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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060308
Party	Defendant Corcamore, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SFM, LLC,		}	
	Petitioner,	}	Cancellation No: 92 060308
v.		}	
		}	
Corcamore, LLC		}	Registration No. 3708453
		}	
	Respondent-Registrant.	}	

ELECTRONICALLY SERVED

**NOTICE OF MOTION TO DISMISS
AMENDED PETITION.**

TO: Nicole M. Murray, Esq.
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PLEASE TAKE NOTICE that the Respondent Corcamore LLC moves to dismiss the First Amended Petition, and to suspend other proceedings pursuant to Trademark Rule 2.127(d). Reliance for this motion is placed on the following points and authorities.

Procedural Background.

After the petition first was filed, respondent’s motion to dismiss was filed and served Nov. 14. No opposition to that motion was filed timely by petitioner.

Petitioner used its “once” as of right option to file an Amended Petition on December 1, 2014. That Amended Petition was filed more than “five years from the date of the registration” of the respondent’s mark, which “issued on November 10, 2009” as ¶ 4 of Amended Petition avers.

Many averments in the original petition were omitted from the Amended Petition, even entire paragraphs, *e.g.*, ¶8, were omitted. The omissions eliminated the “dilute” and loss of “distinctiveness and exclusivity” claims from this matter.

The Amended Petition in numerous instances changes the averred real party in interest from petitioner SFM to “Sprouts Farmers Market,” *e.g.*, ¶7 of the original petition averred it was petitioner SFM who had “expended substantial” resources to create “good will associated” with its marks, but now in ¶15 of the amended petition avers that, a “licensee, Sprouts Farmers Market, has expended substantial” resources, etc. Compare too, ¶1 of the original petition with ¶3 of the Amended Petition.

The Amended Petition newly avers a theory that a “licensee” used petitioner’s service marks as “nominative trademarks” on goods (no mark identifies goods).

The Amended Petition avers damage but not to either petitioner SFM or to “Sprouts Farmers Market,” see, ¶16 of the amended petition.

The two and a half pages of the original petition has expanded to five pages in the Amended Petition, even though the latter omits averments from the original petition. Based on the procedural and factual background, and the points and authorities cited here, the respondent-registrant moves to dismiss the Amended Petition.

ARGUMENTS

A. Omissions & Additions to the Amended Petition Defeat Relation Back.

The record is clear that the Amended Petition was filed December 1, 2014, and more than “five years from the date of the registration” of the respondent’s mark. 15 U.S.C.A. §1064.¹ The Amended Petition should be dismissed based on the five year limitation in the Lanham Act §14.

¹ See ¶ 4 of amended petition, averring that respondent’s mark “issued on November 10, 2009.”

Within the time period in Rule 15(a)(1), FED. R. CIV. PROC., Petitioner amended. “Because the amended petition to cancel is complete in itself and does not adopt or refer to the original petition, the amended petition to cancel superseded the original petition.” *Penthouse Digital Media Productions Inc. v. Cloudstreet Inc.*, 98 U.S.P.Q.2d 1496 (TTAB 2010). Lanham Act §14 does not allow relation back. Moreover, averments in the Amended Petition so “differ in both time and type from those the original pleading set forth” that the amendment does not relate back to the date the original petition was filed. *Mayle v. Felix*, 545 U.S. 644, 650, 125 S.Ct. 2562, 162 L.Ed.2d 582 (2005). The amended petition should be dismissed as untimely under §1064. The omissions from the original petition, as well as substantially different additions cause the Amended Petition *not* to relate back to the original, now-superseded petition.

Under Rule 15(c)(1)(A), FED. R. CIV. PROC., an amended pleading only “relates back to the date of the original pleading when: (A) the law that provides the applicable statute of limitations allows relation back.” Five years is the limitations period stated in §14 of the Lanham Act for a petition to cancel, and the Amended Petition was filed after that period expired. No text in 15 U.S.C.A. §1064 “allows relation back,” and thus, under Rule 15(c)(1)(A), the amendments do not relate back to the original petition.

The real party in interest was changed from the original petition to the amended petition from SFM, LLC to a “licensee, Spouts Farmers Markets,” and the amended petition newly avers a theory that a “licensee” used petitioner’s service marks as “nominative trademarks” on goods (none of the registrations recite goods, only services.)²

² The “sale of a good (i.e. the provision of dietary supplements) does not constitute a ‘service’ within the meaning of Section 45 of the Trademark Act”. *IdeasOne, Inc. v. Nationwide Better Health, Inc.*, 89 U.S.P.Q.2d 1952 (TTAB 2009)

In this and numerous other material respects, what the Amended Petition pleads is "divergent" from the superseded averments in the original petition. *Makro Capital of America v. UBS AG*, 543 F.3d 1254, 1258 (11th Cir. 2008) ("the widely divergent nature of the two complaints means that the amended complaint would not relate back ... under Rule 15"), *accord*, *Mayle* (facts "differ in both time and type from those the original" petition. Based on the statute and precedent, Rule 15(c)(1) "relation back is inappropriate". *Id.*

The Amended Petition here should be dismissed based on Rule 15 precedent that holds an "amended" petition superseded the original filing and does "not relate back because the [§14] claim raised new and discrete allegations that were not pled in her original" petition. *Hernandez v. Valley View Hosp. Ass'n*, 684 F.3d 950, 961 (10th Cir. 2012) (statutory employment claim). Even an amendment that shares "some elements and some facts in common" with the original petition does not relate back if its effect is "to fault [*respondent*] for conduct different from that identified in the original" pleading. *Meijer, Inc. v. Biovail Corp.*, 533 F.3d 857, 866 (D.C. Cir. 2008). The licensee averment, the licensee's nominative use theory, the abandonment of averred conduct by SFM are divergent, different, new and discrete, and do not relate back.

The alterations to the original petition are so substantial that there was no adequate notice in the original petition of the conduct, transaction, or occurrence averred subsequently in the Amended Petition, and therefore, the petitioner's amendments do not relate back and are time barred by expiration of the five year limitations period in §1064.

For these reasons, the Amended Petition should be dismissed as time-barred under the five year limitation in §14 of the Lanham Act.

B. The Superseded Petition Contradicts SFM's Judicial Admissions.

It was averred in the original, now superseded, petition that:

7. Sprouts [*identified in preamble averment as “Petitioner, SFM, LLC”*] has expended substantial amounts of time, money and effort in advertising, promoting and popularizing its SPROUTS trademarks and in preserving the good will associated therewith.

The Amended Petition superseded this with the averment, that it was not SFM who expended time and money or who developed the good will, but instead that:

15. SFM’s licensee, Sprouts Farmers Markets, has expended substantial amounts of time, money and effort in advertising, promoting and popularizing its SPROUTS trademarks and in preserving the good will associated therewith, including Sprouts Farmers Markets as a national leader in healthy, organic food options.

Petitioner SFM’s amendment, which “does not adopt or refer to the original petition” and which identifies an altogether different entity as the real party interest, has the effect of rendering the earlier averment and the original petition *functus officio* that is, “of no legal effect.” *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994); *see also, Carver v. Condie*, 169 F.3d 469, 472 (7th Cir.1999) (“Once the amended complaint was filed, however, it became the governing document in the case and any allegations and parties not brought forward fell by the wayside”).

The amendment has the same nullifying effect on the original averment that:

7. ... The trade and purchasing public have come to know Sprouts’ trademarks and recognize any goods or services so marked originate with Sprouts [*identified in preamble averment as “Petitioner, SFM, LLC”*].

That was superseded by the Amended averment that consumers do not recognize SFM as the source of “goods or services” that may bear the marks:

15. ... The trade and purchasing public have come to know the SPROUTS Trademarks and recognize any goods or services so marked originate with Sprouts Farmers Markets.

It is certain that “the amended petition to cancel superseded the original petition.” *Penthouse Digital Media, supra*, and so, paragraph 15 in the Amended petition “superseded” and eliminated from the case what had been averred in paragraph 7 of SFM’s original petition.

These, and other amendments are inconsistent with judicial admissions that SFM made earlier in another Lanham Act case. SFM should be barred from pleading the same matter in inconsistent ways to suit its interests, instead of the interests of justice. SFM, LLC, the same party who filed the amended petition had pleaded in the U.S. District Court for the Southern District of California, in *SFM, LLC v. Sprouts Natural Market, Inc.*, 3:11-CV-2640³, that:

22. Plaintiff [*identified as SFM, LLC*] has expended substantial effort, including the expenditure of millions of dollars, to develop the goodwill in Plaintiff’s Mark and to cause consumers to recognize Plaintiff’s Mark [*identified there as “registration number 2,798,632*] as distinctively designating goods and services originating with Plaintiff [*SFM, LLC*].

The allegation, which was relied upon by the federal court in California, that SFM, LLC had “expended” resources to develop good will for the `632 trademark, which is a mark pleaded here, is inconsistent with SFM’s amended averment here that:

15. SFM’s licensee, Sprouts Farmers Markets, has expended substantial amounts of time, money and effort in advertising, promoting and popularizing its SPROUTS trademarks and in preserving the good will associated therewith, [*intending the*] public ...to know the SPROUTS Trademarks and recognize any goods or services so marked originate with Sprouts Farmers Markets.

In accordance with the doctrines of judicial admission, judicial estoppel and the preclusion of inconsistent positions, the cancellation claim revisedly pleaded in the amended

³ Pursuant to 37 CFR § 2.122(e), the offering party Respondent notes that the cited material is available online at <https://ecf.casd.uscourts.gov> and the paper attached hereto indicates the date of publication in accordance with *Safer Inc. v. OMS Investments, Inc.*, 94 USPQ2d 1031 (TTAB 2010).

petition should be dismissed. See, e.g., *Best Canvas Products & Supplies, Inc. v. Ploof Truck Lines, Inc.*, 713 F.2d 618, 621 (11th Cir. 1983) (“a party is bound by the admissions in his pleadings”). “Here is a party who, as the record conclusively shows, has earlier successfully asserted a legal position respecting [its Lanham Act claim] that is completely at odds with the position now asserted” in its Amended Petition. *Allen v. Zurich Ins. Co.*, 667 F.2d 1162, 1166-67 (4th Cir. 1982). These doctrines of preclusion attach when a litigant is “playing fast and loose with the courts,” and when “intentional self-contradiction is being used as a means of obtaining unfair advantage” in a forum, then another. *Scarano v. Central R. Co.*, 203 F.2d 510 (3rd Cir. 1953) and *Patriot Cinemas v. General Cinema Corp.*, 834 F.2d 208, 212 (1st Cir. 1987).

Here, petitioner by amendment has pleaded pursuant to Rule 11 that SFM did not expend money to develop good will for the marks, instead it was a “licensee, Sprouts Farmers Markets” that allegedly spent that same money. That contradicts what SFM pleaded in its federal court action in California, also pursuant to Rule 11, that SFM, LLC had expended “millions” to develop good will for the ‘632 trademark. This is an “intentional self-contradiction” that should be disallowed by an order dismissing the Amended Petition.

In another federal court matter, a named defendant was “Sprouts Farmers Market, LLC d.b.a. Sprouts Farmers Market,” and in a financial disclosure statement, the real party in interest that operated the grocery was identified as “Sprouts Farmers Market, LLC.” That is a different entity, or LLC or seems to be, that operates these groceries in California.⁴

In each instance where the petitioner’s amended averments are inconsistent with its pleaded admissions in SFM’s prior suits, in particular, its Lanham Act case against *Sprouts*

⁴ Copy at Tab 3, hereto. *Outerbridge Access Ass’n v. S.B. Restaurant Co., et al*, 3:08-CV-121 (S.D. Cal.) Pursuant to 37 CFR § 2.122(e), the offering party Respondent notes that the cited material is available online at <https://ecf.casd.uscourts.gov> and the paper attached hereto indicates the date of publication in accordance with *Safer, supra*.

Natural Market, Inc., the preclusive doctrines should apply. On that basis, respondent urges the Board to dismiss the Amended Petition.

C. Petitioner SFM Provides No Marked Services and Lacks Standing Under *Lexmark*.

1. Who's Who That Could Allege Injury?

The primary point *un*-pleaded by petitioner regards identifying a party who could allege an injury to a commercial interest in reputation or sales. The original petition averred that SFM, LLC had expended money to garner goodwill for the marks, but the Amended Petition abandoned that and replaced it with averments that a “licensee” made that expenditure. By amending, the petitioner SFM conceded that it does not operate the groceries. A corporation Sprouts Farmers Market Inc. is averred in the Amended Petition to have made “nominative” use of the pleaded service marks.

The three service trademarks registration in the Amended Petition issued to “Premier Grocery, Inc.” In 2012, “Sunflower Farmers Markets LLC” registered the trade name “Sprouts Farmers Markets” with the State of Arizona. (Tab 2, hereto). Then, Sunflower LLC federally registered two Sunflower Farmers Markets marks, and those registrations coincidentally list the exact same street address on Tatum Blvd. in Phoenix as is averred in the Amended Petition. (Tab 5, hereto). Earlier this year, a federal suit was filed and remains on the record that identify the operator of the groceries as “Sunflower Farmers Markets LLC dba Sprouts Farmers Market” which alleges that Sunflower dba Sprouts violated the Lanham Act. (e.g., 14CV1605 AJB S.D. Cal.). (Tab 4, hereto)⁵.

⁵ Pursuant to 37 CFR § 2.122(e), the offering party Respondent notes that the cited material is available online at <https://ecf.casd.uscourts.gov> and the paper attached hereto indicates the date of publication in accordance with *Safer, supra*.

A decision from an Arizona Court of Appeals lists the plaintiff as “Sprouts Farmers Market, LLC, an Arizona limited liability company” (Div. No. 1 CA-CV 09-0117). However here, petitioner is SFM, LLC a Delaware limited liability company. It is doubted that the Arizona LLC is the same as the Delaware LLC, since in that Arizona case the law firm that represents SFM, LLC here, represented the adverse party Williamsfield, e.g., RPC 1.9(a)(“ shall not thereafter represent another [whose] interests are materially adverse to the interests of the former client”). Another federal court proceeding identifies the grocery operator as “Sprouts Farmers Market LLC d.b.a. Sprouts Farmers Market” (Tab 3, hereto)⁶. None of these matter name SFM, LLC, who put forth the Amended Petition here.

Another federal court suit, which pleads that “Sprouts Farmers Market LLC” distributed salmonella contaminated turkey (Tab 6, hereto)⁷, which is a different LLC than named here, and it does not mention SFM, LLC or the “licensee” corporation pleaded here in the Amended Petition. The same can be noticed from a removed state court suit against “Sprouts Farmers Market, LLC, an Arizona limited liability company” that alleges denial of access to the physically disabled. (Tab 7, hereto)⁸. When sued for another Lanham Act violation, Sprouts Farmers Market, Inc., counterclaimed, not SFM, LLC. (Tab 7, hereto). That counterclaim should be viewed as an admission that SFM, LLC is not the party with Lanham Act standing.

Here, petitioner failed to plead, per Section 14, that it “will” be damaged by an injury to its commercial interest in reputation or sales, and did not plead any of “Sunflower Farmers

⁶ Pursuant to 37 CFR § 2.122(e), the offering party Respondent notes that the cited material is available online at <https://ecf.casd.uscourts.gov> and the paper attached hereto indicates the date of publication in accordance with *Safer, supra*.

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Markets LLC dba Sprouts Farmers Market” or “Sunflower Farmers Markets LLC dba Sprouts Farmers Market” or even its “licensee” will be damaged in its commercial interest in reputation or sales. Without knowing which of these LLCs, etc., might allege that, then that omission defeats moving on to the broader questions of standing under *Lexmark*.

Standing is a threshold jurisdictional issue in every case, directed solely to determine the interest of the plaintiff. *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 188 (CCPA 1982). “Attacks on subject matter jurisdiction can be either ‘facial’ or ‘factual.’” *Makro, supra*. Here, standing is challenged on the facial inadequacies of the Amended Petition. First, in failing to plead what entity might be damaged in its commercial interest in reputation or sales, and second failing to plead an economic or reputational injury. Standing was not pleaded, jurisdiction is undermined, and the Amended Petition should be dismissed.

2. Under the Modern Standard, the Elements for Standing Were Not Pleaded.

Precedential decisions regarding standing under Section 14 have required some averment “establishing a direct commercial interest.” *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000). Other rulings indicate generally that “Section 14 has been interpreted as requiring a cancellation petitioner to show (1) that it possesses standing to challenge the continued presence on the register of the subject registration and (2) that there is a valid ground why the registrant is not entitled under law to maintain the registration.” *Young v. AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752 (Fed. Cir. 1998), *citing, Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1026, 213 USPQ 185, 187 (CCPA 1982).

What petitioner must plead, and prove, to indicate it possesses standing under Section 14 now must conform to the holding in of *Lexmark Int’l, Inc. v. Static Control Components, Inc.*,

___ U.S. ___, 134 S. Ct. 1377, 188 L.Ed.2d 392, 109 USPQ2d 2061 (2014). It extends the “reasonable interest” and other previously-used standards for Lanham Act standing with a two factor test, the essentials of which must be well-pleaded. “In short, we think the principles set forth [*there*] will provide clearer and more accurate guidance than the ‘reasonable interest’ test.” *Id.*, 134 S.Ct. at 1393.

The statutory basis for standing to plead a Section 14 action specifies that pleader must be a “person who believes that he or she is or is will be damaged.” 15 U.S.C. §1064. This statement of the zone of interest for a claimant to show standing is nearly verbatim to that in Section 43(a), which enables a pleading by “any person who believes that he or she is or is likely to be damaged” by acts contemplated by that provision. 15 U.S.C. §1125(a)(1)(B). The one textual difference is that Section 14 does not use “likely to be,” but amplifies that with “is or will be” damaged. This textual difference bears on how the two prongs of the *Lexmark* ruling impact the standing question in a Section 14 cancellation action.

Earlier this year, the Supreme Court ruled that standing to bring a Section 43(a) claim must be pleaded and proved. As *Lexmark* applies here, Section 14 requires two elements of standing to be pleaded in a cancellation action. Respondent urges dismissal here, because the Amended Petition does not plead the essential matters that *Lexmark* requires to plead a supportable averment of standing in a Lanham Act case.

The Court in *Lexmark* began from the premise that a “statutory cause of action extends only to [*those*] whose interests `fall within the zone of interests protected by the law invoked.’” *Citing Allen v. Wright*, 468 U.S. 737, 751, 104 S. Ct. 3315, 82 L.Ed.2d 556 (1984). *Lexmark*, 137 S. Ct. at 1388. It then considered the “zone of interests” encompassed by statutory phrase in Section 43(a), and again, Section 14 has practically the same legislative expression. “We thus

hold that to come within the zone of interests ... [*the pleader*] must allege an injury to a commercial interest in reputation or sales.” *Id.*, at 1390. The Amended Petition does not “allege an injury to a commercial interest in reputation or sales.” Indeed, petitioner SFM could not plead a plausible “injury to [*its*] commercial interest in reputation or sales.” Petitioner SFM could not plead a plausible “reputational injury flowing directly from” the vending machine services that are offered consistent with the respondent’s registration.

Applying that statute-based, zone-of-interests test, the Court “h[e]ld that a plaintiff suing under §1125(a) ordinarily must show economic or reputational injury flowing directly from the deception wrought by the defendant’s advertising; and that that occurs when deception of consumers causes them to withhold trade from the plaintiff.” *Id.*, at 1392.

In sum, the modern standard for standing in a Lanham Act case requires first a pleaded plausibility that the petitioner is within the zone of interests protected by Section 14, and second, to “plead (and ultimately prove) an injury to a commercial interest in sales or business reputation proximately caused by the defendant’s” alleged Lanham Act violation. *Id.*, at 1395. Here, the Amended Petition fails to “plead” standing, and fails to plead (i) economic or reputational injury to SFM, which (ii) is proximately caused actions within the zone of interest protected by the Lanham Act, here, Section 14. The Amended Petition should be dismissed for the failure to plead standing as required by the *Lexmark* standards.

The requirement to “plead” and prove proximate causation of an injury fits squarely with the “is or will be damaged” provision in Section 14, and perhaps more so than with the “likely” damaged Section 43(a) provision that the Court applied in *Lexmark*.⁹ The modern standard

⁹ Prior to *Lexmark*, the Circuit courts used different tests for Lanham Act standing. The 2nd Circuit required a “reasonable interest to be protected” and a “reasonable basis” for alleging harm. See *Famous Horse Inc. v. 5th Ave. Photo Inc.*, 624 F.3d 106, 113 (2d Cir. 2010), and that aligns with the “reasonable basis” prong in *Lipton*, *supra*.

extends, but requires more than the “direct” and “commercial interest” aspects in *Cunningham v. Laser Golf*, and *Lexmark* holds that its two-factor standard “will provide clearer and more accurate guidance than a ‘reasonable interest’ test,” found in *Lipton*. *Id.*, at 1393. As applied here, *Lexmark* compels the conclusion that the Amended Petition fails to plead standing.

The Amended Petition does not plead, or even suggest, that petitioner SFM has any “injury” within the zone of interest. No “injury to a commercial interest in reputation or sales” was pleaded. *Id.*, at 1390. Indeed, no injury “proximately caused by” the Respondent’s actions under the Lanham Act was pleaded. The Section 14 standing averment fails. The Amended Petition here should be dismissed pursuant to Rule 12(b)(6), FED. R. CIV. PROC., and *Lexmark*.

