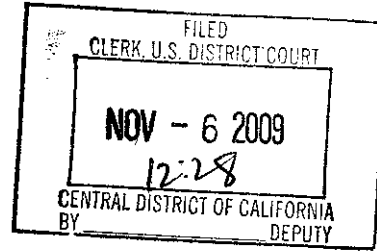


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SUMMIT ENTERTAINMENT, LLC  
9

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

13 SUMMIT ENTERTAINMENT, LLC,  
a Delaware limited liability company,

14 Plaintiff,

15 v.

16 BECKETT MEDIA, LLC., a Delaware  
17 Corporation, and Does 1-10, inclusive,

18 Defendants.  
19

CV09-8161 PSG (MANx)  
Case No. \_\_\_\_\_

**COMPLAINT FOR FALSE  
DESIGNATION OF ORIGIN,  
TRADEMARK INFRINGEMENT,  
TRADEMARK DILUTION,  
COPYRIGHT INFRINGEMENT,  
AND UNFAIR COMPETITION,  
BREACH OF CONTRACT**

**(Demand For Jury Trial)**

20 Plaintiff Summit Entertainment, LLC ("Summit"), for its complaint against  
21 defendant Beckett Media, LLC ("Defendant") and Does 1-10, alleges as follows:

22 **JURISDICTION**

23 1. This action arises under the trademark and anti-dilution laws of the  
24 United States, 15 U.S.C. § 1125, *et seq.*; the Copyright Act of 1976, as amended,  
25 17 U.S.C. § 101, *et seq.*; and under the statutory and common law of unfair  
26 competition. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and  
27 (b), and § 1367, 15 U.S.C. § 1121, 17 U.S.C. § 501. This action arises under the  
28 laws of the United States.



1 for use on various types of goods and services.

2 9. Summit has licensed the TWILIGHT Marks and the NEW MOON  
3 mark to third parties to sell a wide variety of products, including posters, clothing,  
4 trading cards and beverageware. Summit's licensees first sold posters bearing the  
5 TWILIGHT Marks in May of 2008, and continue to sell such products.

6 10. Summit is the copyright owner of both the screenplay and the motion  
7 pictures *Twilight* and *New Moon* (the "Twilight Motion Pictures"), as well as all  
8 publicity, promotional, unit, and special shoot photography related thereto and the  
9 trailers for the *Twilight* Motion Pictures. Summit has licensed its copyrighted  
10 photographs to third parties to promote the *Twilight* Motion Pictures, as well as for  
11 various items of merchandise related to the *Twilight* Motion Pictures and bearing  
12 the TWILIGHT Marks and the NEW MOON mark.

13 **Defendant and Its Infringing Actions**

14 11. On information and belief, Defendant is a publisher of sports and  
15 entertainment collectibles and memorabilia magazines.

16 12. On information and belief, Defendant distributes its magazines widely  
17 in various outlets throughout the United States including corner newsstands,  
18 bookstores, grocery stores, drugstores, and other similar retail outlets. In addition,  
19 Defendant operates a website at <[www.beckett.com](http://www.beckett.com)> and sells its magazines from  
20 that website as well.

21 13. In late August 2009, Summit learned that Defendant was and is selling  
22 an 80-page fan magazine entitled *Twilight* (the "first Twilight Fanzine") devoted  
23 entirely to stories and articles about the *Twilight* Motion Pictures and the characters  
24 and actors from those motion pictures, as well as advertisements for *Twilight*  
25 trading cards, dolls and other collectibles. Included in this first Twilight Fanzine  
26 are more than 30 unauthorized and unlicensed reproductions of photographs from  
27 the *Twilight* Motion Pictures and photographs and artwork produced for promotion  
28 of the *Twilight* Motion Pictures (collectively, along with the photographs and

1 artwork described in paragraphs 17 and 23 below, the “Photographs”). Included in  
 2 the center of the magazine is a removable, approximately 14 x 20½ inch poster, that  
 3 is an unauthorized and unlicensed reproduction of Summit’s promotional  
 4 photograph and artwork for the *Twilight* sequel, *New Moon* (“Poster Image I”).  
 5 Appearing in large print as the title on the cover of the first *Twilight* Fanzine is the  
 6 TWILIGHT trademark in the same or confusingly similar font as the stylized  
 7 TWILIGHT mark used by Summit for the *Twilight* Motion Pictures. Defendant has  
 8 been selling this stand alone *Twilight* Fanzine for \$9.99 per copy. A true and  
 9 correct copy of the first *Twilight* Fanzine is attached hereto as **Exhibit A**.

