

David A. Lowe (Pro Hac Vice to be filed)
LOWE GRAHAM JONES^{PLLC}
701 Fifth Avenue, Suite 4800
Seattle, WA 98104
T: 206.381.3300
Lowe@LoweGrahamJones.com

Norman A. Ryan, Esq./Bar No. 116175
RYAN CARVALHO^{LLP}
8989 Rio San Diego Drive, Suite 368
San Diego, CA 92108
T: 858.455.8700
Nryan@ryanlitigators.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GINA BECKMAN, an individual,

Plaintiff,

v.

WAL-MART STORES, INC., an Arkansas
corporation; ESPRESSO SUPPLY, INC., a
Washington corporation, EKO BRANDS,
LLC; EKOBREW, a Washington corporation,
and DOES 1-10 inclusive

Defendants.

CASE NO. '17 CV2499 BAS BLM

DEFENDANTS' NOTICE OF REMOVAL

**TO PLAINTIFFS, THROUGH THEIR COUNSEL OF RECORD, THE CLERK OF
THE ABOVE-ENTITLED COURT AND THE HONORABLE UNITED STATES
DISTRICT JUDGE, AS ASSIGNED:**

PLEASE TAKE NOTICE that Defendants Espresso Supply Inc., Eko Brands, LLC
(collectively "Eko"), and Wal-Mart Stores, Inc. ("Wal-Mart") submit this Notice of Removal
pursuant to 28 U.S.C. §§ 1331, 1332, 1441(b) and 1441(c). Defendants do not waive any rights to
dismiss the Amended Complaint and/or deny/strike any allegations contained therein. Diversity
jurisdiction exists here because there is complete diversity among opposing parties and the amount

1 in controversy for each potential plaintiff exceeds \$75,000 under 28 U.S.C. § 1332(a). Federal
2 Question jurisdiction exists here because Defendants are subject to potentially \$81,885,000 in
3 statutory damages award arising from a finding of a violation of Cal. Bus. & Prof. Code § 17500.

4 I. INTRODUCTION

5 Plaintiff Gina Beckman (“Mrs. Beckman” or “Plaintiff”) filed this action on or about
6 June 16, 2017 in the Superior Court of California for the County of San Diego against a number
7 of defendants, including Eko and Wal-Mart. A true and accurate copy of the Register of Actions
8 (“ROA”) is attached hereto as Exhibit A. Pursuant to 28 U.S.C. § 1446(a), Defendants attach
9 “a copy of all process, pleadings, and orders served upon such defendant or defendants in such
10 action.” Ms. Beckman filed an Amended Complaint on or about September 7, 2017. (See Exhibit
11 A, ROA at Dkt. 13) Counsel for Defendants was served with the Amended Complaint on or about
12 October 4, 2017. (See Christopher Legler Declaration (“Legler
13 Decl.”) ¶ 8; see also Wal-Mart representative Declaration (“Wal-
14 Mart Decl.”) at ¶ 4)

15 The Amended Complaint purports to be a class action
16 lawsuit against Eko and Wal-Mart for selling allegedly defective
17 “Brew & Save Carafe” filters to be used in single-serve brewing
18 machines (e.g. Keurig®-style coffee brewers). (See Amended
19 Complaint Exhibit 1). Defendant Eko Brands LLC makes and sells
20 the allegedly defective carafes and markets them under the brand
21 “Brew & Save.” A representative photograph of the “Brew & Save Reusable Carafe Coffee Filter”
22 is reproduced to the right¹:



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25 ¹ For the Court’s benefit, a clearer image showing what is included in the Plaintiff’s Amended Complaint
26 was obtained from <https://www.walmart.com/ip/Brew-and-Save-Reusable-Carafe-Coffee-Filter-for-Keurig-2-0-Brewer/48937394>

1 Plaintiff allegedly purchased one of these products from a Wal-Mart store in San Diego on
2 or about May 22, 2017 for \$9.92. (Amended Complaint ¶¶ 23- 24) She alleges it did not work as
3 advertised and now she seeks redress in the form of a class action lawsuit. Plaintiff has defined the
4 proposed Class as follows:

5 The members of the proposed Class consists of all consumers who
6 purchased a Brew & Save K-Cup Carafe Filter, advertised as being
7 compatible with Keurig® 2.0 and 1.0 models, at Wal-Mart retail stores, in
8 California, during the period commencing on the date that is within four (4)
years prior to the filing of the initial complaint and through the present date
("Class Period")...

9 (Amended Complaint ¶ 8 (footnote omitted)) Her four causes of action are state law claims for
10 Breach of Implied Warranty of Merchantability, Breach of Express Warranty, Breach of Implied
11 Warranty of Fitness for a Particular Purpose, and Unfair Business Practices. (Amended Complaint,
12 pp. 11-17) In her prayer for relief, Plaintiff seeks *inter alia* ...

