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

Proceeding	92061096
Party	Defendant Everett and Jones Barbeque - Jack London, LLC
Correspondence Address	RALPH C FRANCIS FRANCIS LAW GROUP 512 WESTLINE DRIVE STE 301 ALAMEDA, CA 94501 UNITED STATES rcf@francislaw.com
Submission	Response to Board Order/Inquiry
Filer's Name	Ralph C Francis
Filer's e-mail	rcf@francislaw.com
Signature	/rcfrancis/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Shirley A. Dicko,)	
)	Cancellation No. 92061096
)	
Plaintiff,)	Registration No.: 3747512
vs.)	
)	Filed: March 12, 2015
Everett and Jones Barbeque – Jack London,)	
LLC,)	Mark: EVERETT AND JONES
)	
Defendant.)	

RESPONSE TO MARCH 31, 2016 BOARD ORDER

I. Factual Background

On August 26, 2008, Defendant filed Application No. 77556026 to register its *Everett and Jones* trademark. On February 9, 2010, the *Everett and Jones* trademark was registered on the U.S. Patent and Trademark Office (“USPTO”) Principal Register and accorded Reg. No. 3747512.

On August 9, 2012, Plaintiff commenced a civil action in the Superior Court of California, County of Alameda (Case No. RG12634726) against Defendant (hereinafter “CA Superior Court Action”), seeking, among other relief, declaratory and injunctive relief, including *invalidation of the same trademark registration at issue in the present Cancellation Proceeding, i.e. Reg. No. 3747512*. See ¶ D of Prayer for Relief in Plaintiff’s Amended Complaint for Declaratory and Injunctive Relief (hereinafter “CA Superior Court Complaint”)¹

¹ Copies of the relevant pages of Plaintiff’s Amended Complaint for Declaratory and Injunctive Relief, filed in the Superior Court of California on August 9, 2012, are attached in Appendix A. A full copy of Plaintiff’s Amended Complaint was previously submitted by Defendant and is of record in the Cancellation Proceeding.

Indeed, the specific relief sought by Plaintiff in the CA Superior Court Action, included “[t]hat [the] Court issue temporary, preliminary or injunctive relief; restraining Defendants *Everett and Jones Barbeque-Jack London, LLC*, Dorothy King Jernegan, Annie Jones and Mary Everett from acting on the applications and registrations [including Reg. No. 3,747,512] by Defendants in the United States Patent and Trademark Office on the Principal Register be enjoined and *be invalidated*...”²

The noted relief sought by Plaintiff in the CA Superior Court Action was based on the same ground as asserted by Plaintiff in the instant Cancellation Proceeding – Fraud. See Fourth Claim For Relief in Plaintiff's CA Superior Court Complaint.

In support of Plaintiff's CA Superior Court fraud claim, Plaintiff alleged, *inter alia*:

(i) “On all four of the U.S. trademark applications [including U.S. App. No. 77/556,026] Defendants [including Everett and Jones Barbeque-Jack London, LLC] knowingly made willful false and misleading statements to the Examining Attorney in the United States Patent and Trademark Office with the intent to deceive the U.S. trademark Examining Attorney into believing that Defendants were the sole and exclusive owners of the trademarks [including the *Everett and Jones* trademark]” (CA Superior Court Complaint, ¶ 55), and

(ii) “Defendant, Everett and Jones Barbeque-Jack London, LLC fraudulently became the registered owner of trademark registration number 3,747,512 after falsely claiming to be the owner of trademark registration number 2612132 [for the *Everett and Jones* trademark]...” (Plaintiff's CA Superior Court Complaint, ¶ 64).

² Although the specific relief sought by Plaintiff in the CA Court Action comprised invalidation of Reg. No. 3,747,512, such relief would have the same effect as cancellation of the registration on the USPTO Principal Register. Indeed, in most instances, when a trademark registration is found invalid by a Court, the Court typically issues an Order canceling the registration from the Principal Register.

The seminal issue thus before the CA Superior Court was *whether Defendant knowingly made willful false and misleading statements to the USPTO Examining Attorney with the intent to deceive the Examining Attorney into believing that Defendant was the sole and exclusive owner of the Everett and Jones trademark.*

During the CA Superior Court Action, Plaintiff was granted the opportunity to present (and did present) considerable evidence and testimony in support of the fraud claim. As reflected in the Final Judgment that was rendered by the CA Superior Court, the Court even allowed “further testimony and evidence [to be presented] by the parties with respect to declaratory relief in the 10th cause of action [i.e. fraud]”.

On April 9, 2015, a valid and final judgment, i.e. Judgment After Trial By Court, was entered against Plaintiff on **all** counts, including the 10th cause of action for fraud. The Final Judgment rendered by the CA Superior Court unequivocally provides that Plaintiff is not entitled to any declaratory and injunctive relief, including invalidation of Reg. No. 3747512.³

On June 25, 2015, Plaintiff filed an “untimely” Notice of Appeal of the CA Superior Court’s Final Judgment, which was dismissed by the Court of Appeal of the State of California.⁴ As conceded by Plaintiff, the CA Superior Court Action has thus been finally determined.

Plaintiff further concedes that all other Court Actions relating to U.S. Reg. No. 3747512 have also been finally determined.

On March 12, 2015, just six (6) days prior to the trial in the CA Superior Court Action, Plaintiff commenced the instant Cancellation Proceeding seeking to cancel Reg. No. 3747512. As indicated above, Plaintiff’s ground for cancellation of Reg. No. 3747512 is the same ground

³ A copy of the April 9, 2015 Final Judgment by the CA Superior Court is attached in Appendix B

⁴ A copy of appeal dismissal by the California Court of Appeal is attached in Appendix C.

that was asserted by Plaintiff in the CA Superior Court Action to invalidate Reg. No. 3747512 – *Fraud*.

In support of Plaintiff's fraud claim in the Cancellation Proceeding, Plaintiff similarly alleges:

(i) "Defendant, Everett and Jones Barbeque-Jack London, LLC, knowingly made willful false and misleading statements to the Examining Attorney in the United States Patent and Trademark Office with the intent to deceive the U.S. trademark Examining Attorney into believing that Defendant was the sole and exclusive owner of the *Everett and Jones* trademark" and

(ii) "Defendant, Everett and Jones Barbeque-Jack London, LLC fraudulently became the registered owner of trademark registration number 3,747,512 after falsely claiming to be the owner of trademark registration number 2612132 [for the *Everett and Jones* trademark]."

The same issue that was before the CA Superior Court (and finally determined by the CA Superior Court) is thus before the Board, i.e. *whether Defendant knowingly made willful false and misleading statements to the USPTO Examining Attorney with the intent to deceive the Examining Attorney into believing that Defendant was the sole and exclusive owner of the Everett and Jones trademark*.

II. Plaintiff's Response to the Board Orders

On January 27, 2016, the Board issued a show cause order, requesting that Plaintiff provide an explanation as to whether the CA Superior Court Action referenced above has any bearing on the instant Cancellation Proceeding and to show cause why the decision by the CA Superior Court does not provide a basis to dismiss the petition to cancel Reg. No. 3,747,512.

In response to the January 27, 2016 Board Order, Plaintiff stated that “[she] submitted final determined court actions *that have a direct bearing upon this proceeding that show cause for a De Novo review and provides a basis to grant Plaintiff's request to cancel the Defendant's trademark registration.*”⁵ Plaintiff further requested that the Board accord no deference to the CA Superior Court decision.

As indicated above, during the CA Superior Court Action, Plaintiff was granted the opportunity to present (and did present) considerable evidence and testimony in support of the *same claim* that is before the Board, i.e. fraud. The CA Superior Court even allowed further testimony and evidence to be presented by Plaintiff with respect to declaratory relief in the 10th cause of action for fraud.

After three (3) days of trial testimony before the Hon. Frank Roesch and after considering considerable oral and documentary evidence proffered by Plaintiff, the CA Superior Court entered a valid and *final judgment* against Plaintiff on all counts, including the 10th cause of action for fraud.

As also indicated above, in the instant Cancellation Proceeding, *the same “seminal” issue* that was finally determined by the CA Superior Court (and formed the basis for the Final Judgment) has been presented by Plaintiff and, hence, is before the Board i.e. *whether Defendant knowingly made willful false and misleading statements to the USPTO Examining Attorney with the intent to deceive the Examining Attorney into believing that Defendant was the sole and exclusive owner of the Everett and Jones trademark.*

⁵ In response to the March 31, 2016 Board Order, Plaintiff similarly states that “[she] provided to the Board *prior final determined court decisions that she believed did provide a basis to grant Plaintiff's request to cancel Defendant's registration.*”

Defendant thus respectfully submits that Plaintiff is merely seeking to re-litigate *the same issue* and *same claim* in the instant Cancellation Proceeding that were “**finally determined**” by the CA Superior Court.

