in the court being unable to provide notice to a non-complying party of upcoming hearings, orders, and other proceedings.

For cases of the type subject to mandatory eFiling that are already pending as of March 3, 2013, and provided that the case has been imaged by the court, all documents filed on or after March 4, 2013 **must be filed electronically**, subject to the exceptions set forth below.

A party may request to be excused from mandatory electronic filing and/or service requirements. This request must be in writing and may be made by ex-parte application to the judge or department to whom the case is assigned. The clerk will not accept or file any documents in paper form that are required to be filed electronically, absent a court order allowing the filing.

Self-represented litigants are not required to eFile or electronically serve documents in a mandatory eFile case; however, they may eFile and electronically serve documents if they choose to do so and/or are otherwise ordered to eFile and/or electronically serve documents by the court.

REQUIREMENTS FOR ALL eFILERS

eFile documents can only be filed through the court's Electronic Filing and Service Provider (the "Provider"). See www.onelegal.com.

eFilers must comply with CRC 2.250 – 2.261. Also, all documents electronically filed must be in a text searchable format, i.e., OCR. The court is unable to accept documents that do not comply with these requirements, or documents that include but are not limited to: digitized signatures, fillable forms, or a negative image.

eFilers are required to enter all parties listed on the document being filed, if the party is not already a part of the case. (If the filer is submitting a new complaint, ALL parties must be entered.) If all parties are not entered, the transaction will be rejected.

Documents that contain exhibits must be bookmarked, as set forth on the Provider's site. Documents not so bookmarked are subject to rejection. Moving papers with exhibits that are not bookmarked will be rejected. (See CRC 3.1110(f) with bookmarking being the substitute for plastic tabs in electronically filed documents.)

Exhibits to be considered via a Notice of Lodgment shall not be attached to the electronically filed Notice of Lodgment; instead, the submitting party must provide the assigned department with hard copies of the exhibits with a copy of the Notice of Lodgment that includes the eFiling Transaction ID # noted in the upper right hand corner.

All documents must be uploaded as individual documents within the same transaction, unless filing a Motion. [Example: A Request to Waive Court Fees must be uploaded separately from the document to which it applies, i.e. complaint, answer or other responsive pleading, motion, etc...] If filing a notice of motion, all documents can be scanned and uploaded as one document under a filing that most closely captures the type of motion. All filings and exhibits within these filings must be bookmarked.

Unless otherwise required by law, per CRC 1.20(b) only the last four digits of a social security or financial account number may be reflected in court case filings. Exclusion or redaction is the responsibility of the filer, not the clerk, CRC 1.20(b)(3). Failure to comply with this requirement may result in monetary sanctions, CRC 2.30(b).

Proposed filings, such as proposed court orders and amended complaints, should be submitted as an exhibit and then re-submitted as a separate and new eFiling transaction after the Court has ruled on the matter to which the proposed document applies. See also CRC 3.1312.

Any document filed electronically shall be considered as filed with the Clerk of the Superior Court when it is first transmitted to the vendor and the transmission is completed, except that any document filed on a day that the court is not open for business, or after 5:00 p.m. (Pacific Time) on a day the court is open for business, **shall be deemed to have been filed on the next court day.**

Electronically filed documents must be correctly named and/or categorized by Document Type. The lead document must also be designated appropriately, as the lead document determines how the transaction will be prioritized in the work queue. Failure to correctly name the document and/or designate the lead document appropriately may result in a detrimental delay in processing of the transaction.

Please be advised that you must schedule a motion hearing date directly with the Independent Calendar Department. A motion filed without an appointment, even when a conformed copy of the filing is provided by the court, is not scheduled and the hearing will not occur.

If a hearing is set within 2 court days of the time documents are electronically filed, litigant(s) must provide hard copies of the documents to the court. Transaction ID numbers must be noted on the documents to the extent it is feasible to do so. Hard copies for Ex Parte hearings must be delivered directly to the department on or before 12 Noon the court day immediately preceding the hearing date.

An original of all documents filed electronically, including original signatures, shall be maintained by the party filing the document, pursuant to CRC 2.257.

