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 BECKSTOFFER VINEYARDS

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

BECKSTOFFER VINEYARDS, a
 California corporation,
 Plaintiff,
 v.

BLICKER PIERCE WAGNER WINE
 MERCHANTS, LLC, a California limited
 liability company, doing business as BP
 WINE, BPWINE.COM and SLEEPER
 CELLARS; and NEW LAST BOTTLE
 WINES, INC., a California corporation,
 doing business as LAST BOTTLE; and
 DOES 1-100, inclusive,
 Defendants.

CASE NO. _____

**COMPLAINT FOR DAMAGES AND FOR
 INJUNCTIVE RELIEF:**

1. **FEDERAL TRADEMARK
 INFRINGEMENT** [15 U.S.C., § 1114 et
 seq.];
2. **FEDERAL FALSE DESIGNATION OF
 ORIGIN, FALSE ADVERTISING AND
 UNFAIR COMPETITION** [15 U.S.C. §
 1125(a)];
3. **MISAPPROPRIATION AND
 UNAUTHORIZED COMMERCIAL USE
 OF NAME AND PUBLICITY RIGHTS**
 [Cal. Civ. Code § 3344];
4. **UNFAIR COMPETITION** [Cal. Bus. &
 Prof. Code, § 17200 et seq.];
5. **DILUTION** [Cal. Bus. & Prof. Code, §
 14330 et seq.];
6. **FALSE ADVERTISING** [Cal. Bus. & Prof.
 Code, § 17500 et seq.];
7. **BREACH OF CONTRACT;**
8. **CONSTRUCTIVE TRUST; AND**
9. **ACCOUNTING**

JURY TRIAL DEMANDED

Plaintiff BECKSTOFFER VINEYARDS (“**Plaintiff**” or “**Beckstoffer**”), for its
 Complaint for trademark infringement and the other claims stated herein alleges as against
 Defendants BLICKER PIERCE WAGNER WINE MERCHANTS, LLC, dba BP WINE,
 BPWINE.COM and SLEEPER CELLARS; and, NEW LAST BOTTLE WINES, INC., dba
 LAST BOTTLE; and DOES 1 through 100 (collectively “**Defendants**”):

INTRODUCTION

1
2 1. This is an action to redress violations of the federal trademark and unfair
3 competition laws (15 U.S.C. § 1114 et seq., and § 1125 et seq.) as the result of Defendants’
4 willful and unauthorized use of Plaintiff’s registered and common law trademarks and trade
5 names, unlawful use of Plaintiff’s name and publicity rights, and related claims as more fully set
6 forth herein. Plaintiff seeks injunctive relief restraining Defendants’ infringement of Plaintiff’s
7 trademarks and trade names, as well as damages that are the direct and proximate result of the
8 infringement and wrongful acts. In addition to damages and permanent injunctive relief,
9 Plaintiff seeks an accounting, the imposition of a constructive trust upon Defendants’ illegal
10 profits, and other relief.

THE PARTIES

11
12 2. Plaintiff is a California corporation organized and existing under the laws of
13 California with a business address at PO Box 405, Rutherford, California 94573. Plaintiff is in
14 the business of growing, marketing, and selling wine grapes to wineries for the purpose of
15 making wine.

16 3. Plaintiff is the owner of 89 acres of the historic “To Kalon” vineyard in
17 Rutherford, California. Grapes from the Beckstoffer To Kalon vineyard, and other Beckstoffer
18 vineyards located in Napa Valley, sell for some of the highest prices per ton in the United States.
19 Wine bearing the BECKSTOFFER TO KALON designation on their labels can sell for upwards
20 of \$450.00 per bottle.

21 4. Plaintiff licenses the name “Beckstoffer” to purchasers of its grapes to identify it
22 as the source and farmer of the grapes, together with the vineyard names (commonly known as
23 “vineyard designates”). Subject to specific terms and conditions, these trademark licenses allow
24 buyers of Beckstoffer grapes to place the name and trademark BECKSTOFFER on the fronts
25 and/or backs of the buyers’ wine bottles.

26 5. A license from Plaintiff to place the BECKSTOFFER trademark on bottle labels
27 is of great value to the licensees as wine consumers identify BECKSTOFFER as a source of
28 high-quality grapes, and as a result are willing to pay prices for these wines well above the

1 average price of Napa Cabernet Sauvignon wines.

2 6. Upon information and belief, Defendant Blicher Pierce Wagner Wine Merchants,
3 LLC, doing business as BP Wine, BP Wine.Com, and Sleeper Cellars (collectively “**Sleeper**
4 **Cellars**”) is a California limited liability company with a listed address at 22985 Burndale Road,
5 Sonoma, CA 95476. Upon information and belief, Defendant Sleeper Cellars is in the business
6 of producing, procuring, and selling bottled wines.

7 7. Upon information and belief, Defendant New Last Bottle Wines, Inc., doing
8 business as Last Bottle (collectively “**Last Bottle**”), is a California corporation with a listed
9 address at 255 Lombard Road B, American Canyon, CA 94503. Last Bottle is in the business of
10 marketing, promoting, and selling bottled wine brands directly to consumers through its website.

11 8. Upon information and belief, Sleeper Cellars and Last Bottle are wholly owned
12 and controlled by the same three individuals, Corey Wagner, Brent Pierce, and Stefan Blicher.
13 Last Bottle promotes Sleeper Wines as its “very own” wine label.

14 9. Upon information and belief, Defendant DOE 1 is a Napa based winery in the
15 business of producing wines and under specific terms and conditions set forth in a grape
16 Purchase Agreement purchased grapes from Plaintiff Beckstoffer Vineyards for the purpose of
17 producing wine under its wine label.

18 10. Under the Grape Purchase Agreement between Plaintiff and DOE 1, DOE 1 is
19 strictly prohibited from selling any grapes or unlabeled wine to third parties without Plaintiff’s
20 specific written permission.

21 11. Upon information and belief, in breach of its Grape Purchase Agreement with
22 Plaintiff, and without Plaintiff’s knowledge, authorization, or permission, DOE 1 sold produced
23 wine or unlabeled bottles of wine to Sleeper Cellars and/or Last Bottle.

24 12. The true names and capacities, whether individual, corporate, associate or
25 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who
26 therefore sues said Defendants by such fictitious names. Plaintiff will seek leave of the Court to
27 amend this Complaint when the names of said Defendants have been ascertained.

28 13. Plaintiff is informed and believes, and upon such information and belief alleges,

that at all times herein mentioned Defendant DOES 1 through 100, inclusive, were the agents, employees, servants, consultants, principals, employers, or masters of each of their Co-Defendants and each Defendant has ratified, adopted or approved the acts or omissions hereinafter set forth of the remaining Defendants, and each and every Defendant. Plaintiff is further informed and believes, and upon such information and belief alleges, that each of these fictitiously named Defendants is responsible in some manner for acts and/or omissions herein alleged.