Indeed, if, as stated by Plaintiff, the “final determined court actions... [provide] *a basis to grant Plaintiff's request to cancel the Defendant's trademark registration,*” Plaintiff concedes that the seminal issue that is before the Board, i.e. *whether Defendant knowingly made willful false and misleading statements to the USPTO Examining Attorney with the intent to deceive the Examining Attorney into believing that Defendant was the sole and exclusive owner of the Everett and Jones trademark,* was “finally” determined by the CA Superior Court.

As discussed in detail below, under the well-established law, Plaintiff is bound by the final judgment of the CA Superior Court and, hence, is barred from re-litigating the *same fraud claim* and *same issue* in the Cancellation Proceeding.

III. The CA Court Action and Final Judgment have a direct Bearing on the Instant Cancellation Proceeding

As discussed in detail below, since the *same claim*, i.e. *fraud*, and *same issue*, i.e. *whether Defendant knowingly made willful false and misleading statements to the USPTO Examining Attorney with the intent to deceive the Examining Attorney into believing that Defendant was the sole and exclusive owner of the Everett and Jones trademark,* were presented (and actually litigated) by Plaintiff in the CA Superior Court Action, the CA Superior Court Action and Final Judgment relating thereto *have a direct bearing on the Cancellation Proceeding*⁶.

⁶ As indicated above, Plaintiff concedes that the CA Superior Court Action has “*a direct bearing upon this proceeding.*”

Indeed, as discussed in detail below, under the doctrine of *res judicata* (claim preclusion), when a claim is actually litigated in an earlier proceeding by a party, and a court of competent jurisdiction has entered a valid and final judgment on the claim, the parties to the earlier action are thereafter bound by the judgment.

As indicated above, in the CA Superior Court Action, the *same claim* that is before the Board in the Cancellation Proceeding, i.e. *fraud*, was actually litigated⁷ and finally determined by a court of competent jurisdiction, i.e. the Superior Court of the State of California. Under the doctrine of *res judicata*, Plaintiff is bound by the final judgment of the CA Superior Court and, thus, barred from re-litigating the same “fraud” claim in the Cancellation Proceeding. The Final Judgment of the CA Superior Court is thus dispositive of the Cancellation Proceeding.

As also discussed in detail below, under the doctrine of collateral estoppel (issue preclusion), when an issue of fact is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.

In the CA Superior Court Action, the same seminal and “determinative” issue that is before the Board was actually litigated by Plaintiff and finally determined by the CA Superior Court; namely, whether Defendant knowingly made willful false and misleading statements to the USPTO Examining Attorney with the intent to deceive the Examining Attorney into believing that Defendant was the sole and exclusive owner of the *Everett and Jones* trademark.

Plaintiff, having fully litigated the noted seminal issue (as well as other issues in support of Plaintiff's fraud claim) in the CA Superior Court Action, which was determinative of the Final Judgment rendered by the CA Superior Court, Plaintiff is also barred from re-litigating the same issue in the Cancellation Proceeding. The CA Superior Court Action; specifically, the final

⁷ A full trial was held in California Superior Court on March 18, 19 and 23, 2015.

determination of the CA Superior Court on the same seminal issue, is thus similarly dispositive of the Cancellation Proceeding.

IV. Law and Argument

A. *Res Judicata*

As indicated above, under the doctrine of *res judicata* (claim preclusion), when a claim is actually litigated or should have been advanced in an earlier proceeding by a party, and a court of competent jurisdiction has entered a valid and final judgment on the claim, the parties to the earlier action are thereafter bound by the judgment. *In re Bose Corp.*, 476 F.3d 1331, 81 U.S.P.Q. 2d 1748 (Fed. Cir. 2007). See also *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326 n. 5, 58 L. Ed. 2d 552, 99 S. Ct. 645 (1979) (" Under the doctrine of *res judicata*, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.").

It is thus well established that a plaintiff is barred from bringing a subsequent action for the same claim under the doctrine of *res judicata* if: "(1) there is identity of parties (or their privies); (2) there has been an earlier final judgment on the merits of [the] claim; and (3) the second claim is based on the same set of transactional facts as the first." *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1372, 107 U.S.P.Q. 2d 1167, 1171 (Fed. Cir. 2013) (quoting *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1362, 55 U.S.P.Q. 2d 1854, 1856 (Fed. Cir. 2000)). See also *Sharp Kabushiki Kaisha v. ThinkSharp, Inc.*, 448 F.3d 1368, 1370, 79 U.S.P.Q. 2d 1376, 1378 (Fed. Cir. 2006); *Mayer/Berkshire Corp. v. Berkshire Fashions, Inc.*, 424 F.3d 1229, 1232, 76 U.S.P.Q. 2d 1310, 1312 (Fed. Cir. 2005); and *Zachry Infrastructure, LLC v. Am. Infrastructure, Inc.*, 101 U.S.P.Q. 2d 1249 (TTAB 2011).

As discussed in detail below, the doctrine of *res judicata* is clearly applicable in the instant matter, since, in the prior CA Superior Court Action, there was (i) identity of parties, (ii) a final judgment on the merits of the same claim, i.e. fraud, was rendered by the CA Superior Court and (iii) the same "fraud" claim that is before the Board in the Cancellation Proceeding is based on the same factual allegations that were presented (and litigated by Plaintiff) in the CA Superior Court Action.

1. Identity of Parties

It cannot be reasonably disputed that the same parties that were before the CA Superior Court, i.e. Superior Court of California, County of Alameda (Case No. RG12634726), are the same parties that are before the Board in the Cancellation Proceeding. Indeed, Plaintiff, Shirley A. Dicko, was the Plaintiff in the CA Court Action and is the Plaintiff in the Cancellation Proceeding. Defendant, Everett and Jones Barbeque-Jack London, LLC, was a named Defendant in the CA Court Action and is the defendant in the Cancellation Proceeding.

2. Final Judgment

As indicated above, on April 9, 2015 a valid and final judgment was rendered by the CA Superior Court against Plaintiff on the *same fraud claim* that is before the Board in the Cancellation Proceeding.

3. Transactional Facts

Plaintiff's fraud claim in the Cancellation Proceeding is based on the *same* set of transactional facts, i.e. factual allegations, which were presented and fully litigated by Plaintiff in the CA Superior Court Action.

As indicated above, in the CA Superior Court Action, Plaintiff alleged, *inter alia*:

(i) “On all four of the U.S. trademark applications [including U.S. App. No. 77/556,026] Defendants [including Everett and Jones Barbeque-Jack London, LLC] knowingly made willful false and misleading statements to the Examining Attorney in the United States Patent and Trademark Office with the intent to deceive the U.S. trademark Examining Attorney into believing that Defendants were the sole and exclusive owners of the trademarks [including the *Everett and Jones* trademark]” (Plaintiff's CA Superior Complaint, ¶ 55) and

(ii) “...Defendant, Everett and Jones Barbeque-Jack London, LLC, fraudulently became the registered owner of trademark registration number 3,747,512 after falsely claiming to be the owner of trademark registration number 2612132 [for the *Everett and Jones* trademark]...” (Plaintiff's CA Complaint, ¶ 64).

As indicated above, substantial evidence and testimony in support of the noted allegations were presented by Plaintiff in the CA Superior Court Action and a valid and final judgment, based on the CA Superior Court's findings, was rendered by the CA Superior Court. As reflected in the CA Superior Court Final Judgment, the Court even allowed “further testimony and evidence [to be presented] by the parties with respect to declaratory relief in the 10th cause of action [i.e. fraud]”.

In the Cancellation Proceeding, Plaintiff similarly alleges that Defendant knowingly made willful false and misleading statements to the Examining Attorney, including falsely claiming to be the owner of trademark registration number 2612132, with the intent to deceive the Examining Attorney into believing that Defendant was the sole and exclusive owner of the *Everett and Jones* trademark.

Defendant thus respectfully submits that, since (1) there is identity of parties, i.e. the identical parties that were before the CA Superior Court are before the Board in the Cancellation Proceeding, (2) there has been an earlier final judgment on the merits of the same claim, i.e. the CA Superior Court has rendered a valid and final judgment on *the same fraud claim*; and (3) the fraud claim in the Cancellation Proceeding is based on the *same* factual allegations that were before the CA Superior Court (and fully litigated by Plaintiff), under the doctrine of *res judicata*, Plaintiff is bound by the CA Superior Court judgment and barred from re-litigating the same “fraud” claim in the Cancellation Proceeding.

B. Collateral Estoppel

As also indicated above, under the doctrine of collateral estoppel (issue preclusion), when an issue of fact or law is actually litigated and determined by a valid and final judgment in a prior action, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. *Restatement (Second) of Judgments* §27, p. 250 (1980). Accord *Parklane Hosiery, supra* and *B&B Hardware, Inc. v. Hargis Industries, Inc.*, 135 S. Ct. 1293, 191 L. Ed. 2d 222 (2015).

Indeed, the Courts, including the U.S. Supreme Court, have long recognized that “the determination of a question directly involved in one action is conclusive as to the question in a second suit.” *Cromwell v. County of Sac.*, 94 U.S. 351, 354, 24 L. Ed. 195 (1877). See also *Baldwin v. Iowa State Traveling Men's Assn.*, 283 U.S. 522, 525, 51 S. Ct. 517, 75 L. Ed. 1244 (1931)(“Once a court has decided an issue, it is ‘forever settled as between the parties’”).

