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8 SAMSONITE COMPANY STORES LLC

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 KRISTEN SCHERTZER, on behalf of
13 herself and all others similarly situated,

14 Plaintiff,

15 v.

16 SAMSONITE COMPANY STORES,
17 LLC, an Indiana Limited Liability
Company; and DOES 1-100, inclusive,

18 Defendants.

CASE NO. '19CV0639 JLS MSB

NOTICE OF REMOVAL

[Originally San Diego County Superior Court
Case No. 37-2019-00011100-CU-MC-CTL]

19
20 TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
21 DISTRICT OF CALIFORNIA, AND TO THE CLERK OF THAT COURT:

22 **PLEASE TAKE NOTICE** that Defendant Samsonite Company Stores LLC
23 (“Samsonite”), pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, hereby removes the above-
24 captioned action from the Superior Court of California, County of San Diego to the United States
25 District Court for the Southern District of California.

26 **I. INTRODUCTION**

27 1. This Action is properly removed to this Court pursuant to 28 U.S.C. § 1441
28 because this Court has jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)

1 (“CAFA”), in that this Action is a civil action in which the alleged amount in controversy
2 exceeds the sum of \$5,000,000 exclusive of costs and interest, has more than 100 members in the
3 proposed putative class, and is between citizens of different states.

4 **II. BACKGROUND**

5 2. On February 27, 2019, Plaintiff Kristen Schertzer, purportedly on behalf of
6 herself and all others similarly situated, filed a civil action in the San Diego Superior Court
7 entitled *Kristen Schertzer v. Samsonite Company Stores LLC*, San Diego County Superior Court,
8 Case No. 37-2019-00011100-CU-MC-CTL. (See Exhibit A, which includes the summons,
9 Complaint and all of the documents served on Samsonite.) Samsonite has not been served with
10 any other process or pleading, nor is it aware of the filing of any other process or pleading.

11 3. The Complaint, which is styled as a class action, purports to bring claims under
12 California’s Unfair Competition Law (“UCL”), Business & Professions Code § 17200, *et seq.*;
13 California’s False Advertising Law (“FAL”), Business & Professions Code § 17500, *et seq.*; and
14 the Consumer Legal Remedies Act (“CLRA”), California Civil Code § 1750 *et seq.* (Complaint ¶
15 9.) Plaintiff’s Complaint arises from a purported transaction at a Samsonite store located in
16 Carlsbad, California, in San Diego County. *Id.* ¶ 15.

17 4. The proposed putative class consists of “[a]ll persons who, within the State of
18 California, during the relevant statutory time period, purchased one or more products at a
19 discount from the advertised “OUR PRICE” price from a Samsonite outlet store and who have
20 not received a refund or credit for their purchase(s).” (Complaint ¶ 37.)

21 5. Plaintiff served the Complaint upon Samsonite by personal service on March 5,
22 2019. See Exhibit A, page 1.

23 6. Nothing in this Notice of Removal should be interpreted as a concession of
24 liability, the appropriateness of venue, the appropriateness of class treatment, Plaintiff’s class
25 definition, or the validity of Plaintiff’s claim for relief. Samsonite reserves the right to
26 supplement and amend this Notice of Removal.

27
28

1 **III. REQUIREMENTS FOR REMOVAL UNDER CAFA**

2 7. This Court has original jurisdiction over this action under the Class Action
3 Fairness Act of 2005 (“CAFA”), codified in part at 28 U.S.C. §§ 1332 and 1453. Under CAFA, a
4 district court shall have original jurisdiction over any putative civil class action in which: (1)
5 there are at least 100 members in all proposed plaintiff classes; (2) “the matter in controversy
6 exceeds the sum or value of \$5,000,000, exclusive of interest and costs”; and (3) “any member of
7 a class of plaintiffs is a citizen of a state different from any defendant.” 28 U.S.C. § 1332(d)(2,
8 5). Because this action meets each of CAFA’s requirements, it may be removed to federal court.
9 28 U.S.C. § 1441(a) (“[A]ny civil action brought in a State Court of which the district courts of
10 the United States have original jurisdiction, may be removed by the defendant.”).

11 **IV. THE REQUIREMENTS FOR REMOVAL UNDER CAFA ARE SATISFIED**

12 **A. The Number of Proposed Class Members Exceeds 100**

13 8. The Complaint alleges that members of the putative class are “so numerous that
14 joinder of all members is impracticable,” but does not identify the number of class members.
15 (Complaint ¶ 39.)

16 9. According to Plaintiff’s Complaint, the putative class is “[a]ll persons who,
17 within the State of California, during the [last four years], purchased one or more products at a
18 discount from the advertised ‘OUR PRICE’ price from a Samsonite outlet store and who have
19 not received a refund or credit for their purchase(s).” (Complaint ¶ 37.)

20 10. The Complaint clearly pleads that more than 100 individuals from the State of
21 California purchased merchandise from a Samsonite outlet store in California during the putative
22 class period. Samsonite has 14 outlet stores in California. *See* [https://shop.samsonite.com/store-](https://shop.samsonite.com/store-locator)
23 [locator](https://shop.samsonite.com/store-locator). Thus, if each store had just two customers a year during the four-year class period, the
24 class size requirement would be satisfied. The size of the putative class thus well exceeds 100
25 members.

26 **B. The Amount in Controversy Exceeds \$5 Million**

27 11. Defendant denies Plaintiff’s substantive allegations, the appropriateness of class
28 treatment, and that Plaintiff is entitled to any of the relief sought in her Complaint, and does not

1 waive any defense with respect to any of Plaintiff's claims. Nonetheless, the amount in
2 controversy is determined by accepting Plaintiff's allegations as true. See *Cain v. Hartford Life*
3 *& Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012) ("In measuring the amount in
4 controversy, a court must assume that the allegations of the complaint are true and assume that a
5 jury will return a verdict for the plaintiff on all claims made in the complaint."). Here, taking
6 Plaintiff's allegations as true, the amount in controversy in this action (including attorney's fees)
7 exceeds \$5,000,000.

8 12. Case law is clear that "the amount-in-controversy allegation of a defendant
9 seeking federal-court adjudication should be accepted when not contested by the plaintiff or
10 questioned by the court." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547,
11 549-50, (2014) (citations omitted); *see also* Schwarzer, Tashima, et al., *California Practice*
12 *Guide: Federal Civil Procedure Before Trial* (2016) § 2:2395, at 2D-30 ("[D]efendant may
13 simply allege in its notice of removal that the jurisdictional threshold has been met and discovery
14 may be taken with regard to that question."); *id.* § 2:3435, at 2D-172 – 173 ("Defendant's notice
15 of removal 'need include only a plausible allegation that the amount in controversy exceeds the
16 jurisdictional threshold.'). Further, CAFA's legislative history indicates that even if the Court
17 "is uncertain about whether all matters in controversy in a purported class action do not in the
18 aggregate exceed the sum or value of \$5,000,000, the court should err in favor of exercising
19 jurisdiction over the case." Senate Report on the Class Action Fairness Act of 2005 Dates of
20 Consideration and Passage, S. Rep. 109-14.

