

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

APPLE MARKETING COMPANY,
a Michigan corporation,

Plaintiff,

Case No. _____

Hon. _____

-vs-

LINZER PRODUCTS CORPORATION,
a New York corporation,

Defendant.

Removed from Michigan Circuit
Court for the County of Oakland
Case No. 11-116069-CK
Hon. Wendy L. Potts

Zachary B. Mack (P62742)
SALES REPRESENTATIVE LAW CENTER, PLLC
1370 N. Oakland Boulevard, Suite 110
Waterford, MI 48327
(248) 904-0935
Attorneys for Plaintiff

Frederick A. Acomb (P44523)
Paul D. Hudson (P69844)
MILLER CANFIELD PADDOCK AND STONE, PLC
150 W. Jefferson, Suite 2500
Detroit, MI 48226
(313) 963-6420
acomb@millercanfield.com
hudson@millercanfield.com
Attorneys for Defendant

NOTICE OF REMOVAL

**TO: CHIEF JUDGE AND JUDGES OF
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

ON NOTICE TO:

Clerk
Oakland County Circuit Court
1200 North Telegraph Road
Pontiac, Michigan 48341-0404

Zachary B. Mack (P62742)
SALES REPRESENTATIVE LAW CENTER, PLLC
1370 N. Oakland Boulevard, Suite 110
Waterford, MI 48327

HONORABLE JUDGES:

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Linzer Products Corporation gives notice of removal of this action, Oakland County Circuit Court Case No. 11-116069-CK, to the United States District Court for the Eastern District of Michigan, Southern Division. As grounds for removal Linzer states as follows:

TIMELINESS OF REMOVAL

1. On January 6, 2011, Plaintiff Apple Marketing Company filed a civil action against Linzer in the Oakland County Circuit Court, entitled *Apple Marketing Company v. Linzer Products Corporation*, Case No. 11-116069-CK.

2. Due to the bare and conclusory allegations in Plaintiff's complaint, Linzer could not ascertain whether the case stated was removable. Linzer filed a motion for a more definite statement of the claims on February 25, 2011. The court granted the motion on March 9, 2011.

3. On March 15, 2011, Plaintiff filed a First Amended Complaint.

4. Under 28 U.S.C. § 1446(b), it could "first be ascertained that the case is one which is or has become removable" on March 15, 2011, when Plaintiff filed the First Amended Complaint.

5. Accordingly, this Notice of Removal has been timely filed under 28 U.S.C. § 1446(b).

6. Copies of all process, pleadings, and orders served upon Linzer to date are collectively attached hereto as **Exhibit A**.

BASIS FOR REMOVAL

7. This cause is a civil action within the meaning of the Acts of Congress relating to removal of causes.

8. Plaintiff alleges in its First Amended Complaint that it is a Michigan corporation with its principal place of business in Oakland County, Michigan. (Ex. A, First Am. Compl. ¶ 1.)

9. Plaintiff also alleges that Linzer is a New York corporation with its principal place of business in New York. (*Id.* ¶ 2.) These allegations are correct.

10. There is therefore complete diversity of citizenship between Plaintiff and Defendant under 28 U.S.C. § 1332(a).

11. Plaintiff is seeking the recovery of commissions allegedly owed for the life of certain products and for all past and future sales to several named and unnamed customers Plaintiff allegedly procured for Linzer. (*See, e.g.*, First Am. Compl. ¶ 23 (“Plaintiff had procured additional accounts, orders and/or sales, including but not limited to Boswick-Braun Co., The Andersons, Self Serve Lumber, Ace Stores, Hardware Distributors, and Aco Hardware, which, upon information and belief, has resulted in sales of Defendant’s products beyond June 30, 2010 which Plaintiff is owed its rightfully earned commissions”); ¶ 26 (“Plaintiff has incurred substantial damages and will continue to suffer such damages in the future”); ¶ 27 (“Such damages include, but are not necessarily limited to, the agreed upon applicable commission rate on all sales of Defendant’s products that were made as a result of Plaintiff’s efforts prior to the unilateral termination of the parties’ agreement by Defendant”); ¶ 31 (“Under the Procuring Cause Doctrine, Plaintiff is entitled to a commission on all accounts, sales and orders of Defendant’s products procured as a result of Plaintiff’s efforts, even if the orders and sales take place after the termination of the parties’ agreement”); ¶ 33 (“The sales and accounts procured by Plaintiff have and will likely continue to do substantial business with and for Defendant, based upon Plaintiff’s efforts prior to the unilateral termination of the parties’ agreement by

