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8 **UNITED STATES DISTRICT COURT**
 9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 MICHEL CHAHINI, an individual; on
 11 behalf of himself and all others similarly
 12 situated, and ROES 1 through 100,
 inclusive,

13 Plaintiffs,

14 vs.

15 HAZE TOBACCO, LLC, a Texas
 Corporation; and DOES 1 through 100,
 16 inclusive;

17 Defendants.

Case No.: '16CV1922 LAB RBB

**DEFENDANT'S NOTICE OF
 REMOVAL OF ACTION TO THE
 UNITED STATES DISTRICT
 COURT FOR THE SOUTHERN
 DISTRICT OF CALIFORNIA**

[28 U.S.C. §§ 1332, 1441, and 1446]

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1 **TO THE CLERK OF THE DISTRICT COURT FOR THE SOUTHERN**
2 **DISTRICT OF CALIFORNIA:**

3 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(a), 1332(d),
4 1441, and 1446 Defendant Haze Tobacco, LLC (“Defendant”) hereby removes
5 this action from the Superior Court of the State of California, County of San
6 Diego to the United States District Court for the Southern District of California.

7 The Court has original subject matter jurisdiction because the parties are
8 completely diverse and the amount in controversy exceeds the sum or value of
9 \$75,000, exclusive of interest and costs. See 28 U.S.C. §§ 1332(a). Moreover,
10 the Court has original subject matter jurisdiction under the Class Action Fairness
11 Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d) and 1453. In support of the
12 removal of this action, Defendant alleges as follows:

13 **I. BACKGROUND & ALLEGATIONS**

14 1. On or about July 31, 2015, Plaintiff Michel Chahini (“Plaintiff”)
15 filed a Class Action Complaint for: (1) Violation of the Consumers Legal
16 Remedies Act, Civil Code §1750, et seq.; (2) Violation of the Unfair Competition
17 Law, Business & Professions Code §17200, et seq., entitled “MICHEL CHAHINI,
18 *an individual; on behalf of himself and all others similarly situated, and ROES 1*
19 *through 100, inclusive, Plaintiffs, vs. HAZE TOBACCO, LLC, a Texas*
20 *Corporation; and DOES 1 through 100, inclusive,”* in the Superior Court of
21 California, Count of San Diego, Case No. 37-2015-00025590-CU-BT-CTL
22 (hereinafter, the “Complaint.”) A true and correct copy of the Complaint is
23 attached as **Exhibit A** to the Declaration of Edwin Aiwazian (“Aiwazian Decl.”).

24 2. On or about September 14, 2015, Plaintiff filed his First Amended
25 Complaint (hereinafter, the “FAC.”) A true and correct copy of the FAC is
26 attached as **Exhibit D** to the Aiwazian Decl.

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1 3. On or about May 3, 2016, Plaintiff filed his Second Amended
2 Complaint (hereinafter, the “SAC.”) A true and correct copy of the SAC is
3 attached as **Exhibit DD** to the Aiwazian Decl.

4 4. On May 31, 2016, Defendant filed a demurrer to the SAC and a
5 motion to strike portions of the SAC. The aforementioned challenges to
6 Plaintiff’s SAC are currently pending and scheduled to be heard in the Superior
7 Court of California, County of San Diego on December 16, 2016 at 9:00 a.m.

8 5. Plaintiff filed his Complaint, FAC, and SAC as a putative class
9 action pursuant to California Code of Civil Procedure § 382. Plaintiff, a
10 consumer of tobacco products, seeks to represent the following putative class:

11 All California Citizens who purchased, for consumption, Haze’s flavored
12 tobacco products since July 27, 2011. (Aiwazian Decl., Exhibit DD, ¶ 22.)

13 6. Plaintiff alleges that Defendant has engaged in “deceitful
14 misrepresentations and omissions regarding the amount of Nicotine in its flavored
15 tobacco, and . . . that its products were made in the United States.” (Aiwazian
16 Decl., Exhibit DD, ¶ 1.)

17 7. This lawsuit is a civil action within the meaning of Acts of Congress
18 relating to removal of class actions. *See* 28 U.S.C. §§ 1453.

19 **II. PROCEEDINGS IN STATE COURT**

20 8. Attached as Exhibits A through QQ to the accompanying Declaration
21 of Edwin Aiwazian are all pleadings in the Superior Court’s record that have
22 been served on Defendant, filed by Defendant, or retrieved from the Court’s
23 records prior to the filing of this Notice of Removal.

24 **III. TIMELINESS OF REMOVAL**

25 9. The removal statute provides that “if the case stated by the initial
26 pleading is not removable, a notice of removal may be filed within thirty days
27 after receipt by the defendant, through service or otherwise, of a copy of an
28 amended pleading, motion, **order** or **other paper** from which it may first be

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1 ascertained that the case is one which is or has become removable.” 28 U.S.C. §
2 1446(b)(3)(emphases added).

3 10. This Notice of Removal is timely filed, pursuant to 28 U.S.C. §
4 1446(b) because it is filed within 30 days of the Honorable Eddie C. Sturgeon’s¹
5 order denying Defendant’s Motion to Disqualify Nicholas & Tomasevic LLP. A
6 true and correct copy of the July 8, 2016 Minute Order denying Defendant’s
7 disqualification motion is attached as **Exhibit PP** to the Aiwazian Decl.

8 11. Defendant filed the Motion to Disqualify Nicholas & Tomasevic
9 LLP on the ground that Plaintiff was solicited in violation of California Rule of
10 Professional Conduct 1-400. (See Aiwazian Decl., ¶ 30, Exh. CC.) Accordingly,
11 the filing of Plaintiff’s Complaint, FAC, and SAC was improper from inception.

12 12. However, as Defendant’s Motion to Disqualify Nicholas &
13 Tomasevic LLP was denied on July 8, 2016, it is now ascertainable that this
14 action is one which is or has become removable.² See 28 U.S.C. § 1446(b)(3).

15 13. Additionally, it is now ascertainable that this action is one which is
16 or has become removal in light of Plaintiff’s refusal to stipulate that the amount
17 in controversy in this action is not greater than \$5,000,000.00. (See Aiwazian
18 Decl., ¶ 45, Exh. RR.) On July 13, 2016, Defendant’s counsel requested that
19 Plaintiff stipulate that the amount in controversy in this action is not greater than
20 \$5,000,000.00. *Id.* Defendant’s counsel requested a response by July 18, 2016.
21 *Id.* To date, Plaintiff has declined to so stipulate. *Id.*

22 14. Accordingly, Defendant hereby removes this action from the
23 Superior Court of California, County of San Diego within thirty days after receipt
24

25 ¹ Judge Sturgeon sits in Department C-67 of the Superior Court of California,
26 County of San Diego, from which this action is hereby removed.

27 ² The allegations set forth in this Notice of Removal are provided for purposes of
28 removal, only. Defendant, in no way, concedes that Plaintiff’s allegations are
meritorious. Defendant denies that Plaintiff or any putative class member is
entitled to any relief whatsoever and expressly reserves the right to challenge
Plaintiff’s claims and alleged damages at every stage of this case.

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1 of an order or other paper from which it may first be ascertained that this case is
2 one which is or has become removable. 28 U.S.C. § 1446(b)(3).

3 **IV. REMOVAL PURSUANT TO DIVERSITY JURISDICTION**

4 15. This Court has original jurisdiction of this action under 28 U.S.C. §
5 1332(a). As such, removal is proper pursuant to 28 U.S.C. §§ 1441, 1446, and
6 1453. As set forth, *infra*, this Court has original jurisdiction because the
7 aggregate amount in controversy exceeds \$ 75,000 exclusive of interest and costs,
8 the there is complete diversity amongst the parties. 28 U.S.C. § 1332(a).

9 **A. Diversity of Citizenship Exists**

10 16. In an action brought in accordance with 28 U.S.C. § 1332(a), the
11 named plaintiff and the defendants must be citizens of different states. The
12 citizenship of the putative class members is of no consequence to this diversity
13 analysis. *Snyder v. Harris*, 394 U.S. 332 (1969), *superseded by statute as stated*
14 *in Lowery v. Alabama Power Co.*, 483 F.3d 1184 (11th Cir. 2007).

15 17. For purposes of determining diversity, a person is a “citizen” of the
16 state in which he or she is domiciled. *Kantor v. Wellesley Galleries, Inc.*, 704
17 F.2d 1088, 1090 (9th Cir. 1983). Residence is *prima facie* evidence of domicile.
18 *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994).
19 Evidence of continuing residence creates a presumption of domicile. *Washington*
20 *v. Havensa LLC*, 652 F.3d 340, 345 (3d Cir. 2011). Citizenship is determined by
21 the individual’s domicile at the time that the lawsuit is filed. *Armstrong v.*
22 *Church of Scientology Int’l*, 243 F.3d 546, 546 (9th Cir. 2000) (citing *Lew v.*
23 *Moss*, 797 F.2d 747, 750 (9th Cir. 1986)).