14. Upon information and belief, Defendants individually and collectively are involved in the unlawful production, distribution, marketing, and/or sales of wine bearing the names and trademarks BECKSTOFFER and TO KALON in willful violation of Beckstoffer's trademark rights.

15. Upon information and belief, Defendants Sleeper Cellars advertise and market their wine online through Last Bottle, and have unlawfully marketed, sold, and/or distributed their wine products bearing the names BECKSTOFFER and TO KALON in the state of California, including through Defendants' locations in Sonoma and Napa, California.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a), in that this case arises under the trademark laws of the United States. Specifically, this is an action for federal trademark infringement arising under Section 32 of the Lanham Act, 15 U.S.C. § 1114 et seq.; federal and common law infringement and unfair competition because of false advertising and false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and for related claims of common law trademark infringement and California unfair competition, false advertising, and dilution. The Court has jurisdiction over the subject matter of the related unfair competition claims pursuant to 28 U.S.C. § 1338(b) because those claims are joined with substantial and related claims brought under the trademark laws.

17. This Court has personal jurisdiction over Defendants, and venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) because, inter alia, (a) Defendants and/or their agents, are doing business in this District and operating an interactive website; and (b) events

1 giving rise to this lawsuit, as well as substantial injury to Plaintiff, have occurred or will occur in
 2 interstate commerce, in the State of California, and in the Northern District of California as a
 3 result of Defendants' violations of the asserted trademark as alleged in detail below. Defendants
 4 and/or their agents have purposefully availed themselves of the opportunity to conduct
 5 commercial activities in this forum. For example, Defendants maintain places of business in
 6 California and advertise their wine in the state of California, including through Defendants'
 7 Napa, California location.

8 18. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a) in that Defendants
 9 conduct commercial activities in this District, and pursuant to 28 U.S.C. § 1391(c) as Defendants
 10 are corporations and are deemed to reside in any judicial district in which it is subject to personal
 11 jurisdiction at the time the action is commenced.

12 **FACTS COMMON TO ALL CLAIMS**

13 **A. Plaintiff's Registered Trademarks**

14 19. Plaintiff owns a series of valid federally registered trademarks that include the
 15 name "Beckstoffer" in International Class 031 for fresh wine grapes including U.S. Registration
 16 Nos. 559853 for BECKSTOFFER VINEYARD GEORGES III; 5598349 for BECKSTOFFER
 17 CARNEROS LAKE VINEYARD; 5598350 for BECKSTOFFER CARNEROS CREEK
 18 VINEYARD; 5532737 for BECKSTOFFER VINEYARDS; and 5532738 for BECKSTOFFER
 19 MISSOURI HOPPER VINEYARD (collectively the "**Registered Marks**"). Each of these marks
 20 were filed in 2016 and registered in 2018.

21 20. The Registered Marks are all valid, subsisting, and conclusive evidence of the
 22 validity of the Beckstoffer mark, Plaintiff's ownership of the mark, and Plaintiffs' exclusive right
 23 to use them in commerce on or in connection with the goods and services specified therein.

24 21. Plaintiff actively uses the Registered marks in commerce in its advertising and
 25 sale of wine grapes, and further licenses its Beckstoffer name and Registered Marks to wine
 26 producers that buy its grapes for placement on the wine producers wine labels. Plaintiff has
 27 continuously used and licensed the Registered Marks for wine goods in commerce since as early
 28 as 2000.

1 **B. Plaintiff's State Law and Common Law Rights:**

2 22. Plaintiff has a long history of using and licensing the name Beckstoffer, and the
 3 Registered Marks (collectively the "**Beckstoffer Marks**"), as an indication of source in the
 4 marketing and sales of its wine grapes to both wineries and consumers of wine. As a result,
 5 consumers associate Plaintiff's name and the Beckstoffer Marks with high-end wine grapes and
 6 finished wine goods produced from Beckstoffer grapes. Attached hereto as **EXHIBIT A** are
 7 representative examples of wine goods bearing the Beckstoffer Marks.

8 23. Plaintiff, while based in California, has offered for sale, advertised, and sold its
 9 wine grapes, and licensed its mark to numerous well-known wine producers who sell their wines
 10 bearing Plaintiff's Beckstoffer Marks on their wine labels domestically and internationally for
 11 well over two decades.

12 24. As a result of the Plaintiff's marketing and wine grape sales activities, and the
 13 licensing of its name to numerous prestigious wineries that prominently display the Beckstoffer
 14 Marks on the front labels of their wine bottles, the name Beckstoffer, has established common
 15 law trademark rights throughout the United States for both wine grapes and wines.

16 **C. Defendants' Infringing Acts**

17 25. Upon information and belief, Defendant Sleeper Cellars has recently sold, and is
 18 selling a wine that bears the name "Beckstoffer To Kalon" on the front label of the bottle.

19 26. Upon information and belief, Defendant Sleeper Cellars advertises, markets, and
 20 sells their wine bottles bearing the Beckstoffer name and trademark online through its affiliated
 21 company, Defendant Last Bottle. Attached hereto as **EXHIBIT B** is a copy of a recent online
 22 promotion on Defendant's Last Bottle online retail website of Sleeper Cellar's wine bearing the
 23 Beckstoffer name and trademark.

24 27. Upon information and belief, each Defendant was well aware that their use of the
 25 Beckstoffer name and trademark to sell their wine goods was unlawful, as indicated in their copy
 26 on the Last Bottle promotion depicted in Exhibit B which reads: "*There's a lot more super-secret*
 27 *stuff we CAN'T tell you about (thanks to a 6 page non-disclosure), but really, we already let the*
 28 *cat out the bag when we typed "Beckstoffer To Kalon"—no doubt our legal counsel is*

1 *furious...not to mention the all-powerful To Kalon Illuminati...".*

2 28. Upon information and belief, that beginning at a time unknown, but after
3 Plaintiff's first commercial use of the Beckstoffer trademark in commerce and continuing to the
4 present, Defendants actively engaged in the illegal and unlawful business of advertising,
5 distributing, and selling a deceptively confusing product line of wine, including use of Plaintiff's
6 Beckstoffer trademark and trade name, or imitation thereof.

7 29. Defendants' use of the Beckstoffer trademark began at an unknown date and time,
8 and, upon information and belief, began after January 1, 2023.

9 30. Upon information and belief, Defendants advertise, market, distribute, and/or sell
10 its products, namely wine, bearing the Beckstoffer trademark prominently and deceptively on the
11 front label of the wine in interstate commerce in several states including California and on the
12 internet among other locations, and specifically through their website lastbottlewines.com .