Application of the *Lexmark* standard starts with the Court’s holding that “a direct application of the zone-of-interests test and the proximate-cause requirement supplies the relevant limits on who may sue.” *Id.*, at 1391. On the first of those “relevant limits,” petitioner SFM, LLC is a level removed from the zone of interest, because it does not operate the grocery stores owned, and this was acknowledged by the matter superseded by the Amended Petition. To meet the primary requirement of *Lexmark*, the Petition must plead that this LLC “‘fall[s] within the zone of interests protected by the law invoked.’” *Lexmark, id.*, at 1388. Petitioner SFM, LLC apparently does not use the service marks, and the Amended Petition does not even plead use by the petitioner, and does not plead the services to which use pertains.¹⁰ SFM, LLC is

The 3rd Circuit followed *Associated Gen. Contractors of Cal. v. Cal. State Council of Carpenters*, 459 U.S. 519 (1983), and considered (1) nature of the alleged injury, (2) directness or indirectness of the asserted injury, (3) proximity or remoteness of the party to the alleged injurious conduct, (4) speculativeness of the claim, and (5) risks or complexity in assessing damages; and, the Ninth Circuit, found only commercial competitors had standing, upon demonstrating “that the injury is ‘competitive,’ or harmful to its ability to compete.” *Jack Russell Terrier Network of N. Cal. v. Am. Kennel Club*, 407 F.3d 1027, 1037 (9th Cir. 2005). The Supreme Court rejected all of these tests for standing, *Lexmark*, supra, 134 S. Ct. at 1389-90, which strongly indicates that the jurisprudential rules it sets forth for standing are to be followed in this forum.

¹⁰ Mistakenly, the Petition refers to “goods” in ¶’s 6 & 7, even though both parties’ registrations identify “services.” A “federal trademark registration does not apply to a name or other mark in a vacuum, but attaches only

outside the zone of interests, and its Amended Petition should be dismissed for failing to meet the modern pleading requirements for Section 14 standing.

The second prong of *Lexmark* sets “relevant limits on who may sue.” The Amended Petition has no well-pleaded averments of Respondent having “proximately caused” any reputational or other “injury” to SFM, LLC. Even assuming the Amended Petition implies an injury, there exists (what *Lexmark* refers to as) “a `discontinuity’ between the injury” and the pleader SFM, LLC, which admits it does not operate any grocery stores, or even use the mark on SFM’s services. Furthermore, the second requirement in *Lexmark* combined with the textual difference between Section 14’s “is or will be damaged” and Section 43(a)’s “likely to” be, can be understood to result in a requirement to plead instances of actual confusion proximately causing an injury. By any measure, the Amended Petition does not aver actual confusion, actual injury, proximate cause, or anything, other than form-book recitations.

Based on the foregoing, the *Lexmark* pleading standards must apply here. The Federal Circuit must follow the Supreme Court’s precedential ruling in *Lexmark*, and so too, this Board must adhere to it. The Amended Petition should be dismissed as failing to identify an entity that could (i) plead some economic or reputational injury, which (ii) is proximately caused by actions within the zone of interest protected by the Lanham Act. Based on the Petitioner’s failure to plead Section 14 standing under *Lexmark*, the Amended Petition should be dismissed.

D. SFM’s Claim of Superior Rights is Estopped by the Ruling in a Prior Proceeding.

Based on a complete record, the federal court in California found that SFM, LLC (including its predecessors in interest) did not prove it was entitled to use the mark SPROUTS

to the use of the mark on specified goods ...[and] registrations designate specified classes of goods and do not create a presumptive exclusive right to use the mark for entirely different goods.” *S Industries, Inc. v. Kimberly-Clark Corp.*, 1996 WL 388427, (N.D. Ill. 1996).

FARMERS MARKET, because another grocer used Sprouts in commerce first. The rules of issue preclusion bar Petitioner SFM, LLC from averring a claim here that it lost on in its own prior federal Lanham Act lawsuit against the grocer first using that service mark.

In that Lanham Act suit, *SFM, LLC v. Sprouts Natural Market Inc.*, docket no. 3:11-CV-2640 (S.D. Cal.), “SFM, LLC, filed a complaint against Sprouts Natural Market, Inc., for trademark infringement,” and Sprouts Natural Market, Inc., counterclaimed and successfully proved its entitlement to “an order enjoining Plaintiff [SFM] ...from marketing ...referencing the name `Sprouts,’ `Sprouts Market,’ or `Sprouts Farmers Market’ ...and from conducting business” under those names. (Tab 1, hereto, Dkt. #52, pages 1-3)¹¹. Here, SFM should be precluded from pleading that it has superior rights to those brand names, since a federal court ruled that an unrelated party, Sprouts Natural Market, Inc., was the grocer first entitled to use the Sprouts service mark in commerce. Had the proofs and evidence ruled upon by the federal court been presented to an examiner considering the applications for the registrations pleaded in the Amended Petition here, then those applications would have been denied. The rules of preclusion on the issues heard and decided by the federal court in California should apply here, and the Amended Petition should be dismissed.

Whether the rule of law is denominated as issue preclusion, or judicial estoppel or collateral estoppel, the applicable principles are not dissimilar. Some of the variations exist because only the petitioner was party to the California suit, not the respondent. One asking the tribunal “to apply collateral estoppel must establish that: “(1) the issue at stake is identical to the one involved in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the determination of the issue in the prior litigation must have been ‘a critical and necessary

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part' of the judgment in the first action; and (4) the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding.” { *cit. om.*}. *Dana v. E.S. Originals*, 342 F.3d 1320, 1323-25 (Fed. Cir.2003).

In the “prior proceeding” brought by SFM, LLC, the “issue at stake” was whether or not it, or the party it sued, had first used the mark and had superior rights to the mark in relation to grocery services. Here again, SFM pleads it has “superior” rights. Also, in that “prior proceeding” SFM pleaded the same marks and registrations, now pleaded here in the Amended Petition. (Compare ¶5 of Amended Petition with listing attached to SFM’s complaint, at Exhibit A hereto, dkt. #1, starting at page 13 of 26). Second, the “issue was actually litigated in the prior proceeding.” *Id.* The record from the prior proceeding confirms that the prevailing party, Sprouts Natural Market, Inc., presented over forty exhibits (Tab 1, Dkt. # 10-8) and numerous sworn declarations (Exhibit 1, Dkt. # 10-5 to 10-7) that, after a hearing, evidenced to the federal court that Sprouts Natural Market, Inc., used the Sprouts mark in commerce for grocery store services earlier than, and had rights to the Sprouts marks that were superior to the plaintiff SFM, LLC or its predecessors. This determination was “a critical and necessary part” of the Rule 65 order entered by the California court against SFM, which plainly took advantage of its “full and fair opportunity to litigate the issue in the prior proceeding.” For those and other reasons, all aspects of the *Dana* factors, *id.*, apply, and respondent asserts that essential averments in the Amended Petition are precluded by the ruling in SFM’s prior suit in California.

Precedent holds that the rules of issue preclusion and estoppel apply when the prior ruling was an injunction. Under the Restatement view noted in Federal Circuit decisions, the “test for finality is whether the prior decision was ‘adequately deliberated and firm’ or ‘avowedly tentative,’ and whether the parties were fully heard in the prior proceeding.” *Restatement*

(*Second*) of *Judgments* § 13, cmt. g. (1982). See, e.g., *Abbott Laboratories v. Andrx Pharmaceuticals Inc.*, 473 F.3d 1196, 1204 (Fed. Cir. 2007). In *Miller Brewing v. Jos. Schlitz Brewing Co.*, 605 F.2d 990, 996 (7th Cir. 1979), the court held that the generic status of the mark was thoroughly litigated in the preliminary injunction proceeding that, as to that issue, there was a sufficient final judgment for preclusion (for purposes of “collateral estoppel, that decision {a preliminary injunction} was a final determination that “LITE” is generic and therefore not entitled to trademark protection”). Here, key averments in the prior suit by SFM deserve to be precluded in this Section 14 matter based on *Dana* and the doctrines favoring non-mutual, offensive collateral estoppel and issue preclusion. Again, had the examiner, when considering the applications for registration of the marks pleaded in the Amended Petition, been aware of the evidence and findings of the federal court, then the examiner would have rejected those applications. For good cause, the Amended Petition should be dismissed based on the findings and rulings made in petitioner SFM’s prior Lanham Act suit.

E. The Lanham Act Section 43(a) Averments Should be Dismissed.

"The Trademark Trial and Appeal Board is not the proper forum in which to assert Section 43(a) claims because the Board has no original jurisdiction over such claims." *Pure Gold, Inc. v. Syntex (U.S.A.) Inc.*, 221 U.S.P.Q. 151 (TTAB 1983), *aff'd*, 739 F.2d 624 Fed. Cir. 1984). The Amended Petition avers Section 43(a) claims in parags. 9 & 13. Dismissal of those averments and all Section 43(a) claims is warranted as a matter of law.

F. The Likelihood of Confusions Averments are Formulaic and Implausible.

“[D]etermining whether a complaint states a plausible claim is context-specific, requiring the [tribunal] to draw on its experience and common sense.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663-64, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009). Would a person of common sense,

buying a container of apple juice from a vending machine “be led to the mistaken belief” that the apple juice in the vending machine came from a brick & mortar, retail grocery store, or be confused, mistaken or deceived that that the apple juice in the vending machine was “sponsored, authorized, or warranted by SFM”? (See, Amended Petition, ¶9).

Paragraphs 9, 13 & 15 are formulaic and parrot statutory phrasing to sound like an enumerated allegation. It is settled that “where a complaint pleads facts that are 'merely consistent with' [*statutory*] liability, it 'stops short of the line between possibility and plausibility of “entitlement to relief.”” *Iqbal*, 556 U.S. at 678, quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557, 127 S. Ct. 1955, 1966, 167 L. Ed. 2d 929 (2007). “Although [*the pleader*] alleges ... `a strong likelihood of confusion in the marketplace as to the source of origin and sponsorship of the goods [in the vending machine and on the grocery store shelves] ... such a conclusory and `formulaic recitation' ... is insufficient to survive a motion to dismiss.” *Hensley Mfg. v. ProPride, Inc.*, 579 F.3d 603, 610-11, 92 U.S.P.Q.2d 1003 (6th Cir. 2009). Experience and common sense dictate that no consumer buying from a vending machine a granola bar, bearing the trademark of Kraft Foods or Golden Harvest, viz., not marked Sprouts, ever could be mistaken or confused that the granola bar in the vending machine was “sponsored, authorized, or warranted by” some grocery store. It is implausible, speculative, indeed it is non-sensical. Moreover, the petitioner’s logic can be exaggerated to extend, or misuse, a trademark registered for grocery store services to bar the products of any company from being sold elsewhere. Petitioner’s logic is not confined to goods that SFM (or some entity) marks with a house-brand Sprouts. Petitioner would go as far as claiming its service marks extends to bar sale of the goods of any company “such as potato chips, cookies, popcorn, chocolate bars, fruit juice and flavored

waters” *not* bearing Sprouts marks if such products might be on its grocery store shelves.¹² It too would assert it can prevent other companies, as it tried to do SFM’s suit in California, who use the word sprout in their company name.¹³

The Amended Petition makes plainly erroneous factual averments about “Respondent’s vending machines.” Any fair reading of the respondent’s registration confirms that the mark is for “services.” A more informed conclusion is that petitioner’s averments constitute proof of actual confusion between respondent’s registered trademark and the name chosen by a California company, not affiliated with respondent, which sells vending machines. That California company Sprout Healthy Vending LLC and its business of selling vending machines are as averred in its suit against a machine manufacturer. (Tab 11, hereto). The Amended Petition indicates petitioner’s confusion about the respondent’s business and the “services” to which its registered trademark pertains.

The Amended Petition avers no plausible assertion of actual or likely confusion as between services provided to vending machine operators and petitioner SFM’s grocery store services. Therefore, the Amended Petition should be dismissed.

CONCLUSION

The Amended Petition superseded the original averments, and by that some claims and allegations were dropped and others were materially changed. Also, the present averments are at odds with judicial admissions and rulings in prior federal court proceedings. At a fundamental level, jurisdiction is lacking in view of the petitioner failing to plead standing as required in the

¹² Taken to further extremes, the petitioner would assert that these grocery store services marks give it rights against companies selling actual sprouts that are “the same or similar” to sprouts in SPROUTS grocery stores, even if those companies have been in business longer than the petitioner or its predecessors. At Tab 10, hereto, are active, California companies who have been operating “Sprout” businesses prior to the earliest dates pleaded in parag. 5 of the Amended Petition.

¹³ At Tab 9 hereto is a pleading against Sprout Foods Inc., a Delaware corporation, and the paper attached hereto indicates the date of publication in accordance with *Safer, supra*.

Lexmark decision. Finally, key averments in the Amended Petition fail under Iqbal. For all the foregoing reasons, the Amended Petition should be dismissed.

12 DEC 2014

Respectfully submitted,

~S~ Charles L. Thomason
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2014, I electronically filed the foregoing Notice of Motion to Dismiss, and mailed a copy of the motion and exhibits to the attorneys for the Petitioner, directed to the address of the attorney indicated below:

Nicole M. Murray, Esq.
Quarles & Brady LLP
30 N. LaSalle St., Suite 4000
Chicago, IL 60654

Date: 12 DEC 2014

~ S ~ /Charles L. Thomason/
Charles L. Thomason

EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SFM, LLC, a Delaware limited liability
company,

Plaintiff,

v.

SPROUTS NATURAL MARKET INC.,
a California corporation,

Defendants.

Civil No. 11cv2640 JAH (NLS)

**ORDER GRANTING IN PART
DEFENDANT'S/
COUNTERCLAIMANT'S MOTION
FOR A PRELIMINARY
INJUNCTION [Doc. No. 10]**

BACKGROUND

On November 11, 2011, Plaintiff, SFM, LLC, filed a complaint against Sprouts Natural Market, Inc. for trademark infringement, 15 U.S.C. section 1114, false designation of origin, 15 U.S.C. section 1125, anti-cybersquatting consumer protection, 15 U.S.C. section 1125(d), common law infringement of trademark and unfair competition under California Business and Professions Code section 17200. Plaintiff alleges it uses the trademark "SPROUTS FARMERS MARKET" in connection with its retail grocery services and is the current owner of the mark¹ pursuant to the U.S. Patent and Trademark Office's ("USPTO") registration. Complaint (Doc. No. 1) ¶ 11. Plaintiff alleges Defendant uses the domain name www.sproutsnaturalmarket.net and the name Sprouts Natural Market for its store in Temecula, California without Plaintiff's permission

¹Plaintiff includes a chart with 7 marks for which it contends it is the owner for use in connection with its retail grocery store services. See Complaint, Exhibit A.

1 and the store name is nearly identical to Plaintiff's mark used for the same services. Id.
2 ¶¶ 14, 16, 19, 20.

3 Defendant Sprouts Natural Market² filed an answer and counterclaim and third
4 party complaint on November 21, 2011. Defendant/Counter-claimant asserts claims for
5 violation of the Lanham Act, violation of California Business and Professions Code
6 sections 14411, 17200, 1427, fraudulent registration of trademark and unfair competition
7 and names SFM, LLC, Sprouts Farmers Market, LLC and Premier Grocery, Inc. as
8 defendants. See Counterclaim at 1.

9 Defendant Sprouts Natural Market filed the pending motion for preliminary
10 injunction on November 23, 2011. On December 21, 2011, the parties jointly moved for
11 expedited discovery which the magistrate judge granted by order filed on December 23,
12 2011. Plaintiff/Counter-defendant and Third Party Defendants (collectively "Plaintiff")³
13 jointly filed an opposition to the motion for preliminary injunction on January 17, 2012.
14 Defendant filed a reply on January 25, 2012. Plaintiff filed a motion to strike additional
15 pages and new evidence contained in the reply. After the parties briefed the motion to
16 strike, the Court denied the motion to strike but permitted Plaintiff to file a surreply.
17 Thereafter, Plaintiff sought additional expedited discovery, which was granted by the
18 magistrate judge. Plaintiff filed a surreply on March 28, 2012.

19 A hearing was held before this Court on April 30, 2012. Frank G. Long and Nathan
20 T. Mitchler appeared on behalf of Plaintiff. Robert Tyler and Jordan Borsch appeared on
21 behalf of Defendant. Following oral argument, the Court took the matter under
22 submission and directed the parties to provide supplemental briefing on the applicability
23 of Custom Vehicles Inc. v. Forest River, Inc., 476 F.3d 481(7th Cir. 2007), which was
24 raised by Defendant for the first time during the hearing. Plaintiff filed a supplemental
25

26 _____
27 ²Sprouts Natural Market describes itself as "a family owned and operated organic
grocery store" run by Linda Watson and Paul Cook, mother and son. Motion at 1.

28 ³The opposing parties refer to themselves collectively as "Plaintiff." The Court will
do the same to avoid confusion.

1 brief to which Defendant responded.⁴

2 **LEGAL STANDARD**

3 Preliminary injunction motions are governed by Rule 65 of the Federal Rules of
4 Civil Procedure. A party seeking a preliminary injunction must show “it is likely to
5 succeed on the merits, that it is likely to suffer irreparable harm in the absence of
6 preliminary relief, that the balance of equities tips in its favor and that an injunction is in
7 the public interest.” Winter v. Natural Resources Defense Council, Inc., 129 S.Ct. 365,
8 374 (2008). The Ninth Circuit Court of Appeal has determined that its “serious
9 questions” sliding scale test, which permits one element to offset a weaker one, is still
10 viable after the four-part element test provided in Winter. See Alliance for the Wild
11 Rockies v. Cottrell, 632 F.3d 1127, 1134 -35 (9th Cir. 2011). Therefore, a preliminary
12 injunction may issue if the plaintiff demonstrates serious questions going to the merits and
13 that the balance of hardships tip sharply in its favor, “so long as the plaintiff also shows
14 that there is a likelihood of irreparable injury and that the injunction is in the public
15 interest.” Id at 1135. However, “a preliminary injunction may be denied on the sole
16 ground that the plaintiff failed to raise even “serious questions” going to the merits.”
17 Vanguard Outdoor, LLC v. City of Los Angeles, 648 F.3d 737, 740 (9th Cir. 2011).

18 **DISCUSSION**

19 Defendant seeks an order enjoining Plaintiff from continuing to violate its federal
20 and state rights through its unlawful use of its trademark. Specifically, Defendant seeks
21 to enjoin Plaintiff from marketing material displaying signs, logos, coupons, labels, tags,
22 advertisement, invoices, receipts referencing the name “Sprouts”, “Sprouts Market” or
23 “Sprouts Farmers Market”, advertising or marketing the sale of products carrying the
24 name, and from conducting business as “Sprouts”, “Sprouts Market” or “Sprouts Farmers
25 Market” in Temecula, Riverside, Hemet, Corona, Carlsbad, Vista, Escondido, San Marcos,
26 Fallbrook and Oceanside, California. Plaintiff argues the evidence provided does not

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⁴Thereafter, Plaintiff filed a motion for leave to file a declaration of Lawrence A. Maxham. Defendant filed an opposition. The motion is DENIED.

1 support an issuance of a preliminary injunction.

2 **I. Likelihood of Success on the Merits**

3 Defendant alleges infringement of its trademark in violation of the Lanham Act and
 4 California Business and Professions Code sections 14411 and 14247, and violations of
 5 California Business and Professions Code section 17200 and unfair competition.⁵ A claim
 6 for trademark infringement under Section 1114(1)(a) may be brought against any person
 7 who, without the registered trademark owner's consent, "use in commerce any
 8 reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection
 9 with the sale, offering for sale, distribution, or advertising of any goods or services ... which
 10 such use is likely to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. §
 11 1114(1)(a). Similarly, an owner of a distinctive mark is entitled to an injunction against
 12 another's commercial use of the mark or trade name under California law. See Cal. Bus.
 13 & Prof. Code § 14247.

14 Defendant argues it used its name in commerce and has a valid protectable interest
 15 in the name. Specifically, Defendant argues it filed its fictitious business name in 2001
 16 (Def's Exh. 1), immediately advertised the grand opening (Def's Exh. 2) and has been
 17 operating under the name ever since. Defendant also argues Plaintiff's use of the
 18 SPROUTS FARMERS MARKET name creates substantial confusion.⁶

19
 20 ⁵Defendant's section 17200 and common law unfair competition claims are
 21 derivative of their trademark infringement claims. See Counterclaim ¶¶ 34-39, 53-57.

22 ⁶Plaintiff addresses the Sleekcraft factors to support its contention of likelihood of
 23 confusion. AMF, Inc. v. Sleekcraft Boats, 599 F.2d 341 (9th Cir. 1979). Specifically,
 24 Defendant argues its mark is an arbitrary name or at a minimum it's a suggestive mark;
 25 the mark acquired secondary meaning within the region for being a leader in the organic,
 26 non-processed and raw food market; Plaintiff is competing with Defendant in the grocery
 27 market targeting consumers seeking organic foods and opened numerous locations
 28 throughout the region in which Sprouts Natural Market is located, including Hemet,
 Oceanside, Vista, San Diego, Corona, Temecula and Riverside; there is evidence of actual
 confusion; both parties sell food, a necessity, and common knowledge dictates the level of
 sophistication within the consumer is at most average if not low and the products are
 inexpensive purchases; and strong probability exists Plaintiff will expand its business and
 convert the two Henry's Farmers Market to Sprouts Farmers Markets; the Court can
 presume intent to deceive the public because Plaintiff's board members visited Defendant's
 new location while construction for the grand opening was ongoing and there was a sign
 advertising the new location clearly displayed stating "Health Zone is Sprouting a new

1 Plaintiff does not dispute the similarity of the marks is likely to cause confusion.
2 See Pla's Opp. at 10. However, Plaintiff argues Defendant cannot demonstrate a
3 likelihood of success on the merits of its action because Defendant fails to show it owns
4 exclusive rights to the SPROUTS NATURAL MARKET mark for retail grocery services.
5 Plaintiff maintains it owns the exclusive rights to the SPROUTS FARMERS MARKET
6 mark and the priority for those rights dates from December 11, 2001, and Defendant's
7 earliest apparent use of SPROUTS NATURAL MARKET as either a trade name or as the
8 name for a retail grocery store is 2002. Plaintiff also argues Defendant fails to show the
9 parties' store names are likely to result in confusion outside of any limited trade area
10 pertaining to Defendant's single store in Temecula. Plaintiff further argues, even if
11 Defendant could establish the elements of a trademark infringement claim, Plaintiff's
12 laches defense precludes any likelihood of success on the merits.

