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FEB 18 2011

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LB

DONOVAN LUCAS, on behalf of himself  
and others similarly situated,

Plaintiff,

vs.

DAIICHI SANKYO COMPANY, INC.;  
and DOES 1 to 50, Inclusive,

Defendant.

CV11 0772

**DEFENDANT DAIICHI SANKYO, INC.'S  
NOTICE OF REMOVAL TO THE UNITED  
STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA**

Diversity Jurisdiction Under The Class Action  
Fairness Act

[28 U.S.C. §§ 1332(d), 1441, 1446 and 1453]

Donovan Lucas v. Daichi Sankyo Company, Inc.

Doc. 1

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NOTICE OF REMOVAL

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1 **TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR**  
2 **THE NORTHERN DISTRICT OF CALIFORNIA:**

3 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453,  
4 Defendant DAIICHI SANKYO, INC. (“Defendant”)<sup>1</sup> hereby removes the above-entitled action  
5 from the Superior Court of the State of California, in and for the County of Alameda, to the  
6 United States District Court for the Northern District of California. Removal is based on the  
7 following grounds:

8 **I. THE REMOVAL IS TIMELY**

9 This Notice of Removal is timely filed, pursuant to 28 U.S.C. § 1446(b), because it is filed  
10 within thirty days from January 20, 2010, the effective date of service of the original Complaint  
11 and Summons, which was sent to Defendant via certified mail on January 10, 2010.

12 When calculating the deadline to remove, the effective date of service is determined by  
13 state law. *City of Clarksdale v. Bellsouth Communications, Inc.*, 428 F.3d 206, 210-11 (5th Cir.  
14 2005) (holding that “the term ‘service of process’ is defined by state law” when calculating the  
15 deadline for an out-of-state corporation to timely file for removal). When serving a complaint  
16 and summons on an out-of-state corporation via certified first class mail (as Plaintiff has done  
17 here), California law provides that service is deemed made on the out-of-state defendant ten days  
18 after mailing. Cal. Civ. Proc. Code § 415.40; *Villareal v. Demarco*, No. CV 09-0452 PA  
19 (VBKx), 2009 WL 279111 at \*2 (C.D. Cal. Feb. 5, 2009) (holding that the thirty-day period to  
20 remove begins to run “on the tenth day after mailing” pursuant to California Code of Civil  
21 Procedure § 415.40); *HMG Ben. Services, LLC v. Fringe Ins. Benefits, Inc.*, No. 07cv1704 DMS  
22 (LSP), 2007 WL 3333115 at \*2-\*3 (S.D. Cal. Nov. 7, 2007) (same); *Jimena v. UBS AG Bank,*  
23 *Inc.*, No. 1:07-CV-00367 OWW TAG, 2007 WL 1687045 at \*5 (E.D. Cal. June 7, 2007) (same);  
24 *Roylance v. ADT Sec. Services, Inc.*, No. C 08-1101 JF (RS), 2008 WL 2168690 at \*3 (N.D. Cal.  
25 May 22, 2008) (holding that, for removal purposes, service was complete on the tenth day after  
26 mailing, even if defendant received the summons and complaint sooner); *see also Murphy Bros.*,

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiff amended his complaint on January 14, 2011 to replace the erroneous defendant  
“Daiichi Sankyo Company, Inc.” with “Daiichi Sankyo, Inc.” Ex. C.

1 *Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 347-48, 119 S.Ct. 1322, 143 L.Ed.2d 448  
2 (1999) (holding that mere receipt of complaint unattended by formal service does not start the 30-  
3 day deadline to remove). Plaintiff mailed the Complaint and Summons on January 10, 2011,  
4 which results in an effective date of service of January 20, 2011. Because this Notice of Removal  
5 is filed within thirty days of the effective date of service of the Complaint and Summons, it is  
6 timely under 28 U.S.C. §§ 1446(b).

7 No previous Notice of Removal has been filed or made with this Court for the relief  
8 sought herein.

9 **II. THIS COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION**

10 This Court has original subject matter jurisdiction based on diversity of citizenship under  
11 CAFA, because Plaintiff is diverse from Defendant and the amount in controversy exceeds \$5  
12 million. 28 U.S.C. § 1332(d)(2). Plaintiff brings this action as a class action, and alleges that he  
13 is a citizen of California. Ex. A, Complaint ¶ 7. Defendant is a citizen of New Jersey. Ex. A,  
14 Complaint ¶ 8; *see also* Ex. B, Declaration of Craig Mangan (“Mangan Decl.”) ¶ 3. In  
15 addition, Plaintiff’s class claims, when aggregated for potential class members, puts into  
16 controversy an amount in excess of \$5 million.<sup>2</sup>

17 Removal under diversity jurisdiction is therefore proper pursuant to 28 U.S.C. §§ 1446  
18 and 1453.

19 **A. Diversity Exists Between The Parties**

20 The parties meet the diversity requirements of CAFA because one or more Plaintiffs,  
21 including members of the putative class, are citizens of different states from Defendant. 28  
22 U.S.C. § 1332(d)(2)(A) (providing that diversity under is met under this subsection where “any  
23 member of a class of plaintiffs is a citizen of a State different from any defendant”). Diversity  
24

25 <sup>2</sup> Defendant's estimates of the amount in controversy are based on the allegations in the  
26 Complaint, which are presumed to be true for the purposes of this removal only, and which  
27 Defendant expressly denies. Defendant submits that all of Plaintiff's claims are meritless as  
28 supported by the recent holding in *Christopher v. SmithKline Beecham Corp.*, Case No. 10-15257  
(9th Cir. Feb. 14, 2011), which holds that pharmaceutical representatives, like those in this action,  
are properly classified as exempt.

1 therefore exists between the parties under CAFA.

2 1. Plaintiff and the Members of the Putative Class Are California Citizens

3 At the time Plaintiff filed this action, Plaintiff alleged that he is a citizen of California.

4 Ex. A, Complaint ¶ 7. In addition, Defendant’s records reflect that Plaintiff’s last known address  
5 was in California. Ex. B, Mangan Decl. ¶ 2. For diversity purposes, he is therefore considered a  
6 citizen of California.

7 Members of the putative class are also alleged to be citizens of California, because  
8 Plaintiff purports to represent a putative class of all persons who are employed or have been  
9 employed by Defendant in California. Ex. A, Complaint ¶ 21.

10 2. Defendant Is Not a Citizen of California

11 For diversity determination purposes, Defendant is diverse from Plaintiff and putative  
12 members because Defendant is not a citizen of California, and Plaintiff admits that Defendant  
13 resides in the State of New Jersey. Ex. A, Complaint ¶ 8; Ex. B, Mangan Decl. ¶ 3.

14 Defendant is Delaware corporation with its principal place of business located in New  
15 Jersey. Ex. A, Complaint, ¶ 8; Ex. B, Mangan Decl. ¶ 3. Defendant maintains its headquarters in  
16 New Jersey, and their officers direct, control, and coordinate its business activities from New  
17 Jersey. Ex. B, Mangan Decl. ¶ 3 Accordingly, New Jersey is the “nerve center” for diversity  
18 purposes, and Defendant is not now, and was not at the time this action was instituted, a citizen of  
19 the State of California. *See Hertz Corp. v. Friend*, 559 U.S. \_\_\_, 130 S. Ct. 1181, 1186, 1192, 175  
20 L. Ed. 2d 1029 (2010) (a corporation’s principal place of business for diversity purposes is its  
21 “nerve center” -- the location where the corporation’s officers direct, control, and coordinate the  
22 corporation’s activities).

23 Although Plaintiff has named 50 fictitiously named “Doe” defendants, the citizenship of  
24 these “Doe” defendants is disregarded for purposes of removal. 28 U.S.C. § 1441(a); *Newcombe*  
25 *v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998) (for removal purposes, the citizenship  
26 of defendants sued under fictitious names shall be disregarded).

27 Accordingly, Defendant is not a resident of California for diversity jurisdiction purposes,  
28 and is therefore diverse from Plaintiff and the putative class he purports to represent.

1           **B. The Amount Plaintiff Places in Controversy Exceeds \$5 Million**

2           Pursuant to CAFA, the amount in controversy component of diversity jurisdiction is  
3 satisfied when the aggregated claims of the individual members in a class action exceed the sum  
4 or value of \$5 million. *See* 28 U.S.C. § 1332(d)(6). Furthermore, Congress intended for federal  
5 jurisdiction to be appropriate under CAFA “if the value of the matter in litigation exceeds  
6 \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and  
7 regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory relief.)”  
8 Senate Judiciary Report, S. REP. 109-14, at 42.

9           The amount in controversy is determined at the time of removal and is to be decided based  
10 on the allegations in the operative pleading. *Lowdermilk v. U.S. Bank Nat’l Assoc.*, 479 F.3d 994,  
11 994 (9th Cir. 2007). Where a plaintiff alleges an amount in controversy greater than the  
12 jurisdictional amount (\$5 million), the amount in controversy is presumptively satisfied. *Id.* at  
13 998. Where, as here, a plaintiff does not expressly plead a specific amount of damages, a  
14 defendant need only make a factual showing that the amount in controversy exceeds \$5 million.  
15 *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997). “Said burden is not  
16 ‘daunting,’ as courts recognize that under this standard, a removing defendant is not obligated to  
17 ‘research, state, and prove the plaintiff’s claims for damages.’” *Korn v. Polo Ralph Lauren Corp.*,  
18 536 F. Supp. 2d 1199, 1204-05 (E.D. Cal 2008).

