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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 **STEPHANIE BAUMAN,**
16 **Individually and on Behalf**
17 **of All Others Similarly**
18 **Situated,**

19 Plaintiff,

20 v.

21 **AUSTRALIAN GOLD,**
22 **LLC,**

23 Defendant.

24 **Case No.: 3:18-cv-01682-L-BGS**

25 **FIRST AMENDED CLASS**
26 **ACTION COMPLAINT FOR**
27 **VIOLATION OF:**

- 28 (1) **CONSUMERS LEGAL REMEDIES ACT (CAL. CIV. CODE §§ 1750, *ET SEQ.*);**
- (2) **CALIFORNIA BUS. & PROF. §§ 17533.7 (CALIFORNIA FALSE “MADE IN U.S.A.” CLAIM);**
- (3) **CALIFORNIA BUS & PROF. §§ 17200 *Et Seq.*;**
- (4) **NEGLIGENT MISREPRESENTATION;**
- (5) **AND INTENTIONAL MISREPRESENTATION**

JURY TRIAL DEMANDED



Introduction

1. Plaintiff Stephanie Bauman (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Australian Gold, LLC (“Defendant”) in unlawfully labeling Defendant’s consumable consumer packaged goods, such as Australian Gold Sunscreen Spray Gel with Instant Bronzer - SPF8, with the false designation and representation that this product is or was “Made in the U.S.A.” The unlawfully labeled products are sold via Defendant’s website and in various stores throughout the United States.¹ Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.
2. As stated by the California Supreme Court in *Kwikset v. Superior Court* (January 27, 2011) 51 Cal. 4th 310, 328-29:

Simply stated: labels matter. The marketing industry is based on the premise that labels matter, that consumers will choose one product over another similar product based on its label and various tangible and intangible qualities that may come to associate with a particular source...In particular, to some consumers, the “Made in U.S.A.” label matters. A range of motivations may fuel this preference, from the desire to support domestic jobs to beliefs about quality, to concerns about overseas environmental or labor conditions, to simple patriotism. The Legislature has recognized the materiality of this representation by specifically outlawing deceptive and fraudulent “Made in America” representations. (Cal. Bus. & Prof. Code section 17533.7; see also Cal. Civ. Code § 1770, subd. (a)(4) (prohibiting deceptive representations of geographic origin)). The object of section 17533.7 “is

¹ Plaintiff seeks class wide relief on behalf of all purchasers of Defendant’s Australian Gold Sunscreen Spray Gel with Instant Bronzer, which was purchased by Plaintiff and labeled as “Made in the USA,” or some derivative thereof, but instead is foreign made or includes foreign made components in violation of California law(s).

1 to protect consumers from being misled when they
2 purchase products in the belief that they are advancing
the interest of the United States and its industries and
workers...”

- 3
- 4 3. The “Made in U.S.A.” claim (or some derivative thereof) is prominently printed
5 on Defendant’s products², including the product purchased by Plaintiff. Contrary
6 to Defendant’s representation and in violation of California law, Defendant’s
7 Class Products, including the Product purchased by Plaintiff, include foreign
8 ingredients constituting more than ten percent (10%) of the final wholesale
9 value of the manufactured product.
- 10 4. This nationwide sale and advertising of deceptively labeled products constitutes
11 violations of: (1) California’s Consumer Legal Remedies Act (“CLRA”), Cal.
12 Civ. Code §§ 1750 et seq.; (2) California’s False Advertising Law (“FAL”), Bus.
13 & Prof. Code § 17533.7; (3) California’s Unfair Competition Law (“UCL”),
14 Bus. & Prof. Code §§ 17200 et seq.; (4) negligent misrepresentation; and (5)
15 intentional misrepresentation. This conduct caused Plaintiff and other similarly
16 situated damages, and requires restitution and injunctive relief to remedy and
17 prevent further harm.
- 18 5. Unless otherwise indicated, the use of any Defendant’s name in this Complaint
19 includes all agents, employees, officers, members, directors, heirs, successors,
20 assigns, principals, trustees, sureties, subrogees, representatives and insurers of
21 the named Defendant.

22

23 _____

24 ² Defendant’s Class Products include, but are not limited to, all sizes and SPF
25 variations 8, 15, and 30 of the Australian Gold Sunscreen Spray Gel with Instant
26 Bronzer. The Spray Gel with Instant Bronzer products with higher SPFs include at a
27 minimum the same active and inactive ingredients as the SPF 8 purchased by
28 Plaintiff. See <https://www.australiangold.com/shop/spf/spf-30/spf-30-spray-gel-with-instant-bronzer>; <https://www.australiangold.com/shop/spf/spf-15-and-below/spf-15-spray-gel-with-instant-bronzer>; <https://www.australiangold.com/shop/spf/spf-15-and-below/spf-8-spray-gel-with-instant-bronzer>.

Jurisdiction and Venue

- 6. This Court has jurisdiction over this matter because the Plaintiff and Defendant have separate domiciles and the amount in controversy exceeds \$75,000: plaintiff lives in Vista, California, Defendant is an Indiana Company, and Plaintiff anticipates \$5,000,000 in class recovery.
- 7. The Court has jurisdiction over Plaintiff’s claims for damages, restitution, injunctive relief, and declaratory relief arising from Defendant’s unlawful business practices under California’s CLRA, FAL, and UCL; as well as negligent misrepresentation and intentional misrepresentation.
- 8. This Court has personal jurisdiction over Defendant because Defendant conducts substantial business in this State and County, has sufficient minimum contacts with this State and County, and otherwise purposefully avails itself of the markets in this State and County through the promotion, sale, and marketing of its products in this State, to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.
- 9. Venue is proper in this Court because Plaintiff sells products in this county, and this is the county where Plaintiff’s injuries arose.