21 13. Plaintiff seeks restitution and disgorgement of "all profits" associated with
22 Samsonite's allegedly unfair business practices during the relevant statutory time period.
23 (Prayer for Relief ¶ b.) Given the number of outlet stores owned by Samsonite, the volume of
24 sales in each store, and the number of potential class members who made purchases at those
25 outlet stores, the amount in controversy exceeds \$5,000,000.

26 14. Additionally, the Complaint states that Plaintiff will move to amend her
27 Complaint to pursue claims for actual, punitive and statutory damages (Complaint ¶ 73), each of
28 which are properly included in the calculation for determining the amount in controversy. The

1 CLRA provides for statutory penalties of not less than \$1,000 per violation. Cal. Civ. Code §
2 1780(a)(1).

3 15. Plaintiff also seeks an award of attorney's fees. (Prayer for Relief ¶ e.) This
4 amount should also be included in connection with the amount in controversy. *See Guglielmino*
5 *v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007). Although Defendant denies
6 Plaintiff's claim for attorneys' fees, for purposes of removal, the Ninth Circuit uses a benchmark
7 rate of twenty-five percent of the potential damages as the amount of attorneys' fees. *In re*
8 *Quintus Sec. Litig.*, 148 F. Supp. 2d 967, 973 (N.D. Cal. 2001) (benchmark for attorneys' fees is
9 25% of the common fund). Assuming the amount in controversy is \$5,000,000, an award of
10 25% attorneys' fees based upon such amount would be an additional \$1,250,000.

11 16. Plaintiff also seeks injunctive relief. The potential cost of compliance with a
12 request for injunctive relief may be considered when calculating the amount put in controversy
13 under CAFA. *Tompkins v. Basic Research LLC*, No. 5-08-244, 2008 WL 71808316, at *4 & n9
14 (E.D. Cal. Apr. 22, 2008) (noting that under CAFA, the amount put in controversy includes
15 defendants' potential cost of compliance with a request for injunctive relief); *see also* James
16 Wm. Moore et al., *Moore's Federal Practice's* 102.26(c)(iii) (3d ed. 2010) ("The amount in
17 controversy in CAFA cases may be determined on the basis of the aggregate value to either the
18 plaintiff class members or to the defendants"). The costs to comply with an injunction could
19 potentially be significant and Plaintiff's request for injunctive relief further takes the amount in
20 controversy over the statutory threshold. *See* 28 U.S.C. § 1332(d)(2).

21 17. While Plaintiff's claim for restitution, in itself, puts the amount in controversy
22 above \$5,000,000, the actual, punitive and statutory damages; attorney's fees; and injunctive
23 relief requested by Plaintiff make clear that this requirement is satisfied.

24 **C. Minimum Diversity Exists**

25 18. The minimal diversity standard of CAFA is met as long as any one defendant is a
26 citizen of a different state than any of the named plaintiffs. 28 U.S.C. § 1332(d)(2)(A). Plaintiff
27 is a resident of California. (Complaint ¶ 15.)
28

1 19. For purposes of diversity, a corporation is deemed to be a citizen of (1) the state
2 under whose laws it is organized; and (2) the state of its “principal place of business.” 28 U.S.C.
3 § 1332(c)(1). Samsonite is an Indiana limited liability company, with its principal executive
4 offices in Massachusetts. (Complaint ¶ 18.) None of the members, which are listed in the
5 declaration of John B. Livingston, are California residents. Samsonite is therefore not a citizen
6 of California.

7 20. Thus, minimal diversity is satisfied because Plaintiff is a citizen of a state
8 (California) different from Samsonite.

9 **D. No CAFA Exceptions Apply**

10 21. The Action does not fall within any of exclusion to removal jurisdiction
11 recognized by 28 U.S.C. § 1332(d), and Plaintiff has the burden of proving otherwise. *See*
12 *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007) (“[T]he party seeking remand
13 bears the burden to prove an exception to CAFA’s jurisdiction”).

14 **V. THE OTHER PROCEDURAL REQUISITES FOR REMOVAL ARE SATISFIED**

15 22. Removal to this judicial district and division is proper under 28 U.S.C. §§
16 1441(a), 1446(a), because the Superior Court of the State of California for the County of San
17 Diego is located within the Southern District of California.

18 23. This Notice of Removal is timely because it was filed within thirty days of March
19 5, 2019, the date on which Samsonite was served with the Summons and Complaint. 28 U.S.C. §
20 1446(b).

21 24. Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons, Complaint, and all other
22 documents served on Samsonite are attached as Exhibit A.

23 25. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal and all
24 documents in support thereof and concurrently therewith are being filed with the Clerk of the
25 Superior Court for the County of San Diego. Written notice of the filing of this Notice of
26 Removal is being served upon counsel for Plaintiff.

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VI. CONCLUSION

Samsonite respectfully submits that this action is removed properly pursuant to the Class Action Fairness Act.

DATED: April 3, 2019

STEPTOE & JOHNSON LLP

By: /s/ Stephanie A. Sheridan
Stephanie A. Sheridan
Anthony J. Anscombe
Meegan B. Brooks
Attorneys for Defendant
SAMSONITE COMPANY STORES LLC

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KRISEN SCHERTZER, on behalf of herself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Zev B. Zysman Law Offices of Zev B. Zysman 15760 Ventura Blvd 16th Floor Encino CA 91436

DEFENDANTS

SAMSONITE COMPANY STORES LLC, et al.

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

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

Attorneys (If Known) Stephanie A. Sheridan, Anthony J. Anscombe, Meegan B. Brooks, Steptoe & Johnson One Market Street Steuart Tower Ste 1800 San Francisco CA 94105 415.365.6700

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Cal. Bus. & Prof. Code 17200, 17500, and Cal. Civ. Code 1750
Brief description of cause: Consumer product false advertising

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

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 2 STEPHANIE A. SHERIDAN, State Bar No. 135910
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 Telephone: 415.365.6700
 Facsimile: 415.365.6699

7 Attorneys for Defendant
 8 SAMSONITE COMPANY STORES, LLC

9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA
 11

12 KRISTEN SCHERTZER, on behalf of
 13 herself and all others similarly situated,

14 Plaintiff,

15 v.

16 SAMSONITE COMPANY STORES,
 17 LLC, an Indiana Limited Liability
 Company; and DOES 1-100, inclusive,

18 Defendants.

CASE NO. **'19CV0639 JLS MSB**

**DECLARATION OF JOHN B.
 LIVINGSTON IN SUPPORT OF NOTICE
 OF REMOVAL**

[Originally San Diego County Superior Court
 Case No. 37-2019-00011100-CU-MC-CTL]

DECLARATION OF JOHN B. LIVINGSTON

I, John B. Livingston, hereby declare as follows:

1. I am currently the Secretary of Samsonite Company Stores, LLC (“Samsonite”) and have held this position since March 6, 2017. I previously served as the Assistant Secretary for Samsonite beginning on September 8, 2006. I am familiar with Samsonite’s business operations in the United States. In my position, I have access to information regarding the overall direction, control and coordination of Samsonite’s activities.

2. This declaration is based on my personal knowledge and/or review of the business records of Samsonite. If called as a witness for this purpose, I could and would competently testify to the facts set forth in this declaration. To the extent this declaration is based upon my review of the business records of Samsonite, those records are kept in the regular course of business, entries are made on those records in a timely manner by people with knowledge of the information being entered, and it is the regular practice of Samsonite’s business to maintain such records.