- 13 5. For damages as provided by California law;
- 14 6. For restitution as permitted under California law;
- 15 7. For disgorged profits as allowed by California law;
- 16 8. For injunctive relief as provided under California law;
- 17 9. For pre- and post-judgment interest on all amounts award [sic] as
permitted by California Law [sic];
- 18 10. For attorney's fees and costs incurred in bringing this action as
provided by California law;
- 19 11. For any other relief, the Court may deem just and proper.

20 (Amended Complaint p. 17) For the reasons set forth below, this action is properly before this
21 Court.

22 II. LEGAL STANDARDS

23 District Courts have original jurisdiction under 28 U.S.C. § 1332(a)(1) over civil actions
24 "between . . . citizens of different states" if the amount in controversy exceeds \$75,000. "Since
25 *Strawbridge v. Curtiss*, 7 U.S. 267 (1806), [the United States Supreme Court] ha[s] read the
26 statutory formulation 'between . . . citizens of different States' to require complete diversity

1 between all plaintiffs and all defendants.” *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005)
2 (citing *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996)).

3 “In actions seeking declaratory or injunctive relief, it is well established that the amount in
4 controversy is measured by the value of the object of the litigation.” *Hunt v. Wash. State Apple*
5 *Adver. Comm’n*, 432 U.S. 333, 347 (1977) (superseded by statute on other grounds as stated in
6 *United Food & Commer. Workers Union Local 751 v. Brown Group*, 517 U.S. 544, 557 (1996)).
7 The proper burden of proof imposed upon a defendant to establish the amount in controversy is
8 the preponderance of the evidence standard. *Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d
9 975, 977 (9th Cir. 2013). “A preponderance of the evidence, rather than “legal certainty,” is the
10 standard for determining whether the amount in controversy is satisfied when state law permits the
11 plaintiff to recover in excess of the amount alleged in the complaint.” *Patel v. Nike Retail Servs.*,
12 58 F. Supp. 3d 1032, 1038 (N.D. Cal. 2014).

13 III. ARGUMENT

14 A. Timeliness

15 This Notice is timely pursuant to 28 U.S.C. § 1446(b) as service of the summons and
16 complaint was effected on or about October 4, 2017. (See Summons p. 1 “COPY RECEIVED
17 OCT 04 2017”; see also Legler Decl. ¶ 8; Wal-Mart Decl. ¶ 4). See *Destfino v. Reiswig, et al.*, 630
18 F.3d 952, 956 (9th Cir. Cal. 2011) (“we hold that each defendant is entitled to thirty days to
19 exercise his removal rights after being served”). Neither the named defendants “Brew & Save”,
20 “Ekobrew” nor “Doe” defendants exist. (See Legler Decl. ¶ 6) As such they are
21 nonexistent/nominal defendants not required to consent to removal. 28 U.S.C. § 1441(b)(1) (“In
22 determining whether a civil action is removable on the basis of the jurisdiction under section
23 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be
24 disregarded”); see also *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 (9th Cir. 1988)
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1 (general requirement of consent does not apply to “nominal, unknown or fraudulently joined
2 parties”).

3 **B. Complete Diversity Exists**

4 On the face of the Amended Complaint, Plaintiff admits complete diversity. (Amended
5 Complaint ¶¶ 10, 11, 13, 14) Plaintiff admits she is a California resident. (Id. ¶ 10) “A person’s
6 domicile is her permanent home, where she resides with the intention to remain or to which she
7 intends to return.” *See, e.g., Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. Cal. 2001);
8 *Heinz v. Havelock*, 757 F. Supp. 1076, 1079 (C.D. Cal. 1991) (residence and property ownership
9 is a factor in domicile for diversity jurisdiction); *State Farm Mut. Auto Ins. Co. v. Dyer*,
10 19 F.3d 514, 520 (10th Cir. 1994) (“... the place of residence is prima facie the domicile”).

11 The residency of Defendants is also not in dispute. Under 28 U.S.C. § 1332(c)(1),
12 “a corporation shall be deemed to be a citizen of every State and foreign state by which it has been
13 incorporated and of the State or foreign state where it has its principal place of business.” Plaintiff
14 admits that Espresso Supply and Eko Brands are both headquartered in Washington State.
15 (Amended Complaint ¶¶ 13, 14). Plaintiff states that Wal-Mart is headquartered in Arkansas. (Id. ¶
16 11).