Parties

- 10. Plaintiff is an individual who at all times relevant herein is a resident of in the City of Vista, County of San Diego, State of California.
- 11. Defendant is a limited liability company based in Indiana. Defendant conducts business through Internet sales and mail orders, and at general merchandise stores and outlets within the United States. One of the products sold by Defendant is the Australian Gold Spray Gel with Instant Bronzer (“the Product”) purchased by Plaintiff at Target.

Nature of The Case

- 12. At all times relevant, Defendant made, and continues to make, affirmative misrepresentations regarding its Class Products, including the Product purchased



1 by Plaintiff, it manufactures, markets and sells. Specifically, Defendant
2 packaged, advertised, marketed, promoted, and sold its Class Products as a
3 “Made in U.S.A.,” or some derivative thereof.

4 13.However, although Defendant represents that its Class Products are “Made in
5 U.S.A.” (or some derivate thereof), Defendant’s Class Products are composed of
6 articles, units, or parts obtained outside the United States which constitute more
7 than ten percent (10%) of the final wholesale value of the manufactured product.

8 14.In fact, Defendant’s Class products comprised of foreign ingredients which
9 include: Octocrylene, Aloe Barbadensis Leaf Juice, Butylphthalimide,
10 Helianthus Annuus (Sunflower) Seed Oil, Hydroxypropyl Methylcellulose,
11 Melaleuca Alternifolia (Tee Tree) Oil, Olea Europe Fruit Oil (Olive), Propylene
12 Glycol, Sorbitan Oleate, Terminalia Ferdinandiana Fruit Extract (Kakadu Pum),
13 and others. Accordingly, Defendant is not entitled to lawfully make
14 representations that the Class products, including Plaintiff’s product, were
15 “Made in U.S.A.” See [https://www.australiangold.com/shop/spf/spf-30/spf-30-](https://www.australiangold.com/shop/spf/spf-30/spf-30-spray-gel-with-instant-bronzer)
16 [spray-gel-with-instant-bronzer](https://www.australiangold.com/shop/spf/spf-15-and-below/spf-15-spray-gel-with-instant-bronzer); [https://www.australiangold.com/shop/spf/spf-15-](https://www.australiangold.com/shop/spf/spf-15-and-below/spf-15-spray-gel-with-instant-bronzer)
17 [and-below/spf-15-spray-gel-with-instant-bronzer](https://www.australiangold.com/shop/spf/spf-15-and-below/spf-8-spray-gel-with-instant-bronzer); [https://](https://www.australiangold.com/shop/spf/spf-15-and-below/spf-8-spray-gel-with-instant-bronzer)
18 [www.australiangold.com/shop/spf/spf-15-and-below/spf-8-spray-gel-with-](https://www.australiangold.com/shop/spf/spf-15-and-below/spf-8-spray-gel-with-instant-bronzer)
19 [instant-bronzer](https://www.australiangold.com/shop/spf/spf-15-and-below/spf-8-spray-gel-with-instant-bronzer).

20 15.Each consumer, including Plaintiff, was exposed to virtually the same material
21 misrepresentations, as the similar labels were prominently placed on all of the
22 Defendant’s Class Products that were sold, and are currently being sold,
23 throughout the United States and within the State of California.

24 16.As a consequence of Defendant’s unfair and deceptive practices, Plaintiff and
25 other similarly situated consumers have purchased Defendant’s Class Products
26 under the false impression that the products were actually made in the U.S.A.

27 17.As a result of Defendant’s misrepresentations, Plaintiff and other consumers
28 similarly situated overpaid for the Defendant’s Class Products, and/or purchased

1 the Class Products under the false belief that the product they purchased was
2 made in the U.S.A. Had Plaintiff and other consumers similarly situated been
3 made aware that Defendant’s Class Products were not actually made in the
4 U.S.A, they would not have purchased the products.

5 18.As a result of Defendant’s false and misleading statements and failure to
6 disclose, as well as Defendant’s other conduct described herein, Plaintiff and
7 other similarly situated consumers purchased thousands, if not millions, of
8 Defendant’s Class Products and have suffered, and continue to suffer, injury in
9 fact, including the loss of money and/or property.

10 19.Defendant’s conduct as alleged herein violates several California laws, as more
11 fully set forth herein.

12 20.This action seeks, among other things, equitable and injunctive relief; restitution
13 of all amounts illegally retained by Defendant; and disgorgement of all ill-gotten
14 profits from Defendant’s wrongdoing alleged herein.

15 **Factual Allegations**

16 21.Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
17 this Complaint as though fully stated herein.

18 22.Defendant manufactures, markets and/or sells various products that have been
19 and are currently still represented as “Made in U.S.A.” Defendant’s makes these
20 representations on the Class Products themselves.

21 23.Contrary to the representation, Defendant’s Class Products are composed of
22 articles, units, or parts obtained outside the United States, which constitute more
23 than ten percent (10%) of the final wholesale value of the manufactured product.

24 24.Based upon information and belief, the offending Product purchased by Plaintiff
25 contains foreign ingredients not made in the U.S.A.

26 25.Based upon information and belief, the offending Product purchased by
27 Plaintiff, and presumably all of Defendant’s Class Products contain articles,
28 units, or parts that are obtained from outside the United States and said articles,



1 units, or parts constitute more than ten percent (10%) of the final wholesale
2 value of the manufactured product, contrary to Defendant’s “Made in U.S.A” (or
3 similar words) representations.