3. Samsonite Company Stores, LLC is an Indiana limited liability company.

4. At all relevant times (February 27, 2015 through present), Samsonite Company Stores, LLC has been a direct, wholly-owned subsidiary of Samsonite LLC, a Delaware limited liability company.

5. At all relevant times, Samsonite LLC has been a direct, wholly-owned subsidiary of Samsonite US Holdco, LLC, a Delaware limited liability company (“Samsonite Holdco”).

6. At all relevant times, Samsonite Holdco has been a direct, wholly-owned subsidiary of Delilah US Investments S.ar.L., a company organized under the laws of Luxembourg (“Delilah US”).

7. At all relevant times, Delilah US has been a direct, wholly-owned subsidiary of Samsonite IP Holdings S.ar.L., a company organized under the laws of Luxembourg (“Samsonite IP Holdings”).

EXHIBIT A



**Service of Process
Transmittal**

03/05/2019

CT Log Number 535041374

TO: Peter Cacioppo, Senior Paralegal
Samsonite Corporation
575 West St Ste 110
Mansfield, MA 02048-1160

RE: Process Served in California

FOR: Samsonite Company Stores, LLC (Domestic State: IN)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: KRISTEN SCHERTZER, ETC., PLTF. vs. SAMSONITE COMPANY STORES, LLC, ETC., ET AL., DFTS.

DOCUMENT(S) SERVED: Summons, Complaint, Exhibit(s)

COURT/AGENCY: San Diego County - Superior Court - San Diego, CA
Case # 37201900011100CUMCCTL

NATURE OF ACTION: PRAYER FOR RELIEF

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 03/05/2019 at 15:42

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 days after this summons and legal papers are served on you

ATTORNEY(S) / SENDER(S): Todd D. Carpenter
CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP
1350 Columbia St., Ste. 603
San Diego, CA 92101
619-762-1900

REMARKS: The document(s) received have been modified to reflect the name of the entity being served.

ACTION ITEMS: CT has retained the current log, Retain Date: 03/06/2019, Expected Purge Date: 03/11/2019

Image SOP

Email Notification, Peter Cacioppo Peter.Cacioppo@samsonite.com

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

3/5/19 @ 2:50pm

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

SAMSONITE COMPANY STORES; LLC, an Indiana Limited Liability Company,

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

KRISTEN SCHERTZER, on behalf of herself and all others similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/27/2019 at 12:50:22 PM
Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

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 presente 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.

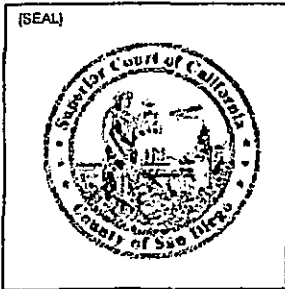
The name and address of the court is:
(El nombre y dirección de la corte es): Central
330 West Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso), 37-2018-00011100-CU-MC-CTL

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):
Todd D. Carpenter, 1350 Columbia Street, St. 603, San Diego, CA 92101, (619) 762-1900

DATE: February 27, 2019 02/28/2019 Clerk, by M. McClure, Deputy
(Fecha) (Secretario) M. McClure (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)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): Samsonite Company Stores, LLC an Indiana Limited Liability Company
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify): Limited Liability Company
4. by personal delivery on (date): 3/5/19

1 **CARLSON LYNCH SWEET**
2 **KILPELA & CARPENTER, LLP**
3 Todd D. Carpenter (CA 234464)
4 1350 Columbia St., Ste. 603
5 San Diego, California 92101
6 Telephone: 619.762.1900
7 Facsimile: 619.756.6991
8 tcarpenter@carsonlynch.com

9 *Attorneys for Plaintiff and*
10 *Proposed Class Counsel*

ELECTRONICALLY FILED
Superior Court of California;
County of San Diego
02/27/2019 at 12:50:22 PM
Clerk of the Superior Court
By: Melinda McClure, Deputy Clerk

11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 KRISTEN SCHERTZER, on behalf of herself and
14 all others similarly situated,

15 Plaintiff,

16 v.

17 SAMSONITE COMPANY STORES, LLC, an
18 Indiana Limited Liability Company and Does 1-
19 100, inclusive,

20 Defendant.

Case No. 37-2019-00011100-CU-MC-CTL

[E-FILE]

CLASS ACTION COMPLAINT

1. Violation of California's Unfair Competition Laws ("UCL"); California Business and Professions Code Sections 17200, *et seq.*
2. Violation of California's False Advertising Laws ("FAL"); California Business & Professions Code Sections 17500, *et seq.*
3. Violations of California Consumer Legal Remedies Act ("CLRA"); Civ. Code Sections 1750, *et. seq.*

[DEMAND FOR JURY TRIAL]

1 Plaintiff Kristen Schertzer brings this action on behalf of herself and all others similarly situated
2 against Defendant Samsonite Company Stores, LLC (“Samsonite” or “Defendant”), and states:

3 **I. NATURE OF THE ACTION**

4 1. This is a class action regarding Defendant’s false and misleading advertisement of deep
5 discounts on its Samsonite luggage and travel accessories sold in its retail outlet stores. The discounts
6 offered by Defendant on its Samsonite merchandise are fake sales – the advertised discounts are not real.

7 2. Samsonite advertises all of its Samsonite branded products for sale by listing the
8 merchandise with an “OUR PRICE” price and a corresponding discounted “Now” price. See, e.g. Exhibit
9 A, exemplar of in-store pricing placard. The “OUR PRICE” price represents to consumers the
10 merchandise’s regular price and the “Now” price represents to consumers a significant discount or
11 savings from the regular, “OUR PRICE” price.

12 3. The Samsonite merchandise is never offered for sale, nor sold at the “OUR PRICE” price.
13 The “OUR PRICE” price is used exclusively as a benchmark from which the false discount and
14 corresponding “Now” price is derived. Samsonite’s scheme has the effect of tricking consumers into
15 believing they are getting a significant deal by purchasing merchandise at a steep discount, when in
16 reality, consumers are paying for merchandise at its regular retail price.

17 4. As recognized by the Ninth Circuit, this practice is prohibited in California:

18 “Most consumers have, at some point, purchased merchandise that was marketed as being
19 “on sale” because the proffered discount seemed too good to pass up. Retailers, well
20 aware of consumers’ susceptibility to a bargain, therefore have an incentive to lie to their
21 customers by falsely claiming that their products have previously sold at a far higher
22 “original” price in order to induce customers to purchase merchandise at a purportedly
23 marked-down “sale” price. Because such practices are misleading — and effective — the
24 California legislature has prohibited them”.

25 *See Hinojos v. Kohl’s Corp.* 718, F.3d 1098 (2013)

26 5. During the Class Period, Defendant continually mislead consumers by advertising its
27 Samsonite branded luggage, bags, and travel accessories at discounted, “Now” prices. However, the
28 “Now” prices were actually the regular prices of the Samsonite products.