The Courts and the *Restatement* also make it clear that the issue preclusion is not limited to those situations in which the same issue is before two *courts*. Rather, “where the same issue is before a court and an administrative agency, preclusion also often applies.” *B&B Hardware*, 135 S. Ct. at 1298.

It is thus well established that a plaintiff is barred from re-litigating an issue in a subsequent proceeding under the doctrine of collateral estoppel if: “(1) the prior action presents an identical issue; (2) the issue was actually litigated and adjudged in the prior action; (3) determination of the identical issue was necessary to the resulting judgment; and (4) the party defending against preclusion has a full and fair opportunity to litigate the issue.” *Montana v. United States*, 440 U.S. 147, 153-55, 59 L. Ed. 2d 210, 99 S. Ct. 970 (1979). See also *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1371, 107 U.S.P.Q. 2d 1167, 1171 (Fed. Cir. 2013).

As discussed in detail below, the doctrine of collateral estoppel is also clearly applicable in the instant matter, since (1) the identical “seminal” issue that was before the CA Superior Court is before the Board in the Cancellation Proceeding, i.e. whether Defendant knowingly made willful false and misleading statements to the USPTO Examining Attorney with the intent to deceive the Examining Attorney into believing that Defendant was the sole and exclusive owner of the *Everett and Jones* trademark, (2) the noted identical issue was actually litigated and adjudged in the CA Superior Court Action, (3) determination of the identical issue was also necessary to the Final Judgment rendered by the CA Superior Court, and (4) Plaintiff had a full and fair opportunity to litigate the issue in the CA Superior Court Action.

1. Identical Issue

As indicated above, the seminal, “determinative” issue that was presented by Plaintiff in the CA Court Action and, hence, before the CA Superior Court is the *identical issue* that is before the Board in the Cancellation Proceeding; namely, *whether Defendant knowingly made willful false and misleading statements to the USPTO Examining Attorney with the intent to deceive the Examining Attorney into believing that Defendant was the sole and exclusive owner of the Everett and Jones trademark.*

2. The Identical Issue Was Actually Litigated By the CA Superior Court

The noted identical issue that is before the Board in the Cancellation Proceeding was actually litigated by Plaintiff *for nearly three (3) years* in the CA Superior Court Action and adjudged by the CA Superior Court. As reflected in the Final Judgment that was entered by the CA Superior Court, a three (3) day trial on the merits of Plaintiff's was also held on March 18, 19 and 23, 2015.

The Final Judgment rendered by the CA Superior Court even reflects that “further testimony and evidence was presented by the parties with respect to declaratory relief in the 10th cause of action [i.e. fraud]” (emphasis added).

3. The Final Judgment Was Based On the Identical Issue

Determination of the noted identical issue that was before the CA Superior Court (and is now before the Board in the Cancellation Proceeding) was necessary to the Final Judgment rendered by the CA Superior Court.

As indicated above, the Final Judgment rendered by the CA Superior Court reflects that “further testimony and evidence [directed to whether Defendant knowingly made willful false and misleading statements to the USPTO Examining Attorney with the intent to deceive the

Examining Attorney into believing that Defendant was the sole and exclusive owner of the *Everett and Jones* trademark] was presented by the parties with respect to declaratory relief in the 10th cause of action [i.e. fraud].”

The Final Judgment further reflects that “[a]fter receiving and considering the evidence and closing arguments, the Court [has] determined that Plaintiff is not entitled to any relief on the 10th cause of action [i.e. fraud].”

4. Plaintiff Had A Full and Fair Opportunity To Litigate the Identical Issue in the CA Court Action

Plaintiff had a full and fair opportunity to litigate the seminal, determinative issue in the CA Superior Court Action, i.e. whether Defendant knowingly made willful false and misleading statements to the USPTO Examining Attorney with the intent to deceive the Examining Attorney into believing that Defendant was the sole and exclusive owner of the *Everett and Jones* trademark.

As indicated above, Plaintiff actually litigated the fraud claim and, hence, seminal determinative issue in support thereof *for nearly three (3) years* in the CA Superior Court Action. As reflected in the Final Judgment rendered by the CA Superior Court, Plaintiff also had the opportunity and did introduce oral and documentary evidence during three full days of trial before the Hon. Frank Roesch, i.e. March 18, 19 and 23, 2015. The Final Judgment also reflects that “further testimony and evidence was presented by the parties with respect to declaratory relief in the 10th cause of action [i.e. fraud].”

Defendant thus respectfully submits that, since (1) the seminal, determinative issue that was before the CA Superior Court is the identical issue that is before the Board in the Cancellation Proceeding, i.e. whether Defendant knowingly made willful false and misleading statements to the USPTO Examining Attorney with the intent to deceive the Examining Attorney

into believing that Defendant was the sole and exclusive owner of the *Everett and Jones* trademark, (2) the identical issue that is before the Board was actually litigated and adjudged in the CA Superior Court Action; (3) determination of the identical issue was necessary to the Final Judgment rendered by the CA Superior Court, and (4) Plaintiff had a full and fair opportunity to litigate the issue in the CA Superior Court Action, under the doctrine of collateral estoppel, Plaintiff is precluded, i.e. barred, from re-litigating the same issue in the Cancellation Proceeding.

V. Conclusion

Defendant thus respectfully submits that, under the doctrine of *res judicata*, Plaintiff is bound by the CA Superior Court Judgment and barred from re-litigating the same "fraud" claim in the Cancellation Proceeding.

Under the doctrine of collateral estoppel, Plaintiff is also precluded, i.e. barred, from re-litigating the identical issue that was actually litigated in the CA Superior Court Action in the Cancellation Proceeding and finally determined by the CA Superior Court, i.e. whether Defendant knowingly made willful false and misleading statements to the USPTO Examining Attorney with the intent to deceive the Examining Attorney into believing that Defendant was the sole and exclusive owner of the *Everett and Jones* trademark.

Defendant accordingly respectfully requests that the petition to cancel Trademark Reg. No. 3,747,512 be dismissed, with prejudice. Plaintiff's forum shopping is clearly a waste of judicial time and resources, as well as a considerable burden on Defendant.

Date: April 22, 2016


Respectfully submitted,

By: 

Ralph C. Francis, Esq.
FRANCIS LAW GROUP
512 Westline Drive, Ste. 301
Alameda, CA 94501
Telephone: 510.523.6200
E-mail: rcf@francislaw.com
*Attorneys for Defendant, Everett and
Jones Barbeque – Jack London, LLC*

ELECTRONIC FILING CERTIFICATE


I hereby certify that Everett and Jones Barbeque – Jack London, LLC's Response to the March 31, 2016 Board Order was submitted to the United States Patent & Trademark Office electronically via ESTTA on April 22, 2016.

By: 
Ralph C. Francis, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Everett and Jones Barbeque – Jack London, LLC's Response to the March 31, 2016 Board Order was served, via email to Plaintiff at everettandjonesbarbeque@gmail.com and deposited with the U.S. Postal Service on April 22, 2016 as First Class Mail, postage affixed, in an envelope addressed to Plaintiff at the following address:

Shirley A. Dicko
4121 Oak Hill Road
Oakland, CA 94605

By: 
Ralph C. Francis, Esq.

APPENDIX A

1 Shirley Everett-Dicko
4121 Oak Hill Road
2 Oakland, CA 94605
3 (510) 350-0838

ENDORSED
FILED
ALAMEDA COUNTY

AUG 09 2012

4 Plaintiff In Pro Per

CLERK OF THE SUPERIOR COURT
By M. Lovett, Deputy

5 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
6 Unlimited Jurisdiction
7

8 SHIRLEY EVERETT-DICKO)
9 individually)

10 Plaintiff,

11 vs.

12 Dorothy King Jernegan,
13 John Jernegan, Annie Pearl
14 Jones, Mary Everett)
15 individually, Everett and Jones)
16 Barbeque-Jack London LLC, a)
17 Limited Liability Company;)
18 Super Que LLC, a Limited)
19 Liability Company,)
20 DOES 1-100, inclusive.)

21 Defendants.
22

) Case No.: RG12634726
)
)
) AMENDED COMPLAINT
) FOR DAMAGES
) GROSS NEGLIGENCE; BREACH
) OF CONTRACT; BREACH OF
) FIDUCIARY DUTY; FRAUD;
) FRAUDULENT CONVEYANCE;
) RETALIATION; UNFAIR
) COMPETITION; RIGHT OF
) INSPECTION OF CORPORATE
) RECORDS; EXPLUSION OF MEMBERS
) LIMITED LIABILITY COMPANY;
) DECLARATORY AND INJUNCTIVE
) RELIEF

23 A. PARTIES

24 1. Plaintiff named herein is;

25 (a) Shirley Everett-Dicko (Everett-Dicko). At all times
26 mentioned herein, she was a citizen and resident of the City of
27 Oakland, County of Alameda, and State of California. Everett-
28 Dicko is and was, at all times mentioned herein, owner of the
Everett and Jones Barbeque name, logos and recipes, the

Plaintiff Shirley Everett-Dicko's Amended Complaint for Declaratory and Injunctive Relief

1 There have been hundreds of employees wearing the t-shirts in
2 the 39 years old family business and thousands sold or given
3 away as promotional items. As the attached promotional evidence
4 states, "Send a Super Q t-shirt, or pick up a gift certificate
5 for a barbeque experience next to none." A copy of the
6 "Promotional postcard" is attached as Exhibit number "J" and
7 thereby incorporated herein by reference in the complaint.