24 18. Plaintiff alleges that he resides, and continues to reside, in San Diego
25 County, California. (Aiwazian Decl., Exh. DD, ¶ 12). Accordingly, Plaintiff is a
26 citizen of California.

27 19. Defendant is, and was at the time of the filing of this action, a citizen
28 of a state other than California. For purposes of diversity jurisdiction, a limited

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1 liability company (“LLC”) is a citizen of “every state of which its
2 owners/members are citizens.” *Johnson v. Columbia Props. Anchorage, LP*, 437
3 F.3d 894, 899 (9th Cir. 2006).

4 20. Defendant is, and was at the time of the inception of this civil action,
5 a citizen of Texas. Defendant’s sole owner resides in, and is a citizen of, Texas.
6 (Declaration of Danny Ahmad in Support of Defendant’s Notice of Removal
7 [“Ahmad Decl.”], ¶ 4). Additionally, Defendant’s principal place of business is
8 in Texas, and Defendant’s State of formation is Texas. (Ahmad Decl., ¶ 3).

9 21. Pursuant to 28 U.S.C. § 1441(b), the residence of fictitious and
10 unknown defendants shall be disregarded for purposes of establishing removal
11 jurisdiction under 28 U.S.C. § 1332. *See also Fristoe v. Reynolds Metals Co.*,
12 615 F.2d 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join
13 in a removal petition). Thus, the inclusion of “Doe” defendants does not deprive
14 this Court of jurisdiction.

15 **B. The Amount-in-Controversy Requirement is Satisfied**

16 22. Diversity jurisdiction may only be exercised where the amount in
17 controversy exceeds \$75,000 exclusive of interest and costs. 28 U.S.C. §
18 1332(a).

19 23. Defendant’s notice of removal need include only a plausible
20 allegation that the amount in controversy exceeds the jurisdictional threshold.
21 *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014).

22 24. Plaintiff prays for “injunctive relief . . . enjoining Defendants from
23 continuing the unlawful, unfair, and deceptive practices . . .” (Aiwazian Decl.,
24 Exh. DD, Prayer for Relief, ¶ 4.) In particular, Plaintiff has requested that
25 Defendant “[d]estroy all misleading and deceptive advertising materials and
26 products.” (Aiwazian Decl., Exh. DD, Complaint, Exh. A.)

27 25. “In actions seeking declaratory or injunctive relief, it is well
28 established that the amount in controversy is measured by the value of the object

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1 of the litigation.” *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002). In
 2 calculating the value of an injunction, the amount in controversy is satisfied if
 3 either party can gain or lose the jurisdictional amount. *See In re Ford Motor Co.*,
 4 264 F.3d 952, 958 (9th Cir. 2001). Here, the costs to Defendant of complying
 5 with *just one type* of injunctive relief requested by Plaintiff would, alone, surpass
 6 the \$75,000 threshold.

7 26. Defendant’s tobacco products are packaged in tin cans, purchased in
 8 bulk, with nicotine content printed directly on the can. (Declaration of Patrick
 9 Biglarians in Support of Defendant’s Notice of Removal [“Biglarians Decl.”], ¶
 10 4). Currently, Defendant’s inventory includes 243,561 tin cans already bearing
 11 nicotine content that may ultimately be sold to distributors in the State of
 12 California. *Id.* It would cost Defendant \$ **125,657.68** to replace this form of
 13 packaging. *Id.*

14 27. Accordingly, the amount in controversy is at least \$ **125,657.68**,
 15 *exclusive of all other forms of relief sought by Plaintiff*, including, but not limited
 16 to: other types of injunctive relief, “damages”; “restitution and disgorgement of
 17 Defendant’s ill-gotten gains”; “attorneys’ fees, interest, and costs.” (Aiwazian
 18 Decl., Exh. DD, Prayer for Relief, ¶¶ 2, 3, 6). Notably, attorneys’ fees are
 19 properly considered in the amount in controversy where the underlying statute
 20 authorizes an award of fees. *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994,
 21 1000 (9th Cir. 2007) *overruled on other grounds by Standard Fire Ins. Co. v.*
 22 *Knowles*, 133 S.Ct. 1345 (2013).

23 **V. REMOVAL UNDER THE CLASS ACTION FAIRNESS ACT**

24 28. Additionally, this Court has original jurisdiction of this action under
 25 the CAFA. As such, removal is proper pursuant to 28 U.S.C. §§ 1441, 1446, and
 26 1453. As set forth, *infra*, this Court has original jurisdiction because the
 27 aggregate amount in controversy exceeds \$5,000,000 exclusive of interest and
 28 costs, the action is a class action in which at least one class member is a citizen of

1 a state different from that of Defendant, and the number of putative class
2 members is 100 or greater. 28 U.S.C. §§ 1332(d)(2); 1332(d)(5); 1332(d)(6).
3 Further, Defendant is not a State, State official, or other governmental entity.

4 29. Plaintiff brings the instant action as a class action. The operative
5 complaint is identified as a “**CLASS ACTION**.” (See Aiwazian Decl., Exh.
6 DD.) Plaintiff seeks to represent a class of “[a]ll California Citizens who
7 purchased, for consumption, Haze’s flavored tobacco products since July 27,
8 2011.” (Aiwazian Decl., Exhibit DD, ¶ 22.) Accordingly, CAFA applies.

9 **A. Diversity of Citizenship Exists**

10 30. Plaintiff alleges that he resides, and continues to reside, in San Diego
11 County, California. (Aiwazian Decl., Exh. DD, ¶ 12). Accordingly, Plaintiff is a
12 citizen of California.

13 31. Defendant is, and was at the time of the filing of this action, a citizen
14 of a state other than California within the meaning of 28 U.S.C. § 1332(d)(10).
15 For purposes of diversity jurisdiction under the CAFA, a limited liability
16 company (“LLC”) is a “citizen of the State where it has its principal place of
17 business and the State under whose laws it is organized.” 28 U.S.C. §
18 1332(d)(10).

19 32. Defendant is, and was at the time of the inception of this civil action,
20 a citizen of Texas. Defendant’s principal place of business is in Texas. (Ahmad
21 Decl., ¶ 3). Further, Defendant was formed in and under the laws of the State of
22 Texas. *Id.*

23 33. Pursuant to 28 U.S.C. § 1441(b), the residence of fictitious and
24 unknown defendants shall be disregarded for purposes of establishing removal
25 jurisdiction under 28 U.S.C. § 1332. *See also Fristoe v. Reynolds Metals Co.*,
26 615 F.2d 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join
27 in a removal petition). Thus, the inclusion of “Doe” defendants does not deprive
28 this Court of jurisdiction.

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B. The Number of Putative Class Members Exceeds 100

34. Plaintiff seeks to represent a class of “[a]ll California Citizens who purchased, for consumption, Haze’s flavored tobacco products since July 27, 2011.” (Aiwazian Decl., Exhibit DD, ¶ 22.)

35. Plaintiff alleges “that the proposed Class contains many thousands of members.” (Aiwazian Decl., Exhibit DD, ¶ 24.)

36. Upon information and belief, Defendant alleges that the number of putative class members exceeds 100.

C. The Amount-in-Controversy Requirement is Satisfied

37. CAFA requires that the amount in controversy exceed \$5,000,000 exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). Under CAFA, the claims of the individual members in a class action are aggregated to determine if the amount in controversy exceeds the sum or value of \$5,000,000. 28 U.S.C. § 1332(d)(6). Additionally, Congress intended for federal jurisdiction to be appropriate under CAFA “if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (*e.g.*, damages, injunctive relief, or declaratory relief).” Senate Judiciary Committee Report, S. Rep. No. 109-14, at 42 (2005). Further, “if a federal court is uncertain about whether ‘all matters in controversy’ in a purposed class action ‘do not in the aggregate exceed the sum or value of \$5,000,000, the court should err in favor of exercising jurisdiction over the case.” *Id.* at 42-43.

38. Although Plaintiff explicitly alleges that “the total amount in controversy is less than \$5,000,000.00,” the Supreme Court has held that, where there are absent class members, such an allegation or stipulation regarding the amount in controversy is irrelevant for purposes of determining whether CAFA jurisdiction exists. *See Std. Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1350 (U.S. 2013). Further, the Ninth Circuit has held that “the amount-in-controversy

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1 inquiry in the removal context is not confined to the face of the complaint.”
2 *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004).

3 39. Defendant’s notice of removal need include only a plausible
4 allegation that the amount in controversy exceeds the jurisdictional threshold.
5 *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014).