13 31. Defendants, and Plaintiff through its sale of wine grapes to its buyer and
14 trademark licensees, are in the same industry, alcohol and specifically wine, and offer for sale the
15 same products, specifically wine produced from wine grapes to the same target customers.

16 32. Defendants, and Plaintiff through its trademark licenses granted to its winery
17 licensees, advertise, distribute, and/or sell their alcohol-related products in the same or similar
18 trade channels, including at online retail stores.

19 33. Defendants' use of the Beckstoffer mark and other imitations thereof are
20 confusingly similar to Plaintiff's federally registered marks and Plaintiff's state and common law
21 trademark and trade name rights.

22 34. Defendants' use of the Beckstoffer mark and other variations is in direct
23 competition with Plaintiff's Beckstoffer marks and trade names.

24 35. Defendants' use of the Beckstoffer mark and other variations thereof in the
25 alcohol and wine industry has caused actual confusion and/or is likely to cause confusion as to
26 source, sponsorship, and/or affiliation in relation to Plaintiff's Beckstoffer marks.

27 36. Defendants' use of the Beckstoffer mark harms Plaintiff's goodwill and dilutes
28 Plaintiff's trademarks and trade names.

37. Plaintiff is informed and believes, and thereon alleges, that Defendants will continue to use Plaintiff's mark unless enjoined from its use. Thus, Defendants' use will continue to harm Plaintiff's goodwill and will continue to dilute Plaintiff's mark and trademark rights unless enjoined.

38. Upon information, Defendants' use of the word and trademark Beckstoffer on their wine products and/or advertising has caused and will cause Plaintiff and its licensees immediate and irreparable harm.

39. Unless restrained and enjoined, Defendants will continue to engage in the acts complained of herein and expand its use of Plaintiff's marks and trade name, causing irreparable damage to Plaintiff. Plaintiff's remedy at law is not adequate to compensate Plaintiff for all the injuries resulting from Defendants' actions.

40. Defendants are not affiliated with Plaintiff. Defendants' use of the BECKSTOFFER mark is not authorized by Plaintiff.

FIRST CAUSE OF ACTION

TRADEMARK INFRINGEMENT (15 U.S.C. § 1114 et. seq.)

41. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 40 inclusive and incorporates them as though fully set forth herein.

42. As set forth above, Plaintiff is the owner of the Registered Marks and Beckstoffer Marks. Plaintiff has used its Beckstoffer Marks continuously in commerce for each of its products, including those described and identified above in this Complaint. Said marks identify the goods and services of Plaintiff, only, and distinguishes those products because of their long use by Plaintiff and its licensees that are authorized to advertise, distribute and/or sell Plaintiff's products.

43. Defendants' activities as alleged herein constitute infringement of Plaintiff's trademarks in violation of the Lanham Act, including, but not limited to, 15 U.S.C. § 1114(a).

44. Defendants' wrongful conduct includes the advertising, distribution and/or sales of each and every product sold under the Beckstoffer Marks that are confusingly similar, nearly

identical, and identical to Plaintiff's Beckstoffer Marks. Whether imitation, or confusingly similar and deceptive, the infringing products that Defendants have and are continuing to create, use, offer, advertise, distribute and/or sell under the Beckstoffer Marks are so similar to genuine products bearing Plaintiff's BECKSTOFFER mark that they cause actual confusion and/or are likely to cause confusion and mistake as to the source of the product and/or sponsorship, ownership, or affiliation of Plaintiff's products.

45. On information and belief, and thereon alleged, Defendants have developed, advertised, marketed and/or distributed its infringing products with the knowledge of Plaintiff's trademark and trade name and with willful and calculated purposes of (a) misleading, deceiving or confusing customers and the public as to the origin of the infringing products/materials, and (b) trading upon Plaintiff's business reputation and goodwill. At a minimum, Defendants acted with knowledge and reckless disregard of Plaintiff's registered and common law trademarks and trade name.

46. As a result of its wrongful conduct, Defendants are liable to Plaintiff for trademark infringement. Plaintiff has suffered, and will continue to suffer, losses, including, but not limited to, damage to its business reputation and goodwill. Plaintiff is entitled to recover damages, which include its losses and all profits Defendants have made as a result of its wrongful conduct, pursuant to 15 U.S.C. § 1117(b).

47. Plaintiff is also entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a), as it has no adequate remedy at law as to Defendants continue to develop, advertise and/or sell their products to the same or similar consumers as Plaintiff does as well as through the same channels, including the Internet and distributors. On information and belief and thereon alleged, Defendants may expand their wines bearing the Beckstoffer Marks. Lastly, Plaintiff is entitled to injunctive relief as its business reputation and goodwill will be irreparably harmed if Defendants' wrongful activities continue and consumers and/or potential consumers and the public are confused and/or are likely to become further confused, mistaken, or deceived as to the source, origin or authenticity of the infringing materials.

48. Plaintiff is also entitled to recover its attorneys' fees and costs of suit pursuant to

1 15 U.S.C. § 1117.

2 WHEREFORE, Plaintiff prays for judgment, damages and injunctive relief against
3 Defendants as set forth below.

4 **SECOND CAUSE OF ACTION**

5 **FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING,**
6 **AND UNFAIR COMPETITION**
7 **(15 U.S.C. §§ 1125(a) et seq.)**

8 49. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 48
9 inclusive and incorporates them as though fully set forth herein.

10 50. Because Plaintiff advertises, markets, distributes, and sells its products under the
11 trademark described in this Complaint, this trademark is the means by which Plaintiff's products
12 and materials are distinguished from the products and materials of others in the same or related
13 fields.

14 51. Due to Plaintiff's long, continuous, and exclusive use of the Beckstoffer Marks,
15 the name BECKSTOFFER has come to mean, and is understood by customers and the public, to
16 signify products and services and materials of Plaintiff, particularly when used related to wines.

17 52. Plaintiff has designed and used, and continues to use, and license its Beckstoffer
18 Marks with the Plaintiff's name on packaging for wine products and materials, just for this
19 purpose.

20 53. Defendants' wrongful conduct includes the use, advertising, marketing,
21 distribution, and/or sale of products bearing Plaintiff's marks, as well as Plaintiff's name, and/or
22 imitations of said marks that are virtually indistinguishable from Plaintiff's mark, in connection
23 with its products.

24 54. Plaintiff is informed and believes, and upon that basis alleges, that Defendant
25 engaged in such wrongful conduct with the willful purpose of misleading, deceiving, or
26 confusing customers and the public as to the origin and authenticity of the products offered,
27 marketed, distributed, and/or sold in connection with Plaintiff's marks, name, and imitation
28 visual materials and design and is and trading upon Plaintiff's business reputation and goodwill.