Defendant’’)). Based on Plaintiff’s allegations, the amount in controversy exceeds \$75,000.00, exclusive of interests and costs.

12. This action is therefore properly removable under 28 U.S.C. § 1441 because the this Court has original jurisdiction under 28 U.S.C. § 1332(a), which provides: “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States[.]”

13. Plaintiff brought this action in the Oakland County Circuit Court, which is located in a county embraced by the United States judicial district for the Eastern District of Michigan, Southern Division. Thus, this action is properly removed to this Court under 28 U.S.C. § 1441(a).

14. Linzer has not previously sought similar relief. Upon information and belief, Linzer is the only party defendant to this action.

15. Pursuant to 28 U.S.C. § 1446, copies of this notice of removal will this day be filed in the Oakland County Circuit Court and served by first class mail upon counsel for Plaintiff.

WHEREFORE, Linzer respectfully requests that this Honorable Court take jurisdiction of this action and issue all necessary orders and process to remove the action from the Oakland County Circuit Court to the United States District Court for the Eastern District of Michigan.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, PLC

By: s/ Paul D. Hudson
Frederick A. Acomb (P44523)
Paul D. Hudson (P69844)
Attorneys for Defendant
150 W. Jefferson, Ste. 2500
Detroit, MI 48226
(313) 963-6420
acomb@millercanfield.com
hudson@millercanfield.com

March 25, 2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 25, 2011 I electronically filed a copy of this Notice of Removal via the Court's ECF system, and served a copy via first-class United States Mail, postage prepaid, on:

Zachary B. Mack, Esq.
SALES REPRESENTATIVE LAW CENTER, PLLC
1370 N. Oakland Boulevard, Suite 110
Waterford, MI 48327

I FURTHER CERTIFY that on March 25, 2011 I served a copy of this Notice of Removal via first-class United States mail, postage prepaid on:

Clerk
Oakland County Circuit Court
1200 North Telegraph Road
Pontiac, Michigan 48341-0404

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, PLC

By: s/ Paul D. Hudson
Frederick A. Acomb (P44523)
Paul D. Hudson (P69844)
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March 25, 2011

INDEX OF EXHIBIT

EXHIBIT A Register of State Court Action and copies of Pleadings

EXHIBIT A



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Case Number 2011-116069-CK APPLE MARKETING CO vs. LINZER PRODUCTS CORP
Judge Name WENDY L. POTTS
Case Filed 01/06/2011