6. The advertised discounts overstated and did not represent a *bona fide* price at which
Defendant formerly sold the merchandise and were nothing more than mere phantom markdowns

1 because the represented "OUR PRICE" prices were artificially inflated and were never the original prices
2 for merchandise sold at Defendant's outlet stores. In addition, the represented "OUR PRICE" prices
3 were not the prevailing market retail prices within three months next immediately preceding the
4 publication of the advertised former prices, as required by California law.

5 7. Defendant conveys its deceptive pricing scheme to consumers through the use of
6 promotional materials, in-store pricing placards, price tags, and other related price advertisements.

7 8. The "OUR PRICE" price never existed and/or did not constitute the prevailing market
8 retail prices for such products within the three months next immediately preceding the publication of the
9 sales tag. The difference between the "Now" and "OUR PRICE" price is a false savings percentage used
10 to lure consumers into purchasing products they believe are significantly discounted.

11 9. Through its false and misleading marketing, advertising, and pricing scheme, Defendant
12 violated and continues to violate California and federal law prohibiting advertising goods for sale as
13 discounted from former prices which are false, and prohibiting misleading statements about the existence
14 and amount of price reductions. Specifically, Defendant violated and continues to violate California
15 Business and Professions Code §§ 17200, *et seq.* (the "UCL"), California Business and Professions Code
16 §§ 17500, *et seq.* (the "FAL"), the California Consumer Legal Remedies Act, California Civil Code §§
17 1750, *et seq.* (the "CLRA"), and the Federal Trade Commission Act ("FTCA"), which prohibits "unfair
18 or deceptive acts or practices in or affecting commerce" (15 U.S.C. § 45(a)(1)) and false advertisements
19 (15 U.S.C. § 52(a)).

20 10. Plaintiff brings this action on behalf of herself and other similarly situated consumers who
21 have purchased one or more Samsonite branded items at Defendant's outlet stores that were deceptively
22 represented as discounted from false former "OUR PRICE" prices in order to halt the dissemination of
23 this false, misleading, and deceptive pricing scheme, to correct the false and misleading perception it has
24 created in the minds of consumers, and to obtain redress for those who have purchased merchandise
25 tainted by this scheme. Plaintiff seeks to obtain damages, restitution, and other appropriate relief in the
26 amount by which Defendant was unjustly enriched as a result of their sales of merchandise offered at a
27 false discount.

28 11. Finally, Plaintiff seeks reasonable attorneys' fees pursuant to California Code of Civil

1 Procedure § 1021.5, as this lawsuit seeks the enforcement of an important right affecting the public
2 interest and satisfies the statutory requirements for an award of attorneys' fees.

3 **II. JURISDICTION AND VENUE**

4 12. This Court has jurisdiction over Defendant and the claims set forth pursuant to Code of
5 Civil Procedure § 410.10 and the California Constitution, Article VI § 10, because this case is a cause not
6 given by statute to other trial courts.

7 13. Venue is proper in the Superior Court of California, County of San Diego because
8 Plaintiff Schertzer resides in this County, the acts and transactions giving rise to her causes of action
9 occurred in this County, and Defendant has accepted credit cards for the transaction of business
10 throughout California, including the County of Diego, which has caused both obligations and liability of
11 Defendant to arise in the County of San Diego.

12 14. The amount in controversy exceeds the jurisdictional minimum of this Court.

13 **III. PARTIES**

14 **A. Plaintiff**

15 15. Plaintiff Kristen Schertzer resides in San Diego County, California. Plaintiff Schertzer
16 visited a Samsonite outlet store located in Carlsbad, California on October 18, 2018, and, in reliance on
17 Defendant's false and deceptive advertising, marketing, and "discount" pricing scheme, purchased a
18 Samsonite On Air 3 Hardside Spinner 20" (the "Suitcase") for \$167.99, exclusive of tax. Defendant,
19 through price tags and related in-store signage, advertised the Suitcase has having an "OUR PRICE" of
20 approximately \$280.00. *See Exhibit A, exemplar of in-store pricing placard.* Additional in-store signage
21 also advertised the Suitcase on sale as "Take 40% off OUR PRICE" and set forth a pricing chart that
22 advertised the Suitcase as having a regular "OUR PRICE" as \$280.00 and a sale "Now 40%" off price as
23 \$167.99. *See id.*

24 16. Upon information and belief, the Suitcase, however, was never offered for sale at its
25 original "OUR PRICE" in Defendant's outlet stores, nor was it offered for sale at its advertised "OUR
26 PRICE" within the 90-day period immediately preceding Plaintiff Schertzer's purchase anywhere in the
27 relevant market. Upon information and belief, at all times during the 90 days preceding Ms. Schertzer's
28 purchase, the Suitcase was offered for sale at a substantial discount from its advertised "OUR PRICE"

1 price.

2 17. Ms. Schertzer believed the higher "OUR PRICE" price was an actual and legitimate price
3 at which Defendant had previously sold the Suitcase. Had she known the "OUR PRICE" price was
4 fictitious and that Defendant never sold the Suitcase at that price, she would not have purchased the
5 suitcase or would have paid less for the item.

6 **B. Defendant**

7 18. Plaintiff alleges upon information and belief that Defendant Samsonite Company Stores,
8 LLC is an Indiana limited liability company with its principal executive offices in Mansfield,
9 Massachusetts. It operates as a subsidiary of Samsonite International S.A. Defendant designs,
10 manufactures, advertises, markets, distributes, and/or sells travel luggage and accessories to hundreds of
11 thousands of consumers in California and throughout the United States.

12 19. Plaintiff does not know the true names and capacities of the persons or entities sued herein
13 as DOES 1-100, inclusive, and therefore sues such Defendants by such fictitious names. Plaintiff is
14 informed and believes, and upon such information and belief alleges, that each of the DOE Defendants is
15 in some manner legally responsible for the damages suffered by Plaintiff and the Class members as
16 alleged herein. Plaintiff will amend this Complaint to set forth the true names and capacities of these
17 Defendants when they have been ascertained, along with appropriate charging allegations, as may be
18 necessary.

19 **IV. FACTUAL BACKGROUND**

20 **A. The Fraudulent Sale Discounting Scheme**

21 20. Samsonite is a travel luggage retailer, selling products such as luggage, business bags,
22 backpacks and duffels, and travel accessories. Samsonite operates over 100 stores in the United States,
23 including approximately 14 outlet stores in California. Samsonite sells a variety of travel baggage and
24 accessories from its own name brand at its retail and outlet stores, as well at various authorized retailers
25 such as JC Penney, Macy's, and Kohl's. This case involves only the Samsonite branded merchandise
26 sold by Defendant at its Samsonite outlet store locations.

27 21. Samsonite engages in a scheme to defraud its customers by perpetually discounting its
28 Samsonite merchandise in its retail outlet stores. The scheme is effectuated as follows: Every single piece

1 of Samsonite brand merchandise sold in Samsonite's retail outlet stores is advertised with two prices; the
2 "OUR PRICE" price and the corresponding "Now" price. The "OUR PRICE" price conveys to the
3 consumer the purported regular price of the item. The "Now" price conveys to the customer a deeply
4 discounted price at which the item presently being offered for sale. The two prices ("OUR PRICE" and
5 "Now") are conveyed to consumers via in-store signage.