4 26. Defendant markets, and continues to market, and represent to the general public
5 via its packing and its Class Products’ labels that the Class Products are “Made
6 in U.S.A.” As such, Defendant fraudulently concealed the material facts at issue
7 in this matter by misrepresenting to the general public the true country of origin
8 of the offending products. Defendant possesses superior knowledge of the true
9 facts that were not disclosed, thereby tolling the running of any applicable
10 statute of limitations.

11 27. Consumers are particularly vulnerable to these deceptive and fraudulent
12 practices. Most consumers possess limited knowledge of the likelihood that
13 products, including the component products therein, claimed to be made in the
14 United States are in fact manufactured in foreign countries. This is a material
15 factor in many individuals’ purchasing decisions, as they believe they are
16 purchasing superior goods while supporting American companies and American
17 jobs.

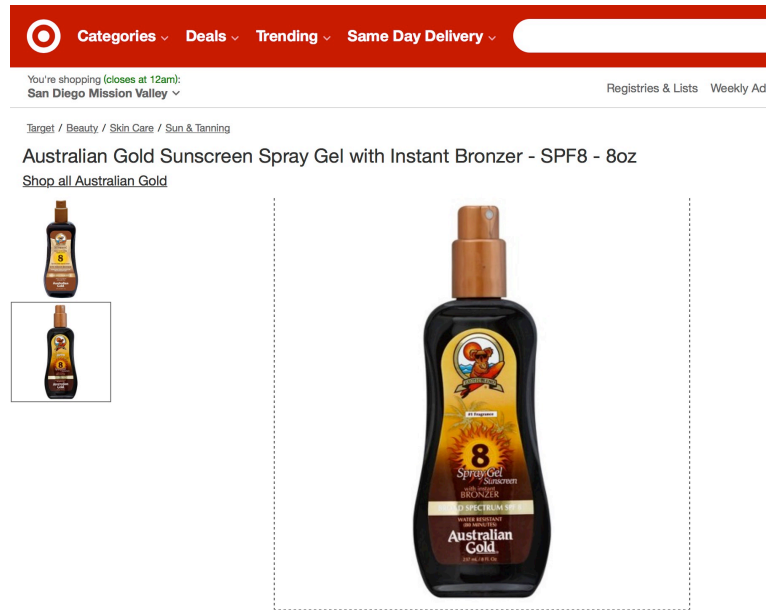
18 28. Consumers generally believe that “Made in U.S.A.” products are of higher
19 quality than their foreign-manufactured counterparts. Due to Defendants’
20 scheme to defraud the market, members of the general public were fraudulently
21 induced to purchase Defendant’s products at inflated prices.

22 29. On information and belief, Defendant charged excess monies for its Class
23 Products in comparison to Defendant’s competitors during the entirety of the
24 relevant four-year statutory time period, based on the false “Made in U.S.A.”
25 designation (or some derivative thereof). California laws are designed to protect
26 consumers from such false representations and predatory conduct. Defendant’s
27 scheme to defraud consumers for its own self-interest and monetary gain is
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1 ongoing and will victimize consumers daily for the foreseeable future unless
2 altered by judicial intervention.

3 30. On November 16, 2015 Plaintiff purchased Defendant's product, Australian
4 Gold Spray Gel with Instant Bronzer from Target.



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16 31. At the time of Plaintiff's purchase, the packaging or label of the offending
17 product described the supplement as "Made in U.S.A.," when the product
18 actually was made and/or contained components, constituting more than ten
19 percent (10%) of the final wholesale value of the product, made outside of the
20 United States. These foreign ingredients include: Octocrylene, Aloe Barbadensis
21 Leaf Juice, Butylphthalimide, Helianthus Annuus (Sunflower) Seed Oil,
22 Hydroxypropyl Methylcellulose, Melaleuca Alternifolia (Tea Tree) Oil, Olea
23 Europe Fruit Oil (Olive), Propylene Glycol, Sorbitan Oleate, Terminalia
24 Ferdinandiana Fruit Extract (Kakadu Plum), and others. Accordingly, Defendant
25 is not entitled to lawfully make representations that the product was "Made in
26 U.S.A."

27 32. In making the decision to purchase Defendant's Product, Plaintiff relied upon
28 the advertising and/or other promotional materials prepared and approved by

1 Defendant and its agents and disseminated through its Class Products’ packaging
2 containing the misrepresentations alleged herein. Had Plaintiff been made aware
3 that the Product was not actually “Made in U.S.A.,” she would not have
4 purchased the Product. In other words, Plaintiff would not have purchased
5 Defendant’s Product, but for the “Made in U.S.A.” representation on
6 Defendant’s Product’s label.

7 33.Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by
8 Defendant as a result of Defendant’s false “Made in U.S.A.” designation set
9 forth on Defendant’s Product and elsewhere.

10 34.In each case when Plaintiff and putative Class members purchased a Class
11 Product, they relied upon Defendant’s “Made in U.S.A.” representation in their
12 purchasing decision, which is typical of most U.S. consumers. Consequently,
13 they were deceived as a result of Defendant’s actions. Plaintiff believed at the
14 time she purchased the Product that she was purchasing a superior quality
15 product, supporting U.S. jobs and the U.S. economy, and also supporting ethical
16 working conditions.