13 A. Senior Trademark Rights

14 Plaintiff maintains it has senior trademark rights. Trademark rights are established
15 through use, not registration or mere adoption. See Sengoku Works Ltd. v. RMC Intern.,
16 Ltd., 96 F.3d 1217 (9th Cir. 1996). Federal registration of a mark is *prima facie* evidence
17 that the registrant is the owner of the mark. See U.S.C. § 1057. The presumption of
18 ownership is granted from the filing date of the application for federal registration. See
19 Rolley, Inc. v. Younghusband, 204 F.2d 209, 211 (9th Cir. 1953). A party asserting
20 common law rights may overcome the presumption by demonstrating its continuous use
21 of the mark prior to the date of the registration. See Casual Corner Associates, Inc. v.
22 Casual Stores of Nevada, Inc., 493 F.2d 709 (9th Cir. 1974).

23 Plaintiff contends its undisputed federal trademark registration is *prima facie*
24 evidence it owns exclusive nationwide rights to SPROUTS FARMERS MARKET as a mark
25 for retail grocery services as of December 11, 2001, and Defendant has no federal
26 registration of any of the trademark rights it claims to own in the SPROUTS NATURAL
27 MARKET name. Plaintiff maintains Defendant relies on its September 5, 2001, Riverside
28 _____
store: Sprouts Natural Market." Cook Decl. ¶ 7.

1 County "Fictitious Business Name" registration in support of its contention it has senior
2 rights to the name without providing evidence that it was using the alleged trade name at
3 the time. Plaintiff further maintains Defendant's evidence that it has been using the
4 SPROUTS NATURAL MARKET name since 2001 is insufficient.

5 Specifically, Plaintiff argues none of the evidence submitted by Defendant
6 demonstrates any consumer viewed or associated the name SPROUTS NATURAL
7 MARKET with Defendant's goods and services, or Defendant used it as a trade name or
8 for transactions that involved consumers of Defendant's goods and services. Plaintiff
9 further argues the evidence demonstrates Defendants did not use or even publicize the
10 future use of the SPROUTS NATURAL MARKET name in association with its services
11 until after December 11, 2001, when it applied for its sign permit on January 16, 2002,
12 with the City of Temecula to display a SPROUTS NATURAL MARKET sign outside its
13 store on Winchester Road. The signage announced Defendant's move to Winchester
14 Road from its Motor City Parkway location and announced the new location's opening
15 in March 2002. Plaintiff further argues the evidence demonstrates Defendant used the
16 Health Zone name as its trade name and the name of its retail grocery store until
17 Defendant opened its first SPROUTS NATURAL MARKET store in 2002. In support,
18 Plaintiff points to correspondence between Defendant and the Alcoholic Beverage Control
19 Board in which Defendant identified itself as Health Zone before December 11, 2001, and
20 after as indicated by documents produced in discovery. See Mitchler Decl. ¶¶ 1,2, 3.
21 Plaintiff also contends the only evidence to support Defendant's claim that it used either
22 a trade name for the business or the name of a retail grocery store before December 11,
23 2001, consists of self-serving declarations of Defendant's owners.

24 In reply, Defendant argues it has established a senior claim because it filed a prior
25 fictitious business name statement in Riverside county and Plaintiff failed to rebut the
26 presumption in Defendant's favor as provided in California Business and Profession Code
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1 section 14411.⁷ In further support of its contention it has a senior claim, Defendant relies
2 upon the following:

3 (1) an advertisement placed in grocery bags advertising Defendant's new name
4 created on July 27, 2001 (Def's Exh. 44 (Doc. No. 25-3));

5 (2) a customer sign up sheet with the new name displayed used from August 2001
6 to April 2002 (Def's Exh. 45 (Doc. No. 25-3, 25-4));

7 (3) a California newspaper advertising its fictitious business name on October 4,
8 2001, October 11, 2001, October 18, 2001, October 25, 2001, November 22,
9 2001, November 29, 2001, December 6, 2001, and December 13, 2001 (Def's Exh.
10 46 (Doc. No. 25-5));

11 (4) a bank account utilized in 2001 under the new name (Def's Exh. 48, 49 (Doc.
12 No. 25-5));

13 (5) a deposit slip dated December 3, 2001 (Def's Exh. 47);

14 (6) a deposit slip dated November 13, 2001 (Def's Exh. 48);

15 (7) payments to Living Naturally beginning August 2001 for managing the website
16 Defendant created in August 2001, www.sproutsnaturalmarket.com, (Def's Exh. 50
17 (Doc. No. 25-5));

18 (8) signs displayed at the Motor Car Parkway location in approximately September
19 2001, stating "our website is open all night" and "SproutsNaturalMarket.com"
20 (Def's Exh. 51 (Doc. No. 25-5), Cook Supp. Decl. (Doc. No. 25-2)); and

21 (9) phone records of Paul Cook⁸ showing no incoming call from a San Diego phone
22 number between January 7, 2002 and January 8, 2002 which supports Defendant's
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⁷Pursuant to California law, "[t]he filing of any fictitious business name statement
27 by a person required to file such statement pursuant to section 17910 shall establish a
rebuttable presumption that the registrant has the exclusive right to use as a trade name
the fictitious business name. . ." Cal. Bus. & Prof Code § 14411.

28 ⁸Paul Cook owns and operates Defendant, Sprouts Natural Market, with his mother
Linda Watson.

1 claim that Scott Wing⁹ never called Paul Cook and further supports that Mr. Wing
2 visited the store prior to December 11, 2001 (Def's Exh. 52 (Doc. No. 25-5)).

3 In the surreply, Plaintiff maintains Defendant's new evidence¹⁰ does not establish
4 Defendant's use of the SPROUTS NATURAL MARKET name in public as a trademark
5 prior to 2002. Plaintiff argues the evidence is vague and indefinite and does not establish
6 bona fide public use in the ordinary course of operating a retail grocery store before 2002.
7 Specifically, Plaintiff argues the evidence contains undated documents and those that are
8 dated fail to establish any public trademark use of the name prior to December 11, 2001,
9 the declaration testimony is questionable, and none of the documents are evidence that
10 any consumer viewed or associated the name SPROUTS NATURAL MARKET with
11 Defendant's retail grocery store or goods and services prior to 2002. Plaintiff further
12 argues the evidence regarding the website does not indicate the contents displayed on the
13 website or that the website received visitors; and the fliers are not dated and do not have
14 any text or images that would connect them to Defendant, its store or its goods and
15 services. Additionally, Plaintiff argues the mailing lists, the sample notices and fliers, the
16 bank account statements and checks and the newspaper notices fail to indicate any public
17 use of the name much less any trademark use of the name. At most, Plaintiff contends,
18 the collective documents are evidence of discrete non-public business events, private
19 transactions or mandatory official notices that could not and did not expose consumers
20 to the name as an identifier of Defendant's store or its goods and services.

21 Plaintiff further maintains Assumma, a longtime customer of Defendant who
22 assisted Defendant in preparing marketing and graphic design materials, testified, during
23 his deposition, that the use of the name began in 2002. Plaintiff argues the current
24 Assumma declaration submitted by Defendant includes dates that are rough guesses after
25 the passage of over 12 years, and the Cook declaration contains information that does not

26 ⁹Wing is a founder and board member of Plaintiff SFM.

27
28 ¹⁰The signed agreement with a company hired to host a website and an undated flier
allegedly promoting the domain name, Paul Cook's supplemental declaration, and Chuck
Assumma's declaration.

1 constitute public use of the name as a trademark. Plaintiff contends the deposition
2 testimony of Scott Wing is mischaracterized by Defendant, in that Wing admitted he
3 could not be certain his visit to Defendant's store was January 8, 2002, but he knew it was
4 early January 2002. Plaintiff argues the cell phone records are inapplicable and
5 unpersuasive because Wing never stated he called Cook's private cell phone nor that he
6 had the number.

7 The Court finds the evidence submitted by Defendant in support of its contention
8 that it used the SPROUTS NATURAL MARKET name in relation to its store prior to
9 December 2001 persuasive. The owner's assertions that they used the name is supported
10 by the Assumma declaration and deposition and the documentary evidence, including the
11 advertisement, the flyer, and the website. Although some documentary evidence is
12 undated, the Assumma declaration and deposition corroborates other evidence presented
13 by Defendant and supports Defendant's continuous use of the trade name and mark prior
14 to December 11, 2001. As such, the evidence sufficiently demonstrates Defendant's prior
15 and continuous use of the trade name and trademark to overcome the presumption of
16 ownership in favor of Plaintiff.

17 **B. Likelihood of Confusion Outside Temecula**

18 Plaintiff concedes there is a likelihood of some confusion in this case. However,
19 Plaintiff goes on to argue Defendant has not provided any evidence to suggest, much less
20 prove, that any reasonable likelihood of confusion could exist outside the limited trade
21 area of Defendant's store, and therefore fails to carry its burden of persuasion for an
22 injunction mandating changes to Plaintiff's 38 stores located throughout three counties
23 of southern California.

24 In reply, Defendant contends it provided multiple declarations attached to its
25 motion showing confusion from San Diego to Orange County.

26 The evidence submitted by Defendant to demonstrate likelihood of confusion
27 includes declarations from its owners Linda Watson and Paul Cook. Watson attests that
28 customers inquired into whether Defendant's store was closing or a merger was going to

1 occur with Sprouts Farmers Market. See Watson Decl. ¶ 6 (Doc. No. 10-5). She further
2 attests that Henry's, a store operated by Plaintiff in Temecula, provided grocery receipts
3 to its customers labeled "Sprouts" and not "Henry's", that many products sold therein
4 bore the label "Sprouts" and not "Henry's", that two of Plaintiff's stores were located
5 within a 1 ½ mile radius of Defendant's store, and that customers expressed confusion.
6 Watson further declared delivery trucks dropped off Sprouts Farmers Market goods to
7 Sprouts Natural Market at least once a week for 6 week. Defendant attached as further
8 proof of confusion multiple invoices for deliveries of goods ordered by Plaintiff Sprouts
9 Farmers Market that were improperly delivered to Defendant Sprouts Natural Market.
10 See Def's Exh. 12. Additionally, Watson also attests that some Sprouts Natural Market
11 items were delivered to the Sprouts Farmers Market located in Temecula, bills were
12 received at Sprouts Natural Market that were intended for Sprouts Farmers Market,
13 customers attempted to use Sprouts Farmers Market gift cards at Sprouts Natural Market
14 and customers called Sprouts Natural Market inquiring about Sprouts Farmers Market
15 products. See Id. ¶¶ 7 - 8. Paul Cook attests that as customers are exposed to Sprouts
16 Farmers Market's advertising, customer confusion is demonstrated in customer questions,
17 deliveries, mail and phone calls. See Paul Cook Decl. ¶ 13 (Doc. No. 10-6). He further
18 attests that he "personally evidenced massive amounts of confusion relating to the
19 similarity of the names" but provides no specifics. See Id. ¶ 14.

20 Defendant also provides declarations from many customers who reside in Temecula,
21 Murrieta, Winchester, Canyon Lake, Lake Elsinore, Wildomar, all in Riverside County;
22 Fallbrook, Coronado, and Oceanside, all in San Diego County; and Lompoc located in
23 Santa Barbara County, stating they confused Sprouts Farmers Market with Sprouts
24 Natural Market when viewing newspaper advertisements, street signage, building signage,
25 coupons, products labeled "Sprouts", and internet advertisement. Def's Exhs. 16 - 35; 38 -
26 40 (Doc. Nos. 10-12 - 10-15).

27 As stated, Plaintiff does not dispute the similarity of the marks is likely to cause
28 confusion. Pla's Opp. at 10. And Defendant's evidence clearly demonstrates a likelihood

1 of confusion within and outside the Temecula area. However, as discussed below, the
2 Court finds Defendant has not demonstrated for purposes of this proceeding, that the
3 likelihood of confusion exists in the entire geographic area Defendant's requested
4 injunction seeks to cover.

5 C. Laches Defense

6 Plaintiff asserts a laches defense. Laches may bar a trademark infringement claim
7 when the plaintiff unreasonably delays in bringing suit. See E-Systems, Inc. v. Monitek,
8 Inc., 720 F.2d 604, 607 (9th Cir. 1983). Laches requires a showing that the delay is
9 unreasonable and the party asserting laches was prejudiced by the delay. See Jarrow
10 Formulas, Inc. v. Nutrition Now, Inc., 304 F.3d 829, 838 (9th Cir. 2002). If an action is
11 brought within the limitations period for an analogous state action, there is a presumption
12 that laches does not bar the suit. See id. The presumption is reversed if the suit is filed
13 outside the limitations period. See id. It is well-established that a district court looks at
14 when a plaintiff "knew or should have known" of the infringing activity to determine
15 whether a plaintiff unreasonably delayed in bringing suit. Miller v. Glen Miller Prods.,
16 454 F.3d 975, 980 (9th Cir. 2006); Jarrow Formulas, 304 F.3d at 838.

17 Plaintiff argues Defendant's pleadings and motion admit and acknowledge
18 Defendant knew of Plaintiff's adoption and use of the SPROUTS FARMERS MARKET
19 mark for retail grocery services at least 10 years before Defendant filed the motion.
20 Plaintiff maintains Defendant, in 2005, demanded Plaintiff change the name of all its
21 SPROUTS FARMERS MARKET stores located within 150 miles of Temecula and
22 threatened litigation if Plaintiff failed to comply. Plaintiff asserts Defendant failed to
23 enforce its asserted claim after Plaintiff responded by reminding Defendant that Plaintiff
24 had priority rights to use the SPROUTS FARMERS MARKET mark. Plaintiff argues the
25 filing of Defendant's Lanham Act claim long after the expiration of the analogous statute
26 of limitations creates a presumption that laches is a bar to the claim.

27 Plaintiff further argues it is prejudiced by the delay. Plaintiff maintains it
28 established and expanded its retail grocery services in San Diego, Orange, and Riverside

1 Counties during Defendant's delay in asserting its purported trademark rights. Plaintiff
2 further argues due to the passage of time, the parties and the Court are unlikely to obtain
3 evidence related to Defendant's purported first use of the SPROUTS NATURAL
4 MARKET name in 2001.

5 In reply, Defendant maintains there is a four year statute of limitations period for
6 unfair competition and trade name infringement under California law and argues its claims
7 filed in 2011 are within the four year statute of limitations period. Defendant further
8 argues, in the alternative, any delay was reasonable under the circumstances. Specifically,
9 Defendant argues it was unreasonable for it to file suit in 2005 because it could not have
10 satisfied the high standard of consumer confusion in that Plaintiff was only doing business
11 in one store in east San Diego County at that time and there was insufficient confusion
12 to allow Defendant to prevail in an infringement suit when Plaintiff opened stores in
13 Orange County in 2007. Defendant maintains it was not until 2009 or 2011 upon the
14 merger of Plaintiff's business with Henry's Farmers Market and Plaintiff launching of a
15 massive advertising campaign in the county of Riverside that significantly affected
16 Defendant's customer base that Defendant had a supportable claim of trade name
17 infringement.

18 In addition, Defendant argues Plaintiff is barred from asserting the laches defense
19 because it progressively encroached upon Defendant's territory. Under the progressive
20 encroachment argument, "the trademark owner need not sue in the face of *de minimis*
21 infringement by the junior user." Tillamook Country Smoker, Inc. v. Tillamook County
22 Creamery Ass'n, 465 F.3d 1102, 1110 (9th Cir. 2006). The doctrine allows a senior owner
23 to delay bringing suit when the junior user engages in *de minimis* infringement then
24 "gradually encroaches on the [senior owner's] market." Grupo Gigante SA De CV v. Dallo
25 & Co., Inc., 391 F.3d 1088, 1103 (9th Cir. 2004). Defendant maintains Plaintiff opened
26 for business on July 10, 2002 in Arizona, opened its first store in California in 2005, its
27 first store in Riverside county opened in 2009, and it merged with Henry's Farmers
28 Market in 2011. As such, Defendant maintains direct competition was in 2009 or 2011,

1 and Defendant was justified in waiting to bring suit.

2 Defendant also argues Plaintiff comes to the Court with unclean hands and should
3 be barred from asserting a laches defense. Defendant maintains Plaintiff knew of
4 Defendant's use of the name "Sprouts" prior to filing its trademark application, as
5 evidenced by the fact Defendant contracted to establish sproutsnaturalmarket.com in
6 August 2001, and Plaintiff alleges to have purchased the webpage sproutsfarmersmarket
7 the following month. Defendant contends it is "hardly plausible that in attempting to
8 acquire a domain name the potential purchaser, prior to filing a trademark, would be
9 oblivious to a clearly competing use." Reply at 12. Defendant maintains an accurate
10 analysis of the circumstances demonstrates Mr. Wing visited Defendant's new location
11 while it was under construction prior to filing Plaintiff's trademark application in
12 December 2001.

13 Defendant also argues the factors of E-System support denial of the laches defense.
14 Specifically, Defendant argues Plaintiff was not diligent in enforcing its mark, as evidenced
15 by the fact Plaintiff knew about SPROUTS NATURAL MARKET since 2001 when Wing
16 visited Defendant's construction site and asserted he was about to file a trademark
17 application seeking rights to a similar name and, after obtaining the trademark, he did not
18 file a lawsuit until ten years later. Defendant further argues if the Court allows Plaintiff
19 the ability to stand behind the laches defense, nothing prevents Plaintiff from opening a
20 new location next door to Defendant, Plaintiff will unfairly benefit from allowing the
21 laches defense, Plaintiff had knowledge of Defendant's objection to Plaintiff's use of the
22 name "Sprouts", the parties were not in competition until 2009 when Plaintiff entered
23 Riverside County, and Plaintiff was well aware of the risk of expanding its operations into
24 Defendant's zone of influence.

25 In the surreply, Plaintiff argues Defendant's argument to overcome laches concedes
26 the trade area does not extend beyond Temecula, and therefore proves, whatever common-
27 law trademark rights Defendant may have do not extend as far as the reach of Defendant's
28 request for injunctive relief. Plaintiff also disputes Defendant's contention that Wing

1 visited the store in 2001.

2 Based upon the evidence currently before the Court, the Court is persuaded by
3 Defendant's argument that it did not have an infringement claim supported by sufficient
4 customer confusion until Plaintiff opened its first store in Riverside in 2009. Accordingly,
5 Defendant could not be aware of the infringing activity until 2009 at the earliest. The
6 action brought in November 17, 2011 is within the four year statute of limitations period.
7 As such, there is a presumption that laches does not bar Defendant's suit, and Plaintiff
8 fails to rebut that presumption. Even if the action was filed outside the limitations period,
9 the evidence demonstrates direct competition did not exist until 2009 due to Plaintiff's
10 progressive encroachment. Plaintiff does not meet its burden to support a laches defense.

11 The Court, however, agrees that Defendant's evidence to support progressive
12 encroachment, specifically the lack of direct competition until Plaintiff opened its first
13 store in the Riverside County area strongly suggests that Defendant has failed to show
14 likelihood of success on the merits as to the degree to which the likelihood of confusion
15 extends beyond the Riverside County area.¹¹

16 **II. Irreparable Harm**

17 Defendant argues severe harm will occur if immediate relief is not granted. It
18 maintains as a single store, family-owned business it will suffer significant harm whereas
19 any harm to Plaintiff, a large corporate grocery store chain, will be mitigated.

20 Plaintiff argues Defendant's purported evidence of irreparable harm is insufficient,
21 and that Defendant's alleged injury, the probability of being put out of business if not
22 granted injunctive relief, is too speculative and/or is compensable in money damages.
23 Plaintiff further argues the purported harm of diminished goodwill is supported by one
24 affidavit of Defendant's owner which is insufficient to establish irreparable harm. Plaintiff
25 also argues Defendant's long and undue delay in filing its preliminary injunction motion
26 rebuts its assertion of irreparable injury.

27

28 ¹¹In that this Court finds that laches does not apply due to progressive encroachment, the Court need not resolve Defendant's argument that Plaintiff is barred from asserting the laches defense because it comes to the Court with unclean hands.

1 In reply, Defendant argues regardless of the alleged adequacy of monetary damages,
2 Defendant has the right to assert its claim to a preliminary injunction where the facts show
3 a likelihood of success on the merits. Defendant further argues widespread customer
4 confusion makes an injunction the only plausible remedy to protect Defendant's goodwill.

5 The Court finds the evidence of customer confusion and the risk of being put out
6 of business sufficient to demonstrate irreparable harm.

7 **III. Balance of Equities**

8 Defendant argues the balance of hardships tip sharply in its favor in light of the
9 significant negative impact Plaintiff's continued ability to advertise, market and do
10 business as "Sprouts" would have on a single-store family owned business. If the
11 injunction is granted, Defendant contends Plaintiff will suffer minimal harm in
12 comparison as it has over 100 stores across multiple states and the injunction will only
13 impact a small percentage of those stores.

14 Plaintiff argues a preliminary injunction will cause them significant, severe and
15 irreparable harm, as it will require Plaintiff to spend over \$14 million to change the names
16 of thirty-six stores and alter its internal processes and private labels in thirty-eight stores
17 during the injunction. Plaintiff further argues the business interruption that will result
18 from an injunction will damage its reputation beyond repair. In contrast, Plaintiff
19 maintains the potential damage to Defendant's business is too remote and too little, and
20 any actual harm can be repaired, mitigated or compensated with money.