DOCUMENTS INELIGIBLE FOR ELECTRONIC FILING

The following documents are **not eligible for eFiling** in cases subject to either mandatory or permissive filing, and shall be filed in paper form:

- Safe at Home Name Change Petitions
- Civil Harassment TRO / RO
- Workplace Violence TRO / RO
- Elder Abuse TRO / RO
- Transitional Housing Program Misconduct TRO / RO
- School Violence Prevention TRO / RO
- Out-of-State Commission Subpoena
- Undertaking / Surety Bonds
- Request for Payment of Trust Funds
- Notice of Appeal of Labor Commissioner
- Abstracts
- Warrants
- Settlement Conference Briefs (to be lodged)
- Confidential documents lodged conditionally under seal
- Interpleader actions pursuant to CC §2924j

The following documents **may be filed in paper form**, unless the court expressly directs otherwise:

- Documents filed under seal or provisionally under seal pursuant to CRC 2.551 (although the motion to file under seal itself must be electronically filed)
- Exhibits to declarations that are real objects, i.e. construction materials, core samples, etc. or other documents, i.e. plans, manuals, etc., which otherwise may not be comprehensibly viewed in an electronic format may be filed in paper form

DOCUMENTS DISPLAYED ON THE PUBLIC-FACING REGISTER OF ACTIONS

Any documents submitted for eFiling (and accepted) will be filed and displayed on the San Diego Superior Court's public-facing Register of Actions with the exception of the following documents:

- CASp Inspection Report
- Confidential Cover Sheet False Claims Action
- Confidential Statement of Debtor's Social Security Number
- Financial Statement
- Request for Accommodations by Persons with Disabilities and Court's Response
- Defendant/Respondent Information for Order Appointing Attorney Under Service Members Civil Relief Act
- Request to Waive Court Fees
- Request to Waive Additional Court Fees

Documents not included in the list above, that are intended to be kept confidential, should NOT be eFiled with the court.

F I L E D
Clark of the Superior Court

MAY 14 2014

By: ELAINE SABLAN, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

IN RE PROCEDURES REGARDING
ELECTRONIC FILING

GENERAL ORDER OF THE
PRESIDING DEPARTMENT

ORDER NO. 051414

THIS COURT FINDS AND ORDERS AS FOLLOWS:

On August 1, 2011, the San Diego Superior Court ("court") began an Electronic Filing and Imaging Pilot Program ("Program") designed to reduce paper filings and storage, facilitate electronic access to civil court files and, in Phase Two, allow remote electronic filing ("E-File" or "E-Filing") of papers in civil cases. The ultimate goal of the Program is to create a paperless or electronic file in all civil cases, as well as in other case categories.

Phase One of the Program, described in General Order: *In re Procedures Regarding Electronically Imaged Court Records, Electronic Filing, and Access to Electronic Court Records*, involved the court's scanning of papers in newly filed cases in designated divisions and departments (the "Imaging Project"). Phase Two of the Program involved the implementation of electronic filing by counsel and parties through the court's E-File Service Provider, One Legal. Electronic filing under Phase Two of the Program was limited to the Central Civil Division only and it excluded Probate and

1 Construction Defect Cases. Electronic filing under Phase Three of the Program
2 expanded electronic filing to include permissive electronic filing in Probate cases.
3 Electronic Filing under Phase Four of the Program expanded electronic filing to include
4 **mandatory** E-Filing in Construction Defect Cases in the Central Division through the
5 court's E-File Service Provider. Effective **June 2, 2014**, mandatory electronic filing
6 through the court E-File Service Provider, One Legal, will be required for all
7 Construction Defect Cases, including those currently being filed through File&Serve
8 Xpress (fka LexisNexis File&Serve). As of **5:01 p.m. on May 30, 2014**, no documents
9 will be allowed to be filed through File&Serve Xpress.

10 Phase Five of the program expands electronic filing to include permissive E-
11 Filing in Civil cases in the North County Division through the court's E-File Service
12 Provider effective June 30, 2014. This General Order relates to Phase Five, and
13 supplements General Orders: *In re Procedures Regarding Electronically Imaged Court*
14 *Records, Electronic Filing, and Access to Electronic Court Records*. Further information
15 on these initiatives can be found on the court's website at www.sdcourt.ca.gov.

16 Filing and service of documents by electronic means is governed by Code of Civil
17 Procedure section 1010.6 and California Rules of Court ("CRC"), rules 2.250 et seq.
18 and CRC 2.30. In addition, the San Diego Superior Court's specific requirements for E-
19 filing are available on the court's website at www.sdcourt.ca.gov. Litigants and
20 attorneys electronically filing documents must comply with all applicable rules and
21 requirements.