19           In measuring the amount in controversy, the court must assume that the allegations of the  
20 complaint are true and that a jury will return a verdict for the plaintiff on all claims made in the  
21 complaint. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001  
22 (C.D. Cal. 2002). The ultimate inquiry is what amount is put “in controversy” by the plaintiff’s  
23 complaint, not what a defendant will actually owe. *See Rippee v. Boston Market Corp.*, 408 F.  
24 Supp. 2d 982, 986 (S.D. Cal. 2005); *Scherer v. Equitable Life Assurance Society of the United*  
25 *States*, 347 F.3d 394, 397-99 (2d Cir. 2003) (recognizing that the ultimate or provable amount of  
26 damages is not what is considered when determining the amount in controversy; rather, it is the  
27 amount put in controversy by the plaintiff’s complaint).

28           Although Defendant denies Plaintiff’s allegations and denies that he or the class that he



1 purports to represent are entitled to any relief, Plaintiff’s allegations and prayer for relief put into  
2 controversy an amount that exceeds the \$5 million threshold when aggregating the claims of the  
3 potential class members as set forth in 28 U.S.C. § 1332(d)(6).

4 A removing party seeking to invoke CAFA jurisdiction may use estimates and  
5 assumptions when they are relatively conservative and based on evidence. *Behrazfar v. Unisys*  
6 *Corp.*, 687 F. Supp. 2d 999, 1004 (C.D. Cal. 2009). Such estimates may be calculated by  
7 presenting evidence of the number of putative class members or class claims. *Korn v. Polo Ralph*  
8 *Lauren*, 536 F. Supp. 2d 1199, 1206 (E.D. Cal. 2008) (plaintiff’s motion for remand denied). The  
9 number of putative class claims can then be multiplied by the damages alleged per claim to  
10 determine the amount in controversy. *Id.* In *Korn*, for example, plaintiffs brought a class action  
11 alleging violations of California Civil Code section 1747.08, which carries a maximum civil  
12 penalty of \$1,000 per claim. To establish the \$5 million amount in controversy for CAFA  
13 jurisdiction purposes, the defendant offered evidence that more than 5,000 potential claims (credit  
14 card transactions) took place during the class period. The court found this evidence sufficient to  
15 prove, by a preponderance of the evidence, that the amount in controversy under CAFA was met,  
16 by multiplying the number of claims by the statutory penalty. *Id.* In addressing the defendant’s  
17 evidentiary burden, the court held, “defendant need only demonstrate that there are at least 5,001  
18 putative class claims.” *Id.* Because the 5,001 putative class claims multiplied by the \$1,000  
19 statutory penalty resulted in an amount in controversy greater than \$5 million, the district court  
20 found the amount in controversy satisfied, and denied plaintiff’s motion to remand.

21 Here, Plaintiff seeks to represent a putative class of all persons who are employed or have  
22 been employed as “Pharmaceutical Representatives” by Defendant in the State of California and  
23 “for at least four (4) years prior to the filing of this action” (which was filed on December 7,  
24 2010). Ex. A, Compl. ¶ 21. Plaintiff’s Complaint alleges five causes of action under the  
25 California Labor Code and Business & Professions Code: failure to pay overtime under the  
26 California Labor Code, violation of Business & Professions Code § 17200 for failure to provide  
27 meal periods, violation of Business & Professions Code § 17200 for failure to provide overtime,  
28 failure to provide accurate wage statements under Labor Code § 226, and waiting time penalties

1 under Labor Code § 203. These causes of action are premised on theory that Pharmaceutical  
2 Representatives are misclassified as exempt from overtime requirements. Ex. A, Complaint ¶ 12.

3 During the period between December 7, 2006 (which is four years prior to the filing of the  
4 complaint) through February 3, 2011 (“covered period”), there were at least 214 employees who  
5 meet this definition. Mangan Decl. ¶ 4. During the period between December 7, 2006 and  
6 February 3, 2011, these 214 employees worked a cumulative total of approximately 27,524 work  
7 weeks in a covered position. *Id.* ¶ 5. The average annual base salary for these employees was  
8 approximately \$66,097, which does not include bonuses or other incentive compensation. *Id.* ¶ 6.  
9 In addition, in the three-year period prior to the filing of the complaint, approximately 68  
10 employees left their employment with Defendant. *Id.* ¶ 7. Applying these facts to the allegations  
11 in the Complaint, demonstrates that the amount in controversy exceeds \$5 million.

12 1. Plaintiff’s Meal Period Claim Puts Into Controversy More than \$3.3  
13 Million

14 Plaintiff’s Second Cause of Action alleges that Defendant failed to provide putative class  
15 members with meal breaks in violation of California law. Ex. A, ¶¶ 14, 35-44. Taking Plaintiff’s  
16 allegations to be true – that Plaintiff and putative class members were not provided with meal  
17 periods – then the amount in controversy arising from Plaintiff’s meal period claim is more than  
18 \$3.3 million.

19 If, as Plaintiff contends, putative class members were not provided with meal and rest  
20 breaks, they would be entitled to one hour of premium pay for each missed meal period per day at  
21 the employee’s regular hourly rate. *Murphy v. Kenneth Cole Productions*, 40 Cal. 4th 1094  
22 (2007). Class members typically work five or more days a week, and work shifts longer than five  
23 hours. Mangan Decl. ¶ 9. Thus, taking as true Plaintiff’s claim that Defendant did not provide  
24 meal breaks (as Plaintiff’s Second Cause of Action alleges), putative class members would be  
25 eligible for one hour of premium pay for each day worked. *See Johnson v. U.S. Vision, Inc., et*  
26 *al.*, No. 10-CV-0690-BEN-CAB, 2010 WL 3154847 at \*3-\*4 (S.D. Cal. Aug. 9, 2010) (where  
27 complaint alleges that all class members were not provided with meal breaks, removing party  
28 may estimate meal period violations occurred on all eligible days worked); *Muniz v. Pilot Travel*

1 *Centers LLC*, No. CIV.S-07-0325 FCD EFB, 2007 WL 1302504 (E.D. Cal. May 1, 2007) (where  
2 plaintiff does not allege facts specific to the circumstances of allegedly missed meal and/or rest  
3 periods, defendant may use 100% violation rate in calculating the amount in controversy).

4 During the class period, the 214 members of the putative class worked approximately  
5 27,524 work weeks combined. Mangan Decl. ¶ 5. These putative class members would be  
6 eligible for five meal period premiums per work week, or approximately 137,620 meal period  
7 violations during the class period (5 x 27,524 = 137,620). The base average hourly rate (i.e.,  
8 without including incentive compensation) for these putative class members is \$31.78 per hour  
9 (calculated by taking the average annual base compensation for putative class members, before  
10 inclusion of incentive compensation, and dividing by 2080). *Id.* at ¶ 6. One meal break premium  
11 for each work day during class period results equals \$4,373,564, calculated as follows:

12  $137,620 \text{ workdays} \times 1 \text{ meal premium} \times \$31.78 \text{ base avg rate} = \mathbf{\$4,373,564}$

13 Class members do not actually work 52 weeks out of a 52 week year, but take time off for  
14 vacations, sick time, holidays, and other time off. When accounting for this time off, putative  
15 class members worked at least 40 weeks out of a 52 week year. Mangan Decl. ¶ 10. Using 40  
16 actual workweeks in a 52-week year has been found to be a “good faith” estimate of the actual  
17 number of days employees worked when calculating the amount in controversy under CAFA.  
18 *Behrazfar v. Unisys Corp.*, 687 F. Supp. 2d 999, 1004 (C.D. Cal. 2009) (calculating amount in  
19 controversy based on 40 workweeks per year was “relatively conservative, made in good faith,  
20 and based on evidence”). When accounting for this time off, the amount in controversy for meal  
21 break premiums is \$3,364,280:

22  $\$4,373,564 \text{ meal premiums} \times 40/52 = \mathbf{\$3,364,280}$

23 Accordingly, when multiplying the actual number of putative class members times their  
24 potential recovery, and accounting for days not actually worked, results in an amount in  
25 controversy of more than \$3.3 million.

26 2. Plaintiff’s Overtime Claim Puts Intro Controversy More than \$1 Million

27 Plaintiff’s First Cause of Action alleges that Defendant systematically failed to pay  
28 overtime compensation to putative class members in violation of California law. Ex. A, ¶¶ 31-34.

1 Plaintiff alleges that he and putative class members “were forced to work on a regular and  
2 consistent basis” more than 40 hours per week and/or 8 hours per day. Ex. A, ¶ 33.

