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9 Attorneys for Defendants,
10 KAZ USA, INC. *erroneously sued and served as*
11 KAZ, USA, INC. a corporation and KAZ INCORPORATED, a corporation

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE BRANCH

14 KIM MCGEORGE, individually,
15 Plaintiff,

CASE NO.: **5:15-cv-02271-BLF**
(Monterey County Superior Court Case
No.: M131630)

16 v.

**STIPULATION STRIKING PORTIONS
OF PLAINTIFF’S COMPLAINT;
ORDER**

17 KAZ, USA INCORPORATED, a
18 corporation, KAZ INCORPORATED,
19 a corporation, and DOES 1 through 50,
20 inclusive,

Hon. Beth Labson Freeman
U.S. District Judge

21 Defendants.

22 **IT IS HEREBY STIPULATED** by and between Plaintiff KIM MCGEORGE
23 (“Plaintiff”) and Defendant KAZ USA, INC. (“Defendant” or “KAZ”), by and through
24 their counsel of record, as follows:

25 1. Plaintiff filed her Complaint on April 6, 2015 in the Superior Court for
26 the County of Monterey. It states causes of action for Negligence, Strict Products
27 Liability, Breach of Implied Warranty, and Breach of Express Warranty.

28 2. On May 20, 2015, Defendant KAZ removed the case from the Superior
Court of the State of California for the County of Monterey, to the United States
District Court, Northern District of California pursuant to 28 U.S.C. Sections 1332 and
1441(b) on grounds of diversity jurisdiction.

1 3. On May 29, 2015, Defendant KAZ filed its Motion to Strike Portions of
2 Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6). Specifically, Defendant
3 challenged the legal sufficiency of Plaintiff's punitive damage allegations in the
4 Complaint.

5 4. The parties hereby agree to strike the following portions of Plaintiff KIM
6 MCGEORGE's Complaint, without prejudice, pursuant to Federal Rule of Civil
7 Procedure 12(b)(6):

8 Paragraph 32 on pages 6-7 in its entirety, which reads as follows:

9 "32. Plaintiff is informed and believes, and thereon alleges, that Defendants
10 KAZ and DOES 1 through 50, inclusive, and each of them, acted with "malice" in that
11 they engaged in despicable conduct in conscious disregard of the rights, safety and
12 welfare of the Plaintiff, thereby entitling the Plaintiff to an award of punitive damages
13 pursuant to California Civil Code § 3294."

14 Paragraph 33 on page 7 in its entirety, which reads as follows:

15 "33. Plaintiff is informed and believes, and thereon alleges, that Defendants
16 KAZ and DOES 1 through 50, inclusive, acted with "malice" by conduct that included,
17 but is not limited to, the following:

- 18 a. Intentionally failing to adequately test the HP 710 Softhead Pad, before
19 selling these items on the open market;
- 20 b. Having awareness of prior similar complaints and episodes involving burns
21 and despite these events continuing to sell the Subject Softhead Pad;
- 22 c. Continuing to sell the Subject Softhead Pad, without proper warnings, despite
23 knowing of its dangerous propensities and prior similar events;
- 24 e. Misleading customers, users and individuals with assurances that the Subject
25 Softhead Pad was actually safe and non-harmful to foreseeable users, despite
26 knowing that such items had had an unacceptably high propensity to cause
27 burn injuries such as those inflicted upon the Plaintiff herein, during
28 reasonably foreseeable use;

- 1 f. Designing, developing, engineering, manufacturing, fabricating,
2 assembling, distributing, marketing, advertising, warranting, promoting,
3 placing into the stream of commerce, selling, and/or providing the Subject
4 Softhead Pad, despite knowing the high likelihood of injury;
5 g. Purposefully understating the warnings on the Subject Softhead Pad to
6 customers, users and individuals in an effort to boost sales and put profits
7 over safety;
8 h. Receiving and/or learning of numerous customer reports of injuries resulting
9 from the use of these products prior to the sale of the Subject Softhead Pad.”

10 Paragraph 34 on pages 7-8 in its entirety, which reads as follows:

11 “34. Said acts and omissions were ratified by managerial employees of said
12 Defendants, and each of them, and were carried out with the consent of their officers,
13 directs, and/or managing agents whose identities are currently unknown but will be
14 identified when ascertained. Said conduct by these Defendants was oppressive,
15 despicable, highly reprehensible, and done in the conscious disregard for the rights
16 and safety of Plaintiff and, as such, warrants imposition of punitive damages against
17 said Defendants.”

18 Paragraph 42 on page 9 in its entirety, which reads as follows:

19 “42. Plaintiff is informed and believes, and thereon alleges, that Defendants
20 KAZ and DOES 1 through 50, inclusive, and each of them, acted with “malice” in that
21 they engaged in despicable conduct in conscious disregard of the rights, safety and
22 welfare of the Plaintiff, thereby entitling the Plaintiff to an award of punitive damages
23 pursuant to California Civil Code § 3294.”