10 14. The distinctive font of the stylized TWILIGHT mark is shown below  
 11 on the left. For comparison, Defendant’s infringing use appears on the right.

12 **Summit’s Stylized Mark**

**Defendant’s Infringing Use**



15 15. On September 1, 2009, Summit sent Defendant a letter demanding that  
 16 Defendant cease and desist its trademark and copyright infringement. A true and  
 17 correct copy of Summit’s demand letter to Defendant is attached hereto as  
 18 **Exhibit B**. Defendant failed to respond to Summit’s initial letter, and Summit was  
 19 forced to send a follow-up demand letter on September 17, 2009. A true and  
 20 correct copy of Summit’s second demand letter to Defendant is attached hereto as  
 21 **Exhibit C**.

22 16. On September 22, 2009, Brown Law, LLP in Raleigh, North Carolina,  
 23 acting on behalf of Defendant, contacted Summit’s counsel seeking more time for  
 24 Defendant to respond to Summit’s demand letters, stating that they had just  
 25 received copies of the demand letters the previous day and had not yet seen a copy  
 26 of the first *Twilight* Fanzine. Summit’s counsel asked that Defendant’s counsel  
 27 obtain a copy of the first *Twilight* Fanzine and call the following day to discuss the  
 28 matter, because Summit urgently needed Defendant to cease producing and selling

1 the first Twilight Fanzine given the large amount of infringing material in it.  
2 Defendant did not respond.

3 17. On September 29, 2009, Leopold, Petrich & Smith, in Beverly Hills,  
4 California, new counsel for Defendant, contacted Summit's counsel, again seeking  
5 an extension of time for Defendant to respond to Summit's demand letters, stating  
6 that they had just received the matter, had not seen a copy of the first Twilight  
7 Fanzine, and counsel was leaving the country until Sunday, October 4, 2009.  
8 Summit's counsel conveyed to Defendant's counsel the urgency of Summit's need  
9 to have Defendant cease producing and selling the first Twilight Fanzine and  
10 agreed to an extension only until Monday, October 5, 2009.

11 18. On October 2, 2009, Summit discovered that Defendant had published  
12 and was selling a second 80-page Twilight Fanzine, also for \$9.99 per copy (the  
13 "second Twilight Fanzine," with the first Twilight Fanzine collectively "the  
14 Twilight Fanzines"). Like the first Twilight Fanzine, the second Twilight Fanzine  
15 is filled with more than 20 unauthorized and unlicensed reproductions of  
16 photographs from the *Twilight* Motion Pictures and photographs and artwork  
17 produced for promotion of those films (also part of the "Photographs"). Similar to  
18 the first Twilight Fanzine, the second Twilight Fanzine includes in the center of the  
19 magazine a removable, approximately 14 x 20½ inch, poster that is an unauthorized  
20 and unlicensed reproduction of a photograph from *New Moon* ("Poster Image II,"  
21 with Poster Image I and Poster Image II, collectively, the "Poster Images"). The  
22 second Twilight Fanzine also bears as the title in large print on the cover the  
23 TWILIGHT trademark in the same or confusingly similar font as the stylized  
24 TWILIGHT mark used by Summit for the *Twilight* Motion Pictures. A true and  
25 correct copy of the second Twilight Fanzine is attached hereto as **Exhibit D**.

26 19. On October 5, 2009, Defendant's counsel represented that the first  
27 Twilight Fanzine was authorized based on Defendant's access to Summit's  
28 publicity website at www.summitpublicity.com (the "Website"). The Website

1 contains, among other things, downloadable copyrighted photographs and other  
2 artwork from or related to the *Twilight* Motion Pictures of which Summit is the  
3 copyright owner (the “Content”). The Website and the Content thereon are  
4 intended for use only by legitimate journalists who are reviewing or commenting on  
5 Summit’s films. The Terms of Use of the Website specifically state that the  
6 Content from the Website may be used “only for journalistic purposes in  
7 connection with and/or related to motion pictures and other entertainment  
8 programming distributed by Summit.” The Terms of Use do not include  
9 permission to allow third parties to merchandise the *Twilight* Motion Pictures, as  
10 Defendant has done and continues to do.