6 40. Plaintiff claims that he “saw and relied on Defendant’s deceptive
7 label when he purchased the Defendant’s Don Fizzle flavored tobacco product.”
8 (Aiwazian Decl., Exh. DD, ¶ 3). Further, Plaintiff alleges that, “[h]ad Plaintiff
9 known the reality of the harm caused by using Defendant’s extra potent flavored
10 tobacco, Plaintiff never would have bought the offending product.” *Id.*

11 41. Plaintiff prays for damages, “restitution and disgorgement of
12 Defendant’s ill-gotten gains to Plaintiff and the proposed Class Members where
13 and when appropriate,” as well as “declaratory and injunctive relief.” (Aiwazian
14 Decl., Exh. DD, Prayer for Relief, ¶¶ 2-4).

15 42. “In actions seeking declaratory or injunctive relief, it is well
16 established that the amount in controversy is measured by the value of the object
17 of the litigation.” *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002). In
18 calculating the value of an injunction, the amount in controversy is satisfied if
19 either party can gain or lose the jurisdictional amount. *See In re Ford Motor Co.*,
20 264 F.3d 952, 958 (9th Cir. 2001).

21 43. Plaintiff requests that the Court “direct[] Defendant to identify, with
22 Court supervision, victims of its conduct and pay them restitution and
23 disgorgement . . .” (Aiwazian Decl., Exh. DD, Prayer for Relief, ¶ 4).

24 44. Plaintiff also requests that, in order to “satisfy the requirements of
25 California Civil Code section 1782(c),” Defendant “[c]onduct a corrective
26 advertising campaign” and “[d]estroy all misleading and deceptive advertising
27 materials and products.” (Aiwazian Decl., Exh. DD, Complaint, Exh. A.).

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1 45. Further, Plaintiff prays for “attorneys’ fees, interest, and costs.”
2 (Aiwazian Decl., Exh. DD, Prayer for Relief, ¶ 6). Notably, attorneys’ fees are
3 properly considered in the amount in controversy where the underlying statute
4 authorizes an award of fees. *Lowdermilk v. U.S. Bank Nat’l Ass’n*, 479 F.3d 994,
5 1000 (9th Cir. 2007) *overruled on other grounds by Standard Fire Ins. Co. v.*
6 *Knowles*, 133 S.Ct. 1345 (2013).

7 46. Upon information and belief, the amount in controversy in the
8 instant action exceeds \$5,000,000 exclusive of interest and costs. (Aiwazian
9 Decl., ¶ 45, Exh. RR.)

10 **VI. VENUE**

11 47. Venue lies in the United States District Court for the Southern
12 District of California pursuant to 28 U.S.C. §§ 1391(a), 1441, 1446(a), and 84(d).
13 This action was originally brought in the San Diego County Superior Court of the
14 State of California. Therefore, venue is proper in the Southern District because it
15 encompasses the county in which this action was filed and has been pending.

16 **VII. SERVICE OF THE NOTICE OF REMOVAL**

17 48. A true and correct copy of this Notice of Removal will be promptly
18 served on Plaintiff and filed with the Clerk of the San Diego County Superior
19 Court of the State of California as required under 28 U.S.C. § 1446(d).

20 **VIII. CONCLUSION**

21 WHEREFORE, Defendant removes this action to the United States District
22 Court for the Southern District of California.

23 Dated: July 29, 2016

LAWYERS for JUSTICE, PC

24 By: /s/ Ashley H. Cruz

25 Ashley H. Cruz

26 *Attorneys for Defendant*

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28

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CIVIL COVER SHEET

16CV1922 LAB RBB

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

MICHEL CHAHINI, an individual; on behalf of himself and all others similarly situated, and ROES 1 through 100, inclusive,

(b) County of Residence of First Listed Plaintiff San Diego County, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Alex Tomasevic; Lacy Wells; NICHOLAS & TOMASEVIC, LLP 225 Broadway, 19th Floor, San Diego, CA 92101 Telephone: (619) 325-0492

DEFENDANTS

HAZE TOBACCO, LLC, a Texas Corporation, and DOES 1 through 100, inclusive

County of Residence of First Listed Defendant Fort Bend 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) Edwin Aiwazian; Ashley H. Cruz; LAWYERS for JUSTICE, PC 410 West Arden Avenue, Suite 203, Glendale, California 91203 Telephone: (818) 265-1020

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

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes rows for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each category contains a list of specific legal claims with checkboxes.

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
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. Sections 1332(a), 1332(d)
Brief description of cause: False Advertising Consumer Class Action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/29/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Ashley H. Cruz

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE
Print Save As... Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

1 **NICHOLAS & TOMASEVIC, LLP**
 2 Craig M. Nicholas (SBN 178444)
 3 Alex Tomasevic (SBN 245598)
 4 Lacy Wells (SBN 306496)
 5 225 Broadway, 19th Floor
 6 San Diego, California 92101
 7 Telephone: (619) 325-0492
 8 Facsimile: (619) 325-0496
 9 Attorneys for Plaintiff
 10 Michel Chahini

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **IN AND FOR THE COUNTY OF SAN DIEGO**

11 MICHAEL CHAHINI, an individual; on
 12 behalf of himself and all others similarly
 13 situated, and ROES 1 through 100, inclusive,
 14 Plaintiffs,
 15 vs.
 16 HAZE TOBACCO, LLC, a Texas limited
 17 liability company; and DOES 1 through 100,
 18 inclusive,
 19 Defendants.

CASE NO.: 37-2015-00025590-CU-BT-CTL

CLASS ACTION

SECOND AMENDED COMPLAINT FOR:

1. **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE §1750, ET SEQ.; AND**
2. **VIOLATION OF THE UNFAIR COMPETITION LAW, BUSINESS & PROFESSIONS CODE §17200, ET SEQ.**

Dept.: C-67
 Judge: Eddie C. Sturgeon

20 Plaintiff Michel Chahini ("Plaintiff"), by and through his attorneys, brings this action on
 21 behalf of himself and all others similarly situated against defendant Haze Tobacco, LLC. ("Haze"
 22 or "Defendant"). Plaintiff alleges, on information and belief, except for information based on
 23 personal knowledge, as follows:

24 **NATURE OF THE ACTION**

25 1. Defendant manufactures, markets, and sells hookah products, including hookahs,
 26 flavored tobacco, and charcoal. Defendant's flavored tobacco contains "Virginia Tobacco,
 27 Honey, Glycerin, [and] Flavor." Defendant's tobacco products also contain, of course, Nicotine,
 28 which is a substance recognized by California to cause cancer and birth defects. At issue here is

1 Defendant's deceitful misrepresentations and omissions regarding the amount of Nicotine in its
2 flavored tobacco, and its misrepresentations that its products were made in the United States.

3 **Misrepresentations Regarding Nicotine Content**

4 2. Specifically, the package label for Haze's "Don Fizzle" flavored tobacco, like other
5 Haze products, represents that the contents contain "nicotine 0.05%." This representation,
6 though, is false and misleading. Haze's flavored tobacco products do not, in fact, contain
7 "nicotine 0.05%," but instead contain *double* that amount. The affirmative representation that
8 Haze's products contain only 0.05% nicotine is demonstrably false. Haze conceals and omits
9 from its marketing materials that its products contain double the stated amount of harmful
10 nicotine in them.

11 3. Plaintiff saw and relied on Defendant's deceptive label when he purchased the
12 Defendant's Don Fizzle flavored tobacco product. Plaintiff purchased and used Defendant's
13 product with the mistaken belief that the product contained only 0.05% of nicotine. Had Plaintiff
14 known the reality of the harm caused by using Defendant's extra potent flavored tobacco, Plaintiff
15 never would have bought the offending product. Plaintiff brings this action on behalf of himself
16 and other similarly situated consumers in California to halt the dissemination of this false and
17 misleading labeling, correct the false and misleading perception it has created in the minds of
18 consumers, and obtain redress for those who have purchased Defendant's flavored tobacco
19 products.

20 **Misrepresentations Regarding Manufacture Origin**

21 4. The American origin of Haze's "Don Fizzle" flavored tobacco was also a
22 significant factor in Plaintiff's decision to purchase the product. Plaintiff is concerned that
23 products of foreign origin are generally less safe or of inferior quality. Plaintiff typically purchases
24 products manufactured in countries with better product quality control, such as Brazil, Canada,
25 Japan or, in this case, the United States. Prior to purchasing Haze's "Don Fizzle" flavored
26 tobacco, Plaintiff knew from the packaging that the product was manufactured in the United
27 States and relied on Defendant's deceptive label when he bought Defendant's flavored tobacco
28 product. Shortly after his purchase, Plaintiff was dismayed to learn that Haze's "Don Fizzle"

1 flavored tobacco was not actually made in the United States, contrary to Defendant's explicit
2 representations.

3 5. Haze's company website still markets its products as "Made in USA Quality
4 Guaranteed" and its Frequently Asked Questions (FAQs) page still states that Haze's products are
5 manufactured in Stafford, Texas. Defendant illegally and unfairly made these misrepresentations
6 to its customers, when in fact the products were made and manufactured in other countries.
7 Consumers, like Plaintiff, relied on these misrepresentations and would not have otherwise
8 purchased Defendants' products absent the false representations, which enabled Defendants to
9 reap windfall profits from the sale of cheaper goods manufactured or made in foreign countries.