17 35.Component parts made in the U.S.A. are subject to strict regulatory
18 requirements, including but not limited to environmental, labor, and safety
19 standards. Foreign made component parts are not subject to the same U.S.
20 standards and as a result can be potentially much more dangerous to consumers.
21 Further, foreign made component parts are also generally of lower quality than
22 their U.S. made counterparts, and routinely less reliable and less durable than
23 their U.S. made counterparts.

24 36.Consequently, Defendant’s Class Products containing the foreign ingredients,
25 including the Product purchased by Plaintiff, are of inferior quality, potentially
26 more dangerous and less reliable, as Defendant falsely represented that these
27 products are “Made in U.S.A.” This results in lower overall customer
28



1 satisfaction than if the products were truly “Made in U.S.A.” and/or consisting
2 of component parts made in the United States.

3 37. On information and belief, Defendant’s products containing the foreign
4 ingredients, including the Product purchased by Plaintiff, are not worth the
5 purchase price paid by Plaintiff and Class members. The precise amount of
6 damages will be proven at trial, in large part, by expert testimony.

7 38. Plaintiff and Class members were undoubtedly injured as a result of Defendant’s
8 false “Made in U.S.A.” representations that are at issue in this matter.

9 **Class Action Allegations**

10 39. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
11 this Complaint as though fully stated herein.

12 40. Plaintiff brings this action individually and on behalf of all others similarly
13 situated against Defendant, pursuant to Federal Rules of Civil Procedure Rule
14 23.

15 41. Plaintiff represents, and is a member of the class, (“the Class”) consisting of:

16 All persons similarly situated within the state of California who
17 purchased one or more of Defendant’s Class Products, which were
18 labeled with a “Made in U.S.A.” country of origin designation (or
19 similar words), but were foreign-made and/or composed of foreign-
20 made component parts that constituted more than ten percent (10%)
21 of the final wholesale value of the manufactured product, within the
22 four years prior to the filing of the Complaint.

23 42. Excluded from the Class are Defendant and any of its officers, directors, and
24 employees. Plaintiff reserves the right to modify or amend the Class definition
25 before the Court determines whether certification is appropriate.

26 43. The “Class Period” means four years prior to the filing of the Complaint in this
27 action.

28 44. **Ascertainability.** Plaintiff does not know the number of members in the Class,
but Plaintiff currently believes that there are hundreds of thousands, if not more,



1 members of the Class within the State of California. Because of the nature of
2 Defendant's products, Defendant and Defendant's distributors must keep
3 detailed and accurate records of distribution in order to accurately and
4 effectively execute a recall if so ordered by the Food and Drug Administration or
5 any other organization. Therefore, the members of the Class are ascertainable
6 through Defendant's records and/or Defendant's agents' records regarding retail
7 and online sales, as well as through public notice. This matter should therefore
8 be certified as a Class action to assist in the expeditious litigation of this matter.

9 **45. Numerosity.** The numerosity requirement of Federal Rules of Civil Procedure
10 Rule 23(a)(1) is satisfied for the aforementioned Class because the members of
11 the Class are so numerous and geographically disbursed that joinder of all Class
12 members is impractical, and the disposition of their claims in the Class action
13 will provide substantial benefits both to the parties and to the court.

14 **46. Existence and Predominance of Common Questions of Law and Fact.** There
15 is a well-defined community of interest in the questions of law and fact involved
16 affecting the parties to be represented. Common questions of fact and law exist
17 in this matter that predominate over questions that may affect individual Class
18 members, satisfying the requirement of Cal. Civ. Proc. Code § 382, including,
19 but not limited to, the following:

- 20 • Whether Defendant committed the wrongful conduct alleged herein;
- 21 • Whether Defendant's acts, transactions, or course of conduct constitute the
22 violations of law alleged herein;
- 23 • Whether Defendant, through its conduct, received money that, in equity and
24 good conscience, belongs to Plaintiff and Class Members;
- 25 • Whether the members of the Class sustained and/or continue to sustain
26 damages attributable to Defendant's conduct, and, if so, the proper measure
27 and appropriate formula to be applied in determining such damages; and
28

- Whether the members of the Class are entitled to injunctive and/or any other equitable relief.

47. **Typicality.** As a person who purchased one or more of Defendant’s products, that were advertised with a “Made in U.S.A.” country of origin designation (or some derivative thereof), but contain foreign-made ingredients and/or composed of foreign-made component parts, Plaintiff is asserting claims that are typical of the Class. Plaintiff’s claims involve the same violations of law by Defendant as other Class members’ claims. Plaintiff and members of the Class also sustained damages arising out of Defendant’s common course of conduct complained herein. Accordingly, Plaintiff satisfies the “typicality” requirement with respect to the Class.

48. **Adequacy of Representation.** Plaintiff will fairly and adequately represent and protect the interests of other members of the Class in that Plaintiff has no interests antagonistic to any member of the Class. Further, Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the consumer laws, and specifically violations of the California Business and Professions Code.

49. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. Individualized litigation would create the danger of inconsistent and/or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and court system and the issues raised by this action. The damages or other financial detriment suffered by individual Class members may be relatively small compared to the burden and expense that would be entailed by individual litigation of the claims against the Defendant. The injury suffered by each individual member of the proposed class is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant’s conduct. It would be



1 virtually impossible for members of the proposed Class to individually redress
2 effectively the wrongs to them. Even if the members of the proposed Class could
3 afford such litigation, the court system could not. Individualized litigation
4 increases the delay and expense to all parties, and to the court system, presented
5 by the complex legal and factual issues of the case. By contrast, the class action
6 device presents far fewer management difficulties, and provides the benefits of
7 single adjudication, economy of scale, and comprehensive supervision by a
8 single court.