55. Defendants' conduct constitutes: (a) false designation of origin, (b) false or

misleading description, and (c) false or misleading representation that the imitation “Beckstoffer” To Kalon products originate from or are authorized by Plaintiff, all in violation of section 43(a) of the Lanham Act, set forth at 15 U.S.C. section 1125(a).

56. Defendants’ wrongful conduct is likely to continue unless restrained and enjoined.

57. As a result of Defendants’ wrongful conduct, Plaintiff has suffered and will continue to suffer losses, including, but not limited to, sales revenues illegally and unfairly captured by Defendants, damage to its business reputation and good will.

58. Plaintiff is entitled to injunctive relief enjoining Defendants’ wrongful conduct pursuant to 15 U.S.C. Section 1125(a), and to an order impounding all products or materials bearing imitation marks being used, offered, advertised, distributed and/or sold by Defendants.

59. Plaintiff has no adequate remedy at law for Defendants’ wrongful conduct because, among other reasons: (a) Plaintiff’s marks, names, and designs are unique and valuable property, which has no readily determinable market value; (b) Defendants’ advertising, marketing, distribution, and/or sales of imitated marks works a great harm to Plaintiff’s business reputation and goodwill such that Plaintiff could not be made whole by any monetary award; and (c) Defendants’ wrongful conduct, and the resulting damage to Plaintiff, is continuing and likely expanding.

60. Plaintiff is also entitled to recover its attorneys’ fees and costs of suit pursuant to 15 U.S.C. Section 1117.

WHEREFORE, Plaintiff prays for judgment, damages, restitution, seizure, an accounting, and injunctive relief against Defendants, and each of them, as set forth below.

THIRD CAUSE OF ACTION

MISAPPROPRIATION AND UNAUTHORIZED COMMERCIAL USE OF NAME AND PUBLICITY RIGHTS

[Cal. Civ. Code § 3344]

61. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 60, inclusive, and incorporates them as though fully set forth herein.

62. Continuing through the present, Defendants knowingly used and are continuing to

1 use Plaintiff's name and likeness for Defendants' advantage and commercial profit, all without
 2 Plaintiff's prior consent or knowledge in violation of California Civil Code § 3344.

3 63. As a direct and proximate result of the above-described acts by Defendants,
 4 Plaintiff has suffered damages. In addition to damages attributed to Defendants' unauthorized
 5 use of Plaintiff's name and likeness or statutory damages, Defendants are liable to Plaintiff for
 6 the amount of any profits Defendants received from the unauthorized use of Plaintiff's name and
 7 or likeness.

8 64. Plaintiff did not authorize Defendants' use of Plaintiff's name or likeness in any
 9 of the materials hereto as Exhibit B.

10 65. In the process making intentional misrepresentations, engaging in deceit and
 11 concealing material facts known to Defendant by engaging in the actions described herein,
 12 Defendants acted with the intention to thereby deprive Plaintiff of its property rights, legal rights
 13 and otherwise to cause it injury, as described herein above.

14 66. In doing the acts alleged herein, Defendants engaged in a willful and conscious
 15 disregard of Plaintiff's rights and acted with negligence, oppression, fraud, and malice, engaging
 16 in despicable conduct.

17 67. Under authority of California Civil Code § 3344, Plaintiff is entitled to an award
 18 of reasonable attorneys' fees and costs of suit incurred herein,

19 68. Plaintiff is also entitled under California Civil Code § 3344 to an award of
 20 punitive damages against Defendants.

21 69. Defendants will continue using the misappropriated name and likeness of Plaintiff
 22 for purposes of promoting Defendants' fraudulent and unlawful scheme of advertising and
 23 selling wine attributed to Plaintiff, for their overall advantage, including, but not limited to
 24 commercial gain and profit.

25 70. Unless and until enjoined and restrained by order of this Court, Defendants' use
 26 of Plaintiff's name and likeness will cause Plaintiff continued and great harm and irreparable
 27 injury by the impairment of Plaintiff's business reputation.

28 71. Plaintiff, thus, has no adequate remedy at law for the injuries being suffered in

1 that a judgment for monetary damages alone will not end the invasion of Plaintiff's right of
 2 privacy to utilize its name or likeness without fear of fraudulent misappropriation or otherwise
 3 suffice to fully remedy Plaintiff's injuries.

4 WHEREFORE, Plaintiff prays for judgment, damages, restitution, punitive damages,
 5 seizure, an accounting, and injunctive relief against Defendants, and each of them, as set forth
 6 below.

7 **FOURTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION** 9 **(California Business & Professions Code §§ 17200 et seq.)**

10 72. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 71
 11 inclusive, and incorporates them as though fully set forth herein.

12 73. Defendants' aforesaid conduct constitutes unfair, unlawful, and fraudulent
 13 business practices in violation of California Business & Professions Code Sections 17200 et seq.,
 14 in that Defendants' use of confusingly similar marks and/or counterfeit marks to those of
 15 Plaintiff in the exact same industry related to the same products constitutes unfair competition, as
 16 Plaintiff was the first to use its various marks in conjunction with its products and services in the
 17 in the wine industry, among others, and has obtained a registered trademark for said mark.
 18 Plaintiff has continuously used the Beckstoffer Marks and trade name as set forth above and
 19 expanded the use of said mark. Plaintiff and Defendants are in direct competition as they
 20 advertise and offer for sale the same products, to the same target customers, and operate in the
 21 same advertising space, including through distributors, retail store locations, and bars/restaurants.

22 74. As a direct and proximate result of the unfair and illegal conduct and
 23 representations to consumers and the public by Defendants, and each of them, as herein alleged,
 24 Plaintiff has been damaged in an amount not yet ascertained and continues to be damaged. These
 25 wrongful acts have proximately caused and/or will continue to cause Plaintiff substantial injury,
 26 including confusion in the marketplace, wrongful association, dilution of its goodwill, confusion
 27 of government partners and potential customers, injury to its reputation, and diminution in value
 28 of its trademarks and trade name. These actions cause imminent irreparable harm and injury to

1 Plaintiff.

2 75. As a result of Defendants' wrongful conduct, Plaintiff is entitled to recover from
3 Defendants the gains, profits, and advantages they have obtained as a result of its wrongful acts
4 as hereinabove alleged and said amounts should be disgorged and restitution made to Plaintiff.

5 WHEREFORE, Plaintiff prays for judgment and injunctive relief against Defendants, and
6 each of them, as set forth below.