6 22. However, upon information and belief, at no time are the Samsonite branded products
7 ever offered for sale at the "OUR PRICE" price. The "OUR PRICE" price is merely a false reference
8 price from which Defendant utilizes to reference a deeply discounted "Now" price on every piece of
9 Samsonite branded merchandise sold in its outlet stores during the class period.

10 23. This practice is not accidental; it is a fraudulent scheme intended to deceive consumers
11 into: 1) making purchases they otherwise would not have made; or 2) into paying substantially more for
12 merchandise consumers believed was heavily discounted; and thereby believed was worth more than its
13 actual value.

14 24. Retailers, including Defendant understand that consumers are susceptible to a good
15 bargain and therefore Defendant has substantial interest in lying in order to generate sales. A product's
16 "regular" price or "original" price matters to consumers. In this case, Defendant has marked its
17 merchandise with an "OUR PRICE" price; intended to be the equivalent of a "regular" or "original"
18 price. The regular price and/or the original price conveys to consumers, including Plaintiff, the product's
19 worth and the prestige that ownership of the product conveys. *See Dhruv Grewal & Larry D. Compeau,*
20 *Comparative Price Advertising: Informative or Deceptive?*, 11 *J. of Pub. Pol'y & Mktg.* 52, 55 (Spring
21 1992) ("By creating an impression of savings, the presence of a higher reference price enhances subjects'
22 perceived value and willingness to buy the product."); *id.* at 56 ("[E]mpirical studies indicate that as
23 discount size increases, consumers' perceptions of value and their willingness to buy the product
24 increase, while their intention to search for a lower price decreases.").

25 25. Defendant's pricing advertisements uniformly include both the false regular price ("OUR
26 PRICE"), and right next to it, the purported "Now" price. This uniform scheme is intended to and does
27 provide misinformation to the customer. This misinformation communicates to consumers, including
28 Plaintiff, that the Samsonite branded products have a greater value than the advertised "Now" Price. As

1 the Ninth Circuit recognizes, “[m]isinformation about a product’s “normal” price is...significant to many
2 consumers in the same way as a false product label would be.” *See Hinojos v. Kohl’s Inc.* 718 F.3d at
3 1106.

4 **B. Plaintiff’s Investigation**

5 26. Plaintiff’s counsel has investigated dozens of retailers to determine whether they are
6 engaged in fraudulent sale discounting. Plaintiff’s investigation of Samsonite outlet stores included the
7 90-day period immediately preceding Plaintiff’s purchase. To be clear, Plaintiff’s counsel was
8 investigating Samsonite retail sale discounting practices long before Plaintiff made a purchase at
9 Samsonite and long before Plaintiff contacted Plaintiff’s counsel seeking representation.

10 27. Plaintiff’s investigation cataloged the pricing practices of Samsonite outlet stores in San
11 Diego County, including at the Carlsbad Premium Outlets at 5620 Paseo Del Norte, Carlsbad, CA 92008
12 and the Las Americas Premium Outlets 4265 Camino De La Plaza, San Diego, CA 92173. The false
13 “OUR PRICE” price and corresponding purported “Now” price pricing scheme was both uniform and
14 identical at all stores investigated.

15 28. The fraudulent pricing scheme applies to all Samsonite branded products sold in every
16 Samsonite retail outlet store, and included the Suitcase purchased by Ms. Schertzer on October 18, 2018.

17 29. Plaintiff’s counsel initially investigated Samsonite in the summer of 2018. On every
18 occasion that Plaintiff’s counsel catalogued Defendant’s pricing; the Samsonite branded merchandise
19 was discounted; meaning: it was offered at the “Now” price, not the listed “OUR PRICE” price. In fact,
20 as of the date of this filing the Samsonite branded merchandise remains on sale at a “Now” price.

21 30. The “OUR PRICE” prices listed and advertised on Defendant’s products are fake
22 reference prices; utilized only to perpetuated Defendant’s fake-discount scheme.

23 31. Defendant knows that its comparative price advertising is false, deceptive, mislead, and
24 unlawful under California and federal law.

25 32. Defendant fraudulently concealed from and intentionally failed to disclose to Plaintiff and
26 other members of the Class the truth about its advertised price and former prices.

27 33. At all relevant times, Defendant has been under a duty to Plaintiff and the Class to
28 disclose the truth about its false discounts.

1 34. Plaintiff relied upon Defendant’s artificially inflated “OUR PRICE” prices and false
2 discounts when purchasing the Suitcase from Defendant. Plaintiff would not have made such purchase
3 but for Defendant’s representations of fabricated “OUR PRICE” prices and false discounts. Plaintiff may
4 in the future shop at Defendant’s Samsonite outlet store.

5 35. Plaintiff and the Class reasonably and justifiably acted and relied on the substantial price
6 differences that Defendant advertised, and made purchases believing that they were receiving a
7 substantial discount on an item of greater value than it actually was. Plaintiff, like other Class members,
8 was lured in, relied on, and was damaged by these pricing schemes that Defendant carried out.

9 36. Defendant intentionally concealed and failed to disclose material facts regarding the truth
10 about false former price advertising in order to provoke Plaintiff and the Class to purchase merchandise
11 in its outlet stores.

12 **V. CLASS ALLEGATIONS**

13 37. Plaintiff brings this action individually and on behalf of all other similarly situated Class
14 members pursuant to Code of Civil Procedure section 382, which Class is defined as follows:

15 All persons who, within the State of California, during the relevant statutory time period,
16 purchased one or more products at a discount from the advertised “OUR PRICE” price from a
Samsonite outlet store and who have not received a refund or credit for their purchase(s).

17 38. Excluded from the Class is Defendant, as well as its officers, employees, agents, or
18 affiliates, and any judge who presides over this action, as well as all past and present employees, officers,
19 and directors of Samsonite. Plaintiff reserves the right to expand, limit, modify, or amend this class
20 definition, including the addition of one or more subclasses, in connection with her motion for class
21 certification, or at any other time, based upon, *inter alia*, changing circumstances and/or new facts
22 obtained during discovery.

23 39. **Numerosity:** The Class members are so numerous that joinder of all members is
24 impracticable. Plaintiff is informed and believes that the proposed Class contain hundreds of thousands
25 of individuals who have been damaged by Defendant’s conduct as alleged herein. The precise number of
26 Class members is unknown to Plaintiff.

27 40. **Existence and Predominance of Common Questions of Law and Fact:** This action
28

1 involves common questions of law and fact, which predominate over any questions affecting individual
2 Class members. These common legal and factual questions include, but are not limited to, the following:

- 3 a. Whether, during the Class Period, Samsonite used false "OUR PRICE" prices and falsely
4 advertised price discounts on merchandise it sold in outlet stores;
- 5 b. Whether, during the Class Period, the "OUR PRICE" prices advertised by Defendant were
6 the prevailing market prices for the respective merchandise during the three-month period
7 preceding the dissemination and/or publication of the advertised former prices;
- 8 c. whether Defendant's alleged conduct constitutes violations of the laws asserted;
- 9 d. whether Defendant engaged in unfair and/or unlawful business practices under the laws
10 asserted;
- 11 e. whether Defendant engaged in false or misleading advertising; and
- 12 f. whether Plaintiff and the Class are entitled to damages and/or restitution and the proper
13 measure of that loss.