10 6. Plaintiff alleges violations of California's Consumer Legal Remedies Act
11 ("CLRA") and California's Unfair Competition Law ("UCL"). By this Complaint, Plaintiff seeks
12 an injunction to halt Defendant's unlawful, unfair, and fraudulent conduct, for money damages
13 and/or restitution to compensate all purchasers for their monetary loss, and disgorgement of all of
14 Defendant's wrongfully earned profits and other gains from the wrongful conduct alleged here.

15 **JURISDICTION AND VENUE**

16 7. This action is within the Court's jurisdiction under California's UCL, Business and
17 Professions Code section 17200 *et seq.*

18 8. The amount in controversy arising from the actions and statutory violations as
19 further described below is sufficient to implicate the general jurisdiction of the Superior Court in
20 and for San Diego County.

21 9. Plaintiff is informed and believes and thereon alleges that the total amount in
22 controversy is less than \$5,000,000.00.

23 10. Venue is proper in this judicial district, pursuant to California Code of Civil
24 Procedure sections 395 and 395.5, Business & Professions Code sections 17203, 17204 and
25 17535, and Civil Code section 1780(c) as Defendant conducts substantial business within San
26 Diego County and many of the acts complained of occurred in the County of San Diego, and
27 Plaintiff specifically purchased Defendant's products in this County.

28 ///

1 11. If new facts are obtained with respect to the amount at issue, Plaintiff will seek
2 leave to amend this Complaint.

3 **PARTIES**

4 12. At all times relevant to this matter, Plaintiff resided and continues to reside in San
5 Diego County, California. During the Class period, Plaintiff purchased Defendant's tobacco
6 product in reliance on its labeling, and suffered injury in fact and lost money as a result of the
7 misrepresentations and unfair competition described here.

8 13. Upon information and belief, Defendant is, and at all times mentioned was, a
9 corporation organized and existing under the laws of Texas with its principal place of business in
10 Stafford, Texas. Defendant develops, markets and sells the hookah tobacco products at issue in
11 this matter throughout San Diego County, the State of California, and online through its website:
12 www.hazetobacco.com

13 14. The true names and capacities of the defendants named here under California Code
14 of Civil Procedure, Section 474 as Does 1 through 100 are presently unknown to Plaintiff, who
15 therefore sues them by such fictitious names. Plaintiff will amend this Complaint to allege the
16 true names and capacities of these defendants when they have been determined. Each of the
17 fictitiously named defendants is responsible in some manner for the conduct alleged here. The
18 Doe defendants are private individuals, associations, partnerships, corporations or institutes who
19 participated in the wrongful conduct alleged here in ways which are unknown to Plaintiff at this
20 time.

21 **ADDITIONAL FACTUAL ALLEGATIONS**

22 15. The Food and Drug Administration (FDA) estimates that tobacco use is the
23 leading preventable cause of disease, disability, and death in the United States, responsible for
24 more than 480,000 deaths each year. Every year, tobacco use contributes to many millions of
25 cases of many types of cancer, heart disease, and chronic lung diseases like emphysema. Like all
26 tobacco products, flavored tobacco products have serious health risks and are not considered safe
27 by the FDA.

28 ///

1 16. The FDA states that “[a]ll tobacco products, including flavored tobacco products
2 are as addictive and carry the same health risks as regular tobacco products.” Additionally, the
3 Center for Disease Control and Prevention studies of youth expectations around other flavored
4 tobacco products like . . . hookahs have found that younger smokers report choosing flavored
5 products over cigarettes because they “taste better” and are perceived to be “safer.” In fact, the
6 FDA has found that between 2011 and 2014, hookah use among high school students doubled.

7 17. According to Defendant’s own sales website, www.hazetobacco.com, “Nicotine is
8 a harmful and addictive substance. The products offered on this site may be associated with
9 tobacco use and subsequent inhaling of tobacco and nicotine.”

10 18. Yet, Defendant still misrepresents the amounts of dangerous nicotine it puts in its
11 tobacco products. Preying on consumers attempting to balance their nicotine addictions with the
12 potential dangerous health problems associated with nicotine use, Defendant actively and
13 affirmatively misrepresents that its products only contain exactly 0.05% nicotine.

14 19. Defendant’s representations that its flavored tobacco products contain 0.05% of
15 nicotine are false and have been used to unfairly deceive legions of consumers into buying
16 Defendant’s products.

17 20. Plaintiff Michel Chahini was misled and lost money as a result. Plaintiff visited a
18 store in San Diego, California in order to purchase flavored tobacco products for his hookah.
19 Plaintiff read Defendant’s flavored tobacco product labeling and the representation that it
20 contained only 0.05% nicotine. He then decided to purchase the flavored product. Subsequently,
21 Plaintiff used this product. At no point did Defendant ever disclose to Plaintiff the true amount of
22 nicotine in its product. Plaintiff relied on Defendant to sell accurately labeled products in
23 conformance with California law. Plaintiff was misled by Defendant’s statements and omissions
24 regarding nicotine content and would not have purchased the Defendant’s flavored products had
25 he not been misled, or if Defendant had adequately disclosed the true facts.

26 ///

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1 21. Plaintiff was exposed to, saw, and relied on Defendant's promises about its
2 flavored tobacco products and purchased Defendant's products in July 2015 in reliance on
3 Defendant's claims and relied on Defendant to disclose all material facts regarding nicotine
4 content.

5 **CLASS ACTION ALLEGATIONS**

6 22. Plaintiff brings this action individually, and as a class action, under California
7 Code of Civil Procedure section 382 and California Civil Code sections 1752, 1780 and 1781.
8 The proposed Class consists of:

9 All California Citizens who purchased, for consumption, Haze's flavored
10 tobacco products since July 27, 2011.

11 23. Subject to additional information obtained through further investigation and
12 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or
13 amended complaint. Specifically excluded from the proposed Class are defendants, their officers,
14 directors, agents, trustees, parents, children, corporations, trusts, representatives, employees,
15 principals, servants, partners, joint venturers, or entities controlled by the defendants, and their
16 heirs, successors, assigns, or other persons or entities related to or affiliated with defendants
17 and/or their officers and/or directors, or any of them; the Judge assigned to this action, and any
18 member of the Judge's immediate family.

19 24. *Numerosity.* The members of the Class are so numerous that their individual
20 joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the
21 proposed Class contains many thousands of members. The precise number of Class members is
22 unknown to Plaintiff. The true number of Class members is known by the Defendant, however,
23 and thus, may be notified of the pendency of this action by first class mail, electronic mail, and by
24 published notice.

25 [rest of page intentionally left blank]
26
27
28

1 25. ***Existence and Predominance of Common Questions of Law and Fact.*** There
2 exists a well-defined community of interest in the questions of law and fact presented by this
3 controversy. Common questions of law and fact exist as to all members of the Class and
4 predominate over any questions affecting only individual Class members. These common legal
5 and factual questions include, but are not limited to, the following:

6 (a) whether the nicotine claims are true, or are misleading, or reasonably likely
7 to deceive;

8 (b) whether Defendant misrepresented the national origin of their products;

9 (c) whether Defendant's alleged conduct violates public policy;

10 (d) whether the alleged conduct constitutes violations of the laws asserted here;

11 (e) whether Defendant engaged in false or misleading advertising;

12 (f) whether Defendant should be permanently enjoined from continuing to sell
13 flavored tobacco products whose nicotine content or national origin is incorrectly represented on
14 packaging;

15 (g) whether Plaintiff and Class members have sustained monetary loss and the
16 proper measure of that loss;

17 (h) whether Plaintiff and Class members are entitled to an award of restitution;

18 and

19 (i) whether Plaintiff and Class members are entitled to declaratory and
20 injunctive relief.

21 26. ***Typicality.*** Plaintiff's claims are typical of the claims of the members of the Class
22 in that the Defendant was unjustly enriched as a result of Plaintiff's and the Class' respective
23 purchases of the Defendant's flavored tobacco products.

24 27. ***Adequacy of Representation.*** Plaintiff will fairly and adequately protect the
25 interests of the members of the Class. Plaintiff has retained counsel highly experienced in
26 complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously.
27 Plaintiff has no adverse or antagonistic interests to those of the Class.

28

1 28. *Superiority* (to the extent required). A class action is superior to all other available
2 means for the fair and efficient adjudication of this controversy. The damages or other financial
3 detriment suffered by individual Class members is relatively small compared to the burden and
4 expense that would be entailed by individual litigation of their claims against the Defendant. It
5 would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress
6 for the wrongs done to them. Furthermore, even if Class members could afford such
7 individualized litigation, the court system could not. Individualized litigation would create the
8 danger of inconsistent or contradictory judgments arising from the same set of facts.
9 Individualized litigation would also increase the delay and expense to all parties and the court
10 system from the issues raised by this action. By contrast, the class action device provides the
11 benefits of adjudication of these issues in a single proceeding, economies of scale, and
12 comprehensive supervision by a single court, and presents no unusual management difficulties
13 under the circumstances here.