8 53. Plaintiff and Super Que, LLC have used the trademark
9 words "Saucy Sistah" since 1989, to identify all eight Everett
10 sisters of the famous Everett and Jones Barbeque family.
11 Plaintiff is saucy sistah number 4 as described in the family's
12 20th Anniversary program in 1993, and Virginia, the eldest
13 daughter, is saucy sistah number 1, as the attached evidence
14 shows a photo of Virginia in her saucy sistah t-shirt. A copy
15 of the "20th anniversary program and a picture of Virginia in her
16 saucy sistah t-shirt" is attached as Exhibit number "K" and
17 thereby incorporated herein by reference in the complaint.

18 54. Plaintiff and Super Que, LLC have sold clothing
19 apparel such as sweatshirts, aprons and hats with the trademark
20 "Everett and Jones" printed on the items for over 35 years. A
21 copy of the " www.super-que.com website pages and photos" is
22 attached as Exhibit "L" and thereby incorporated herein by
23 reference in the complaint.

24 55. Defendants were warned that willful false statements
25 and the like are punishable by fine or imprisonment, or both,
26 under 18 U.S.C. §1001, and that such willful false statements
27 and the like may jeopardize the validity of the application or
28 document or any registration resulting therefrom, declares that
all statements made of his/her own knowledge are true; and all
statements made on information and belief are believed to be

1 true.* On all four of the U.S. trademark applications Defendants
2 knowingly made willful false and misleading statements to the
3 Examining Attorney in the United States Patent and Trademark
4 Office with the intent to deceive the U.S. trademark Examining
5 Attorney into believing that Defendants were the sole and
6 exclusive owners of the trademarks and that all exhibits
7 submitted on behalf of the applied for trademark applications
8 and the goods or services offered were all from a single company
9 or from a single source.

10 56. Plaintiff believes that there is sufficient evidence
11 that Defendants committed fraud and conspired to commit fraud by
12 silence and concealment and base on the documentation, acts and
13 admissions by Defendants that Defendant's conduct amounted to
14 gross negligence and breaches of the September 11, 1998
15 Licensing Agreement, the Super Que, LLC Operating Agreement and
16 their fiduciary duties to Super Que, LLC. Defendants retaliated
17 against Plaintiff and fraudulently conveyed her ownership
18 interest in the trademarks to the Defendants to deprive
19 Plaintiff and Super Que, LLC of their rights to continue to
20 receive royalties and continue to use the Everett and Jones
21 Barbeque trademarks in commerce and or share in any current or
22 future benefits from the family's 39 years old business
23 goodwill.

24 E. DAMAGES

25 1. The acts and omissions of Defendants of which
26 Plaintiff complain herein are the direct legal cause of economic
27 damages to Plaintiff for which she seek recovery of general
28 compensatory and special damages in an amount according to proof
at trial.

1 retail products using the family's recipes to compete with Super
2 Que, LLC in the marketplace. Defendants have breached the Super
3 Que, LLC Operating Agreement and their fiduciary duties to Super
4 Que, LLC.

5 52. Defendants in doing the acts alleged herein abused
6 their authority and disregarded their fiduciary duty to
7 Plaintiff and Super Que LLC.

8 53. In doing the acts alleged herein, Defendants, and each
9 of them engaged in unlawful, unfair and fraudulent acts.

10 54. As a proximate result of Defendants wrongful conduct,
11 Plaintiff have sustained damages the exact amount of which is
12 unknown to Plaintiff but which will be proven at trial.

13 WHEREFORE, Plaintiff pray for damages as hereinafter set
14 forth.

15 **FOURTH CLAIM FOR RELIEF - FRAUD**
16 (All Defendants)

17 55. Plaintiff reallege and incorporate herein by reference
18 each and every allegation contained in paragraphs 1 through 56
19 inclusive, as though fully set forth herein,

20 56 Defendant's intentional and willful false and
21 misleading statements on four U.S. trademark applications to
22 obtain three U.S. trademark registrations in the United States
23 Patent and Trademark Office was done in silence and concealment
24 and no valuable consideration was given to Plaintiff or Super
25 Que, LLC for the transfer of ownership of the trademarks to the
26 Defendants. Ownership of the trademarks had been assigned to
27 Plaintiff and Super Que, LLC, and for years Super Que, LLC had
28 collected trademark fees and paid for the assignment of

1 ownership of the trademarks to Super Que, LLC in the form of
2 monthly royalty fees paid to the Plaintiff and her family.

3 (57) With reckless disregard for Super Que, LLC's long term
4 financial health and viability, Defendants Dorothy King Jernegan
5 and John Jernegan authorized a company, Everett and Jones
6 Barbeque-Jack London, LLC, that the Defendants are the majority
7 owners of, to secretly file two U.S. trademark applications to
8 falsely claim sole and exclusive ownership of the "Everett and
9 Jones" and "Saucy Sistah" trademarks, on or about August 26,
10 2008, in the United States Patent and Trademark Office.
11 Defendants Dorothy King Jernegan and John Jernegan knew that
12 Plaintiff's and Super Que, LLC's ownership of the said
13 trademarks was still in force and effect when Defendant Everett
14 and Jones Barbeque-Jack London, LLC filed the two trademark
15 applications for ownership of the trademarks. Defendants were
16 executive officers and managing members of Super Que, LLC and
17 did not disclose knowledge of the trademark applications to
18 Plaintiff or the other managing members of Super Que, LLC.

19 58. Defendants falsely stated on one of the U.S. trademark
20 applications that Defendants were the owners of Everett and
21 Jones Barbeque, Inc., and the owners of U.S. trademark
22 registration number 2612132 and or 2571217 to fraudulently
23 obtain one of the U.S. trademark registrations on the Principle
24 Register in the United States Patent and Trademark Office.

25 59. Defendants willfully submitted Super Que, LLC website
26 pages as exhibits with the intent to deceive the U.S. trademark
27 Examining Attorney into believing that Defendants were the sole
28 and exclusive owners of the applied for trademarks and that the
goods and services offered were from a single company and or a
single source. Defendants Dorothy King Jernegan and John

1 Jernegan, who were executive officers and managing members of
2 Super Que, LLC, did not make full disclosure of all material
3 facts within their knowledge relating to the trademark
4 applications to Plaintiff or other disinterested managing
5 members of Super Que, LLC.

6 60. Defendants then enlisted the aid of Defendants Annie
7 Pearl Jones and Mary Everett in the conspiracy to defraud
8 Plaintiff and Super Que, LLC out of their ownership of the
9 trademarks. Defendants Annie Pearl Jones and Mary Everett knew
10 that Plaintiff's and Super Que, LLC's ownership of the
11 trademarks was still in force and effect, joined the conspiracy
12 and filed two trademark applications falsely claiming sole and
13 exclusive ownership of the trademarks "Everett and Jones
14 Barbeque" and "Super Q". Defendants Annie Pearl Jones and Mary
15 Everett were managing members of Super Que, LLC and did not make
16 full disclosure of all material facts within their knowledge
17 relating to the trademark applications to Plaintiff or other
18 disinterested managing members of Super Que, LLC.

19 61. Defendants Dorothy King Jernegan, Annie Pearl Jones
20 and Mary Everett falsely stated on two U.S. trademark
21 applications that Defendants were the owners of Everett and
22 Jones Barbeque, Inc. and the owners of U.S. trademark
23 registration number 2612132 and or 2571217 to fraudulently
24 obtain one U.S. trademark registration on the Principle Register
25 in the United States Patent and Trademark Office. Defendants
26 intentionally submitted Super Que, LLC www.super-que.com website
27 pages as exhibits with the intent to deceive the U.S. trademark
28 Examining Attorney into believing that Defendants were the sole
and exclusive owners of the applied for trademarks and that the

1 goods and services offered were from a single company and or a
2 single source.

3 62. Defendants Dorothy King Jernegan and John Jernegan
4 were executive officers and managing members of Super Que, LLC
5 and did not make full disclosure of all material facts within
6 their knowledge relating to the four trademark applications and
7 registrations and Defendants Annie Pearl Jones and Mary
8 Everett's involvement to Plaintiff or other disinterested
9 managing members of Super Que, LLC. Each of the Defendants did
10 not get consent from Plaintiff or other disinterested managing
11 members for the transfer of ownership of the trademarks from
12 Super Que, LLC to the Defendants. Super Que, LLC received no
13 valuable consideration for the transfer of ownership of the
14 trademarks to the Defendants. Defendants concealed the
15 information from August 26, 2008 until it was discovered by
16 strangers and revealed to the family on or about November 5,
17 2010.

