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8 LAURA D. SHINALL, DAVID C.
CLARK, MICHAEL A. WILLIAMS and
9 THOMAS C. LUNSFORD

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

12
13 NATURAL PACK, INC., a California
14 corporation,

15 Plaintiff,

16 vs.

17 SYNDICATE SALES, INC., an Indiana
corporation; DEL DEMAREE, JR., an
18 individual; LAURA D. SHINALL, an
individual; MICHAEL A. WILLIAMS,
19 an individual; THOMAS C.
LUNSFORD, an individual; GUY
20 MARKUS, an individual, and DOES 1-
10,

21 Defendants.

CASE NO.

**NOTICE OF REMOVAL TO THE
UNITED STATES DISTRICT
COURT, CENTRAL DISTRICT OF
CALIFORNIA PURSUANT TO 28
USC §§ 1331, 1332, 1367, 1441, AND
1446**

**REQUEST FOR WRIT OF
CERTIORARI PURSUANT TO 28
U.S.C. § 1447(b)**

Date Filed: September 12, 2019

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23 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

24 PLEASE TAKE NOTICE that Defendants Syndicate Sales, Inc., Del
25 Demaree, Jr., Laura D. Shinall, David C. Clark, Michael A. Williams, and Thomas
26 C. Lunsford (“Defendants”), by their counsel Lewis Brisbois Bisgaard & Smith,
27 LLP, hereby remove to this court, pursuant to 28 U.S.C. §§ 1331, 1332, 1367, 1441,
28

1 and 1446, based on federal question jurisdiction, supplemental jurisdiction, and
2 diversity of citizenship, the claims pending as Case No. 19STCV32476 of the
3 Superior Court of California, County of Los Angeles. In support of this removal,
4 Defendants state as follows:

5 **I. THE REMOVED CASE**

6 1. The removed case is a civil action commenced in the Superior Court of
7 California, County of Los Angeles by Plaintiff Natural Pack, Inc. Defendants,
8 entitled *Natural Pack, Inc. v. Syndicate Sales, Inc., et al.* Case No. 19STCV32476
9 (the “State Action”). The State Action named six individuals and one entity as
10 defendants.

11 2. Plaintiff filed the State Action on September 12, 2019, asserting claims
12 for violation of Uniform Trade Secrets Act, fraud, negligent misrepresentation,
13 breach of contract, intentional interference with prospective economic relations,
14 negligence, violation of Lanham Act, and California statutory and common law
15 trademark infringement.

16 **II. PROCEDURAL REQUIREMENTS**

17 3. Defendants have thirty (30) days from the date of service or receipt of a
18 copy of the Complaint to remove a case. 28 U.S.C. § 1446(b). Syndicate Sales, Inc.
19 was served with a copy of the Complaint on September 16, 2019 with the remaining
20 defendants being served later, if at all. This Notice of Removal is therefore timely
21 filed.

22 4. Pursuant to 28 U.S.C. § 1446(a), venue for the purposes of removal
23 only is proper in the Central District of California because this district embraces the
24 place in which the removed action has been pending.

25 5. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice
26 of Removal will be filed with the Superior Court of California, County of Los
27 Angeles promptly after filing of same in this Court.

28 6. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice

1 of Removal will be given to all adverse parties promptly after the filing of same in
2 this Court.

3 7. If any question arises as to the propriety of the removal of this action,
4 Defendants requests the opportunity to conduct discovery, brief any disputed issues
5 and to present oral argument in favor of its position that this case is properly
6 removable.

7 8. Nothing in this Notice of Removal shall be interpreted as a waiver or
8 relinquishment of Defendants’ right to assert defenses including, without limitation,
9 the defenses of (i) lack of jurisdiction over person, (ii) improper venue and/or *forum*
10 *non conveniens*, (iii) insufficiency of process, (iv) insufficiency of service of
11 process, (v) improper joinder of claims and/or parties, (vi) failure to state a claim,
12 (vii) failure to join indispensable party(ies), or (viii) any other procedural or
13 substantive defense available under state or federal law.

14 **III. THE COURT HAS FEDERAL QUESTION JURISDICTION**

15 **A. Plaintiff Asserts a Claim Arising Under the Laws of the United**
16 **States**

17 9. The Court has original jurisdiction over this case. Federal question
18 jurisdiction exists under 28 U.S.C. section 1331 because Plaintiff has asserted a
19 claim “arising under the ... laws ... of the United States.”