9 50. Unless the Class is certified, Defendant will retain monies received as a result of
10 Defendant's unlawful and deceptive conduct alleged herein. Unless a class-wide
11 injunction is issued, Defendant will continue to, or allow its resellers to,
12 advertise, market, promote, and package Defendant's Class Products in an
13 unlawful and misleading manner, and Class Members will continue to be misled,
14 harmed, and denied their rights under California law.

15 51. Further, Defendant has acted or refused to act on grounds that are generally
16 applicable to the class so that declaratory and injunctive relief is appropriate to
17 the Class as a whole.

18 **First Cause of Action**

19 **Violation of California Consumers Legal Remedies Act**

20 **Cal. Civ. Code Section 1750, et seq.**

21 52. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
22 this Complaint as though fully stated herein.

23 53. California Civil Code Section 1750 *et seq.*, entitled the Consumers Legal
24 Remedies Act (hereinafter "CLRA"), provides a list of "unfair or deceptive"
25 practices in a "transaction" relating to the sale of "goods" or "services" to a
26 "consumer." The Legislature's intent in promulgating the CLRA is expressed in
27 Civil Code Section 1760, which provides, *inter alia*, that its terms are to be:
28



1 Construed liberally and applied to promote its underlying
2 purposes, which are to protect consumers against unfair
3 and deceptive business practices and to provide efficient
4 and economical procedures to secure such protection.

5 54. Defendant's products constitute "goods" as defined pursuant to Civil Code
6 Section 1761(a).

7 55. Plaintiff, and the Class members, are each a "consumer" as defined pursuant to
8 Civil Code Section 1761(d).

9 56. Each of Plaintiff's and the Class members' purchases of Defendant's products
10 constituted a "Transaction" as defined pursuant to Civil Code Section 1761(e).

11 57. Civil Code Section 1770(a)(2), (4), (5), (7) and (9) provides that:

12 The following unfair methods of competition and unfair
13 or deceptive acts or practices undertaken by any person
14 in a transaction intended to result or which results in the
15 sale or lease of goods or services to any consumer are
16 unlawful:

17 (2) Misrepresenting the source, sponsorship, approval, or
18 certification of goods or services;

19 (4) [u]sing deceptive representations or designations of
20 geographic origin in connection with goods or services;

21 (5) Representing that goods or services have sponsorship,
22 approval, characteristics, ingredients, uses, benefits, or
23 quantities which they do not have or that a person has a
24 sponsorship, approval, status, affiliation, or connection
25 which he or she does not have;

26 (7) Representing that goods or services are of a particular
27 standard, quality, or grade...; [and]

28 (9) Advertising goods or services with intent not to sell
 them as advertised."

58. Defendant violated Civil Code Section 1770(a)(2), (4), (5), (7) and (9) by
marketing and representing that its Class Products are "Made in U.S.A." when
the final wholesale value of the manufactured product's articles, units, or parts
contains more than ten percent (10%) foreign-made or manufactured
ingredients.

59. Pursuant to section 1782(d), by letters dated October 10, 2017, Plaintiff notified
Defendant in writing by certified mail of the particular violations of section
1770 and demanded that Defendant rectify the problems associated with the

1 actions detailed above and give notice to all affected consumers of Defendant’s
2 intent to so act.

3 60.It is alleged on information and belief that Defendant and/or Defendant’s
4 representatives received said letter in or around October 2017 because
5 Defendant acknowledged its receipt in a separate letter dated November 22,
6 2017.

7 61.Defendant failed to rectify or agree to rectify the problems associated with the
8 actions detailed above and give notice to all affected consumers within thirty
9 days of the date of written notice pursuant to section 1782. Therefore, Plaintiff
10 and the Class further seek actual, punitive, and statutory damages, as deemed
11 appropriate.

12 62.On information and belief, Defendant’s violations of the CLRA set forth herein
13 were done with awareness of the fact that the conduct alleged was wrongful and
14 was motivated solely for Defendant’s self-interest, monetary gain and increased
15 profit. Plaintiff further alleges that Defendant committed these acts knowing the
16 harm that would result to Plaintiff and Defendant, nonetheless, engaged in such
17 unfair and deceptive conduct.

18 63.Plaintiff further alleges that Defendant committed these acts knowing the harm
19 that would result to Plaintiff and Defendant engaged in such unfair and
20 deceptive conduct notwithstanding such knowledge.

21 64.Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by
22 Defendant as a result of Defendant’s false “Made in U.S.A.” representations set
23 forth on Defendant’s actual products.

24 65.As a direct and proximate result of Defendant’s violations of the CLRA, Plaintiff
25 and members of the Class are entitled to a declaration that Defendant violated
26 the Consumer Legal Remedies Act.

27 66.Plaintiff, on behalf of herself and the Class demand judgment against
28 Defendant for damages, restitution, punitive damages, statutory damages, pre-



1 and post-judgment interest, attorneys' fees, injunctive and declaratory relief
2 prohibiting such conduct in the future, costs incurred in bringing this action, and
3 any other relief as this Court deems just and proper.

4 67.Pursuant to section 1780(e) of the California Civil Code, Plaintiff and the Class
5 make claims for damages and attorneys' fees and costs.

6 68.In prosecuting this action for the enforcement of important rights affecting the
7 public interest, Plaintiff seeks the recovery of attorneys' fees, which is available
8 to a prevailing plaintiff in class action cases such as this matter.

