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15 Attorneys for Defendants
16 ROSETTA STONE INC.,
17 ROSETTA STONE LTD., and
18 ROSETTA STONE INTERNATIONAL
19 INC.

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 SOUTHERN DIVISION

23 NADIA LOTUN, individually, and on behalf
24 of all others similarly situated,

25 Plaintiff,

26 v.

27 ROSETTA STONE, INC.;
28 ROSETTA STONE LTD.;
ROSETTA STONE INTERNATIONAL,
INC.; CAMBIAN LEARNING GROUP,
INC.; VERITAS CAPITAL FUND
MANAGEMENT, LLC; and DOES-1-10,
inclusive,

Defendants.

Case No. _____

**DEFENDANTS' NOTICE OF
REMOVAL OF ACTION FROM
STATE COURT**

[28 U.S.C. §§ 1332, 1441 (Diversity),
1446 and Fed. R. Civ. P. 81(c)]

**Removal Action Filed:
December 29, 2020**

*State Court Action filed in the
California Superior Court,
County of Orange Case on
September 24, 2020*

Case No.:
30-2020-01161980-CU-AT-CXC

1 **TO THE CLERK OF THE ABOVE-TITLED COURT AND TO PLAINTIFF**
2 **AND HER COUNSEL OF RECORD:**

3 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and
4 Fed. R. Civ. P. 81(c), Defendants Rosetta Stone Inc., Rosetta Stone Ltd., and Rosetta
5 Stone International Inc. (“Defendants”) hereby file their Notice of Removal to the
6 United States District Court for the Central District of California the above-captioned
7 state court action, originally filed as Case No. 30-2020-01161980-CU-AT-CXC in the
8 Superior Court of the State of California for the County of Orange.

9 As set forth below, removal is proper pursuant to 28 U.S.C. § 1441(a) because
10 this is a civil action and this Court has original jurisdiction under 28 U.S.C. § 1332
11 since the amount in controversy exceeds the sum or value of \$75,000, exclusive of
12 interest and costs, and is an action between citizens of different States.

13 **I. TIMELINESS OF REMOVAL**

14 1. Plaintiff Nadia Lotun (“Lotun” and/or “Plaintiff”) filed a Class-Action
15 Complaint in the Superior Court of the State of California for the County of Orange,
16 Case No. 30-2020-01161980-CU-AT-CXC on September 24, 2020 (the “Complaint”).

17 2. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Summons,
18 Complaint, Civil Cover Sheet, three Notices and Acknowledgements of Receipt of
19 Defendants, the Minute Order re Case Management Conference with Certificate of
20 Service, the Notice of Status Conference and E-filing Requirement, the First Amended
21 Complaint and the Court Register of Actions are attached as **Exhibits 1 through 9**
22 **and 11** to the accompanying Declaration of Teresa H. Michaud (“Michaud Decl.”),
23 filed concurrently herewith.

24 3. On October 16, 2020, Plaintiff sent Defendants the Summons and
25 Complaint, along with Notices and Acknowledgments of Receipt. Defendants
26 returned the signed Notices and Acknowledgments of Receipt on November 5, 2020.
27 Michaud Decl. ¶ , **Exhibits 5 - 7**.

28 4. The basis for removal set forth below in this Notice of Removal was not

1 apparent from the face of the original Complaint.

2 5. Prior to Defendants' deadline to respond to the Complaint, on
3 November 24, 2020, Plaintiff filed her First Amended Class Action Complaint
4 ("FAC"), and served it on Defendants via electronic service. Although Defendants
5 had not consented to electronic service, assuming solely for purposes of this Removal
6 that such service were effective, Defendants' present deadline to file a responsive
7 pleading to Plaintiff's First Amended Complaint, as well as to file this Notice of
8 Removal, would be December 29, 2020. *See* Cal. Code. Civ. Proc. §§ 471.5(a),
9 1010.6(a)(4)(B).

10 6. The First Amended Complaint asserts a cause of action under the
11 California Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*, which was
12 not included in the original Complaint. The inclusion of this additional claim has
13 provided the valid basis for removal by creating an amount in controversy in excess of
14 \$75,000, exclusive of interests and costs, as set forth in more detail below.

15 7. Defendants timely filed this Notice of Removal on December 29, 2020,
16 within 30 days after purported electronic service of the First Amended Complaint.
17 *See* 28 U.S.C. § 1446(b). As explained below, Defendants' Notice of Removal is
18 procedurally proper.

19 II. GROUNDS FOR REMOVAL

20 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
21 § 1332(a)(1) because the amount in controversy exceeds the sum or value of \$75,000,
22 exclusive of interest and costs, and this is a civil action between citizens of different
23 States.

24 A. Plaintiff and Defendants Are Citizens of Different States

25 9. Plaintiff is a natural person who is a citizen of the state of California,
26 County of Orange. (FAC ¶ 20.)

27 10. As set forth below, none of the defendants is a citizen of California,
28 which is also the state in which this action is pending.

1 11. For purposes of diversity jurisdiction, the citizenship of a corporation is
2 its state of incorporation and the state where it has its principal place of business.
3 *3123 SMB LLC v. Horn*, 880 F.3d 461, 463 (9th Cir. 2018) (citing 28 U.S.C.
4 § 1332(c)(1)).

5 12. Defendant Rosetta Stone Inc. (erroneously sued as “Rosetta Stone, Inc.”)
6 is incorporated in Delaware. Its principal place of business is 1621 North Kent Street,
7 Suite 1200, Arlington, Virginia 22209. Defendant Rosetta Stone Inc. is therefore a
8 citizen of Delaware and Virginia.

9 13. Defendant Rosetta Stone International Inc. (“Rosetta Stone
10 International”) (erroneously sued as “Rosetta Stone International, Inc.”) is
11 incorporated in Delaware. Its principal place of business is 1621 North Kent Street,
12 Suite 1200, Arlington, Virginia 22209. Defendant Rosetta Stone International Inc. is
13 therefore a citizen of Delaware and Virginia.

14 14. Defendant Rosetta Stone Ltd. (“Rosetta Stone Ltd.”) is a stock
15 corporation incorporated in Virginia. Its principal place of business is 135 West
16 Market Street, Harrisonburg, Virginia 22801. Defendant Rosetta Stone Ltd. is
17 therefore a citizen of Virginia.

18 15. Defendant Cambium Learning Group, Inc. erroneously sued as “Cambian
19 Learning Group, Inc.,” (“Cambium”) is incorporated in Delaware. Its principal place
20 of business is 17855 Dallas Parkway, Suite 400, Dallas, Texas 75287. Defendant
21 Cambium is therefore a citizen of Delaware and Texas.

22 16. For purposes of diversity jurisdiction, the citizenship of a limited liability
23 company (LLC) is the citizenship of its members. *See Johnson v. Columbia Props.*
24 *Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). “[T]o properly plead diversity
25 jurisdiction with respect to a limited liability company, the citizenship of all members
26 must be pled.” *Schweiss v. Greenway Health, LLC*, 2019 U.S. Dist. LEXIS 90066, at
27 *4 (C.D. Cal. May 29, 2019) (citing *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606
28 (9th Cir. 2016)).

1 17. Defendant Veritas Capital Fund Management, L.L.C. (“Veritas Capital”)
2 is a limited liability company organized under the laws of the state of Delaware with
3 its headquarters located at 9 West 57th Street, 32nd Floor, New York, New York
4 10019. Plaintiff does not allege that Veritas Capital has any members who are
5 citizens of California. (*See* FAC ¶ 25.)

6 18. Veritas Capital has one member, Veritas Manager Holdings, L.P., a
7 Delaware limited partnership with its headquarters located at 9 West 57th Street, 32nd
8 Floor, New York, New York 10019. (Michaud Decl. ¶ 7.) None of the limited
9 partners of Veritas Manager Holdings, L.P. is a citizen of the state of California. (*Id.*)
10 Therefore, no member of Veritas Capital is a citizen of the state of California and
11 Veritas Capital is not a citizen of the state of California.

12 19. The Court may also disregard the citizenship of unserved defendant
13 Veritas Capital for purposes of removal under the doctrine of fraudulent joinder. The
14 FAC contains no specific allegations of any wrongdoing against Veritas. It instead
15 contains a single legal conclusion that Veritas Capital may bear “successor liability”
16 as an “agent” to Cambium. (*See* FAC ¶ 26.) There is no possibility that this single
17 legal conclusion, standing alone, could give rise to liability under any of the three state
18 law causes of action asserted in the FAC. *See Gutierrez v. Whitley*, No. 2:20-cv-
19 08542-JWH-AFMx, 2020 U.S. Dist. LEXIS 226130, at *7 (C.D. Cal. Dec. 2, 2020)
20 (“[T]he [fraudulent joinder] standard is not whether plaintiffs will actually or even
21 probably prevail on the merits, but whether there is a possibility that they may do
22 so.”).