7 **FIFTH CAUSE OF ACTION**

8 **DILUTION**
9 **(California Business & Professions Code §§ 14330 et seq.)**

10 76. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 75,
11 inclusive, and incorporates them as though fully set forth herein.

12 77. Plaintiff has, since 1983, advertised, marketed, offered for sale, and sold products
13 using the Beckstoffer Marks and name, including in its advertising, packaging, and logos for its
14 wine products described above. Plaintiff has built up valuable goodwill in the Beckstoffer Marks,
15 and the name "Beckstoffer," and have come to be associated exclusively with Plaintiff's
16 company and are strong marks in the wine industry.

17 78. Defendants have, in connection with the advertising, distribution and sale of its
18 imitation products, used marks and labels that are confusingly similar or identical to Plaintiff's
19 marks, and used the Beckstoffer mark and name in a trademark sense to indicate source, thereby
20 diluting the distinctive quality of Plaintiff's marks and the goodwill associated with such marks.

21 79. Defendants have acted with knowledge of the use of Plaintiff's mark and
22 Plaintiff's application for the mark related to products sold by Plaintiff for the purpose of
23 usurping the goodwill and reputation associated with Plaintiff and its products, as well as to
24 willfully and intentionally confuse, mislead, and deceive members of the public by such use.

25 80. Defendants' actions have, and continue to, dilute, blur and tarnish the strong and
26 positive associations represented by Plaintiff's marks and lessen the capacity of Plaintiff's marks
27 to identify and distinguish Plaintiff and its products, including its Beckstoffer products and cause
28 Plaintiff's marks to be associated with products that are not made, distributed, sponsored,

endorsed or approved by Plaintiff.

81. Defendants' use is not for comparative advertising. Defendants do not use the Beckstoffer Marks or trade name in advertising to compare the relative qualities of the competitive goods.

82. Defendants' acts are willful and are in violation of California Business and Professions Code Section 14330 et seq., and Plaintiff has been, and continues to be, damaged by these acts.

WHEREFORE, Plaintiff prays for judgment and injunctive relief against Defendants, and each of them, as set forth below.

SIXTH CAUSE OF ACTION

FALSE ADVERTISING (California Business & Professions Code §§ 17500 et seq.)

83. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 82, inclusive, and incorporates them as though fully set forth herein.

84. Defendants were aware of Plaintiff's use of and rights in its marks and that the advertising, promotion, distribution, and sale of its products would mislead and create a likelihood of confusion to consumers, potential consumers, and the public. Upon information and belief, Defendants were aware of or should have been aware of Plaintiff's registered trademark.

85. Defendants' use of their confusingly similar and/or identical marks to advertise and promote their products, and well as using such marks on their infringing products to indicate that the Beckstoffer mark and name is used in its trademark sense to indicate source, affiliation, or sponsorship, has caused actual confusion and/or is likely to cause confusion with respect to Plaintiff's and its licensees' products with Defendants' products and falsely, misleadingly, and confusingly implies that Defendants' products are genuine Plaintiff products or are sponsored by, or affiliated with, or approved by Plaintiff.

86. Defendants' actions are willful and constitute false advertising as it is likely to deceive, confuse, and mislead consumers, potential consumers, and members of the public in violation of California Business and Professions Code Section 17500 et seq. Plaintiff has been

and continues to be damaged and irreparably harmed by these acts.

87. Pursuant to California Business and Professions Code Section 17535, Plaintiff is entitled to injunctive relief, and to an order requiring Defendants to make restitution of all profits that Defendants realized as a result of their false and misleading advertising.

WHEREFORE, Plaintiff prays for judgment, restitution, and an injunction against Defendants, and each of them, as set forth below.

SEVENTH CAUSE OF ACTION

BREACH OF CONTRACT (Against Does 1-50)

88. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 87, inclusive, and incorporates them as though fully set forth herein.

89. Plaintiff licenses its Beckstoffer name and Beckstoffer Marks to wine producers that buy Plaintiff's grapes to produce wine. Such producers use the name and marks under license in connection with the wine they produce with Plaintiff's grapes. Plaintiff has continuously used and licensed the Beckstoffer name and trademark for wine goods in commerce since as early as 2000, and only allows the use of its name and marks subject to strict requirements in its licensing agreements with wine producers.

90. Purchasers of Beckstoffer's grapes may only use Plaintiff's name, likeness, marks pursuant to rights conveyed by license.

91. On information and belief, the wine at issue in this action, i.e., advertised and sold by Defendants in connection with the unauthorized use of Plaintiff's name and marks was sold to or provided to Defendants by a purchaser or purchasers of Plaintiff's grapes.

92. Such purchaser or purchasers, identified herein as Does 1-50, who in turn supplied or sold wine to Defendants, breached the terms and conditions contained in the licensing agreement between Plaintiff and such purchaser or purchasers by engaging in such sale or by providing wine to Defendants without complying with the terms and conditions of their licensing agreement with Plaintiff.

93. As a proximate result of such breach of their licensing agreement, the purchaser or purchasers identified herein as Does 1 – 50 have caused Plaintiff to suffer damage in an

1 amount to be proven at trial.

2 94. In addition to financial damages for the above-described breach or breaches of
3 contract, each of Plaintiff's license agreements provide for the recovery of reasonable attorneys'
4 fees in the event of a dispute regarding the terms and conditions of, or to enforce, any such
5 license agreement. Plaintiff is, thus, entitled to recovery of its reasonable attorneys' fees in
6 establishing liability for breach of its licensing agreement or agreements with the purchaser or
7 purchasers of its grapes, identified herein as Does 1-50.

8 WHEREFORE, Plaintiff prays for judgment of damages and an award of attorneys' fees
9 and costs, as set forth below.

10 **EIGHTH CAUSE OF ACTION**

11 **CONSTRUCTIVE TRUST**

12 95. Plaintiff realleges each and every allegation in Paragraphs 1 through 94, inclusive,
13 and incorporates them as though fully set forth herein.

14 96. Defendants' acts and conduct constitute deceptive, fraudulent, and wrongful
15 conduct in the nature of passing off their infringing Beckstoffer To Kalon wine products as those
16 approved by, authorized by, affiliated with, or sponsored by Plaintiff.

17 97. By virtue of Defendants' wrongful acts and conduct, Defendants have illegally
18 received money and profits that rightfully belong to Plaintiff.

19 98. Plaintiff is also entitled, pursuant to 15 U.S.C. Section 1117(a), 17 U.S.C. Section
20 504(b), and California Civil Code Section 3344, to recover all profits of Defendants that are
21 attributable to their acts of infringement of violations thereof.

22 99. Defendants hold the illegally made profits in the form of money and property as
23 constructive trustees for the benefit of Plaintiff.

