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Attorneys for Defendant  
THE KROGER CO.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SONIA PEREZ, individually, and on  
behalf of a class of similarly situated  
individuals,

Plaintiff,

v.

THE KROGER CO., an Ohio  
corporation;  
and DOES 1-10, inclusive,

Defendants.

Case No.

**DEFENDANT THE KROGER  
CO.'S NOTICE OF REMOVAL  
(FEDERAL QUESTION AND  
CAFA)**

[Los Angeles Superior Court Case  
No. BC650000]

1           **TO THE CLERK OF THE UNITED STATES DISTRICT COURT**  
2           **FOR THE CENTRAL DISTRICT OF CALIFORNIA:**

3           PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1332, 1441,  
4           1446, and 1453, Defendant The Kroger Co. respectfully submits this Notice of  
5           Removal of this case from the Superior Court of the State of California for the  
6           County of Los Angeles to the United States District Court for the Central District of  
7           California.

8                           **REMOVAL IS TIMELY AND**  
9                           **ALL PROCEDURAL REQUIREMENTS ARE SATISFIED**

10           1.       On February 9, 2017, Plaintiff Sonia Perez, on behalf of herself and a  
11           purported nationwide class of similarly situated individuals, filed a civil action in  
12           the Superior Court of the State of California for the County of Los Angeles entitled  
13           *Sonia Perez v. The Kroger Co.*, Case No. BC650000. (Declaration of Purvi G.  
14           Patel, Ex. A.)

15           2.       On February 27, 2017, Plaintiff served the summons and complaint on  
16           Kroger by personal service. (Patel Decl., Ex. A.)

17           3.       Kroger's removal notice is timely; it has been filed within thirty days  
18           of Kroger's receipt of a copy of the summons and complaint. *See* 28 U.S.C.  
19           §§ 1446(b), 1453(b); Fed. R. Civ. Proc. 6(a).

20           4.       Pursuant to 28 U.S.C. § 1446(a), copies of all state court pleadings,  
21           processes, and orders served on Kroger are attached as Exhibit A to the Patel  
22           Declaration.

23           5.       This case is properly removed to this Court pursuant to 28 U.S.C.  
24           § 1441(a) and (b) because the state court action is pending in the Superior Court of  
25           the State of California for the County of Los Angeles, which is within the Central  
26           District of California.

27           6.       Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal and  
28           supporting documents is being filed with the Clerk of the Superior Court of the

1 State of California for the County of Los Angeles. (*See* Patel Decl., Ex. B,  
2 attaching without exhibits the Notice of Filing of Notice of Removal.)

3 **BASIS FOR REMOVAL JURISDICTION: FEDERAL QUESTION**

4 1. Generally. The action is removable pursuant to 28 U.S.C. § 1331  
5 because the Court has original federal jurisdiction over the state court action.  
6 Specifically, this Court has federal question jurisdiction because this is a civil  
7 action “founded on a claim or right arising under the Constitution, treaties or laws  
8 of the United States.” 28 U.S.C. § 1331. Plaintiff’s state law claims “necessarily  
9 raise a stated federal issue, actually disputed and substantial, which a federal forum  
10 may entertain without disturbing any congressionally approved balance of federal  
11 and state judicial responsibilities.” *Grable & Sons Metal Products v. Darue*  
12 *Engineering & Manufacturing*, 545 U.S. 308, 314 (2005).

13 2. Plaintiff’s Allegations. Plaintiff brings this action on behalf of herself  
14 and a nationwide putative class of individuals who allegedly purchased one or more  
15 containers of Kroger 100% Apple Juice, Kroger 100% Natural Apple Juice, and  
16 Simple Truth Organic 100% Apple Juice with the phrase “No Sugar Added” on its  
17 label or outer packaging (collectively “Kroger Apple Juice”). (*See* Compl. ¶¶ 1, 9,  
18 29.)

19 Plaintiff alleges that the “No Sugar Added” statement on Kroger Apple Juice  
20 fails to comply with Food and Drug Administration (“FDA”) regulations  
21 promulgated pursuant to the Food, Drug, and Cosmetic Act of 1938 (“FDCA”),  
22 which “specify the precise nutrient content claims concerning sugar that may be  
23 made on a food label.” (*Id.* ¶ 2 [citing 21 C.F.R. § 101, Subpart D].) In the  
24 complaint, Plaintiff sets forth the criteria a product must meet — pursuant to the  
25 FDA — in order to make a “No Sugar Added” claim. (*Id.* ¶¶ 5-7, 23-25.) Plaintiff  
26 claims that this alleged violation of the FDA regulations constitutes a violation of  
27 California’s Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*)  
28 (UCL), violation of the False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et*

1 *seq.*) (FAL), and violation of the Consumers Legal Remedies Act (Cal. Civ. Code §  
2 1750 *et seq.*) (CLRA). (*Id.* ¶¶ 7, 25, 37-71.) All of Plaintiff's claims are premised  
3 on an alleged violation of the FDA regulations.

4 3. Federal Question Jurisdiction. Plaintiff's state law causes of action are  
5 expressly and entirely dependent on the alleged failure to comply with 21 C.F.R.  
6 101.60(c)(2). (*See, e.g.,* Compl. ¶¶ 2, 5-7, 23-25.) As such, they raise federal  
7 questions conferring original jurisdiction on this Court.

8 Although a plaintiff may frame her causes of action as state law claims, those  
9 state law claims may not serve to preclude federal court jurisdiction.<sup>1</sup> Where, as  
10 here, a complaint turns on the construction of federal law, it presents a federal  
11 question. *See, e.g., Nat'l Credit Reporting Ass'n v. Experian Info. Solutions Inc.*,  
12 2004 WL 1888769, at \*3, 5 (N.D. Cal. Mar. 6, 2013); *Baeza v. Bank of Am., N.A.*,  
13 2012 WL 275523, at \*4 (D. Nev. Jan. 31, 2012); *Moore v. Chase Bank*, 2008 WL  
14 314664, at \*2 (N.D. Cal. Feb. 4, 2008).

15 Plaintiff's state law claims necessarily and actually put in dispute a federal  
16 issue—whether Kroger Apple Juice complies with FDA labeling regulations.  
17 Because there are no state law equivalents to these FDA standards, Plaintiff's  
18 complaint necessarily depends on federal law. *See In re Zyprexa Prods. Liab.*  
19 *Litig.*, Nos. 04MD1596, 07CV1933 (JBW), 2008 WL 398378, at \*5 (E.D.N.Y. Feb.  
20 12, 2008) (absence of a state-law equivalent standard evidences the necessity of  
21 federal law).

22 Because Plaintiff's claims present substantial questions of federal law, *Cnty.*  
23 *of Santa Clara v. Astra USA, Inc.*, 401 F. Supp. 2d 1022, 1027 (N.D. Cal. 2005),  
24 recognizing federal question jurisdiction in this case will not upset the federal-state

25 <sup>1</sup> *Bright v. Bechtel Petroleum, Inc.*, 780 F.2d 766 (9th Cir. 1986) (“A plaintiff  
26 may not be allowed to conceal the true nature of a complaint through ‘artful  
27 pleading.’”); *Schroeder v. Trans World Airlines, Inc.*, 702 F.2d 189 (9th Cir. 1983)  
(holding UCL claims properly removed where “[a]rtful pleading by the plaintiff”  
28 concealed federal questions underlying state unfair competition claim”).

balance. The essence of Plaintiff’s complaint is that Kroger Apple Juice is not labeled properly under federal law. (*See, e.g.*, Compl. ¶¶ 2, 5-7, 23-25.) Plaintiff seeks to enforce FDA’s regulations through California’s consumer protection statutes, but a state law claim does not exist where it is “in substance (even if not in form) a claim for violating the FDCA—that is, when the state claim would not exist if the FDCA did not exist.” *Riley v. Cordis, Corp.*, 625 F. Supp. 2d 769, 777 (D. Minn. 2009) (citing *Buckman v. Pls.’ Legal Comm.*, 531 U.S. 314, 352-53 (2001)).

Because Plaintiff’s causes of action under California law directly and necessarily borrow a federal regulation, the Court’s interpretation and application of federal regulatory law is necessary to determine whether the challenged conduct violates 21 C.F.R. 101.60(c)(2). Removal based on federal question jurisdiction is therefore proper.

#### **BASIS FOR REMOVAL JURISDICTION: CAFA**

4. Generally. The action is removable pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d) and 1453(b) because this case is (1) a proposed class action within the meaning of CAFA, in which (2) “any member of a class of plaintiffs is a citizen of a State different from any defendant,” (3) the “number of members of all proposed plaintiff classes in the aggregate is [not] less than 100,” (4) “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,” and (5) no CAFA exclusions apply. *See* 28 U.S.C. § 1332(d)(2), (d)(5)(B).

5. Covered Class Action Consisting of More Than 100 Members. CAFA defines a “class action” to include “any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute . . . authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B). “Plaintiff brings this lawsuit as a class action on behalf of herself and all others similarly situated as members of the proposed Class pursuant to California Code of Civil Procedure § 382.” (Compl. ¶ 27.) This case qualifies as a

1 “class action” removable under Section 1332(d)(1)(B).

2 This “class action” is not one in which the “number of members of all  
3 proposed classes in the aggregate is less than 100.” 28 U.S.C. § 1332(d)(5)(B).  
4 Plaintiff purports to bring the action on behalf of “all persons in the United States  
5 who purchased one or more containers of Kroger [Apple Juice] with the phrase ‘No  
6 Sugar Added’ on its label or outer packaging . . .” from February 9, 2013 “until the  
7 date of certification[.]” (Compl. ¶¶ 1, 29.)

8 Plaintiff alleges that “[a]lthough the exact number of prospective Class  
9 Members is uncertain and can only be ascertained through appropriate discovery,  
10 the number is great enough such that joinder is impracticable.” (*Id.* ¶ 32.) Based  
11 on the quantity of Kroger Apple Juice units sold in the United States between the  
12 end of December 2014 and end of March 2017 (millions of units), Kroger alleges  
13 that more than 100 people purchased Kroger Apple Juice during the relevant time  
14 period. (Declaration of John P. Pugh ¶ 4.) As such, the size of the putative class in  
15 this case exceeds CAFA’s 100-member proposed class requirement.