14 41. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class
15 because, *inter alia*, all Class members have been deceived (or were likely to be deceived) by Defendant's
16 false and deceptive price advertising scheme, as alleged herein. Plaintiff is advancing the same claims
17 and legal theories on behalf of herself and all members of the Class.

18 42. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the members of the
19 Class. Plaintiff has retained counsel experienced in complex consumer class action litigation, and
20 Plaintiff intends to prosecute this action vigorously. Plaintiff has no antagonistic or adverse interest to
21 those of the Class.

22 43. **Superiority:** The nature of this action and the nature of laws available to Plaintiff and the
23 Class make the use of the class action format a particularly efficient and appropriate procedure to afford
24 relief to her and the Class for the wrongs alleged. The damages or other financial detriment suffered by
25 individual Class members is relatively modest compared to the burden and expense that would be
26 entailed by individual litigation of their claims against Defendant. Thus, it would be virtually impossible
27 for Plaintiff and Class members, on an individual basis, to obtain effective redress for the wrongs done to
28 them. Absent the class action, Class members and the general public would not likely recover, or would

1 not likely have the chance to recover, damages or restitution, and Defendant will be permitted to retain
2 the proceeds of its unfair and unlawful misdeeds.

3 44. All Class members, including Plaintiff, were exposed to one or more of Defendant's
4 misrepresentations or omissions of material fact claiming that former "OUR PRICE" prices represented
5 former market prices and those "OUR PRICE" prices advertised prices were in existence. Due to the
6 scope and extent of Defendant's consistent false "discount" price advertising scheme that has been
7 disseminated in a continuous campaign to consumers via a number of different platforms—in-store
8 displays, media advertisements, print advertisements, etc.—it can be reasonably inferred that such
9 misrepresentations or omissions of material fact were uniformly made to all members of the Class. In
10 addition, it can be reasonably presumed that all Class members, including Plaintiff, affirmatively acted in
11 response to the representations contained in Defendant's false advertising scheme when purchasing
12 merchandise from Defendant.

13 45. Upon information and belief, Defendant keeps extensive computerized records of its
14 customers through, *inter alia*, customer loyalty programs and general marketing programs. Defendant
15 has one or more databases through which a significant majority of Class members may be identified and
16 ascertained, and it maintains contact information, including email and home addresses, through which
17 notice of this action could be disseminated in accordance with due process requirements.

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **Violation of Unfair Competition Law
Business and Professions Code § 17200, *et seq.***

21 46. Plaintiff repeats and re-alleges the allegations contained in every preceding paragraph as if
22 fully set forth herein.

23 47. The UCL defines unfair business competition to include any "unlawful, unfair or
24 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising. Cal.
25 Bus. & Prof. Code § 17200.

26 48. The UCL imposes strict liability. Plaintiff need not prove that Defendant intentionally or
27 negligently engaged in unlawful or unfair business practices – only that such practices occurred.
28

1 ***“Unfair” Prong***

2 49. A business act or practice is “unfair” under the UCL if it offends an established public
3 policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, and
4 that unfairness is determined by weighing the reasons, justifications, and motives of the practice against
5 the gravity of the harm to the alleged victims.

6 50. Defendant’s actions constitute “unfair” business acts of practices because, as alleged
7 above, Defendant engaged in misleading and deceptive price comparison advertising that represented
8 false “OUR PRICE” prices and discounted “Now” prices that were nothing more than fabricated
9 “regular” prices leading to phantom markdowns. Defendant’s acts and practices offended an established
10 public policy, and engaged in immoral, unethical, oppressive, and unscrupulous activities that are
11 substantially injurious to consumers.

12 51. The harm to Plaintiff and Class members outweighs the utility of Defendant’s practices.
13 There were reasonably available alternatives to further Defendant’s legitimate business interests, other
14 than the misleading and deceptive conduct described herein.

15 ***“Fraudulent” Prong***

16 52. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members
17 of the consuming public.

18 53. Defendant’s acts and practices alleged above have deceived Plaintiff and are highly likely
19 to deceive members of the consuming public. Plaintiff relied on Defendant’s fraudulent and deceptive
20 representations regarding its “OUR PRICE” prices and the corresponding discounts for Defendant’s
21 merchandise, which Defendant sells at its outlet stores. These misrepresentations played a substantial
22 role in Plaintiff’s decision and that of the proposed Class to purchase the products at steep discounts, and
23 Plaintiff would not have purchased the Suitcase without Defendant’s misrepresentations.

24 ***“Unlawful” Prong***

25 54. A business act or practice is “unlawful” under the UCL if it violates any other law or
26 regulation.

27 55. Samsonite’s acts and practices alleged above constitute unlawful business acts or
28 practices, as it has violated state and federal law in connection with its deceptive pricing scheme. The

1 Federal Trade Commissions Act (“FCTA”) prohibits “unfair or deceptive acts or practices in or affecting
2 commerce” (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false advertisements. (15
3 U.S.C. § 52(a)). Under the FTCA, false former pricing schemes similar to the ones implemented by
4 Defendant are described as deceptive practices that would violate the FTCA:

5 (a) One of the most commonly used forms of bargain advertising is to offer a
6 reduction from the advertiser’s own former price for an article. If the former price is
7 the actual, bona fide price at which the article was offered to the public on a regular
8 basis for a reasonably substantial period of time, it provides a legitimate basis for the
9 advertising of a price comparison. Where the former price is genuine, the bargain
10 being advertised is a true one. If, on the other hand, the former price being advertised
11 is not bona fide but fictitious—for example, where an artificial, inflated price was
12 established for the purpose of enabling the subsequent offer of a large reduction—the
13 “bargain” being advertised is a false one; the purchaser is not receiving the unusual
14 value he expects.

15 (b) A former price is not necessarily fictitious merely because no sales at the
16 advertised price were made. The advertiser should be especially careful, however, in
17 such a case, that the price is one at which the product was openly and actively offered
18 for sale, for a reasonably substantial period of time, in the recent, regular course of his
19 business, honestly, and in good faith—and, of course, not for the purpose of
20 establishing a fictitious higher price on which a deceptive comparison might be based.

21 16 C.F.R. § 233.1.

22 56. In addition to federal law, California law also expressly prohibits false former pricing
23 schemes. California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17501, entitled “*Worth*
24 *or value; statements as to former price.*” states:

25 For the purpose of this article the worth or value of any thing advertised is the prevailing
26 market price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time
27 of publication of such advertisement in the locality wherein the advertisement is
28 published.

29 **No price shall be advertised as a former price of any advertised thing, unless the alleged**
30 **former price was the prevailing market price as above defined within three months next**
31 **immediately preceding the publication of the advertisement** or unless the date when the
32 alleged former price did prevail is clearly, exactly, and conspicuously stated in the
33 advertisement.

34 [Emphasis added.]

35 57. As detailed in Plaintiff’s Third Cause of Action below, the Consumer Legal Remedies Act
36 (“CLRA”). Cal. Civil Code § 1770(a)(9) prohibits a business from “[a]dvertising goods or services with
37
38

1 intent not to sell them as advertised,” and subsection (a)(13) prohibits a business from “[m]aking false or
2 misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.”

3 58. The violation of any law constitutes an “unlawful” business practice under the UCL.