22 **GENERAL E-FILING REQUIREMENTS:**

23 Documents can only be electronically filed through the court's electronic service
24 provider (the "Provider"). E-file Provider information is available on the court's website.

25 Any document filed electronically shall be considered as filed with the Clerk of
26 the Superior Court when it is first transmitted to the Provider and the transmission is
27 completed, except that any document filed on a day that the court is not open for
28 business, or after 5:00 p.m. (Pacific Time) on a day the court is open for business, shall

1 be deemed to have been filed on the next court day.

2 Additional and more specific information on electronic filing can be found on the
3 court's website.

4 This Order shall expire on December 31, 2014, unless otherwise ordered by this
5 court.

6 IT IS SO ORDERED.

7
8 Dated: May 14, 2014


DAVID J. DANIELSEN
PRESIDING JUDGE

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19 Attorneys for Defendant Fifth
20 Generation, Inc.

21 UNITED STATES DISTRICT COURT
22 SOUTHERN DISTRICT OF CALIFORNIA

23 GARY HOFMANN,

24 Plaintiff,

25 v.

26 FIFTH GENERATION, INC., a Texas
27 corporation; and DOES 1 through 100,
28 inclusive,

Defendants.

CASE NO.: '14CV2569 JM JLB

DECLARATION OF KATHERINE
WHITE IN SUPPORT OF
NOTICE OF REMOVAL BY
DEFENDANT FIFTH GENERATION,
INC.

Action filed: Sept. 30, 2014
Trial date: none set

DECLARATION OF KATHERINE WHITE

I, Katherine White, declare and state:

1. Unless stated on information and belief, I have personal knowledge of the facts stated herein or personal knowledge of the relevant business records and, if called and sworn as a witness, I could testify completely with respect to these matters.

2. I am currently employed by Fifth Generation, Inc. ("Fifth Generation") as an Accounting and Order Fulfillment Specialist. I have been in this position since December 2013.

3. Fifth Generation is a Texas corporation, with its principal place of business and headquarters in Austin, Texas. Fifth Generation's executive officers and senior management team and its corporate officers work out of the Texas headquarters and executive offices. Fifth Generation's corporate policies and procedures are set by its officers at the Texas offices, meetings of its board of directors are held in Texas, and the company's corporate records, including the corporate minutes, are maintained at its Texas offices. Further, Fifth Generation's production facilities are all in Austin, Texas. All Tito's Handmade Vodka products are packaged and shipped from the production facilities in Austin Texas.

4. I have reviewed the ordering and sales information for Tito's Handmade Vodka products for the past four (4) years. In that time, more than 100,000 cases of product have been shipped to various locations in the United States for retail sale, including outside of Texas, which corresponds to more than 1 million one liter bottles. Fifth Generation itself has no records identifying individual consumers who purchase Tito's Handmade Vodka products at retail, but based upon this number of cases, I am confident that more than 100 individuals have purchased Tito's Handmade Vodka products over the past four years. If there were 100 or less persons in the putative class, every putative class member would have had to purchase on average more than 10,000 bottles of vodka (each).

Katherine White
Katherine White

CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Gary Hofmann

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

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

John H. Donboli & JL Sean Slattery
DEL MAR LAW GROUP LLP
12250 El Camino Real, Ste 120, San Diego, CA 92130
Tel: (858) 793-6244

DEFENDANTS

Fifth Generation, Inc.

'14CV2569 JM JLBCounty of Residence of First Listed Defendant Travis County, Texas

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Ricky L. Shackelford, GREENBERG TRAURIG LLP, 1840 Century
Park East, Ste 1900, Los Angeles, CA 90067 Tel: (310) 586-7700
Michelle C. Doolin, COOLEY LLP, 4401 Eastgate Mall, San Diego, CA
92121 Tel: (858) 550-6000

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
- ☒ 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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

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, 1441, and 1453; 28:1331 - Federal Question

Brief description of cause:

Alleged violations of Cal. Bus. & Prof. Code §§ 17200 and 17500, Cal. Civ. Code § 1750, and a claim for negligent misrepresentation.**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$ Unspecified

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

10/28/2014

SIGNATURE OF ATTORNEY OF RECORD

/s/Michelle C. Doolin

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____