20 10. The case may be removed to this Court by Defendants pursuant to 28
21 U.S.C. section 1441(c) because it is a civil action over which the District Court has
22 original jurisdiction founded on claims arising under the laws of the United States.

23 11. There is federal question jurisdiction because Plaintiff asserts a claim
24 for relief under the Lanham Act, 15 U.S.C. § 1125(a).

25 12. Because at least one of the claims in the Complaint involves the
26 resolution of a substantial, disputed federal question under the Lanham Act, the case
27 is removable to this Court.

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1 **B. The Court Has Supplemental Jurisdiction Over Any Non Federal**
2 **Claims**

3 13. Supplemental jurisdiction exists as to all other claims pled in the
4 Complaint. 28 U.S.C. § 1367.

5 14. The Court may exercise supplemental jurisdiction “over all other
6 claims that are so related to claims within such original jurisdiction that they form
7 part of the same case or controversy.” 28 U.S.C. § 1367(a). This standard is
8 satisfied here. All of Plaintiff’s state law claims are based on the same factual
9 allegations supporting its federal Lanham Act claim. Those claims are so related to
10 the Lanham Act claims (as to which there is federal question jurisdiction) that they
11 form part of the same case or controversy about the Defendants’ purported
12 fraudulent misappropriation of Plaintiff’s trade secrets and use thereof to sell a
13 nearly identical copy of Plaintiff’s products.

14 15. There is a significant interest in having these and other federal issues
15 adjudicated in a federal forum, and removal of this action will not disrupt any
16 balance between federal and state judicial responsibilities over related disputes.

17 16. Accordingly, to the extent necessary, this Court has supplemental
18 jurisdiction pursuant to 28 U.S.C. § 1367.

19 **IV. DIVERSITY JURISDICTION EXISTS**

20 17. As set forth more fully below, this Court has subject matter jurisdiction
21 under 28 U.S.C. § 1332, which confers original jurisdiction of “all civil actions
22 where the matter in controversy exceeds the sum or value of \$75,000, exclusive of
23 interest and costs, and is between ... citizens of different States and in which citizens
24 or subjects of a foreign state are additional parties[.]”

25 **A. The Amount In Controversy Requirement Is Met**

26 18. The amount in controversy in this action exceeds \$75,000, exclusive of
27 interest and costs. *See* 28 U.S.C. § 1332.

28 19. The removing party’s initial burden is to “file a notice of removal that

1 includes ‘a plausible allegation that the amount in controversy exceeds the
2 jurisdictional threshold.’” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1195 (9th
3 Cir. 2015) (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct.
4 547, 554 (2014)). “By design, § 1446(a) tracks the general pleading requirement
5 stated in Rule 8(a)” which requires only that the grounds for removal be stated in a
6 “short and plain statement.” *Dart*, 135 S. Ct. at 553.

7 20. Generally, a federal district court will first “consider whether it is
8 ‘facially apparent’ from the complaint that the jurisdictional amount is in
9 controversy.” *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 690 (9th Cir. 2006)
10 (internal citation omitted). According to the Complaint, Plaintiff seeks “[d]amages
11 in the sum of no less than \$10,000,000”. (Compl. P. 13:18).

12 21. Thus, the total amount in controversy therefore far exceeds \$75,000
13 even before adding Plaintiff’s claim for punitive damages or considering the value
14 of the injunctive relief sought. The amount in controversy is satisfied.

15 **B. Diversity Of Citizenship Exists**

16 22. Plaintiff is, and was at the time of filing of the Complaint, both a
17 citizen and resident of California. (Compl. ¶ 1).

18 23. Syndicate Sales is, and was at the time Plaintiff commenced this action,
19 a corporation organized under the laws of the State of Indiana with its principal
20 place of business in Kokomo, Indiana. While this Court may take judicial notice of
21 these facts, it need not as Plaintiff does not dispute these facts. (Compl. ¶ 2).
22 Similarly, Plaintiff has alleged that Defendants are each residents of and domiciled
23 in the State of Indiana. (Compl. ¶ 4). This is accurate, with the exception of Laura
24 D. Shinall, who primarily resides in the State of South Carolina, but has a secondary
25 residence in the State of Indiana. Defendant Guy Markus is also a resident of the
26 State of Indiana. (Compl. ¶ 3).