3 Taking these allegations to be true, then the amount in controversy arising from Plaintiff’s  
4 overtime claim is over \$1 million, and as much as \$5 million. If, as Plaintiff contends, putative  
5 class members regularly worked more than 40 hours per week and/or 8 hours per day, then they  
6 would arguably be entitled to at least 1 hour of overtime pay for each *work week* (12 minutes per  
7 day). Multiplying the 27,524 total number of class workweeks by 1 hour of unpaid overtime and  
8 by the average overtime rate of \$47.67 (which is 1.5 times the regular, pre-incentive rate of  
9 \$31.78), results in an amount in controversy of \$1,312,069, calculated as follows:

10  $27,524 \text{ workweeks} \times 1 \text{ hr OT per week} \times \$47.67/\text{hr OT rate} = \underline{\$1,312,069}$

11 When accounting for a 40 workweek year, the amount in controversy would be  
12 \$1,009,284 ( $\$1,312,069 \times 40/52 = \$1,009,284$ ). If one estimates 2 overtime hours per week (24  
13 minutes per day), this amount increases to place over \$2,018,568 at issue. At 3 overtime hours  
14 per week (36 minutes per day), the amount at issue increases to at least \$3,027,852. At just 5  
15 overtime hours per week, the amount at issue on this claim alone without penalties or fees  
16 exceeds \$5 million:

17

OT Hours Per Week	Amount In Controversy
1	\$1,009,284
2	\$2,018,568
3	\$3,027,852
4	\$4,037,136
5	\$5,046,420

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24 Accordingly, when multiplying the number of putative class members times their potential  
25 overtime recovery, and accounting for days not actually worked, results in an amount in  
26 controversy of over \$1 million.

1                   3.     Plaintiff's Wage Statement Claim Puts Into Controversy More than  
2                                    \$650,000

3                   In this Fourth Cause of Action, Plaintiff alleges that Defendant failed to comply with  
4 Labor Code § 226 “on each and every wage statement that should have been provided to Plaintiff  
5 and members of the proposed class.” Ex. A, Complaint, ¶ 57. He further alleges that Plaintiff  
6 and the class he purports to represent are thus entitled to damages as provided for in Labor Code  
7 section 226. Ex. A, Complaint, ¶ 59.

8                   Labor Code section 226(e) provides that an employee is entitled to recover the greater of  
9 all actual damages or \$50 for the initial violation and \$100 for each subsequent violation, up to a  
10 maximum of \$4,000, plus costs and reasonable attorneys’ fees, if an employer knowingly and  
11 intentionally fails to provide an accurate, itemized wage statement. Cal. Labor Code § 226(e).  
12 Such an award may be granted for each wage statement issued that fails to comply with section  
13 226’s requirements. Thus, according to Plaintiff’s theory, he would be entitled to no less than  
14 \$50 for the first violation, plus \$100 for each subsequent violation, for every pay period during  
15 the class period where he allegedly did not receive an accurate statement of wages, subject to a  
16 maximum award of \$4,000. This maximum award of \$4,000 would be reached if he (or  
17 employees similarly situated) received 41 or more allegedly inaccurate wage statements (\$50 first  
18 alleged violation + 40 alleged subsequent violations x \$100 = \$4,050, in excess of the statutory  
19 maximum); or, in other words, was employed for at least 41 pay periods. In addition, under  
20 Plaintiff’s alleged claim, each member of the putative class that he purports to represent would  
21 also be entitled to such an award, up to a maximum award of \$4,000 for each putative class  
22 member.

23                   Defendant pays Pharmaceutical Representatives on a bi-weekly basis, for a total of 26 pay  
24 periods per year. Ex. B, Mangan Decl., ¶ 8. As alleged in the Complaint, the class period began  
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1 four years prior to the filing of the original action, or December 7, 2006.<sup>3</sup> Between December 7,  
2 2006 and February 3, 2011, 164 current or former Pharmaceutical Representatives were  
3 employed by Defendant for 41 or more pay periods within the alleged applicable statute of  
4 limitations period. Ex. B, Mangan Decl., ¶ 6. These 164 putative class members would  
5 therefore be eligible for the statutory maximum of \$4,000. Cal. Lab. Code § 226(e). Thus, the  
6 amount in controversy for these employees alone is \$656,000 (164 class members x \$4,000  
7 maximum award = \$656,000). This figure does not include those employee who worked less  
8 than 41 pay periods, which would increase the amount in controversy further.

9 4. Plaintiff's Waiting Time Penalty Claims Puts Into Controversy Nearly  
10 \$500,000

11 In Plaintiff's fifth cause of action for waiting time penalties pursuant to Labor Code § 203,  
12 Plaintiff alleges that Defendant failed to pay Plaintiff and members of the putative class all earned  
13 and unpaid wages upon termination Ex. A, Complaint ¶¶ 60-63. He seeks waiting time penalties  
14 equal to their daily wage for 30 days. *Id.* ¶ 62 and Prayer for Relief ¶ 4. This claims puts into  
15 controversy nearly \$500,000.

16 During the three-year period before December 7, 2010 (the date the complaint was filed),  
17 68 putative class members terminated from Defendant. Ex. B, DSI Decl. ¶ 4. Of these, 65  
18 terminated more than 30 days before December 7, 2010, and would be eligible for the maximum  
19 30 days waiting time penalty. At the average equivalent hourly rate for members of the putative  
20 class, the amount in controversy for Plaintiff's waiting time penalty claim is at least \$495,768 (65  
21 terminated x 30 days x 8 hrs/day x \$31.78/hr = \$495,768). The waiting time penalties for the  
22 three employees who terminated less than 30 days before the filing of the complaint would

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23 <sup>3</sup> Defendant contends that a one-year limitations period applies to this claim. As pleaded,  
24 however, the Complaint alleges a four-year limitations period. Using a one-year limitations  
25 period, the amount in controversy is still over \$300,000. During the period between December 7,  
26 2009 and February 3, 2011, there were 123 putative class members who were employed for 26 or  
27 more pay periods. Assuming each were entitled to 1 initial violation penalty of \$50 and 25  
28 subsequent violation penalties of \$100, the amount in controversy over a one-year limitations  
period is \$313,650 ( $[123 \times 1 \times 50] + [123 \times 25 \times 100] = \$313,650$ .) The actual amount is higher,  
because the majority of these employees were employed for more than 26 pay periods, thereby  
increasing the amount in controversy further.

1 increase the amount in controversy further.

2 Although Defendant disputes the merits of Plaintiff's waiting time penalty claims, based  
3 on these figures, this claims puts at least an additional \$495,768 into controversy.

4 5. Plaintiff's Claim for Attorney's Fees Puts Into Controversy an Additional  
5 \$1.3 Million

6 The Complaint also seeks attorneys' fees, which are properly included in determining the  
7 amount in controversy. Ex. A, Complaint (Prayer for Relief) ¶ 9; *Guglielmino v. McKee Foods*  
8 *Corp.*, 506 F.3d 696, 698 (9th Cir. 2007); *Sanchez v. Wal-Mart Stores, Inc.*, No. Civ. S-06-cv-  
9 2573 DFL KJM, 2007 WL 1345706, \*2 (E.D. Cal. May 8, 2007) ("Attorney's fees, if authorized  
10 by statute or contract, are also part of the calculation").

11 Although Defendant denies Plaintiff's claim for attorney's fees, for purposes of removal,  
12 the Ninth Circuit uses a benchmark rate of 25% of the potential damages as the amount of  
13 attorney's fees. *In re Quintus Securities Litigation*, 148 F. Supp. 2d 967, 973 (N.D. Cal. 2001)  
14 (benchmark for attorneys' fees is 25% of the common fund). Given the \$5,525,332 minimum  
15 amount in controversy discussed above (\$3,364,280 (meal period allegations) + \$1,009,284 (OT  
16 allegations) + \$656,000 (wage statement allegations) + \$495,768 (waiting time penalty  
17 allegations) = \$5,525,332), an award of such attorney's fees would increase the amount in  
18 controversy by \$1,381,333, for a total of \$6,906,665. Thus, adding these attorney's fees further  
19 increases Plaintiff's alleged amount in controversy well in excess of \$5 million.

20 6. The Amount in Controversy Is Satisfied for Diversity Jurisdiction Purposes

21 Thus, although Defendant denies Plaintiff's allegations and denies that he or the class that  
22 he purports to represent are entitled any relief, based on Plaintiff's allegations, theories, and  
23 prayer for relief, Plaintiff's Complaint places in controversy at least \$6,906,665, an amount that  
24 far exceeds the \$5 million threshold set forth under CAFA.

25 Because there is diversity between the parties and the amount in controversy threshold has  
26 been satisfied in this Action, this Court has original subject matter jurisdiction to hear this  
27 dispute.

1    **III.    VENUE**

2           This action was originally filed in the Superior Court for the County of Alameda.

3    **IV.    NOTICE**

4           Defendant will promptly serve this Notice of Removal on all parties and will promptly file  
5 a copy of this Notice of Removal with the clerk of the state court in which the action is pending,  
6 as required under 28 U.S.C. § 1446(d).

7           A true and correct copy of Plaintiff's original Complaint is attached as Exhibit A.

8           A true and correct copy of the Declaration of Craig Mangan is attached as Exhibit B.

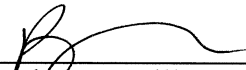
9           True and correct copies of documents from the Superior Court's file are attached as  
10 Exhibit C.