11 20. Defendant requested a password and permission to use the Website for  
12 “newsstand magazine coverage.” Defendant was granted a password and  
13 permission based on that request and under the Terms of Use for the Website, to  
14 which Defendant expressly agreed when it signed on to the Website for the first  
15 time. The Terms of Use grant the right to use Content from the Website solely “for  
16 journalistic purposes” in connection with an article reviewing or commenting on  
17 Summit’s motion picture(s). Paragraph 2 of the Terms of Use for the Website  
18 states: “you agree that: (a) you will not edit, alter or modify any of the Content  
19 without Summit’s prior written approval; . . . and (d) you will not use the Content  
20 or the names, images, likeness or biographical images of the performers in the  
21 Program in any manner which could constitute an express, direct or indirect tie-in  
22 or endorsement of any product, service, sponsor or of your media outlet.” The  
23 Terms of Use also provide: “Unauthorized use [of] the Content may be a violation  
24 of law which may result in civil and criminal liability. Summit has the right to  
25 enforce its intellectual property rights to the fullest extent of the law.” Paragraph  
26 12 of the Terms of Use for the Website provides: “You agree that a breach by you  
27 of any of your undertakings under these Terms would cause Summit damage which  
28 could not readily be remedied by an action at law and might, in addition, constitute

1 an infringement of copyright and/or trademark and/or other applicable laws, and/or  
2 a violation of moral rights (where applicable). Any such breach would, therefore,  
3 entitle Summit to equitable remedies, costs and attorneys' fees in addition to any  
4 other rights and remedies provided herein or by law." A true and correct copy of  
5 the Terms of Use for the Website is hereto as **Exhibit E**.

6 21. Defendant's use of Summit's copyrighted material and trademarks is  
7 not for a journalistic purpose. Even if it had some modicum of journalistic purpose,  
8 Defendant's use goes far beyond a journalistic use and therefore exceeds the scope  
9 of the limited license that Summit grants to accredited journalists to use Content  
10 from the Website. Defendant has used a vast amount of Summit's copyrighted  
11 works and the TWILIGHT Marks to create stand alone products, the Twilight  
12 Fanzines, for commercial, not journalistic, purposes. Defendant's extensive use of  
13 Summit's copyrighted material in these stand alone products is such that it creates  
14 the false impression that Summit endorsed, licensed or sponsored the Twilight  
15 Fanzines and/or Defendant.

16 22. Defendant also has edited, altered and/or modified Summit's  
17 copyrighted material without Summit's prior written approval. The first Twilight  
18 Fanzine includes at least 14 images that have been created by editing, altering,  
19 and/or modifying Summit's copyrighted material without Summit's prior written  
20 approval, and the second Twilight Fanzine includes at least an additional seven  
21 images that have been created by editing, altering, and/or modifying Summit's  
22 copyrighted material without Summit's prior written approval. Summit's  
23 copyrighted materials have been altered, among other ways, by cropping single  
24 images from broader photographs, changing color schemes of photographs,  
25 changing the backgrounds appearing behind characters in the photographs, creating  
26 collages from single photographs, and superimposing lettering and other designs  
27 over the images in the photographs. Examples of such alterations in the first  
28 Twilight Fanzine appear on the front cover, the back of the front cover, and on

1 pages 1, 10-11, 12-13, 20, 26, 28-29, 30, 32, and 53. Examples of such alterations  
2 in the second Twilight Fanzine appear on the front cover and on pages 12-13, 24-  
3 25, 42-43, and 62.

4 23. Defendant has used in the Twilight Fanzines copyrighted material  
5 owned by Summit, including photographs and other artwork related to the *Twilight*  
6 Motion Pictures that are not part of the Content on the Website (also part of the  
7 “Photographs”) and therefore were never covered in any way by the limited scope  
8 license granted in connection with the Content on the Website. At least eight of the  
9 Photographs in first Twilight Fanzine and at least five of the Photographs in the  
10 second Twilight Fanzine are not part of the Content included on the Website and  
11 thus were never within the scope of even the limited license granted pursuant to the  
12 Terms of Use for the Website.