18 63. Defendants actively perpetrated the fraud by
19 preventing members from examining the books and records of Super
20 Que, LLC, so as to effectively conceal the fraudulent transfer
21 of ownership of Plaintiff's and Super Que, LLC's trademarks to
22 Defendants for their own personal gain. For months Plaintiff
23 sent repeated demands and request to allow access to inspect the
24 financial records and other Super Que, LLC documents to the very
25 persons who had conceived the fraud, participated in the fraud
26 and was now trying to conceal the fraud from Plaintiff.

27 64. On February 9, 2010, Defendant Everett and Jones
28 Barbeque-Jack London, LLC fraudulently became the registered
owner of trademark registration number 3,747,512 (Everett and
Jones) after falsely claiming to be the owner of trademark

1 registration number 2,612,132 (Everett and Jones Barbeque) on
2 its trademark application. No valuable consideration was given
3 to Plaintiff or Super Que, LLC for the transfer of ownership of
4 the trademarks to the Defendant Everett and Jones Barbeque-Jack
5 London, LLC. Defendants Dorothy King Jernegan and John Jernegan
6 did not disclose knowledge of the registrations of the two
7 trademarks to Plaintiff or other disinterested managing members
8 of Super Que, LLC.

8 65. On November 9, 2010, Defendants Dorothy King Jernegan,
9 Annie Pearl Jones and Mary Everett fraudulently became the
10 registered owners of trademark registration number 3,872,455
11 (Everett and Jones Barbeque) in the restaurant and food services
12 class by falsely claiming to be the registered owner of
13 trademark registration number 3,747,512 (Everett and Jones) in
14 the clothing apparel class. The same trademark registration
15 number that Defendant Everett and Jones Barbeque-Jack London,
16 LLC had become the registered owner of eight months earlier on
17 February 9, 2010. No valuable consideration was given to
18 Plaintiff or Super Que, LLC for the transfer of ownership of the
19 trademarks to the Defendants. Defendants Dorothy King Jernegan
20 and John Jernegan, Annie Pearl Jones and Mary Everett did not
21 disclose knowledge of the registration of the trademarks to
22 Plaintiff or other disinterested managing members of Super Que,
23 LLC.

24 66. Defendants committed fraud and engaged in a cover-up
25 to conceal their fraudulent acts through silence and concealment
26 and by active misconduct. Defendants Dorothy King Jernegan and
27 John Jernegan wrongfully diverted funds and resources from Super
28 Que, LLC to Defendants Annie Pearl Jones and/or Mary Everett,
personally or to pay operating expenses in their own businesses

1 for the plaintiff to determine the precise amount of damage
2 which she will suffer if defendants conduct is not restrained.

3 159. Defendants wrongful and unlawful actions have caused
4 severe emotional injury to Plaintiff and was without
5 justification and entitles Plaintiff to an award of money,
6 expenses, fees or other benefits, whether by statute or
7 otherwise.

8 160. In doing the acts alleged herein, Defendants, and each
9 of them engaged in unlawful, unfair and fraudulent acts.

10 161. As a proximate result of each Defendant's wrongful
11 conduct, Plaintiff have sustained monetary damages the exact
12 amount of which is unknown to Plaintiff but which will be proven
13 at trial.

14 WHEREFORE, Plaintiff prays for judgment on this claim for
15 relief as hereinafter set forth.

16 An order granting a preliminary and/or permanent injunction:

17 A. That this court order a temporary, preliminary and/or
18 permanent injunctive relief: restraining Defendants and
19 that during the pendency of this action or until further
20 court order that Dorothy King Jernegan, John Jernegan,
21 Annie Pearl Jones and Mary Everett resign as officers of
22 Super Que, LLC and be barred from participating in or
23 voting for or on any Super Que, LLC business and
24 activities;

25 B. That this court order a temporary, preliminary and/or
26 permanent injunctive relief: restraining Defendants and
27 that during the pendency of this action or until further
28 court order, Defendants Everett and Jones Barbeque-Jack
London, LLC, Dorothy King Jernegan, John Jernegan, Annie

1 Pearl Jones and Mary Everett and its agents, officers and
2 employees be enjoined and restrained from all activity
3 based upon the unlawful registration of the three
4 trademarks on file at the United States Patent and
5 Trademark Office on the Principal Register, and cease and
6 refrain from manufacturing, selling or shipping any
7 products based on the unlawful trademark registrations
8 and that all product be pulled from wholesale and retail
9 shelves and accounts and held or destroyed or turned over
to Super Que, LLC;

10 C. That this court order a temporary, preliminary and/or
11 permanent injunctive relief: restraining Defendants and
12 that during the pendency of this action or until further
13 court order, defendant Super Que LLC be ordered to
14 immediately pay the costs and or fees in connection with
15 an attorney to immediately file a Petition to Cancel the
16 trademark registration held by Mr. Kim Seng's Company,
17 the owner of Registration No. 3362263, in the United
18 States Patent and Trademark Office on the Principal
19 Register which threaten Plaintiff's company Defendant
20 Super Que, LLC's ability to continue to use the trademark
21 "Super Q" and sell its Everett and Jones Barbeque "Super
22 Q" BBQ sauce because the trademark registration becomes
uncontestable on January 1, 2013, and allow Plaintiff to
work with the attorney;

23 D. That this Court issue a temporary, preliminary or
24 permanent injunctive relief; restraining Defendants
25 Everett and Jones Barbeque-Jack London LLC, Dorothy King
26 Jernegan, Annie Jones and Mary Everett from acting on the
27 applications and registrations by Defendants in the

1 United States Patent and Trademark Office on the
2 Principal Register be enjoined and be invalidated and
3 declare to be lawfully in the name of Plaintiff and Super
4 Que LLC;

5 E. That this court order a temporary, preliminary and/or
6 permanent injunctive relief: restraining and freezing the
7 assets of Defendants Dorothy King Jernegan and John
8 Jernegan to prevent Defendants from hiding assets.
9 Plaintiff is entitled to equitable and injunctive relief
10 against Defendants Dorothy King Jernegan and John
11 Jernegan including, among other things, a preliminary
12 injunction: (1) Freezing the personal and business assets
13 of Defendants Dorothy King Jernegan and John Jernegan
14 and; (2) Requiring Dorothy King Jernegan and John
15 Jernegan to provide 30 days advance notice to the
16 Plaintiff and Super Que, LLC, during the pendency of this
17 litigation and any subsequent judgment in favor of
18 Plaintiff and Super Que, LLC, of any intended future
19 transfers of their assets in the amount of \$10,000 or
20 more in a single transaction; (3) Plaintiff is likely to
21 succeed on the merits of its claims against Defendants
22 Dorothy King Jernegan and John Jernegan for gross
23 negligence, breach of fiduciary duty and contract, fraud,
24 fraudulent conveyance, unfair business competition, and
25 retaliation; (4) Given the Defendants Dorothy King
26 Jernegan and John Jernegan's prior efforts to
27 fraudulently convey assets to avoid the reach of
28 Plaintiff and Super Que, LLC, and the fact that their
assets are substantially insufficient to satisfy the
damages claimed in this Complaint, a possibility exists

APPENDIX B



FILED
ALAMEDA COUNTY

APR 9 2015

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

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APR - 7 2015

- 1 LEWIS BRISBOIS BISGAARD & SMITH LLP
Julian J. Pardini, Esq. SB# 133878
- 2 E-Mail: Julian.Pardini@lewisbrisbois.com
- 3 Stephen J. Liberatore, Esq. SB# 129772
- 4 E-Mail: Stephen.Liberatore@lewisbrisbois.com
- 5 Leo A. Bautista, Esq. SB# 149889
- 6 E-Mail: Leo.Bautista@lewisbrisbois.com
- 7 333 Bush Street, Suite 1100
- 8 San Francisco, California 94104-2872
- 9 Telephone: 415.362.2580
- 10 Facsimile: 415.434.0882
- 11 Attorneys for Defendants
- 12 DOROTHY KING JERNEGAN, JOHN JERNEGAN,
- 13 EVERETT AND JONES BARBEQUE-JACK LONDON LLC,
- 14 Limited Liability Company
- 15 Frederick John James, Esq. SB# 59545
- 16 7750 Pardee Lane, Ste. 130
- 17 Oakland, CA 94621
- 18 Telephone: 510.430.8243
- 19 Facsimile: 510.430.2784
- 20 frederickjames@aol.com
- 21 Attorneys for Defendants
- 22 DOROTHY KING JERNEGAN, JOHN JERNEGAN,
- 23 EVERETT AND JONES BARBEQUE-JACK LONDON LLC,
- 24 a Limited Liability Company; and SUPER QUE LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

SHIRLEY EVERETT-DICKO,
Plaintiff,

v.

DOROTHY KING JERNEGAN; JOHN
JERNEGAN; ANNIE PEARL JONES,
MARY EVERETT individually, EVERETT
AND JONES BARBEQUE-JACK LONDON
LLC, a Limited Liability Company; SUPER
QUE LLC, a Limited Liability Company,
DOES 1-100, inclusive,
Defendants.