21 In reply, Defendant argues Plaintiff fails to address the percentage the \$14 million
22 reflects in Plaintiff's overall worth of \$20,000,000,000.¹² Defendant maintains it is a
23 family run store and has a difficult time competing in a fair market, and if Plaintiff is
24 freely granted the right to directly compete while using Plaintiff's name, Defendant cannot
25 afford to stay in business.

26 The potential damage to Plaintiff' reputation and costs associated with the limited
27 injunction is mitigated by way of its action concerning progressive encroachment.

28 ¹²Plaintiff does not challenge Defendant's assertion of Plaintiff's overall worth.

1 Additionally, allowing Plaintiff to continue business as usual in Riverside County would
2 substantially impact Defendant's reputation and good will among its customers as well as
3 heighten the nature and extent of confusion. The balance of equities weigh in favor of
4 granting the preliminary injunction.

5 **IV. Public Interest**

6 Plaintiff argues Defendant's failure to establish any *prima facie* trademark rights,
7 irreparable harm or a balance of harms in its favor is compounded by the profound
8 negative effect the injunction will have on creating consumer confusion across a broad
9 geographic area.

10 In reply, Defendant argues the fact that Plaintiff must stop the infringement of
11 Defendant's name cannot be grounds to deny the proper remedy.

12 **V. Security**

13 If the Court grants the motion, Plaintiff asks the Court to require Defendant to give
14 security in form of a bond of no less than \$14,770,852 to pay costs and damages Plaintiff
15 will suffer if found to be wrongfully enjoined.

16 In reply, Defendant maintains it cannot post a security of \$14,770,852 to enforce
17 a preliminary injunction and asks the Court to use its discretion and grant preliminary
18 injunction without requiring a bond.

19 Under Rule 65 of the Federal Rules of Civil Procedure, a court may issue a
20 preliminary injunction or temporary restraining order "only if the movant give security in
21 an amount that the court considers proper to pay the costs and damages sustained by any
22 party found to have been wrongfully enjoined or restrained." FED.R.CIV.P. 65(c). The
23 Ninth Circuit has held that Rule 65 provides the Court "with discretion as to the amount
24 of security, if any." Jorgensen v. Cassidy, 320 F.3d 906, 919 (9th Cir. 2003) (Citing
25 Barahona-Gomez v. Reno, 167 F.3d 1228, 127 (9th Cir. 1999). The Court may, in its
26 discretion, grant preliminary injunction without requiring a bond if "there is no realistic
27 likelihood of harm [to the non-moving party] from enjoining his or her conduct." Id.

28 The Court is limiting the injunction to stores located within Riverside County and

1 the financial impact upon Plaintiff is substantially less than Plaintiff purports. The costs
2 incurred by Plaintiff for complying with the injunction does require a bond in the event
3 Plaintiff is later found to be wrongfully enjoined. Accordingly, the Court finds a bond in
4 the amount of \$500,000 is proper.

5 **CONCLUSION AND ORDER**

6 Based upon the foregoing, IT IS HEREBY ORDERED Defendant's motion for a
7 preliminary injunction is **GRANTED IN PART**. During the pendency of this action the
8 above-named Plaintiff, Counter-defendant, and Cross-Defendants, (collectively referred
9 to as "Plaintiff") and each of them, and their officers, agents, employees, representatives,
10 and all persons acting in concert or participating with them, are enjoined and restrained
11 from engaging in, committing, or performing, directly or indirectly, by any means
12 whatsoever, any of the following acts:

13 (1) marketing materials displaying signs, logos, coupons, labels, tags,
14 advertisements, invoices, receipts, or other materials referencing the name
15 "Sprouts", "Sprouts Market", or "Sprouts Farmers Market," at Plaintiff's Temecula,
16 Riverside, Hemet, and Corona places of business;

17
18 (2) advertising or marketing in any way the sale of products carrying the name or
19 logo of "Sprouts", "Sprouts Market", or "Sprouts Farmers Market" at Plaintiff's
20 Temecula, Riverside, Hemet, and Corona, places of business;

21
22 (3) conducting business as "Sprouts", "Sprouts Market", or "Sprouts Farmers
23 Market" in purchasing or ordering products to Plaintiff's Temecula, Riverside,
24 Hemet, and Corona, places of business;

25
26 (4) communicating to the public that any affiliation exists between Plaintiff and
27 Defendant.

28

1 IT IS FURTHER ORDERED Plaintiff shall:

2 (1) Remove, cover, or replace any sign, logo or other material referencing the name
3 "Sprouts", "Sprouts Market", or "Sprouts Farmers Market," at Plaintiff's Temecula,
4 Riverside, Hemet, and Corona, places of business;

5
6 (2) Remove, cover, or replace any "Sprouts" branded products at Plaintiff's
7 Temecula, Riverside, Hemet, and Corona, places of business;

8
9 (3) Remove Plaintiff's Temecula, Riverside, Hemet, and Corona, places of business
10 from Sprouts.com or any other website or domain name within the control of
11 Plaintiff.

12
13 (4) Inform its officers, agents, employees, representatives, and all persons acting in
14 concert or participating with them at Plaintiff's Temecula, Riverside, Hemet, and
15 Corona, places of business of the requirements of this ORDER.

16 IT IS FURTHER ORDERED Defendant shall post a bond in the amount of \$500,000
17 with the Clerk of Court pursuant to Federal Rule of Civil Procedure 65(c) no later than
18 October 8, 2012.

19 DATED: September 26, 2012

20 
21 JOHN A. HOUSTON
22 United States District Judge
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9 Attorneys for Plaintiff, SFM, LLC

10
11 **IN THE UNITED STATES DISTRICT COURT**
12
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 SFM, LLC, a Delaware limited liability
15 company,

16 Plaintiff,

17 vs.

18 SPROUTS NATURAL MARKET INC., a
California corporation,

19 Defendant.
20
21
22
23
24

CASE NO. '11CV2640 JAH NLS

COMPLAINT FOR:

- 25 (1) **Federal Trademark Infringement, 15 U.S.C. §1114;**
- 26 (2) **Federal False Designation of Origin, 15 U.S.C. §1125;**
- 27 (3) **Anti-Cybersquatting Consumer Protection, 15 U.S.C. §1125(d);**
- 28 (4) **State Common Law Infringement of Trademark;**
- (5) **Statutory Unfair Competition, Cal. Bus. & Prof. Code §17200, et seq.**

DEMAND FOR JURY TRIAL

COMPLAINT

1 Plaintiff SFM, LLC alleges as follows:

2 **NATURE OF THIS ACTION**

3 1. This is an action for federal trademark infringement, federal false designation of origin,
4 cybersquatting, state common law infringement of trademark, and unfair competition. Plaintiff seeks
5 damages, preliminary and permanent injunctive relief, an accounting, unjust enrichment, and attorneys'
6 fees.

7 **THE PARTIES**

8 2. Plaintiff, SFM, LLC (hereafter "Plaintiff") is a Delaware limited liability company with
9 its principal office located in Phoenix, Arizona.

10 3. Defendant, Sprouts Natural Market (hereafter "Defendant") is a California corporation
11 with its principal place of business located in Temecula, California.

12 4. Defendant provides retail grocery services.

13 **JURISDICTION AND VENUE**

14 5. This is a civil action for injunctive relief and damages for violations of the Lanham Act,
15 15 U.S.C. §1051, et seq.

16 6. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121(a), 28 U.S.C. §
17 1331 and 28 U.S.C. § 1338.

18 7. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c).

19 8. Personal jurisdiction is proper in this Court because Defendant has engaged in business in
20 the State of California, and this action arises out of business conducted in California by the Defendant.

21 9. Personal jurisdiction is also proper, because upon information and belief, Defendant is
22 domiciled in this State

23 **BACKGROUND FACTS**

24 10. Plaintiff uses the trademark "SPROUT FARMERS MARKET" (the "Plaintiff's Mark") in
25 connection with Plaintiff's retail grocery services.

26 11. On December 11, 2001, Plaintiff's predecessor filed an application with the U.S. Patent
27 and Trademark Office ("USPTO") to register Plaintiff's Mark with the PTO, based on an intent to use
28 Plaintiff's Mark in commerce on or in connection with "retail grocery store services." On December 23,

1 2003 the USPTO issued trademark registration number 2,798,632, for Plaintiff's Mark in connection
2 with "retail grocery store services. On August 4, 2009, the USPTO issued a Notice of Acceptance and
3 Acknowledgement of the sections 8 and 15 Declaration for Plaintiff's Mark. Plaintiff is the current
4 owner by assignment of the USPTO registration for Plaintiff's Mark.

5 12. In addition to the USPTO registration of Plaintiff's Mark, Plaintiff is the owner of the
6 USPTO registrations of the marks identified on the chart attached as "Exhibit A" and used by Plaintiff
7 in connection with its retail grocery store services ("Plaintiff's Marks"). Copies of the registration
8 certificates for each of Plaintiff's Marks are attached as "Exhibit B".

9 13. Defendant operates a retail grocery store located in Temecula, California.

10 14. Defendant uses Sprouts Natural Market ("Defendant's Store Name") as the name of its
11 retail grocery store in Temecula.

12 15. Defendant first used Defendant's Store Name for its retail grocery store services in 2002.

13 16. Defendant uses the www.sproutsnaturalmarket.net domain name ("Defendant's Domain
14 Name"), registered in 2007.

15 **FIRST CLAIM FOR RELIEF**

16 (Trademark Infringement Under The Lanham Act, 15 U.S.C. §1114)

17 17. Plaintiff incorporates in this Count all previous allegations contained in this Complaint.

18 18. 17. Plaintiff and its predecessors in interest filed the USPTO application to register
19 Plaintiff's Mark before Defendant adopted and began using Defendant's Store Name for Defendant's
20 services.

21 19. Defendant is using Defendant's Store Name without Plaintiff's authorization.

22 20. Defendant's Store Name is nearly identical to Plaintiff's Mark used for the same services.

23 21. Defendant's use of Defendant's Store Name creates, or has a reasonable likelihood of
24 creating, customer confusion between the Plaintiff's retail grocery store services and Defendant's retail
25 grocery store services.

26 22. Plaintiff has invested substantial effort, including the expenditure of millions of dollars, to
27 develop goodwill in Plaintiff's Mark and to cause consumers to recognize Plaintiff's Mark as
28 distinctively designating goods and services originating with Plaintiff.

1 23. The confusion created by Defendant's use of Defendant's Store Name is damaging the
2 reputation and goodwill that Plaintiff has created in Plaintiff's Marks.

3 24. By virtue of Defendant's actions, there is a likelihood of confusion between Plaintiff and
4 Defendant's services. Defendant's conduct constitutes an infringement of Plaintiff's Mark, registered
5 under § 1114 of the Lanham Act (15 U.S.C. § 1114).

6 25. Upon information and belief, Defendant has acted knowingly and intentionally in
7 misappropriating Plaintiff's Mark in an effort to trade off the goodwill established by Plaintiff over
8 many years.

9 26. Defendant will continue its infringement activities unless enjoined by this Court.

10 27. Upon information and belief, Defendant's actions were undertaken willfully and with the
11 intent to confuse and deceive the public.

12 28. Defendant's acts have damaged Plaintiff's business, reputation and goodwill and have
13 interfered with Plaintiff's use of its own marks.

14 29. Defendant has caused, and unless enjoined, will cause irreparable harm and injury to
15 Plaintiff for which there is no adequate remedy at law.

16 30. Defendant should be, upon final hearing, permanently enjoined from using Defendant's
17 Store Name and any trademarks and/or service marks incorporating or similar to Defendant's Store
18 Name ("Infringing Marks"), pursuant to 15 U.S.C. § 1116.

19 31. Plaintiff is entitled, under 15 U.S.C. § 1117, to recover from Defendant: (i) Defendant's
20 profits in providing Defendant's grocery store services using Defendant's Store Name and/or
21 Defendant's Domain Name; (ii) damages sustained by Plaintiff due to Defendant's provision of
22 Defendant's grocery store services using Defendant's Store Name or Defendant's Domain Name; (iii)
23 the costs of this action, (iv) exceptional damages for intentional infringement, bad faith and willful
24 conduct, equal to three times profits or damages, whichever is greater, and (v) attorneys' fees.

25 32. Furthermore, Plaintiff seeks an order from this Court under 15 U.S.C. § 1118 compelling
26 Defendant to destroy all materials bearing Defendant's Store Name and/or Defendant's Domain Name
27 and transfer registration and ownership of the Defendant's Domain Name to Plaintiff.

28 ///

SECOND CLAIM FOR RELIEF

(Unfair Competition Under 15 U.S.C. 1125(A))

33. Plaintiff incorporates in this Count all previous allegations contained in this Complaint.

34. The aforesaid activities of Defendant has caused or are likely to cause confusion or misunderstanding as to source, origin, sponsorship or approval of its services, and constitute infringement of Plaintiff's Marks and unfair competition, in violation of common law trademark and unfair competition principles.

35. Defendant's actions have damaged Plaintiff's business, reputation and goodwill and have interfered with Plaintiff's use of its own trademarks.

36. Unless restrained and enjoined by this court, Defendant will persist in its activities, causing irreparable harm and injury to Plaintiff for which there is no adequate remedy at law.

37. Defendant should be, upon final hearing, permanently enjoined from using Defendant's Store name and Defendant's Domain Name, pursuant to 15 U.S.C. § 1116.

38. Plaintiff is entitled, under 15 U.S.C. § 1117, to recover from Defendant: (i) Defendant's profits in providing Defendant's services using Defendant's Store Name and Defendant's Domain Name; (ii) damages sustained by Plaintiff due to Defendant's providing of Defendant's services using Defendant's Store Name and/or the Defendant's Domain Name, (iii) the costs of this action, (iv) exceptional damages for intentional infringement, bad faith and willful conduct, equal to three times profits or damages, whichever is greater, and (v) attorneys' fees.

39. Furthermore, Plaintiff seeks an order from this Court under 15 U.S.C. § 1118 compelling Defendant to destroy all materials bearing Defendant's Store Name and/or Defendant's Domain Names and to transfer ownership and registration of Defendant's Store Name and Defendant's Domain Name to Plaintiff.

THIRD CLAIM FOR RELIEF

(Federal False Designation of Origin And Representation)

40. Plaintiff incorporates in this Count all previous allegations contained in this Complaint.

41. Defendant's use of the Defendant's Store Name and/or Defendant's Domain Name to identify Defendant's services represents a false designation of origin that has caused, or is likely to

1 cause, confusion, mistake and deception as to the affiliation, connection or association between
2 Defendant's services and the goods, services and commercial activities of Plaintiff, all in violation of 15
3 U.S.C. § 1125(a)(1)(A).

4 42. Defendant's actions have damaged, or may damage, Plaintiff's business, reputation and
5 goodwill and, unless enjoined, will cause, or are reasonably likely to cause, irreparable harm to Plaintiff
6 for which there is no adequate remedy at law.

7 43. Defendant should be, upon final hearing, permanently enjoined from using Defendant's
8 Store Name and Defendant's Domain Name, pursuant to 15 U.S.C. § 1116.

9 44. Plaintiff is entitled, under 15 U.S.C. § 1117, to recover from Defendant: (i) Defendant's
10 profits in providing Defendant's services using Defendant's Store Name and/or Defendant's Domain
11 Name; (ii) damages sustained by Plaintiff due to Defendant's providing Defendant's services using
12 Defendant's Store Name and/or Defendant's Domain Name, (iii) the costs of this action, and (iv)
13 exceptional damages for intentional infringement, bad faith and willful conduct, equal to three times
14 profits or damages, whichever is greater, and (v) attorneys' fees.

15 45. Furthermore, Plaintiff seeks an order from this Court under 15 U.S.C. § 1118 compelling
16 Defendant to destroy all materials bearing the Defendant's Store Name and/or Defendant's Domain
17 Name and to transfer ownership and registration of Defendant's Store Name and Defendant's Domain
18 Name to Plaintiff.

19 **FOURTH CLAIM FOR RELIEF**

20 (Anti-Cybersquatting Consumer Protection)

21 46. Plaintiff incorporates in this Count all previous allegations contained in this Complaint.

22 47. Plaintiff's Mark was distinctive at the time of the registration of Defendant's Domain
23 Name.

24 48. The Defendant's Domain Name registered or used by Defendant, is confusingly similar to
25 Plaintiff's Marks.

26 49. Defendant registered or used the Defendant's Domain Name with a bad faith intent to
27 profit from Plaintiff's Marks.

28 50. For these reasons, Defendant's registration and Defendant's use of the Defendant's

1 Domain Name violates § 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

2 51. Unless restrained and enjoined by this court, Defendant swill persist in the activities,
3 causing irreparable harm and injury to Plaintiff for which there is no adequate remedy at law.

4 52. Defendant should be, upon final hearing, permanently enjoined from using Defendant's
5 Domain Name pursuant to 15 U.S.C. § 1116.

6 53. Plaintiff is entitled, under 15 U.S.C. § 1117, to recover from Defendant: (i) Defendant's
7 profits in providing Defendant's Services using Defendant's Store Name and/or Defendant's Domain
8 Name; (ii) damages sustained by Plaintiff due to Defendant's providing Defendant's Services using
9 Defendant's Store Name and/or Defendant's Domain Name, (iii) the costs of this action, and (iv)
10 exceptional damages for intentional infringement, bad faith and willful conduct, equal to three times
11 profits or damages, whichever is greater, and (v) attorneys' fees. .

12 54. Furthermore, Plaintiff seeks an order from this Court under 15 U.S.C. § 1118 compelling
13 Defendant to destroy all materials bearing the Defendant's Store Name and/or Defendant's Domain
14 Name and to transfer ownership and registration of Defendant's Store Name and Defendant's Domain
15 Name to Plaintiff.

16 **FIFTH CLAIM FOR RELIEF**

17 (State Common Law Infringement of Trademarks)

18 55. Plaintiff incorporates in this Count all previous allegations contained in this Complaint.

19 56. This cause of action for infringement arises under the common law of the State of
20 California.

21 57. Defendant's use of the Defendant's Store Name and/or Defendant's Domain Name is
22 likely to cause confusion, mistake or deception as to source, origin, sponsorship or approval of
23 Defendant's services and constitutes infringement of Plaintiff's Marks under the common law of the
24 State of California.

25 58. By its actions, Defendant has infringed Plaintiff's Marks deliberately and with the
26 intention of wrongfully trading on the goodwill and reputation symbolized by Plaintiff's Marks.

27 59. Plaintiff is entitled to an award of damages from Defendant for the loss of business and
28 other monetary losses that Plaintiff has suffered and will continue to suffer in the future as a proximate

1 result of Defendant's misappropriation and infringement of Plaintiff's Marks. Alternatively, Plaintiff is
2 entitled to recover damages in an amount equivalent to the amount of profits that Defendant has derived
3 and may continue to derive as a result of their unlawful misappropriation and infringement of Plaintiff's
4 Marks.

5 60. Defendant's conduct as described above has been willful, deliberate, malicious, and
6 intended to injure Plaintiff. Therefore, Plaintiff is also entitled to recover exemplary damages from
7 Defendant to punish Defendant and to deter Defendant and others similarly situated from engaging in
8 similar wrongful conduct in the future.

9 61. Defendant should also be, upon final hearing, permanently enjoined from using
10 Defendant's Store Name and Defendant's Domain Name.

11 **SIXTH CLAIM FOR RELIEF**

12 (State Statutory Unfair Competition – Cal. Bus. & Prof. Code § 17200, et seq.)

13 62. Plaintiff incorporates in this Count all previous allegations contained in this Complaint.

14 63. As set forth in detail above, Defendant has engaged in unlawful, unfair or fraudulent
15 business practices in violation of Section 17200, et seq. of the California Business & Professions Code,
16 as well as acts of unfair competition in violation of the common law.

17 64. Among other things, Defendant's activities create the impression that Defendant's goods
18 and services have been approved, licensed, sponsored or authorized by Plaintiff.

19 65. In addition, Defendant's aforesaid wrongful acts and unauthorized use of the Defendant's
20 Store Name and use of the Defendant's Domain Name identical with or confusingly similar to Plaintiff's
21 Marks constitutes unfair competition.

22 66. Defendant's conduct was and is intentional and in deliberate disregard of the rights of
23 Plaintiff. By reason thereof, Plaintiff is entitled to recover not only Defendant's profits and Defendant's
24 actual damages, but also punitive or exemplary damages in an amount sufficient to deter Defendant
25 from similar conduct in the future.

26 67. The unlawful, unfair and/or fraudulent business practices of Defendant are likely to
27 continue and therefore will continue to mislead the public by presenting false facts about the Plaintiff's
28 Services.

1 68. Defendant has also wrongfully profited from selling goods and services in commerce that
2 infringe upon, dilute or violate Plaintiff's Marks.

3 69. Defendant should be, upon final hearing, permanently enjoined from using the
4 Defendant's Store Name and the Defendant's Domain Name.

5 70. Plaintiff requests a jury trial on the claims asserted herein.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff requests a judgment against Defendant as follows:

8 A. Temporarily, preliminarily and permanently restraining and enjoining Defendant from:

9 (1) selling any products and offering any services under Defendant's Store Name and/or the Defendant's
10 Domain Name or any variations thereof in or as part of the title or name of any business or service or
11 commercial activity, Internet domain name, website home page or website; (2) using Defendant's Store
12 Name and/or the Defendant's Domain Name or any variations thereof in or as part of the title or name of
13 any business or service or commercial activity or as a key word, search word, or as any part of the
14 description of a web site or in any submission for registration of any Internet web site with a search
15 engine or index; (3) using Defendant's Store Name and/or the Defendant's Domain Name or any other
16 identical or similar mark, word or name for any tanning salon, or spa, or as any service mark, trade
17 name or corporate name or Internet domain name or in any manner likely to cause confusion, mistake or
18 deception; or (4) filing or pursuing any application for registration of Defendant's Store Name and/or
19 the Defendant's Domain Name as a trademark or service mark or trade name or Internet domain name in
20 any jurisdiction in the United States.