13 24. Defendant’s actions were willful. Prior to publishing the first Twilight  
14 Fanzine, Defendant contacted Summit’s licensee for trading cards to find out the  
15 identity of the licensor of the *Twilight* property. Defendant was given the contact  
16 information for Summit, but did not seek a proper license from Summit before  
17 publishing the Twilight Fanzines. Defendant then proceeded to copy and post all  
18 72 Twilight trading cards of Summit in the first Twilight Fanzine. Even after  
19 notification of Summit’s objection to the first Twilight Fanzine, Beckett published  
20 and/or distributed the second Twilight Fanzine. On information and belief,  
21 Defendant intends to publish six more issues of Twilight Fanzines despite  
22 Summit’s clear objections to the first two Twilight Fanzines.

23 25. Summit recently learned that Defendant is now selling the printing  
24 plates for the Twilight Fanzines on eBay and on Defendant’s website. On  
25 information and belief, Defendant posted the magazine printing plate for the first  
26 Twilight Fanzine in October 2009, well after Defendant was put on notice of  
27 Summit’s claims. In early November 2009, Summit learned that Defendant was  
28 selling the printing plate for the second Twilight Fanzine on eBay, and on



1 Defendant's website. True and correct copies of the eBay listing and the listing on  
2 Defendant's website for the printing plates are attached hereto as **Exhibit F**.

3 **FIRST CAUSE OF ACTION**

4 **(False Designation of Origin – 15 U.S.C. § 1125(a))**

5 26. Summit repeats and realleges each and every allegation of paragraphs 1  
6 through 25, above, as though fully set forth herein.

7 27. Defendant's actions as alleged herein constitute a false designation of  
8 origin in violation of 15 U.S.C. § 1125(a).

9 28. The use of the TWILIGHT Marks by Defendant constitutes a false  
10 designation of origin and a false description or representation that wrongfully and  
11 falsely designates the Twilight Fanzines as originating from Summit, or being  
12 associated with, licensed by, or authorized by Summit.

13 29. As a direct and proximate result of Defendant's wrongful acts, Summit  
14 has suffered and continues to suffer and/or is likely to suffer damage to its  
15 trademarks, business reputation, and goodwill. Defendant will continue to use  
16 and/or will restart the use of, unless restrained, the TWILIGHT Marks and will  
17 cause irreparable damage to Summit. Summit has no adequate remedy at law and is  
18 entitled to an injunction restraining Defendant, its officers, agents, and employees,  
19 and all persons acting in concert with Defendant, from engaging in further acts of  
20 false designation of origin.

21 30. Summit is further entitled to recover from Defendant the actual  
22 damages that it sustained and/or is likely to sustain as a result of Defendant's  
23 wrongful acts. Summit is presently unable to ascertain the full extent of the  
24 monetary damages that it has suffered and/or is likely to sustain by reason of  
25 Defendant's acts of false designation of origin.

26 31. Summit is further entitled to recover from Defendant the gains, profits,  
27 and advantages that Defendant has obtained as a result of its wrongful acts.  
28 Summit is presently unable to ascertain the extent of the gains, profits, and

1 advantages that Defendant has realized by reason of its acts of false designation of  
2 origin.

3 32. Because of the willful nature of Defendant's wrongful acts, Summit is  
4 entitled to an award of treble damages and increased profits pursuant to 15 U.S.C.  
5 § 1117 and destruction of the Twilight Fanzines under 15 U.S.C. § 1118.

6 33. Summit is also entitled to recover its attorneys' fees and costs of suit  
7 pursuant to 15 U.S.C. § 1117.

8 **SECOND CAUSE OF ACTION**

9 **(Trademark Infringement)**

10 34. Summit repeats and realleges each and every allegation of paragraphs  
11 1 through 33, above, as though fully set forth herein.

12 35. Defendant has used in commerce, without Summit's permission, the  
13 TWILIGHT Marks in a manner that is likely to cause confusion with respect to the  
14 source and origin of the Twilight Fanzines and is likely to cause confusion or  
15 mistake and to deceive purchasers as to the affiliation, connection, or association of  
16 Summit with Defendant and/or its products.

17 36. Defendant's acts constitute infringement of the TWILIGHT Marks in  
18 violation of the common law.