CASE NO. RG12634726

Assigned for All Purposes to Hon. Frank Roesch,
Dept. 24

~~PROPOSED~~ JUDGMENT
AFTER TRIAL BY COURT

Action Filed: FAC: 8/9/12
Trial Date: March 16, 2015

LEWIS
BRISBOIS
BISGAARD
& SMITH LLP
ATTORNEYS AT LAW

4831-5686-6082.1

[PROPOSED] JUDGMENT

ORIGINAL

1 This matter came on regularly for trial at 9:30 a.m. on March 16, 2015, in Department 24
2 of this court, and was actually tried on March 18, 19, and 23, 2015, the Honorable Frank Roesch,
3 presiding. Plaintiff SHIRLEY EVERETT-DICKO appeared *In Propria Persona*. Stephen J.
4 Liberatore and Leo A. Bautista of Lewis, Brisbois, Bisgaard & Smith, LLP and Frederick John
5 James appeared as attorneys for defendants DOROTHY KING JERNEGAN, JOHN JERNEGAN,
6 and EVERETT AND JONES BARBEQUE - JACK LONDON, LLC, a Limited Liability
7 Company. Frederick John James also appeared as attorney for Defendant SUPER QUE, LLC, a
8 Limited Liability Company. Defendant MARY EVERETT appeared *In Propria Persona*.
9 Defendant ANNIE PEARL JONES had been previously dismissed from that action by plaintiff.

10 A jury trial having been waived, oral and documentary evidence was introduced on behalf
11 of the respective parties who appeared through counsel and *In Propria Persona* and the cause was
12 argued and submitted for decision. The Court, having considered the evidence and heard and read
13 the arguments of counsel and being fully advised, issues the following judgment based thereon:

14 Plaintiff's Amended Complaint for Damages (hereinafter the "Complaint" or "Amended
15 Complaint") asserted 10 causes of action for (1) Gross Negligence; (2) Breach of Contract; (3)
16 Breach of Fiduciary Duty; (4) Fraud; (5) Fraudulent Conveyance; (6) Retaliation; (7) Unfair
17 Competition; (8) Right of Inspection of Corporate Records; (9) Expulsion of Members of Limited
18 Liability Company; and (10) Declaratory and Injunctive Relief. At the commencement of opening
19 arguments on March 19, 2014, Plaintiff withdrew causes of action numbers 5 and 9, and the
20 remaining causes of action proceeded to trial.

21 FIRST CAUSE OF ACTION FOR GROSS NEGLIGENCE

22 Pursuant to the allegations in the Complaint, Plaintiff asserted and sought damages and
23 other relief based on the following alleged matters in the First Cause of Action for Gross
24 Negligence:

25 The Complaint alleged that defendants Dorothy Jernegan, John Jernegan, Annie Jones,
26 Mary Everett, Super Que, LLC ("Super Que"), and Everett and Jones Barbeque-Jack London,
27 LLC caused plaintiff to lose ownership of three U.S. Trademarks fraudulently registered in the
28

1 United States Patent and Trademark Office on the principal and supplemental register on February
2 9, 2010 and November 14, 2010. (Amended Complaint, pgs. 28-30, ¶¶ 6 - 12.)

3 The Complaint alleged that Defendants allowed Super Que property to be used to steal
4 assets from Super Que for the personal benefit of the Defendants. (Amended Complaint, p.30, ¶
5 13).

6 The Complaint further alleged at paragraph 13 that the Defendants wrongfully engaged in
7 the following acts:

- 8 (a) Failed to renew U.S. Trademark Registrations in the name of Super Que;
- 9 (b) Failed to prevent conflicts of interests by failing to resign as officers and managers as
10 Super Que;
- 11 (c) Failed to oppose trademark applications;
- 12 (d) Aided and abetted co-defendants with registering the alleged trademark applications;
- 13 (f) Failed to disclose the existing of the alleged trademark applications and registrations
14 to Plaintiff and other Super Que managing members;
- 15 (g) Mislead investors through the alleged trademark registrations;
- 16 (h) Caused Plaintiff and Super Que to lose economic opportunities by means of the alleged
17 registered trademarks;
- 18 (i) Implemented practices and policies that denied members access and inspection rights to
19 the books and records of Super Que;
- 20 (j) Failed to provide monthly financial reports pertaining to Super Que as required under
21 the Operating Agreement;
- 22 (k) Failed to hold management meetings of Super Que;
- 23 (l) Failed to pay monthly royalty payments to managing members of Super Que;
- 24 (m) Failed to protect the economic interests of the members of Super Que and failed to
25 protect Super Que's position in the market place;
- 26 (n) Allowed the transfer of trademarks from Super Que to Defendants (Amended
27 Complaint, pgs. 30-32, ¶ 13).

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SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT

Pursuant to the allegations in the Complaint, Plaintiff asserted and sought damages and other relief based on the following alleged matters in the Second Cause of Action for Breach of Contract:

The Complaint alleged that Defendants disregarded and refused to comply with the Super Que Operating Agreement (“Operating Agreement”) and breached the January 12, 2000 Operating Agreement and the September 11, 1988 Licensing Agreement. (Amended Complaint, p. 33, ¶ 19).

The Complaint alleged that the Defendants denied the Plaintiff and other minority interest managing members from examining the books and records of Super Que. (Amended Complaint, p. 34, ¶ 20).

The Complaint alleged that Defendants wrongfully comingled and diverted money and resources from Super Que to the operations of Defendants’ own businesses. (Amended Complaint, p. 34, ¶ 20).

The Complaint alleged that Defendants caused Plaintiff’s and Super Que’s property to be falsely placed in the names of the Defendants. (Amended Complaint at ¶ 21).

The Complaint alleged that Defendants moved the Super Que business office without authorization and allowed Super Que funds to be co-mingled with the funds of others. (Amended Complaint, p. 34, ¶ 21).

The Complaint alleged that Defendants refused to convene meetings of Super Que and deprived Plaintiff and other members of their rights to participate in the management of the business. (Amended Complaint, p. 34, ¶ 21).

The Complaint alleged that by doing the acts above Defendants breached the Operating Agreement. (Amended Complaint, p. 35, ¶ 22).

The Complaint alleged that Defendants Everett and Jones Barbeque - Jack London LLC, Dorothy Jernegan and John Jernegan breached the September 11, 1998 License Agreement. (Amended Complaint, p. 35, ¶ 23).

The Complaint alleged that Defendants wrongfully stopped paying monthly royalty payments and breached the License Agreement when Defendants opened another restaurant at

1 4245 McArthur Blvd., Oakland, California on or about March 28, 2010 using the Everett and
2 Jones Barbeque and Super Que's trademarks and related food recipes. (Amended Complaint, p.
3 35, ¶23).

4 The Complaint alleged that Defendants breached the September 11, 1998 License
5 Agreement by manufacturing and distributing a line of competing barbeque retail products using
6 the Everett and Jones Barbeque names, logos and recipes. (Amended Complaint, p. 35, ¶ 24.)

7 The Complaint alleged that Defendants deprived Plaintiff and Super Que of the rightful
8 ownership of the Everett and Jones Barbeque trademarks and registrations with the United States
9 Patent and Trademark Office in breach of the Operating Agreement and the September 11, 1988
10 Licensing Agreement. (Amended Complaint, p. 35, ¶ 25.)

11 During trial, the Plaintiff further asserted that the Defendants breached a written, oral,
12 implied, or quasi-contract with Plaintiff by failing to make ongoing royalty payments for the sale
13 of barbeque sauce and other products by Super Que.

14 **THIRD CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY**

15 Pursuant to the allegations in the Complaint, Plaintiff asserted and sought damages and
16 other relief based on the following alleged matters in the Third Cause of Action for Breach of
17 Fiduciary Duty:

18 The Complaint alleged that Defendants diverted assets of Super Que for their own use,
19 including the alleged trademarks. (Amended Complaint, p. 36, ¶ 30).

20 The Complaint alleged that John Jernegan and Dorothy Jernegan failed to disclose
21 trademark applications that they had knowledge of since August 26, 2008 and January 14, 2010.
22 (Amended Complaint, p. 37, ¶ 31).

23 The Complaint alleged that John and Dorothy Jernegan failed to disclose their knowledge
24 acquired on or about February 9, 2010 and on or about November 9, 2010 that three trademarks
25 had been registered on the principal register of the United States Patent and Trademark Office in
26 the name of Everett and Jones Barbeque - Jack London, LLC and in the name of Dorothy
27 Jernegan, Annie Jones, and Mary Everett individually. (Amended Complaint at ¶ 32).

1 The Complaint alleged that the Defendants wrongfully caused the registration of
2 trademarks in their names. (Amended Complaint, pgs. 37-40, ¶¶ 33- 42).

3 The Complaint alleged that Defendants failed to disclose their conflicts of interest with
4 Super Que and falsely claimed exclusive ownership of the trademarks Everett and Jones Barbeque
5 and Super Q. (Amended Complaint, p. 41, ¶ 43).