17 In fact, Defendants Espresso Supply, Inc. and Eko Brands, LLC are both Washington
18 corporations. (See Legler Decl. ¶¶ 2-5; see also, Exhibits A and B to Legler Decl.) Espresso
19 Supply, Inc. is the parent company of Eko Brands, LLC but Eko Brands is principally responsible
20 for the sale of the Brew & Save Carafes. (Id. ¶¶ 5-6) Additionally, Wal-Mart is in fact a Delaware
21 corporation with a principle place of business in Arkansas. (See Wal-Mart Decl. at ¶¶ 2-3; see also,
22 Exhibit A to Wal-Mart Decl.) As stated above, the other “Ekobrew” and “Doe” defendants cannot
23 be considered to determine diversity jurisdiction.

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C. The Amount in Controversy Requirement Is Met to All Individual Plaintiffs

“The amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant’s liability.” *Lewis v. Verizon Communs., Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). Again, Defendants reserve the right to move to dismiss, strike, and/or deny all allegations in Plaintiff’s Amended Complaint. *See Henry v. Cent. Freight Lines, Inc.*, No. 17-15993, 2017 U.S. App. LEXIS 10995, at *3 (“In support of remand, Henry argued that lease payments cannot be considered for purposes of the amount in controversy because they are not recoverable as a matter of law. However, ‘[t]he amount in controversy is simply an estimate of the total amount in dispute,’” (quoting *Lewis v. Verizon Communs., Inc.*, 627 F.3d 395, 400 (9th Cir. 2010))). This “is a concept distinct from ‘the amount of damages ultimately recoverable.’” *Id.* (quoting *LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1203 (9th Cir. 2015)). “In determining the amount in controversy, the Court accepts the allegations contained in the complaint as true and assumes the jury will return a verdict in the plaintiff’s favor on every claim.” *Id.*

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In actions seeking declaratory or injunctive relief, “it is well established that the amount in controversy is measured by the value of the object of the litigation.” *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 690-692 (9th Cir. 2006). While the amount in controversy excludes interests and costs, it includes compensatory damages, punitive damages, injunctions and other equitable relief, as well as attorney’s fees. *See Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007) (“Section 1332(a)’s amount-in-controversy requirement excludes only ‘interest and costs’ and therefore includes attorney’s fees.”).

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The Amended Complaint does not express any specific amount of damages. (See Amended Complaint ¶¶ 46-47, 60-61, 68-69, 78 (damages and attorney’s fees), ¶ 81 (disgorgement of profits), ¶ 83 (attorney’s fees)). Thus, the Court cannot rely exclusively on the complaint in any computation of an amount in controversy. However, in addition to the contents of the removal petition, district courts consider “summary-judgment-type evidence relevant to the amount in controversy at the time of removal,” such as affidavits or declarations. *Valdez v. Allstate Ins. Co.*,

1 372 F.3d 1115, 1117 (9th Cir. 2004) (internal quotations omitted). A court may also consider
2 supplemental evidence later proffered by the removing defendant, which was not originally
3 included in the removal notice. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 n.1 (9th Cir. 2002).

4 Under Plaintiff's first cause of action, she seeks damages and attorney's fees as provided
5 for in Cal. Civ. Code § 1794 (a), which includes "the recovery of damages and other legal and
6 equitable relief." Under Section 1794(b), the measure of buyer's damages "shall include the rights
7 of replacement or reimbursement." This code section also provides for an award of attorney's fees
8 should the buyer prevail. *Id.* § 1794 (d).

9 ***I. Plaintiff's Attorney's Fees in this Matter Could Eclipse the Jurisdictional***
10 ***Requirement***

11 To determine the amount-in-controversy, district courts in the Ninth Circuit are free to
12 estimate the likely expenditure of attorney's fees throughout the entire life of a case. *See e.g.*,
13 *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp.2d 1004, 1010-11 (N.D. Cal. 2002) (including "a
14 reasonable estimate of attorney's fees likely to be expended" in calculating the amount in
15 controversy); *Simmons v. PCR Tech.*, 209 F. Supp.2d 1029, 1034-35 (N.D. Cal. 2002) (same).
16 Attorney's fees to prosecute even simple breach of warranty claims have routinely exceeded
17 \$75,000 in California since at least 1994. *See e.g.*, *Nightingale v. Hyundai Motor Am.*, 31 Cal.
18 App. 4th 99, 104, 37 Cal. Rptr. 2d 149, 152 (1994) ("Here, the buyer admittedly was being billed
19 for and was liable for attorney fees only at the hourly rate of \$120 per hour. Thus, for the 630.4
20 hours of actual time expended by her attorney, Nightingale was only obligated for fees in the
21 amount of \$ 75,648."); *Brady* 243 F. Supp.2d at 1010-11; *Graham v. DaimlerChrysler Corp.*,
22 101 P.3d 140, 146 (Cal. 2004) ("The trial court found the lodestar fee amount was \$329,620
23 through the October 18, 2000 hearing..."); *Andersen v. Pac. Asian Enters.*, No. G044427), 2012
24 Cal. App. Unpub. LEXIS 290, at *33 (Jan. 13, 2012) (discussing evidence of counsel's
25 submissions of attorney's fees in the amount of \$560,236.47). At this time, Defendants are
26 unaware of the actual amount of attorney's fees Plaintiff has expended in this case thus far, but

1 even at this early stage it likely has exceeded \$75,000. Defendants reserve the right to seek
2 jurisdictional discovery on this issue should the Court deem it necessary.