4 59. As detailed herein, the acts and practices alleged were intended to or did result in
5 violations of the FTCA, the FAL, and the CLRA.

6 60. Samsonite’s practices, as set forth above, have misled Plaintiff, the proposed Class, and
7 the public in the past and will continue to mislead in the future. Consequently, Samsonite’s practices
8 constitute an unlawful, fraudulent, and unfair business practice within the meaning of the UCL.

9 61. Samsonite’s violation of the UCL, through its unlawful, unfair, and fraudulent business
10 practices, are ongoing and present a continuing threat that members of the public will be deceived into
11 purchasing products based on price comparisons of arbitrary and inflated “OUR PRICE” prices to
12 discounted “Now” prices that created phantom markdowns and led to financial damage for consumers
13 like Plaintiff and the Class.

14 62. Pursuant to the UCL, Plaintiff is entitled to preliminary and permanent injunctive relief
15 ordering Samsonite to cease this unfair competition, as well as disgorgement and restitution to Plaintiff
16 and the Class of all Samsonite’s revenues associated with its unfair competition, or such portion of those
17 revenues as the Court may find equitable.

18 **SECOND CAUSE OF ACTION**
19 **Violation of the California False Advertising Law,**
20 **Business and Professions Code § 17500, *et seq.***

21 63. Plaintiff repeats and re-alleges the allegations contained in every preceding paragraph as if
22 fully set forth herein.

23 64. Cal. Bus. & Prof. Code § 17500 provides that:

24 [i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of . . . personal
25 property . . . to induce the public to enter into any obligation relating thereto, to make or
26 disseminate or cause to be made or disseminated . . . from this state before the public in
27 any state, in any newspaper or other publication, or any advertising device, or by public
28 outcry or proclamation, or in any other manner or means whatever, including over the
Internet, any statement . . . which is *untrue* or *misleading*, and which is known, or which
by the exercise of reasonable care should be known, to be untrue or misleading

[Emphasis added.]

1 products purchased by Plaintiff and the Class are “goods” within the meaning of California Civil Code §
2 1761(a).

3 72. Defendant violated, and continues to violate, the CLRA by engaging in the following
4 practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the Class which
5 were intended to result in, and did result in, the sale of merchandise:

- 6 a. Representing that its merchandise has characteristics, uses, and/or benefits, which it does
7 not;
- 8 b. Advertising goods or services with intent not to sell them as advertised;
- 9 c. Making false or misleading statements of fact concerning reasons for, existence of, or
10 amounts of price reductions.

11 73. Pursuant to §1782(a) of the CLRA, on February 27, 2019, Plaintiff’s counsel notified
12 Defendant in writing by certified mail of the particular violations of § 1770 of the CLRA and demanded
13 that it rectify the problems associated with the actions detailed above and give notice to all affected
14 consumers of Defendant’s intent to act. If Defendant fails to respond to Plaintiff’s letter or agree to
15 rectify the problems associated with the actions detailed above and give notice to all affected consumers
16 within 30 days of the date of written notice, as proscribed by § 1782, Plaintiff will move to amend her
17 complaint to pursue claims for actual, punitive, and statutory damages, as appropriate against Defendant.
18 As to this cause of action at this time, Plaintiff only seeks injunctive relief.

19 **VI. PRAYER FOR RELIEF**

20 Wherefore, Plaintiff, on behalf of herself and on behalf of the other members of the Class,
21 requests that this Court award relief against Defendant as follows:

- 22 A. An order certifying the Class and designating Plaintiff as the Class Representative
23 and her counsel as Class Counsel;
- 24 B. Awarding restitution and disgorgement of all profits that Defendant obtained from
25 Plaintiff and the Class members as a result of its unlawful, unfair, and fraudulent
26 business practices described herein;
- 27 C. Awarding declaratory relief as permitted by law or equity;
- 28 D. Order Defendant to engage in a corrective advertising campaign;

E. Awarding attorneys' fees and costs; and

F. For such other and further relief as the Court may deem necessary or appropriate.

VII. DEMAND FOR JURY TRIAL

74. Plaintiff hereby demands a jury trial for all of the claims so triable.

Dated: February 27, 2019

**CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP**



Todd D. Carpenter (CA 234464)
1350 Columbia St., Ste. 603
San Diego, California 92101
Telephone: (619) 762-1900
Facsimile: (619) 756-6990
tcarpenter@carsonlynch.com

*Attorneys for Plaintiff and
Proposed Class Counsel*

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EXHIBIT A

PULL

LARRY

Stryde

Introducing someone's latest innovation, this...
 New low profile shape with the added touch and pull handle
 provides superior grip and durability
 100% Polyethylene construction for extra durability
 Traction finish to minimize the appearance of scratches
 Integrated USA lock for security
 (The most durable and secure...)