23 20. Defendants Cambium and Veritas Capital have not been served in this
24 action. Neither party need therefore provide consent to this Notice of Removal. *See*
25 28 U.S.C. § 1446(b)(2)(A) (providing that only those “defendants who have been
26 properly joined *and served* must join in or consent to the removal of the action”)
27 (emphasis added); *accord Destfino v. Reiswig*, 630 F.3d 952, 957 (9th Cir. 2011).

28 21. Thus, Plaintiff on the one hand, and the Rosetta Stone Defendants, along

1 with the other two Defendants Cambium and Veritas Capital, on the other hand, are
2 citizens of different States pursuant to 28 U.S.C. § 1332(a)(1).

3 **B. The Citizenship of Doe Defendants Is Irrelevant For Removal**

4 22. The citizenship of Defendants DOES 1-10 is disregarded. *See* 28 U.S.C.
5 § 1441(b)(1) (“In determining whether a civil action is removal on the basis of the
6 jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under
7 fictitious names shall be disregarded.”).

8 **C. The Amount In Controversy Exceeds \$75,000**

9 23. A sum demanded by the plaintiff “in the initial pleading shall be deemed
10 the amount in controversy” for removal on the basis of 28 U.S.C. § 1332(a), 28 U.S.C.
11 § 1446(c)(2).

12 24. The First Amended Complaint alleges that Plaintiff suffered emotional
13 distress, frustration, anxiety, as well as monetary injury in the amount of her initial
14 purchase of a product described as “Rosetta Stone® “Learn Spanish: Rosetta Stone
15 Bonus Pack (24 month subscription + Lifetime Down [sic] [of the software] + Book
16 Set), which she allegedly purchased for \$145.46. (FAC ¶¶ 31-32, 37.)

17 25. Plaintiff asserts a claim under the California Consumer Legal Remedies
18 Act, Cal. Civ. Code §§ 1750 *et seq.* (“CLRA”). Plaintiff specifically demands
19 recovery of “[a]ll reasonable and necessary attorneys’ fees and costs provided by
20 statute . . .” (FAC ¶ 105(g).) “[A] court must include future attorneys’ fees
21 recoverable by statute or contract when assessing whether the amount-in-controversy
22 requirement is met.” *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 794
23 (9th Cir. 2018).

24 26. Although Defendants dispute the merits of Plaintiff’s claims, if Plaintiff
25 prevails on her CLRA claim, she may recover her attorneys’ fees. Cal. Civ. Code
26 § 1780(e). Attorneys’ fees are therefore “‘at stake’ in the litigation.” *In re*
27 *Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672
28 CRB (JSC), 2019 U.S. Dist. LEXIS 26277, at *335 (N.D. Cal. Feb. 19, 2019)

1 (considering future attorneys' fees demanded by plaintiffs for CLRA claims for
2 purposes of determining amount in controversy).

3 27. Assuming a very conservative hourly rate of \$300 per hour, Plaintiff's
4 counsel will incur more than 251 hours to oppose one or more motions to dismiss,
5 conduct discovery, defend against summary judgment, prepare for and go to trial, and
6 obtain a jury verdict on her CLRA claim on an individual basis. As a result, the
7 minimum amount in controversy exceeds the jurisdictional amount of \$75,000,
8 exclusive of interest and costs. Thus, the alleged amount in controversy requirement
9 is met under 28 U.S.C. § 1332(a).

10 **D. Jury Demand by Plaintiff**

11 28. Plaintiff has made a Jury Demand in the First Amended Complaint filed
12 with the Orange County Superior Court.

13 **III. PROCEDURAL PREREQUISITES SATISFIED**

14 29. Venue is proper in the United States District Court for the Central
15 District of California, Southern Division, under 28 U.S.C. §§ 1441(a), 1446(a)
16 because this District Court and Division embraces the place in which the removed
17 action has been pending, that is, the Orange County Superior Court.

18 30. As is required by 28 U.S.C. § 1446(a), true and correct copies of all the
19 process, pleadings and orders served upon Defendants are hereby attached as follows:

- 20 a) **Exhibit 1** – Summons;
21 b) **Exhibit 2** - Complaint;
22 c) **Exhibit 3** - Case Cover Sheet
23 d) **Exhibit 4** - Minute Order re Case Management Conference with
24 Certificate of Service
25 e) **Exhibit 5** - Notice and Acknowledgment of Receipt for Defendant
26 Rosetta Stone International Inc.
27 f) **Exhibit 6** - Notice and Acknowledgment of Receipt for Defendant
28 Rosetta Stone Ltd.

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- g) **Exhibit 7** - Notice and Acknowledgment of Receipt for Defendant Rosetta Stone Inc.
- h) **Exhibit 8** - Notice of Status Conference and E-Filing Requirement
- i) **Exhibit 9** - First Amended Class Action Complaint

14. Defendants will promptly serve Plaintiff with this Notice of Removal and will promptly file a copy of this Notice of Removal with the clerk of the Superior Court, as required under 28 U.S.C. § 1446(d).

IV. CONCLUSION

WHEREFORE, Defendants respectfully request that this action be removed from the Superior Court of the State of California in and for the County of Orange to the United States District Court for the Central District of California, and that all future proceedings in this matter take place in the United States District Court for the Central District of California.

Dated: December 29, 2020

BAKER & McKENZIE LLP

By: /s/ Teresa H. Michaud
 Teresa H. Michaud
 Attorneys for Defendants
 ROSETTA STONE INC.,
 ROSETTA STONE LTD., and
 ROSETTA STONE
 INTERNATIONAL INC.

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14 Facsimile: 650 856 9299

15 Attorneys for Defendants
16 ROSETTA STONE INC.,
17 ROSETTA STONE LTD., and
18 ROSETTA STONE INTERNATIONAL
19 INC.

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

22 NADIA LOTUN, individually, and on behalf
23 of all others similarly situated,

24 Plaintiff,

25 v.

26 ROSETTA STONE, INC.;
27 ROSETTA STONE LTD.;
28 ROSETTA STONE INTERNATIONAL,
INC.; CAMBIAN LEARNING GROUP,
INC.; VERITAS CAPITAL FUND
MANAGEMENT, LLC; and DOES-1-10,
inclusive,

Defendants.

Case No. _____

DECLARATION OF TERESA H. MICHAUD IN SUPPORT OF DEFENDANTS' NOTICE OF REMOVAL OF ACTION FROM STATE COURT

[28 U.S.C. §§ 1332, 1441 (Diversity), 1446 and Fed. R. Civ. P. 81(c)]

**Removal Action Filed:
December 29, 2020**

State Court Action filed in the California Superior Court, County of Orange Case on September 24, 2020

**Case No.:
30-2020-01161980-CU-AT-CXC**

1 I, Teresa H. Michaud, declare and state as follows:

2 1. I am an attorney at law duly admitted to practice before this Court and
3 the Courts of the State of California. I am a partner with the law firm of Baker &
4 McKenzie LLP, counsel of record for Defendants Rosetta Stone Inc., Rosetta Stone
5 Ltd., and Rosetta Stone International Inc. (“Defendants”). I make this Declaration in
6 support of Defendants’ Notice of Removal of Action from State Court. I am the lead
7 attorney at Baker & McKenzie LLP involved in handling this case on behalf of
8 Defendants and have been since the inception of the case. As such, I have personal
9 knowledge of the matters set forth in this Declaration and, if called as a witness, could
10 and would testify competently thereto.

11 1. Plaintiff Nadia Lotun (“Lotun” and/or “Plaintiff”) filed a Class-Action
12 Complaint in the Superior Court of the State of California for the County of Orange,
13 Case No. 30-2020-01161980-CU-AT-CXC on September 24, 2020 (the “Action”).