16 6. Diversity. The minimal diversity standard of CAFA is met as long as  
17 any one defendant is a citizen of a different state than any member of the class of  
18 plaintiffs. 28 U.S.C. § 1332(d)(2)(A).

19 a. Plaintiff is a citizen and resident of the State of California. (*See*  
20 Compl. ¶ 9.) The putative nationwide class includes members from every state.  
21 (*See id.* ¶ 29.)

22 b. Defendant The Kroger Co. is an Ohio corporation with its  
23 principal place of business in the state of Ohio. (Compl. ¶ 13.) *See Hertz Corp. v.*  
24 *Friend*, 130 S.Ct. 1181, 1186 (2010) (adopting the “nerve center test,” which  
25 locates a corporation’s principal place of business in the place “where the  
26 corporation’s high level officers direct, control, and coordinate the corporation’s  
27 activities,” “typically” the corporation’s headquarters.) Accordingly, pursuant to 28  
28 U.S.C. § 1332(c)(1), Kroger is, and at all relevant times was, a citizen of Ohio..

1 c. The citizenship of defendants sued as “Does” is disregarded for  
2 purposes of removal. 28 U.S.C. § 1441.

3 Thus, this putative nationwide class action satisfies the diversity  
4 requirements of 28 U.S.C. § 1332(d)(2)(A) because any member of a class of  
5 plaintiffs (all States) is a citizen of a state different from any defendant (Ohio).  
6 Further Plaintiff (California) is a citizen of a state different from any defendant  
7 (Ohio).

8 7. Amount in Controversy – Alleged Damages. Under CAFA, the claims  
9 of individual class members are aggregated to determine if the amount in  
10 controversy exceeds the required “sum or value of \$5,000,000, exclusive of interest  
11 and costs.” 28 U.S.C. § 1332(d)(2), (d)(6).

12 Plaintiff alleges three causes of action: violation of the UCL, violation of the  
13 FAL, and violation of the CLRA (Cal. Civ. Code § 1750 *et seq.*). Plaintiff seeks,  
14 on behalf of herself and putative class members, *inter alia*, compensatory damages,  
15 exemplary damages, statutory damages, restitution, disgorgement of profits, and  
16 declaratory and injunctive relief. (Compl. ¶ 72(b)-(e).) Without conceding any  
17 merit to Plaintiff’s damages allegations or causes of action, the amount in  
18 controversy here satisfies CAFA’s jurisdictional threshold, given Plaintiff’s claims  
19 for compensatory damages and restitution alone.

20 In the four years preceding the filing of this action, sales of Kroger Apple  
21 Juice in the United States have exceeded \$5,000,000. (Pugh Decl. ¶ 4.) While  
22 Kroger disputes that it is liable to Plaintiff or the putative class (or that Plaintiff or  
23 the putative class suffered injury or incurred damages in any amount whatsoever)  
24 and makes no admission as to whether class action treatment is appropriate or  
25 warranted in this case, for purposes of satisfying the jurisdictional prerequisite of  
26 CAFA, the amount in controversy exceeds \$5,000,000.

27 8. Amount in Controversy – Attorneys’ Fees. Plaintiff also seeks an  
28 award of attorneys’ fees. (Compl. ¶ 72(f)-(g).) This amount should also be



1 included in the amount in controversy. *See Goldberg v. CPC Int'l Inc.*, 678 F.2d  
2 1365 (9th Cir. 1982).

3 9. No CAFA Exclusions. This action does not fall within any exclusion  
4 to removal jurisdiction recognized by 28 U.S.C. § 1332(d). Plaintiff brings this  
5 action on behalf of a nationwide class of “all persons in the United States who  
6 purchased one or more containers of Kroger [Apple Juice] with the phrase ‘No  
7 Sugar Added’ on its label or outer packaging . . .” from February 9, 2013 “until the  
8 date of certification[.]” (Compl. ¶¶ 1, 29.) Plaintiff does not allege that over one-  
9 third of the putative class comprises citizens of California. Nor can the complaint  
10 as pleaded support such a conclusion. Moreover, Kroger is a citizen of Ohio, not  
11 California. Therefore, the exclusions to removal jurisdiction do not apply. *See* 28  
12 U.S.C. § 1332(d).

### 13 **DEMAND FOR JURY TRIAL**

14 10. Kroger demands trial by jury on all issues raised in this action upon  
15 which a jury trial is permitted.

16 \* \* \*

17 Accordingly, Kroger respectfully submits that this action is removed properly  
18 pursuant to federal question jurisdiction and/or the Class Action Fairness Act. By  
19 filing this notice of removal, Kroger does not waive, either expressly or implicitly,  
20 its right to assert any defense which it could have asserted in the Superior Court of  
21 the State of California for the County of Los Angeles.

22  
23 Dated: March 29, 2017

MORRISON & FOERSTER LLP

24 By: /s/ Purvi G. Patel  
25 Purvi G. Patel

26 *Attorneys for Defendant*  
27 *The Kroger Co.*  
28



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Attorneys for Defendant  
THE KROGER CO.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SONIA PEREZ, individually, and on  
behalf of a class of similarly situated  
individuals,

Plaintiff,

v.

THE KROGER CO., an Ohio  
corporation; and DOES 1-10,  
inclusive,

Defendants.

Case No.

**DECLARATION OF  
JOHN P. PUGH IN SUPPORT OF  
DEFENDANT THE KROGER  
CO.'S NOTICE OF REMOVAL**

[Los Angeles Superior Court  
Case No. BC650000]

**DECLARATION OF JOHN P. PUGH**

I, John P. Pugh, declare and state as follows:

1. I am a member of The Kroger Co.'s law department, employed as an Investigator. The statements in this declaration are based on my personal knowledge, including my review of corporate records maintained by Kroger in the ordinary course of business. If called to testify as a witness, I could and would competently do so under oath.

2. As a part of my regular job responsibilities, I interact with Kroger employees to investigate and analyze information relating to, among other things, sales of products sold under the Kroger brand. As a result, I am familiar with the types of information that Kroger maintains concerning sales of Kroger brand products in the United States, including sales of Kroger 100% Apple Juice, Kroger 100% Natural Apple Juice, and Simple Truth Organic 100% Apple Juice ("Kroger Apple Juice").

3. In the ordinary course of its business, Kroger receives and maintains aggregated information regarding sales data on units sold and revenue generated from retail sales of Kroger Apple Juice in the United States. This data is collected by Kroger in the ordinary course of its business as part of its business records and is routinely relied upon in the conduct of its business.

4. I worked with Kroger employees with access to sales information of Kroger Apple Juice that Kroger maintains in the ordinary course of its business to pull available information regarding sales of Kroger Apple Juice (as described in Paragraph 2) to customers in the United States. I set the parameters to pull the data and reviewed the output from the data pull. My review of the sales data indicates sales of Kroger Apple Juice in the United States from week ending December 27, 2014 to week ending March 25, 2017 exceed \$5,000,000. Although this data does not contain breakdowns of the quantities of products sold to specific customers, it does provide an aggregate number of units sold. Based on the quantity of products

1 sold (millions of units), it is my assessment that more than 100 people have  
2 purchased Kroger Apple Juice in the United States during this time period.  
3

4 I declare under penalty of perjury under the laws of the State of Ohio and the  
5 United States that the foregoing is true and correct.

6 Executed this 29th day of March, 2017 in Cincinnati, Ohio.

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9 John P. Pugh  
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Attorneys for Defendant  
THE KROGER CO.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SONIA PEREZ, individually, and on  
behalf of a class of similarly situated  
individuals,

Plaintiff,

v.

THE KROGER CO., an Ohio  
corporation;  
and DOES 1-10, inclusive,

Defendants.

Case No.

**DECLARATION OF  
PURVI G. PATEL IN SUPPORT  
OF DEFENDANT THE KROGER  
CO.'S NOTICE OF REMOVAL**

[Los Angeles Superior Court Case  
No. BC650000]

**DECLARATION OF PURVI G. PATEL**

I, Purvi G. Patel, declare and state as follows:

1. I am a partner with the law firm of Morrison & Foerster LLP, attorneys of record for Defendant The Kroger Co. in this action. I am a member in good standing of the Bar of the State of California and this Court. I make this declaration based on personal knowledge, and, if called as a witness, I could and would testify competently to the matters set forth herein.

2. Attached as **Exhibit A** is a true and correct copy of the summons and complaint in *Sonia Perez v. The Kroger Co.*, Case No. BC650000 (the “State Action”). **Exhibit A** also contains true and correct copies of all process, pleadings, and orders served on The Kroger Co., including the service record indicating the summons and complaint were served on The Kroger Co. by personal service on February 27, 2017.

3. Attached as **Exhibit B** is a true and correct copy of the Notice of Removal (without exhibits) being filed in Los Angeles Superior Court.

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

Executed this 29th day of March, 2017 in Los Angeles, California.

/s/ Purvi G. Patel  
Purvi G. Patel

# EXHIBIT A



CORPORATION SERVICE COMPANY®

## Notice of Service of Process

null / ALL  
Transmittal Number: 16308013  
Date Processed: 03/01/2017

**Primary Contact:** Venessa C. Wickline Gribble  
The Kroger Co.  
1014 Vine Street  
Cincinnati, OH 45202-1100

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<b>Entity:</b>	The Kroger Co. Entity ID Number 2171751
<b>Entity Served:</b>	The Kroger Co.
<b>Title of Action:</b>	Sonia Perez vs. The Kroger Co.
<b>Document(s) Type:</b>	Summons/Complaint
<b>Nature of Action:</b>	Class Action
<b>Court/Agency:</b>	Los Angeles County Superior Court, California
<b>Case/Reference No:</b>	BC650000
<b>Jurisdiction Served:</b>	California
<b>Date Served on CSC:</b>	02/27/2017
<b>Answer or Appearance Due:</b>	30 Days
<b>Originally Served On:</b>	CSC
<b>How Served:</b>	Personal Service
<b>Sender Information:</b>	Lee A. Cirsch 310-556-4811

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**

2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)



SUM-100

# SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):** THE KROGER CO., an Ohio Corporation;  
and DOES 1-10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):** SONIA PEREZ,  
individually and on behalf of similarly situated individuals.