24 Paragraph 43 on pages 9-10 in its entirety, which reads as follows:

25 “43. Plaintiff is informed and believes, and thereon alleges, that Defendants
26 KAZ and DOES 1 through 50, inclusive, acted with “malice” by conduct that included,
27 but is not limited to, the following:

28 ///

- 1 a. Intentionally failing to adequately test the HP 710 Softhead Pad, before
- 2 selling these items on the open market;
- 3 b. Having awareness of prior similar complaints and episodes involving burns
- 4 and despite these events continuing to sell the Subject Softhead Pad;
- 5 c. Continuing to sell the Subject Softhead Pad, without proper warnings, despite
- 6 knowing of its dangerous propensities and prior similar events;
- 7 e. Misleading customers, users and individuals with assurances that the Subject
- 8 Softhead Pad was actually safe and non-harmful to foreseeable users, despite
- 9 knowing that such items had had an unacceptably high propensity to cause
- 10 burn injuries such as those inflicted upon the Plaintiff herein, during
- 11 reasonably foreseeable use;
- 12 f. Designing, developing, engineering, manufacturing, fabricating,
- 13 assembling, distributing, marketing, advertising, warranting, promoting,
- 14 placing into the stream of commerce, selling, and/or providing the Subject
- 15 Softhead Pad, despite knowing the high likelihood of injury;
- 16 g. Purposefully understating the warnings on the Subject Softhead Pad to
- 17 customers, users and individuals in an effort to boost sales and put profits
- 18 over safety;
- 19 h. Receiving and/or learning of numerous customer reports of injuries resulting
- 20 from the use of these products prior to the sale of the Subject Softhead Pad.”

21 Paragraph 44 on page 10 in its entirety, which reads as follows:

22 “44. Said acts and omissions were ratified by managerial employees of said
23 Defendants, and each of them, and were carried out with the consent of their officers,
24 directs, and/or managing agents whose identities are currently unknown but will be
25 identified when ascertained. Said conduct by these Defendants was oppressive,
26 despicable, highly reprehensible, and done in the conscious disregard for the rights
27 and safety of Plaintiff and, as such, warrants imposition of punitive damages against
28 said Defendants.”

1 The prayer for punitive damages on pg. 12, line 28, which reads in pertinent
2 part:

3 4. For punitive damages, according to proof.

4 5. The parties hereby agree that Defendant KAZ withdraw its Motion to
5 Strike Portions of Plaintiff’s Complaint, including the hearing date on said motion on
6 August 27, 2015 at 9:00 a.m., before this Court in light of the above stipulation.
7 However, Plaintiff reserves her right to subsequently amend the pleadings if it is
8 later determined after conducting discovery that there is evidence to substantiate a
9 claim for exemplary damages.

10 6. WHEREFORE, based on the foregoing the parties hereby stipulate and
11 agree to stipulate to strike any and all of Plaintiff’s punitive damage allegations
12 without prejudice, in addition to Plaintiff’s prayer for punitive damages without
13 prejudice, from the operative Complaint.

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7. The parties stipulate and request that an Order be issued in accordance with this Stipulation.

Dated: August 20, 2015

THARPE & HOWELL, LLP

/s/ Paul V. Wayne

By: _____

PAUL V. WAYNE
BRIAN J. KIM
Attorneys for Defendant
KAZ USA, INC. *erroneously sued
and served as KAZ, USA INC. a
corporation and KAZ
INCORPORATED, a corporation*

Dated: August 19, 2015

PANISH, SHEA & BOYLE, LLP

/s/ Rahul Ravipudi

By: _____

RAHUL RAVIPUDI
ROBERT S. GLASSMAN
Attorneys for Plaintiff,
KIM MCGEORGE

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Date: _____



HON. BETH LABSON FREEMAN
U.S. DISTRICT COURT JUDGE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My business address is 15250 Ventura Boulevard, Ninth Floor, Sherman Oaks, CA 91403.
3. I served copies of the following documents (specify the exact title of each document served):
STIPULATION STRIKING PORTIONS OF PLAINTIFF'S COMPLAINT; ORDER
4. I served the documents listed above in item 3 on the following persons at the addresses listed:

Rahul Ravipudi, Esq. Robert S. Glassman PANISH, SHEA & BOYLE, LLP 11111 Santa Monica Blvd., Suite 700 Los Angeles, CA 90025 (310) 477-1700; (310) 477-1699 – FAX ravipudi@psblaw.com	Attorneys for Plaintiff, KIM MCGEORGE
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5. a. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 4 and (*specify one*):
 - (1) ___ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid on the date shown below, or
 - (2) placed the envelope for collection and mailing on the date shown below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Sherman Oaks, California.

- b. ___ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents on the date shown below to the fax numbers of the persons listed in item 4. No error was reported by the fax machine that I used. A copy of the fax transmission, which I printed out, is attached to my file copy.

6. I served the documents by the means described in item 5 on (*date*): *See below*

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

8/20/15 MICHELE SCHEE

 DATE (TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

I:\26000-000\26625\Pleadings\FEDERAL\Stip to Strike Portions of Plf's Complaint.docx

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