19 37. As a direct and proximate result of Defendant's wrongful acts, Summit  
20 has suffered and continues to suffer and/or is likely to suffer damage to its  
21 trademark, business reputation, and goodwill. Defendant will continue to use  
22 and/or will restart the use of, unless restrained, the TWILIGHT Marks and will  
23 cause irreparable damage to Summit. Summit has no adequate remedy at law and is  
24 entitled to an injunction restraining Defendant, its officers, agents, and employees,  
25 and all persons acting in concert with Defendant, from engaging in further acts of  
26 infringement.

27 38. Summit is further entitled to recover from Defendant the actual  
28 damages that it sustained and/or is likely to sustain as a result of Defendant's

1 wrongful acts.

2 39. Summit is further entitled to recover from Defendant the gains, profits,  
3 and advantages that Defendant has obtained as a result of its wrongful acts.

4 40. Because of the willful nature of Defendant's wrongful acts, Summit is  
5 entitled to an award of punitive damages under the common law.

6 **THIRD CAUSE OF ACTION**

7 **(Dilution--15 U.S.C. § 1125(c); Cal. Bus. & Prof. Code § 14330)**

8 41. Summit repeats and realleges each and every allegation of paragraphs 1  
9 through 40, above, as though fully set forth herein.

10 42. Summit has used the TWILIGHT Marks to identify its products  
11 relating to the *Twilight* Motion Pictures before Defendant began promoting and  
12 selling the Twilight Fanzines or otherwise used the TWILIGHT Marks. The  
13 TWILIGHT Marks are inherently distinctive and have acquired distinction through  
14 Summit's extensive, continuous, and exclusive use of the TWILIGHT Marks.

15 43. The TWILIGHT Marks are famous and distinctive within the meaning  
16 of 15 U.S.C. §§ 1125(c)(1) and 1127 and Cal. Bus. & Prof. Code § 14330.

17 44. Defendant's use of the TWILIGHT Marks is likely to dilute the  
18 distinctive quality of Summit's mark in violation of 15 U.S.C. § 1125(c) and Cal.  
19 Bus. & Prof. Code § 14330.

20 45. Defendant's acts complained of herein are likely to damage Summit  
21 irreparably. Summit has no adequate remedy at law for such wrongs and injuries.  
22 The damage to Summit includes harm to its trademarks, goodwill, and reputation  
23 that money cannot compensate. Summit is, therefore, entitled to a preliminary and  
24 permanent injunction enjoining Defendant's use of the TWILIGHT Marks in  
25 connection with the promotion, advertisement and sale of any goods by Defendant.

26 46. Summit is further entitled to recover from Defendant its actual  
27 damages sustained by Summit as a result of Defendant's wrongful acts. Summit is  
28 presently unable to ascertain the full extent of the monetary damages it has suffered

1 by reason of Defendant's acts of dilution.

2 47. Summit is further entitled to recover from Defendant the gains, profits,  
3 and advantages Defendant has obtained as a result of its wrongful acts. Summit is  
4 presently unable to ascertain the extent of the gains, profits and advantages  
5 Defendant has realized by reason of Defendant's willful acts of dilution.

6 48. Because of the willful nature of Defendant's actions, Summit is  
7 entitled to all remedies available under 15 U.S.C. §§ 1117 and 1118.

8 **FOURTH CAUSE OF ACTION**

9 **(Copyright Infringement)**

10 49. Summit repeats and realleges each and every allegation of paragraphs 1  
11 through 48, above, as though fully set forth herein.

12 50. The Content, Photographs and Poster Images all are original works of  
13 authorship owned by Summit and are copyrightable subject matter under the laws  
14 of the United States. The Photographs were fixed in a tangible medium by  
15 development of the photographs and/or by uploading to a hard drive and publishing  
16 the artwork bearing the Photographs. The Content and Photographs comprise unit  
17 photography from the *Twilight* Motion Pictures and publicity photographs and/or  
18 artwork for publicity of the *Twilight* Motion Pictures. Poster Image I is a publicity  
19 photograph and artwork for *New Moon* and Poster Image II is a unit photograph  
20 from *New Moon*. The Contents, Photographs, and Poster Images are the subject of  
21 valid and pending copyright applications that have been filed on an expedited basis  
22 with the U.S. Copyright Office. Summit will amend its complaint to allege the  
23 copyright registrations once they issue.