21 B. Temporarily, preliminarily and permanently restraining and enjoining Defendant from:

22 (1) using Plaintiff's marks or any variations thereof in or as part of the title or name of any business or
23 service or commercial activity, Internet domain name, website home page or website; or (2) using
24 Plaintiff's Marks or Plaintiff's Domain Name or any variation thereof in or as part of the title or Internet
25 domain name or name of any business or service or commercial activity or as a key word, search word,
26 or as any part of the description of a web site or in any submission for registration of any Internet web
27 site with a search engine or index; (3) using Plaintiff's Marks or Plaintiff's Domain Name or any other
28 identical or similar mark, word or name as a trademark, service mark, trade name or corporate name or

1 in any manner likely to cause confusion, mistake or deception; or (4) filing or pursuing any application
2 for registration in any jurisdiction in the U.S. of the Defendant's Store Name and/or the Defendant's
3 Domain Name or any other mark, design, word or name as trademark or service mark or trade name
4 identical or similar to Plaintiff's Marks, and/or Plaintiff's Domain Name.

5 C. Directing Defendant to: (1) notify all customers, distributors, advertisers and other
6 persons, involved in Defendant's offer of, or attempt to offer, services under Defendant's Store Name
7 and/or Defendant's Domain Name, that Plaintiff's marks are owned and controlled exclusively by and
8 for the benefit of Plaintiff; (2) deliver to Plaintiff to be destroyed all labels, signs, prints, packages,
9 wrappers, receptacles, and advertisements in Defendant's possession and bearing Defendant's Store
10 Name and/or the Defendant's Domain Name (or any other name, or other designation, description, or
11 representation that violates § 1125(a)) or any reproduction, counterfeit, copy, or colorable imitation
12 thereof, and all plates, molds, matrices, and other means of making the same; (3) remove from the
13 Defendant's store and website all references to the Defendant's Store Name and/or the Defendant's
14 Domain Name (including references in signage, menus, and other displays or promotional material); and
15 (4) provide all documentation and approvals necessary to effect a transfer to Plaintiff of the registration
16 of the Defendant's Domain Name.

17 D. Awarding Plaintiff its statutory damages and/or its actual damages in an amount to be
18 proved at trial;

19 E. Ordering an accounting by Defendant of all revenues and profits derived from the
20 providing of services through the unauthorized use of Defendant's Store Name and/or Defendant's
21 Domain Names;

22 F. Awarding Plaintiff the amount by which Defendant has been unjustly enriched by their
23 wrongful acts;

24 G. Awarding Plaintiff its costs and reasonable attorneys' fees incurred in connection with
25 this action; and

26 H. Awarding Plaintiff such other and further relief that is just and proper.

27 ///

28 ///

DEMAND FOR JURY TRIAL

Plaintiff SFM, LLC hereby requests a trial by jury of all issues so triable.

DATED: November 11, 2011

GREENBERG TRAURIG LLP

By /s/ Lindsay Ayers
Franklin D. Ubell
Lindsay Ayers
Frank G. Long
Attorneys for Plaintiff, SFM, LLC

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EXHIBIT A

Serial Number/ Filing Date	Reg. Number/ Registration Date	Mark (Disclaimer)	Int'l Class; Goods & Services; First Uses	Owner; Registrant
1 85/197622 December 14, 2010	4002187 July 26, 2011	 <p>(NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FARMERS MARKET" APART FROM THE MARK AS SHOWN)</p>	IC 035 G & S: retail grocery stores. FIRST USE: 20071200 FIRST USE IN COMMERCE: 20071200	(REGISTRANT) Premier Grocery, Inc. CORPORATION CALIFORNIA 11811 N. Tatum Blvd., #2400 Phoenix, Arizona 85028 (LAST LISTED OWNER) SFM, LLC LIMITED LIABILITY COMPANY DELAWARE 11811 N. Tatum Blvd., #2400 Phoenix, Arizona 85028
2 77/731710 May 7, 2009	3748830 February 16, 2010	 <p>(NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FARMERS MARKET" APART FROM THE MARK AS SHOWN)</p>	IC 035. G & S: Retail grocery stores. FIRST USE: 20090128 FIRST USE IN COMMERCE: 20090128	(REGISTRANT) Premier Grocery, Inc. CORPORATION CALIFORNIA 11811 N. Tatum Blvd., #2400 Phoenix ARIZONA 85028 (LAST LISTED OWNER) SFM, LLC LIMITED LIABILITY COMPANY DELAWARE 11811 N. TATUM BLVD., SUITE 2400, PHOENIX ARIZONA 85028
3 77/730943 May 6, 2009	3730903 December 29, 2009	<p>SPROUTS FARMERS MARKET HEALTHY LIVING FOR LESS</p>	IC 035. G & S: Retail grocery stores. FIRST USE: 20090128 FIRST USE IN COMMERCE:	(REGISTRANT) Premier Grocery, Inc. CORPORATION CALIFORNIA 11811 N. Tatum Blvd. #2400 Phoenix ARIZONA 85028 (LAST LISTED OWNER)

Serial Number/ Filing Date	Reg. Number/ Registration Date	Mark (Disclaimer)	Int'l Class; Goods & Services; First Uses	Owner; Registrant
		(NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FARMERS MARKET" APART FROM THE MARK AS SHOWN)	20090128	SFM, LLC LIMITED LIABILITY COMPANY DELAWARE 11811 N. TATUM BLVD., SUITE 2400, PHOENIX ARIZONA 85028
77/174990 May 7, 2007 4	3441913 June 3, 2008	GREAT THINGS FOR A GREAT LIFE	IC 035. G & S: Retail grocery stores. FIRST USE: 20041115 FIRST USE IN COMMERCE: 20041115	(REGISTRANT) Premier Grocery, Inc. CORPORATION CALIFORNIA Suite 2400 11811 N. Tatum Blvd Phoenix ARIZONA 85028 (LAST LISTED OWNER) SFM, LLC LIMITED LIABILITY COMPANY DELAWARE 11811 N. TATUM BLVD., SUITE 2400 PHOENIX ARIZONA 85028
77/080961 January 11, 2007 5	3322841 October 30, 2007	SPROUTS	IC 035. G & S: Retail Grocery Store Services. FIRST USE: 20020415 FIRST USE IN COMMERCE: 20020415	(REGISTRANT) Premier Grocery, Inc. CORPORATION CALIFORNIA Suite 2400 11811 N. Tatum Blvd. Phoenix ARIZONA 85028 (LAST LISTED OWNER) SFM, LLC LIMITED LIABILITY COMPANY DELAWARE 11811 N. TATUM BLVD., SUITE 2400 PHOENIX ARIZONA 85028

Serial Number/ Filing Date	Reg. Number/ Registration Date	Mark (Disclaimer)	Int'l Class; Goods & Services; First Uses	Owner; Registrant
6 76/545302 September 8, 2003	2924760 February 8, 2005	 <p>(NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE FARMERS MARKET APART FROM THE MARK AS SHOWN)</p>	IC 035. G & S: Retail grocery store services. FIRST USE: 20020415 FIRST USE IN COMMERCE: 20020415	(REGISTRANT) PREMIER GROCERY, INC. CORPORATION CALIFORNIA 9301 East Shea Blvd., #132 Scottsdale ARIZONA 85260 (LAST LISTED OWNER) SFM, LLC LIMITED LIABILITY COMPANY DELAWARE 11811 N. TATUM BLVD., SUITE 2400 PHOENIX ARIZONA 85028
7 76/347816 December 11, 2001	2798632 December 23, 2003 SECT 15. SECT 8 (6- YR).	<p>SPROUTS FARMERS MARKET</p> <p>(NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FARMERS MARKET" APART FROM THE MARK AS SHOWN)</p>	IC 035 G & S: Retail grocery store services. FIRST USE: 20020415 FIRST USE IN COMMERCE: 20020415	(REGISTRANT) Premier Grocery, Inc. CORPORATION CALIFORNIA 11811 North Tatum Blvd. Suite 2400 Phoenix ARIZONA 85028 (LAST LISTED OWNER) SFM, LLC LIMITED LIABILITY COMPANY DELAWARE 11811 N. TATUM BLVD., SUITE 2400 PHOENIX ARIZONA 85028

EXHIBIT B

Int. Cl.: 35

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,798,632

Registered Dec. 23, 2003

**SERVICE MARK
PRINCIPAL REGISTER**

SPROUTS FARMERS MARKET

PREMIER GROCERY, INC. (CALIFORNIA COR-
PORATION)
8880 RIO SAN DIEGO, SUITE 800
SAN DIEGO, CA 92108

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "FARMERS MARKET", APART
FROM THE MARK AS SHOWN.

FOR: RETAIL GROCERY STORE SERVICES, IN
CLASS 35 (U.S. CLS. 100, 101 AND 102).

SN 76-347,816, FILED 12-11-2001.

FIRST USE 4-15-2002; IN COMMERCE 4-15-2002.

GIANCARLO CASTRO, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,924,760

Registered Feb. 8, 2005

**SERVICE MARK
PRINCIPAL REGISTER**



PREMIER GROCERY, INC. (CALIFORNIA COR-
PORATION)
9301 EAST SHEA BLVD., #132
SCOTTSDALE, AZ 85260

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE FARMERS MARKET, APART
FROM THE MARK AS SHOWN.

FOR: RETAIL GROCERY STORE SERVICES, IN
CLASS 35 (U.S. CLS. 100, 101 AND 102).

SER. NO. 76-545,302, FILED 9-8-2003.

FIRST USE 4-15-2002; IN COMMERCE 4-15-2002.

OWNER OF U.S. REG. NO. 2,798,632.

YONG KIM, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,322,841

Registered Oct. 30, 2007

**SERVICE MARK
PRINCIPAL REGISTER**

SPROUTS

PREMIER GROCERY, INC. (CALIFORNIA COR-
PORATION)
SUITE 2400
11811 N. TATUM BLVD.
PHOENIX, AZ 85028

FOR: RETAIL GROCERY STORE SERVICES, IN
CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 4-15-2002; IN COMMERCE 4-15-2002.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,798,632 AND
2,924,760.

SER. NO. 77-080,961, FILED 1-11-2007.

ALLISON HOLTZ, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 3,441,913

Registered June 3, 2008

**SERVICE MARK
PRINCIPAL REGISTER**

**GREAT THINGS FOR A GREAT
LIFE**

PREMIER GROCERY, INC. (CALIFORNIA COR-
PORATION)
SUITE 2400
11811 N. TATUM BLVD
PHOENIX, AZ 85028

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: RETAIL GROCERY STORES, IN CLASS 35
(U.S. CLS. 100, 101 AND 102).

SN 77-174,990, FILED 5-7-2007.

FIRST USE 11-15-2004; IN COMMERCE 11-15-2004.

AISHA SALEM, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

**SPROUTS FARMERS MARKET
HEALTHY LIVING FOR LESS**

Reg. No. 3,730,903 PREMIER GROCERY, INC. (CALIFORNIA CORPORATION)
Registered Dec. 29, 2009 11811 N. TATUM BLVD. #2400
PHOENIX, AZ 85028

Int. Cl.: 35 FOR: RETAIL GROCERY STORES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

SERVICE MARK FIRST USE 1-28-2009, IN COMMERCE 1-28-2009.
PRINCIPAL REGISTER THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,798,632 AND 2,924,760.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FARMERS MARKET", APART FROM THE MARK AS SHOWN.

SER. NO. 77-730,943, FILED 5-6-2009.

MARILYN IZZI, EXAMINING ATTORNEY



David J. Kyffes

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office



Reg. No. 3,748,830 PREMIER GROCERY, INC. (CALIFORNIA CORPORATION)
Registered Feb. 16, 2010 11811 N. TATUM BLVD., #2400
PHOENIX, AZ 85028

Int. Cl.: 35 FOR: RETAIL GROCERY STORES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-28-2009; IN COMMERCE 1-28-2009.

SERVICE MARK
PRINCIPAL REGISTER OWNER OF U.S. REG. NOS. 2,798,632 AND 2,924,760.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FARMERS MARKET", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDS "SPROUTS FARMERS MARKET" APPEARING BELOW IMAGES OF FRUIT INSIDE A THREE DIMENSIONAL OVAL. THE WORDS "HEALTHY LIVING FOR LESS!" APPEAR IN AN UPWARD ARCH UNDER THE OVAL.

SER. NO. 77-731,710, FILED 5-7-2009.

MARILYN IZZI, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office



Reg. No. 4,002,187

Registered July 26, 2011

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

PREMIER GROCERY, INC. (CALIFORNIA CORPORATION)
11811 N. TATUM BLVD., #2400
PHOENIX, AZ 85028

FOR: RETAIL GROCERY STORES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 12-0-2007; IN COMMERCE 12-0-2007.

OWNER OF U.S. REG. NOS. 2,798,632, 3,748,830 AND OTHERS.

THE COLOR(S) GREEN, LIGHT GREEN, SILVER, PURPLE, PINK, BLACK, LIGHT BROWN, BROWN, YELLOW, ORANGE AND RED IS/ARE CLAIMED AS A FEATURE OF THE MARK.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FARMERS MARKET", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDING "SPROUTS FARMERS MARKET" IN GREEN LETTERING. THE LETTERING "SPROUTS" IS OUTLINED IN SILVER. ABOVE THE WORDING IS THE STYLIZED DESIGN OF FRUIT SPECIFICALLY PURPLE GRAPES, A SLICE OF WATERMELON WHICH IS PINK, GREEN AND BLACK, A LIGHT BROWN PEAR WITH A BROWN STEM, A GREEN LIME, A YELLOW LEMON, AN ORANGE COLORED ORANGE, TWO RED APPLES WITH BROWN STEMS, A LIGHT GREEN APPLE WITH A BROWN STEM, TWO RED STRAWBERRIES WITH GREEN STEMS, A BROWN AND BLACK PINEAPPLE WITH A GREEN STEM, A LIGHT GREEN PEAR WITH A BLACK STEM AND A BUNCH OF YELLOW BANANAS. ALL OF THE FRUITS ARE LINED IN BLACK. THE COLOR WHITE IS USED FOR SHADING AND BACKGROUND AND IS NOT PART OF THE MARK.

SER. NO. 85-197,622, FILED 12-14-2010.

WENDY GOODMAN, EXAMINING ATTORNEY



David J. Kyjars

Director of the United States Patent and Trademark Office

1 TYLER & MONK, LLP
2 Robert H. Tyler, State Bar No. 179572
3 Jennifer L. Monk, State Bar No. 245512
4 24910 Las Brisas Road, Suite 110
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9 jmonk@tylermonk.net

10 Attorneys for Defendant and Counterclaimant,
11 **SPROUTS NATURAL MARKET, INC.**

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 SFM, LLC, a Delaware limited liability company,

15 Plaintiff,

16 vs.

17 SPROUTS NATURAL MARKET INC., a
18 California corporation,

19 Defendant.

20 SPROUTS NATURAL MARKET, INC., a
21 California corporation,

22 Counterclaimant,

23 vs.

24 SFM, LLC, a Delaware limited liability company;
25 SPROUTS FARMERS MARKET, LLC, a Arizona
26 Limited Liability Company; and PREMIER
27 GROCERY, INC., a California corporation,

28 Counterdefendant and
Cross-Defendants, respectively.

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Case No. 11-CV-2640-JAH NLS

Judicial Officer: Hon. John A. Houston

Courtroom: 11

Hearing

Date: January 30, 2012

Time: 2:30 p.m.

**DECLARATION OF LINDA WATSON
IN SUPPORT OF PRELIMINARY
INJUNCTION**

1 I, LINDA WATSON, declare as follows:

2 1. I have personal knowledge of the matters stated herein, and if called to
3 testify thereto, I would and could do so competently.

4 2. I became ill in the early 1980's and doctors were unable to diagnose my
5 illness, but my symptoms reflected an increasingly severe allergy to many foods. I was
6 referred to a naturopathic physician in San Diego who began educating me on what he
7 diagnosed as environmental illness. According to my physician, my illness was a result
8 of dangerously high levels of acidity in my body from eating processed foods lacking in
9 nutritional value. The treatment was an intensive detoxification program in San Diego
10 where Paul, my son, drove me daily.

11 3. As a result of knowledge gained through my traumatic illness and
12 subsequent treatment, in 1989 Paul and I opened Health Zone Natural Foods, LLC.,
13 ("Health Zone") located at 41915 Motor Car parkway, Suite A, Temecula, Ca 92591, a
14 unique grocery store dedicated to healthy eating through organic and raw foods as an
15 alternative for the community to corporate grocers' processed foods. I wanted to offer
16 the community a place to shop that focused on a healthy diet that did not rely on the
17 myths promulgated by large corporate grocery stores that rely on industrial farming.

18 4. When Paul and I started Health Zone we were meticulous about educating
19 ourselves on healthy eating and living in order to supply our customers with the most
20 quality foods possible, and through our customer care and quality products Health Zone
21 flourished.

22 5. SPROUTS, like Health Zone, is dedicated to organic and raw foods, and
23 SPROUTS seeks to educate the public on the need for healthy eating, and the dangers of
24 continually relying on processed foods. The corresponding business model has been
25 wildly successful and gained overwhelming public support.

26 6. In July, 2011, customers began asking questions about changing the store
27 name, whether SPROUTS was buying Henry's, whether or not the customer service will
28 change after the merger, and when SPROUTS is closing. These questions were just the

1 beginning of what has become an extremely confusing issue for customers due wholly to
2 the similarity in names between Sprouts Natural Market and Sprouts Farmers Market.

3 7. In October, 2011, I became aware that Henry's Farmers Markets in
4 Temecula were charging customers as Sprouts Farmers Market, and the customer's bank
5 statement showed a Sprouts Farmers Market charge. Customers have called me and
6 expressed confusion regarding SPROUTS' employees fraudulently using customer's
7 credit cards because their bank statements showed "Sprouts" charges, but the customer
8 did not shop at SPROUTS on the date indicated on the statement. Customers have
9 canceled cards and issued fraud alerts with their bank before taking a closer look and
10 noticing the charge was from Sprouts Farmers Market, which they later determined is
11 actually Henry's Farmers Market. This causes confusion and injures SPROUTS'
12 reputation.

13 8. Delivery trucks have been dropping FARMERS' goods off at SPOURTS
14 inadvertently at least once a week for more than six weeks due to the similarity in
15 names. Often times these deliveries are not corrected before the driver leaves and
16 SPROUTS employees expend unnecessary time correcting the mistakes. SPROUTS'
17 deliveries are also mistakenly delivered to FARMERS' Temecula locations due to the
18 similarity in names. SPROUTS also receives bills meant for FARMERS. The bills are
19 addressed to "Sprouts" and are very difficult and time consuming to correct.
20 FARMERS' customers have repeatedly brought FARMERS' gift cards into SPROUTS
21 for redemption, and are confused when they are denied. The customers are confused by
22 SPROUTS' employees' response, and express frustration due to the confusion.
23 SPROUTS receives daily telephone calls inquiring into products or locations actually
24 belonging to FARMERS, and again, customers express frustration due to confusion
25 regarding SPROUTS' employees' responses that the customer has the wrong "Sprouts".

26 9. The confusion is prevelant and it costs SPROUTS' employees time, and
27 SPROUTS money in dealing with all the questions and mistakes related to the similarity
28 in names.

1 10. I filed a fictitious business name on September 25, 2001, for the use of the
2 name Sprouts Natural Market. SPROUTS' new Temecula location at 40458 Winchester
3 Road was the catalyst to what has become a strong business identity.

4 11. Filed concurrently herewith as Exhibit "1" is a true and correct copy of
5 Plaintiff's Fictitious Business Name Application, signed by me. I submitted the
6 application for filing in the County of Riverside.

7 12. Filed concurrently herewith as Exhibits "16" through "35" are declarations
8 of customers I obtained at SPROUTS between September, 2011, and the present.

9 13. Filed concurrently herewith as Exhibit "41" is a true and correct copy of my
10 information page, which is located on my Facebook account that I set-up myself. I
11 printed this page on November 21, 2011. No other person has my password to enter my
12 account and edit my data. For some reason, it appears that Facebook has somehow
13 confused the name of my employer, Sprouts Natural Market, with Sprouts Farmers
14 Market, because my information page identifies my employer as being Sprouts Farmers
15 Market. I have also noticed that other employees of Sprouts Natural Market are
16 erroneously identified as employees of Sprouts Farmers Market on their own Facebook
17 accounts. When clicking on the icon for Sprouts Farmers Market as reflected on Exhibit
18 41 under my "employer," it links to Exhibit 42, which appears to be a page set-up for, or
19 by, Sprouts Farmers Market.

20 I declare under penalty of perjury that the foregoing is true and correct. Executed
21 this 21st day of November, 2011, at Temecula, California.

22
23
24
25 A handwritten signature in blue ink, appearing to read "Linda Watson", is written over a horizontal line.

LINDA WATSON

CERTIFICATE OF SERVICE

I am employed in the county of Riverside, State of California. I am over the age of 18 and not a party to the within action. My business address is 24910 Las Brisas Road, Suite 110, Murrieta, California 92562.

On November 23, 2011, I caused to be served the foregoing documents described below on the following interested parties in this action:

DECLARATION OF LINDA WATSON IN SUPPORT OF PRELIMINARY INJUNCTION

Via **ELECTRONIC CASE FILING**, by which listed counsel will automatically receive e-mail notices with links to true and correct copies of said documents:

- **Franklin D. Ubell**
ubellf@gtlaw.com
- **Lindsay A. Ayers**
ayerslf@gtlaw.com
- **Frank G. Long**
longf@gtlaw.com

BY MAIL

I deposited such envelope in the mail at or near Murrieta, California.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at or near Murrieta, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on November 23, 2011, at Murrieta, California.