11   **V.    CONCLUSION**

12           Based on the foregoing, Defendant respectfully requests that this action be removed to this  
13 Court. If any question arises as to the propriety of the removal of this action, Defendant requests  
14 the opportunity to present a brief and oral argument in support of its position that this case is  
15 removable.

16 Dated: February 18, 2011

MORGAN, LEWIS & BOCKIUS LLP

17  
18 By   
19 \_\_\_\_\_  
20 Barbara J. Miller  
21 Attorneys for Defendant  
22 DAIICHI SANKYO, INC.  
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# **EXHIBIT A**

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*\*Seeking Admission Pro Hac Vice*

Attorneys for Plaintiffs

**FILED BY FAX**  
**ALAMEDA COUNTY**

December 07, 2010

CLERK OF  
THE SUPERIOR COURT  
By Rosanne Case, Deputy

CASE NUMBER:  
**RG10550221**

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

**DONOVAN LUCAS, on behalf of himself**  
**and others similarly situated,**

Plaintiffs,

v.

**DAIICHI SANKYO COMPANY, INC.; and**  
**DOES 1 to 50, Inclusive,**

Defendants.

CASE NO.:

**CLASS ACTION COMPLAINT FOR:**

1. Failure to Pay Overtime
2. Violation of Business & Professions Code §17200 (Meal)
3. Violation of Business & Professions Code §17200 (Overtime)
4. Violation of Labor Code §226(a)
5. Wages Pursuant to Labor Code §203

Plaintiff **DONOVAN LUCAS** on behalf of himself and all others similarly situated, complain of Defendants, and each of them, as follows:

I

**INTRODUCTION**

1. This is a Class Action, pursuant to Code of Civil Procedure §382, on behalf of Plaintiff and all individuals who hold or held the position of "Sales Representative" who are employed by, or formerly employed by **DAIICHI SANKYO COMPANY, INC.**, and any subsidiaries or affiliated

1 companies (hereinafter referred to as "DAIICHI SANKYO" or "Defendants") within the State of  
2 California.

3 2. In this pleading, the term "Pharmaceutical Representative" means all persons who have  
4 been, are, or in the future will be employed by any of the Defendants in any job whose title is or was  
5 referred to by any of the following titles, and employees who performed substantially the same work  
6 as employees with those titles (discovery may reveal additional titles and employees that should be  
7 included):

- 8 a. Sales Representative
- 9 b. Senior Sales Representative
- 10 c. Executive Sales Representative
- 11 d. Senior Executive Sales Representative

12 3. For at least four (4) years prior to the filing of this action continuing to the present,  
13 Defendants have had a consistent policy of failing to pay overtime to all "Pharmaceutical  
14 Representatives" for all work over eight (8) hours per day or forty (40) per week.

15 4. For at least four (4) years prior to the filing of this action and continuing to the present,  
16 Defendants have had a consistent policy of requiring "Pharmaceutical Representatives" within the  
17 State of California, including Plaintiff, to work at least five (5) hours without an uninterrupted meal  
18 period and failing to pay such employees one (1) hour of pay at the employees regular rate of  
19 compensation for each workday that the meal period is not provided or provided after five (5) hours,  
20 as required by California state wage and hour laws.

21 5. Plaintiff, on behalf of himself and all proposed class members, brings this action  
22 pursuant to Labor Code §§201, 202, 203, 510, 512, 1194, 1197, and 1199 seeking proper overtime  
23 compensation, unpaid meal period compensation, and reasonable attorneys' fees and costs.

24 6. Plaintiff, on behalf of himself and all proposed class members, pursuant to Business  
25 & Professions Code §§17200-17208, also seeks restitution and disgorgement of all benefits  
26 Defendants enjoyed from their failure to pay overtime and meal period compensation.

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**II**

**JURISDICTION**

7. Plaintiff **DONOVAN LUCAS** is and at all times mentioned herein a citizen of the State of California residing in Palm Desert. Between August 2008 and November 2010, Plaintiff lived in and was employed by Defendant in California. Plaintiff's sales territory was in California.

8. Defendant **DAIICHI SANKYO**, is incorporated under the laws of the State of New Jersey, having its principal place of business in the State of New Jersey. Defendants employed Plaintiff and similarly situated persons as "Pharmaceutical Representatives" within California.

9. Defendant **DAIICHI SANKYO**, a foreign corporation, has not designated a principal place of business with the California Secretary of State, therefore can be sued in any county. Therefore, the proper venue for this complaint can be Alameda.

**III**

**FACTUAL BACKGROUND**

10. Defendants hire "Sales Representatives," who work throughout California. These employees work in non-exempt positions and on a regular basis work over eight (8) hours per day or over forty (40) hours per week without the proper overtime compensation. In addition, Plaintiff and the members of the class were regularly required to work in excess of five (5) hours per day, without being provided a meal period.

11. Plaintiff and the proposed class are, and at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code and the implementing rules and regulations of the IWC California Wage Orders.

12. Plaintiff and the class members did not sell tangible or intangible items nor obtain orders or contracts for products, services, or use of facilities. Therefore, the outside sales exemption would not be applicable.

13. Defendants' requirement that Plaintiff and the members of the class work over eight (8) hours per day and/or forty (40) hours per week without the proper overtime compensation was willful and deliberate. Defendants willfully failed to pay overtime compensation when each employee quit or was discharged.

1 14. Defendants' requirement that Plaintiff and the class work through meal periods without  
2 paying legal compensation for failure to provide meal periods was willful and deliberate. Defendants  
3 willfully failed to pay one hours wages in lieu of meal periods when each employee quit or was  
4 discharged.

5 15. Plaintiff and the class are covered by California Industrial Welfare Commission  
6 Occupational Wage Order No. 1-2001, California Industrial Welfare Commission in No. 1 (Title 8  
7 Cal. Code of Reg. §§11040).

8 16. Defendants have failed to comply with Industrial Welfare Commission ("IWC") Wage  
9 Order 1-2001(7) by failing to maintain time records showing when the employee begins and ends  
10 each work period, meal periods, and total daily hours worked by itemizing in wage statements all  
11 deductions from payment of wages and accurately reporting total hours worked by Plaintiff and the  
12 members of the proposed class.

13 17. As a "Pharmaceutical Representative," Plaintiff was regularly required to:

14 (a) Work over eight (8) hours per day or forty (40) per week without being provided  
15 premium overtime pay rates; and

16 (b) Work in excess of five (5) hours per day without being provided a meal period  
17 and not being compensated one (1) hour of pay at the regular rate of compensation for each workday  
18 that a meal period was not provided or provided after five (5) hours, all in violation of California  
19 labor laws, regulations, and Industrial Welfare Commission Wage Orders.

20 18. Defendants willfully failed to compensate Plaintiff and members of the class for wages  
21 at the termination of their employment with Defendants.

22 19. The true names and capacities, whether individual, corporate, associate, or otherwise,  
23 of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who  
24 therefore sue Defendants by such fictitious names under Code of Civil Procedure §474. Plaintiff is  
25 informed and believes, and based thereon alleges, that each of the Defendants designated herein as  
26 a DOE are legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will  
27 seek leave of court to amend this Complaint to reflect the true names and capacities of the  
28 Defendants designated hereinafter as DOES when such identities become known.



1 B. Commonality

2 26. There are questions of law and fact common to the proposed class that predominate  
3 over any questions affecting only individual class members. These common questions of law and  
4 fact include, without limitation:

5 (a) Whether Defendants failed to pay overtime compensation as required by the  
6 Labor Code and Wage Orders;

7 (b) Whether Defendants violated Labor Code §§226.7 and 512, IWC Wage Order  
8 1-2001 or other applicable IWC Wage Orders, by failing to provide meal periods on days they  
9 worked in excess of five (5) hours and failing to compensate said employees one (1) hours wages  
10 in lieu of meal periods;

11 (c) Whether Defendants violated Labor Code §226 and Wage Order 1-2001 or other  
12 applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 1100 by failing to provide an  
13 accurate itemized wage statements that reflects all deductions from payment of wages and accurately  
14 reporting total hours worked, including when the employee begins and ends each work period, meal  
15 periods, and total daily hours worked, by Plaintiff and the members of the proposed class;

16 (d) Whether Defendants violated §§201-203 of the Labor Code by failing to pay  
17 compensation due and owing at the time that any proposed class member's employment with  
18 Defendants terminated;

19 (e) Whether Defendants violated §17200 et seq. of the Business & Professions  
20 Code by failing to provide overtime wages and meal period compensation to "Pharmaceutical  
21 Representatives," and

22 (f) Whether Plaintiff and the members of the proposed class are entitled to  
23 equitable relief pursuant to Business & Professions Code §17200, et. seq.

24 C. Typicality

25 27. The claims of the named Plaintiff are typical of the claims of the proposed class.  
26 Plaintiff and all members of the proposed class sustained injuries and damages arising out of and  
27 caused by Defendants' common course of conduct in violation of laws, regulations that have the  
28 force and effect of law and statutes as alleged herein.