14 2. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process,
15 pleadings and orders in the Action are attached hereto as follows:

- 16 • **Exhibit 1** - Class Action Complaint
- 17 • **Exhibit 2** - Summons
- 18 • **Exhibit 3** - Case Cover Sheet
- 19 • **Exhibit 4** - Minute Order re Case Management Conference with
20 Certificate of Service
- 21 • **Exhibit 5** - Notice and Acknowledgment of Receipt for Defendant
22 Rosetta Stone International Inc.
- 23 • **Exhibit 6** - Notice and Acknowledgment of Receipt for Defendant
24 Rosetta Stone Ltd.
- 25 • **Exhibit 7** - Notice and Acknowledgment of Receipt for Defendant
26 Rosetta Stone Inc.
- 27 • **Exhibit 8** - Notice of Status Conference and E-Filing Requirement
- 28 • **Exhibit 9** - First Amended Class Action Complaint

EXHIBIT 1

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: Rosetta Stone, Inc.; Rosetta Stone Ltd.;
(AVISO AL DEMANDADO): Rosetta Stone International, Inc.; Cambian
Learning Group Inc.; Veritas Capital
Management, Inc.; and DOES 1-10, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Nadia Lotun, individually, and on behalf of all others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): County of Orange

CASE NUMBER:
(Número del Caso):
30-2020-01161980-CU-AT-CXC XC

Superior Court of California
751 WEST SANTA ANA BLVD., SANTA ANA, CA 92701

Judge Randall J. Sherman

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
James H. Bartolomei III (SBN 301678), Duncan Firm, P.A., 809 West Third Street, Little Rock, AR 72201
501-228-7600

DAVID H. YAMASAKI, Clerk of the Court

DATE: 10/16/2020
(Fecha)

Clerk, by _____, Deputy
(Secretario) Sarah Loose (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)). Sarah Loose



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date):

EXHIBIT 2

1 James H. Bartolomei III (SBN 301678)
2 Of Counsel at Duncan Firm, P.A.
3 809 W. 3rd Street
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6 Facsimile: 501.228.0415
7 james@duncanfirm.com

8 *Attorneys for Plaintiff, and all others similarly situated*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ORANGE**

11 NADIA LOTUN, individually, and on behalf of
12 all others similarly situated,

13 Plaintiff,

14 vs.

15 ROSETTA STONE, INC.;
16 ROSETTA STONE LTD.;
17 ROSETTA STONE INTERNATIONAL, INC.;
18 CAMBIAN LEARNING GROUP, INC.;
19 VERITAS CAPITAL MANAGEMENT, INC.;
20 and DOES 1-10, inclusive,

21 Defendants.

CASE No. 30-2020-01161980-CU-AT-CXC

Assigned for All Purposes
Honorable Judge Randall J. Sherman

CLASS ACTION COMPLAINT

Jury Trial Demanded

CX-105

1 Plaintiff Nadia Lotun (“Plaintiff”), individually and on behalf of all other members of the
2 public similarly situated, allege as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against the Rosetta Stone Defendants
5 (hereinafter collectively “Rosetta Stone Defendants” or “Defendants”) to stop Defendants’
6 practice of falsely advertising Defendants’ foreign language software course package and to
7 obtain redress for a class of California consumers (“Class Members”) who paid for a Rosetta
8 Stone product, within the applicable statute of limitations period, as a result of Defendants’ false
9 and misleading advertisements. Plaintiff suffered economic harm and injury directly and
10 immediately as a result of her reliance on Defendants’ false and misleading advertisements and
11 paid money to Defendants as a result of her direct reliance. Plaintiff is a consumer and member
12 of the class of individuals for which the State of California has statutes designed to protect
13 consumers from false and misleading advertisements for consumer products.

14 2. Defendant Rosetta Stone, Inc. is a Virginia company duly existing and doing
15 business in the state of California and is engaged in the sale and distribution of Rosetta Stone®
16 foreign language software online courses to California consumers. Rosetta Stone is publicly
17 traded on the New York Stock Exchange under the symbol “RST.”

18 3. At all relevant times, Rosetta Stone Defendants represented, advertised and
19 promoted to consumers that consumers who purchased foreign language software courses in a
20 boxed package at a set price fixed by Rosetta Stone were granted a “lifetime download” of the
21 software, a limited online subscription and supporting reference materials. Defendants
22 misrepresented and falsely advertised to Plaintiff, and other similarly situated consumers, these
23 qualities and characteristics of Defendants’ foreign language software package (hereinafter
24 “Class Products”).

25 4. Plaintiff, and others similarly situated, purchased or attempted to purchase these
26 Class Products, and experienced and suffered harm, for which they seek class-wide relief.

27 5. Defendants’ misrepresentations to Plaintiff, and others similarly situated, caused
28

1 them to purchase or attempt to purchase these Class Products, which Plaintiff, and others
2 similarly situated, would not have purchased or attempted to purchase absent these
3 misrepresentations by Defendants, including but not limited to advertisements on the Class
4 Products’ containers and statements from Defendants’ employees, agents, owners, and/or
5 managers. In so doing, Defendants have violated California consumer protection statutes,
6 including the Unfair Competition Law and False Advertising Law.

7 **NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT**

8 6. Consumers purchased foreign language software advertised with certain product
9 capabilities, and consumers could not determine what product the consumer was actually
10 purchasing, as opposed to products without the advertised characteristics.

11 7. Consumers relied on the representations and advertisements of foreign language
12 software vendors, such as Rosetta Stone, in order to know which foreign language software
13 vendor to purchase products from and the capabilities of the software package purchased. The
14 representations of the type of product is important for all consumers’ purchase(s), including the
15 type of software product the consumer can access when downloaded, according to the
16 Defendant’s representations and advertising.

17 8. Defendants are engaged in the manufacture, marketing, supplying, and
18 distribution of foreign language software that are accompanied by deceptive advertising
19 practices that are not disclosed or are misrepresented on the face of Defendants’ packaging.

20 9. When consumers purchase Defendants’ foreign language software, they
21 reasonably believe that they will be obtaining a “**lifetime software download**” that is “**YOURS**
22 **TO KEEP FOREVER**” of foreign language software products, with the advertised product at
23 the advertised price from the source advertised at the time they purchase and consume the Class
24 Products.

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10. Defendants profit from the sale of Class Products. With deceptive advertising practices, many of the consumers would not have purchased or attempted to purchase these Class Products or would have chosen to purchase foreign language software courses from a competitor or chosen a lesser priced product.

11. In Plaintiff's case, the advertising practices that Defendants engaged in and created as a scheme and device were wholly deceptive and false. Defendants actively promoted, advertised, and represented to consumers a "lifetime software download" of foreign language course(s) such as Spanish when Defendants knew that they never intended to honor a lifetime software download commitment. Defendants actively concealed, suppressed, and omitted material facts about its foreign language online software package from consumers to entice

1 consumers to purchase the product at a set price so that Defendants could immediately obtain
2 money paid by each consumer for the package.

3 12. This false advertising and merchandizing scheme and devise were created by
4 Defendants to maximize income and sales from foreign language software packages to
5 Defendants without providing the product as advertised and represented to consumers. In short,
6 Defendants did not provide the foreign language software download (for Macs and/or PCs)
7 course to consumers as advertised and represented. This failure to provide the foreign language
8 software downloadable course to consumers in exchange for consumers paying Defendants was
9 part of a false, fraudulent scheme and device, premised on false representations of material fact
10 and false advertising, specifically designed and created to prompt and entice consumers to
11 purchase and order the software package, although the falseness was hidden and concealed from
12 the consumers. Defendants concealed the fact that its software products did not function as
13 advertised and that the foreign language software product was not available to download, all in
14 order to deceive consumers into purchasing Defendants' products and paying the stated price.

15 13. Defendants did not present consumers with either correctly advertised packaging
16 or the online advertisement prior to purchase, in order to conceal the Defendants' affirmative
17 deception that is at issue in this case.

18 14. Defendants make written representations to consumers which contradict the
19 actual characteristics of the Class Products. This written advertisement and representation was
20 designed to induce payment of money to the detriment and harm of the consumer.

21 15. The aforementioned written and oral representations are objectively false and
22 constitute false advertising under California's False Advertising Laws, Bus. & Prof. Code §§
23 17500 *et seq.* (hereafter "FAL"), and unlawful, unfair, or deceptive business practices under
24 California's Unfair Competition Laws, Bus. & Prof. Code §§ 17200 *et seq.*

25 16. Defendants' violations of the law include, but are not limited to, the false
26 advertising, marketing, representations, packaging, and sale of the falsely advertised Class
27 Products to consumers in California.

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1 Virginia company existing and doing business pursuant to the laws of California. Rosetta Stone
2 International has its principal office address at 4701 Cox Road, Suite 285, Glen Allen, Virginia
3 23060 with its principal information at 1621 North Kent Street, Suite 1200, Arlington, Virginia
4 22209.

5 24. Defendant Cambian Learning Group, Inc. (“Cambian Learning Group”) is a
6 Texas company existing and doing business pursuant to the laws of California. Defendant
7 Cambian Learning Group is owned by Veritas Capital Management, II, LLC, an equity firm in
8 New York. The principal address for Cambian Learning Group is 17855 Dallas Parkway, Suite
9 400, Dallas, Texas 75287.

10 25. Defendant Veritas Capital Management II, LLC (“Veritas Capital Management”) is
11 an equity firm located in New York at 590 Madison Avenue, 41st Floor, New York, New
12 York 10022.