24 WHEREFORE, Plaintiff prays for judgment and or decree declaring all profits by
25 Defendants attributable to their acts of infringement and misappropriation of Plaintiff's name and
26 likeness be held in constructive trust for the benefit of Plaintiff.

27 ///

28 ///

NINETH CAUSE OF ACTION

ACCOUNTING

100. Plaintiff realleges each and every allegation in Paragraphs 1 through 99, inclusive, and incorporates them as though fully set forth herein.

101. Plaintiff is entitled, pursuant to 15 U.S.C. Section 1117(a) and 17 U.S.C. Section 504(b), to recover all profits of Defendants that are attributable to their acts of infringement or violations thereof.

102. The amount of money due from Defendants to Plaintiff is unknown to Plaintiff and cannot be ascertained without a detailed accounting by Defendants of the precise number of infringing materials advertised or offered for distribution and sold by Defendants.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF respectfully requests judgment as follows:

1. That the Court enter a judgment against Defendants, finding that Defendants have:
 - a. Willfully infringed Plaintiff's rights in its federally registered trademarks;
 - b. Willfully infringed Plaintiff's rights in common law trademarks and trade name;
 - c. Committed and are committing acts of false designation of origin, false or misleading description of fact, and false or misleading advertising against Plaintiff;
 - d. Committed and are committing unfair business competition by and through deceptive advertising and false designations of origin;
 - e. Misappropriated Plaintiff's name and right to publicity in violation of California Civil Code Section 3344;
 - f. As to DOES 1-50, Breached the licensing agreement between Plaintiff and Does 1-50.
 - g. Otherwise injured the business reputation, goodwill and business of Plaintiff and irreparably harmed Plaintiff by the acts and conduct set forth in this Complaint.

2. That this Court issue temporary and permanent injunctive relief against Defendants, and each of them, and that Defendants, their agents, representatives, servants, employees, attorneys, successors and assigns and all others in active concert or participation with Defendants, be enjoined and restrained from:

- a. Imitating, copying, or making any other infringing use or infringing distribution of the products or materials protected by Plaintiff's trademarks;
- b. Manufacturing, distilling, producing, distributing, offering for distribution, selling, offering for sale, advertising, importing, promoting or displaying any products, items or other things bearing any simulation, reproduction, copy or colorable imitation of products, items or things protected by Plaintiff's trademarks;
- c. Using any simulation, reproduction, counterfeit, copy or colorable imitation of Plaintiff's registered trademark or common law trademarks, in connection with the manufacture, assembly, production, distribution, offering for distribution, sale, offering for sale, import, advertising, promotion or display of any product, item or thing, including alcohol and wine and related materials not authorized by Plaintiff;
- d. Using any false designation of origin or false or misleading description or false or misleading representation or name, that can or is likely to lead the industry or public erroneously to believe that any product, item or thing has been manufactured, distilled, produced, distributed, offered for distribution, sold, offered for sale, imported, advertised, promoted, displayed, licensed, sponsored, approved or authorized by or for Plaintiff, when such is not true in fact;
- e. Using the names, logos, or other variations thereof, of any of Plaintiff's trademark protected products and materials in any of the Defendants' trade or corporate names or products;
- f. Engaging in any other activity constituting an infringement of any of

Plaintiff's trademarks, and/or trade name or of Plaintiff's rights in or right to use to exploit, these trademarks and/or trade name, and;

g. Assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs a through f above.

3. That the Court enter an order declaring that the Defendants hold in trust, as constructive trustee for the benefit of Plaintiff, all profits received by Defendants from their distribution or sale of counterfeit or imitation or infringing products and materials, and issue temporary and permanent injunctive relief enjoining and restraining Defendants and their agents from transferring, concealing or dissipating all profits and assets acquired in whole or in part with those profits.

4. That the Court enter an order requiring Defendants to provide Plaintiff a full and complete accounting of all profits received by Defendants from their distribution or sale of counterfeit, imitation and infringing products and/or materials, and of any other amounts due and owing to Plaintiff as a result of Defendants' illegal activities.

5. That the Court order Defendants to pay Plaintiff's general, special, actual and statutory damages, including Defendants' profits, for Defendants' willful infringement of Plaintiff's trademarks.

6. That the Court award Plaintiff exemplary damages against Defendants for engaging in willful acts of oppression, fraud, malice, despicable conduct and for Defendants' willful and conscious disregard of Plaintiff's rights.

7. That the Court order Defendants to pay Plaintiff the costs of this action and the reasonable attorneys' fees incurred by Plaintiff in prosecuting this action.

8. That the Court grant to Plaintiff such other and additional relief as may be just and proper in the premises.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the Seventh Amendment to the Constitution of the United States, Plaintiff hereby demands a trial by jury of

1 all issues triable in the above action.

2 Dated: February 13, 2023

CARLE, MACKIE, POWER & ROSS LLP

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By: /s/ Philip J. Terry

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Philip J. Terry
Kimberly Corcoran
Attorneys for Beckstoffer Vineyards

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EXHIBIT A


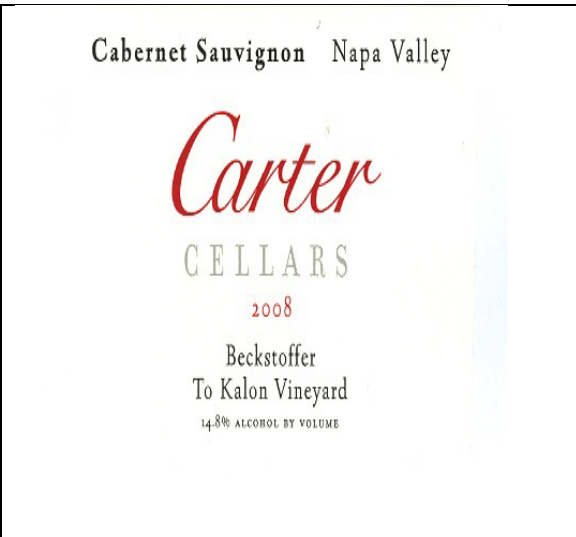
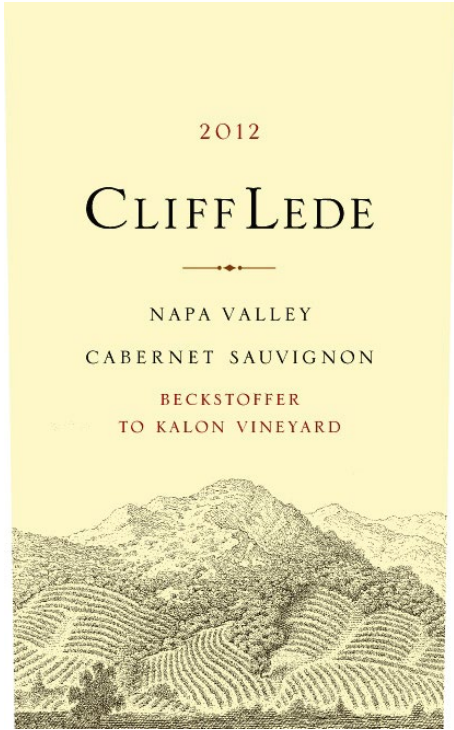