9 **Second Cause Of Action**

10 **Violation of Business & Professions Code**

11 **Bus. & Prof. Code, Section 17533.7**

12 69.Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
13 this Complaint as though fully stated herein.

14 70.Business & Professions Code § 17533.7 provides:

15 It is unlawful for any person, firm, corporation or
16 association to sell or offer for sale in this State any
17 merchandise on which merchandise or on its container
18 there appears the words "Made in U.S.A.," "Made in
19 America," "U.S.A.," or similar words when the
merchandise or any article, unit, or part thereof, has been
entirely or substantially made, manufactured, or
produced outside of the United States.

20 71.Defendant violated Bus. & Prof. Code § 17533.7 by selling and offering to sell
21 products in the State of California with the "Made in U.S.A." country of origin
22 designation as fully set forth herein. The Class Products at issue contain articles,
23 units, or parts obtained from outside the United States, all of which constitute
24 more than ten percent of the final wholesale value of the manufactured product
25 in violation of California law.

26 72.On information and belief, Defendant's violations of Bus. & Prof. Code §
27 17533.7 as set forth herein were done with awareness of the fact that the conduct
28 alleged was wrongful and was motivated solely for Defendant's self-interest,

1 monetary gain and increased profit. Plaintiff further alleges that Defendant
2 committed these acts knowing the harm that would result to Plaintiff and
3 Defendant engaged in such unfair and deceptive conduct notwithstanding such
4 knowledge.

5 73.As a direct and proximate result of Defendant’s violations of Bus. & Prof. Code
6 § 17533.7, Plaintiff and the Class are entitled to restitution of excess monies
7 paid to Defendant by Plaintiff and the Class relating to the false “Made in
8 U.S.A.” representations set forth on Defendant’s actual products’ labels and/or
9 packaging used by Defendant to sell Defendant’s products.

10 74.In prosecuting this action for the enforcement of important rights affecting the
11 public interest, Plaintiff seeks the recovery of attorneys’ fees, which is available
12 to a prevailing plaintiff in class action cases such as this matter.

13 **Third Cause Of Action**

14 **Violation of Business & Professions Code**

15 **Bus. & Prof. Code, Section 17200, et seq.**

16 75.Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
17 this Complaint as though fully stated herein.

18 76.Plaintiff and Defendants are each “person[s]” as defined by California Business
19 & Professions Code § 17201. California Business & Professions Code § 17204
20 authorizes a private right of action on both an individual and representative
21 basis.

22 77.“Unfair competition” is defined by Business and Professions Code Section §
23 17200 as encompassing several types of business “wrongs,” four of which are at
24 issue here: (1) an “unlawful” business act or practice, (2) an “unfair” business
25 act or practice, (3) a “fraudulent” business act or practice, and (4) “unfair,
26 deceptive, untrue or misleading advertising.” The definitions in § 17200 are
27 drafted in the disjunctive, meaning that each of these “wrongs” operates
28 independently from the others.



1 78. By and through Defendant's conduct alleged in further detail above and herein,
2 Defendant engaged in conduct which constitutes unlawful, unfair, and/or
3 fraudulent business practices prohibited by Bus. & Prof. Code § 17200 *et seq.*

4 **A. "Unlawful" Prong**

5 79. Beginning at a date currently unknown through the time of this Complaint,
6 Defendant committed acts of unfair competition, including those described
7 above, by engaging in a pattern of "unlawful" business practices, within the
8 meaning of Bus. & Prof. Code § 17200 *et seq.* by manufacturing, distributing,
9 and/or marketing Defendant's Class Products with a false country of origin
10 designation, in violation of California's CLRA, Civil Code § 1750, *et seq.*,
11 California's False Made In the U.S.A statute, Bus. & Prof. Code §§ 17533.7 by
12 falsely representing that the products referenced herein are "Made in U.S.A."
13 when Defendant's products are composed of articles, units, or parts obtained
14 outside the United States which constitute more than ten percent (10%) of the
15 final wholesale value of the manufactured product.

16 **B. "Unfair" Prong**

17 80. Beginning at a date currently unknown and continuing up through the time of
18 this Complaint, Defendant has committed acts of unfair competition that are
19 prohibited by Bus. & Prof. Code section 17200 *et seq.* Defendant engaged in a
20 pattern of "unfair" business practices that violate the wording and intent of the
21 statutes by engaging conduct and practices that threaten an incipient violation of
22 law/s or violate the policy or spirit of law/s by manufacturing, distributing, and/
23 or marketing Defendant's products with a false country of origin designation, of
24 in violation of California's CLRA, Civil Code § 1750, *et seq.* and California's
25 False Made In the U.S.A statute, Bus. & Prof. Code §§ 17533.7 by falsely
26 representing that the products referenced herein are "Made in U.S.A." when
27 Defendant's products are composed of articles, units, or parts obtained outside
28





1 the United States which constitute more than ten percent (10%) of the final
2 wholesale value of the manufactured product.

3 81. Alternatively, Defendant engaged in a pattern of “unfair” business practices that
4 violate the wording and intent of the above mentioned statute/s by engaging in
5 practices that are immoral, unethical, oppressive or unscrupulous, the utility of
6 such conduct, if any, being far outweighed by the harm done to consumers and
7 against public policy by manufacturing, distributing, and/or marketing
8 Defendant’s Class Products with a false country of origin designation, in
9 violation of California’s CLRA, Civil Code § 1750, et seq. and California’s
10 False Made In the U.S.A statute, Bus. & Prof. Code §§ 17533.7 by falsely
11 representing that the products referenced herein are “Made in U.S.A.” when
12 Defendant’s products are composed of articles, units, or parts obtained outside
13 the United States which constitute more than ten percent (10%) of the final
14 wholesale value of the manufactured product.