(Federal) I declare that I am a member of the Bar of this Court at whose direction the service was made.

s/Robert H. Tyler
Email: rtyler@tylermonk.net

1 TYLER & MONK, LLP
Robert H. Tyler, State Bar No. 179572
2 Jennifer L. Monk, State Bar No. 245512
3 24910 Las Brisas Road, Suite 110
Murrieta, California 92562
4 Tel: (951) 600-2733
5 Fax: (951) 600-4996
6 rtyler@tylermonk.net
jmonk@tylermonk.net

7 Attorneys for Defendant and Counterclaimant,
8 **SPROUTS NATURAL MARKET, INC.**

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
11

12 SFM, LLC, a Delaware limited liability company,

13 Plaintiff,

14 vs.

15 SPROUTS NATURAL MARKET INC., a
16 California corporation,

17 Defendant.
18

19 SPROUTS NATURAL MARKET, INC., a
20 California corporation,

21 Counterclaimant,

22 vs.

23 SFM, LLC, a Delaware limited liability company;
24 SPROUTS FARMERS MARKET, LLC, a Arizona
25 Limited Liability Company; and PREMIER
26 GROCERY, INC., a California corporation,

27 Counterdefendant and
28 Cross-Defendants, respectively.

///

Case No. 11-CV-2640-JAH NLS

Judicial Officer: Hon. John A. Houston

Courtroom: 11

Hearing

Date: January 30, 2012

Time: 2:30 p.m.

**DECLARATION OF PAUL COOK IN
SUPPORT OF PRELIMINARY
INJUNCTION**

1 I, PAUL COOK, declare as follows:

2 1. I have personal knowledge of the matters stated herein, and if called to
3 testify thereto, I would and could do so competently.

4 2. In the early 1980's my mother, Linda Watson, was diagnosed with
5 Environmental Illness. I drove her to San Diego for detoxification daily as part of her
6 required treatment.

7 3. I had always been interested in healthy living and wellness as a supervisor
8 at Stater Bros. Markets, but upon my mother's diagnosis I felt compelled to take action.
9 In 1989, Linda and I opened Health Zone Natural Foods, LLC., ("Health Zone"). Health
10 Zone opened a location at 41915 Motor Car Parkway, Suite A, Temecula, California
11 92591, a grocery store dedicated to healthy eating through organic and raw foods as an
12 alternative for the community to corporate grocers' processed foods. I wanted the
13 community to have somewhere to shop that did not focus on industrial farming. Healthy
14 living became my life mission.

15 4. When Linda and I started Health Zone we were meticulous about educating
16 ourselves on healthy eating and living in order to supply our customers with the most
17 quality foods possible, and through our customer care and quality products Health Zone
18 flourished.

19 5. Health Zone grew substantially and in 2001 we needed to move into a
20 larger facility. At that point, Linda and I reinvented Health Zone's image by changing
21 the name to Sprouts Natural Market ("SPROUTS").

22 6. On September 25, 2001, SPROUTS filed a fictitious business name for the
23 use of the name Sprouts Natural Market. SPROUTS' new Temecula location at 40458
24 Winchester Road and the name change served as the catalyst to what has become a
25 strong business identity.

26 7. On January 16, 2002, I filed an application for a temporary sign permit with
27 the City of Temecula, which indicated Health Zone would be moving and changing its
28 name to Sprouts Natural Market. The sign was created to display on the new location

1 pending the grand opening stating the following, "Health Zone is Sprouting a New
2 Store: Sprouts Natural Market." Signs and advertisements had already been created and
3 displayed at Health Zone in late 2001.

4 8. SPROUTS is dedicated to organic and raw foods, and SPROUTS seeks to
5 educate the public on the need for healthy eating, and the dangers of continually relying
6 on processed foods. SPROUTS maintains a high level of quality control by purchasing
7 products close to the source. This enables me to hand pick sellers based on their
8 individualized levels of quality. This business model has been wildly successful and
9 gained overwhelming public support.

10 9. In late 2001, two men, Scott Wing and Kevin Easler, entered the soon to be
11 SPROUTS location located at 40458 Winchester Road, Temecula, Ca, and introduced
12 themselves. The building was being renovated and construction was in full swing
13 preparing for SPROUTS' grand opening. The only way the men could have known
14 about the location was the sign advertising the new location at Health Zone. The two
15 men clearly saw the sign indicating our use of the name Sprouts Natural Market.
16 Mr. Wing and Mr. Easler walked around in an investigatory manner taking pictures of
17 SPROUTS' displays.

18 10. As a result of the merger with Henry's Farmers Market in early 2011,
19 FARMERS began establishing California locations.

20 11. Seth Brown contacted me as a representative of FARMERS and expressed
21 FARMERS interest in the Temecula region, and inquired into buying SPROUTS' name.
22 SPROUTS, however, was not for sale. SPROUTS subsequently retained Morland C.
23 Fischer to protect SPROUTS' name due to FARMERS' presumed intent to compete in
24 the region.

25 12. Mr. Fischer sent a letter to FARMERS dated February 11, 2011. The letter
26 informed FARMERS that SPROUTS filed its fictitious business name on September 25,
27 2001, with the County of Riverside, and began advertising approximately the same time.
28 Mr. Fischer further informed FARMERS that SPROUTS had invested energy in the

1 surrounding communities of Hemet, Moreno Valley, Corona, Sun City, Fallbrook,
2 Bonsal and Murrieta.

3 13. Much of the existing confusion comes as a result of FARMERS'
4 advertisements. I have read FARMERS advertisements in the local newspaper, heard
5 FARMERS' radio advertisements, and seen FARMERS' internet ads. Meanwhile,
6 SPROUTS advertises in the local newspaper, door hangers and internet advertisements.
7 SPROUTS cannot economically compete with FARMERS robust advertising. However,
8 print media is probably the most cost effective and common source of advertising for our
9 store and most grocers. Further, SPROUTS and FARMERS rely heavily on the internet
10 to market new products and locations. As more customers are exposed to FARMERS'
11 advertisements, increased indication of customer confusion is evident in customer
12 questions, deliveries, mail and phone calls.

13 14. I have experienced and personally evidenced massive amounts of confusion
14 relating to the similarity of names between Sprouts Natural Market, and Sprouts Farmers
15 Market.

16 15. Filed concurrently herewith as Exhibit "2" is a true and correct copy of the
17 Plaintiff's Sign Permit filed with the City of Temecula. I personally filed this sign
18 permit, and my signature appears on the bottom of the application.

19 16. Filed concurrently herewith as Exhibit "5" and Exhibit "6" are true and
20 correct copies of FARMERS locations in Oceanside and Riverside, respectively, taken
21 by me, on or about September 20, 2011.

22 17. Filed concurrently herewith as Exhibit "9" is a true and correct copy of a
23 Trademarkia search result for "Sprouts Farmers Market". The url of the website visited
24 is <http://www.trademarkia.com/sprouts-farmers-market-76545302.html> and was last
25 visited January 24, 2011.

26 18. Filed concurrently herewith as Exhibit "10" is a true and correct copy of
27 products purchased at Henry's Farmers Market, which bear the brand "Sprouts". I
28 personally purchased these products at Henry's Farmers Market.

1 19. Filed concurrently herewith as Exhibit "11" is a true and correct copy of a
2 letter prepared by Mr. Fischer, an attorney retained by SPROUTS in early 2011, to
3 FARMERS. I personally instructed Mr. Fischer to write the letter, I personally read the
4 letter, and I have personal knowledge of the letters contents.

5 20. Filed concurrently herewith as Exhibit "12" are true and correct copies of
6 invoices and shipping documents I received that were mistakenly delivered to
7 SPROUTS, but should have been delivered to FARMERS.

8 21. Filed concurrently herewith as Exhibit "13" are true and correct copies of
9 FARMERS advertisements I have acquired in the Temecula area between June, 2011,
10 and the present.

11 22. Filed concurrently herewith as Exhibit "14" are true and correct copies of
12 FARMERS' website setting forth FARMERS' intent on changing the Temecula Henry's
13 Farmers Markets to FARMERS as it appears on their official website at
14 <http://sprouts.com/home.php>. I personally visited the website and printed the website on
15 July 21, 2011.

16 23. Filed concurrently herewith as Exhibit "15" is a true and correct copy of an
17 internet news article publicizing FARMERS' store I read at <http://radiosophie.com>. I
18 printed the article on September 16, 2011.

19 24. Filed concurrently herewith as Exhibit "36" is a true and correct copy of a
20 photograph I personally took of the front of SPROUTS in November, 2011.

21 I declare under penalty of perjury that the foregoing is true and correct. Executed
22 this 21st day of November, at Temecula, California.

23
24 
25 PAUL COOK
26
27
28

CERTIFICATE OF SERVICE

I am employed in the county of Riverside, State of California. I am over the age of 18 and not a party to the within action. My business address is 24910 Las Brisas Road, Suite 110, Murrieta, California 92562.

On November 23, 2011, I caused to be served the foregoing documents described below on the following interested parties in this action:

DECLARATION OF PAUL COOK IN SUPPORT OF PRELIMINARY INJUNCTION

Via **ELECTRONIC CASE FILING**, by which listed counsel will automatically receive e-mail notices with links to true and correct copies of said documents:

- **Franklin D. Ubell**
ubellf@gtlaw.com
- **Lindsay A. Ayers**
ayerslf@gtlaw.com
- **Frank G. Long**
longf@gtlaw.com

BY MAIL

I deposited such envelope in the mail at or near Murrieta, California.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at or near Murrieta, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on November 23, 2011, at Murrieta, California.

(Federal) I declare that I am a member of the Bar of this Court at whose direction the service was made.

s/Robert H. Tyler
Email: rtyler@tylermonk.net

1 TYLER & MONK, LLP
Robert H. Tyler, State Bar No. 179572
2 Jennifer L. Monk, State Bar No. 245512
3 24910 Las Brisas Road, Suite 110
Murrieta, California 92562
4 Tel: (951) 600-2733
5 Fax: (951) 600-4996
6 rtyler@tylermonk.net
jmonk@tylermonk.net

7 Attorneys for Defendant and Counterclaimant,
8 **SPROUTS NATURAL MARKET, INC.**

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11
12 SFM, LLC, a Delaware limited liability company,

13 Plaintiff,

14 vs.

15 SPROUTS NATURAL MARKET INC., a
16 California corporation,

17 Defendant.

18
19 SPROUTS NATURAL MARKET, INC., a
20 California corporation,

21 Counterclaimant,

22 vs.

23 SFM, LLC, a Delaware limited liability company;
24 SPROUTS FARMERS MARKET, LLC, a Arizona
25 Limited Liability Company; and PREMIER
26 GROCERY, INC., a California corporation,

27 Counterdefendant and
28 Cross-Defendants, respectively.

///

Case No. 11-CV-2640-JAH NLS

Judicial Officer: Hon. John A. Houston

Courtroom: 11

Hearing

Date: January 30, 2012

Time: 2:30 p.m.

**EXHIBITS IN SUPPORT OF
PRELIMINARY INJUNCTION**

- 1 Exhibit 1. Plaintiff's Fictitious Business Filing
- 2 Exhibit 2. Plaintiff's Sign Permit
- 3 Exhibit 3. Photographs of Sprouts Farmers Market's Corona
- 4 Exhibit 4. Photographs of Sprouts Farmers Market's Hemet
- 5 Exhibit 5. Photographs of Sprouts Farmers Market's Oceanside
- 6 Exhibit 6. Photographs of Sprouts Farmers Market's Riverside
- 7 Exhibit 7. Sprouts Farmers Market Management
- 8 Exhibit 8. History of Sprouts Farmers Market
- 9 Exhibit 9. Sprouts Farmers Market Trademark Application
- 10 Exhibit 10. Photocopy of Sprouts Farmers Market's Private Label
- 11 Exhibit 11. Letter From Fischer to Sprouts Farmers Market
- 12 Exhibit 12. FARMERS' Invoices Delivered to SPROUTS
- 13 Exhibit 13. Sprouts Farmers Market Advertisements
- 14 Exhibit 14. Advertising Henry's of Temecula Change to Sprouts
- 15 Exhibit 15. Article For Sprouts Farmers Market
- 16 Exhibit 16. Declaration of John Elbers
- 17 Exhibit 17. Declaration of S.C. Rustin
- 18 Exhibit 18. Declaration of Andrea Peterson
- 19 Exhibit 19. Declaration of Patricia J. Arnett
- 20 Exhibit 20. Declaration of Lynda Kellogg
- 21 Exhibit 21. Declaration of Donovan Sun Contreras
- 22 Exhibit 22. Declaration of Natalie Phillips
- 23 Exhibit 23. Declaration of Sharin Sarfaty
- 24 Exhibit 24. Declaration of Jacqueline Nichols
- 25 Exhibit 25. Declaration of Beverly Youngren
- 26 Exhibit 26. Declaration of Johanna Spencer
- 27 Exhibit 27. Declaration of Ari Flanagin
- 28 Exhibit 28. Declaration of Karen Hintze

- 1 Exhibit 29. Declaration of Charity Fava
2 Exhibit 30. Declaration of Michele Latzke
3 Exhibit 31. Declaration of Kathy Sutton
4 Exhibit 32. Declaration of Valerie P Russo
5 Exhibit 33. Declaration of Kathy L Wolfe
6 Exhibit 34. Declaration of Sharyl Nowicki
7 Exhibit 35. Declaration of Richard Myatt
8 Exhibit 36. Photograph of Sprouts Natural Market
9 Exhibit 37. Cease and desist letter from Robert H. Tyler to Doug Sanders regarding
10 Exhibit 38. Declaration of Carol Marcon
11 Exhibit 39. Declaration of R. B. Berry
12 Exhibit 40. Declaration of Phyllis Buck
13 Exhibit 41. Facebook page of Linda Ann Watson
14 Exhibit 42. Facebook page for Sprouts Farmers Market
15 Exhibit 43. Facebook page for Charles Cook

16
17 TYLER & MONK, LLP

18
19
20 Date: November 23, 2011

By: s/Robert H. Tyler

21 Robert H. Tyler
22 Attorneys for Defendant and
23 Counterclaimant, **SPROUTS NATURAL**
24 **MARKET, INC.**
25
26
27
28

Tab 2



Registered Name

Information Search

Generated by TnT Names Search Version 3.11

[Instructions](#)

General Information

File ID	550884
Description	Trade Name
Status	Active
Name	SPROUTS FARMERS MARKETS
Address 1	11811 N TATUM BLVD SUITE 2400
City	PHOENIX
State	AZ
ZIP	85028-
Phone	480-814-8016
Business Type	RETAIL GROCERY OPERATION
Domestic Begin Date	5/29/2012
Registered Date	7/12/2012

Agent/Owner Information

Agent ID	Type	Fullname	Address	City	State	ZIP	Phone
1162144	Owner	SUNFLOWER FARMERS MARKETS, LLC	11811 N TATUM BLVD SUITE 2400	PHOENIX	AZ	85028-	480-814-8016

Registration Information

Received	Amended	Assigned	Expiration	Cancelled	Revoked
7/12/2012			7/12/2017		

Correspondence History

Description	Date	Printed	Filmed	Loc. No.	Page No.	Pages
Application	7/12/2012	7/12/2012 12:54:14 PM				2

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Please email your comments or questions regarding this system to trades@azsos.gov. We appreciate any

Tab 3

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GREENBERG TRAUIG, LLP
GREGORY F. HURLEY (SBN 126791)
RICHARD H. HIKIDA (SBN 196149)
ALANA R. CHO (SBN 254730)
3161 Michelson Drive, Suite 1000
Irvine, California 92612
Telephone: (949) 732-6500
Facsimile: (949) 732-6501
E-mail: hurleyg@gtlaw.com; hikidar@gtlaw.com;
choa@gtlaw.com

Attorneys for Defendant
SPROUTS FARMERS MARKET, LLC

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

OUTERBRIDGE ACCESS
ASSOCIATION, SUING ON BEHALF OF
DIANE CROSS; and DIANE CROSS, An
Individual,

Plaintiffs,

v.

S. B. RESTAURANT CO. d.b.a.
ELEPHANT BAR; SPROUTS FARMERS
MARKET, LLC d.b.a. SPROUTS
FARMERS MARKET; SPORT CHALET,
INC. d.b.a. SPORTS CHALET #67;
LOEHMANN'S, INC. d.b.a.
LOEHMANN'S; KYUNG AH PARK d.b.a.
FASHION 5; GRAND PLAZA, LLC; AND
DOES 1 THROUGH 10, Inclusive,

Defendants.

CASE NO. 08 CV 0121 JM CAB

**DEFENDANT SPROUTS FARMERS
MARKET, LLC 'S FRCP 7.1
DISCLOSURE STATEMENT AND
NOTICE OF PARTY WITH FINANCIAL
INTEREST**

[Local Rule 40.2]

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Defendant SPROUTS FARMERS MARKET, LLC hereby submits the following Disclosure Statement pursuant to Federal Rule of Civil Procedure 7.1 and Notice of Party with Financial Interest pursuant to Local Rule 40.2:

The parent corporation of defendant Sprouts Farmers Market, LLC (“Sprouts”) is Premier Grocery, Inc., a non-publicly held California corporation. There is no publicly held corporation that owns 10% or more of Sprouts’ stock.

DATED: March 5, 2008

GREENBERG TRAURIG, LLP

By /s/ Richard H. Hikida
Richard H. Hikida
E-mail: hikidar@gtlaw.com

Attorneys for Defendant
SPROUTS FARMERS MARKET, LLC d.b.a. SPROUTS
FARMERS MARKET

1 **PROOF OF SERVICE**
 2 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

3 I am employed in the aforesaid county, State of California; I am over the age of 18 years and not
 4 a party to the within action; my business address is **3161 Michelson Drive, Suite 1000, Irvine, CA 92612.**

5 On March 5, 2008, I served the **DEFENDANT SPROUTS FARMERS MARKET, LLC 'S**
 6 **FRCP 7.1 DISCLOSURE STATEMENT AND NOTICE OF PARTY WITH FINANCIAL**
 7 **INTEREST** with the Clerk of the United States District Court for the Southern District of California,
 8 using the CM/ECF System. The Court's CM/ECF System will send an email notification of the
 9 foregoing filing to the following parties and counsel of record who are registered with the Court's
 10 CM/ECF System:

8 Theodore A. Pinnock, Esq. 9 David C. Wakefield, Esq. 10 Michelle L. Wakefield, Esq. 11 Pinnock & Wakefield, A.P.C. 12 3033 Fifth Avenue, Suite 410 San Diego, CA 92103 Tel: 619-858-3671 Fax: 619-858-3646	Counsel for Plaintiff Outerbridge Access Association, suing on behalf of Diane Cross; and Diane Cross, an individual.
13 Russell A. Franklin, Esq. 14 John H. Horwitz, Esq. 15 Schaffer, Lax, McNaughton & Chen 16 515 S. Figueroa St., Ste. 1400 Los Angeles, CA 90071 Tel: 213-337-1000 Fax: 213-337-1010	Counsel for Defendant Sport Chalet, Inc.
17 James O. Eiler 18 Gary L. Angotti 19 Tharpe and Howell 20 600 West Santa Ana Blvd., Ste. 705 Santa Ana, CA 92701 Tel: 714-437-4900 Fax: 714-437-7997	Counsel for S. B Restaurant Co. d.b.a. Elephant Bar Restaurant, erroneously sued and served as S.B. Restaurant Co. d.b.a. Elephant Bar

21 **NOTICE OF ELECTRONIC FILING:**

22 On all parties identified for Notice of Electronic Filing generated by the Court's CM/ECF system
 23 under the above-referenced case caption and number on this date.

24 **(FEDERAL)**

I declare under penalty of perjury that the foregoing is true and correct,
 and that I am employed at the office of a member of the bar of this Court
 at whose direction the service was made.

25 Executed on March 5, 2008, at Irvine, California.

26 /s/ Richard H. Hikida
 27 Signature

Tab 4

<i>Attorney or Party without Attorney:</i> Steven J. Nataupsky, Esq. Knobbe Martens Olson & Bear LLP 12790 El Camino Real, Suite 100 San Diego, CA 92130 Telephone No: 858-836-9000 FAX No: 858-836-9001			<i>For Court Use Only</i>		
<i>Attorney for:</i> Plaintiff			Ref. No. or File No.:		
<i>Insert name of Court, and Judicial District and Branch Court:</i> United States District Court - Southern District Of California					
Plaintiff: Youngevity International, Inc. Defendant: Renew Life Formulas, Inc., et al.					
AFFIDAVIT OF SERVICE Summons/Complaint		Hearing Date:	Time:	Dept/Div:	Case Number: 14CV01605AJBKSC

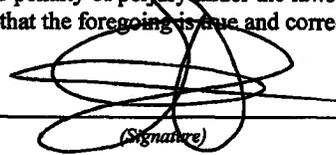
1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Summons in a Civil Action; Complaint; Civil Cover Sheet; Youngevity International, Inc.'s Notice of Party with Financial Interest; Notice of Related Cases
3. a. Party served: Sunflower Farmers Markets, LLC dba Sprouts Farmers Markets, a Delaware limited liability company
 b. Person served: Susan Rhea, Person Authorized to Accept Service, Caucasian, Female, 45 Years Old, Brown Hair.
4. Address where the party was served: Corporation Service Company
 2711 Centerville Road, Suite 400
 Wilmington, DE 19808
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Wed., Jul. 09, 2014 (2) at: 2:36PM

7. Person Who Served Papers:
 - a. Chris Jones
 - b. Class Action Research & Litigation
 P O Box 740
 Penryn, CA 95663
 - c. (916) 663-2562, FAX (916) 663-4955

Fee for Service:
 I Declare under penalty of perjury under the laws of the State of DELAWARE that the foregoing is true and correct.