1 **D. Adequacy of Representation**

2 28. Plaintiff will fairly and adequately represent and protect the interests of the members  
3 of the proposed class. Counsel who represents Plaintiff is competent and experienced in litigating  
4 large employment class actions.

5 **E. Superiority of Class Action**

6 29. A class action is superior to other available means for the fair and efficient  
7 adjudication of this controversy. Individual joinder of all proposed class members is not practicable,  
8 and questions of law and fact common to the proposed class predominate over any questions  
9 affecting only individual members of the proposed class. Each member of the proposed class has  
10 been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of  
11 failing to compensate class members at the legal overtime rates, denying class members meal periods  
12 without legal compensation.

13 30. Class action treatment will allow those similarly situated persons to litigate their  
14 claims in the manner that is most efficient and economical for the parties and the judicial system.  
15 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this  
16 action that would preclude its maintenance as a class action.

17 V

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME**

20 **(LABOR CODE §§510, 1194, 1199)**

21 31. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
22 paragraphs as if fully set forth herein.

23 32. By their policy of requiring Plaintiff to work in excess of eight (8) hours in a workday  
24 and/or forty (40) hours in a workweek without compensating Plaintiff at the rate of time and one-half  
25 (1 1/2), Defendant wilfully violated the provisions of Labor Code §510.

26 33. As previously alleged, Plaintiff and others were forced to work on a regular and  
27 consistent basis, more than eight (8) hours a day and/or forty (40) hours per week. Plaintiff was not  
28 compensated for said work at premium rates.



1 34. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of overtime  
2 an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest and  
3 penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §§1194.

4 VI

5 SECOND CAUSE OF ACTION

6 UNFAIR COMPETITION PURSUANT TO

7 BUSINESS & PROFESSIONS CODE §17200 (MEAL)

8 35. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
9 paragraphs as if fully set forth herein.

10 36. This is a Representative Private Attorney General Action and Class Action for Unfair  
11 Business Practices. DONOVAN LUCAS on his own behalf and on behalf of the general public, and  
12 on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code  
13 §17200, et seq. The conduct of all Defendants as alleged in this Complaint has been and continues  
14 to be unfair, unlawful, and harmful to Plaintiff, the general public, and the proposed class. Plaintiff  
15 seeks to enforce important rights affecting the public interest within the meaning of Code of Civil  
16 Procedure §1021.5.

17 37. Plaintiff is a "person" within the meaning of Business & Professions Code §17204,  
18 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other  
19 appropriate equitable relief.

20 38. Business & Profession Code §17200, et seq. prohibits unlawful and unfair business  
21 practices.

22 39. Wage and hour laws express fundamental public policies. Providing employees with  
23 proper overtime compensation and meal breaks are fundamental public policies of this State and of  
24 the United States. Labor Code §90.5(a) articulates the public policies of this State to vigorously  
25 enforce minimum labor standards, to ensure that employees are not required or permitted to work  
26 under substandard and unlawful conditions, and to protect law-abiding employers and their  
27 employees from competitors who lower their costs by failing to comply with minimum labor  
28 standards.

1           40. Defendants have violated statutes and public policies. Through the conduct alleged in  
2 this Complaint, Defendants, and each of them, have acted contrary to these public policies, have  
3 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair  
4 business practices in violation of Business & Profession Code §17200, et seq., depriving Plaintiff,  
5 and all persons similarly situated, and all interested persons of rights, benefits, and privileges  
6 guarantees to all employees under law.

7           41. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of  
8 §17200 et. seq. of the Business & Professions Code.

9           42. Defendants by engaging in the conduct herein alleged, by not providing overtime  
10 compensation and proper breaks, either knew or in the exercise of reasonable care should have  
11 known that the conduct was unlawful. As such it is a violation of §17200 et. seq. of the Business  
12 & Professions Code.

13           43. As a proximate result of the above mentioned acts of Defendants, Plaintiff and others  
14 similarly situated have been damaged and therefore entitled to restitution in a sum as may be proven.

15           44. Unless restrained by this Court, Defendants will continue to engage in the unlawful  
16 conduct as alleged above. Pursuant to Business & Professions Code this Court should make such  
17 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use  
18 or employment, by Defendants, their agents or employees, of any unlawful or deceptive practice  
19 prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement  
20 of profits which may be necessary to restore Plaintiff and the proposed class members to the money  
21 Defendants have unlawfully failed to pay.

22                               VII

23                               **THIRD CAUSE OF ACTION**

24                               **UNFAIR COMPETITION PURSUANT TO**  
25                               **BUSINESS & PROFESSIONS CODE §17200**

26           45. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
27 paragraphs as if fully set forth herein.

28           46. This is a Representative Private Attorney General Action and Class Action for Unfair

1 Business Practices DONOVAN LUCAS on his own behalf and on behalf of the general public, and  
2 on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code  
3 §17200, et seq. The conduct of all Defendants as alleged in this Complaint has been and continues  
4 to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Class. Plaintiff seeks to  
5 enforce important rights affecting the public interest within the meaning of Code of Civil Procedure  
6 §1021.5.

7 47. Plaintiff is a "person" within the meaning of Business & Professions Code §17204,  
8 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other  
9 appropriate equitable relief.

10 48. Business & Profession Code §17200, et seq. prohibits unlawful and unfair business  
11 practices.

12 49. Wage and hour laws express fundamental public policies. Providing employees with  
13 overtime is a fundamental public policy of this State and of the United States. Labor Code §90.5(a)  
14 articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure  
15 that employees are not required or permitted to work under substandard and unlawful conditions, and  
16 to protect law-abiding employers and their employees from competitors who lower their costs by  
17 failing to comply with minimum labor standards.

18 50. Defendants have violated statutes and public policies. Through the conduct alleged in  
19 this Complaint, Defendants, and each of them, have acted contrary to these public policies, have  
20 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair  
21 business practices in violation of Business & Profession Code §17200, et seq., depriving Plaintiff,  
22 and all persons similarly situated, and all interested persons of rights, benefits, and privileges  
23 guarantees to all employees under law.

24 51. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in  
25 violation of §17200 of the Business & Professions Code.

26 52. Defendants by engaging in the conduct herein alleged, by not paying proper overtime  
27 compensation either knew or in the exercise of reasonable care should have known that the conduct  
28 was unlawful. As such it is a violation of §17200 of the Business & Professions Code.

1 53. As a proximate result of the above mentioned acts of Defendants, Plaintiff and others  
2 similarly situated have been damaged in a sum as may be proven.

3 54. Unless restrained by this Court, Defendants will continue to engage in the unlawful  
4 conduct as alleged above. Pursuant to the Business & Professions Code this Court should make such  
5 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use  
6 or employment, by Defendants, their agents or employees, of any unlawful or deceptive practice  
7 prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement  
8 of profits which may be necessary to restore Plaintiff and the Class Members to the money  
9 Defendants have unlawfully failed to pay.

10 55. Defendants by engaging in the conduct herein alleged, by not providing proper meal  
11 breaks, either knew or in the exercise of reasonable care should have known that the conduct was  
12 unlawful. As such it is a violation of Business & Professions Code §17200.

### 13 VIII

#### 14 FOURTH CAUSE OF ACTION

#### 15 VIOLATION OF LABOR CODE §226(a)

16 56. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
17 paragraphs as if fully set forth herein.

18 57. Section 226(a) of the California Labor Code requires Defendants to itemize in wage  
19 statements all deductions from payment of wages and to accurately report total hours worked by  
20 Plaintiff and the members of the proposed class. Defendants have knowingly and intentionally  
21 failed to comply with Labor Code §226(a) on each and every wage statement that should have been  
22 provided to Plaintiff and members of the proposed class.

23 58. IWC Wage Orders 1-2001(7), 1-2000(7), 1-1998(7) require Defendants to maintain  
24 time records showing, among others, when the employee begins and ends each work period, meal  
25 periods, split shift intervals and total daily hours worked in an itemized wage statements, and must  
26 show all deductions from payment of wages, and accurately report total hours worked by Plaintiff  
27 and the members of the proposed class.

28 59. An employee suffering injury as a result of a knowing and intentional failure by an

1 employer to comply with Labor Code §226(a) is entitled to recover the greater of all actual damages  
2 or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars  
3 (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate  
4 penalty of four thousand dollars (\$4,000) per employee, and is entitled to an award of costs and  
5 reasonable attorney's fees.

6 IX

7 **FIFTH CAUSE OF ACTION**

8 **WAITING TIME WAGES UNDER LABOR CODE §203**

9 60. Plaintiff incorporates each and every allegation set forth in all of the foregoing  
10 paragraphs as if fully set forth herein.

11 61. Numerous members of the proposed class are no longer employed by Defendants.  
12 They were either fired or quit Defendants' employ.

13 62. The Defendants' failure to pay wages, as alleged above, was willful in that Defendants  
14 and each of them knew wages to be due but failed to pay them, thus entitling Plaintiff and the  
15 proposed class to wages under Labor Code §203, which provides that an employee's wages shall  
16 continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

17 63. Defendants have failed to pay Plaintiff and others a sum certain at the time of  
18 termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums  
19 for thirty (30) days thereafter. Pursuant to the provisions of Labor Code §203, Plaintiff and the  
20 proposed class entitled to wages in the amount of Plaintiff's and others daily wage multiplied by  
21 thirty (30) days.