14 29. In the alternative, the Class may also be certified because:

15 (a) the prosecution of separate actions by individual Class members would
16 create a risk of inconsistent or varying adjudication with respect to individual Class members that
17 would establish incompatible standards of conduct for the Defendant;

18 (b) the prosecution of separate actions by individual Class members would
19 create a risk of adjudications with respect to them that would, as a practical matter, be dispositive
20 of the interests of other Class members not parties to the adjudications, or substantially impair or
21 impede their ability to protect their interests; and/or

22 (c) Defendant has acted or refused to act on grounds generally applicable to the
23 Class thereby making appropriate final declaratory and/or injunctive relief with respect to the
24 members of the Class as a whole.

25 30. Unless stated otherwise, the claims asserted herein are applicable to all persons
26 who purchased Defendant's hookah tobacco products.

27 31. Adequate notice can be given to Class members directly using information
28 maintained in Defendant's records or through notice by publication.

1 32. Damages may be calculated, in part, from the sales information maintained in
2 Defendant's records, so that the cost of administering a recovery for the Class can be minimized.
3 However, the precise amount of damages available to Plaintiff and the other members of the Class
4 is not a barrier to class certification.

5 33. Plaintiff seeks a preliminary and permanent injunction and equitable relief on
6 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and
7 prevent Defendant from engaging in the acts described, and requiring Defendant to provide full
8 restitution to Plaintiff and Class members.

9 34. Unless a class is certified, Defendant will retain monies received as a result of its
10 conduct that was taken from Plaintiff and proposed Class members. Unless a class-wide
11 injunction is issued, Defendant will continue to commit the violations alleged, and the members
12 of the Class and the general public will continue to be misled.

13 35. Defendant has acted and refused to act on grounds generally applicable to the
14 Class, making appropriate final injunctive relief with respect to the Class as a whole.

15 **FIRST CAUSE OF ACTION**
16 **Violation of Consumers Legal Remedies Act,**
California Civil Code section 1750, et seq.
17 **(On Behalf of Plaintiff and the Class against Defendant)**

18 36. Plaintiff incorporates by reference each and every allegation contained in the
19 paragraphs above as if fully set forth here.

20 37. Plaintiff brings this claim individually and on behalf of the Class.

21 38. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
22 Civil Code, Section 1750, et seq. (the "Act"). Plaintiff is a consumer as defined by Civil Code,
23 Section 1761(d). The flavored tobacco products sold by Defendant are goods within the meaning
24 of the Act.

25 39. Defendant violated and continues to violate the Act by engaging in the following
26 practices proscribed by Section 1770(a):

27 (a) Representing that Haze's flavored tobacco products have less nicotine than
28 they actually do;

1 (b) Representing that Haze's flavored tobacco products have a particular
2 quality which they do not have, namely nicotine of only 0.05%.

3 (c) Advertising Haze's flavored tobacco products with intent not to sell them
4 as advertised; and

5 (d) Representing that Haze's flavored tobacco products have been supplied in
6 accordance with a previous representation when they have not.

7 40. Defendant violated the Act by making the representations and claims for its
8 products as described above when it knew, or should have known, that the representations and
9 advertisements were unsubstantiated, false, and misleading.

10 41. Pursuant to Section 1782 of the Act, Plaintiff notified Defendant in writing by
11 certified mail of the particular violations of Section 1770 of the Act and demanded that Defendant
12 rectify the problems associated with the actions detailed above and to give notice to all affected
13 consumers of its intent to so act. A copy of the letter is attached as **Exhibit A**.

14 42. Pursuant to Section 1782(d) of the Act, Plaintiff and the Class seek a Court order
15 enjoining the above-described wrongful acts and practices.

16 43. Plaintiff has standing to bring an action pursuant to the CLRA on behalf of himself
17 and the Class because Plaintiff and the members of the Class have sustained damages as a result
18 of Defendant's wrongful conduct. Plaintiff is seeking the recovery of monetary damages.
19 Pursuant to Section 1782 of the CLRA, Plaintiff notified Defendant in writing via certified mail
20 (return receipt requested) of the particular violations of the CLRA described more fully above. In
21 that writing, Plaintiff demanded that Defendant rectify the actions described above by, among
22 other things, providing complete cometary relief and agreeing to cease the unlawful business
23 practices alleged in this pleading. As of August 24, 2015, Defendant refused to remedy their
24 violations of the CLRA.

25 44. Defendant's conduct is malicious, fraudulent and wanton, and provides misleading
26 information that can lead to increased consumption of toxic chemicals by consumers.

27 45. Plaintiff has incurred attorneys' fees and costs in connection with the investigation
28 and filing of this Complaint and anticipates incurring additional attorneys' fees and costs in

1 connection with the prosecution of this action. An award of attorneys' fees is, therefore,
2 appropriate pursuant to, among other grounds, Civil Code, Section 1780(d).

3 46. Pursuant to Section 1780(d) of the Act, attached hereto as **Exhibit B** is the
4 affidavit showing that this action has been commenced in the proper forum.

5 **SECOND CAUSE OF ACTION**

6 **Violation of California's Unfair Competition Law,
7 California Business & Professions Code Section 17200, *et seq.*,
(On Behalf of Plaintiff and the Class against Defendant)**

8 47. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above,
9 as if fully set forth here.

10 48. Business & Professions Code Section 17200 prohibits any "unlawful, unfair or
11 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

12 49. Defendant has violated Section 17200's prohibition against engaging in unlawful
13 business acts and practices by actively and affirmatively misrepresenting material facts, as set
14 forth more fully here, and violating, among other statutes, Civil Code, Sections 1572, 1573, 1709,
15 1710, 1711, 1770, Business & Professions Code, Section 17200 *et seq.*

16 50. Plaintiff and the Class reserve the right to allege other violations of law which
17 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to
18 this date

19 51. Defendant's acts, omissions, misrepresentations, practices and non-disclosures as
20 alleged here also constitute "unfair" business acts and practices within the meaning of Business &
21 Professions Code Section 17200 *et seq.* in that its conduct is substantially injurious to consumers,
22 offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of
23 the conduct outweighs any alleged benefits attributable to such conduct

24 52. As stated in this Complaint, Plaintiff alleges violations of consumer protection,
25 unfair competition and truth in advertising laws resulting in harm to consumers. Plaintiff asserts
26 violations of the public policy of engaging in false and misleading advertising, unfair competition
27 and deceptive conduct towards consumers.

28 ///

1 53. There were reasonably available alternatives to further Defendant's legitimate
2 business interests, other than the conduct described here.

3 54. Defendant's claims, nondisclosures and misleading statements, as more fully set
4 forth above, were also false, misleading and/or likely to deceive the consuming public within the
5 meaning of Business & Professions Code, Section 17200, and actually *did* deceive Plaintiff.

6 55. Defendant's labeling, as described here, also constitutes unfair, deceptive, untrue
7 and misleading advertising.

8 56. Defendant actively and affirmatively misleads consumers into believing that
9 Defendant's flavored tobacco products contained minimal amounts of nicotine, when in reality
10 their flavored tobacco products contain, at times, double the advertised amount.

11 57. Defendant actively and affirmatively misleads consumers into believing that
12 Defendant's flavored tobacco products are manufactured in the United States, when in reality their
13 flavored tobacco products were manufactured in foreign countries.

14 58. Defendant actively conceals material information about its products: the true
15 amount of nicotine in them and their origin of manufacture,

16 59. Defendant's conduct caused and continues to cause substantial injury to Plaintiff
17 and the other Class members. Plaintiff has suffered injury in fact and has lost money as a result of
18 Defendant's unfair conduct. Plaintiff was exposed to, saw, and relied on Defendant's false claims
19 about its products' nicotine content and origin of manufacture, and purchased Defendant's
20 flavored tobacco products in reliance on Defendant's claims.

21 60. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts and
22 practices and false advertising, entitling Plaintiff to judgment, restitution, and other equitable
23 relief against Defendant, as set forth in the Prayer for Relief.

24 61. Additionally, pursuant to Business & Professions Code, Section 17203,
25 Plaintiff seeks an order requiring Defendant to immediately cease such acts of unlawful, unfair
26 and fraudulent business practices and requiring Defendant to engage in a corrective advertising
27 campaign. Plaintiff also seeks, on behalf of himself and the class, all allowable interest, costs, and
28 attorneys' fees.