3 **2. *Eko's Profits and Defendants' Compliance Costs Exceed the Amount in***
4 ***Controversy Requirement***

5 While discovery is still ongoing, the Chief Executive Officer of Eko Brands Mr. Chris
6 Legler has reviewed Eko's records for the Brew & Save Carafe sales at issue. (Legler Dec. ¶ 9)
7 He has determined that from the time Eko started selling the Brew & Save carafes to mid-2017,
8 Eko has sold approximately 32,754 Brew & Save Carafes into California earning approximately
9 \$98,084 in gross profits (Legler Decl. ¶¶ 7-10). As Plaintiff has sought a disgorgement of Eko's
10 profits in this case (see Amended Complaint at p. 17), potentially \$98,084 is in controversy. This
11 case is therefore properly removed.

12 Additionally, should Plaintiff prevail, Eko and Wal-Mart will incur substantial costs in
13 complying with the injunction. *See In re Ford Motor Co.*, 264 F.3d 952, 958 (9th Cir. 2001)
14 (holding, where injunctive relief sought, "amount in controversy is the pecuniary result to either
15 party which the judgment would directly produce"); *McCauley v. Ford Motor Co.* (In re Ford
16 Motor Co./Citibank (S.D.) N.A.), 264 F.3d 952, 958 (9th Cir. 2001) ("Under the "either viewpoint"
17 rule, the test for determining the amount in controversy is the pecuniary result to either party which
18 the judgment would directly produce."). As the *McAuley* court held, "where the value of a
19 plaintiff's potential recovery (in this case, a maximum of \$ 3,500) is below the jurisdictional
20 amount, but the potential cost to the defendant of complying with the injunction exceeds that
21 amount, it is the latter that represents the amount in controversy for jurisdictional purposes." *See*
22 *also, Berry v. Am. Express Publ'g*, 381 F. Supp. 2d 1118, 1123 (C.D. Cal. 2005) ("Accordingly,
23 the Court concludes that the amount in controversy may be satisfied either from the view of the
24 aggregate value to the class members or defendants."). While additional discovery is necessary to
25 determine the exact cost of complying with Plaintiff's undefined injunctive and equitable relief
26 (Amended Complaint at p. 17), both Eko and Wal-Mart would incur substantial costs in order to

1 comply. (See Legler Decl. at ¶ 11; Wal-Mart Decl. at ¶ 8) Depending on the nature of the
2 injunction, these costs could include paying Wal-Mart employees/contractors, the destruction or
3 re-labeling of all Brew & Save Carafes, nationwide notices to all individuals who may have
4 purchased Brew & Save Carafes from a California Wal-Mart store, and potentially issuing refunds
5 as well. (Id.)

6 In sum, each individual named plaintiff could incur attorney's fees exceeding \$75,000, Eko
7 has earned approximately \$98,084 in gross profits from the sales at issue, and the over-all cost of
8 compliance would be substantial. Thus, the amount in controversy requirement is met pursuant to
9 28 U.S.C. §§ 1332 and 1441.

10 **D. Plaintiff's Fourth Cause of Action Eclipses the \$5 million Amount in Controversy**
11 **Requirement**

12 "In any class action, the claims of the individual class members shall be aggregated to
13 determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
14 interest and costs." 28 U.S.C. § 1332(d)(6). To remove a case pursuant to CAFA, "a defendant's
15 notice of removal need include only a plausible allegation that the amount in controversy exceeds
16 the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547,
17 554 (2014). "But evidence establishing the amount is required where . . . defendant's assertion of
18 the amount in controversy is contested by plaintiffs. In such a case, both sides submit proof and
19 the court decides, by a preponderance of the evidence, whether the amount-in-controversy
20 requirement has been satisfied." *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193, 1197 (9th
21 Cir. 2015) (citations and internal quotation marks omitted). "CAFA's requirements are to be tested
22 by consideration of real evidence and the reality of what is at stake in the litigation, using
23 reasonable assumptions underlying the defendant's theory of damages exposure." *Ibarra*, 775 F.3d
24 at 1198. To be sure, however, "Congress intended CAFA to be interpreted expansively." *Ibarra*,
25 775 F.3d at 1197. Thus, "no antiremoval presumption attends cases invoking CAFA, which
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1 Congress enacted to facilitate adjudication of certain class actions in federal court.” *Dart*,
2 135 S. Ct. at 554.