22  
23 **RELIEF REQUESTED**

24 **WHEREFORE**, Plaintiff prays for the following relief:

- 25 1. For overtime in an amount according to proof, with interest thereon;
- 26 2. For restitution in the amount of Plaintiff's and each class members' hourly wage for  
27 each meal period missed or taken late from at least four (4) years prior to the filing of this action to  
28 the present as may be proven;

- 1           3.     For penalties pursuant to Labor Code §226(e) for violation of Labor Code §226(a) in
- 2 the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
- 3 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
- 4 an aggregate penalty of four thousand dollars (\$4,000) per employee;
- 5           4.     For wages pursuant to Labor Code §203 for all employees who quit or were fired equal
- 6 to their daily wage times thirty (30) days;
- 7           5.     An award of prejudgment and post judgment interest;
- 8           6.     An order enjoining Defendant and its agents, servants, and employees, and all persons
- 9 acting under, in concert with, or for it from providing Plaintiff and each class member with proper
- 10 overtime compensation and meal breaks pursuant to Labor Code §§226.7, 510, 512, and IWC
- 11 1-2001;
- 12           7.     For restitution for unfair competition pursuant to Business & Professions Code
- 13 §17200, including disgorgement or profits, in an amount as may be proven;
- 14           8.     An award providing for payment of costs of suit;
- 15           9.     An award of attorneys' fees; and
- 16           10.    Such other and further relief as this Court may deem proper and just.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

21 DATED: December <sup>6<sup>th</sup></sup>, 2010

KINGSLEY & KINGSLEY, APC

By:   
ERIC B. KINGSLEY  
Attorney For Plaintiffs

# **EXHIBIT B**

1 MORGAN, LEWIS & BOCKIUS LLP  
BARBARA J. MILLER, State Bar No. 167223  
2 JENNIFER WHITE, State Bar No. 166504  
MARIA GUTIERREZ, State Bar No. 209995  
3 JOHN HAYASHI, State Bar No. 211077  
5 Park Plaza, Suite 1750  
4 Irvine, CA 92614  
Tel: 949.399.7000  
5 Fax: 949.399.7001  
[barbara.miller@morganlewis.com](mailto:barbara.miller@morganlewis.com)  
6 [jennifer.white@morganlewis.com](mailto:jennifer.white@morganlewis.com)  
[maria.gutierrez@morganlewis.com](mailto:maria.gutierrez@morganlewis.com)  
7 [jhayashi@morganlewis.com](mailto:jhayashi@morganlewis.com)

8 Attorneys for Defendant  
DAIICHI SANKYO, INC.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11

12 DONOVAN LUCAS, on behalf of himself  
and others similarly situated,

13 Plaintiff,

14 vs.

15 DAIICHI SANKYO COMPANY, INC.;;  
16 and DOES 1 to 50, Inclusive,

17 Defendant.  
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Case No.

**DECLARATION OF CRAIG MANGEAN IN  
SUPPORT OF DEFENDANT DAIICHI  
SANKYO, INC.'S NOTICE OF REMOVAL**



**DECLARATION OF CRAIG MANGEAN**

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I, Craig Mangan, declare as follows:

1. I currently serve as interim Executive Director of Human Resources for Defendant Daiichi Sankyo, Inc. ("DSI"). I have personal knowledge of the facts stated herein, and if called and sworn as a witness, I could and would testify competently to these facts.

2. According to DSI's records, while employed at DSI, Plaintiff Donovan Lucas' last known address was in California.

3. DSI is a Delaware corporation with a principal place of business in Parsippany, New Jersey. Its officers direct, control, and coordinate the corporations' business activities from Parsippany, New Jersey.

4. According to DSI's records, for the period between December 7, 2006 and February 3, 2011, DSI employed approximately 214 current and former pharmaceutical representatives who worked in California.

5. For the period between December 7, 2006 and February 3, 2011, the number of cumulative weeks that these 214 pharmaceutical representatives were employed is approximately 24,524. This number was calculated using the date that employees first held a pharmaceutical representative position and the date they no longer held that position or left the company.

6. The average annual base compensation, not including bonuses or incentive compensation, for these 214 employees is approximately \$66,097.

7. Between December 7, 2007 and December 7, 2010, approximately 68 DSI pharmaceutical representatives ended their employment with DSI. Of these, 65 terminated 30 or more days before December 7, 2010.

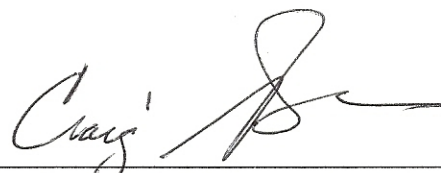
8. DSI pharmaceutical representatives are paid on a bi-weekly basis. Between December 7, 2006 and February 3, 2011, approximately 164 DSI pharmaceutical representatives were employed for 41 or more pay periods, and would have received 41 or more wage statements. Between December 7, 2009 and February 3, 2011, at least 123 pharmaceutical representatives were employed for 26 or more pay periods, and would have received 26 or more wage statements.

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9. DSI pharmaceutical representatives typically work five or more days per work week and five or more hours per work day.

10. DSI pharmaceutical representatives may take time off for holidays, vacations, sick leave, and other time off. When accounting for holidays, vacation, and other time off, DSI pharmaceutical representatives would typically work at least 40 weeks out of a 52-week year.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed this 18th day of February, 2011 at Parsippany, New Jersey.

  
\_\_\_\_\_  
CRAIG MANGEAN

# **EXHIBIT C**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, telephone number, and attorney State Bar number): KINGSLEY & KINGSLEY, APC GEORGE R. KINGSLEY, ESQ. SBN-38022 ERIC B. KINGSLEY, ESQ. SBN-185123 LIANE L. KATZENSTEIN, ESQ. SBN-259230 16133 VENTURA BOULEVARD, SUITE 1200 ENCINO, CA 91436 ATTORNEY FOR (Name): DONOVAN LUCAS, PLAINTIFF		<b>FILED BY FAX</b> <i>File Stamp</i> ALAMEDA COUNTY January 10, 2011 CLERK OF THE SUPERIOR COURT By Catherine Green, Deputy
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA</b>		CASE NUMBER: <b>RG10550221</b>
COURT ADDRESS RENE C. DAVIDSON ALAMEDA COUNTY COURTHOUSE 1221 OAK STREET OAKLAND, CA 94612		
PLAINTIFF DONOVAN LUCAS		
DEFENDANT DAIICHI SANKYO COMPANY, INC.		
<b>AMENDMENT TO COMPLAINT          (Fictitious/Incorrect Name)</b>		CASE NUMBER RG10550221

 **FICTITIOUS NAME (No order required)**

Upon filing the complaint in this case, the plaintiff, being ignorant of the true name of a defendant and having designated the defendant in the complaint by the fictitious name of: DAIICHI SANKYO COMPANY, INC.

and having discovered the defendant's true name to be: DAIICHI SANKYO, INC.

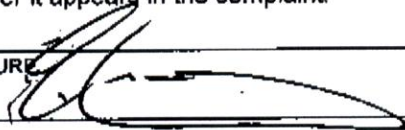
amends the complaint by substituting the true name for the fictitious name wherever it appears in the complaint.

 **INCORRECT NAME (Order required)**

The plaintiff, having designated a defendant in the complaint by the incorrect name of:

and having discovered the true name of the defendant to be:

amends the complaint by inserting the true name for the incorrect name wherever it appears in the complaint.

DATE January 11, 2011	TYPE OR PRINT NAME Eric B. Kingsley	SIGNATURE 
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**ORDER**

THE COURT ORDERS the amendment approved and filed.

Date:

Judge  Commissioner

Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse

<b>Lucas</b> Plaintiff/Petitioner(s)
VS.
<b>Daiichi Sankyo Company, Inc.</b> Defendant/Respondent(s) (Abbreviated Title)

No. **RG10550221**

**Minutes**

Department 20 Honorable Robert B. Freedman, Judge  
Reporter Kathy Lyons CSR#7230

Cause called for: Complex Determination Hearing on January 20, 2011.

The order will be issued by the court.

The Court designates this case as complex pursuant to Rule 3.400 et seq. of the California Rules of Court. The matter is assigned for all purposes including trial to Department 20 of the Alameda County Superior Court. Counsel are advised to be familiar with the Alameda County Local Rules concerning complex litigation, including Rule 3.250 et seq.