7-14-14

(Date)

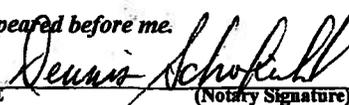


(Signature)

8. STATE OF DELAWARE, COUNTY OF New Castle
 Subscribed and sworn to (or affirmed) before me on this 14 day of July 2014 by Chris Jones
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

DENNIS SCHOFIELD
 NOTARY PUBLIC
 STATE OF DELAWARE
 My commission expires Nov. 3, 2015

AFFIDAVIT OF SERVICE
Summons/Complaint



(Notary Signature)

stat.143636

1 Steven J. Nataupsky (SBN: 155,913)
Steven.Nataupsky@knobbe.com
2 Boris Zelkind (SBN: 214,014)
Boris.Zelkind@knobbe.com
3 David P. Kujawa (SBN: 271,976)
David.Kujawa@knobbe.com
4 S. Emily Lee (SBN 292,402)
Emily.Lee@knobbe.com
5 KNOBBE, MARTENS, OLSON & BEAR, LLP
12790 El Camino Real
6 San Diego, CA 92130
Phone: (858) 707-4000
7 Facsimile: (858) 707-4001

8 Attorneys for Plaintiff
YOUNGEVITY INTERNATIONAL, INC.

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

12
13
14 YOUNGEVITY INTERNATIONAL,
15 INC., a Delaware corporation,

16 Plaintiff,

17 v.

18 RENEW LIFE FORMULAS, INC., a
Florida corporation, KEIL'S FOOD
19 STORES, a California corporation,
SUPER JR., INC. dba KRISP
20 BEVERAGES AND NATURAL
FOODS, a California corporation,
21 SUNFLOWER FARMERS
MARKETS, LLC dba SPROUTS
22 FARMERS MARKETS, a Delaware
limited liability company, and
23 PHARMACA INTEGRATIVE
PHARMACY, INC., a Delaware
24 corporation,

25 Defendants.

Civil Action No. '14CV1605 AJB KSC

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, FALSE
DESIGNATION OF ORIGIN,
UNFAIR COMPETITION AND
DECLARATORY JUDGMENT**

DEMAND FOR JURY TRIAL

26 Plaintiff Youngevity International, Inc. ("Plaintiff" or "Youngevity") by
27 and through its undersigned attorneys, files this Complaint against Defendant
28 Renew Life Formulas, Inc. ("Renew Life"), Defendant Keil's Food Stores

1 (“Keil’s”), Defendant Super Jr., Inc. dba Krisp Beverages and Natural Foods
2 (“Krisp”) Defendant Sunflower Farmers Markets, LLC dba Sprouts Farmers
3 Markets (“Sprouts”), and Defendant Pharmaca Integrative Pharmacy, Inc.
4 (“Pharmaca”), (collectively “Defendants”), and alleges as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This is an action for (a) declaratory judgment of priority and
7 noninfringement pursuant to 28 U.S.C. §§ 2201 and 2202; (b) trademark
8 infringement arising under the common law of the state of California (c) false
9 designation of origin under 15 U.S.C. § 1125(a); (d) unfair competition arising
10 under California Business & Professions Code § 17200 *et seq.*; and (e) unfair
11 competition arising under the common law of the State of California.

12 2. This Court has original subject matter jurisdiction over the claims
13 that relate to trademark infringement pursuant to 15 U.S.C. §§ 1116 and
14 1121(a), as these claims arise under the laws of the United States. This Court
15 has original subject matter jurisdiction over the claims for declaratory judgment
16 pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201(a), 2201(b), and 2202 and 15
17 U.S.C. §§ 1116 and 1121(a) based on an actual controversy between
18 Youngevity and Defendants, arising under the Trademark laws of the United
19 States, 15 U.S.C. § 1051 *et seq.* This Court has supplemental jurisdiction over
20 the claims in this Complaint which arise under state statutory and common law
21 pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to
22 the federal claims that they form part of the same case or controversy and derive
23 from a common nucleus of operative facts.

24 3. This Court has personal jurisdiction over Defendants because they
25 have continuous, systematic, and substantial presence within this judicial district
26 and within California. By selling and offering for sale infringing products
27 and/or causing infringing products to be imported, sold, and/or offered for sale
28 in this judicial district, and by committing acts of false designation of origin,

1 unfair competition, and trademark infringement in this judicial district,
2 including but not limited to selling infringing products indirectly and directly to
3 consumers and/or retailers in this district and selling into the stream of
4 commerce knowing and intending that such products would be sold in
5 California and within this district, Defendants' acts form a substantial part of the
6 events or omissions giving rise to Youngevity's claims. Moreover, Defendants
7 Keil's, Krisp, Sprouts, and Pharmaca, have acted in concert with Defendant
8 Renew Life to sell and/or offer for sale infringing products in California and this
9 district.

10 4. Venue is proper in this judicial district pursuant to 28 U.S.C.
11 §§ 1391(b) and (c), as a substantial portion of the events herein took place in
12 this judicial district.

13 **II. THE PARTIES**

14 5. Plaintiff Youngevity is a corporation organized and existing under
15 the laws of the State of Delaware, having a principal place of business at 2400
16 Boswell Rd., Chula Vista, California 91914.

17 6. Upon information and belief, Defendant Renew Life is a
18 corporation organized and existing under the laws of the State of Florida, having
19 a principal place of business at 198 Alt. U.S. 19 South, Palm Harbor, Florida
20 34683. Renew Life is subject to the personal jurisdiction of this Court by virtue
21 of its substantial contacts with California, including its participation in the acts
22 and events occurring in this judicial district described herein.

23 7. Upon information and belief Defendant Keil's is a California
24 corporation organized and existing under the laws of the State of California,
25 having a principal place of business at 3015 Clairemont Dr. San Diego,
26 California 92117. Keil's is subject to the personal jurisdiction of this Court by
27 virtue of its substantial contacts with California, including its participation in the
28 acts and events occurring in this judicial district described herein.

1 8. Upon information and belief Defendant Krisp is a California
2 corporation organized and existing under the laws of the State of California,
3 having a principal place of business at 1036 7th Ave. San Diego, California
4 92101. Krisp is subject to the personal jurisdiction of this Court by virtue of its
5 substantial contacts with California, including its participation in the acts and
6 events occurring in this judicial district described herein.

7 9. Upon information and belief Defendant Sprouts is a Delaware
8 limited liability company organized and existing under the laws of the State of
9 Delaware, having a principal place of business at 11811 N Tatum Blvd. Suite
10 2400, Phoenix, Arizona 85028. Sprouts is subject to the personal jurisdiction of
11 this Court by virtue of its substantial contacts with California, including its
12 participation in the acts and events occurring in this judicial district described
13 herein.

14 10. Upon information and belief Defendant Pharmaca is a Delaware
15 corporation organized and existing under the laws of the State of Delaware,
16 having a principal place of business at 4940 Pearl East Circle, Suite 301,
17 Boulder, Colorado 80301. Pharmaca is subject to the personal jurisdiction of
18 this Court by virtue of its substantial contacts with California, including its
19 participation in the acts and events occurring in this judicial district described
20 herein.

21 11. Defendants are subject to the general and specific jurisdiction of
22 this Court by virtue of their substantial contacts with California, including the
23 participation in the acts and events occurring in this judicial district described
24 herein.

25 **III. COMMON FACTS FOR ALL CLAIMS FOR RELIEF**

26 **A. Youngevity's Business and Trademarks**

27 12. Since its founding in 1997, Youngevity (formally known as
28 American Longevity) has been providing quality, innovative health care and

Tab 5

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	Intellectual Property Security Release Agreement		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Jefferies Finance LLC		04/23/2013	LIMITED LIABILITY COMPANY: DELAWARE
RECEIVING PARTY DATA			
Name:	Sunflower Farmers Markets, LLC		
Street Address:	11811 N. Tatum Blvd.		
Internal Address:	Suite 2400		
City:	Phoenix		
State/Country:	ARIZONA		
Postal Code:	85028		
Entity Type:	LIMITED LIABILITY COMPANY: DELAWARE		
PROPERTY NUMBERS Total: 6			
Property Type	Number	Word Mark	
Registration Number:	3761801	NEWFLOWER FARMERS MARKET	
Registration Number:	3157596	SUNFLOWER MARKET	
Registration Number:	2891747	SERIOUS FOOD...SILLY PRICES	
Registration Number:	2827865	SUNFLOWER	
Serial Number:	85249875	SUNFLOWER FARMERS MARKET	
Registration Number:	4059153	SUNFLOWER FARMERS MARKET	
CORRESPONDENCE DATA			
Fax Number:	8004947512		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	2023704761		
Email:	tfahey@nationalcorp.com		
Correspondent Name:	Thomas Fahey		
Address Line 1:	1100 G Street NW, Suite 420		

900253357

TRADEMARK
 REEL: 005013 FRAME: 0375

OP \$165.00 3761801

Address Line 2: National Corporate Research, Ltd.
Address Line 4: Washington, DISTRICT OF COLUMBIA 20005

ATTORNEY DOCKET NUMBER:	F144427
NAME OF SUBMITTER:	Rick Harrison
Signature:	/Rick Harrison/
Date:	04/24/2013

Total Attachments: 3
source=Trademark.Release.Sunflower Farmers.sent for filing#page2.tif
source=Trademark.Release.Sunflower Farmers.sent for filing#page3.tif
source=Trademark.Release.Sunflower Farmers.sent for filing#page4.tif

Tab 6

1 JOHN C. MILLER, JR., #143323
MILLER LAW, INC.
2 A Professional Law Corporation
MAILING ADDRESS:
3 Post Office Box 700
Folsom, California 95763-0700
4 Phone: (916) 351-1200
Fax: (916) 351-1244
5 Email: jmiller@millerlawinc.com

6 Attorneys for Plaintiffs

7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 SAMANTHA WENZL,
12 Plaintiff,

13 v.

14 CARGILL MEAT SOLUTIONS CORP.;
15 SUNFLOWER FARMERS MARKET;
16 SPROUTS FARMERS MARKETS, LLC;
and DOES 1 through 500,
17 Defendants.

CASE NO.

COMPLAINT

- 1. **Strict Products Liability**
- 2. **Strict Products Liability: Failure to Warn**
- 3. **Negligence**
- 4. **Negligence Per Se**
- 5. **Breach of Warranty**

18 COMES NOW Plaintiff SAMANTHA WENZL, ("Plaintiff"), who alleges as follows:

19 I.

20 PARTIES

21 1. Plaintiff is at all times mentioned herein was a resident of the State of California,
22 County of Placer.

23 2. Plaintiff is informed and believes and thereon alleges that Defendants CARGILL
24 MEAT SOLUTIONS CORP. and DOES 1 - 100, are, or at all relevant times herein were, domestic
25 and/or foreign corporations or business entities of unknown type, doing business in the State of
26 California. In particular, Plaintiff alleges that Defendant CARGILL MEAT SOLUTIONS CORP. is
27 a foreign corporation organized and existing under the laws of the State of Delaware, and registered
28 as a corporation in the State of Kansas. Cargill's corporate headquarters is located in Wichita, Kansas.

MILLER LAW, INC.
Post Office Box 700
Folsom, California 95763-0700
(916) 351-1200

1 Defendants CARGILL MEAT SOLUTIONS CORP. and DOES 1 - 100 are hereinafter referred to as
2 the "MANUFACTURER DEFENDANTS". At all relevant times to this action, the
3 MANUFACTURER DEFENDANTS carried on their ordinary course of business to manufacture,
4 distribute, and sell turkey products to retail and wholesale food services nationwide, including in the
5 State of California. At all times relevant to the allegations contained in this Complaint, the
6 MANUFACTURER DEFENDANTS conducted business in the State of California, sufficient to
7 subject them to the personal jurisdiction of this Court.

8 3. Plaintiff is informed and believes and thereon alleges that Defendants SUNFLOWER
9 FARMERS MARKET, SPROUTS FARMERS MARKETS, LLC and DOES 101 - 200, are, or at all
10 relevant times herein were, business entities of unknown type doing business in the State of California.
11 These Defendants have corporate headquarters in Phoenix, Arizona. Defendants SUNFLOWER
12 FARMERS MARKET, SPROUTS FARMERS MARKETS, LLC and DOES 101 - 200 are hereinafter
13 referred to as the "RETAILER DEFENDANTS". At all relevant times the RETAILER
14 DEFENDANTS conducted business in the State of California, sufficient to subject them to the
15 personal jurisdiction of this Court.

16 4. Plaintiff is informed and believes, and thereon alleges that the Defendants, and each
17 of them, designed, manufactured, compounded, tested or failed the test, inspected or failed to inspect,
18 packaged, labeled, fabricated, analyzed, distributed, serviced, merchandise, recommended, advertised,
19 promoted, marketed, and sold ground turkey products, including the defective ground turkey at issue
20 in this matter (hereinafter, the "Contaminated Turkey") to members of the public, including Plaintiff
21 herein.

22 II.

23 JURISDICTION AND VENUE

24 5. This Court is vested with jurisdiction of this action pursuant to 28 U.S.C. §1332 (a).
25 The matter in controversy exceeds the sum or value of \$75,000, and is between citizens of different
26 states.

27 6. This Court is vested with venue of this action pursuant to 28 U.S.C. §1391 (a) (1) and
28 (2) because the Defendants reside within this district, and because a substantial part of the events or

1 omissions giving rise to the claim occurred within the district.

2 **III.**

3 **OPERATIVE FACTUAL OVERVIEW**

4 7. On July 29, 2011, the U.S. Department of Agriculture's (USDA) Food Safety
5 Inspection Service (FSIS) announced that ground turkey contaminated with Salmonella Heidelberg
6 was the source of a Salmonella outbreak that at the time had sickened at least 78 people in 26 states,
7 including a California resident who died.

8 8. As of August 11, 2011, a total of 107 persons infected with the Salmonella had been
9 reported from 31 states between February 27 and August 9, 2011. The number of ill persons identified
10 in each state is as follows: Alabama (1), Arkansas (1), Arizona (3), California (6), Colorado (2),
11 Georgia (2), Illinois (13), Indiana (1), Iowa (2), Kansas (1), Kentucky (2), Louisiana (1),
12 Massachusetts (3), Maryland (1), Michigan (12), Minnesota (2), Mississippi (1), Missouri (4),
13 Nebraska (2), Nevada (1), New York (2), North Carolina (3), Ohio (10), Oklahoma (1), Oregon (1),
14 Pennsylvania (5), South Dakota (3), Tennessee (2), Texas (14), Utah (1), and Wisconsin (4).

15 9. On August 3, 2011, Cargill recalled 35,709,675 pounds of fresh and frozen ground
16 turkey products produced at the company's Springdale, Arkansas, facility from February 20, 2011,
17 through August 2, 2011, due to possible contamination with Salmonella.

18 10. A government agency called NARMS (National Antimicrobial Resistance Monitoring
19 System), which tracks antibiotic-resistant pathogens, detected Salmonella in retail ground turkey
20 samples produced at Cargill's Springdale, Arkansas facility on at least five (5) occasions between
21 March 7 and June 27, 2011.

22 11. Further, Salmonella was also detected at Cargill's Springdale, Arkansas plant—i.e. the
23 plant where the contaminated turkey was produced that caused the outbreak—on multiple occasions
24 in 2010.

25 12. The MANUFACTURER DEFENDANTS have a history of recalls and association with
26 food borne illness outbreaks:

- 27 • 1993 - Cargill supplied meat to Northwest Sizzler restaurants that was implicated in
28 an outbreak of E. coli 0157:H7 infection, involving 39 confirmed and 54 probable

Tab 7

D-62
Michael J. Stern

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Attorneys for Plaintiff
Erick Moran, an individual

10005
90405

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAY 10 2011

John A. Clark, Executive Officer/Clerk
Mary Flores, Deputy

SEE WANTED PENDING
COURT REPORTERS (CPC 885)
PER ORDER DATED
AMOUNT RECOVERABLE PURSUANT
STO 88511.5 GO § 395
PLUS A ONE TIME ADMINISTRATIVE FEE UPON JUDGMENT
IF THE PARTY BECOMES A JUDGMENT CREDITOR.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT
UNLIMITED JURISDICTION

ERICK MORAN, an individual;

Plaintiff,

vs.

SPROUTS FARMERS MARKETS, LLC, an
Arizona limited liability company, and DOES 1
through 20, inclusive,

Defendants.

Case No.:

BC 461 22 9

COMPLAINT FOR DAMAGES FOR:

- (1) Denial of Access to Full and Equal Accommodations, Advantages, Facilities, Privileges and/or Services in Violation of California Civil Code §51, et seq. (The Unruh Civil Rights Act);

Plaintiff, ERICK MORAN, an individual ("MORAN") alleges:

GENERAL ALLEGATIONS

1. Plaintiff MORAN is and at all times mentioned in this complaint was, a resident of Los Angeles County, State of California.

COMPLAINT OF PLAINTIFF ERICK MORAN

14

1 2. Plaintiff MORAN is a "physically handicapped person", a "physically disabled person",
2 and a "person with physical disabilities" (hereinafter the terms "physically disabled", "physically
3 handicapped", and "person with physical disabilities" are used interchangeably, as these words have
4 similar or identical common usage and legal meaning, but the legislative scheme in Part 5.5 of the
5 California Health and Safety Code §19955, et seq. uses the term "physically handicapped persons"
6 and the Unruh Civil Rights Act, §§51, 51.5, 54, 54.1 and other statutory measures refer to protection
7 of the rights of "physically disabled persons"). Plaintiff MORAN is a "person with physical
8 disabilities," as defined by all applicable California and United States laws. Plaintiff MORAN
9 requires the use of a wheelchair to travel about the public. Consequently, Plaintiff MORAN is a
10 member of that portion of the public whose rights are protected by the provisions of Health and
11 Safety Code §19955, et seq. (entitled "Access to Public Accommodations by Physically Handicapped
12 Persons") and the protections of the Unruh Civil Rights Acts, Civil Code §§51 and 51.5, and the
13 Disabled Persons Act, Civil Code §§54, 54.1, and 54.3.

14 3. Defendant SPROUTS FARMERS MARKETS, LLC, an Arizona limited liability
15 company ("SPROUTS") is the owner and operator, lessor and/or lessee, or agents of the owners,
16 lessors, and/or lessees, of the public accommodation known as Sprouts Farmers Market located
17 at/near 4230 Pacific Coast Hwy., Torrance, CA 90505, or of the building and/or buildings which
18 constitute said public accommodation.

19 4. At all times relevant to this complaint, Defendant SPROUTS owns and operates the
20 subject Sprouts Farmers Market as a public accommodation. This business is open to the general
21 public and conducts business therein. The business is a "public accommodation" or "public facility"
22 subject to the requirements of California Civil Code §§51, 51.5 and 54 et seq., and Health and Safety
23 Code §19955 et seq.

24 5. Plaintiff MORAN is ignorant of the true names and capacities of the Defendants sued
25 herein as DOBS 1 through 20, inclusive, and therefore sue said Defendants by such fictitious names
26 and capacities. Plaintiff MORAN will amend this complaint to show said Defendants' true names
27 and capacities when they have been ascertained.

10/27/11

AE

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 9 Facsimile: 949-732-6501

10 Attorneys for Defendant
 11 SPROUTS FARMERS MARKETS, LLC

12
 13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 ERICK MORAN, an individual,

16 Plaintiff,

17 vs.

18 SPROUTS FARMERS MARKETS, LLC,
 19 an Arizona limited liability company, and
 20 DOES 1-10, inclusive,

21 Defendants.

CASE NO. 2:11-cv-05348-ODW-MAN

**SPROUTS FARMERS MARKETS,
 LLC'S ANSWER TO COMPLAINT;
 DEMAND FOR JURY TRIAL**

Assigned to Judge Otis D. Wright, II

Tab 8

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14 Attorneys for Defendant
 15 SPROUTS FARMERS MARKET

16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA**

18 KING'S HAWAIIAN HOLDING
 19 COMPANY, INC., a California
 20 Corporation; and KING'S
 21 HAWAIIAN BAKERY WEST, INC.,
 22 a California corporation,

23 Plaintiffs,

24 v.

25 SPROUTS FARMERS MARKET,
 26 INC., a Delaware corporation; and
 27 DOES 1-10, inclusive,

28 Defendants.

CASE NO. 2:14-cv-05650-DSF-RZ

**DEFENDANT SPROUTS FARMERS
 MARKET, INC.'S FED. R. CIV. P.
 7.1 CORPORATE DISCLOSURE
 STATEMENT**

Complaint Served: July 30, 2014

1 Per Federal Rule of Civil Procedure 7.1, and Local Rules 3-2 and 7-1, Defendant
2 Sprouts Farmers Market, Inc. ("Sprouts") by and through its attorneys Greenberg
3 Traurig, LLP, hereby declares the following:

4 Sprouts is a publicly traded corporation and has no parent corporation. No publicly
5 held corporation owns ten percent or more of its stock.

6
7 DATED: September 19, 2014

GREENBERG TRAURIG, LLP

8
9 By /s/ Jenny S. Kim

10 J. Rick Taché
11 Susan L. Heller
12 Shaun A. Hoting
13 Jenny S. Kim

14 Attorneys for
15 SPROUTS FARMERS MARKET
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PROOF OF SERVICE

King's Hawaiian Holding Co., Inc. et al. v. Sprouts Farmers Market, Inc., et al.
CASE NO. 2:14-CV-05650-DSF-RZ

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of Orange in the office of a member of the bar of this court at whose direction the service was made. My business address is 3161 Michelson Drive, Suite 1000, Irvine, California 92612.