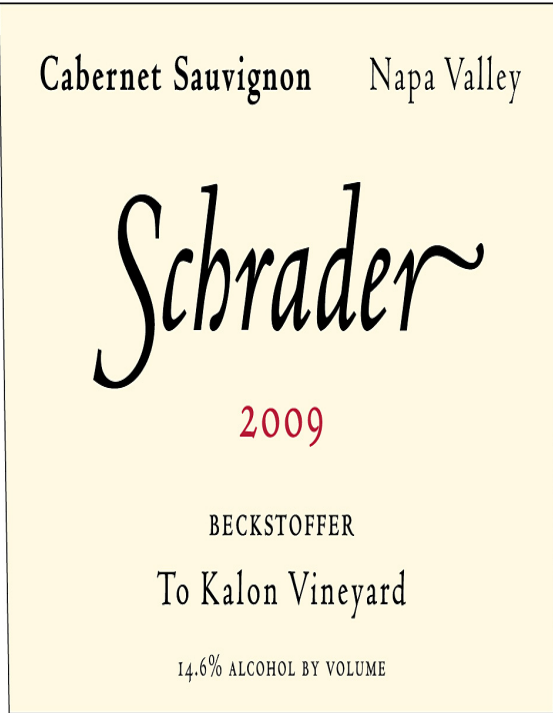
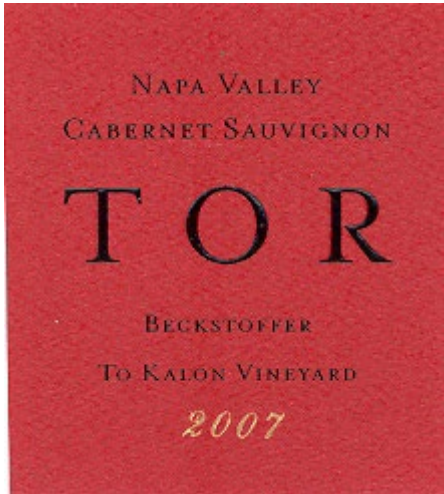
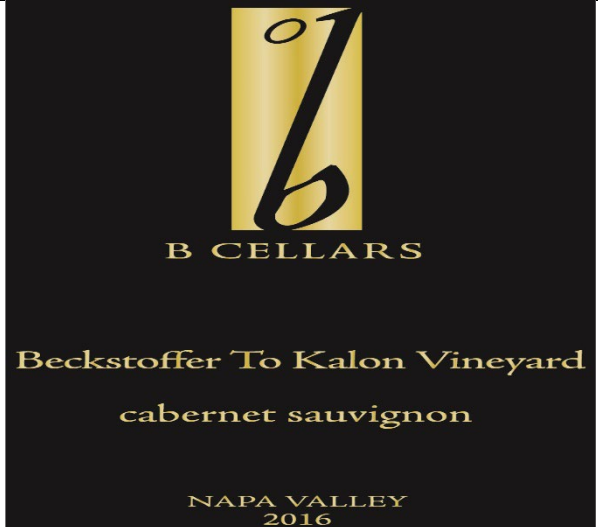
 <p>AMICI</p> <p><i>Cabernet Sauvignon</i></p> <p>BECKSTOFFER TO KALON VINEYARD</p> <p><i>Napa Valley</i> <i>Oakville</i></p> <p>2014</p>	 <p>Cabernet Sauvignon Napa Valley</p> <p><i>Carter</i></p> <p>CELLARS</p> <p>2008</p> <p>Beckstoffer To Kalon Vineyard</p> <p>14.8% ALCOHOL BY VOLUME</p>
 <p>2012</p> <p>CLIFF LEDE</p> <p>NAPA VALLEY</p> <p>CABERNET SAUVIGNON</p> <p>BECKSTOFFER TO KALON VINEYARD</p> 	 <p>Cabernet Sauvignon Napa Valley</p> <p><i>Schrader</i></p> <p>2009</p> <p>BECKSTOFFER</p> <p>To Kalon Vineyard</p> <p>14.6% ALCOHOL BY VOLUME</p>
 <p>NAPA VALLEY CABERNET SAUVIGNON</p> <p>TOR</p> <p>BECKSTOFFER TO KALON VINEYARD</p> <p>2007</p>	 <p><i>B</i></p> <p>B CELLARS</p> <p>Beckstoffer To Kalon Vineyard</p> <p><i>cabernet sauvignon</i></p> <p>NAPA VALLEY 2016</p>

EXHIBIT B



Sleeper Cabernet
Sauvignon Beckstoffer
To Kalon 2019

YES!!! Today we blow your Napa Valley cabernet drinking mind (if you can get some fast enough...) with this are-you-kidding-me, completely unfathomable, BECKSTOFFER TO KALON CABERNET.

** We're gonna take a brief pause to let the enormity of that all sink in... **

OK...this is all a little surreal...the one, the only, THE To Kalon (!!!), all under our very own Sleeper label. YEAH, you read THAT right. But seriously, tremendously, IMPOSSIBLY LIMITED...so if you know To Kalon, you know that you will never

EVER find CABERNET SAUVIGNON from that holiest of holy ground in the heart of Oakville for UNDER \$100. For under \$200 even! GET YOURS NOW!

Lordy, I hope you got some already. This is a GAME-CHANGER! We've had some epic wines and monumental deals with our Sleeper portfolio over the years – BUT THIS! Our first ever completely To Kalon cabernet sauvignon (and we WISH we could promise there'd be more to come, but really, who knows?! This exact wine snagged a 96 POINT score from a top critic (seriously, we can't say more...)).

There's a lot more super-secret stuff we CAN'T tell you about (thanks to a 6-page non-disclosure), but really, we already let the cat out the bag when we typed out "Beckstoffer To Kalon" – no doubt our legal counsel is furious...not to mention the all-powerful To Kalon Illuminati that ensures you NEVER see cabernets from that vineyard for less than \$250! If you got some, CONGRATULATIONS! You are one of the few people on this planet to own this. Please know that we have almost NOTHING of this to sell, and it will go in a FLASH of cabernet brilliance, like the sun setting over the Mayacamas range that is the backdrop for this vineyard.