Courtesy (bench) copies of all filings should be delivered directly to Dept. 20 and may be left in the drop box when court is in session. The Court may also direct that certain filings be supplemented by an electronic copy (via e-mail to [Dept.20@alameda.courts.ca.gov](mailto:Dept.20@alameda.courts.ca.gov) or by CD-ROM lodged with the clerk in Dept. 20). Any such electronic copy of documents shall be in Microsoft Word readable form (Microsoft Word, Word Perfect, a TIF or JPEG file inserted into a Word file, or any other format that can be saved in a Microsoft Word document). Each separate document (notice, points and authorities, declarations, requests for judicial notice, et al) must be in a separate file in the diskette and the computer files must be identified in a fashion to permit accurate identification by Court personnel (e.g. "Notice.doc," "Points and Authorities.doc," "Li Declaration.doc," "Johnson Declaration.doc," and "Proof of Service.doc," NOT "Quashnot.doc," "briefdraft3.doc," "Defdecl.doc," "Decl2revised.doc," or "Form5.doc.") Electronic media submitted will not be returned.

Calendar information, filings, and tentative rulings are available to the public at <http://www.alameda.courts.ca.gov/domainweb/>.

All motions and ex parte applications shall be noticed for hearing in Department 20. The parties shall reserve hearing dates and times by contacting the Department 20 courtroom clerk via email at [Dept.20@alameda.courts.ca.gov](mailto:Dept.20@alameda.courts.ca.gov). The courtroom clerk can also be contacted by phone at (510) 267-6936, but phone contact should be used very sparingly. E-mail is the preferred method of communication.

Case Management Statements may be filed by E-Delivery, by emailing them to the following address: [EDelivery@alameda.courts.ca.gov](mailto:EDelivery@alameda.courts.ca.gov). No fee is charged for this service. For further information, go to Direct Calendar Departments at <http://apps.alameda.courts.ca.gov/domainweb/>.

At the Initial CCMC, the parties must be prepared to discuss at length the nature of the case, both factually and legally, as well as the projected management of the case at each stage. This is not a perfunctory exercise. The primary objective of the CCMC is to develop a comprehensive plan for a just, speedy and economical determination of the litigation.

The CCMC statements must address the following issues when applicable:

A. A brief factual summary to assist the Court in understanding the background of the case, a statement of the issues presented, including each theory of liability and defense and a summary of the facts

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**Minutes**

M6490444

supporting each position taken, and the relief sought, including an estimate of damages.

B. The number of parties and their posture, including a proposed structure of representation, (e.g., liaison/lead counsel or by committee) if applicable;

C. Deadlines and limits on joinder of parties and amended or additional pleadings;

D. Class discovery and class certification;

E. A proposed schedule for the conduct of the litigation including, but not limited to, a discovery plan, a plan for hearing remaining law and motion, and a projected trial date;

F. An identification of all potential evidentiary issues involving confidentiality or protected evidence;

G. A detailed description of the procedural posture of the case, describing any outstanding procedural problems, including, but not limited to:

- (1) unserved parties and the reasons for the failure to serve;
- (2) unserved and/or unfiled cross-complaints;
- (3) related actions pending in any jurisdiction and the potential for coordination or consolidation;
- (4) any possible jurisdictional or venue issues that may arise;
- (5) the status of discovery, including a description of all anticipated discovery and incomplete or disputed discovery issues;
- (6) unresolved law and motion matters;
- (7) requests for, or opposition to, any ADR proceedings, including but not limited to mediation, judicial or contractual arbitration;
- (8) severance of issues for trial; and
- (9) calendar conflicts for any attorney, witness, or party, and any other matter which may affect the setting of a trial date.

H. Counsel may make suggestions for streamlining the litigation, including, but not limited to, a master file system, designation of lead counsel [for plaintiff(s) and/or defendant(s)] to streamline service of process and/or management of discovery, the use of e-filing, and the use of a web-page maintained by lead counsel for the purpose of posting the litigation schedule and agenda.

Minutes of 01/20/2011

Entered on 01/21/2011

Executive Officer / Clerk of the Superior Court

By

 digital

Deputy Clerk

1 **KINGSLEY & KINGSLEY, APC**  
**GEORGE R. KINGSLEY, ESQ. SBN-38022**  
2 *gkingsley@kingsleykingsley.com*  
**ERIC B. KINGSLEY, ESQ. SBN-185123**  
3 *eric@kingsleykingsley.com*  
**LIANE L. KATZENSTEIN, ESQ. SBN-259230**  
4 *lk Katzenstein@kingsleykingsley.com*  
**16133 VENTURA BOULEVARD, SUITE 1200**  
5 **ENCINO, CA 91436**  
**(818) 990-8300, FAX (818) 990-2903**

**FILED BY FAX**  
**ALAMEDA COUNTY**  
 January 10, 2011

CLERK OF  
 THE SUPERIOR COURT  
 By Denise Dalton, Deputy

CASE NUMBER:  
**RG10550221**

6  
 7 **Attorneys for Plaintiff**

8  
 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 10 **FOR THE COUNTY OF ALAMEDA**

11  
 12 DONOVAN LUCAS, on behalf of himself )  
 and others similarly situated, )  
 13 )  
 Plaintiff, )  
 14 )  
 v. )  
 15 )  
 DAIICHI SANKYO COMPANY, INC.; )  
 16 and DOES 1 to 50, Inclusive, )  
 17 )  
 Defendants. )  
 18 )  
 \_\_\_\_\_ )

CASE NO.: RG10550221

**NOTICE OF HEARINGS**

Complex Determination Hearing:  
 Date: January 20, 2011  
 Time: 2:00 p.m.  
 Dept.: 20  
 Case Management Conference:  
 Date: February 17, 2011  
 Time: 2:00 p.m.  
 Dept.: 20

19  
 20 **PLEASE TAKE NOTICE** that on December 9, 2010, the court set a Complex Determination  
 21 Hearing for January 20, 2011, at 2:00 p.m., in Department 20 of the above-entitled court, located at 1221  
 22 Oak Street, Fourth Floor, Oakland, CA, Administration Building.

23 **PLEASE TAKE FURTHER NOTICE** that on December 9, 2010, the court set a Case Management  
 24 Conference for February 17, 2011, at 2:00 p.m., in Department 20 of the above-entitled court, located at  
 25 1221 Oak Street, Fourth Floor, Oakland, CA, Administration Building.

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Plaintiff was ordered to give notice. Attached hereto as Exhibit "1" is a copy of the court's notice.

DATED: January 10, 2011

KINGSLEY & KINGSLEY, APC



By: \_\_\_\_\_  
ERIC B. KINGSLEY  
Attorney for Plaintiff



Kingsley & Kingsley, APC Attn: Kingsley, George R. 16133 Ventura Blvd. Suite 1200 Encino, CA 91436	Daiichi Sankyo Company, Inc.
--	------------------------------

**Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse**

Lucas <p style="text-align: center;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> Daiichi Sankyo Company, Inc. <p style="text-align: center;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG10550221</u>  NOTICE OF HEARING
---	--

To each party or to the attorney(s) of record for each party herein:  
 Notice is hereby given that the above-entitled action has been set for:

Complex Determination Hearing  
 Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

**Complex Determination Hearing:**  
 DATE: 01/20/2011 TIME: 02:00 PM DEPARTMENT: 20  
 LOCATION: Administration Building, Fourth Floor  
 1221 Oak Street, Oakland

**Case Management Conference:**  
 DATE: 02/17/2011 TIME: 02:00 PM DEPARTMENT: 20  
 LOCATION: Administration Building, Fourth Floor  
 1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 20 issues tentative rulings on DomainWeb ([www.alameda.courts.ca.gov/domainweb](http://www.alameda.courts.ca.gov/domainweb)). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6936. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 20.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by emailing them to the following address:

[EDelivery@alameda.courts.ca.gov](mailto:EDelivery@alameda.courts.ca.gov). No fee is charged for this service. For further information,

EXHIBIT 1

go to **Direct Calendar Departments** at <http://apps.alameda.courts.ca.gov/domainweb>.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 20.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 20 by e-mail at [Dept.20@alameda.courts.ca.gov](mailto:Dept.20@alameda.courts.ca.gov) or by phone at (510) 267-6936.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 12/09/2010

Executive Officer / Clerk of the Superior Court

By

*Philippa Longohan*

Deputy Clerk

---

**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by scaling and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 12/09/2010.

By

*Philippa Longohan*

Deputy Clerk

1 **PROOF OF SERVICE**  
2 **[CCP 1013(a)(3)]**

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a  
5 party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California  
6 91436.

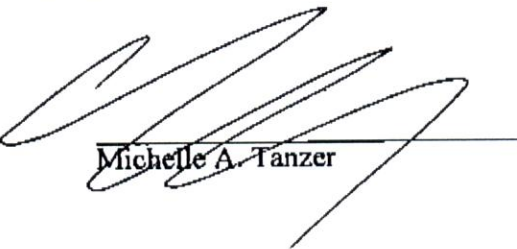
7 On January 10, 2011, I served all interested parties in this action the following documents described as  
8 **NOTICE OF HEARINGS** by placing a true copy thereof enclosed in a sealed envelope addressed as  
9 follows:

10 Daiichi Sankyo, Inc.  
11 Two Hilton Court  
12 Parsippany, New Jersey 07054

13 **[XX](BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing  
14 correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same  
15 day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on  
16 motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is  
17 more than one day after date of deposit for mailing in affidavit.

18 **[XX](STATE)** I declare under penalty of perjury under the laws of the State of California that the above is  
19 true and correct.