13 26. Defendant Rosetta Stone has been recently acquired by Defendant Cambian
14 Learning Group. All Defendants herein are referred to collectively as “Rosetta Defendants” or
15 “Defendants.”

16 27. Plaintiff is informed and believes, and thereon alleges, that each and all of the
17 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
18 their employees, agents, and/or third parties acting on their behalf, each acting as the agent for
19 the other, with legal authority to act on the other’s behalf. The acts of any and all of Defendants’
20 employees, agents, owners, managers, and/or third parties acting on their behalf, were in
21 accordance with, and represent, the official policies of Defendants.

22 28. Plaintiff is informed and believes, and thereon alleges, that said Defendants are
23 in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
24 occurrences, and transactions of each and all their employees, agents, and/or third parties acting
25 on their behalf, in proximately causing the damages herein alleged.

26 29. At all relevant times, Defendants ratified each and every act or omission
27 complained of herein. At all relevant times, Defendants aided and abetted the acts and
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1 omissions as alleged herein.

2 30. The above-named Defendants, and their subsidiaries and agents, are collectively
3 referred to as “Defendants.” The true names and capacities of the Defendants sued herein as
4 DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore
5 sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE
6 is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to
7 amend the Complaint to reflect the true names and capacities of the DOE Defendants when such
8 identities become known.

9 **FACTUAL ALLEGATIONS**

10 31. On or around November 27, 2018, Plaintiff purchased a Rosetta Stone® “Learn
11 Spanish: Rosetta Stone Bonus Pack (24 month subscription + Lifetime Down [of the software]
12 + Book Set) in the State of California from Defendants for \$145.46 on Amazon.com using her
13 Amazon account credit card. Defendants advertised and represented to Plaintiff that their
14 downloadable foreign language software course product was able to be download by the
15 Plaintiff at a set price, which was paid by Plaintiff.

16 32. As a result of Defendants’ representation, Plaintiff purchased Defendants’
17 product over competitors with a better foreign language software course product that could be
18 downloaded and used, and Plaintiff had a reasonable expectation that she could download the
19 software to any PC and/or Mac at any time for at least a lifetime, and that the Rosetta Stone®
20 software was hers to keep forever.

21 33. However, Defendants’ representations were objectively false and misleading in
22 that foreign language software download was not available to consumers after the price was
23 paid by consumers to Defendants, but only available through the online subscription that expired
24 after 24 months, which was admitted by the Defendants in writing to Plaintiff, after Plaintiff
25 had purchased the product.

26 34. Plaintiff relied on Defendants’ representations in purchasing these products, and
27 paid Defendants valuable consideration. Plaintiff relied on the fact that the foreign language
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1 software online course product was produced and sold according to the advertised packaging
2 and would include the characteristics on the packaging. Plaintiff was never informed, in
3 writing, orally, or in any conspicuous manner, that she would be purchasing a foreign language
4 software online product that was not available to download and access after payment.

5 35. Defendants continued to sell Class Products using the false and deceptive
6 packaging and failed to correct the problem.

7 36. Plaintiff believes that Defendants will continue their action of tricking customers
8 into purchasing Defendants' products through Defendants' fraudulent advertisements and
9 packaging, unless Defendants' practices are halted by way of an injunction.

10 37. As a result of Defendants' fraudulent practices, described herein, Plaintiff has
11 suffered emotional distress, frustration, money (the actual value of the cost and the value of a
12 "lifetime download"), wasted time, and anxiety.

13 38. Defendants' representation, through statements and omissions, concerning their
14 foreign language software product constitutes fraudulent affirmative misrepresentations of
15 material fact that would be important to reasonable consumers when deciding between different
16 foreign language software products from both Defendants and Defendants' competitors.

17 39. That is, had consumers, including Plaintiff, known that Defendants misrepresent
18 their packaging, advertising, and access to its product, then Plaintiff would never have
19 purchased Defendants' product.

20 40. Plaintiff alleges on information and belief that Defendants' corporate policy and
21 practice is to materially misrepresent information regarding the use of their products, through
22 said fraudulent omissions and misrepresentations on the packaging, to induce consumers to
23 reasonably rely on the false and deceptive information in order to induce purchase of products
24 from Defendants over law abiding competitors.

25 41. Defendants have a duty to disclose to a consumer that the consumer cannot
26 download the foreign language software, prior to the time that the consumer agrees to purchase
27 Defendants' products. Defendants have a duty to disclose these material facts, because such
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1 terms would be highly important to a reasonable consumer, because a failure to disclose such
2 terms is intended to falsely and fraudulently induce consumers to purchase a foreign language
3 product at a set price represented as downloadable on the advertising and material on the box
4 of the software product.

5 42. Upon learning that Defendants were selling products not as advertised, Plaintiff
6 felt ripped off and cheated by Defendants.

7 43. Such tactics actively engaged in by Defendants to sell software products for
8 profits, rely on falsities and have a tendency to mislead and deceive a reasonable consumer.

9 44. Defendants expressly represented to Plaintiff, through written statements on the
10 Class Products' packaging, false information about its foreign language software product.

11 45. Plaintiff alleges that such representations were part of an overarching common
12 scheme and device to mislead consumers and incentivize them to purchase Defendants'
13 products in exchange for a set amount of money from consumers.

14 46. In purchasing the Class Products, Plaintiff relied upon Defendants'
15 representations.

16 47. Such representations were clearly false because Defendants knew or should have
17 known the foreign language software could not be downloaded and intended consumers to pay
18 the represented price even though Defendants knew the product would not work and was not
19 available as represented and advertised.

20 48. Plaintiff would not have purchased the products if she had known that the above-
21 referenced statements made by Defendants were false.

22 49. Had Defendants properly marketed, advertised, and represented the Class
23 Products, Plaintiff would not have purchased the products.

24 50. Plaintiff agreed to give her money and patronage to Defendants because of false,
25 material misrepresentations advertised about the foreign language course software. Defendants
26 benefited from falsely advertising the foreign language software course product on the loss to
27 Plaintiff and provided nothing of benefit to Plaintiff in exchange.

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1 unfeasible and impractical.

2 61. No violations alleged in this complaint are contingent on any individualized
3 interaction of any kind between Class members and Defendants.

4 62. Rather, all claims in this matter arise from the identical, false, affirmative
5 representations of the products, when in fact, such representations were false.

6 63. There are common questions of law and fact as to the Class Members that
7 predominate over questions affecting only individual members, including but not limited to:

- 8 (a) Whether Defendants engaged in unlawful, unfair, or deceptive business
9 practices in selling Class Products to Plaintiff and other Class Members;
10 (b) Whether Defendants made misrepresentations with respect to the Class
11 Products sold to consumers;
12 (c) Whether Defendants profited from the sale of the wrongly advertised
13 products;
14 (d) Whether Defendants violated California Bus. & Prof. Code §§ 17200, *et*
15 *seq.*, and 17500, *et seq.*;
16 (e) Whether Plaintiff and Class Members are entitled to equitable and/or
17 injunctive relief;
18 (f) Whether Defendants' unlawful, unfair, and/or deceptive practices harmed
19 Plaintiff and Class Members; and
20 (g) The method of calculation and extent of damages for Plaintiff and Class
21 Members.

22 64. Plaintiff is a member of the Class she seeks to represent.

23 65. The claims of Plaintiff are not only typical of all Class members, they are
24 identical.

25 66. All claims of Plaintiff and the Class are based on the exact same legal theories.

26 67. Plaintiff has no interest antagonistic to, or in conflict with, the Class.

27 68. Plaintiff is qualified to, and will, fairly and adequately protect the interests of
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1 each Class Member, because Plaintiff bought Class Products from Defendants during the Class
2 Period. Defendants’ unlawful, unfair, and/or fraudulent actions concern the same business
3 practices described herein, irrespective of where they occurred or were experienced. Plaintiff’s
4 claims are typical of all Class Members, as demonstrated herein.

5 69. Plaintiff will thoroughly and adequately protect the interests of the Class, having
6 retained qualified and competent legal counsel to represent herself and the Class.

7 70. Common questions will predominate, and there will be no unusual manageability
8 issues.

9 **FIRST CAUSE OF ACTION**

10 **Violation of the California False Advertising Act**

11 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

12 71. Plaintiff incorporates by reference each allegation set forth above.

13 72. Pursuant to California Business and Professions Code section 17500, *et seq.*, it
14 is unlawful to engage in advertising “which is untrue or misleading, and which is known, or
15 which by the exercise of reasonable care should be known, to be untrue or misleading . . . [or]
16 to so make or disseminate or cause to be so made or disseminated any such statement as part of
17 a plan or scheme with the intent not to sell that personal property or those services, professional
18 or otherwise, so advertised at the price stated therein, or as so advertised.”