2019 in Napa is a big, fruit-driven, and opulent vintage in general, and this wine has some serious power – all wrapped in sexy, elegant brilliance. INKY!! Lush! Midnight purple madness! Glass-coating, mouth-filling, dark mocha sensationalism! Huge wine, with masses of blackberry and blueberry fruit, plus high-toned violets, spicy oak, and wildflowers – IMMENSE but never over the top – boasting a strong line of bright acidity and velvety tannins. Classic Oakville, classic To Kalon, if you will, with all manner of complexity enriching secondary notes – leather, cocoa powder, molasses, allspice...just a whopper of a cabernet that is going to age for several decades...! There you go...a hyper-limited Sleeper Special!! While it lasts...!

~~\$250~~ ~~\$250~~
RETAIL BEST WEB

[VIEW OFFER](#)

Free ground shipping on 2 or more bottles.

Get \$50 in Credits

If you happen to purchase the actual "last bottle" of this offer, you'll instantly receive \$50 in credits.

[View Offer](#)

Receive \$30

Just invite your friends—they'll get \$10 and you'll get a \$30 credit when they make their first purchase.

[Invite now](#)

You are receiving this email because you signed up for Last Bottle. Please add wines@lastbottlewines.com to your address book to ensure inbox delivery. [Unsubscribe](#) instantly from all future offers.

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Beckstoffer Vineyards, a California corporation

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Philip J. Terry, Esq. / Kimberly Corcoran, Esq.
CARLE, MACKIE, POWER & ROSS LLP
100 B Street, Ste. 400, Santa Rosa, CA 95401

DEFENDANTS

Blicker Pierce Wagner Wine Merchants, LLC, dba BP Wine, BPWine.com and Sleeper Cellars; and New Last Bottle Wines, Inc., dba Last Bottle; and DOES 1 - 100

County of Residence of First Listed Defendant Sonoma
(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

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3

Federal Question
(U.S. Government Not a Party)

2

U.S. Government Defendant

☐

4

Diversity
(Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/>	<input type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<div>110 Insurance</div> <div>120 Marine</div> <div>130 Miller Act</div> <div>140 Negotiable Instrument</div> <div>150 Recovery of Overpayment Of Veteran's Benefits</div> <div>151 Medicare Act</div> <div>152 Recovery of Defaulted Student Loans (Excludes Veterans)</div> <div>153 Recovery of Overpayment of Veteran's Benefits</div> <div>160 Stockholders' Suits</div> <div>190 Other Contract</div> <div>195 Contract Product Liability</div> <div>196 Franchise</div>	<div><div>PERSONAL INJURY</div><div>310 Airplane</div><div>315 Airplane Product Liability</div><div>320 Assault, Libel & Slander</div><div>330 Federal Employers' Liability</div><div>340 Marine</div><div>345 Marine Product Liability</div><div>350 Motor Vehicle</div><div>355 Motor Vehicle Product Liability</div><div>360 Other Personal Injury</div><div>362 Personal Injury -Medical Malpractice</div></div> <div><div>PERSONAL INJURY</div><div>365 Personal Injury - Product Liability</div><div>367 Health Care/Pharmaceutical Personal Injury Product Liability</div><div>368 Asbestos Personal Injury Product Liability</div></div> <div><div>PERSONAL PROPERTY</div><div>370 Other Fraud</div><div>371 Truth in Lending</div><div>380 Other Personal Property Damage</div><div>385 Property Damage Product Liability</div></div> <div><div>CIVIL RIGHTS</div><div>440 Other Civil Rights</div><div>441 Voting</div><div>442 Employment</div><div>443 Housing/Accommodations</div><div>445 Amer. w/Disabilities-Employment</div><div>446 Amer. w/Disabilities-Other</div><div>448 Education</div></div> <div><div>PRISONER PETITIONS</div><div>HABEAS CORPUS</div><div>463 Alien Detainee</div><div>510 Motions to Vacate Sentence</div><div>530 General</div><div>535 Death Penalty</div><div>OTHER</div><div>540 Mandamus & Other</div><div>550 Civil Rights</div><div>555 Prison Condition</div><div>560 Civil Detainee-Conditions of Confinement</div></div>	<div>625 Drug Related Seizure of Property 21 USC § 881</div> <div>690 Other</div> <div>LABOR</div> <div>710 Fair Labor Standards Act</div> <div>720 Labor/Management Relations</div> <div>740 Railway Labor Act</div> <div>751 Family and Medical Leave Act</div> <div>790 Other Labor Litigation</div> <div>791 Employee Retirement Income Security Act</div> <div>IMMIGRATION</div> <div>462 Naturalization Application</div> <div>465 Other Immigration Actions</div>	<div>422 Appeal 28 USC § 158</div> <div>423 Withdrawal 28 USC § 157</div> <div>PROPERTY RIGHTS</div> <div>820 Copyrights</div> <div>830 Patent</div> <div>835 Patent-Abbreviated New Drug Application</div> <div>X 840 Trademark</div> <div>880 Defend Trade Secrets Act of 2016</div> <div>SOCIAL SECURITY</div> <div>861 HIA (1395ff)</div> <div>862 Black Lung (923)</div> <div>863 DIWC/DIWW (405(g))</div> <div>864 SSID Title XVI</div> <div>865 RSI (405(g))</div> <div>FEDERAL TAX SUITS</div> <div>870 Taxes (U.S. Plaintiff or Defendant)</div> <div>871 IRS-Third Party 26 USC § 7609</div>	<div>375 False Claims Act</div> <div>376 Qui Tam (31 USC § 3729(a))</div> <div>400 State Reapportionment</div> <div>410 Antitrust</div> <div>430 Banks and Banking</div> <div>450 Commerce</div> <div>460 Deportation</div> <div>470 Racketeer Influenced & Corrupt Organizations</div> <div>480 Consumer Credit</div> <div>485 Telephone Consumer Protection Act</div> <div>490 Cable/Sat TV</div> <div>850 Securities/Commodities/Exchange</div> <div>890 Other Statutory Actions</div> <div>891 Agricultural Acts</div> <div>893 Environmental Matters</div> <div>895 Freedom of Information Act</div> <div>896 Arbitration</div> <div>899 Administrative Procedure Act/Review or Appeal of Agency Decision</div> <div>950 Constitutionality of State Statutes</div>

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

X 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):
15 U.S.C. § 1114 et seq., and § 1125 et seq.
Brief description of cause:
This is an action to redress violations of the federal trademark and unfair competition laws.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA-MCKINLEYVILLE

DATE

2/13/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ Philip J. Terry

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
 - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 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.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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.
 - (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 Federal Rule of Civil Procedure 23. 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”

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