24 51. Summit is the copyright owner of the Content, Photographs and Poster  
25 Images, and at all times relevant to the complaint, Summit is and has been the sole  
26 exclusive authorized licensor of the Content, Photographs and Poster Images in the  
27 United States in connection with the issuance of licenses for use of the Content,  
28 Photographs and Poster Images.

1           52. Defendant had access to the Content, Photographs and Poster Images  
2 through the Website and through other online resources, and given the wide  
3 publication of the Poster Images and the *Twilight* Motion Pictures.

4           53. Defendant has violated Summit's exclusive rights in and to the  
5 Content, Photographs and Poster Images by unlawfully using, reproducing,  
6 displaying, and distributing them in the *Twilight* Fanzines without authorization  
7 and by unlawfully preparing derivative works from the Content Defendant accessed  
8 on Summit's Website.

9           54. Upon information and belief, Defendant was at all material times aware  
10 that its use of the Content, Photographs and Poster Images, in the absence of a valid  
11 license agreement authorizing Defendant to use them in a stand alone commercial  
12 product and/or to edit, alter and/or otherwise modify them without Summit's prior  
13 written approval, would constitute copyright infringement. Summit has not granted  
14 to Defendant any such right or license. Defendant's use of the Content,  
15 Photographs and Poster Images in the stand alone *Twilight* Fanzines far exceeds the  
16 scope of the limited license that Summit grants to accredited journalists to use  
17 Content from its Website "for journalistic purposes" in connection with an article  
18 reviewing or commenting on Summit's motion picture(s). Defendant's creation of  
19 derivative works from the Content is outside of the limited license and violates the  
20 express prohibition in that limited license against editing, altering and/or otherwise  
21 modifying the Content without Summit's prior written approval. Finally,  
22 defendant's use of the Photographs that were not part of the Content on the Website  
23 is outside of the limited license related to the Website.

24           55. Summit is informed and believes and on that basis alleges that  
25 Defendant had full knowledge that its acts are wrongful and unlawful and has  
26 continued to infringe said copyright, throughout the United States and various other  
27 territories of the world. Defendant continued to sell the first *Twilight* Fanzine and  
28 then offered the second *Twilight* Fanzine for sale on newsstands and retail outlets

1 after Summit sent to Defendant the first cease and desist letter informing Defendant  
2 that its use of the Photographs and Poster Images infringed its copyrights and  
3 trademark rights. Defendant's respective infringing acts were and continue to be  
4 committed willfully.

5 56. By reason of the foregoing, Summit has suffered damages in an  
6 amount to be determined at trial, and is entitled, at its election, to either (a) all  
7 damages suffered by Summit, along with all gains, profits and advantages derived  
8 by Defendant from the acts of infringement, plus exemplary and punitive damages  
9 in amounts to be proven at trial, or (b) statutory damages as provided for in the  
10 Copyright Act of the United States.

11 57. Summit is also entitled to attorneys' fees under the Copyright Act.

12 **FIFTH CAUSE OF ACTION**

13 **(Statutory and Common Law Unfair Competition)**

14 58. Summit repeats and realleges each and every allegation of paragraphs 1  
15 through 57, above, as though fully set forth herein.

16 59. By reason of the foregoing, Defendant has been, and is, engaged in  
17 "unlawful, unfair or fraudulent business practices" in violation of §§ 17200 *et seq.*  
18 of the California Bus. & Prof. Code and acts of unfair competition in violation of  
19 the common law.

20 60. Defendant's acts complained of herein have damaged and will continue  
21 to damage Summit irreparably. Summit has no adequate remedy at law for these  
22 wrongs and injuries. The damage to Summit includes harm to its trademarks,  
23 goodwill, and reputation in the marketplace that money cannot compensate.  
24 Summit is therefore entitled to: (a) injunctive relief restraining and enjoining  
25 Defendant and its agents, servants, employees, and attorneys, and all persons acting  
26 thereunder, in concert with, or on their behalf, from using the TWILIGHT Marks,  
27 any colorable imitation or variation thereof, or any mark, name, symbol, or logo  
28 which is confusingly similar thereto, in connection with the marketing or sale of

1 any goods or services by Defendant; (b) injunctive relief restraining and enjoining  
2 Defendant and its agents, servants, employees, and attorneys, and all persons acting  
3 thereunder, in concert with, or on their behalf, from reproducing photographs or  
4 other artwork owned by Summit in connection with the marketing or sale of any  
5 goods or services by Defendant; (c) Summit's actual damages sustained as a result  
6 of Defendant's wrongful acts; (d) an accounting of Defendant's profits from their  
7 sales of any products bearing the TWILIGHT Marks or containing copyrighted  
8 photographs or other artwork owned by Summit, or any other goods which make  
9 use of the TWILIGHT Marks or photographs or other artwork owned by Summit;  
10 (d) the award of Defendant's unjust profits, as well as sums sufficient to  
11 compensate Summit for all harm suffered as a result of Defendant's conduct; and  
12 (e) punitive damages.