15 82. Alternatively, Defendant engaged in a pattern of “unfair” business practices that
16 violate the wording and intent of the above mentioned statute/s by engaging in
17 practices, including manufacturing, distributing, marketing, and/or advertising
18 Defendant’s products with a false country of origin designation, wherein: (1) the
19 injury to the consumer was substantial; (2) the injury was not outweighed by any
20 countervailing benefits to consumers or competition; and (3) the injury was not
21 of the kind that consumers themselves could not have reasonably avoided.

22 **C. “Fraudulent” Prong**

23 83. Beginning at a date currently unknown and continuing up through the time of
24 this Complaint, Defendant engaged in acts of unfair competition, including those
25 described above and herein, prohibited and in violation of Bus. & Prof. Code §
26 17200 *et seq.*, by engaging in a pattern of “fraudulent” business practices within
27 the meaning of Bus. & Prof. Code § 17200 *et seq.*, by manufacturing,
28 distributing, and/or marketing Defendant’s Class Products in violation of

1 California’s CLRA, Civil Code § 1750, *et seq.* and California’s False Made In
2 the U.S.A statute, Bus. & Prof. Code §§ 17533.7 by falsely representing that the
3 products referenced herein are “Made in U.S.A.” when Defendant’s products are
4 composed of articles, units, or parts obtained outside the United States which
5 constitute more than ten percent (10%) of the final wholesale value of the
6 manufactured product.

7 84.Plaintiff reserves the right to allege further conduct that constitutes other
8 fraudulent business acts or practices. Such conduct is ongoing and continues to
9 this date.

10 **D. “Unfair, Deceptive, Untrue or Misleading Advertising” Prong**

11 85.Defendant’s advertising is unfair, deceptive, untrue or misleading in that
12 consumers are led to believe that Defendant’s Class Products are made in the
13 U.S.A, when Defendant’s products are composed of articles, units, or parts
14 obtained outside the United States which constitute more than ten percent (10%)
15 of the final wholesale value of the manufactured product.

16 86.Plaintiff, a reasonable consumer, and the public would likely be, and, in fact
17 were, deceived and mislead by Defendant’s advertising as they would, and did,
18 interpret the representation in accord with its ordinary usage, that the products
19 are actually made in the U.S.A.

20 87.Defendant’s unlawful, unfair, and fraudulent business practices and unfair,
21 deceptive, untrue or misleading advertising presents a continuing threat to the
22 public in that Defendant continues to engage in unlawful conduct resulting in
23 harm to consumers.

24 88.Defendant engaged in these unlawful, unfair, and fraudulent business practices
25 motivated solely by Defendant’s self-interest with the primary purpose of
26 collecting unlawful and unauthorized monies from Plaintiff and all others
27 similarly situated; thereby unjustly enriching Defendant.
28



1 89. Such acts and omissions by Defendant are unlawful and/or unfair and/or
2 fraudulent and constitute a violation of Business & Professions Code section
3 17200 *et seq.* Plaintiff reserves the right to identify additional violations by
4 Defendant as may be established through discovery.

5 90. As a direct and proximate result of the aforementioned acts and representations
6 described above and herein, Defendant received and continues to receive
7 unearned commercial benefits at the expense of their competitors and the public.

8 91. As a direct and proximate result of Defendant's unlawful, unfair and fraudulent
9 conduct described herein, Defendant has been and will continue to be unjustly
10 enriched by the receipt of ill-gotten gains from customers, including Plaintiff,
11 who unwittingly provided money to Defendant based on Defendant's fraudulent
12 representations.

13 92. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by
14 Defendant as a result of Defendant's false representations set forth on the
15 Defendant's Products.

16 93. In prosecuting this action for the enforcement of important rights affecting the
17 public interest, Plaintiff seeks the recovery of attorneys' fees, which is available
18 to a prevailing plaintiff in class action cases such as this matter.

19 **Fourth Cause of Action for**
20 **Negligent Misrepresentation**

21 94. Plaintiff repeats, re-alleges and incorporates by reference the above allegations
22 as if fully stated herein.

23 95. At a date presently unknown to Plaintiff, but at least four years prior to the filing
24 of this action, and as set forth above, Defendant represented to the public,
25 including Plaintiff, by packaging and other means, that Defendant's Class
26 Products are made in the U.S.A, when Defendant's products are composed of
27 articles, units, or parts obtained outside the United States which constitute more
28 than ten percent (10%) of the final wholesale value of the manufactured product.

1 96. Defendant made the representations herein alleged with the intention of inducing
2 the public, including Plaintiff and putative class members, to purchase
3 Defendant's Class Products.

4 97. Plaintiff and other similarly situated persons in California saw, believed, and
5 relied upon Defendant's advertising representations and, in reliance on them,
6 purchased the Class Products, as described herein.

7 98. At all times relevant, Defendant made the misrepresentations herein alleged
8 when Defendant should have known these representations to be untrue, and had
9 no reasonable basis for believing the representations to be true.

10 99. As a proximate result of Defendant's negligent misrepresentations, Plaintiff and
11 other consumers similarly situated were induced to purchase, purchase more of,
12 or pay more for Defendant's Class Products, due to the unlawful acts of
13 Defendant, in an amount to be determined at trial, during the Class Period.