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

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

FEB 09 2017

Sherri R. Carter, Executive Officer/Clerk  
By: Judi Lara, Deputy

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

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

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

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 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: Los Angeles Superior Court  
(El nombre y dirección de la corte es): 111 N. Hill Street  
Los Angeles, CA 90013

CASE NUMBER:  
(Número del Caso): BC 6 5 0 0 0 0

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (310) 556-4811  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

BY FAX

Lee Cirsch (SBN 227668), CAPSTONE LAW APC, 1875 Century Park East, #1000, Los Angeles, CA

DATE: FEB 09 2017  
(Fecha)

Clerk, by Deputy  
(Secretario) Judi Lara (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)).

(SEAL)

**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): THE KROGER CO.  
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):
4. ☐ by personal delivery on (date):

CONFIRMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

FEB 09 2017

Sheri R. Carter, Executive Officer/Clerk  
By: Judi Lara, Deputy

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13 Sonia Perez

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF LOS ANGELES

BY FAX

16 SONIA PEREZ, individually, and on  
17 behalf of a class of similarly situated  
18 individuals,

19 Plaintiff,

20 v.

21 THE KROGER CO., an Ohio corporation;  
22 and DOES 1-10, inclusive,

23 Defendants.

Case No.:

BC 650000

CLASS ACTION COMPLAINT FOR:

- (1) Violations of Unfair Competition Law,  
California Business & Professions Code  
§ 17200 *et seq.*
- (2) Violations of False Advertising Law,  
California Business & Professions Code  
§ 17500
- (3) Violations of California's Consumers  
Legal Remedies Act

DEMAND FOR JURY TRIAL

## INTRODUCTION

1. Plaintiff Sonia Perez (“Plaintiff”) brings this action for herself and on behalf of all persons in the United States who purchased one or more containers of Kroger 100% Apple Juice, Kroger 100% Natural Apple Juice, and Simple Truth Organic 100% Apple Juice with the phrase “No Sugar Added” on its label or outer packaging (collectively, “Kroger Apple Juice”) created, manufactured, distributed, marketed, and/or sold by The Kroger Co. and DOES 1-10 (“Defendants” or “Kroger”).

2. Plaintiff’s action arises out of the unlawful “No Sugar Added” statements placed by Defendants on the labels and outer packaging of its Kroger Apple Juice. The Food and Drug Administration (“FDA”) regulations promulgated pursuant to the Food, Drug, and Cosmetics Act of 1938 (“FDCA”) specify the precise nutrient content claims concerning sugar that may be made on a food label. *See* 21 C.F.R. § 101, Subpart D. Defendants’ “No Sugar Added” claims on its Kroger Apple Juice containers fail to comply with these requirements, as set forth below. As a result, Defendants have violated California’s Sherman Law and consumer protection statutes, which wholly adopt the federal requirements.

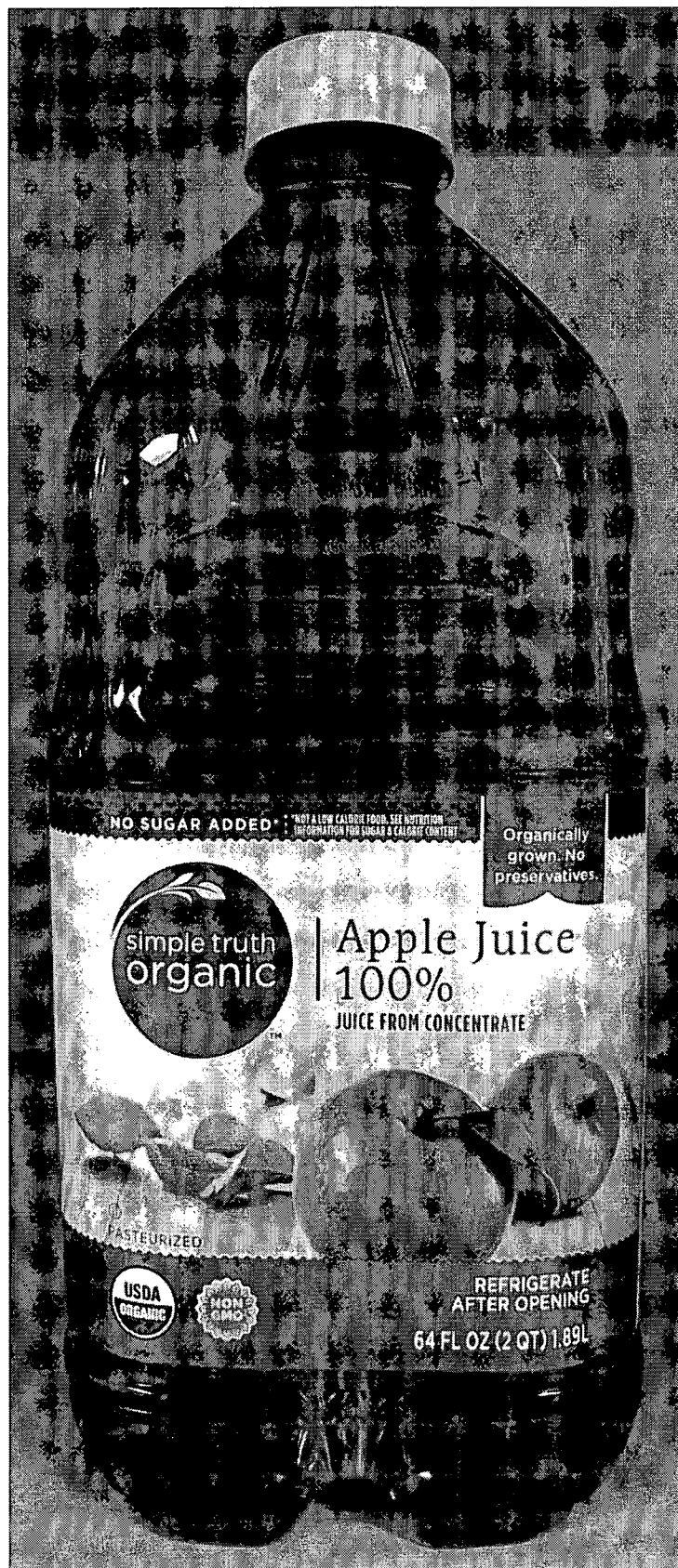
3. In the United States more than one-third of adults are obese, and approximately seventeen percent of children and adolescents are obese. The obesity epidemic has been fueled, in part, by increased consumption of foods high in sugar. Obesity and excess sugar consumption, in turn, have been linked to a variety of health problems, including, but not limited to, heart disease, tooth decay and diabetes. As a result, consumers are increasingly aware of their sugar consumption and attach importance to the statement “No Sugar Added” on the labels of food products.

4. To profit from consumers’ well-placed and increased focus on minimizing sugar consumption, Defendants have prominently featured a “No Sugar Added” statement on the front label of its Kroger Apple Juice containers. The images below depict the “No Sugar Added” statement as featured on the labels (“No Sugar Added Label”):













1           5.     **The FDA forbids the use of “No Sugar Added” claims unless the product**  
 2     **making such claim meets the following criteria:**

3                 (i) No amount of sugars, as defined in 101.9(c)(6)(ii), or any other ingredient  
 4                 that contains sugars that functionally substitute for added sugars is added during  
 5                 processing or packaging; and

6                 (ii) The product does not contain an ingredient containing added sugars such as  
 7                 jam, jelly, or concentrated fruit juice; and

8                 (iii) The sugars content has not been increased above the amount present in the  
 9                 ingredients by some means such as the use of enzymes, except where the intended  
 10                 functional effect of the process is not to increase the sugars content of a food, and a  
 11                 functionally insignificant increase in sugars results; and

12                 (iv) **The food that it resembles and for which it substitutes normally**  
 13                 **contains added sugars; and**

14                 (v) The product bears a statement that the food is not "low calorie" or "calorie  
 15                 reduced" (unless the food meets the requirements for a "low" or "reduced calorie"  
 16                 food) and that directs consumers' attention to the nutrition panel for further information  
 17                 on sugar and calorie content.<sup>1</sup>

18           6.     Further, the FDA has stated that, “[i]n implementing the guidelines, the purpose  
 19     of the ‘no added sugar’ claim is to present consumers with information that allows them to  
 20     differentiate between similar foods that would normally be expected to contain added sugars,  
 21     with respect to the presence or absence of added sugars. Therefore, the ‘no added sugar’  
 22     claim is not appropriate to describe foods that do not normally contain added sugars.”

23           7.     Thus, Defendants’ “No Sugar Added” claims on Kroger Apple Juice are in  
 24     violation of FDA and state regulations because Kroger Apple Juice does not resemble and  
 25     substitute for a food that normally contains added sugars, including, without limitation, apple  
 26     juice (21 C.F.R. § 101.60(c)(iv)).

27                 <sup>1</sup> See 21 C.F.R. § 101.60(c)(2)(emphasis added).  
 28



8. As a result of their reliance on Defendant's unlawful sugar-content labeling claims, Plaintiff and Class Members have suffered an ascertainable loss of money, including, but not limited to, out of pocket costs incurred in purchasing the Kroger Apple Juice. Further, as a result of its deceptive marketing and unfair competition with other similar manufacturers and brands, Kroger Apple Juice realized sizable profits.

**PARTIES**

**PLAINTIFF SONIA PEREZ**

9. Plaintiff SONIA PEREZ is a citizen and resident of the State of California, County of Los Angeles. During the class period alleged herein, Plaintiff purchased one or more bottles of Kroger Apple Juice from Ralphs in Los Angeles, California.