6 The Complaint alleged that John Jernegan failed to disclose the alleged transfer of Super
7 Que's trademarks; was engaged in the management of other entities beside Super Que; failed to
8 disclose the economic interests of the Defendants and other businesses in which John Jernegan
9 and other Defendants were engaged; and, advocated positions in conflict with the interest of Super
10 Que, LLC and in favor of other business interests. (Amended Complaint, pgs. 41-42, ¶ 44).

11 The Complaint alleged that Defendants interfered with Plaintiff's right as an alleged
12 managing member of Super Que. (Amended Complaint, p. 43, ¶ 47).

13 The Complaint alleged that Defendants Dorothy Jernegan and John Jernegan wrongfully
14 pledged Super Que assets to secure the purchase of a Super Que office and warehouse building at
15 1444 Wicks Blvd., San Leandro, California, and that they allowed Super Que to pay an
16 inordinately high rent for property leased from the Defendants. (Amended Complaint, p. 43, ¶
17 49).

18 The Complaint alleged that Dorothy Jernegan and John Jernegan have caused the sale of
19 Super Que's products to be stalled by diverting their attention to the operations and sales of their
20 separate company Everett and Jones Barbeque - Jack London LLC. (Amended Complaint, p. 44, ¶
21 51).

22 **FOURTH CAUSE OF ACTION FOR FRAUD**

23 Pursuant to the allegations in the Complaint, Plaintiff asserted and sought damages and
24 other relief based on the following alleged matters in the Fourth Cause of Action for Fraud:

25 The Complaint alleged that Defendants Dorothy Jernegan, John Jernegan, Everett and
26 Jones Barbeque - Jack London LLC, wrongfully filed two U.S. Trademark Applications to claim
27 ownership of the marks "Everett and Jones" and "Saucy Sistah" on or about August 26, 2008 in
28 the United States Patent and Trademark Office. (Amended Complaint, 46, ¶ 57).

1 The Complaint alleged that Defendants falsely stated to the United States Patent and
2 Trademark Office that Defendants were the owners of the U.S. Trademark Registrations Numbers
3 2612132 and/or 2571217 to fraudulently obtained one of the United States Trademark
4 Registrations. (Amended Complaint, p. 46, ¶ 58).

5 The Complaint further alleged that Defendants Annie Jones, Mary Everett, and Dorothy
6 Jernegan fraudulently filed trademark applications with the United States Trademark Office for the
7 marks "Everett and Jones Barbeque" and "Super Q." (Amended Complaint, p. 47, ¶ 60).

8 The Complaint alleged Defendants willfully prevented members of Super Que from
9 examining the books and records of Super Que (Amended Complaint, p. 48, ¶ 63).

10 The Complaint alleged that on February 9, 2010 Defendant Everett and Jones Barbeque -
11 Jack London LLC fraudulently became the registered owner of Trademark Registration Number
12 3,747,512. (Amended Complaint, p. 48, ¶ 64.)

13 The Complaint alleged that on November 9, 2010, Defendants Dorothy Jernegan, Annie
14 Jones, and Mary Everett fraudulently became the registered owners of trademark Registration
15 Number 3,872,455 for the mark Everett and Jones Barbeque. (Amended Complaint, p. 49, ¶ 65).

16 The Complaint further alleged that Defendants diverted funds and resources from Super
17 Que to themselves and to pay operating expenses in their own businesses. (Amended Complaint,
18 p. 49, ¶ 66).

19 The Complaint alleged that Defendants Dorothy and John Jernegan failed to disclose the
20 acts alleged above to other members of Super Que and failed to allow access to the books and
21 records of Super Que. (Amended Complaint, 50, ¶ 67).

22 The Complaint alleged that Defendants wrongfully reduced and terminated a payment of
23 royalties to Plaintiff and other members owed from the sales of Super Que. (Amended Complaint,
24 pgs. 50-51, ¶¶ 69 -71).

25 The Complaint alleged that Defendants wrongfully modified the appearance of the Everett
26 and Jones Barbeque trademarks and caused dilution of the same. (Amended Complaint, p. 52, ¶
27 72).

28

1 The Complaint alleged that Defendants have excluded Plaintiff from the management and
2 participation in Super Que. (Amended Complaint, pg. 53-54, ¶¶ 76-78).

3 At trial, Plaintiff further asserted that, to Plaintiff's detriment, the Defendants fraudulently
4 represented to her that Plaintiff was a member or held an economic interest in Super Que.

5 FIFTH CAUSE OF ACTION FOR FRAUDULENT CONVEYANCE

6 Pursuant to the allegations in the Complaint, Plaintiff asserted and sought damages and
7 other relief based on the following alleged matters in the Fifth Cause of Action for Fraudulent
8 Conveyance:

9 The Complaint alleged that the Defendants fraudulently conveyed Plaintiff's and Super
10 Que's ownership and management of the Everett and Jones Barbeque trademarks to Defendants'
11 control and deprived Plaintiff and Super Que of the right to continue to use the family's trademark
12 and business goodwill, and to share in royalties and any future benefits from new business
13 ventures. (Amended Complaint, p. 56, ¶ 83).

14 The Complaint alleged that Defendants fraudulently became the owners of trademark
15 Registrations Numbers 3,747,512 and 3, 872,455. (Amended Complaint, pgs. 56-57, ¶¶ 84-85).

16 The Complaint alleged that Defendants caused Plaintiffs' share of royalties' to be withheld
17 in 2010 and allocated to the Defendants, causing all royalty payments owed to Plaintiff to cease.
18 (Amended Complaint, p. 57, ¶ 85.)

19 The Complaint alleged that defendant Dorothy Jernegan fraudulently caused the purchase
20 and transfer of a portion of the ownership and interest of member Yolanda Crawford in Super Que
21 to be transferred to Dorothy Jernegan. (Amended Complaint, p. 58, ¶ 86).

22 The Complaint alleged that Defendants actively concealed the transfer of a portion of
23 Yolanda Crawford's interests in Super Que. (Amended Complaint, p. 59, ¶ 88).

24 The Complaint alleged that the Defendants made improper use of financing, funds, and
25 proposed financing provided to Super Que. (Amended Complaint, pgs. 59-60, ¶¶ 89-90).

26 The Complaint alleged that defendants Dorothy Jernegan and John Jernegan wrongfully
27 took large sums of money as operating or management fees from Super Que. (Amended
28 Complaint. P. 61, ¶ 93).

1 The Complaint realleged that Defendants refused to provide Plaintiff access to the books
2 and records of Super Que and thus fraudulently concealed the alleged acts set forth above.

3 (Amended Complaint, pgs. 61-63, ¶¶ 94-97).

4 **SIXTH CLAIM FOR RELIEF FOR RETALIATION**

5 Pursuant to the allegations in the Complaint, Plaintiff asserted and sought damages and
6 other relief based on the following alleged matters in the Sixth Cause of Action for Retaliation:

7 The Complaint alleged that Defendants retaliated against Plaintiff by filing, and conspiring
8 to file United States Trademark Applications with the United States Patent and Trademark Office,
9 as alleged above, claiming ownership of the “Everett and Jones Barbeque” and “Super Q”
10 trademarks. (Amended Complaint, p. 64, ¶ 102).

11 The Complaint further realleged that the Defendants refused to allow Plaintiff access to the
12 books and records of Super Que in retaliation against Plaintiff. (Amended Complaint, p. 64, ¶
13 103).

14 **SEVENTH CAUSE OF ACTION FOR UNFAIR COMPETITION**

15 Pursuant to the allegations in the Complaint, Plaintiff asserted and sought damages and
16 other relief based on the following alleged matters in the Seventh Cause of Action for Unfair
17 Competition against defendants Everett and Jones Barbeque - Jack London, LLC, Dorothy
18 Jernegan, and John Jernegan.

19 The Complaint alleged that the Defendants John and Dorothy Jernegan and Everett and
20 Jones Barbeque - Jack London, LLC unfairly competed with Super Que by opening competing
21 restaurants and producing retail products in competition under the Everett and Jones Barbeque
22 trademarks. (Amended Complaint, p. 66, ¶ 109).

23 The Complaint alleged that these Defendants wrongfully interfered with a proposed license
24 for use of the Everett and Jones Barbeque trademarks set forth in the “Proposed Seven Square
25 Agreements.” (Amended Complaint, p. 66, ¶ 109).

26 The Complaint alleged these Defendants denied Plaintiff the opportunity to participate in
27 Plaintiff’s own business and interfered with Plaintiff’s right as a managing member of Super Que.
28 (Amended Complaint, p. 67, ¶ 112).

1 The Complaint alleged that all of the Defendants colluded and conspired with one another
2 to create their own private label brand of barbeque products in competition with Super Que's
3 services and products. (Amended Complaint, p. 68, ¶ 114).

4 The Complaint alleged that Defendants wrongfully took secret recipes from Plaintiff and
5 Super Que to create competing businesses in sale competing products. (Amended Complaint, p.
6 69, ¶ 117.)