14 **Fifth Cause of Action for**
15 **Intentional Misrepresentation**

16 100. Plaintiff repeats, re-alleges and incorporates herein by reference the above
17 allegations as if fully stated herein.

18 101. At a date presently unknown to Plaintiff, but at least three years prior to the
19 filing of this action, and as set forth above, Defendant intentionally represented
20 to the public, including Plaintiff, by promoting and other means, that
21 Defendant's Class Products are made in the U.S.A, when Defendant's products
22 are composed of articles, units, or parts obtained outside the United States which
23 constitute more than ten percent (10%) of the final wholesale value of the
24 manufactured product.

25 102. Defendant made the representations herein alleged with the intention of
26 inducing the public, including Plaintiff, to purchase Defendant's Class Products
27 for Defendant's own financial gain.
28





1 103. Defendant intentionally made such misrepresentations by printing on the Class
2 Products' labels that they were "Made in U.S.A."

3 104. The statement regarding Defendant's Class Products as being "Made in U.S.A."
4 was misleading because Defendant's products are composed of articles, units, or
5 parts obtained outside the United States which constitute more than ten percent
6 (10%) of the final wholesale value of the manufactured product.

7 105. Plaintiff and other similarly situated persons in California saw, believed, and
8 relied upon Defendant's advertising representations and, in reliance on such
9 representations, purchased the Class Products, as described above.

10 106. At all times relevant, Defendant intentionally made the misrepresentations
11 herein alleged, allowed the misrepresentations to continue to be made by its
12 resellers and Defendant knew the representations to be false.

13 107. As a proximate result of Defendant's intentional misrepresentations, Plaintiff
14 and other consumers similarly situated were induced to spend an amount of
15 money to be determined at trial on Defendant's misrepresented Products.

16 108. Defendant knew that its Class Products were composed of articles, units, or
17 parts obtained outside the United States which constituted more than ten percent
18 (10%) of the final wholesale value of the manufactured product, but nevertheless
19 made the representations described herein with the intention that consumers rely
20 on Defendant's representations.

21 109. Defendant also knew that retailers were advertising its Class Products as
22 "Made in U.S.A.," as Defendant designed, manufactured, and affixed the
23 product labeling to its Class Products before supplying the products to retailers.

24 110. Plaintiff and other consumers similarly situated, in purchasing and using the
25 Class Products as herein alleged, did rely on Defendant's representations,
26 including the representations on Defendant's Class Products' labels, all to their
27 damage and/or detriment as herein alleged.
28

1 111.Plaintiff alleges the “who, what, when, where, and how” of the alleged
2 deception by Defendant as follows:

- 3 • The “who” is Defendant;
- 4 • The “what” is representation that Defendant’s Class Products are “Made in
5 U.S.A.”;
- 6 • The “when” is the date Plaintiff purchased the product and the Class Period
7 of four years prior to the filing of the Complaint;
- 8 • The “where” is in Defendant’s product labeling; and
- 9 • The “how” is the allegation that Defendant did not disclose that its Class
10 Products are in fact foreign-made and/or composed of component parts
11 manufactured and/or grown outside of the United States.
- 12 • By engaging in the acts described above, Defendant is guilty of malice,
13 oppression, and fraud, and each Plaintiff is therefore entitled to recover
14 exemplary or punitive damages.

15 **Prayer For Relief**

16 **WHEREFORE**, Plaintiff respectfully requests the Court grant Plaintiff and
17 the Class members the following relief against Defendant:

- 18 • That the Court determine that this action may be maintained as a Class
19 Action by certifying this case as a Class Action;
 - 20 • That the Court certify Plaintiff to serve as the Class representative in this
21 matter;
 - 22 • That Defendant’s wrongful conduct alleged herein be adjudged and decreed
23 to violate the consumer protection statutory claims asserted herein;
 - 24 • That Plaintiff and each of the other members of the Class recover the
25 amounts by which Defendant has been unjustly enriched;
 - 26 • That Defendant be enjoined from continuing the wrongful conduct alleged
27 herein and required to comply with all applicable laws;
- 28



- That Plaintiff and each of the other members of the class recover their costs of suit, including reasonable attorneys' fees and expenses as provided by law; and
- That Plaintiff and the members of the Class be granted any other relief the Court may deem just and proper.

TRIAL BY JURY

Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: June 21, 2019

Hyde & Swigart, APC

By: /s/ Joshua B. Swigart
Joshua B. Swigart, Esq.
Attorney For Plaintiff

KAZEROUNI LAW GROUP, APC

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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

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

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

DEFENDANTS

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

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

Attorneys (If Known)

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

Stephanie Bauman v. Australian Gold, LLC
Case No.: 3:18-cv-01682-L-BGS
United States District Court, Southern District of California

CERTIFICATE OF SERVICE

I, Antonia Smith, the undersigned, declare as follows:


I am over the age of eighteen years and not a party to the case. I am employed in the County of San Diego, California where the mailing occurs: My business address is 2221 Camino Del Rio South, Suite 101, San Diego, CA 92108. I am readily familiar with our business' practice of collecting, processing and mailing of correspondence and pleadings for mail with the United Postal Service.

On the date below I electronically filed with the Court through its CM/ECF program, which will electronically mail notice to all attorneys of record in said case through the same program, the following document(s):

- **FIRST AMENDED CLASS ACTION COMPLAINT**

ELECTRONICALLY, Pursuant to the CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF system sends an email notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on Friday, June 21, 2019, at San Diego, California.



Antonia Smith



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