On **September 19, 2014**, I caused to be electronically filed the following documents, described as:

DEFENDANT SPROUTS FARMERS MARKET, INC.'S FED. R. CIV. P. 7.1 CORPORATE DISCLOSURE STATEMENT

with the Clerk of the United States District Court of Central District of California, using the CM/ECF System. The Court's CM/ECF System will send an e-mail notification of the foregoing filing to the following parties and counsel of record who are registered with the Court's CM/ECF System:

Scott B. Kidman
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Attorneys for Plaintiffs King's
Hawaiian Holding Company,
Inc. and King's Hawaiian
Bakery West, Inc.

(Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on **September 19, 2014**, at Irvine, California.

Jenny S. Kim
Type or Print Name

/s/ Jenny S. Kim
Signature

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7 Attorneys for Plaintiffs King’s Hawaiian
 Holding Company, Inc. and King’s
 8 Hawaiian Bakery West, Inc.

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

KING’S HAWAIIAN HOLDING
 COMPANY, INC., a California
 corporation; and KING’S
 HAWAIIAN BAKERY WEST,
 INC., a California corporation,

Plaintiffs,

vs.

SPROUTS FARMERS MARKET,
 INC., a Delaware corporation; and
 DOES 1-10, inclusive,

Defendants.

Case No. 2:14-cv-05650

JURY TRIAL DEMAND

**COMPLAINT FOR FEDERAL
 TRADE DRESS INFRINGEMENT,
 FEDERAL FALSE DESIGNATION
 OF ORIGIN AND UNFAIR
 COMPETITION, STATE UNFAIR
 BUSINESS PRACTICES,
 COMMON LAW UNFAIR
 COMPETITION,
 MISAPPROPRIATION, AND
 PASSING OFF**

Plaintiffs King’s Hawaiian Holding Company, Inc. and King’s Hawaiian
 Bakery West, Inc. (collectively, “King’s Hawaiian”) complain and allege as follows
 against Defendant Sprouts Farmers Market, Inc. (“defendant”).

THE NATURE OF THE ACTION

1. In this action, King’s Hawaiian seeks injunctive relief and damages for
 acts of trade dress infringement, unfair competition, misappropriation and passing-

1 off engaged in by defendant in violation of the laws of the United States and the
2 State of California.

3 2. Defendant is selling in the United States sweet rolls that intentionally
4 and willfully employ product packaging that is confusingly similar to the distinctive
5 packaging trade dress that King's Hawaiian uses in connection with the famous
6 KING'S HAWAIIAN Hawaiian Sweet Rolls. Defendant's deceptively similar
7 product packaging is likely to cause confusion, deception or mistake as to the origin,
8 sponsorship or approval of defendant's products.

9 3. Upon information and belief, defendant's infringement was and is
10 willful and has caused and continues to cause King's Hawaiian substantial
11 irreparable injury, warranting injunctive relief, as well as an award of monetary
12 damages.

13 **THE PARTIES**

14 4. Plaintiff King's Hawaiian Holding Company, Inc. is a corporation
15 organized and existing under the laws of the State of California with its principal
16 place of business in Torrance, California.

17 5. Plaintiff King's Hawaiian Bakery West, Inc. is a corporation organized
18 and existing under the laws of the State of California with its principal place of
19 business in Torrance, California. King's Hawaiian Bakery West, Inc. is a wholly-
20 owned subsidiary of King's Hawaiian Holding Company, Inc. and is a licensed
21 distributor of King's Hawaiian goods, including goods packaged with the King's
22 Hawaiian Sweet Roll Packaging Trade Dress.

23 6. Defendant Sprouts Farmers Market, Inc. is, upon information and
24 belief, a corporation organized and existing under the laws of the State of Delaware
25 with its principal place of business in Phoenix, Arizona.

26 7. The identities of the various Doe Defendants are not currently known,
27 and this Complaint will be amended to include the names and capacities of such
28 individuals or entities when the same is ascertained.

1 **JURISDICTION AND VENUE**

2 8. This Court has subject matter jurisdiction under 15 U.S.C. § 1121
3 (action arising under Lanham Act), 28 U.S.C. § 1331 (federal question), 28 U.S.C. §
4 1338(a) (any Act of Congress relating to patents or trademarks), 28 U.S.C. §
5 1338(b) (action asserting claim of unfair competition joined with a substantial and
6 related claim under the trademark laws), and 28 U.S.C. § 1367(a) (supplemental
7 jurisdiction).

8 9. This Court has personal jurisdiction over defendant because defendant
9 has committed and continues to commit acts of infringement in violation of 15
10 U.S.C. § 1125(a), and places infringing products into the stream of commerce, with
11 knowledge or understanding that such products are sold in the State of California,
12 including in this District. The acts of defendant cause injury to King’s Hawaiian in
13 this District. Upon information and belief, defendant derives substantial revenue
14 from the sale of infringing products within this District and expects its actions to
15 have consequences in this District.

16 10. Venue is proper within this District under 28 U.S.C. § 1391 because
17 defendant transacts business within this District and offers for sale in this District
18 products that infringe King’s Hawaiian’s trade dress and/or places infringing
19 products into the stream of commerce, with knowledge or understanding that such
20 products are sold in this District. In addition, venue is proper because King’s
21 Hawaiian’s principal place of business is in this District and King’s Hawaiian
22 suffered harm in this District. Moreover, a substantial part of the events giving rise
23 to the claims occurred in this District.

24 **THE KING’S HAWAIIAN SWEET ROLL PACKAGING TRADE DRESS**

25 11. King’s Hawaiian is a family-owned business that makes and sells the
26 famous KING’S HAWAIIAN Original Hawaiian Sweet Rolls and other baked
27 goods. The history of King’s Hawaiian began in the 1950s in Hilo, Hawaii. There,
28 Robert Taira opened his first bake shop, Robert’s Bakery, where he made round,

1 soft loaves of Hawaiian Sweet Bread using his own original recipe. After nearly a
2 decade of growing popularity, in 1963 the original shop expanded and moved to
3 King Street in Honolulu, where it was renamed King's Bakery. In the 1970s, Mr.
4 Taira brought his Hawaiian Sweet Bread to the mainland and built a 24,000-square-
5 foot bakery in Torrance, California. He named it King's Hawaiian Bakery. In 1983,
6 King's Hawaiian introduced the now famous 12-pack of Original Hawaiian Sweet
7 Rolls. During the next several decades King's Hawaiian continued to grow as its
8 reputation spread for making delicious, high-quality products. What started as a
9 small bakery in Hilo, Hawaii is now a national brand with products available in
10 grocery stores across the United States.

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1 12. King’s Hawaiian goes to great efforts to preserve its image and identity
2 and the image and identity of its high-quality products. King’s Hawaiian developed
3 distinctive packaging trade dress for use with its Hawaiian Sweet Rolls. The sweet
4 roll packaging trade dress asserted in this lawsuit (the “King’s Hawaiian Sweet Roll
5 Packaging Trade Dress”) consists of an overall visual impression, which includes
6 (1) the prominent use of the color orange; (2) on the front of the package, the color
7 orange is the primary element of a border around a clear window; (3) within the
8 window, a light-colored element with contrasting writing; and (4) on the light-
9 colored element, no word appears in larger font than the word “Hawaiian,” which is
10 in a serif font, as shown below and in Exhibit 1 hereto.



22 King’s Hawaiian has used the King’s Hawaiian Sweet Roll Packaging Trade Dress
23 to distinguish its Hawaiian Sweet Rolls since at least the early 1980s.

24 13. The King’s Hawaiian Sweet Roll Packaging Trade Dress is non-
25 functional. The overall look and feel of the packaging design is not required to
26 achieve any particular function—and there are a plethora of alternative packaging
27 designs available to King’s Hawaiian’s competitors.

28

1 14. The King’s Hawaiian Sweet Roll Packaging Trade Dress is inherently
2 distinctive. Moreover, through extensive use, marketing and promotional activities,
3 the King’s Hawaiian Sweet Roll Packaging Trade Dress has acquired a strong
4 secondary meaning. The King’s Hawaiian Sweet Roll Packaging Trade Dress
5 serves to identify King’s Hawaiian as the source of the products with which it is
6 used, and the relevant consuming public recognizes the King’s Hawaiian Sweet Roll
7 Packaging Trade Dress as distinguishing those products from the goods and services
8 of others.

9 **DEFENDANT’S UNLAWFUL AND DECEPTIVE ACTS**

10 15. Defendant is neither licensed nor otherwise authorized by King’s
11 Hawaiian to use the King’s Hawaiian Sweet Roll Packaging Trade Dress in
12 connection with its products.

13 16. Without King’s Hawaiian’s permission or consent, defendant is
14 offering for sale and selling in the United States, including in this District, sweet
15 rolls in product packaging deceptively similar to the King’s Hawaiian Sweet Roll
16 Packaging Trade Dress.

17 17. Defendant’s conduct is likely to cause consumers to be confused or
18 deceived or mistaken into believing that there is an affiliation, connection or
19 association between defendant and King’s Hawaiian or that defendant’s products
20 originate from or are sponsored by or approved by King’s Hawaiian.

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1 18. The packaging for defendant's sweet rolls is confusingly similar in
2 overall look and feel to the King's Hawaiian Sweet Roll Packaging Trade Dress and
3 includes (1) the prominent use of the color orange; (2) on the front of the package,
4 the color orange is the primary element of a border around a clear window; (3)
5 within the window, a light-colored element with contrasting writing; and (4) on the
6 light-colored element, no word appears in larger font than the word "Hawaiian,"
7 which is in a serif font, as shown below and in Exhibit 2 hereto.



20 19. King's Hawaiian is informed and believes, and on that basis alleges,
21 that defendant has adopted and used its deceptively similar packaging with the intent
22 to trade off the enormous goodwill that King's Hawaiian has earned in the King's
23 Hawaiian Sweet Roll Packaging Trade Dress and the high-quality products with
24 which it is used and, further, to cause consumers to be confused or deceived or
25 mistaken into believing that there is an affiliation, connection or association between
26 defendant and King's Hawaiian or that defendant's sweet rolls originate from or are
27 sponsored by or approved by from King's Hawaiian. Defendant has damaged the
28 reputation, business and goodwill of King's Hawaiian, including within this District,

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8 Attorneys for Defendant
9 SPROUTS FARMERS MARKET

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 KING'S HAWAIIAN HOLDING
COMPANY, INC., a California
13 Corporation; and KING'S
HAWAIIAN BAKERY WEST, INC.,
14 a California corporation,

15 Plaintiffs,

16 v.

17 SPROUTS FARMERS MARKET,
INC., a Delaware corporation; and
18 DOES 1-10, inclusive,

19 Defendants.

CASE NO. 2:14-cv-05650-DSF-RZ

JURY TRIAL DEMANDED

**DEFENDANT SPROUTS FARMERS
MARKET, INC.'S CORRECTED
AMENDED COUNTERCLAIMS**

Complaint Served: July 30, 2014

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GREENBERG TRAURIG, LLP
3161 Michelson Drive, Suite 1000
Irvine, CA 92612-4410

1 **COUNTERCLAIM**

2 Sprouts Farmers Market, Inc. (“Sprouts”) brings these counterclaims against
3 Plaintiffs King’s Hawaiian Holding Company, Inc. and King’s Hawaiian Bakery West,
4 Inc.’s (collectively “King’s Hawaiian”), alleging as follows:

5 **PARTIES**

6 1. Sprouts is a corporation organized and existing under the laws of the State of
7 Delaware with its principal place of business in Phoenix, Arizona.

8 2. Plaintiff King’s Hawaiian Holding Company, Inc., has alleged it is a corporation
9 organized and existing under the laws of the State of California with its principal place of
10 business in Torrance, California.

11 3. Plaintiff King’s Hawaiian Bakery West, Inc., has alleged it is a corporation
12 organized and existing under the laws of the State of California with its principal place of
13 business in Torrance, California. King’s Hawaiian Bakery West, Inc., has further alleged
14 it is a wholly-owned subsidiary of King’s Hawaiian Holding Company, Inc., and is a
15 licensed distributor of King’s Hawaiian goods, including goods sold with the packaging
16 that Sprouts is alleged to have infringed.

17 **JURISDICTION AND VENUE**

18 4. These counterclaims arise under the Lanham Act, 15 U.S.C. § 1051, *et seq.*,
19 California Business and Professions Code § 17200, the common law of trademarks and
20 unfair competition, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* This
21 Court has subject matter jurisdiction over these counterclaims pursuant to 15 U.S.C. §
22 1121 and 28 U.S.C. §§ 1331, 1338(b), 1367, 2201(a) and 2202.

23 5. This Court has personal jurisdiction over King’s Hawaiian because, *inter alia*,
24 King’s Hawaiian has submitted to the jurisdiction of this Court by filing suit in this district
25 and purposefully availing itself of the benefits and protections of the laws of the district.

26 6. Venue is technically proper in this district pursuant to 28 U.S.C. § 1391(b) and (c),
27 and by virtue of King’s Hawaiian asserting a claim for trade dress infringement in this
28 district in response to which these counterclaims are asserted.

Tab 9

when it is disclosed that any such preferential right exists, we always ask for the same treatment as the investor receiving any such preferential rights. MacKenzie represented that no such arrangements or side letters existed and that no shareholder was receiving any preferential treatment or special rights.

4. Based on this representation, I made the investments in Sprout.

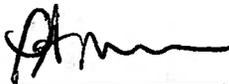
I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 15, 2012



DAVID B. "SCOTT" SCHIFF

Sworn to before me this
15th day of November, 2012



Notary Public

PETER S. SAMAN
Notary Public, State of New York
NO. 02SA6163801
Qualified in Nassau County
Commission Expires May 2, 2015

Tab 10

[Secretary of State](#)[Administration](#)[Elections](#)[Business Programs](#)[Political Reform](#)[Archives](#)[Registries](#)**Business Entities (BE)**

Online Services

- [E-File Statements of Information for Corporations](#)
- [Business Search](#)
- [Processing Times](#)
- [Disclosure Search](#)

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Service Options

Name Availability

Forms, Samples & Fees

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(annual/biennial reports)

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Information Requests
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FAQs

Contact Information

Resources

- [Business Resources](#)
- [Tax Information](#)
- [Starting A Business](#)

Customer Alerts

- [Business Identity Theft](#)
- [Misleading Business Solicitations](#)

Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Friday, November 28, 2014. Please refer to [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	SPROUT ENTERPRISES, INC.
Entity Number:	C1896451
Date Filed:	01/13/1995
Status:	ACTIVE
Jurisdiction:	CALIFORNIA
Entity Address:	2140 SERENA AVENUE
Entity City, State, Zip:	CLOVIS CA 93619
Agent for Service of Process:	DOUGLAS WILLIAM WHITENECK
Agent Address:	2140 SERENA AVENUE
Agent City, State, Zip:	CLOVIS CA 93619

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

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Business Information
Business Search

Confirmation

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Details			
Name	ASPEN SPROUTS, INC.		
Status	Good Standing	Formation date	06/01/1999
ID number	19991103357	Form	Corporation
Periodic report month	June	Jurisdiction	Colorado
		Term of duration	Perpetual
Principal office street address	315 A Baltic Avenue, Aspen, CO 81611, United States		
Principal office mailing address	PO Box 1931, Glenwood Springs, CO 81602, United States		

Registered Agent	
Name	Cathy Coffey
Street address	315 A Baltic Avenue, Aspen, CO 81611, United States
Mailing address	PO Box 1931, Glenwood Springs, CO 81602, United States

I confirm that I am authorized to make changes.

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Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Friday, November 28, 2014. Please refer to [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	BEAN SPROUTS INC.
Entity Number:	C2689302
Date Filed:	10/08/2004
Status:	ACTIVE
Jurisdiction:	CALIFORNIA
Entity Address:	103 E HUNTINGTON DR
Entity City, State, Zip:	ARCADIA CA 91006
Agent for Service of Process:	YI-CHUAN CHEN
Agent Address:	103 E HUNTINGTON DR
Agent City, State, Zip:	ARCADIA CA 91006

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
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- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

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Entity Name:	VITA KING BEAN SPROUT, INC.
Entity Number:	C1766888
Date Filed:	07/17/1995
Status:	ACTIVE
Jurisdiction:	CALIFORNIA
Entity Address:	2214 SASTRE AVE
Entity City, State, Zip:	S EL MONTE CA 91733-2652
Agent for Service of Process:	LIANG TSU LU
Agent Address:	2214 SASTRE AVE
Agent City, State, Zip:	S EL MONTE CA 91733-2652

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
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Entity Name:	BANNER MOUNTAIN SPROUTS, INC.
Entity Number:	C2196944
Date Filed:	08/28/2000
Status:	ACTIVE
Jurisdiction:	CALIFORNIA
Entity Address:	9328 ELK GROVE BLVD, STE 105-320
Entity City, State, Zip:	ELK GROVE CA 95624
Agent for Service of Process:	JOHN BAEK
Agent Address:	9328 ELK GROVE BLVD, STE 105-320
Agent City, State, Zip:	ELK GROVE CA 95624

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
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1 KAUFMAN DOLOWICH & VOLUCK, LLP
2 VINCENT S. GREEN, ESQ. (SBN: 231046)
3 11755 Wilshire Boulevard, Suite 2400
4 Los Angeles, California 90025
5 Telephone: (310) 775-6511
6 Facsimile: (310) 575-9720
7 Email: vgreen@kdvlaw.com

8 Attorneys for Plaintiff
9 Sprout Healthy Vending, LLC

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 SPROUT HEALTHY VENDING
13 LLC,

14 Plaintiff,

15 v.

16 SEAGA MANUFACTURING, INC.,
17 Does 1 through 20,

18 Defendant.

Case No.: 8:14-CV-01613-JVS-JCG

FIRST AMENDED COMPLAINT
FOR:

1. INDUCING BREACH OF CONTRACT
2. INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS
3. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS
4. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS
5. CONVERSION
6. INTENTIONAL MISREPRESENTATION
7. FALSE PROMISE
8. NEGLIGENT MISREPRESENTATION

DEMAND FOR JURY TRIAL

1 Plaintiff Sprout Healthy Vending, LLC (“Plaintiff” or “Sprout Healthy”), by its
2 attorneys, Kaufman Dolowich & Voluck LLP, as and for its First Amended
3 Complaint (“FAC”) against Defendant Seaga Manufacturing, Inc. (“Defendant” or
4 “Seaga”), alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 as this matter is
7 a civil action between citizens of different states and the matter in controversy
8 exceeds the sum of \$75,000, exclusive of interests and costs. Venue is proper in this
9 forum because a substantial portion of the events and property which give rise to the
10 claims occurred in Orange County, California. Defendant is subject to personal
11 jurisdiction in this district at the time the action is commenced and has sufficient
12 minimum contacts with Orange County. Additionally, Defendant removed this action
13 from the Superior Court of California, Orange County, and thereby consented to
14 venue in the district in which the complaint was removed.

15 **PARTIES**

16 2. Plaintiff Sprout Healthy is a limited liability company organized under
17 the laws of the State of Wyoming and is licensed to do business and is doing business
18 from its principal place of business located in Orange County, California.

19 3. Sprout Healthy is informed and believes and thereon alleges that
20 Defendant Seaga is a corporation incorporated under the laws of the State of Illinois
21 with its principal place of business located in Freeport, Illinois. Seaga distributes its
22 products throughout the United States, including in the State of California, and is
23 authorized to do so.

24 4. Sprout Healthy is ignorant of the true names and capacities of
25 defendants sued herein as Does 1 through 20, inclusive, and therefore sue these
26 defendants by such fictitious names. Sprout Healthy will seek leave to amend this
27 complaint, if necessary, to allege their true names and capacities when ascertained.
28 Sprout Healthy is informed and believes and thereupon alleges that each of the

1 fictitiously named defendants is responsible in some manner for the occurrences
2 herein alleged, and that Sprout Healthy's losses and damages as herein alleged were
3 proximately caused by the acts and conduct of such fictitiously named defendants.

4 5. Sprout Healthy is informed and believes and based thereon alleges that
5 defendants, and each of them, gave consent to, ratified, and/or authorized the acts
6 alleged herein as to each of the remaining defendants.

7 **FACTS COMMON TO ALL ALLEGATIONS**

8 6. Sprout Healthy, through its headquarters in Irvine, California, is the
9 distributor of a wide range of state-of-the-art "healthy" vending machines. Sprout
10 Healthy's customers, which are in excess of 200, are spread across the United States.
11 Sprout Healthy's machines vend healthier products such as fruit, organic coffee,
12 snacks and drinks as opposed to the typical fare associated with vending machines.
13 Since 2011 Sprout Healthy has carved out this market as its niche and in the process
14 has established an excellent reputation within this niche. Sprout Healthy's vending
15 machines can often be found in locations such as gyms, schools, hospitals, corporate
16 facilities, sports facilities, and airports. Not only does Sprout Healthy sell vending
17 machines to its customers, it additionally helps its customers secure suitable locations
18 for placement of the vending machines.

19 7. Sprout Healthy does not, itself, manufacture the actual vending
20 machines it sells; instead it relies upon third party manufactures to supply the
21 vending machines. In late 2012, Sprout Healthy began discussions with Seaga
22 regarding the utilization of Seaga as the manufacturer of the vending machines.

23 8. Sprout Healthy's owners went to Seaga's offices and met Steve Chesney
24 (Seaga's CEO) and Kevin Horstman (salesperson) and toured Seaga's facilities. Both
25 Kevin Horstman and Dave Bowersox of Seaga visited Sprout Healthy's headquarters
26 in Irvine several times. Seaga "courted" Sprout Healthy as at the time Sprout Healthy
27 was using a different manufacturer. Sprout Healthy's representatives were assured
28