PRAYER FOR RELIEF

1
2 Plaintiff, on behalf of himself and the Class, prays for judgment against Defendant, as
3 follows:

- 4 1. Certifying the Class as requested here;
- 5 2. Awarding Plaintiff and the proposed Class Members damages, where and when
6 appropriate;
- 7 3. Awarding restitution and disgorgement of Defendant's ill-gotten gains to Plaintiff
8 and the proposed Class Members where and when appropriate;
- 9 4. Awarding declaratory and injunctive relief as permitted by law or equity,
10 including: enjoining Defendants from continuing the unlawful, unfair, and deceptive practices as
11 set forth here, and directing Defendant to identify, with Court supervision, victims of its conduct
12 and pay them restitution and disgorgement of Defendant's ill-gotten gains acquired by Defendant
13 by means of any act or practice declared by this Court to be wrongful, where applicable;
- 14 6. Awarding attorneys' fees, interest, and costs; and
- 15 7. Providing such further relief as may be just and proper.

JURY DEMAND

16
17 Plaintiff hereby demands a trial by jury.

18 Respectfully submitted:

NICHOLAS & TOMASEVIC, LLP

19
20
21 Dated: April 28, 2016

By: *Lacy Wells*
 Craig M. Nicholas
 Alex Tomasevic
 Lacy Wells
 Attorneys for Plaintiffs

EXHIBIT A

NICHOLAS & TOMASEVIC LLP

ATTORNEYS AT LAW

Tel: 619-325-0492
Fax: 619-325-0496

225 Broadway, 19th Floor
San Diego, CA 92101

July 30, 2015

Via Certified Mail

Haze Tobacco, LLC
c/o Incorp. Services, Inc.
5716 Corsa Ave., Ste. 110
Westlake Village, CA 91362

Re: Chahini v. Haze Tobacco, LLC

To Whom It May Concern:

This letter constitutes notice under the California Consumer Legal Remedies Act of your violations of the Act, and of our demand that you remedy such violations within 30 days of your receipt of this letter. We represent Michel Chahini and all other consumers similarly-situated in a class action against Haze Tobacco, LLC ("Haze") arising out of, among other things, misrepresentations by Haze to consumers regarding its sale of flavored tobacco products, including Don Fizzle ("Products").

Mr. Chahini and others similarly situated purchased the Products unaware of the fact that Haze's representations regarding its products containing "nicotine 0.05%" were misleading and untrue. Had Mr. Chahini known the reality of the harm caused by using Haze's extra potent flavored tobacco, he never would have bought the offending product. The "0.05%" representations are false and misleading and constitute unfair methods of competition and unlawful, unfair and fraudulent acts or practices, undertaken by Haze with the intent to result in the sale of its Products to the consuming public. In fact, these representations do not assist consumers; they simply mislead them.

Mr. Chahini alleges that Haze has violated the CLRA by:

- a) Representing that Flavored Tobacco Products have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have . . . Cal. Civ. Code § 1770(a)(5).
- b) Representing that Flavored Tobacco Products are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another. Cal. Civ. Code § 1770(a)(7).
- c) Advertising Flavored Tobacco Products with intent not to sell them as advertised. Cal. Civ. Code § 1770(a)(9).

EXHIBIT A

July 30, 2015
Page 2

- d) Representing Flavored Tobacco Products [have] been supplied in accordance with a previous representation when it has not. Cal. Civ. Code § 1770(a)(16).

Haze's misrepresentations also constitute violations of California Business and Professions Code Section 17200. Moreover you have violated the consumer protection statutes of other states, and this letter is intended to provide you notice of those violations as well.

Pursuant to California Civil Code Section 1782, we hereby demand on behalf of our client and all others similarly situated in California that Haze immediately correct and rectify this violation of California Civil Code Section 1770 by ceasing its misrepresentations in its Products' labeling, and by engaging in an appropriate corrective campaign. In addition, Haze should return to all consumers, of the Products, all ill-gotten gains that have been received as a result of Haze's deceptive and unfair acts and practices.

In addition, California Civil Code Section 1780(b) provides in part that: "Any consumer who is a senior citizen or a disable person, as defined in subdivision (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedied specified therein, up to five thousand dollars..."

Mr. Soriano will, after 30 days from the date of this letter, amend his Complaint without leave of Court, as permitted by California Civil Code section 1782, to include claims for actual and punitive damages (as appropriate) if a full and adequate response to this letter is not received.

Haze must undertake all of the following actions to satisfy the requirements of California Civil Code section 1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the Products who reside in California;
2. Notify all such purchasers so identified that upon their request, Haze will offer an restitution of the purchase price for their wrongful conduct;
3. Undertake (or promise to, within a reasonable time) the action described above for all purchasers who so request;
4. Conduct a corrective advertising campaign;
5. Destroy all misleading and deceptive advertising materials and products; and
6. Cease from expressly or impliedly misrepresenting to consumers that their Products contain 0.05% of nicotine when in fact the Products do not.

July 30, 2015
Page 3

Additionally, I remind you of your legal duty to preserve all records relevant to such litigation. We anticipate that all emails, letters, reports, internal corporate instant messages, and records that relate to your Products will be sought in the discovery process. You must inform any and all employees, contractors, and third-party agents to preserve all such relevant information. I look forward to your response.

Sincerely,



Craig M. Nicholas

EXHIBIT B


DECLARATION OF MICHEL CHAHINI

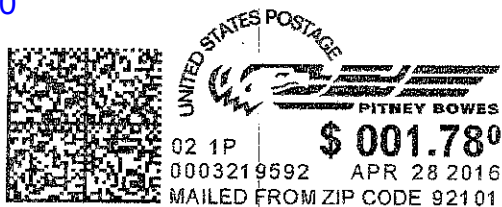
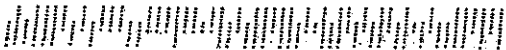
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I, Michel Chahini, declare as follows:

1. I am the plaintiff in the above-entitled action and make this declaration to the best of my knowledge, information and belief of the facts stated herein.
2. I am over twenty-one years of age and am a resident of San Diego, California.
3. I purchased the products at issue in this action while in San Diego County.
4. Defendant conducts business in the County of San Diego.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was signed on the 29th day of July, 2015, at San Diego, California.


Michel Chahini



NICHOLAS & TOMASEVIC, LLP
225 BROADWAY, 19th FLOOR
SAN DIEGO, CALIFORNIA 92101

Edwin Aiwazian
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203



**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
07/31/2015 at 08:00:00 AM
Clerk of the Superior Court
By Marivel Martinez-Frengel, Deputy Clerk

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

HAZE TOBACCO, LLC, a Texas Corporation; and DOES 1 through 100, inclusive

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

MICHEL CHAHINI, an individual, on behalf of himself and all others similarly situated, and ROES 1 through 100, inclusive

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

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

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

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

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

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

CASE NUMBER:
(Número del Caso): 37-2015-00025590-CU-BT-CTL

Superior Court of California, County of San Diego
330 W Broadway, San Diego 92101

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):
Craig Nicholas; Alex Tomasevic, 225 Broadway, 19th Floor, San Diego, CA 92101 (619) 325-0492

DATE: 07/31/2015
(Fecha)

Clerk, by _____, Deputy
(Secretario) _____ M. Martinez-Frengel _____ (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

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

1 Edwin Aiwazian (Cal. State Bar No. 232943)
edwin@lfjpc.com

2 Ashley H. Cruz (Cal. State Bar No. 306235)
ashley@lfjpc.com

3 **LAWYERS for JUSTICE, PC**
4 410 West Arden Avenue, Suite 203
5 Glendale, California 91203
6 Telephone: (818) 265-1020
7 Facsimile: (818) 265-1021

8 *Attorneys for Defendant*

9
10
11 **UNITED STATES DISTRICT COURT**

12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 MICHEL CHAHINI, an individual; on
14 behalf of himself and all others similarly
15 situated, and ROES 1 through 100,
16 inclusive,

17 Plaintiffs,

18 vs.

19 HAZE TOBACCO, LLC, a Texas
20 Corporation; and DOES 1 through 100,
21 inclusive;

22 Defendants.

Case No.: '16CV1922 LAB RBB

**DECLARATION OF DANNY
AHMAD IN SUPPORT OF
DEFENDANT HAZE TOBACCO,
LLC'S NOTICE OF REMOVAL**

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

DECLARATION OF DANNY AHMAD

I, Danny Ahmad, declare and state as follows:

1. The facts set forth in this declaration are within my personal knowledge, or based on information and belief, and, if called as a witness, I could and would competently testify.

2. I am the sole owner of Haze Tobacco, LLC (“Haze Tobacco”), and have been continuously since Haze Tobacco’s inception in the year 2011. As the owner of Haze Tobacco, I am familiar with Haze Tobacco’s organizational background and structure.

3. At all times since the Complaint in this action was filed on July 31, 2015, Haze Tobacco has been a limited liability company formed in and under the laws of the State of Texas. Haze Tobacco’s principal place of business has always been Texas, where all of its operations, including administrative functions, design, production, and executive functions occur.

4. At all times since the Complaint in this action was filed on July 31, 2015, I have resided and been domiciled in Texas.

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

Executed July 28, 2016, at Richmond, Texas.