19 73. California Business and Professions Code section 17500, *et seq.*’s prohibition
20 against false advertising extends to the use of false or misleading written statements.

21 74. Defendants misled consumers by making misrepresentations and untrue
22 statements about the Class Products, namely, Defendants advertised Class Products with
23 download capability which the Class Products did not contain, in a deceptive manner, and made
24 false representations to Plaintiff and other putative class members in order to solicit these
25 transactions to obtain profit without providing the advertised capability.

26 75. Defendants knew that their representations and omissions were untrue and
27 misleading, and deliberately made the aforementioned representations and omissions in order
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1 to deceive reasonable consumers like Plaintiff and other Class Members.

2 76. As a direct and proximate result of Defendants' misleading and false advertising,
3 Plaintiff and the other Class Members have suffered injury in fact and have lost money and/or
4 property, time, and attention. Plaintiff reasonably relied upon Defendants' representations
5 regarding the Class Products. In reasonable reliance on Defendants' false advertisements,
6 Plaintiff and other Class Members purchased the Class Products. In turn, Plaintiff and other
7 Class Members ended up with products that turned out to be significantly different than
8 advertised, and therefore Plaintiff and other Class Members have suffered injury in fact.

9 77. Plaintiff alleges that these false and misleading representations made by
10 Defendants constitute a "scheme with the intent not to sell that personal property or those
11 services, professional or otherwise, so advertised at the price stated therein, or as so advertised."

12 78. Defendants advertised to Plaintiff and other putative class members, through
13 written representations and omissions made by Defendants and their agents, that the Class
14 Products would be of a particular quality and with particular characteristics.

15 79. Thus, Defendants knowingly sold Class Products to Plaintiff and other putative
16 class members which were not as advertised.

17 80. The misleading and false advertising described herein presents a continuing
18 threat to Plaintiff and the Class Members in that Defendants persist and continue to engage in
19 these practices and will not cease doing so unless and until forced to do so by this Court.
20 Defendants' conduct will continue to cause irreparable injury to consumers unless enjoined or
21 restrained. Plaintiff is entitled to preliminary and permanent injunctive relief ordering
22 Defendants to cease their false advertising, as well as disgorgement and restitution to Plaintiff
23 and all Class Members of Defendants' revenues associated with Defendants false advertising,
24 or such portion of those revenues as the Court may find equitable.

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SECOND CAUSE OF ACTION

Violation of Unfair Business Practices Act

(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)

81. Plaintiff incorporates by reference each allegation set forth above.

82. Actions for relief under the unfair competition law may be based on any business act or practice that is within the broad definition of the UCL. Such violations of the UCL occur as a result of unlawful, unfair, or fraudulent business acts and practices. A plaintiff is required to provide evidence of a causal connection between a Defendants' business practices and the alleged harm--that is, evidence that the Defendants' conduct caused or was likely to cause substantial injury. It is insufficient for a Plaintiff to show merely that the Defendants' conduct created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of unfair competition covers any single act of misconduct, as well as ongoing misconduct.

UNFAIR BUSINESS ACTS

83. California Business & Professions Code § 17200 prohibits any "unfair . . . business act or practice." Defendants' acts, omissions, misrepresentations, and practices as alleged herein also constitute "unfair" business acts and practices within the meaning of the UCL in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. There were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein. Plaintiff reserves the right to allege further conduct which constitutes other unfair business acts or practices. Such conduct is ongoing and continues to this date.

84. In order to satisfy the "unfair" prong of the UCL, a consumer must show that the injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or competition; and, (3) is not one that consumers themselves could reasonably have avoided.

85. Here, Defendants' conduct has caused and continues to cause substantial injury to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury

1 in fact due to Defendants’ decision to sell them falsely described Class Products. Thus,
2 Defendants’ conduct has caused substantial injury to Plaintiff and the members of the Class.

3 86. Moreover, Defendants’ conduct as alleged herein solely benefits Defendants
4 while providing no benefit of any kind to any consumer. Such deception utilized by Defendants
5 convinced Plaintiff and members of the Class that the Class Products contained capabilities
6 which it did not, all in order to induce Plaintiff and members of the Class to spend money on
7 said Class Products. In fact, knowing that the Class Products were different from those
8 advertised, Defendants unfairly profited from their sale. Thus, the injury suffered by Plaintiff
9 and the members of the Class is not outweighed by any countervailing benefits to consumers.

10 87. Finally, the injury suffered by Plaintiff and members of the Class is not an injury
11 that these consumers could reasonably have avoided. After Defendants falsely represented the
12 Class Products, Plaintiff and class members suffered injury in fact due to Defendants’ sale of
13 Class Products to them. Defendants failed to take reasonable steps to inform Plaintiff and class
14 members that the Class Products were not as advertised. As such, Defendants took advantage
15 of Defendants’ position of perceived power in order to deceive Plaintiff and the Class members
16 to purchase Class Products with different use and access from what was advertised. Therefore,
17 the injury suffered by Plaintiff and members of the Class is not an injury which these consumers
18 could reasonably have avoided.

19 88. Thus, Defendants’ conduct has violated the “unfair” prong of California Business
20 & Professions Code § 17200.

21 **FRAUDULENT BUSINESS ACTS**

22 89. California Business & Professions Code § 17200 prohibits any “fraudulent ...
23 business act or practice.” In order to prevail under the “fraudulent” prong of the UCL, a
24 consumer must allege that the fraudulent business practice was likely to deceive members of
25 the public.

26 90. The test for “fraud” as contemplated by California Business and Professions
27 Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a §
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1 17200 violation can be established even if no one was actually deceived, relied upon the
2 fraudulent practice, or sustained any damage.

3 91. Here, not only were Plaintiff and the Class members likely to be deceived, but
4 these consumers were actually deceived by Defendants. Such deception is evidenced by the
5 fact that Plaintiff agreed to purchase Class Products under the basic assumption that the
6 information Defendants placed on the packaging and advertising (**Lifetime Download** and
7 **YOURS TO KEEP FOREVER**) will be accurate and true instead of false and misleading.
8 Plaintiff's reliance upon Defendants' deceptive statements is reasonable due to the unequal
9 bargaining powers of Defendants and Plaintiff. For the same reason, it is likely that Defendants'
10 fraudulent business practice would deceive other members of the public.

11 92. As explained above, Defendants deceived Plaintiff and other Class Members by
12 representing the Class Products as containing certain characteristics, when in reality they
13 contained significantly different characteristics, and thus falsely represented the Class Products.

14 93. Thus, Defendants' conduct has violated the "fraudulent" prong of California
15 Business & Professions Code § 17200.

16 **UNLAWFUL BUSINESS ACTS**

17 94. California Business and Professions Code Section 17200, *et seq.* prohibits "any
18 unlawful...business act or practice."

19 95. As explained above, Defendants deceived Plaintiff and other Class Members by
20 representing the Class Products as containing significantly different characteristics.

21 96. Defendants used false advertising, marketing, and misrepresentations to induce
22 Plaintiff and Class Members to purchase the Class Products, in violation of California Business
23 and Professions Code Section 17500, *et seq.* Had Defendants not falsely advertised, marketed
24 or misrepresented the Class Products, Plaintiff and Class Members would not have purchased
25 the Class Products. Defendants' conduct therefore caused and continues to cause economic
26 harm to Plaintiff and Class Members.

27 97. These representations by Defendants are therefore an "unlawful" business
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1 practice or act under Business and Professions Code Section 17200, *et seq.*

2 98. Defendants have thus engaged jointly and severally, and in-concert, in unlawful,
3 unfair, and fraudulent business acts entitling Plaintiff and Class Members to judgment and
4 equitable relief against Defendants, as set forth in the Prayer for Relief. Additionally, pursuant
5 to Business and Professions Code section 17203, Plaintiff and Class Members seek an order
6 requiring Defendants to immediately cease such acts of unlawful, unfair, and fraudulent
7 business practices and requiring Defendants to correct their actions.

8 **MISCELLANEOUS**

9 99. Plaintiff and Class Members allege that they have fully complied with all
10 contractual and other legal obligations and have fully complied with all conditions precedent to
11 bringing this action or that all such obligations or conditions are excused.

12 **REQUEST FOR JURY TRIAL**

13 100. Plaintiff requests a trial by jury as to all claims so triable.