13 **SIXTH CAUSE OF ACTION**

14 **(Breach of Contract)**

15 61. Summit repeats and realleges each and every allegation of paragraphs  
16 1 through 60, above, as though fully set forth herein.

17 62. Summit and Defendant entered into a contract, the terms of which are  
18 set out in the <www.summitpublicity.com> Terms of Use (the "Contract").

19 63. Summit performed all, or substantially all, of its significant obligations  
20 required under the Contract.

21 64. Defendant failed to comply with the terms of the Contract by  
22 exceeding the limited scope of the license granted in the contract. Namely,  
23 Defendant: (a) used the Content for purposes other than a journalistic use, (b)  
24 edited, altered and/or otherwise modified the Content without Summit's prior  
25 written approval; (c) used the Content in such a manner that falsely implies  
26 Summit's endorsement or sponsorship of the Twilight Fanzines and/or Defendant;  
27 and (d) used the TWILIGHT Marks to create stand alone products to which  
28 infringes Summit's trademark rights.





1 the TWILIGHT Marks or any other mark, name, symbol, or logo that is a copy or  
2 colorable imitation of, incorporates, or is confusingly similar to the TWILIGHT  
3 Marks;

4 c. Falsely implying Summit's endorsement of Defendant's  
5 goods or engaging in any act or series of acts which, either alone or in combination,  
6 constitutes unfair methods of competition with Summit and from otherwise  
7 interfering with, or injuring the TWILIGHT Marks or the goodwill associated  
8 therewith;

9 d. Copying, displaying, featuring, or using the Content,  
10 Photographs, Poster Images, or any other copyrightable subject matter from or  
11 related to the *Twilight* Motion Pictures, or any works substantially similar thereto,  
12 or engaging in any act in violation of Summit's copyrights;

13 e. Engaging in any act which is likely to dilute the  
14 distinctive quality of the TWILIGHT Marks and/or injures Summit's business  
15 reputation;

16 f. Representing or implying that Defendant is in any way  
17 sponsored by, affiliated with, or endorsed or licensed by Summit; or

18 g. Knowingly assisting, inducing, aiding, or abetting any  
19 other person or business entity in engaging in or performing any of the activities  
20 referred to in paragraphs 2(a) to (f) above.

21 3. Ordering that Summit is the exclusive owner of the TWILIGHT Marks  
22 and that such marks are valid;

23 4. Ordering that Summit is the exclusive owner of the copyrights in the  
24 Content, Photographs and Poster Images and that such copyrights are valid.

25 5. Ordering that Defendant be required to deliver to Summit for  
26 destruction all Twilight Fanzines (including but not limited to all issues of Twilight  
27 Fanzines or similar magazines that have been produced even if they have not yet  
28 been released), which bear the TWILIGHT Marks or any other trademarks, names,

1 logo, trade dress, or packaging that are confusingly or substantially similar to the  
2 TWILIGHT Marks and/or which contain Content, Photographs, Poster Images, or  
3 other copyrighted works, the copyrights to which are owned by Summit;

4 6. Finding that Defendant has breached the Contract with Summit;

5 7. Granting an award of damages suffered by Summit according to proof  
6 at the time of trial;

7 8. Ordering that Defendant account to Summit for any and all profits  
8 earned as a result of Defendant's acts of infringement in violation of Summit's  
9 rights under the Lanham Act, the Copyright Act, Cal. Bus. & Prof. Code § 17200,  
10 *et seq.*, and the common law;

11 9. Granting an award of three times the amount of compensatory  
12 damages and increased profits pursuant to 15 U.S.C. § 1117;

13 10. Granting an award of statutory damages pursuant to 17 U.S.C.  
14 § 504(c);

15 11. Granting an award of punitive damages for the willful and wanton  
16 nature of Defendant's aforesaid acts;

17 12. For pre-judgment interest on any recovery by Summit;

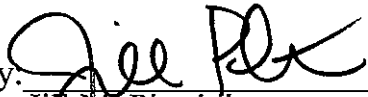
18 13. Granting an award of Summit's costs, expenses, and reasonable  
19 attorney's fees; and

20 14. Granting such other and further relief as is just and proper.