Danny Ahmad

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

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Edwin Aiwazian (Cal. State Bar No. 232943)
edwin@lfjpc.com
Ashley H. Cruz (Cal. State Bar No. 306235)
ashley@lfjpc.com
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020
Facsimile: (818) 265-1021
Attorneys for Defendant

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

MICHEL CHAHINI, an individual; on behalf of himself and all others similarly situated, and ROES 1 through 100, inclusive,

Plaintiffs,

vs.

HAZE TOBACCO, LLC, a Texas Corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No.: '16CV1922 LAB RBB

DECLARATION OF EDWIN AIWAZIAN IN SUPPORT OF DEFENDANT HAZE TOBACCO, LLC'S NOTICE OF REMOVAL

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwazian, declare and state as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California and the United States District Court for the Southern District of California. I am the managing attorney at Lawyers for Justice, PC, attorneys of record for Defendant Haze Tobacco, LLC (“Defendant”) in this case. The facts set forth in this declaration are within my personal knowledge and, if called as a witness, I could and would competently testify as follows.

2. On or about July 31, 2015, Plaintiff Michel Chahini (“Plaintiff”) filed a Class Action Complaint (“Complaint”) in the Superior Court of California for the County of San Diego, entitled “*MICHEL CHAHINI, an individual; on behalf of himself and all others similarly situated, and ROES 1 through 100, inclusive, Plaintiffs, vs. HAZE TOBACCO, LLC, a Texas Corporation; and DOES 1 through 100, inclusive,*” in the Superior Court of California, Count of San Diego, Case No. 37-2015-00025590-CU-BT-CTL (“Complaint”). On or about July 31, 2015, Plaintiff also filed a Summons and Civil Case Cover Sheet. A true and correct copy of Plaintiff’s Complaint, as served on Defendant, is attached hereto as **Exhibit A.**

3. On August 18, 2015, Defendant filed a Notice of Motion and Motion to Strike Class Action Allegations in Plaintiff Michael Chahini’s Complaint (“Motion to Strike”). A true and correct copy of Defendant’s Motion to Strike is attached hereto as **Exhibit B.**

4. On August 18, 2015, Defendant also filed a Notice of Demurrer and Demurrer to Plaintiff’s Class Action Complaint. A true and correct copy of Defendant’s Demurrer is attached hereto as **Exhibit C.**

5. On or about September 14, 2015, Plaintiff filed his First Amended Complaint (“FAC”). A true and correct copy of Plaintiff’s FAC is attached hereto as **Exhibit D.**

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1 6. On or about December 4, 2015, Plaintiff filed notices of motions and
2 motions to compel Defendant’s further responses to Plaintiff’s discovery
3 (“Plaintiff’s Motions to Compel”). A true and correct copy of the following are
4 attached hereto as **Exhibit E**: Plaintiff’s Notice of Motion and Motion to Compel
5 Defendant’s Responses to Requests for Admission [Set One]; Plaintiff’s Notice of
6 Motion and Motion to Compel Defendant’s Responses to Form Interrogatories [Set
7 One]; Plaintiff’s Notice of Motion and Motion to Compel Defendant’s Requests
8 for Production of Documents and Electronically-Stored Information [Set One];
9 Plaintiff’s Notice of Motion and Motion to Compel Defendant’s Responses to
10 Special Interrogatories [Set One].

11 7. On December 21, 2015, Defendant filed its Notice of Motion and
12 Motion to Compel Further Deposition Testimony of Michael Chahini and for
13 Protective Order Barring Attorney Alex Tomasevic from Representing Plaintiff at
14 Deposition; Request for Sanctions, along with supporting documents (“Motion to
15 Compel Plaintiff’s Further Deposition”). A true and correct copy of Defendant’s
16 Motion to Compel Plaintiff’s Further Deposition is attached hereto as **Exhibit F**.

17 8. On or about January 11, 2016, Plaintiff submitted an Ex Parte
18 Application Re: Defendant’s Refusal to Participate in Written Discovery, along
19 with a declaration from Alex Tomasevic. A true and correct copy of Plaintiff’s Ex
20 Parte Application and its supporting declaration is attached hereto as **Exhibit G**.

21 9. On January 12, 2016, the Court issued a Minute Order regarding
22 Plaintiff’s Ex Parte Application. A true and correct copy of the Minute Order is
23 attached hereto as **Exhibit H**.

24 10. On January 15, 2016, Plaintiff filed his Case Management Statement.
25 A true and correct copy of Plaintiff’s Case Management Statement is attached
26 hereto as **Exhibit I**.

27 11. On January 22, 2016, the Court rescheduled the hearing on
28 Defendant’s Demurrer and Motion to Strike for April 8, 2016. A true and correct

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Glendale, California 91203

1 copy of the Defendant’s Notice of Continuance of Hearing is attached hereto as
2 **Exhibit J.**

3 12. On February 2, 2016, Defendant filed its Case Management
4 Statement. A true and correct copy of Defendant’s Case Management Statement is
5 attached hereto as **Exhibit K.**

6 13. On February 4, 2016, Defendant filed its Amended Notice of
7 Demurrer and Demurrer to Plaintiff’s First Amended Class Action Complaint. A
8 true and correct copy of the aforementioned document is attached hereto as
9 **Exhibit L.**

10 14. Also on February 4, 2016, Defendant filed its Amended Notice of
11 Motion and Motion to Strike Allegations in Plaintiff Michael Chahini’s First
12 Amended Class Action Complaint. A true and correct copy of the aforementioned
13 document is attached hereto as **Exhibit M.**

14 15. On February 5, 2016, the Court issued a Minute Order for the parties’
15 Case Management Conference of the same date. A true and correct copy of the
16 February 5, 2016 Minute Order is attached hereto as **Exhibit N.**

17 16. On February 8, 2016, Defendant filed its Second Amended Notice of
18 Demurrer and Demurrer to Plaintiff’s First Amended Class Action Complaint. A
19 true and correct copy of the aforementioned document is attached hereto as
20 **Exhibit O.**

21 17. Also on February 8, 2016, Defendant filed its Second Amended
22 Notice of Motion and Motion to Strike Allegations in Plaintiff Michael Chahini’s
23 First Amended Class Action Complaint. A true and correct copy of the
24 aforementioned document is attached hereto as **Exhibit P.**

25 18. On March 3, 2016, Defendant filed a Notice of Motion and Motion for
26 Protective Order, along with supporting papers (“Motion for Protective Order”). A
27 true and correct copy of Defendant’s Motion for Protective Order is attached
28 hereto as **Exhibit Q.**

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Glendale, California 91203

1 19. On or about March 16, 2016, Plaintiff filed documents in support of
2 Plaintiff's Motions to Compel (*see* ¶ 6, Exh. E). A true and correct copy of all
3 documents submitted by Plaintiff in support of Plaintiff's Motions to Compel are
4 attached hereto as **Exhibit R**.

5 20. On or about March 18, 2016, Plaintiff filed his Case Management
6 Statement. A true and correct copy of Plaintiff's Case Management Statement is
7 attached hereto as **Exhibit S**.

8 21. On March 28, 2016, Defendant filed its oppositions to Plaintiff's
9 Motions to Compel, along with supporting documents ("Oppositions to Plaintiff's
10 Motions to Compel"). A true and correct copy of Defendant's Oppositions to
11 Plaintiff's Motions to Compel are attached hereto as **Exhibit T**.

12 22. On March 29, 2016, Defendant filed its Case Management Statement.
13 A true and correct copy of Defendant's Case Management Statement is attached
14 hereto as **Exhibit U**.

15 23. On or about April 1, 2016, Plaintiff filed replies in support of
16 Plaintiff's Motions to Compel, along with supporting declarations. A true and
17 correct copy of the aforementioned replies and declarations are attached hereto as
18 **Exhibit V**.

19 24. On or about April 1, 2016, Plaintiff filed his Opposition to
20 Defendant's Motion to Strike Class Allegations in Plaintiff's First Amended
21 Complaint and Opposition to Defendant's Demurrer to Plaintiff's First Amended
22 Complaint. A true and correct copy of the aforementioned oppositions are attached
23 hereto as **Exhibit W**.

24 25. On April 1, 2016, Defendant filed its Reply in Support of Defendant's
25 Motion to Strike Class Allegations in Plaintiff's First Amended Complaint and
26 Reply in Support of Defendant's Demurrer to Plaintiff's First Amended Complaint.
27 A true and correct copy of these documents is attached hereto as **Exhibit X**.

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Glendale, California 91203

1 26. On April 7, 2016, the Court published tentative rulings on
2 Defendant’s Demurrer to Plaintiff’s First Amended Complaint, Defendant’s
3 Motion to Strike Class Allegations in Plaintiff’s First Amended Complaint,
4 Defendant’s Motion to Compel Plaintiff’s Further Deposition, and Plaintiff’s
5 Motions to Compel. A true and correct copy of the Court’s April 7, 2016 tentative
6 ruling is attached hereto as **Exhibit Y**.