3 Plaintiff seeks injunctive relief and restitution under “California Bus. & Prof. Code
4 §§ 17200 and 17500 *et seq.*” (See Amended Complaint at pp. 15) While Plaintiff has not fully
5 fleshed out her damages theory, or specified exactly which code sections apply, under
6 Section 17206, the Defendants could be subject to civil penalties up to \$2,500 for each violation
7 if brought “with the consent of the district attorney.” That Plaintiff may not obtain these fines as a
8 matter of law is of no consequence, because the Plaintiff has put them in controversy in her
9 allegations. *See Henry v. Cent. Freight Lines, Inc., supra*, at *3 (“The complaint states multiple
10 times that Henry seeks reimbursement for ‘all costs and expenses of . . . leasing’ the trucks. As
11 such, lease-related payments have been placed into controversy and are properly considered for
12 purposes of CAFA jurisdiction.”). *See also Lewis v. Verizon Communs., Inc.*, 627 F.3d at 400;
13 *LaCross*, 775 F.3d at 1203 (9th Cir. 2015). Again, during the relevant time period, Eko has sold
14 approximately 32,754 Brew & Save Carafes to Wal-Mart retail stores in California. (Legler Dec.
15 ¶¶ 7-10). Therefore, the amount in controversy outlined in Plaintiff’s fourth cause of action is
16 \$2,500 x 32,754, or \$81,885,000.

17 Further, according to Mr. John M. Sjoval, Senior Associate General Counsel for Wal-
18 Mart, class action litigation even for consumer products yields awards exceeding \$5 million. (Wal-
19 Mart Decl. ¶¶ 5-7) As a representative of one of the largest retailers in the world, Mr. Sjoval has
20 experience managing risks and costs surrounding litigation, including class actions. (*Id.*) Thus in
21 this case, there is a possibility that if the case goes through a jury trial, the plaintiffs could recover
22 an award of \$5 million, including attorney’s fees. (*Id.* at ¶ 7)

23 As noted above, should Plaintiff prevail, Defendants will incur substantial costs in
24 complying with the injunction. In addition to the potential monetary recovery, Plaintiff seeks
25 wide-ranging and undefined “injunctive relief as provided under California law.” (Amended
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1 Complaint at p. 17). Complying with such a request would require Defendants to pay Wal-Mart
2 employees for the removal of the Brew & Save Carafes from Wal-Mart shelves, the destruction or
3 re-labeling of all Brew & Save Carafes, nationwide notices to all individuals who may have
4 purchased Brew & Save Carafes from a California Wal-Mart store, and potentially issuing refunds
5 as well. (Wal-Mart Decl. ¶ 8; see also Legler Decl. ¶ 11) Thus, even if the potential recovery is
6 modest, Plaintiff has requested unfettered injunctive relief, thereby increasing the amount in
7 controversy.

8 **IV. CONCLUSION**

9 WHEREFORE, Defendants Espresso Supply, Inc., Eko Brands, LLC, and Wal-Mart Stores
10 hereby removes San Diego Court Case No 37-2017-00021869-CU-BC-CTL to the United States
11 District Court for the Southern District of California.

12 RESPECTFULLY SUBMITTED on November 3, 2017

13
14 s/David A. Lowe (To Appear *Pro*
Hac Vice) Washington State Bar No.
15 24453 LOWE GRAHAM JONES^{PLLC}
16 701 Fifth Avenue, Suite 4800
Seattle, WA 98104
17 T: 206.381.3300
Lowe@LoweGrahamJones.com

18 /s/ Norman A. Ryan
19 Norman A. Ryan
RYAN CARVALHO^{LLP}
20 8989 Rio San Diego Drive, Suite
368 San Diego, CA 92108
21 T: 858.455.8700
Nryan@ryanlitigators.com
22 Attorneys for Defendants
23
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25
26

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served to all counsel or parties of record who are deemed to have consented to electronic service via the Court’s CM/ECF system.

/s/ Norman A. Ryan

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

GINA BECKMAN

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

(c) Attorneys (Firm Name, Address, and Telephone Number) R. Craig Clark, Esq. / CLARK LAW GROUP 205 West Date Street, San Diego, CA 92101 (619) 239-1321

DEFENDANTS

WAL-MART STORES, INC., an Arkansas corporation; ESPRESSO SUPPLY, INC., a Washington corporation; EKO BRANDS, LLC; EKOBREW, a Washington corporation, and DOES 1-10 inclusive County of Residence of First Listed Defendant Bentonville, Arkansas (IN U.S. PLAINTIFF CASES ONLY)

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

'17CV2499 BAS BLM

Attorneys (If Known) Norman A. Ryan, Esq./RYAN CARVALHO LLP 8989 Rio San Diego Drive, Suite 368, San Diego, CA 92108 (858) 455-8700

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (This State, Another State, Foreign Country).