7 **EIGHTH CAUSE OF ACTION RIGHT OF INSPECTION OF CORPORATE RECORDS**

8 Pursuant to the allegations in the Complaint, Plaintiff asserted and sought damages and
9 other relief based on the following alleged matters in the Eighth Cause of Action for Right of
10 Inspection of Corporate Records:

11 The Complaint alleged that Defendants unlawfully prevented Plaintiff from accessing the
12 books and records of Super Que and refused to comply with the Operating Agreement in this
13 regard. (Amended Complaint, pgs. 70-71, ¶¶ 122 - 124).

14 **NINTH CAUSE OF ACTION FOR EXPULSION OF MEMBERS OF LIMITED**
15 **LIABILITY COMPANY**

16 Pursuant to the allegations in the Complaint, Plaintiff asserted and sought damages and
17 other relief based on the following alleged matters in the Ninth Cause of Action for Expulsion of
18 Members of Limited Liability Company:

19 The Complaint alleged that the Defendants conspired to exclude Plaintiff from the
20 management and participation in Super Que; used Super Que property for their own benefit; and
21 concealed the books and records of Super Que. (Amended Complaint, p. 71, ¶ 128).

22 The Complaint alleged that the Defendants failed to oppose a trademark application filed
23 by Kim Seng Company for the trademark "Super Q" published for Opposition on October 16,
24 2007 and failed to disclose these facts or the fact that said application prevented the registration of
25 the mark "Super Q" in favor of the Everett and Jones Barbeque businesses. (Amended Complaint,
26 pgs. 72-74, ¶¶ 129- 134).

27 The Complaint alleged that the Defendants knowingly acted to deprive Plaintiff of royalty
28 payments; acted to benefit from the good will of the Super Que business; acted to obtain

1 ownership of the trademarks in the Everett and Jones Barbeque business; and, wrongfully diverted
2 funds and resources from Super Que for the Defendants benefit. (Amended Complaint, pgs. 75-
3 76, ¶¶ 136- 137).

4 The Complaint realleged that the Defendants failed to allow Plaintiff and other members of
5 Super Que access to the books and records of the limited liability company. (Amended
6 Complaint, pgs. 76-79, ¶¶ 139-145).

7 **TENTH CLAIM FOR RELIEF FOR DECLARATORY AND INJUNCTIVE RELIEF**

8 Pursuant to the allegations in the Complaint, Plaintiff asserted and sought relief in the
9 Tenth Cause of Action for Declaratory and Injunctive Relief based on all of the facts and
10 allegations set forth above.

11 In the Complaint, Plaintiff requested a judicial determination of her rights and as to the
12 validity of the Defendants' applications and registrations of the trademarks "Everett and Jones,"
13 "Everett and Jones Barbeque" and "Saucy Sistah" in the United States Patent and Trademark
14 Office on the Principal Register. (Amended Complaint, p. 80, ¶ 152).

15 The Complaint alleged that Plaintiff contends that she and Plaintiff's company Super Que,
16 LLC are the owners of the trademarks and that those actions taken by the Defendants were a
17 breach of the Operating Agreement and are invalid. (Amended Complaint, p. 80, ¶ 153).

18 The Complaint alleged that the Court's declaration at the present time was necessary and
19 appropriate in order for Plaintiff to ascertain her rights and requested an order restraining
20 Defendants' alleged unlawful and unfair conduct. (Amended Complaint, p. 81, ¶ 155.)

21 At trial, Plaintiff requested a declaratory judgment from the Court ordering that Plaintiff
22 had unfettered rights to use and exploit the "Everett and Jones Barbeque," "Super Q", and "Saucy
23 Sistah" trademarks, and the Everett and Jones Barbeque recipes, and licenses and franchises
24 without interference by the Defendants.

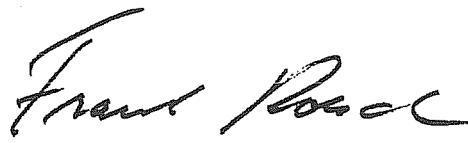
25 As set forth above, at the commencement of trial Plaintiff explicitly abandoned the 5th and
26 9th Causes of Actions for Fraudulent Conveyance and Expulsion of Members of Limited Liability
27 Company, respectively, and those claims were therefore dismissed, with prejudice pursuant to
28 California Code of Civil Procedure § 581(e).

1 Upon the close of Plaintiff's presentation of evidence, Defendants, and each of them,
2 moved for non-suit pursuant to California Code of Civil Procedure § 581c and said motion was
3 GRANTED by the Court with respect to claims for relief numbers 1, 2, 3, 4, 6, 7, 8, and with
4 respect to the claim for Injunctive Relief in the 10th cause of action. After the granting of said
5 motions, further testimony and evidence was presented by the parties with respect to the claim for
6 declaratory relief in the 10th cause of action. After receiving and considering the evidence and
7 closing arguments, the Court determined that Plaintiff is not entitled to any relief on the 10th cause
8 of action.

9 WHEREFORE, the Court having considered all of the issues, claims, testimony, evidence
10 and arguments presented before it, ^{including plaintiff's objection to this proposed judgment,} IT IS ADJUDGED, that Plaintiff Shirley Everett-Dicko takes
11 nothing on each of Plaintiff's causes of action from the defendants Dorothy King Jernegan, John
12 Jernegan, Mary Everett, Super Que, LLC, and Everett and Jones Barbeque - Jack London, LLC.

13 As the prevailing parties, Defendants are entitled to recover their costs in the action against
14 the Plaintiff.

15
16
17 DATED: 4/7, 2015

18 
19
20 The Honorable Frank Roesch, Superior Court Judge

APPENDIX C

SJC

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OCT 22 2015

NOT TO BE PUBLISHED IN OFFICIAL REPORT

26198-411

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not published or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

Court of Appeal First Appellate District
FILED
OCT 20 2015
Diana Herbert, Clerk
by _____ Deputy Clerk

SHIRLEY EVERETT-DICKO,
Plaintiff and Appellant,

v.

DOROTHY KING JERNEGAN et al.,
Defendants and Respondents.

A145524

(Alameda County
Super. Ct. No. RG12634726)

Respondents filed a motion to dismiss the appeal upon the contention that appellant Shirley Everett- Dicko, appearing in propria persona, seeks to appeal a nonappealable postjudgment order and, to the extent her notice of appeal relates to the judgment itself, the appeal is untimely. Appellant filed no opposition to the motion. We shall dismiss the appeal.

A bench trial was held in March 2015 on a business dispute alleging breach of contract and related claims. On April 9, 2015, the trial court filed its judgment. The next day, April 10, appellant was served with notice of entry of judgment. On April 17, appellant filed a motion for reconsideration of the judgment, which was denied on April 30, 2015. ~~Defendant~~^{Appellant} filed another motion on May 8, asking the court for "clarification" of its order denying reconsideration. The court denied this second motion on May 28. Appellant filed a notice of appeal on June 25, seeking to appeal only the order of May 28 denying her second motion for reconsideration but her "Civil Case Information Statement" says she is appealing the judgment and the postjudgment order denying reconsideration.

The order referenced in appellant's notice of appeal is not appealable. An order denying a motion for reconsideration—or a second motion for reconsideration—is not separately appealable and is reviewable only on an appeal from the underlying order. (Code Civ. Proc., § 1008, subd. (g); *Tate v. Wilburn* (2010) 184 Cal.App.4th 150, 159-160.) Liberally construing appellant's notice of appeal as an appeal from the judgment cannot save the appeal. A notice of appeal must be filed 60 days after service of notice of entry of judgment. (Cal. Rules of Court, rule 8.104(a)(1)(B).) Appellant was served with notice of entry of judgment on April 10, so the last day to file notice of appeal was June 9, 2015. Appellant did not file her notice of appeal until June 25, 2015.

Appellant's motion for reconsideration did not extend the time to appeal. A valid motion to reconsider an appealable order does provide an extension of time (Cal. Rules of Court, rule 8.108(e)) but a motion to reconsider a *judgment* is not a valid motion "because after entry of judgment, a trial court has no further power to rule on a motion for reconsideration." (*Ramon v. Aerospace Corp.* (1996) 50 Cal.App.4th 1233, 1236.) "[I]f the trial court has no power to rule on a reconsideration motion after judgment, such a motion can have no effect on the period within which to file a notice of appeal." (*Id.* at p. 1238.) *Ramon* is not alone in holding that a reconsideration motion filed after judgment does not extend the time for filing a notice of appeal. (*Safeco Ins. Co. v. Architectural Facades Unlimited, Inc.* (2005) 134 Cal.App.4th 1477, 1481-1482; *Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1605; see Eisenberg et al., *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter Group 2015) ¶ 3:94.7, p. 3-44.)

Appellant's notice of appeal is untimely. The time for appeal is jurisdictional—once the deadline expires, we have no authority to entertain the appeal: "[N]o court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal." (Cal. Rules of Court, rule 8.104(b).)

Disposition

The appeal is dismissed.

Pollak, J.

We concur:

McGuinness, P. J.

Siggins, J

A145524