7 27. On April 8, 2016, the Court issued a Minute Order modifying its April
8 7, 2016 tentative ruling (*see* ¶ 26, Exh. Y). A true and correct copy of the April 8,
9 2016 Minute Order is attached hereto as **Exhibit Z**.

10 28. On April 11, 2016 Defendant filed its Amended Notice for Protective
11 Order. A true and correct copy of the aforementioned document is attached hereto
12 as **Exhibit AA**.

13 29. On April 11, 2016, Defendant also filed its Amended Notice of
14 Motion to Compel Further Deposition Testimony of Plaintiff Michael Chahini and
15 for Protective Order Barring Attorney Alex Tomasevic from Representing Plaintiff
16 at Deposition; Request for Sanctions. A true and correct copy of the
17 aforementioned document is attached hereto as **Exhibit BB**.

18 30. On April 15, 2016, Defendant filed its Notice of Motion and Motion
19 to Disqualify Nicholas & Tomasevic LLP, along with the Declaration of Edwin
20 Aiwazian in Support of Defendant’s Motion (“Motion to Disqualify”). A true and
21 correct copy of Defendant’s Motion to Disqualify is attached hereto as **Exhibit**
22 **CC**.

23 31. On or about May 3, 2016, Plaintiff filed his Second Amended
24 Complaint (“SAC”). A true and correct copy of the SAC is attached hereto as
25 **Exhibit DD**.

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Glendale, California 91203

1 32. On or about May 27, 2016 Defendant filed its Notice of Motion and
2 Motion to Strike Portions of Plaintiff Michael Chahini’s Second Amended
3 Complaint, along with a supporting declaration from Ashley H. Cruz. A true and
4 correct copy of this document is attached hereto as **Exhibit EE**.

5 33. On May 31, 2016, Defendant filed a Demurrer to Plaintiff’s SAC,
6 along with a supporting declaration from Ashley H. Cruz (“Demurrer to Plaintiff’s
7 SAC”). A true and correct copy of Defendant’s Demurrer to Plaintiff’s SAC is
8 attached hereto as **Exhibit FF**.

9 34. On or about June 6, 2016, Plaintiff filed his Case Management
10 Statement. A true and correct copy of Plaintiff’s Case Management Statement is
11 attached hereto as **Exhibit GG**.

12 35. On June 9, 2016, Defendant filed its Case Management Statement. A
13 true and correct copy of Defendant’s Case Management Statement is attached
14 hereto as **Exhibit HH**.

15 36. On or about June 13, 2016, Plaintiff filed his Opposition to
16 Defendant’s Motion for Protective Order, and his Opposition to Defendant’s
17 Motion to Compel Plaintiff’s Further Deposition, along with supporting
18 documents. A true and correct copy of all documents submitted by Plaintiff in
19 opposition to Defendant’s Motion for Protective Order and Defendant’s Motion to
20 Compel Plaintiff’s Further Deposition are attached hereto as **Exhibit II**.

21 37. On June 17, 2016, Defendant filed its Reply in support of its Motion
22 for Protective Order and its Reply in support of its Motion to Compel Plaintiff’s
23 Further Deposition. A true and correct copy of the aforementioned replies are
24 attached hereto as **Exhibit JJ**.

25 38. On June 20, 2016, the Court issued tentative rulings on Defendant’s
26 Motion for Protective Order and Motion to Compel Plaintiff’s Further Deposition.
27 A true and correct copy of the Court’s June 20, 2016 tentative rulings are attached
28 hereto as **Exhibit KK**.

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1 39. On June 24, 2016, the Court issued a Minute Order regarding the
2 parties' June 24, 2016 Civil Case Management Conference. A true and correct
3 copy of the Court's June 24, 2016 Minute Order is attached hereto as **Exhibit LL**.

4 40. On July 1, 2016, Plaintiff filed his Opposition to Defendant's Motion
5 to Disqualify, along with a declaration from Lacy Wells. A true and correct copy
6 of all documents submitted by Plaintiff in opposition to Defendant's Motion to
7 Disqualify are attached hereto as **Exhibit MM**.

8 41. On July 6, 2016 Defendant filed its Reply in Support of its Motion to
9 Disqualify, a true and correct copy of which is attached hereto as **Exhibit NN**.

10 42. On July 7, 2016, the Court issued a tentative ruling regarding
11 Defendant's Motion to Disqualify, a true and correct copy of which is attached
12 hereto as **EXHIBIT OO**.

13 43. On July 8, 2016, the Court issued a Minute Order regarding
14 Defendant's Motion to Disqualify, a true and correct copy of which is attached
15 hereto as **Exhibit PP**.

16 44. On July 8, 2016, the Court issued a Minute Order regarding the
17 parties' July 8, 2016 Civil Case Management Conference, a true and correct copy
18 of which is attached hereto as **Exhibit QQ**.

19 45. On July 13, 2016, I sent an e-mail to Plaintiff's counsel, Alex
20 Tomasevic. In this e-mail, which served as a follow-up to an in-person
21 conversation I previously had with Mr. Tomasevic, I requested that Mr. Tomasevic
22 stipulate that the amount in controversy in this action is not greater than
23 \$5,000,000.00. Further, I requested that Mr. Tomasevic inform me, by the close of
24 business on July 18, 2016, whether Plaintiff would agree to so stipulate. To date,
25 Plaintiff has declined to stipulate that the amount in controversy in this action is
26 not greater than \$5,000,000.00. A true and correct copy of Defendant's counsel's
27 e-mail of July 13, 2016 is attached hereto as **EXHIBIT RR**.

28 ///

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

3 Executed July 29, 2016, at Glendale, California.

4
5 /s/ Edwin Aiwazian

6 _____
7 Edwin Aiwazian
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LAWYERS for JUSTICE, PC
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1 Edwin Aiwazian (Cal. State Bar No. 232943)

edwin@lfjpc.com

2 Ashley H. Cruz (Cal. State Bar No. 306235)

ashley@lfjpc.com

3 **LAWYERS for JUSTICE, PC**

410 West Arden Avenue, Suite 203

Glendale, California 91203

Telephone: (818) 265-1020

Facsimile: (818) 265-1021

6 *Attorneys for Defendant*

11 **UNITED STATES DISTRICT COURT**

12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 MICHEL CHAHINI, an individual; on
14 behalf of himself and all others similarly
15 situated, and ROES 1 through 100,
inclusive,

16 Plaintiffs,

17 vs.

18 HAZE TOBACCO, LLC, a Texas
19 Corporation; and DOES 1 through 100,
inclusive;

20 Defendants.

Case No.: '16CV1922 LAB RBB

**DECLARATION OF PATRICK
BIGLARIANS IN SUPPORT OF
DEFENDANT HAZE TOBACCO,
LLC'S NOTICE OF REMOVAL**

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

DECLARATION OF PATRICK BIGLARIANS

I, Patrick Biglarians, declare and state as follows:

1. The facts set forth in this declaration are within my personal knowledge, or based on information and belief, and, if called as a witness, I could and would competently testify.

2. I am the President of Haze Tobacco, LLC (“Haze Tobacco”), and have held this position continuously since January of 2012. As President, I am responsible for creating Haze Tobacco products, overseeing production, developing product design, managing Haze Tobacco’s information technology, and generally managing the day-to-day operations of Haze Tobacco. I have ready access to information pertaining to Haze Tobacco’s inventory and sales.

3. At Haze Tobacco, I have access to, and regularly utilize, accounting and inventory management software entitled Sage ERP Accpac 200, which is used to document Haze Tobacco’s inventory and sales. Using Sage ERP Accpac 200, I am competent to personally run sales reports with specified parameters, manually enter data regarding inventory, and retrieve accurate data on Haze Tobacco’s inventory.

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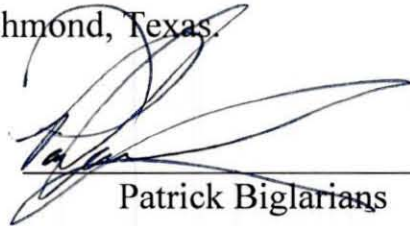
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1 4. On July 20, 2016, using Sage ERP Accpac 200, I retrieved data
2 regarding Haze Tobacco's current inventory. Haze Tobacco's tobacco products
3 are packaged in tin cans in the following quantities: 50 grams; 100 grams; 150
4 grams; 250 grams; and 1,000 grams. These tin cans are purchased in bulk, and all
5 except the 1,000-gram cans are manufactured abroad with nicotine content printed
6 directly on the can. As of July 20, 2016, Haze Tobacco had 243,561 cans on-hand
7 bearing nicotine content directly on them, as opposed to on a separate, paper label.
8 Based on these cans' standard unit cost, it would cost Haze Tobacco \$125,657.68
9 to replace these tin cans.

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

12 Executed July 28, 2016, at Richmond, Texas.

13
14 
15 _____
16 Patrick Biglarians

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410 West Arden Avenue, Suite 203
Glendale, California 91203

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