10. Prior to purchasing the Kroger Apple Juice, Plaintiff observed the illegal and deceptive “No Sugar Added” claim on the front label.

11. Plaintiff reasonably relied on Defendants’ “No Sugar Added” claim in deciding to purchase the Kroger Apple Juice and Defendants’ “No Sugar Added” claims were important to Plaintiff in making her purchase decision.

12. If the Kroger Apple Juice had not included the illegal and deceptive “No Sugar Added” claim on the label, Plaintiff would not have purchased the Kroger Apple Juice or would have paid less for it.

**DEFENDANTS**

13. Defendant THE KROGER CO. is an Ohio corporation, organized and existing under the laws of the State of Ohio and registered to conduct business in California. Defendant THE KROGER CO.'s Corporate Headquarters are located at 1014 Vine Street, Cincinnati, OH 45202.

14. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are the successors, predecessors, parent companies, subsidiaries, affiliates, divisions, or related entities to which these allegations pertain.

15. Plaintiff is informed and believes, and thereon alleges, that each and all of the

1 acts and omissions alleged herein was performed by, or is attributable to THE KROGER CO.  
2 and DOES 1-10, each acting as the agent for the other, with legal authority to act on the  
3 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the  
4 official policy of Defendants.

5 16. Plaintiff is informed and believes, and thereon alleges, that each of said  
6 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,  
7 omissions, occurrences, and transactions of each and all of the other Defendants in  
8 proximately causing the damages herein alleged.

9 17. At all relevant times, Defendants, and each of them, ratified each and every act  
10 or omission complained of herein.

#### 11 JURISDICTION

12 18. This Court has jurisdiction over this action pursuant to California Code of Civil  
13 Procedure § 410.10. Personal jurisdiction over THE KROGER CO. is proper because THE  
14 KROGER CO. has purposefully availed itself of the privilege of conducting business activities  
15 in California, including, but not limited to, testing, manufacturing, marketing, distributing,  
16 and/or selling Kroger Apple Juice to Plaintiff and prospective class members.

17 19. This class action is brought pursuant to California Code of Civil Procedure §  
18 382. Plaintiff is a California resident. The monetary damages and restitution sought by  
19 Plaintiff and the prospective class members exceed the minimal jurisdiction limits of the  
20 Superior Court and will be established according to proof at trial.

#### 21 VENUE

22 20. Venue is proper in this Court pursuant to California Code of Civil Procedure §§  
23 395, 395.5 and California Civil Code § 1780 because Plaintiff resides in the County of Los  
24 Angeles, California, and the acts, omissions, and contractual performance alleged herein took  
25 place in the County of Los Angeles, California. Plaintiff's Declaration, as required under Cal.  
26 Civ. Code section 1780(d), which reflects that Defendant is doing business in Los Angeles  
27 County, California, is filed concurrently as **Exhibit 1**.

## FACTUAL ALLEGATIONS

21. Due to health concerns, U.S. consumers are increasingly more aware of their sugar consumption and, as such, attach great importance to “No Sugar Added” and other sugar-content claims on food and beverage product labeling.

22. To profit from consumers’ well-placed and increased focus on minimizing sugar consumption, Defendants have prominently featured a “No Sugar Added” claim on the front label of its Kroger Apple Juice packaging, as depicted above.

23. However, the FDA forbids the use of “No Sugar Added” claims unless the product making such claim meets the following criteria:

(i) No amount of sugars, as defined in 101.9(c)(6)(ii), or any other ingredient that contains sugars that functionally substitute for added sugars is added during processing or packaging; and

(ii) The product does not contain an ingredient containing added sugars such as jam, jelly, or concentrated fruit juice; and

(iii) The sugars content has not been increased above the amount present in the ingredients by some means such as the use of enzymes, except where the intended functional effect of the process is not to increase the sugars content of a food, and a functionally insignificant increase in sugars results; and

(iv) **The food that it resembles and for which it substitutes normally contains added sugars; and**

(v) The product bears a statement that the food is not “low calorie” or “calorie reduced” (unless the food meets the requirements for a “low” or “reduced calorie” food) and that directs consumers’ attention to the nutrition panel for further information on sugar and calorie content.

24. Further, the FDA has stated that, “[i]n implementing the guidelines, the purpose of the ‘no added sugar’ claim is to present consumers with information that allows them to differentiate between similar foods that would normally be expected to contain added sugars,

1 with respect to the presence or absence of added sugars. Therefore, the ‘no added sugar’  
 2 claim is not appropriate to describe foods that do not normally contain added sugars.”

3 25. Thus, Defendants’ “No Sugar Added” claims on Kroger Apple Juice are in  
 4 violation of FDA and state regulations because Kroger Apple Juice does not resemble and  
 5 substitute for a food that normally contains added sugars, including, without limitation, apple  
 6 juice (21 C.F.R. § 101.60(c)(iv)).

7 26. As a result of their reliance on Defendant’s unlawful sugar-content labeling  
 8 claims, consumers have suffered an ascertainable loss of money, including, but not limited to,  
 9 out of pocket costs incurred in purchasing the Kroger Apple Juice. Further, as a result of its  
 10 deceptive marketing and unfair competition with other similar manufacturers and brands,  
 11 Defendants realized sizable profits.

#### 12 CLASS ACTION ALLEGATIONS

13 27. Plaintiff brings this lawsuit as a class action on behalf of herself and all others  
 14 similarly situated as members of the proposed Class pursuant to California Code of Civil  
 15 Procedure § 382.

16 28. All claims alleged herein arise under California law for which Plaintiffs seek  
 17 relief authorized by California law.

18 29. The class and sub-classes Plaintiff seeks to represent (the “Class Members”) is  
 19 defined as:

20 **Nationwide Class:** All individuals in the United States who  
 21 purchased one or more containers of Kroger Apple Juice  
 22 containing a “No Sugar Added” claim on the label or other  
 23 packaging at any time between four years prior to the filing of  
 this complaint until the date of certification (the “Nationwide  
 Class”).

24 **California Sub-Class:** All members of the Nationwide Class  
 25 who reside in the State of California (the “California Sub-  
 Class”).

26 **CLRA Sub-Class:** All members of the California Sub-Class  
 27 who are “consumers” within the meaning of California Civil  
 28 Code § 1761(d) (the “CLRA Sub-Class”).

1           30. Excluded from the Class are: (1) Defendant, any entity or division in which  
2 Defendant has a controlling interest, and their legal representatives, officers, directors,  
3 assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3)  
4 any Judge sitting in the presiding state and/or federal court system who may hear an appeal of  
5 any judgment entered; and (4) those persons who have suffered personal injuries as a result of  
6 the facts alleged herein. Plaintiff reserves the right to amend the Class and Sub-Class  
7 definitions if discovery and further investigation reveal that the Class or Sub-Class should be  
8 expanded or otherwise modified.

9           31. There is a well-defined community of interest in the litigation and the Class is  
10 readily ascertainable.

11           32. Numerosity: Although the exact number of prospective Class Members is  
12 uncertain and can only be ascertained through appropriate discovery, the number is great  
13 enough such that joinder is impracticable. The disposition of the claims of these Class  
14 Members in a single action will provide substantial benefits to all parties and to the Court.  
15 The Class Members are readily identifiable from information and records in Defendants'  
16 possession, custody, or control.

17           33. Typicality: Plaintiff's claims are typical of the claims of the Class in that  
18 Plaintiff, like all Class Members, has purchased one or more Kroger Apple Juice products  
19 containing a "No Sugar Added" claim on its label or other packaging within the applicable  
20 class period. The representative Plaintiff, like all Class Members, has been damaged by  
21 Defendants' misconduct in that they have incurred expenses due to their reliance on  
22 Defendants' labeling of its Kroger Apple Juice product, as described throughout this  
23 complaint. Furthermore, the factual bases of Defendants' misconduct are common to all Class  
24 Members and represent a common thread resulting in injury to all Class Members.

25           34. Commonality: There are numerous questions of law and fact common to  
26 Plaintiff and the Class that predominate over any question affecting only individual Class  
27 Members. These common legal and factual issues include the following:  
28

- (a) Whether Defendants engaged in unlawful, unfair or deceptive business practices by failing to properly package and label food products sold to consumers;
- (b) Whether the food products at issue were misbranded as a matter of law;
- (c) Whether Defendants unlawfully labeled certain food and beverage products with “No Sugar Added” claims;
- (d) Whether Defendants made false, misleading and/or untrue statements via its labeling;
- (e) Whether Defendants violated California’s Consumers Legal Remedies Act (Cal. Civil Code §§ 1750 *et seq.*);
- (f) Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.*;
- (g) Whether Defendants violated California Business & Professions Code §§ 17500 *et seq.*;
- (h) Whether Defendants violated the Sherman Food, Drug, and Cosmetic Law (Health & Saf. Code, §§ 109875 *et seq.*);
- (i) Whether Plaintiff and the Class are entitled to equitable and/or injunctive relief;
- (j) Whether Plaintiff and other Class Members are entitled to damages;
- (k) Whether Defendants’ unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class;
- (l) Whether Defendants knew or reasonably should have known of the deceptive labeling claims relating to its Kroger Apple Juice product; and
- (m) Whether Defendants are obligated to inform Class Members of their right to seek reimbursement for having paid for Kroger Apple Juice in reliance on Defendants’ misrepresentations.

35. Adequate Representation: Plaintiff will fairly and adequately protect the

1 interests of the Class Members. Plaintiff has retained attorneys experienced in the prosecution  
2 of class actions, including consumer and product defect class actions, and Plaintiff intends to  
3 prosecute this action vigorously.

4 36. Superiority: Plaintiff and the prospective Class Members have all suffered and  
5 will continue to suffer harm and damages as a result of Defendants' unlawful and wrongful  
6 conduct. A class action is superior to other available methods for the fair and efficient  
7 adjudication of the controversy. Absent a class action, most Class Members would likely find  
8 the cost of litigating their claims prohibitively high and would therefore have no effective  
9 remedy at law. Because of the relatively small size of the individual Class Members' claims,  
10 it is likely that only a few Class Members could afford to seek legal redress for Defendants'  
11 misconduct. Absent a class action, Class Members will continue to incur damages, and  
12 Defendants' misconduct will continue without remedy. Class treatment of common questions  
13 of law and fact would also be a superior method to multiple individual actions or piecemeal  
14 litigation in that class treatment will conserve the resources of the courts and the litigants, and  
15 will promote consistency and efficiency of adjudication.