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Sections 1331, 1332, 1441(b) and 1441(c)
Brief description of cause: Class action for breach of warranty, merchantability and unfair business practices

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. Joel R. Wohlfeil DOCKET NUMBER 37-2017-0021869-CU-BC-CTL

DATE November 3, 2017 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ATTACHMENT - LIST OF ATTORNEYS

1. (c) - Plaintiffs

William D. Pettersen, Esq.
PETTERSEN & BARK
205 West Date Street
San Diego, CA 92101
(619) 702-0123
Attorneys for Plaintiff, GINA BECKMAN

1.(c) - Defendants

David A. Lowe, Esq.
LOWE GRAHAM JONES
701 Fifth Avenue, Suite 4800
Seattle, WA 98104
(206) 381-3300
Attorneys for Defendants, WAL-MART STORES, INC., et al.

1 David A. Lowe (Pro Hac Vice to be filed)
2 LOWE GRAHAM JONES^{PLLC}
3 701 Fifth Avenue, Suite 4800
4 Seattle, WA 98104
5 T: 206.381.3300
6 Lowe@LoweGrahamJones.com

7 Norman A. Ryan
8 RYAN CARVALHO^{LLP}
9 8989 Rio San Diego Drive, Suite 368
10 San Diego, CA 92108
11 T: 858.455.8700
12 Nryan@ryanlitigators.com

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 GINA BECKMAN, an individual,

16 Plaintiff,

17 v.

18 WAL-MART STORES, INC., an Arkansas
19 corporation; ESPRESSO SUPPLY, INC., a
20 Washington corporation, EKO BRANDS,
21 LLC; EKOBREW, a Washington corporation,
22 and DOES 1-10 inclusive

23 Defendants.

24 CASE NO. '17CV2249 BAS BLM

25 DECLARATION OF SENIOR
26 ASSOCIATE GENERAL COUNSEL
REGARDING DEFENDANTS' NOTICE
OF REMOVAL

I, John M. Sjoval, Senior Associate General Counsel for Wal-Mart Stores, Inc. declare as follows:

1. I am a Senior Associate General Counsel for Defendant Wal-Mart Stores, Inc. ("Wal-Mart") I make this declaration on personal knowledge, and I confirm that all exhibits are true and accurate copies of the referenced documents.

2. Wal-Mart is a Delaware corporation with its principal place of business in Bentonville, Arkansas.

1 3. Wal-Mart has been registered with the Arkansas Secretary of State since
2 approximately March 1970. Attached as Exhibit A is a true and accurate printout of the Arkansas
3 Secretary of State's online records showing the same.

4 4. Counsel for Wal-Mart was served with a copy of Plaintiff's Amended Complaint
5 on or about October 4, 2017.

6 5. Wal-Mart frequently hires outside counsel in California for a variety of litigation
7 matters, including breaches of warranty and for defending class action lawsuits. As a result, I am
8 personally familiar with ranges of attorneys' fees expended in prosecuting both breach of
9 warranty claims and class action claims in California.

10 6. In my experience as Senior Associate General Counsel for Wal-Mart, taking a
11 case through trial on a collection of breach of warranty claims for consumer products could
12 exceed \$75,000 in attorneys' fees for a plaintiff in California.


13 7. In my experience as Senior Associate General Counsel for Wal-Mart, taking a
14 case through trial on a class action lawsuit for consumer products with approximately the same
15 class size as presently alleged could exceed \$5,000,000. Assuming that Plaintiff could prove
16 every allegation in the Amended Complaint, and that every allegation is ultimately recoverable,
17 the relevant class of persons could receive an award exceeding \$5,000,000.

18 8. In addition to the amount of potential recovery at issue, complying with the
19 Plaintiff's requested forms of injunctive relief would incur substantial costs upon Wal-Mart. For
20 example, it could require Wal-Mart to pay Wal-Mart employees and/or contractors to remove the
21 Brew & Save Carafes from Wal-Mart shelves, destroy and/or re-label of all Brew & Save
22 Carafes, nationwide notices to all individuals who may have purchased Brew & Save Carafes
23 from a California Wal-Mart store, and potentially issuing refunds as well.

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DECLARATION OF JOHN M. SJOVALL RE NOTICE OF
REMOVAL - 2

DEC_WAL-MART


LOWE GRAHAM JONES PLLC


701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

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

EXECUTED on November 3, 2017.