14 **PRAYER FOR RELIEF**

15 101. Plaintiff, on behalf of herself and the Class, requests the following relief:

- 16 (a) An order certifying the Class and appointing Plaintiff as Representative
17 of the Class;
- 18 (b) An order certifying the undersigned counsel as Class Counsel;
- 19 (c) An order requiring Defendants, at their own cost, to notify all Class
20 Members of the unlawful and deceptive conduct herein;
- 21 (d) An order requiring Defendants to engage in corrective advertising
22 regarding the conduct discussed above;
- 23 (e) Actual damages suffered by Plaintiff and Class Members as applicable or
24 full restitution of all funds acquired from Plaintiff and Class Members
25 from the sale of mis-advertised Class Products during the relevant class
26 period;
- 27 (f) Punitive damages, as allowable, in an amount determined by the Court or
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jury;

- (g) All reasonable and necessary attorneys’ fees and costs provided by statute, common law, or the Court’s inherent power;
- (h) Pre- and post-judgment interest; and
- (i) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

Dated: September 24, 2020

Respectfully submitted,

DUNCAN FIRM, P.A.

By: 

James H. Bartolomei, Esq. (CA Bar 301678)
Attorneys for Plaintiff Nadia Lotun

EXHIBIT 3

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James H. Bartolomei, (SBN 301678), Duncan Firm, P.A., 809 W. 3rd Street Little Rock, Arkansas 72201		FOR COURT USE ONLY 30-2020-01161980-CU-AT-CXC
TELEPHONE NO.: 501 228 7600 FAX NO. (Optional): 501 228 0415 ATTORNEY FOR (Name): NADIA LOTUN, Plaintiff		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 WEST SANTA ANA BLVD. MAILING ADDRESS: P.O. Box 22028 Santa Ana, CA 92702-2028 CITY AND ZIP CODE: SANTA ANA, CA 92701 BRANCH NAME: Civil Complex		
CASE NAME: NADIA LOTUN v. ROSETTA STONE, INC. ET. AL.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		JUDGE: Judge Randall J. Sherman DEPT: CX-105

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input checked="" type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input checked="" type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

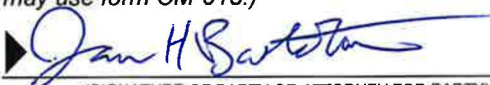
4. Number of causes of action (specify):

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 24, 2020

James H. Bartolomei


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

EXHIBIT 4

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 10/20/2020 TIME: 02:10:00 PM DEPT: CX105

JUDICIAL OFFICER PRESIDING: Randall J. Sherman

CLERK: Jason Phu

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2020-01161980-CU-AT-CXC** CASE INIT.DATE: 09/24/2020

CASE TITLE: **Lotun vs. ROSETTA STONE, INC.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Antitrust/Trade Regulation

EVENT ID/DOCUMENT ID: 73395048

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court finds that this case is exempt from the case disposition time goals imposed by California Rule of Court, rule 3.714 due to exceptional circumstances and estimates that the maximum time required to dispose of this case will exceed twenty-four months due to the following case evaluation factors of California Rules of Court, rules 3.715 and 3.400: Case is Complex.

Each party who has not paid the Complex fee of \$ 1,000.00 as required by Government Code section 70616 shall pay the fee to the Clerk of the Court within 10 calendar days from date of this minute order. Failure to pay required fees may result in the dismissal of complaint/cross-complaint or the striking of responsive pleadings and entry of default.

The initial Case Management Conference is scheduled for 02/19/2021 at 09:00 AM in Department CX105.

Plaintiff shall, at least five court days before the hearing, file with the Court and serve on all parties of record or known to Plaintiff a Case Management Statement that covers the applicable subjects set forth in CRC Rule 3.727. The parties are encouraged to meet and confer and file a Joint Case Management Statement. Counsel should begin the Case Management Statement with a brief, objective summary of the case, its procedural status, the contentions of the parties, and any special considerations of which the Court should be aware. Do NOT use Judicial Council Form CM-110, the Case Management Statement form used for non-complex cases.

This case is subject to mandatory electronic filing pursuant to Superior Court Rules, County of Orange, Rule 352. Plaintiff shall give notice of the Status Conference and the electronic filing requirement to all parties of record or known to plaintiff, and shall attach a copy of this minute order.

Clerk to give notice to plaintiff and plaintiff to give notice to all other parties.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: Lotun vs. ROSETTA STONE, INC.

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2020-01161980-CU-AT-CXC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 10/20/20, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on October 20, 2020, at 2:12:56 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

JAMES BARTOLOMEI III
JAMES@DUNCANFIRM.COM

Clerk of the Court, by:  , Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

EXHIBIT 5

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 301678 NAME: James H. Bartolomei FIRM NAME: Duncan Firm, P.A. STREET ADDRESS: 809 W. 3rd Street CITY: Little Rock STATE: AR ZIP CODE: 72201 TELEPHONE NO.: 501 228 7600 FAX NO.: 501 228 0415 E-MAIL ADDRESS: james@duncanfirm.com ATTORNEY FOR (Name): Plaintiff Nadia Lotun	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 West Santa Ana Blvd. MAILING ADDRESS: 751 West Santa Ana Blvd. CITY AND ZIP CODE: Santa Ana 92701 BRANCH NAME: Civil Complex	
Plaintiff/Petitioner: Nadia Lotun Defendant/Respondent: ROSETTA STONE, INC. et. al.	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: 30-2020-01161980-CU-AT-CXC

TO (insert name of party being served): ROSETTA STONE INTERNATIONAL, INC.

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: October 16, 2020

James H. Bartolomei

(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of **(to be completed by sender before mailing)**:

- A copy of the summons and of the complaint.
- Other (specify):

(To be completed by recipient):

Date this form is signed: November 5, 2020

Teresa H. Michaud - Baker & McKenzie LLP
Attorneys for ROSETTA STONE INTERNATIONAL, INC.

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

EXHIBIT 6

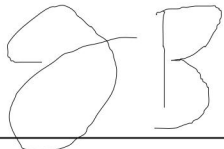
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 301678 NAME: James H. Bartolomei FIRM NAME: Duncan Firm, P.A. STREET ADDRESS: 809 W. 3rd Street CITY: Little Rock STATE: AR ZIP CODE: 72201 TELEPHONE NO.: 501 228 7600 FAX NO.: 501 228 0415 E-MAIL ADDRESS: james@duncanfirm.com ATTORNEY FOR (Name): Plaintiff Nadia Lotun	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 West Santa Ana Blvd. MAILING ADDRESS: 751 West Santa Ana Blvd. CITY AND ZIP CODE: Santa Ana 92701 BRANCH NAME: Civil Complex	
Plaintiff/Petitioner: Nadia Lotun Defendant/Respondent: ROSETTA STONE, INC. et. al.	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: 30-2020-01161980-CU-AT-CXC

TO (insert name of party being served): ROSETTA STONE LTD.

NOTICE
<p>The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.</p> <p>If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.</p>

Date of mailing: October 16, 2020

James H. Bartolomei
(TYPE OR PRINT NAME)


(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of **(to be completed by sender before mailing):**

- 1. A copy of the summons and of the complaint.
- 2. Other (specify):

(To be completed by recipient):

Date this form is signed: November 5, 2020
Teresa H. Michaud - Baker & McKenzie LLP
Attorneys for ROSETTA STONE LTD.

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)



(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

EXHIBIT 7

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 301678 NAME: James H. Bartolomei FIRM NAME: Duncan Firm, P.A. STREET ADDRESS: 809 W. 3rd Street CITY: Little Rock STATE: AR ZIP CODE: 72201 TELEPHONE NO.: 501 228 7600 FAX NO.: 501 228 0415 E-MAIL ADDRESS: james@duncanfirm.com ATTORNEY FOR (Name): Plaintiff Nadia Lotun	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 West Santa Ana Blvd. MAILING ADDRESS: 751 West Santa Ana Blvd. CITY AND ZIP CODE: Santa Ana 92701 BRANCH NAME: Civil Complex	
Plaintiff/Petitioner: Nadia Lotun Defendant/Respondent: ROSETTA STONE, INC. et. al.	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER: 30-2020-01161980-CU-AT-CXC

TO (insert name of party being served): ROSETTA STONE, INC.

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: October 16, 2020

James H. Bartolomei

(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of **(to be completed by sender before mailing)**:

- A copy of the summons and of the complaint.
- Other (specify):

(To be completed by recipient):

Date this form is signed: November 5, 2020
Teresa H. Michaud - Baker & McKenzie LLP
Attorneys for ROSETTA STONE, INC.

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

EXHIBIT 8

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James H. Bartolomei III (SBN 301678)
Of Counsel at Duncan Firm, P.A.
809 W. 3rd Street
Little Rock, Arkansas 72201
Telephone: 501.228.7600
Facsimile: 501.228.0415
james@duncanfirm.com

Attorneys for Plaintiff, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

NADIA LOTUN, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

ROSETTA STONE, INC.;
ROSETTA STONE LTD.;
ROSETTA STONE INTERNATIONAL, INC.;
CAMBIAN LEARNING GROUP, INC.;
VERITAS CAPITAL FUND MANAGEMENT,
LLC.; and DOES 1-10, inclusive,

Defendants.