21 Respectfully submitted,

22 MANATT, PHELPS & PHILLIPS, LLP

23  
24 Dated: November 4, 2009

25 By:   
26 Jill M. Pietrini  
27 Barry E. Mallen  
28 Kathryn A. Vaclavik  
Stuart H. Katz  
*Attorneys for Plaintiff*  
SUMMIT ENTERTAINMENT, LLC

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**JURY DEMAND**

Summit demands a trial by jury of all issues triable by jury.

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP

Dated: November 4, 2009

By:   
Jill M. Pietrini  
Barry E. Mallen  
Kathryn A. Vaclavik  
Stuart H. Katz  
*Attorneys for Plaintiff*  
SUMMIT ENTERTAINMENT, LLC

300002675.2

AO 440 (Rev. 02/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT  
for the  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SUMMIT ENTERTAINMENT, LLC, a Delaware  
limited liability company,

Plaintiff

v.

BECKETT MEDIA, LLC., a Delaware Corporation,  
and Does 1-10, inclusive

Defendant

Civil Action No.

CV09-8161 PSG (MANx)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

BECKETT MEDIA, LLC  
4635 McEwen Road  
Dallas, Texas 75244

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jill M. Pietrini, Esq. (SBN 138335)  
Barry E. Mallen (SBN 120005)  
Kathryn A. Vaclavic (SBN 176250)  
MANATT, PHELPS & PHILLIPS, LLC  
11355 West Olympic Boulevard  
Los Angeles, CA 90064

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

*Shea Berger*  
Signature of Clerk or Deputy Clerk

Date:         - 6 NOV 2009

AO 440 (Rev. 02/09) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(1))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) <b>SUMMIT ENTERTAINMENT, LLC, a Delaware limited liability company</b>	<b>DEFENDANTS</b> <b>BECKETT MEDIA, LLC., a Delaware Corporation, and Does 1*10, inclusive</b>
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) <b>MANATT, PHELPS &amp; PHILLIPS, LLP</b> Jill M. Pietrini (SBN 138335)      jpietrini@manatt.com Barry E. Mallen (SBN 120005)      bmallen@manatt.com Kathryn A. Vaclavik (SBN 176250)      kvaclavik@manatt.com 11355 West Olympic Boulevard Los Angeles, CA 90064-1614 Telephone: (310) 312-4000; Facsimile: (310) 312-4224	Attorneys (If Known)  <b>Joel M. Smith, Esq.</b> <b>Leopold, Petrich &amp; Smith</b> 2049 Century Park East, Suite 3110 Los Angeles, CA 90067-3274

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. 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 (specify):     
  6 Multi-District Litigation     
  7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:**  Yes  No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION** under F.R.C.P. 23:  Yes  No      **MONEY DEMANDED IN COMPLAINT:** \$ \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
**Complaint for False Designation of Origin - 15 U.S.C. § 1125(a); Trademark Infringement, Dilution--15 U.S.C. § 1125(c); Cal. Bus. & Prof. Code § 14330; Copyright Infringement; Statutory and Common Law Unfair Competition; and Breach of Contract**

**VII. NATURE OF SUIT** (Place an X in one box only.)

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 22 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 61 HIA(1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV09-8161

**FOR OFFICE USE ONLY:** Case Number: \_\_\_\_\_  
**AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case?  No  Yes

If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
<b>Summit Entertainment, LLC – Los Angeles, County</b>	


- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	<b>Beckett Media, LLC – Dallas County</b>

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
<b>All claims – Los Angeles County</b>	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties  
 Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date November 4, 2009  
 Jill M. Pietrini

**Notice to Counsel/Parties:** The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

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

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Philip S. Gutierrez and the assigned discovery Magistrate Judge is Margaret A. Nagle.

The case number on all documents filed with the Court should read as follows:

**CV09- 8161 PSG (MANx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.