John M. Sjoval

DECLARATION OF JOHN M. SJOVALL RE NOTICE OF
REMOVAL - 3

DEC_WAL-MART

LOWE GRAHAM JONES LLP



701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served to all counsel or parties of record who are deemed to have consented to electronic service via the Court’s CM/ECF system.

s/ David A. Lowe

DECLARATION OF JOHN M. SJOVALL RE NOTICE OF
REMOVAL - 4

DEC_WAL-MART

LOWE GRAHAM JONES PLLC



701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

EXHIBIT A



ARKANSAS SECRETARY OF STATE Mark Martin

Search Incorporations, Cooperatives, Banks and Insurance Companies

Printer Friendly Version

LLC Member information is now confidential per Act 865 of 2007

Use your browser's back button to return to the Search Results

Begin New Search

For service of process contact the Secretary of State's office.

Table with 2 columns: Field Name and Value. Fields include Corporation Name (WAL-MART STORES, INC.), Fictitious Names (BUD'S DISCOUNT CITY, WAL-MART, etc.), Filing # (100067582), Filing Type (Foreign For Profit Corporation), Filed under Act (For Bus Corp; 958 of 1987), Status (Good Standing), Principal Address (124 WEST CAPITOL AVENUE SUITE 1900), Reg. Agent (THE CORPORATION COMPANY), Agent Address (LITTLE ROCK, AR 72201), Date Filed (03/31/1970), Officers (SEE FILE, Incorporator/Organizer, RICKY YOUNG, etc.), Foreign Name (N/A), Foreign Address (702 SW 8TH STREET, BENTONVILLE, 72716), State of Origin (DE).

Purchase a Certificate of Good Standing for this Entity

Pay Franchise Tax for this corporation



David A. Lowe (*Pro Hac Vice*)
LOWE GRAHAM JONES^{PLLC}
701 Fifth Avenue, Suite 4800
Seattle, WA 98104
T: 206.381.3300
Lowe@LoweGrahamJones.com

Norman A. Ryan
RYAN CARVALHO^{LLP}
8989 Rio San Diego Drive, Suite 368
San Diego, CA 92108
T: 858.455.8700
Nryan@ryanlitigators.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GINA BECKMAN, an individual,

Plaintiff,

v.

WAL-MART STORES, INC., an Arkansas
corporation; ESPRESSO SUPPLY, INC., a
Washington corporation, EKO BRANDS,
LLC; EKOBREW, a Washington corporation,
and DOES 1-10 inclusive

Defendants.

CASE NO. '17CV2249 BAS BLM

DECLARATION OF CHRIS LEGLER
REGARDING DEFENDANTS' NOTICE
OF REMOVAL

I, Christopher Legler, declare as follows:

1. I am the manager for Defendants Eko Brands, LLC ("Eko") and CEO of Espresso Supply, Inc. I make this declaration on personal knowledge, and I confirm that all exhibits are true and accurate copies of the referenced documents.

2. Eko Brands LLC is a Washington corporation that is wholly owned by Espresso Supply, Inc., which is also a Washington corporation. Both companies maintain their principle places of business in Washington.



1 3. Eko Brands, LLC has been registered with the Washington Secretary of State since
2 March 2011. Attached as Exhibit A is a printout of the Washington Secretary of State’s online
3 records showing the same.

4 4. Espresso Supply, Inc. has been registered with the Washington Secretary of State
5 since September 1995. Attached as Exhibit B is a printout of the Washington Secretary of State’s
6 online records showing the same.

7 5. Eko Brands makes and sells the “Brew & Save Carafe.”

8 6. “Ekobrew” and “Brew & Save” are brand names for products sold by Eko Brands,
9 LLC. To the best of my knowledge, they are not corporations. Attached as Exhibit C is a printout
10 of the Washington Secretary of State’s online records showing no results for either “Ekobrew” or
11 “Brew & Save” in its entity search function.

12 7. The Brew & Save Carafe was first made available for purchase in California Wal-
13 Mart retail stores on or about June 2015.

14 8. Eko Brands and Espresso Supply were both served a copy of the Amended
15 Complaint in this action on or about October 4, 2017.

16 9. I have reviewed Eko’s business records of sales of the “Brew & Save Carafe” in
17 California from the date it has been released to the date of filing. Based on my review of these
18 records, internal investigation, and my personal experience, Wal-Mart stores in California account
19 for approximately 98.3% Eko’s sales of the Brew & Save Carafes sold in the state of California.


20 10. Based on my review of Eko’s records, I have determined that from June 2015 to
21 the date Plaintiff filed the Amended Complaint on September 7, 2017, Eko has sold approximately
22 32,197 Brew & Save Carafes to California Wal-Mart stores. This has amounted to approximately
23 \$98,084 in gross margin profits earned by Eko.