#### 16 **FIRST CAUSE OF ACTION**

##### 17 **(Violation of California Business & Professions Code § 17200 *et seq.*)**

18 37. Plaintiff brings this cause of action on behalf of herself and on behalf of the  
19 Nationwide Class, or in the alternative, on behalf of herself and on behalf of the California  
20 Sub-Class.

21 38. As a result of their reliance on Defendant's misrepresentations and omissions,  
22 Class Members suffered an ascertainable loss of money, property, and/or value of their Kroger  
23 Apple Juice products.

24 39. California Business & Professions Code § 17200 prohibits acts of "unfair  
25 competition," including any "unlawful, unfair or fraudulent business act or practice" and  
26 "unfair, deceptive, untrue or misleading advertising."

27 40. Plaintiff and Class Members are reasonable consumers who expect  
28



1 manufacturers, like Defendants, to provide accurate and truthful representations regarding the  
 2 sugar content contained in their products, especially as compared to those in competitors'  
 3 similar products. Further, reasonable consumers, like Plaintiff, rely on the representations  
 4 made by manufacturers regarding products' sugar content in determining whether to purchase  
 5 the particular products and consider that information important to their purchase decision.

6 41. In failing to properly label its Kroger Apple Juice products, Defendants have  
 7 knowingly and intentionally misrepresented material facts and breached their duty not to do  
 8 so. In addition, Defendants' use of "No Sugar Added" claims constitutes a "fraudulent"  
 9 business practice or act within the meaning of Business and Professions Code Sections 17200  
 10 *et seq.* The applicable food labeling regulations are carefully crafted to require that nutritional  
 11 content claims be presented in a qualified and contextualized manner to protect the consuming  
 12 public from being deceived. Defendants' non-compliant sugar content labeling, as described  
 13 above, is an unqualified nutritional content claim that poses the very risk of deception the  
 14 regulations were promulgated to protect against.

15 42. If the Kroger Apple Juice had not included the illegal and deceptive "No Sugar  
 16 Added" claim on the label, Plaintiff and Class Members would not have purchased the Kroger  
 17 Apple Juice or would have paid less for it..

18 43. Defendants' conduct was and is likely to deceive consumers.

19 44. Defendants' acts, conduct and practices were unlawful, in that they constituted:

- 20 (a) Violations of California's Consumers Legal Remedies Act;
- 21 (b) Violations of California's False Advertising Law;
- 22 (c) Violations of California's Sherman Law; and
- 23 (d) Violations of the Federal Food Drug & Cosmetic Act;

24 45. By their conduct, Defendants have engaged in unfair competition and unlawful,  
 25 unfair, and fraudulent business practices.

26 46. Defendants' unfair or deceptive acts or practices occurred repeatedly in  
 27 Defendants' trade or business, and were capable of deceiving a substantial portion of the  
 28

1 purchasing public.

2 47. As a direct and proximate result of Defendants' unfair and deceptive practices,  
3 Plaintiff and the Class have suffered and will continue to suffer actual damages.

4 48. Defendants have been unjustly enriched and should be required to make  
5 restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the Business &  
6 Professions Code.

7 **SECOND CAUSE OF ACTION**

8 **(Violation of California Business & Professions Code § 17500 *et seq.*)**

9 49. Plaintiff incorporates by reference the allegations contained in each and every  
10 paragraph of this Complaint.

11 50. Plaintiff brings this cause of action on behalf of herself and on behalf of the  
12 Nationwide Class, or in the alternative, on behalf of the California Sub-Class.

13 51. California Business & Professions Code § 17500 prohibits unfair, deceptive,  
14 untrue, and misleading advertising in connection with the disposal of personal property  
15 (among other things), including, without limitation, false statements as to the use, worth,  
16 benefits, or characteristics of the property.

17 52. Defendants have committed acts of misleading and unlawful advertising by  
18 utilizing "No Sugar Added" claims on the labels of its Kroger Apple Juice. In addition,  
19 Defendant made such unlawful or misleading labeling claims with the intent to dispose of said  
20 merchandise.

21 53. Defendants knew, or in the exercise of reasonable care should have known, that  
22 the "No Sugar Added" representations were misleading and deceptive.

23 54. The falsely advertised Kroger Apple Juice was, and continues to be, likely to  
24 deceive members of the public.

25 55. As a result of their reliance on Defendants' misrepresentations and omissions,  
26 Class Members suffered an ascertainable loss of money, property, and/or value of their Kroger  
27 Apple Juice.



1 purchasing public.

2 64. Defendants knew the Kroger Apple Juice did not possess the characteristics and  
3 benefits as represented and were not of the particular standard, quality or grade as represented.

4 65. As a result of their reliance on Defendants' representations and omissions,  
5 Class Members suffered an ascertainable loss of money, property, and/or value of their Kroger  
6 Apple Juice.

7 66. In failing to disclose and misrepresenting the true nature and contents of the  
8 Kroger Apple Juice, Defendants knowingly and intentionally concealed material facts and  
9 breached their duty not to do so.

10 67. The facts Defendants concealed from or misrepresented to Plaintiff and Class  
11 Members are material in that a reasonable consumer would have considered them to be  
12 important in deciding whether to purchase the Kroger Apple Juice or pay less. If the Kroger  
13 Apple Juice had not included the illegal and deceptive "No Sugar Added" claim on the label,  
14 Plaintiff and Class Members would not have purchased the Kroger Apple Juice or would have  
15 paid less for it.

16 68. Plaintiff and Class Members are reasonable consumers who expect  
17 manufacturers, like Defendants, to provide accurate and truthful representations regarding the  
18 sugar content contained in their products, especially as compared to those in competitors'  
19 similar products. Further, reasonable consumers, like Plaintiff, rely on the representations  
20 made by manufacturers regarding products' sugar content in determining whether to purchase  
21 the particular products and consider that information important to their purchase decision.

22 69. As a direct and proximate result of Defendants' unfair methods of competition  
23 and/or unfair and deceptive practices, Plaintiff and the Class have suffered and will continue  
24 to suffer actual damages.

25 70. Plaintiff and the Class are entitled to equitable relief.

26 71. Plaintiff provided Defendant with notice of its violations of the CLRA pursuant  
27 to California Civil Code § 1782(a). If Defendant fails to provide the appropriate and  
28

1 requested relief for its violations of the CLRA within 30 days, Plaintiff will seek monetary,  
2 compensatory, and punitive damages, in addition to injunctive and equitable relief.

### 3 **RELIEF REQUESTED**

4 72. Plaintiff, on behalf of herself, and all others similarly situated, requests the  
5 Court to enter judgment against Defendant, as follows:

- 6 (a) An order certifying the proposed Class and Sub-Classes, designating  
7 Plaintiff as named representative of the Class, and designating the  
8 undersigned as Class Counsel;
- 9 (b) An order enjoining Defendants from further unfair and deceptive  
10 business practices regarding the deceptive advertising, sales, and other  
11 business practices relating to the Kroger Apple Juice products;
- 12 (c) A declaration requiring Defendants to comply with the various  
13 provisions of the Federal Food Drug & Cosmetic Act, California's  
14 Sherman Law, California's False Advertising Law and CLRA alleged  
15 herein and to make all the required representations;
- 16 (d) An award to Plaintiff and the Class for compensatory, exemplary, and  
17 statutory damages, including interest, in an amount to be proven at trial,  
18 in the event Defendants fail to provide the relief requested pursuant to  
19 Plaintiff's CLRA notice within 30 days of receipt;
- 20 (e) A declaration that Defendant must disgorge, for the benefit of the Class,  
21 all or part of the ill-gotten profits it received from the sale of its Kroger  
22 Apple Juice products, or make full restitution to Plaintiff and Class  
23 Members;
- 24 (f) An award of attorneys' fees and costs, as allowed by law;
- 25 (g) An award of attorneys' fees and costs pursuant to California Code of  
26 Civil Procedure § 1021.5;
- 27 (h) An award of pre-judgment and post-judgment interest, as provided by  
28

1 law;

2 (i) Leave to amend the Complaint to conform to the evidence produced at  
3 trial; and

4 (j) Such other relief as may be appropriate under the circumstances.

5 **DEMAND FOR JURY TRIAL**

6 73. Plaintiff demands a trial by jury of any and all issues in this action so triable.

7  
8 Dated: February 9, 2017

Respectfully submitted,

9 Capstone Law APC

10  
11 By: /s/ Lee A. Cirsch

12 Lee A. Cirsch  
13 Robert K. Friedl  
14 Trisha K. Monesi

15 Attorneys for Plaintiff Sonia Perez  
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Lee A. Cirsch (SBN: 227668) Lee.Cirsch@capstonelawyers.com CAPSTONE LAW APC 1875 Century Park East, Los Angeles, California 90067 TELEPHONE NO.: 310.556.4800 FAX NO.: 310.943.0396 ATTORNEY FOR (Name): Plaintiff SONIA PEREZ		FOR COURT USE ONLY  <b>CONFIRMED COPY ORIGINAL FILED</b> Superior Court of California County of Los Angeles  <b>FEB 09 2017</b>  BERNARD R. GORIO, Executive Officer/Clerk By: Judi Larn, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME:		
CASE NAME: SONIA PEREZ v. THE KROGER CO., et al.		CASE NUMBER: <b>BC 6 5 0 0 0 0</b>  JUDGE: DEPT:
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	
<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

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:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <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-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <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) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <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)	<b>Provisionally Complex Civil Litigation</b> (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) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <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. ☐ Large number of separately represented parties      d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve      e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence      f. ☐ 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): 3
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 9, 2017

Lee A. Cirsch

(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

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

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

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

## Non-PI/PD/WD (Other) Tort

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

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

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

## Real Property

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

## Unlawful Detainer

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

## Judicial Review

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

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

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

## Enforcement of Judgment

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

## Miscellaneous Civil Complaint

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

## Miscellaneous Civil Petition

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

BY FAX

SHORT TITLE: PEREZ v. THE KROGER CO., et al.