**NOTICE OF STATUS CONFERENCE
AND E-FILING REQUIREMENT**

**Case No. 30-2020-01161980-CU-AT-
CXC**

Case No. 30-2020-01161980-CU-AT-CXC
Case Title: Lotun v. Rosetta Stone, Inc.
Case Category: Civil – Unlimited
Case Type: Antitrust/Trade Regulation

PLAINTIFF NADIA LOTUN'S NOTICE TO ALL PARTIES

Please be notified:

The Initial Case Management Conference for this Civil Antitrust/Trade Regulation case is scheduled for **2/19/2021**, at **9:00 AM** in **Department CX105**. The County of Orange has an **Electronic Filing Requirement (E-Filing Requirement)**. Paper filings are *not* accepted.

Attached to this notice is a copy of the **October 20, 2020 Minute Order**.

Dated: November 20, 2020

Respectfully submitted,

DUNCAN FIRM, P.A.

By: 

James H. Bartolomei, Esq. (CA Bar 301678)
Attorneys for Plaintiff Nadia Lotun

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: Lotun vs. ROSETTA STONE, INC.

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2020-01161980-CU-AT-CXC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 10/20/20, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on October 20, 2020, at 2:12:56 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

JAMES BARTOLOMEI III
JAMES@DUNCANFIRM.COM

Clerk of the Court, by:  , Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 10/20/2020 TIME: 02:10:00 PM DEPT: CX105

JUDICIAL OFFICER PRESIDING: Randall J. Sherman

CLERK: Jason Phu

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2020-01161980-CU-AT-CXC** CASE INIT.DATE: 09/24/2020

CASE TITLE: **Lotun vs. ROSETTA STONE, INC.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Antitrust/Trade Regulation

EVENT ID/DOCUMENT ID: 73395048

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court finds that this case is exempt from the case disposition time goals imposed by California Rule of Court, rule 3.714 due to exceptional circumstances and estimates that the maximum time required to dispose of this case will exceed twenty-four months due to the following case evaluation factors of California Rules of Court, rules 3.715 and 3.400: Case is Complex.

Each party who has not paid the Complex fee of \$ 1,000.00 as required by Government Code section 70616 shall pay the fee to the Clerk of the Court within 10 calendar days from date of this minute order. Failure to pay required fees may result in the dismissal of complaint/cross-complaint or the striking of responsive pleadings and entry of default.

The initial Case Management Conference is scheduled for 02/19/2021 at 09:00 AM in Department CX105.

Plaintiff shall, at least five court days before the hearing, file with the Court and serve on all parties of record or known to Plaintiff a Case Management Statement that covers the applicable subjects set forth in CRC Rule 3.727. The parties are encouraged to meet and confer and file a Joint Case Management Statement. Counsel should begin the Case Management Statement with a brief, objective summary of the case, its procedural status, the contentions of the parties, and any special considerations of which the Court should be aware. Do NOT use Judicial Council Form CM-110, the Case Management Statement form used for non-complex cases.

This case is subject to mandatory electronic filing pursuant to Superior Court Rules, County of Orange, Rule 352. Plaintiff shall give notice of the Status Conference and the electronic filing requirement to all parties of record or known to plaintiff, and shall attach a copy of this minute order.

Clerk to give notice to plaintiff and plaintiff to give notice to all other parties.

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the State of Arkansas, over the age of eighteen years, and not a party to the within action. My business address is 809 W. 3rd Street, Little Rock, AR 72201. On November 20, 2020, I served the following document(s) by the method indicated below:

NOTICE OF STATUS CONFERENCE AND E-FILING REQUIREMENT

X by placing the original document(s) listed above in a sealed envelope addressed as set forth below, with postage thereon fully prepaid, and depositing such envelope in the United States mail at Little Rock, AR to defense counsel.

by placing a copy thereof enclosed in an overnight mail envelope or package designated by the express service carrier, depositing the envelope in a box or other facility regularly maintained by the express service carrier with delivery fees paid or provided for.

by facsimile transmission on this date from fax number 501-228-0415 to the fax number(s) listed below. The transmission was completed at or about and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. The transmitting fax machine complies with California Rules of Court 2.301(3).

X by transmitting the document(s) via e-mail to the parties at the e-mail addresses below via James@duncanfirm.com.

by personally delivering the document(s) listed above to the person(s) set forth below.

Teresa H. Michaud
Baker McKenzie
LA: +1 310 201 4725
teresa.michaud@bakermckenzie.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 20, 2020 at Little Rock, Arkansas.

By: /s/ James Bartolomei

James H. Bartolomei

EXHIBIT 10

Attachments: Conformed First Amended Complaint 11-24-2020.pdf

From: James Bartolomei <James@duncanfirm.com>
Sent: Tuesday, November 24, 2020 4:50 PM
To: Michaud, Teresa H <Teresa.Michaud@bakermckenzie.com>
Cc: Davis, Alexander <Alexander.Davis@bakermckenzie.com>; Wilkes, Nathaniel <Nathaniel.Wilkes@bakermckenzie.com>; Ayala, Carmen <Carmen.Ayala@bakermckenzie.com>; Richard Quintus <richard@duncanfirm.com>; Ashley Duncan <ashley@duncanfirm.com>; Erin Whitfield <erin@duncanfirm.com>
Subject: [EXTERNAL] RE: Lotun v. Rosetta Stone - CLRA Response

Teresa –

Here is the conformed first amended complaint. The filing was rejected on 11/20 because of a clerical error. I plan to have a letter to you tomorrow, but no later than Monday after Thanksgiving.

Sincerely,

James H. Bartolomei, Esq.
Of Counsel



809 W. 3rd Street
Little Rock, Arkansas 72201

5318 E. 2nd Street, #893
Long Beach, California 90803

736 West End Avenue, #4
New York, New York 10025

501-228-7600 office
501-658-1341 mobile
501-228-0415 fax

[Bio at Duncan Firm](#)
[Linkedin](#)

Licensed to practice before the courts in California, New York, Connecticut, Arkansas, Florida, DC, Eastern and Western Districts of Arkansas, Southern District of New York, Eastern District of New York, Central District of California, Eastern District of California, Southern District of Florida, District of Colorado, Second Circuit Court of Appeals, & US Supreme Court.

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communications are not a secure method of communication, 2) any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from sender to recipient, 3) persons not participating in our communication may intercept our communications by improperly accessing your computer or my computer or even some computer unconnected to either of us which the e-mail passes through. I am communicating to you via e-mail because you have consented to receive communications via this medium. If you change your mind and want future communications to be sent in a different fashion, please advise me AT ONCE.

From: Michaud, Teresa H <Teresa.Michaud@bakermckenzie.com>
Sent: Friday, November 20, 2020 12:46 PM
To: James Bartolomei <James@duncanfirm.com>
Cc: Davis, Alexander <Alexander.Davis@bakermckenzie.com>; Wilkes, Nathaniel <Nathaniel.Wilkes@bakermckenzie.com>; Ayala, Carmen <Carmen.Ayala@bakermckenzie.com>; Richard Quintus <richard@duncanfirm.com>; Ashley Duncan <ashley@duncanfirm.com>; Erin Whitfield <erin@duncanfirm.com>
Subject: RE: Lotun v. Rosetta Stone - CLRA Response

James,

Thank you for confirming receipt. I regret the misspelling, but did not get a bounce back email and did not notice the mistake.

We look forward to your response next week on the CLRA claims, and are open to a call thereafter.

Also, we do not need a hard copy of the documents.

Regards,
Teresa

Teresa H. Michaud*
Principal, Dispute Resolution
Baker McKenzie
LA: +1 310 201 4725
SF: +1 415 576 3023
Mobile: +1 415 991 9979
teresa.michaud@bakermckenzie.com
*Admitted in California, New York, Texas, England and Wales
Preferred Pronouns: She/Her/Hers

From: James Bartolomei <James@duncanfirm.com>
Sent: Friday, November 20, 2020 10:10 AM
To: Michaud, Teresa H <Teresa.Michaud@bakermckenzie.com>
Cc: Davis, Alexander <Alexander.Davis@bakermckenzie.com>; Wilkes, Nathaniel <Nathaniel.Wilkes@bakermckenzie.com>; Ayala, Carmen <Carmen.Ayala@bakermckenzie.com>; Richard Quintus <richard@duncanfirm.com>; Ashley Duncan <ashley@duncanfirm.com>; Erin Whitfield <erin@duncanfirm.com>
Subject: [EXTERNAL] RE: Lotun v. Rosetta Stone - CLRA Response

Teresa,

I am in receipt of the CLRA response on November 12, 2020 (I see the November 10 email incorrectly spelled my email). In any event, I plan to share with you a reply by next week and do agree that we need schedule a call to speak after that.