24 11. In addition to the amount of potential recovery at issue, complying with the
25 Plaintiff’s requested forms of injunctive relief would incur substantial costs upon Eko Brands. For
26

1 example, it could require Eko Brands to help Wal-Mart pay its employees and/or contractors to
2 remove of the Brew & Save Carafes from Wal-Mart shelves, destroy and/or re-label of all Brew
3 & Save Carafes, nationwide notices to all individuals who may have purchased Brew & Save
4 Carafes from a California Wal-Mart store, and potentially issuing refunds as well.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 EXECUTED November 3, 2017.

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9 _____
Christopher Legler

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served to all counsel or parties of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

s/ David A. Lowe

EXHIBIT A

EKO BRANDS, LLC

UBI Number 603098199
 Category LLC
 Active/Inactive Active
 State Of Incorporation WA
 WA Filing Date 03/25/2011
 Expiration Date 03/31/2018
 Duration



Agent Name MARK V JORDAN
 Address 2775 HARBOR AVE SW STE D

City SEATTLE
 State WA
 ZIP 981260000



Address 2775 HARBOR AVE SW STE D

City SEATTLE
 State WA
 Zip 981260000

Governing Persons (as defined in RCW 23.95.105 (12) (<http://app.leg.wa.gov/RCW/sup/default.aspx?cite=23.95.105>))

| Title | Name |
|----------|-----------------------|
| Governor | LEGLER, CHRISTOPHER D |
| Governor | SOMMERS, LAURA |

EXHIBIT B

ESPRESSO SUPPLY, INC.

| | |
|------------------------|------------|
| UBI Number | 601661033 |
| Category | REG |
| Profit/Nonprofit | Profit |
| Active/Inactive | Active |
| State Of Incorporation | WA |
| WA Filing Date | 09/29/1995 |
| Expiration Date | 09/30/2018 |
| Duration | Perpetual |

| | |
|------------|--------------------------|
| Agent Name | MARK V JORDAN |
| Address | 2775 HARBOR AVE SW STE D |
| City | SEATTLE |
| State | WA |
| ZIP | 981262138 |

| | |
|---------|--------------------------|
| Address | 2775 HARBOR AVE SW STE D |
| City | SEATTLE |
| State | WA |
| Zip | 981262138 |

Governing Persons (as defined in RCW 23.95.105(12) (<http://app.leg.wa.gov/RCW/sup/default.aspx?cite=23.95.105>))

| Title | Name |
|----------|-----------------------|
| Governor | LEGLER, CHRISTOPHER D |
| Governor | SOMMERS, LAURA J |

EXHIBIT C

Search Results

There were no matches for "**Ekobrew**".

If the results of your Nonprofit Corporation search was unsuccessful, try searching the name using the [Charities database search \(http://sos.wa.gov/charities/\)](http://sos.wa.gov/charities/).

[« Start New Search \(corps_search.aspx\)](#)

Disclaimer

Neither the State of Washington nor any agency, officer, or employee of the State of Washington warrants the accuracy, reliability, or timeliness of any information in the Public Access System and shall not be liable for any losses caused by such reliance on the accuracy, reliability, or timeliness of such information. While every effort is made to ensure the accuracy of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from the System does so at his or her own risk.

All documents filed with the Corporations Division are considered public record.

Search Apps on Mobile Devices



<http://itunes.apple.com/us/app/washington-state-corporations/id380001551?mt=8&uo=4>



<https://play.google.com/store/apps/details?id=gov.wa.sos.businesSearch2>

All Corporations Data Download

[Download the whole Corporations search database \(AllData.aspx\)](#) in XML format. Average file size is 70 MB compressed, 750 MB uncompressed.

Search Results

There were no matches for "**brew & save**".

If the results of your Nonprofit Corporation search was unsuccessful, try searching the name using the [Charities database search \(http://sos.wa.gov/charities/\)](http://sos.wa.gov/charities/).

[« Start New Search \(corps_search.aspx\)](#)

Disclaimer

Neither the State of Washington nor any agency, officer, or employee of the State of Washington warrants the accuracy, reliability, or timeliness of any information in the Public Access System and shall not be liable for any losses caused by such reliance on the accuracy, reliability, or timeliness of such information. While every effort is made to ensure the accuracy of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from the System does so at his or her own risk.

All documents filed with the Corporations Division are considered public record.

Search Apps on Mobile Devices



<http://itunes.apple.com/us/app/washington-state-corporations/id380001551?mt=8&uo=4>



<https://play.google.com/store/apps/details?id=gov.wa.sos.businesSearch2>

All Corporations Data Download

[Download the whole Corporations search database \(AllData.aspx\)](#) in XML format. Average file size is 70 MB compressed, 750 MB uncompressed.