TAKE
 50%
 off
 OUR PRICE

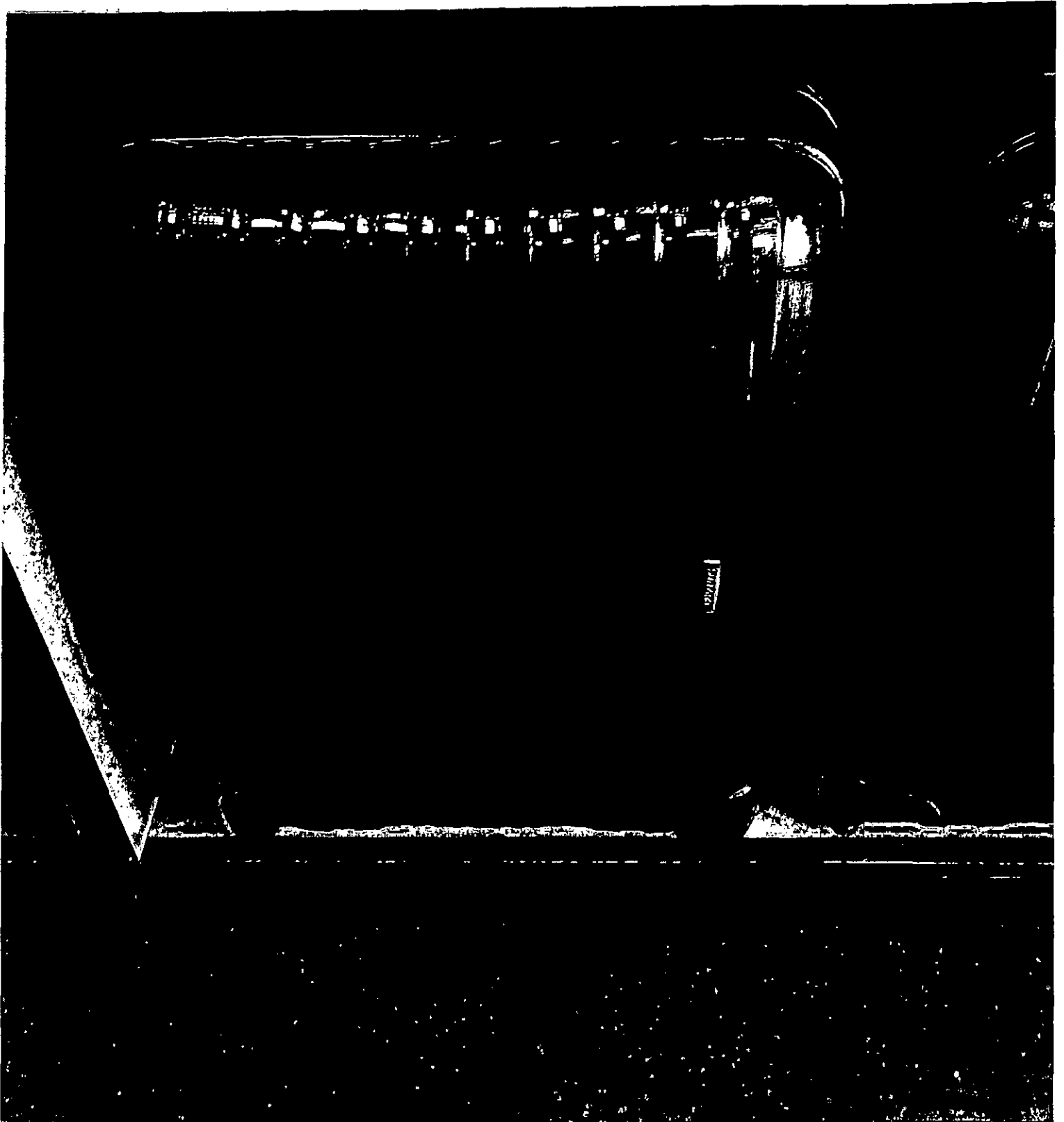
OUR PRICE	Now 50%	OUR PRICE	Now 50%	OUR PRICE	Now
\$100.00	\$49.99	\$270.00	\$134.99	\$410.00	\$211
\$110.00	\$54.99	\$280.00	\$139.99	\$420.00	\$224
\$120.00	\$59.99	\$290.00	\$144.99	\$430.00	\$237
\$130.00	\$64.99	\$300.00	\$149.99	\$440.00	\$250
\$140.00	\$69.99	\$310.00	\$154.99	\$450.00	\$263
\$150.00	\$74.99	\$320.00	\$159.99	\$460.00	\$276
\$160.00	\$79.99	\$330.00	\$164.99	\$470.00	\$289
\$170.00	\$84.99	\$340.00	\$169.99	\$480.00	\$302
\$180.00	\$89.99	\$350.00	\$174.99	\$490.00	\$315
\$190.00	\$94.99	\$360.00	\$179.99	\$500.00	\$328
\$200.00	\$99.99	\$370.00	\$184.99	\$510.00	\$341
\$210.00	\$104.99	\$380.00	\$189.99	\$520.00	\$354
\$220.00	\$109.99	\$390.00	\$194.99	\$530.00	\$367
\$230.00	\$114.99	\$400.00	\$199.99	\$540.00	\$380
\$240.00	\$119.99	\$410.00	\$204.99	\$550.00	\$393
\$250.00	\$124.99	\$420.00	\$209.99	\$560.00	\$406
\$260.00	\$129.99	\$430.00	\$214.99	\$570.00	\$419

Good Better Best

Impact resistance and



七折 30% TOMAR TAKE 30% OFF*



CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Carlson Lynch Sweet Kilpela & Carpenter, LLP Todd D. Carpenter (CA 234464) 1350 Columbia St., Ste. 603 San Diego, CA 92101 TELEPHONE NO.: (619) 762-1900 FAX NO.: (619) 756-6991 ATTORNEY FOR (Name), Plaintiff Kristen Schertzer	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 02/27/2019 at 12:50:22 PM Clerk of the Superior Court By Melinda McClure, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Central, Hall of Justice	CASE NUMBER: 37-2019-00011100-CU-MC-CTL JUDGE: Judge Randa Trapp DEPT:
CASE NAME: Kristen Schertzer v. Samsonite Company Stores, LLC	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

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"/> Assel 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 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 checked="" 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 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): 3, Cal. Bus. & Prof. Code 17200, 17500, and Cal. Civ. Code 1750
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: 2/27/2019
 Todd D. Carpenter


 (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.

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

1 **CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP**

2 Todd D. Carpenter (CA 234464)
3 1350 Columbia St., Ste. 603
4 San Diego, California 92101
5 Telephone: 619.762.1900
6 Facsimile: 619.756.6991
7 tcarpenter@carlsonlynch.com

8 *Attorneys for Plaintiff and
9 Proposed Class Counsel*

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

02/27/2019 at 12:50:22 PM

Clerk of the Superior Court
By: Melinda McClure, Deputy Clerk

10
11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF SAN DIEGO**

13 KRISTEN SCHERTZER, on behalf of herself and
14 all others similarly situated,

15 Plaintiff,

16 v.

17 SAMSONITE COMPANY STORES, LLC, an
18 Indiana Limited Liability Company and Does 1-
19 100, inclusive,

20 Defendant.

Case No.

[E-FILE]

**DECLARATION IN SUPPORT OF
JURISDICTION**

1 I, Todd D. Carpenter, declare under penalty of perjury the following:

2 1. I am an attorney duly licensed to practice before all of the courts in the State of California.
3 I am a partner at Carlson Lynch Sweet Kilpela & Carpenter, LLP, and the counsel of record for Plaintiff
4 in the above-entitled action.

5 2. Defendant Samsonite Company Stores, LLC has done and is doing business in the County
6 of San Diego. Such business includes the marketing, distributing, and sale of luggage at Samsonite outlet
7 stores.

8 3. Plaintiff Kristen Schertzer purchased a Samsonite suitcase from a Samsonite outlet store
9 in Carlsbad, which is in the County of San Diego.

10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct.

12 Executed this 27th day of February 2019 in San Diego, California.

13 
14 Todd D. Carpenter



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2019-00011100-CU-MC-CTL CASE TITLE: Schertzer vs Samsonite Company Stores LLC [IMAGED]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7070	
PLAINTIFF(S) / PETITIONER(S): Kristen Schertzer	
DEFENDANT(S) / RESPONDENT(S): Samsonite Company Stores LLC	
SCHERTZER VS SAMSONITE COMPANY STORES LLC [IMAGED]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2019-00011100-CU-MC-CTL

CASE ASSIGNMENT

Judge: Randa Trapp

Department: C-70

COMPLAINT/PETITION FILED: 02/27/2019

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	10/11/2019	09:40 am	C-70	Randa Trapp

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	<i>FOR COURT USE ONLY</i>
PLAINTIFF(S): Kristen Schertzer	
DEFENDANT(S): Samsonite Company Stores LLC	
SHORT TITLE: SCHERTZER VS SAMSONITE COMPANY STORES LLC [IMAGED]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2019-00011100-CU-MC-CTL

Judge: Randa Trapp

Department: C-70

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|--|--|
| <input type="checkbox"/> Mediation (court-connected)
<input type="checkbox"/> Mediation (private)
<input type="checkbox"/> Voluntary settlement conference (private)
<input type="checkbox"/> Neutral evaluation (private)
<input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | <input type="checkbox"/> Non-binding private arbitration
<input type="checkbox"/> Binding private arbitration
<input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial)
<input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
|--|--|

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 02/28/2019

JUDGE OF THE SUPERIOR COURT

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Samsonite Hit with Class Action Over 'Phantom' Discount Prices](#)