CASE NUMBER

BG 650000

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

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

**Step 1:** After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

**Step 2:** In Column B, check the box for the type of action that best describes the nature of the case.

**Step 3:** In Column C, circle the number which explains the reason for the court filing location you have chosen.

**Applicable Reasons for Choosing Court Filing Location (Column C)**

1. Class actions must be filed in the Stanley Mosk Courthouse, Central District.
2. Permissive filing in central district.
3. Location where cause of action arose.
4. Mandatory personal injury filing in North District.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.
11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury).

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
<b>Auto Tort</b>	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
<b>Other Personal Injury/Property Damage/Wrongful Death Tort</b>	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1, 4, 11
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11 1, 4, 11 1, 4, 11 1, 4, 11

SHORT TITLE: PEREZ v. THE KROGER CO., et al.	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	X, 2, 3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2, 6
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Real Property	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
Unlawful Detainer	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

SHORT TITLE: PEREZ v. THE KROGER CO., et al.		CASE NUMBER
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	A Civil Case Cover Sheet Category No	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2, 8 2 2
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 5, 11 2, 6 2, 9 2, 8 2, 8 2, 8, 9
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1, 2, 8
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2, 8
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1, 2, 8
		<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8
Miscellaneous Civil Petitions	Partnership/Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2, 3, 9 2, 3, 9 2, 3, 9 2 2, 7 2, 3, 8 2, 9




SHORT TITLE: PEREZ v. THE KROGER CO., et al.	CASE NUMBER
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**Step 4: Statement of Reason and Address:** Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

<b>REASON:</b> <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.			<b>ADDRESS:</b>		
<b>CITY:</b>		<b>STATE:</b>	<b>ZIP CODE:</b>		

**Step 5: Certification of Assignment:** I certify that this case is properly filed in the CENTRAL District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: February 9, 2017

  
 (SIGNATURE OF ATTORNEY/FILING PARTY)

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

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
NOTICE OF CASE ASSIGNMENT – CLASS ACTION CASES**

Case Number \_\_\_\_\_

BC 65000

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**  
Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 3.3 (c)).

ASSIGNED JUDGE	DEPT.	ROOM
Judge Elihu M. Berle	323	1707
Judge William F. Highberger	322	1702
Judge John Shepard Wiley, Jr.	311	1408
Judge Kenneth Freeman	310	1412
Judge Ann Jones	308	1415
Judge Maren E. Nelson	307	1402
Judge Carolyn B. Kuhl	309	1409

**Instructions for handling Class Action Civil Cases**

The following critical provisions of the Chapter Three Rules, as applicable in the Central District, are summarized for your assistance.

**APPLICATION**

The Chapter Three Rules were effective January 1, 1994. They apply to all general civil cases.

**PRIORITY OVER OTHER RULES**

The Chapter Three Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

**CHALLENGE TO ASSIGNED JUDGE**

A challenge under Code of Civil Procedure section 170.6 must be made within **15** days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

**TIME STANDARDS**

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

**COMPLAINTS:** All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

**CROSS-COMPLAINTS:** Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

**FINAL STATUS CONFERENCE**

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

**SANCTIONS**

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

Given to the Plaintiff/Cross Complainant/Attorney of Record **FEB 09 2017** SHERRI R. CARTER, Executive Officer/Clerk

BY  Deputy Clerk

## VOLUNTARY EFFICIENT LITIGATION STIPULATIONS

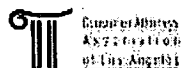


Superior Court of California  
County of Los Angeles

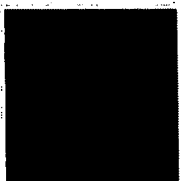


Los Angeles County  
Bar Association  
Litigation Section

Los Angeles County  
Bar Association Labor and  
Employment Law Section



Consumer Attorneys  
Association of Los Angeles



Southern California  
Defense Counsel



Association of  
Business Trial Lawyers



California Employment  
Lawyers Association

The Early Organizational Meeting Stipulation, Discovery Resolution Stipulation, and Motions in Limine Stipulation are voluntary stipulations entered into by the parties. The parties may enter into one, two, or all three of the stipulations; however, they may not alter the stipulations as written, because the Court wants to ensure uniformity of application. These stipulations are meant to encourage cooperation between the parties and to assist in resolving issues in a manner that promotes economic case resolution and judicial efficiency.

*The following organizations endorse the goal of promoting efficiency in litigation and ask that counsel consider using these stipulations as a voluntary way to promote communications and procedures among counsel and with the court to fairly resolve issues in their cases.*

◆ Los Angeles County Bar Association Litigation Section ◆

◆ Los Angeles County Bar Association  
Labor and Employment Law Section ◆

◆ Consumer Attorneys Association of Los Angeles ◆

◆ Southern California Defense Counsel ◆

◆ Association of Business Trial Lawyers ◆

◆ California Employment Lawyers Association ◆

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
<b>STIPULATION – EARLY ORGANIZATIONAL MEETING</b>			CASE NUMBER:

**This stipulation is intended to encourage cooperation among the parties at an early stage in the litigation and to assist the parties in efficient case resolution.**

**The parties agree that:**

1. The parties commit to conduct an initial conference (in-person or via teleconference or via videoconference) within 15 days from the date this stipulation is signed, *to discuss and consider whether there can be agreement on the following:*
  - a. Are motions to challenge the pleadings necessary? If the issue can be resolved by amendment as of right, or if the Court would allow leave to amend, could an amended complaint resolve most or all of the issues a demurrer might otherwise raise? If so, the parties agree to work through pleading issues so that a demurrer need only raise issues they cannot resolve. Is the issue that the defendant seeks to raise amenable to resolution on demurrer, or would some other type of motion be preferable? Could a voluntary targeted exchange of documents or information by any party cure an uncertainty in the pleadings?
  - b. Initial mutual exchanges of documents at the "core" of the litigation. (For example, in an employment case, the employment records, personnel file and documents relating to the conduct in question could be considered "core." In a personal injury case, an incident or police report, medical records, and repair or maintenance records could be considered "core.");
  - c. Exchange of names and contact information of witnesses;
  - d. Any insurance agreement that may be available to satisfy part or all of a judgment, or to indemnify or reimburse for payments made to satisfy a judgment;
  - e. Exchange of any other information that might be helpful to facilitate understanding, handling, or resolution of the case in a manner that preserves objections or privileges by agreement;
  - f. Controlling issues of law that, if resolved early, will promote efficiency and economy in other phases of the case. Also, when and how such issues can be presented to the Court;
  - g. Whether or when the case should be scheduled with a settlement officer, what discovery or court ruling on legal issues is reasonably required to make settlement discussions meaningful, and whether the parties wish to use a sitting judge or a private mediator or other options as



SHORT TITLE:	CASE NUMBER:
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discussed in the "Alternative Dispute Resolution (ADR) Information Package" served with the complaint;

- h. Computation of damages, including documents, not privileged or protected from disclosure, on which such computation is based;
  - i. Whether the case is suitable for the Expedited Jury Trial procedures (see information at [www.lacourt.org](http://www.lacourt.org) under "Civil" and then under "General Information").
2. The time for a defending party to respond to a complaint or cross-complaint will be extended to \_\_\_\_\_ (INSERT DATE) for the complaint, and \_\_\_\_\_ (INSERT DATE) for the cross-complaint, which is comprised of the 30 days to respond under Government Code § 68616(b), and the 30 days permitted by Code of Civil Procedure section 1054(a), good cause having been found by the Civil Supervising Judge due to the case management benefits provided by this Stipulation. A copy of the General Order can be found at [www.lacourt.org](http://www.lacourt.org) under "Civil", click on "General Information", then click on "Voluntary Efficient Litigation Stipulations".
  3. The parties will prepare a joint report titled "Joint Status Report Pursuant to Initial Conference and Early Organizational Meeting Stipulation, and if desired, a proposed order summarizing results of their meet and confer and advising the Court of any way it may assist the parties' efficient conduct or resolution of the case. The parties shall attach the Joint Status Report to the Case Management Conference statement, and file the documents when the CMC statement is due.
  4. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day

The following parties stipulate:

Date:

_____ (TYPE OR PRINT NAME)	➤ _____ (ATTORNEY FOR PLAINTIFF)
Date: _____	
_____ (TYPE OR PRINT NAME)	➤ _____ (ATTORNEY FOR DEFENDANT)
Date: _____	
_____ (TYPE OR PRINT NAME)	➤ _____ (ATTORNEY FOR DEFENDANT)
Date: _____	
_____ (TYPE OR PRINT NAME)	➤ _____ (ATTORNEY FOR DEFENDANT)
Date: _____	
_____ (TYPE OR PRINT NAME)	➤ _____ (ATTORNEY FOR _____)
Date: _____	
_____ (TYPE OR PRINT NAME)	➤ _____ (ATTORNEY FOR _____)
Date: _____	
_____ (TYPE OR PRINT NAME)	➤ _____ (ATTORNEY FOR _____)
Date: _____	

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
<b>STIPULATION – DISCOVERY RESOLUTION</b>			CASE NUMBER:

**This stipulation is intended to provide a fast and informal resolution of discovery issues through limited paperwork and an informal conference with the Court to aid in the resolution of the issues.**