27 **C. All Relevant Defendants Join In This Removal**

28 24. In addition to the Defendants, the Complaint also names Guy Markus

1 (as stated above) as a defendant. Title 28, U.S.C. section 1446(b)(2)(A) provides
2 that all served defendants who properly may be joined in the removal notice must
3 join. Mr. Markus consents to the removal resulting in a unanimous decision that this
4 action should properly be in Federal Court.

5 25. The Complaint also names “Does 1-10” as defendants. For purposes of
6 removal, however, “the citizenship of defendants sued under fictitious names shall
7 be disregarded.” 28 U.S.C. § 1441(b)(1). Therefore, the inclusion of “Doe”
8 defendants in the state court Complaint has no effect on removability. In
9 determining whether diversity of citizenship exists, only the named defendants are
10 considered. *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-691 (9th Cir. 1998);
11 *see also Olive v. Gen. Nutrition Ctrs., Inc.*, No. 2:12-cv04297-ODW, 2012 WL
12 2006389, at *1 (C.D. Cal. June 5, 2012); *Marsikyan v. Porsche Cars N. Am., Inc.*,
13 No. CV 11-09411 SJO, 2012 WL 280585, at *2 (C.D. Cal. Jan. 30, 2012).

14 **V. REQUEST FOR WRIT OF CERTIORARI UNDER 28 U.S.C. § 1447(b)**

15 26. PLEASE TAKE FURTHER NOTICE that Defendants request that the
16 Court issue a Writ of Certiorari under 28 U.S.C. § 1447(b) to the Superior Court for
17 Los Angeles County to obtain the entire State Action file. Good cause exists to
18 grant this request because many of the state-action papers have been filed
19 conditionally under seal pending a hearing that will likely be vacated upon the
20 filing of this Notice of Removal. Good cause further exists to grant this request
21 because the Defendants are informed and believe that the Superior Court has sealed
22 the entirety of the court file in the State Action until the Superior Court rules on one
23 or more of the pending applications to file under seal. Defendants are further
24 informed and believe that the court file in the State Action is voluminous
25 comprising at least 32 separate documents, including a motion for preliminary
26 injunction and supporting declarations, many of which have been filed conditionally
27 under seal.

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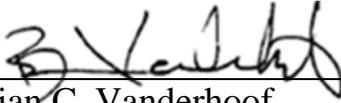
1 **V. CONCLUSION**

2 27. The State Action may be removed to this Court by Defendants in
3 accordance with the provisions of 28 U.S.C. §§ 1331 and 1337 because Plaintiff has
4 asserted a claim “arising under the ... laws ... of the United States.” The State
5 Action may also be removed to this Court by Defendants in accordance with the
6 provisions of 28 U.S.C. § 1441 because: (i) this action is a civil action pending
7 within the jurisdiction of the United States District Court for the Central District of
8 California, (ii) the action is between citizens of different states, and (iii) the amount
9 in controversy exceeds \$75,000.00, exclusive of interest and costs.

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DATED: October 15, 2019

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 

Brian C. Vanderhoof
Attorneys for Defendants, SYNDICATE
SALES, INC., DEL DEMAREE, JR.,
LAURA D. SHINALL, DAVID C.
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FEDERAL COURT PROOF OF SERVICE

Natural Pack v. Syndicate Sales, et al. - Case No. 19STCV32476

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On October 15, 2019, I served the following document(s): **NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA PURSUANT TO 28 USC §§ 1331, 1332, 1367, 1441, AND 1446 REQUEST FOR WRIT OF CERTIORARI PURSUANT TO 28 U.S.C. § 1447(b)**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Pierce O'Donnell, Esq.	Tel.: 310.553.3610
Ira M. Steinberg, Esq.	Fax: 310.553.0687
GREBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP	Email: PODonnell@ggfirm.com
1900 Avenue of the Stars, 21st Floor	ISteinberg@ggfirm.com
Los Angeles, CA 90067-4590	<i>Attorneys for Plaintiff</i>

The documents were served by the following means:

(BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and I deposited the sealed envelope or package with the U.S. Postal Service, with the postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on October 15, 2019, at Los Angeles, California.

Jordan Ginter