Please find attached the amended complaint (filed today) that is being served and notice of the initial case management conference (2/21/2021). Please advise if you also require a hard copy of both documents.

Thank you.

James H. Bartolomei, Esq.
Of Counsel



809 W. 3rd Street
Little Rock, Arkansas 72201

5318 E. 2nd Street, #893
Long Beach, California 90803

736 West End Avenue, #4
New York, New York 10025

501-228-7600 office
501-658-1341 mobile
501-228-0415 fax

[Bio at Duncan Firm](#)
[Linkedin](#)

Licensed to practice before the courts in California, New York, Connecticut, Arkansas, Florida, DC, Eastern and Western Districts of Arkansas, Southern District of New York, Eastern District of New York, Central District of California, Eastern District of California, Southern District of Florida, District of Colorado, Second Circuit Court of Appeals, & US Supreme Court.

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From: Michaud, Teresa H <Teresa.Michaud@bakermckenzie.com>
Sent: Thursday, November 12, 2020 8:36 AM
To: James Bartolomei <James@duncanfirm.com>

Cc: Davis, Alexander <Alexander.Davis@bakermckenzie.com>; Wilkes, Nathaniel <Nathaniel.Wilkes@bakermckenzie.com>; Ayala, Carmen <Carmen.Ayala@bakermckenzie.com>
Subject: FW: Lotun v. Rosetta Stone - CLRA Response

James,

As a follow-up to our CLRA response letter on Tuesday, I am forwarding an additional declaration regarding the Rosetta Stone merger agreement. Once you have had a chance to take a look, please let us know when you would like to speak.

Thank you,
Teresa

Teresa H. Michaud*

Principal, Dispute Resolution
Baker McKenzie

LA: +1 310 201 4725

SF: +1 415 576 3023

Mobile: +1 415 991 9979

teresa.michaud@bakermckenzie.com

*Admitted in California, New York, Texas, England and Wales

Preferred Pronouns: She/Her/Hers

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message. Please visit www.bakermckenzie.com/disclaimers for other important information concerning this message.

From: Michaud, Teresa H
Sent: Tuesday, November 10, 2020 6:48 PM
To: 'james@duncanflrm.com' <james@duncanflrm.com>
Cc: Davis, Alexander <Alexander.Davis@bakermckenzie.com>; Wilkes, Nathaniel <Nathaniel.Wilkes@bakermckenzie.com>; Ayala, Carmen <Carmen.Ayala@bakermckenzie.com>
Subject: Lotun v. Rosetta Stone - CLRA Response

Dear James,

Please see the attached response to your September 25, 2020 letter to Rosetta Stone on behalf of Ms. Lotun.

Regards,
Teresa

Visit our [COVID-19 Global Resource Center for Business and Legal Updates and Shelter-in-Place/Reopening orders across all 50 states](#)

Teresa H. Michaud*

Partner, Dispute Resolution

Baker McKenzie

Los Angeles | Palo Alto | San Francisco

LA: +1 310 201 4725

SF: +1 415 576 3023

Mobile: +1 415 991 9979

teresa.michaud@bakermckenzie.com

*Admitted in California, New York, Texas, England and Wales

Preferred Pronouns: She/Her/Hers

Profile [Teresa Michaud](#)

Connect [LinkedIn](#)

**Baker
McKenzie.**

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#1 Most Considered for Litigation and
Multi-Jurisdictional Litigation

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EXHIBIT 11

Case Summary:

Case Id:	30-2020-01161980-CU-AT-CXC
Case Title:	NADIA LOTUN VS. ROSETTA STONE, INC.
Case Type:	ANTITRUST/TRADE REGULATION
Filing Date:	09/24/2020
Category:	CIVIL - UNLIMITED

Register Of Actions:

ROA	Docket	Filing Date	Filing Party	Document	Select
1	E-FILING TRANSACTION 3939697 RECEIVED ON 09/24/2020 03:49:05 PM.	09/25/2020		NV	
2	COMPLAINT FILED BY LOTUN, NADIA ON 09/24/2020	09/24/2020		19 pages	<input type="checkbox"/>
3	CIVIL CASE COVER SHEET FILED BY LOTUN, NADIA ON 09/24/2020	09/24/2020		1 pages	<input type="checkbox"/>
4	PAYMENT RECEIVED BY LEGALCONNECT FOR 194 - COMPLAINT OR OTHER 1ST PAPER, 34 - COMPLEX CASE FEE - PLAINTIFF IN THE AMOUNT OF 1,435.00, TRANSACTION NUMBER 12785902 AND RECEIPT NUMBER 12612766.	09/25/2020		1 pages	<input type="checkbox"/>
5	CASE ASSIGNED TO JUDICIAL OFFICER SHERMAN, RANDALL ON 09/24/2020.	09/24/2020		NV	
6	E-FILING TRANSACTION NUMBER 1775916 REJECTED.	10/09/2020		1 pages	<input type="checkbox"/>
7	E-FILING TRANSACTION NUMBER 1776226 REJECTED.	10/13/2020		1 pages	<input type="checkbox"/>
8	E-FILING TRANSACTION NUMBER 2949279 REJECTED.	10/15/2020		1 pages	<input type="checkbox"/>
9	E-FILING TRANSACTION NUMBER 41124265 REJECTED.	10/16/2020		1 pages	<input type="checkbox"/>
10	E-FILING TRANSACTION 3946473 RECEIVED ON 10/16/2020 01:25:39 PM.	10/16/2020		NV	
11	SUMMONS ISSUED AND FILED FILED BY LOTUN, NADIA ON 10/16/2020	10/16/2020		1 pages	<input type="checkbox"/>
12	CASE MANAGEMENT CONFERENCE SCHEDULED FOR 02/19/2021 AT 09:00:00 AM IN CX105 AT CIVIL COMPLEX CENTER.	10/20/2020		NV	
13	THE CASE MANAGEMENT CONFERENCE IS SCHEDULED FOR 02/19/2021 AT 09:00 AM IN DEPARTMENT CX105.	10/20/2020		NV	
14	MINUTES FINALIZED FOR CHAMBERS WORK 10/20/2020 02:10:00 PM.	10/20/2020		1 pages	<input type="checkbox"/>
15	CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	10/20/2020		2 pages	<input type="checkbox"/>
16	E-FILING TRANSACTION 3956909 RECEIVED ON 11/20/2020 10:21:46 AM.	11/20/2020		NV	
17	NOTICE AND ACKNOWLEDGMENT OF RECEIPT FILED BY LOTUN, NADIA ON 11/20/2020	11/20/2020		1 pages	<input type="checkbox"/>
18	NOTICE AND ACKNOWLEDGMENT OF RECEIPT FILED BY LOTUN, NADIA ON 11/20/2020	11/20/2020		1 pages	<input type="checkbox"/>
19	NOTICE AND ACKNOWLEDGMENT OF RECEIPT FILED BY LOTUN, NADIA ON 11/20/2020	11/20/2020		1 pages	<input type="checkbox"/>
20	E-FILING TRANSACTION NUMBER 1788571 REJECTED.	11/20/2020		1 pages	<input type="checkbox"/>
21	E-FILING TRANSACTION NUMBER 41134922 REJECTED.	11/23/2020		1 pages	<input type="checkbox"/>
22	E-FILING TRANSACTION 41135894 RECEIVED ON 11/24/2020 03:05:39 PM.	11/24/2020		NV	

ROA	Docket	Filing Date	Filing Party	Document	Select
23	AMENDED COMPLAINT (FIRST) FILED BY LOTUN, NADIA ON 11/24/2020	11/24/2020		53 pages	<input type="checkbox"/>

Participants:

Name	Type	Assoc	Start Date	End Date
VERITAS CAPITAL MANAGEMENT, INC.	DEFENDANT		09/25/2020	
ROSETTA STONE INTERNATIONAL, INC.	DEFENDANT		09/25/2020	
CAMBIAN LEARNING GROUP, INC.	DEFENDANT		09/25/2020	
NADIA LOTUN	PLAINTIFF		09/25/2020	
ROSETTA STONE, INC.	DEFENDANT		09/25/2020	
ROSETTA STONE, LTD.	DEFENDANT		09/25/2020	
JAMES BARTOLOMEI	ATTORNEY		09/25/2020	

Hearings:

Description	Date	Time	Department	Judge
CASE MANAGEMENT CONFERENCE	02/19/2021	09:00	CX105	SHERMAN

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