**The parties agree that:**

1. Prior to the discovery cut-off in this action, no discovery motion shall be filed or heard unless the moving party first makes a written request for an Informal Discovery Conference pursuant to the terms of this stipulation.
2. At the Informal Discovery Conference the Court will consider the dispute presented by parties and determine whether it can be resolved informally. Nothing set forth herein will preclude a party from making a record at the conclusion of an Informal Discovery Conference, either orally or in writing.
3. Following a reasonable and good faith attempt at an informal resolution of each issue to be presented, a party may request an Informal Discovery Conference pursuant to the following procedures:
  - a. The party requesting the Informal Discovery Conference will:
    - i. File a Request for Informal Discovery Conference with the clerk's office on the approved form (copy attached) and deliver a courtesy, conformed copy to the assigned department;
    - ii. Include a brief summary of the dispute and specify the relief requested; and
    - iii. Serve the opposing party pursuant to any authorized or agreed method of service that ensures that the opposing party receives the Request for Informal Discovery Conference no later than the next court day following the filing.
  - b. Any Answer to a Request for Informal Discovery Conference must:
    - i. Also be filed on the approved form (copy attached);
    - ii. Include a brief summary of why the requested relief should be denied;

SHORT TITLE:	CASE NUMBER:
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- iii. Be filed within two (2) court days of receipt of the Request; and
  - iv. Be served on the opposing party pursuant to any authorized or agreed upon method of service that ensures that the opposing party receives the Answer no later than the next court day following the filing.
- c. No other pleadings, including but not limited to exhibits, declarations, or attachments, will be accepted.
- d. If the Court has not granted or denied the Request for Informal Discovery Conference within ten (10) days following the filing of the Request, then it shall be deemed to have been denied. If the Court acts on the Request, the parties will be notified whether the Request for Informal Discovery Conference has been granted or denied and, if granted, the date and time of the Informal Discovery Conference, which must be within twenty (20) days of the filing of the Request for Informal Discovery Conference.
- e. If the conference is not held within twenty (20) days of the filing of the Request for Informal Discovery Conference, unless extended by agreement of the parties and the Court, then the Request for the Informal Discovery Conference shall be deemed to have been denied at that time.
4. If (a) the Court has denied a conference or (b) one of the time deadlines above has expired without the Court having acted or (c) the Informal Discovery Conference is concluded without resolving the dispute, then a party may file a discovery motion to address unresolved issues.
5. The parties hereby further agree that the time for making a motion to compel or other discovery motion is tolled from the date of filing of the Request for Informal Discovery Conference until (a) the request is denied or deemed denied or (b) twenty (20) days after the filing of the Request for Informal Discovery Conference, whichever is earlier, unless extended by Order of the Court.
- It is the understanding and intent of the parties that this stipulation shall, for each discovery dispute to which it applies, constitute a writing memorializing a "specific later date to which the propounding [or demanding or requesting] party and the responding party have agreed in writing," within the meaning of Code Civil Procedure sections 2030.300(c), 2031.320(c), and 2033.290(c).
6. Nothing herein will preclude any party from applying *ex parte* for appropriate relief, including an order shortening time for a motion to be heard concerning discovery.
7. Any party may terminate this stipulation by giving twenty-one (21) days notice of intent to terminate the stipulation.
8. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day.

SHORT TITLE:	CASE NUMBER:
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**The following parties stipulate:**

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

➤

(ATTORNEY FOR PLAINTIFF)

➤

(ATTORNEY FOR DEFENDANT)

➤

(ATTORNEY FOR DEFENDANT)

➤

(ATTORNEY FOR DEFENDANT)

➤

(ATTORNEY FOR \_\_\_\_\_)

➤

(ATTORNEY FOR \_\_\_\_\_)

➤

(ATTORNEY FOR \_\_\_\_\_)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
<b>INFORMAL DISCOVERY CONFERENCE</b> (pursuant to the Discovery Resolution Stipulation of the parties)			CASE NUMBER:

1. This document relates to:

- ☐ Request for Informal Discovery Conference  
☐ Answer to Request for Informal Discovery Conference

2. Deadline for Court to decide on Request: \_\_\_\_\_ (insert date 10 calendar days following filing of the Request).
3. Deadline for Court to hold Informal Discovery Conference: \_\_\_\_\_ (insert date 20 calendar days following filing of the Request).
4. For a Request for Informal Discovery Conference, briefly describe the nature of the discovery dispute, including the facts and legal arguments at issue. For an Answer to Request for Informal Discovery Conference, briefly describe why the Court should deny the requested discovery, including the facts and legal arguments at issue.

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
<b>STIPULATION AND ORDER – MOTIONS IN LIMINE</b>			CASE NUMBER:

**This stipulation is intended to provide fast and informal resolution of evidentiary issues through diligent efforts to define and discuss such issues and limit paperwork.**

**The parties agree that:**

1. At least \_\_\_\_ days before the final status conference, each party will provide all other parties with a list containing a one paragraph explanation of each proposed motion in limine. Each one paragraph explanation must identify the substance of a single proposed motion in limine and the grounds for the proposed motion.
2. The parties thereafter will meet and confer, either in person or via teleconference or videoconference, concerning all proposed motions in limine. In that meet and confer, the parties will determine:
  - a. Whether the parties can stipulate to any of the proposed motions. If the parties so stipulate, they may file a stipulation and proposed order with the Court.
  - b. Whether any of the proposed motions can be briefed and submitted by means of a short joint statement of issues. For each motion which can be addressed by a short joint statement of issues, a short joint statement of issues must be filed with the Court 10 days prior to the final status conference. Each side's portion of the short joint statement of issues may not exceed three pages. The parties will meet and confer to agree on a date and manner for exchanging the parties' respective portions of the short joint statement of issues and the process for filing the short joint statement of issues.
3. All proposed motions in limine that are not either the subject of a stipulation or briefed via a short joint statement of issues will be briefed and filed in accordance with the California Rules of Court and the Los Angeles Superior Court Rules.



SHORT TITLE:	CASE NUMBER:
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**The following parties stipulate:**

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

➤ \_\_\_\_\_  
(ATTORNEY FOR PLAINTIFF)

➤ \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

➤ \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

➤ \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

➤ \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

➤ \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

➤ \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

**THE COURT SO ORDERS.**

Date:

\_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER



CORPORATION SERVICE COMPANY®

## Notice of Service of Process

KG3 / ALL  
Transmittal Number: 16399951  
Date Processed: 03/21/2017

**Primary Contact:** Venessa C. Wickline Gribble  
The Kroger Co.  
1014 Vine Street  
Cincinnati, OH 45202-1100

---

<b>Entity:</b>	The Kroger Co. Entity ID Number 2171751
<b>Entity Served:</b>	The Kroger Co.
<b>Title of Action:</b>	Sonia Perez vs. The Kroger Co.
<b>Document(s) Type:</b>	Order
<b>Nature of Action:</b>	Class Action
<b>Court/Agency:</b>	Los Angeles County Superior Court, California
<b>Case/Reference No:</b>	BC650000
<b>Jurisdiction Served:</b>	California
<b>Date Served on CSC:</b>	03/20/2017
<b>Answer or Appearance Due:</b>	05/23/2017
<b>Originally Served On:</b>	CSC
<b>How Served:</b>	Personal Service
<b>Sender Information:</b>	Kelly Jameson, Judicial Assistant Not Shown

---

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**  
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)



CORPORATION SERVICE COMPANY®

## Notice of Service of Process

null / ALL  
Transmittal Number: 16414815  
Date Processed: 03/24/2017

**Primary Contact:** Venessa C. Wickline Gribble  
The Kroger Co.  
1014 Vine Street  
Cincinnati, OH 45202-1100

---

<b>Entity:</b>	The Kroger Co. Entity ID Number 2171751
<b>Entity Served:</b>	The Kroger Co
<b>Title of Action:</b>	Sonia Perez vs. The Kroger Co.
<b>Document(s) Type:</b>	Order
<b>Nature of Action:</b>	Class Action
<b>Court/Agency:</b>	Los Angeles County Superior Court, California
<b>Case/Reference No:</b>	BC650000
<b>Jurisdiction Served:</b>	California
<b>Date Served on CSC:</b>	03/23/2017
<b>Answer or Appearance Due:</b>	10 days prior to 05/19/2017
<b>Originally Served On:</b>	CSC
<b>How Served:</b>	Personal Service
<b>Sender Information:</b>	Lee A. Cirsch Not Shown

---

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**

2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/10/17

DEPT. 323

HONORABLE ELIHU M. BERLE

JUDGE

K. JAMESON

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

4:00 pm BC650000

Plaintiff

Counsel

SONIA PEREZ

NO APPEARANCES

VS

Defendant

THE KROGER CO

Counsel

Complex 3/10/17

## NATURE OF PROCEEDINGS:

## COURT ORDER REGARDING NEWLY FILED CLASS ACTION

By this order, the Court determines this case to be Complex according to Rule 3.400 of the California Rules of Court. The Clerk's Office has randomly assigned this case to this department for all purposes.

By this order, the Court stays the case, except for service of the Summons and Complaint. The stay continues at least until the Initial Status Conference. Initial Status Conference is set for May 19, 2017, at 2:30 p.m. in Department 323. At least 10 days prior to the Initial Status Conference, counsel for all parties must discuss the issues set forth in the Initial Status Conference Order issued this date. The Initial Status Conference Order is to help the Court and the parties manage this complex case by developing an orderly schedule for briefing, discovery, and court hearings. The parties are informally encouraged to exchange documents and information as may be useful for case evaluation.

Responsive pleadings shall not be filed until further Order of the Court. Parties must file a Notice of Appearance in lieu of an Answer or other responsive pleading. The filing of a Notice of Appearance shall not constitute a waiver of any substantive or procedural challenge to the Complaint. Nothing in this order stays the time for filing an Affidavit of

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 03/10/17

DEPT. 323

HONORABLE ELIHU M. BERLE

JUDGE K. JAMESON

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

4:00 pm

BC650000

Plaintiff

Counsel

SONIA PEREZ

NO APPEARANCES

VS

Defendant

THE KROGER CO

Counsel

Complex 3/10/17

**NATURE OF PROCEEDINGS:**

Prejudice pursuant to Code of Civil Procedure Section 170.6.

Counsel are directed to access the following link for information on procedures in the Complex Litigation Program courtrooms:

<http://www.lacourt.org/division/civil/CI0037.aspx>

According to Government Code Section 70616 subdivisions (a) and (b), each party shall pay a fee of \$1,000.00 to the Los Angeles Superior Court within 10 calendar days from this date.