20 Executed on January 10, 2011, at Encino, California.

21   
22 Michelle A. Tanzer  
23  
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Kingsley & Kingsley, APC  
Attn: Kingsley, George R.  
16133 Ventura Blvd.  
Suite 1200  
Encino, CA 91436

---

**Superior Court of California, County of Alameda**  
**Rene C. Davidson Alameda County Courthouse**

---

Lucas

Plaintiff/Petitioner(s)

VS.

Daiichi Sankyo Company, Inc.

Defendant/Respondent(s)

(Abbreviated Title)

No. RG10550221

Application Re: Amend Complaint  
Granted

IT IS ORDERED that the Plaintiff's Application Re: Amend Complaint is granted.

Dated: 01/14/2011

 facsimile

---

Judge Robert B. Freedman

---

Kingsley & Kingsley, APC  
Attn: Kingsley, George R.  
16133 Ventura Blvd.  
Suite 1200  
Encino, CA 91436

---

**Superior Court of California, County of Alameda**  
**Rene C. Davidson Alameda County Courthouse**

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Lucas

Plaintiff/Petitioner(s)

VS.

Daiichi Sankyo Company, Inc.

Defendant/Respondent(s)  
(Abbreviated Title)

No. RG10550221

Application Re: Amend Complaint  
Granted

IT IS ORDERED that the Plaintiff's Application Re: Amend Complaint is granted.

Dated: 01/14/2011

 facsimile

---

Judge Robert B. Freedman

---

1 **KINGSLEY & KINGSLEY, APC**  
**GEORGE R. KINGSLEY, ESQ. SBN-38022**  
2 *gkingsley@kingsleykingsley.com*  
**ERIC B. KINGSLEY, ESQ. SBN-185123**  
3 *eric@kingsleykingsley.com*  
**LIANE L. KATZENSTEIN, ESQ. SBN-259230**  
4 *lkatzenstein@kingsleykingsley.com*  
**16133 VENTURA BOULEVARD, SUITE 1200**  
5 **ENCINO, CA 91436**  
**(818) 990-8300, FAX (818) 990-2903**

6  
7 **Attorneys for Plaintiff**

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF ALAMEDA**

12	DONOVAN LUCAS, on behalf of himself )	CASE NO.: RG10550221
	and others similarly situated, )	
13	)	<b>NOTICE OF HEARINGS</b>
	Plaintiff, )	
14	)	Complex Determination Hearing:
	v. )	Date: January 20, 2011
15	)	Time: 2:00 p.m.
	DAIICHI SANKYO COMPANY, INC.; )	Dept.: 20
16	and DOES 1 to 50, Inclusive, )	
	)	Case Management Conference:
17	Defendants. )	Date: February 17, 2011
	)	Time: 2:00 p.m.
18	)	Dept.: 20

19  
20 **PLEASE TAKE NOTICE** that on December 9, 2010, the court set a Complex Determination  
21 Hearing for January 20, 2011, at 2:00 p.m., in Department 20 of the above-entitled court, located at 1221  
22 Oak Street, Fourth Floor, Oakland, CA, Administration Building.

23 **PLEASE TAKE FURTHER NOTICE** that on December 9, 2010, the court set a Case Management  
24 Conference for February 17, 2011, at 2:00 p.m., in Department 20 of the above-entitled court, located at  
25 1221 Oak Street, Fourth Floor, Oakland, CA, Administration Building.


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Plaintiff was ordered to give notice. Attached hereto as Exhibit "1" is a copy of the court's notice.

DATED: January 10, 2011

KINGSLEY & KINGSLEY, APC

By:   
ERIC B. KINGSLEY  
Attorney for Plaintiff

<p>           Kingsley &amp; Kingsley, APC            Attn: Kingsley, George R.            16133 Ventura Blvd.            Suite 1200            Encino, CA 91436         </p>	<p>           Daiichi Sankyo Company, Inc.         </p>
---	---

---

**Superior Court of California, County of Alameda**  
**Rene C. Davidson Alameda County Courthouse**

---

<p>Lucas</p> <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> <p>Daiichi Sankyo Company, Inc.</p> <p style="text-align: right;">Defendant/Respondent(s)</p> <p style="text-align: center;">(Abbreviated Title)</p>	<p>No. <u>RG10550221</u></p> <p style="text-align: center;">NOTICE OF HEARING</p>
--	---

To each party or to the attorney(s) of record for each party herein:  
 Notice is hereby given that the above-entitled action has been set for:

**Complex Determination Hearing**  
**Case Management Conference**

You are hereby notified to appear at the following Court location on the date and time noted below:

**Complex Determination Hearing:**  
 DATE: 01/20/2011 TIME: 02:00 PM DEPARTMENT: 20  
 LOCATION: Administration Building, Fourth Floor  
 1221 Oak Street, Oakland

**Case Management Conference:**  
 DATE: 02/17/2011 TIME: 02:00 PM DEPARTMENT: 20  
 LOCATION: Administration Building, Fourth Floor  
 1221 Oak Street, Oakland

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Department 20 issues tentative rulings on DomainWeb ([www.alameda.courts.ca.gov/domainweb](http://www.alameda.courts.ca.gov/domainweb)). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6936. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 20.

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Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by emailing them to the following address:

**EDelivery@alameda.courts.ca.gov**. No fee is charged for this service. For further information,



go to Direct Calendar Departments at <http://apps.alameda.courts.ca.gov/domainweb>.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 20.

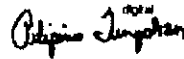
If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 20 by e-mail at [Dept.20@alameda.courts.ca.gov](mailto:Dept.20@alameda.courts.ca.gov) or by phone at (510) 267-6936.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 12/09/2010

Executive Officer / Clerk of the Superior Court

By



Deputy Clerk

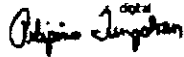
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**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 12/09/2010.

By



Deputy Clerk

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**PROOF OF SERVICE**  
**[CCP 1013(a)(3)]**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

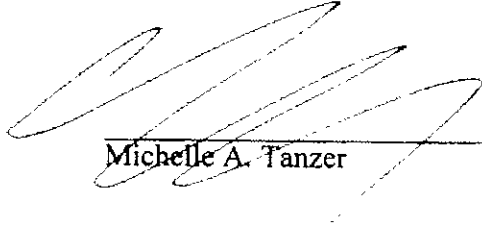
On January 10, 2011, I served all interested parties in this action the following documents described as **NOTICE OF HEARINGS** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Daiichi Sankyo, Inc.  
Two Hilton Court  
Parsippany, New Jersey 07054

(BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 10, 2011, at Encino, California.

  
Michelle A. Tanzer

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**PROOF OF SERVICE**

Lucas v. Daiichi Sankyo, Inc.  
United States District Court, Northern District of California Case No. \_\_\_\_\_

I am a resident of the State of California, County of Orange; I am over the age of eighteen years and not a party to the within action; my business address is 5 Park Plaza, Suite 1750, Irvine, California 92614.

On February 18, 2011, I served on the interested parties in this action the within document(s) entitled:

**DEFENDANT DAIICHI SANKYO, INC.'S NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

- BY FAX:** by transmitting via electronic facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.; I also caused the fax machine to print such record(s) of the transmission.
- BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY OVERNIGHT MAIL:** By **FEDERAL EXPRESS**, following ordinary business practices for collection and processing of correspondence with said overnight mail service, and said envelope(s) will be deposited with said overnight mail service on said date in the ordinary course of business.
- BY PERSONAL SERVICE:** I delivered to an authorized courier or driver authorized by Orange County Corporate Courier, Inc. to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed with the court upon request.
- BY ELECTRONIC SERVICE:** the parties listed below were served electronically with the document(s) listed above by e-mailed PDF files on February 18, 2011. The transmission was reported as complete and without error. My electronic notification address is 5 Park Plaza, Suite 1750, Irvine, California 92614. My e-mail address is [dghani@morganlewis.com](mailto:dghani@morganlewis.com).

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**BY E-FILE:** I caused such documents to be transmitted by e-file with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

George R. Kingsley, Esq. Eric B. Kingsley, Esq. Liane L. Katzenstein, Esq. Kingsley & Kingsley, APC 16133 Ventura Blvd., Suite 1200 Encino, CA 91436 Telephone: 818.990-8300 Facsimile: 818.990.2903 <a href="mailto:gkingsley@kingsleykingsley.com">gkingsley@kingsleykingsley.com</a> <a href="mailto:eric@kingsleykingsley.com">eric@kingsleykingsley.com</a> <a href="mailto:lkatzenstein@kingsleykingsley.com">lkatzenstein@kingsleykingsley.com</a>	<i>Attorneys for Plaintiffs</i>
Charles Joseph, Esq. Joseph & Herzfeld LLP 757 Third Avenue, 24th Floor New York, NY 10017 Telephone: 212.688.5640 Facsimile: 212.688.2548 <a href="mailto:charles@JHLLP.com">charles@JHLLP.com</a>	

**STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

**FEDERAL:** I declare that I am employed in the office of a member of the Bar of this Court at whose direction this service was made.

Executed on February 18, 2011, at Irvine, California.

  
 \_\_\_\_\_  
 Diane Ghani