The plaintiff must serve a copy of this minute order and the attached Initial Status Conference Order on all parties forthwith and file a Proof of Service in this department within seven days of service.

**CLERK'S CERTIFICATE OF MAILING**

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the ISC order and minute order dated 3/10/17

upon each party or counsel named below by placing the document for collection and mailing so as to

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 03/10/17

DEPT. 323

HONORABLE ELIHU M. BERLE

JUDGE K. JAMESON

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

4:00 pm

BC650000

Plaintiff

Counsel

SONIA PEREZ

NO APPEARANCES

VS

Defendant

THE KROGER CO

Counsel

Complex 3/10/17

**NATURE OF PROCEEDINGS:**

cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: March 13, 2017

Sherri R. Carter, Executive Officer/Clerk

By:

KELLY JAMESON, JUDICIAL ASSISTANT

Lee A. Cirsch  
CAPSTONE LAW APC  
1875 Century Park East, Suite 1000  
Los Angeles, CA 90067



CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

MAR 10 2017

Sherri R. Carter, Executive Officer/Clerk  
By Kelly Jameson, Deputy

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

SONIA PEREZ, individually, and on behalf of a  
class of similarly situated individuals,

Plaintiff(s),

vs.

THE KROGER CO., an Ohio corporation; and  
DOES 1-10, inclusive,

Defendant(s).

Case No.: BC650000

**INITIAL STATUS CONFERENCE  
ORDER**

**(COMPLEX LITIGATION  
PROGRAM—CLASS ACTIONS)**

Case Assigned for All purposes to  
Judge Elihu M. Berle

Department 323

Date: May 19, 2017

Time: 2:30 p.m.

This case has been assigned for all purposes to Judge Elihu M. Berle in the Complex Litigation Program. An Initial Status Conference is set for May 19, 2017, at 2:30 p.m. in Department 323 located in the Central Civil West Courthouse at 600 South Commonwealth Avenue, Los Angeles, California 90005. Counsel for all parties are ordered to attend.

Plaintiff's counsel is directed to serve a copy of this Initial Status Conference Order on all parties, within five (5) days of service of this order. If any defendant has not yet been served in this action, service is to be completed within twenty (20) days of the date of this order.

1 The Court orders counsel to prepare for the Initial Status Conference by identifying  
 2 and discussing the central legal and factual issues in the case. Counsel for plaintiff is  
 3 ordered to initiate contact with counsel for defense to begin this process. Counsel then  
 4 must negotiate and agree, as possible, on a case management plan.

5 Counsel must file a Joint Initial Status Statement five (5) court days before the  
 6 Initial Status Conference. The Joint Response Statement must be filed on line-numbered  
 7 pleading paper and must specifically answer each of the below numbered items. Do not  
 8 use the Judicial Council Form CM-110 (Case Management Statement).

9 **1. PARTIES AND COUNSEL:** Please list all presently-named Plaintiff class  
 10 representatives and presently-named defendants, together with all counsel of  
 11 record, including counsel's contact and email information.

12 **2. ELECTRONIC SERVICE OF PAPERS:** For efficiency, the complex  
 13 program requires the parties in every new case to use a third party cloud service,  
 14 such as:

- 15 ■ Case Anywhere ([www.caseanywhere.com](http://www.caseanywhere.com)),
- 16 ■ CaseHomePage ([www.casehomepage.com](http://www.casehomepage.com)), or
- 17 ■ File&ServeXpress ([www.lexisnexis.com/fileandserve](http://www.lexisnexis.com/fileandserve)).

18 The parties are to select one of these vendors and submit the parties' choice  
 19 when filing the Joint Initial Status Conference Class Action Response Statement.  
 20 If the parties cannot agree, the court will select the vendor at the Initial Status  
 21 Conference. Electronic service is not the same as electronic filing. Only  
 22 traditional methods of filing by physical delivery of original papers or by fax  
 23 filing are presently acceptable.

24 **3. CLAIMS AND DEFENSES:** Set forth a brief description of the core factual  
 25 and legal issues, derived from Plaintiff's claims and defendant's defenses.

26 **4. POTENTIAL ADDITIONAL PARTIES:** Does any plaintiff presently  
 27 intend to add more class representatives? If so, and if known, by what date and by what  
 28

1 name? Does any plaintiff presently intend to name more defendants? If so, and if known,  
2 by what date and by what name? Does any appearing defendant presently intend to file a  
3 cross-complaint? If so, who will be named?

4 **5. IMPROPERLY NAMED DEFENDANT(S):** Does any party contend that  
5 the complaint names the wrong person or entity, please explain.

6 **6. ADEQUACY OF PROPOSED CLASS REPRESENTATIVE(S):** Does  
7 any party contend one or more named plaintiffs might not be an adequate class  
8 representative. If so, please explain.

9 **7. ESTIMATED CLASS SIZE:** What is the estimated size of the putative  
10 class?

11 **8. OTHER ACTIONS WITH OVERLAPPING CLASS DEFINITIONS:**  
12 Are there other cases with overlapping class definitions? If so, please identify the court, the  
13 short caption title, the docket number, and the case status.

14 **9. ARBITRATION AND/OR CLASS ACTION WAIVER CLAUSES:**  
15 Does any party contend there is an arbitration and/or class action waiver. If so, please  
16 discuss.

17 **10. POTENTIAL EARLY CRUCIAL MOTIONS:** Are there any issues that  
18 can be identified and resolved early. If so, please identify and set forth proposed vehicles  
19 for resolution.

20 **PLEASE NOTE:** By stipulation a party may move for summary adjudication  
21 of a legal issues or a claim for damages that does not completely dispose of a cause of  
22 action, an affirmative defense, or an issue of duty. (C.C.P. § 437c(t)).

23 **11. PROTECTIVE ORDERS:** Parties considering an order to protect  
24 confidential information from general disclosure should begin with the model protective  
25 orders found on the Los Angeles Superior Court Website under "Civil Tools for  
26 Litigators."  
27  
28

1       **12. DISCOVERY:** Counsel are to discuss a plan of discovery. Prior to  
 2 certification, the court generally allows discovery on matters relevant to class certification,  
 3 which depending on circumstances, sometimes may include some factual issues also  
 4 touching the merits.

5       **13. INSURANCE COVERAGE:** Please state (1) if there is insurance for  
 6 indemnity or reimbursement, and (2) whether there are any insurance coverage issues  
 7 which might affect settlement.

8       **14. ALTERNATIVE DISPUTE RESOLUTION:** Counsel are requested to  
 9 discuss ADR and proposed neutrals to conduct such proceedings.

10       **15. TIMELINE FOR CASE MANAGEMENT:** Counsel to propose future  
 11 dates for:

- 12       ■ The next status conference,
- 13       ■ A schedule for alternative dispute resolution,
- 14       ■ A filing deadline for the motion for class certification, and
- 15       ■ Filing deadlines and descriptions for other anticipated non-discovery motions.

16       **PENDING FURTHER ORDERS OF THIS COURT,** and except as otherwise  
 17 provided in this Initial Status Conference Order, these proceedings are stayed, except for  
 18 service of summons and complaint and filing of Notice of Appearance. This stay shall  
 19 preclude the filing of any answer, demurrer, motion to strike, or motions challenging the  
 20 jurisdiction of the Court. Any defendant may file a Notice of Appearance for purposes of  
 21 identification of counsel and preparation of a service list. The filing such a Notice of  
 22 Appearance shall be without prejudice to any challenge to the jurisdiction of the Court,  
 23 substantive or procedural challenges to the Complaint, any affirmative defense, and the  
 24 filing of any cross-complaint in this action. This stay is issued to assist the Court and the  
 25 parties in managing this “complex” case. Although the stay applied to discovery, this stay  
 26 shall not preclude the parties from informally exchanging documents that may assist in  
 27  
 28

1  
2 their initial evaluation of the issues presented in this case.  
3  
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6 Dated:

7 MAR 10 2017  
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**ELIHU M. BERLE**

---

HON. ELIHU M. BERLE  
JUDGE OF THE SUPERIOR COURT

# **EXHIBIT B**



1 PURVI G. PATEL (BAR NO. 270702)  
PPatel@mofo.com  
2 KELSEY M. STRICKER (BAR NO. 300955)  
KStricker@mofo.com  
3 MORRISON & FOERSTER LLP  
707 Wilshire Boulevard  
4 Los Angeles, California 90017-3543  
Telephone: 213.892.5200  
5 Facsimile: 213.892.5454  
6 Attorneys for Defendant  
THE KROGER CO.  
7  
8  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES

12 SONIA PEREZ, individually, and on behalf  
of a class of similarly situated individuals,

13 Plaintiff,

14 v.

15 THE KROGER CO., an Ohio corporation;  
and DOES 1-10, inclusive,

16 Defendants.  
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Case No. BC650000

**NOTICE OF DEFENDANT  
THE KROGER CO.'S FILING OF  
NOTICE OF REMOVAL TO  
FEDERAL COURT (28 U.S.C § 1446(d))**

Judge: Hon. Elihu M. Berle  
Dept.: 323

Complaint Filed: February 9, 2017

1           **TO THE CLERK OF THE SUPERIOR COURT FOR THE COUNTY OF LOS**  
2 **ANGELES:**

3           In accordance with 28 U.S.C. § 1446(d), notice is hereby given that Defendant The  
4 Kroger Co. has filed a Notice of Removal with the United States District Court for the Central  
5 District of California for the purpose of removing the above-captioned action from this Court.  
6 Section 1446(d) provides that this Court need take no further action with respect to this case  
7 “unless and until the case is remanded.”

8           Attached as **Exhibit A** is a true and correct copy of the Notice of Removal and supporting  
9 documents, which were filed on March 29, 2017 with the Clerk of the United States District  
10 Court for the Central District of California.

11  
12 Dated: March 29, 2017

MORRISON & FOERSTER LLP

13  
14 By: \_\_\_\_\_

  
Purvi G. Patel

*Attorneys for Defendant  
The Kroger Co.*