Case Disposed

Case E-filed YES

Date	Code	Description
01/06/2011	C	COMPLAINT FILED /JURY DEMAND
01/06/2011	SI	SUMMONS ISSUED
02/25/2011	MPR	MOTION PRAECIPE FILED FOR 03092011 JUDGE 05
02/25/2011	APP	APPEARANCE FILED /POS/DFT
02/25/2011	MTN	MOTION FILED FOR MORE DEFINITE STATMT/NOH/POS/DFT
03/02/2011	SUM	P/S ON SUMMONS FILED 01/14/11
03/04/2011	RES	RESPONSE FILED DFT MTN MORE DEF STMT/POS/PLF
03/09/2011	DM	DEFENSE MOTION MORE DEFINITE STATEMENT -G-
03/09/2011	ORD	ORDER FILED GRANT MTN DEFINITE STATEMENT
03/15/2011	AMC	AMENDED COMPLAINT FILED 1ST/JD/POS/PLF
03/19/2011	SC2	04/06/2011 SHOW CAUSE: FAILURE TO REQUEST ENTRY OF DEFAULT.
03/19/2011	SOP	SCHEDULING ORDER WRITTEN
03/19/2011		07/01/2011 EXPERT DATE.
03/19/2011		09/01/2011 CASE EVALUATION DATE.
03/19/2011		07/05/2011 WITNESS DATE.
03/19/2011		10/03/2011 MOTION DATE.
03/19/2011		08/04/2011 DISCOVERY DATE.
03/19/2011		11/21/2011 TRIAL DATE.
03/19/2011	APR	DATE SET FOR TRIAL ON 11212011 08 30 AM
03/22/2011	OSC	ORDER SHOW CAUSE FILED
03/22/2011	SO	SCHEDULING ORDER FILED

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OAKLAND COUNTY 11-116069-CK
JUDGE WENDY L. POTTS
APPLE MARKET v LINZER PRODUCT

STATE OF MICHIGAN
IN THE OAKLAND COUNTY CIRCUIT COURT

APPLE MARKETING COMPANY,
a Michigan corporation,

Plaintiff,

Case No. -CK
Hon.

v.

LINZER PRODUCTS CORPORATION,
a New York corporation,

Defendant.

RECEIVED
2011 JUN -6 AM 10:39
DEPUTY CLERK

Zachary B. Mack (P62742)
Sales Representative Law Center, PLLC
Attorneys for Plaintiff
1370 N. Oakland Boulevard, Suite 110
Waterford, MI 48327
Tele: (248) 904-0935
Fax: (248) 461-6990

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Apple Marketing Company, by and through its attorneys, Sales Representative Law Center, PLLC, and for its Complaint states as follows:

General Allegations

1. Plaintiff, Apple Marketing Company, is a Michigan corporation with its principal place of business located in Commerce Township, in the county of Oakland, state of Michigan.
2. Defendant, Linzer Products Corp., is a New York corporation with its principal place of business located in New York, and which sells its products throughout the

country, including at all times pertinent hereto in the state of Michigan, and in the county of Oakland.

3. The amount in controversy in this matter, exclusive of interest, costs and attorney fees, exceeds \$25,000.00.

Statement of Claim

4. Plaintiff is a manufacturers' sales representative agency.

5. Defendant is a manufacturer of painting products, among other things, and which sells its products to retailers throughout the country via the services of sales representatives, such as Plaintiff.

6. Upon information and belief, Defendant is the corporate parent to American Brush Company, an Oregon corporation, which also manufactures various brushes for commercial purposes, and which also utilizes the services of sales representatives such as Plaintiff.

7. In November of 2007, Plaintiff entered into an agreement with Sam Solomon Associates, Inc. ("Solomon"), a Michigan corporation and current/former sales representative agency, whereby Solomon assigned and transferred to Plaintiff all of their rights, title and interest to represent certain manufacturer accounts, including Defendant.

8. Prior to the agreement between Plaintiff and Solomon, Plaintiff met with a representative of Defendant, Larry Finnegan, upon information and belief, Defendant's current/former National Sales Manager, and informed Defendant of the agreement.

9. Defendant, through its representative, Larry Finnegan, agreed to the assignment, thereby appointing Plaintiff as Defendant's sales representative.

10. Accordingly, and in or about November of 2007, Plaintiff began representing Defendant as its manufacturer's sales representatives, including to various accounts located throughout the Midwest, pursuant to a verbal agreement.

11. Plaintiff responsibilities pursuant to the parties' agreement included, among other things, the procurement of accounts and/or sales of Defendant's products, as well as the products of American Brush Company.

12. In consideration of Plaintiff's efforts on behalf of Defendant, as well as on behalf of American Brush Company, Defendant was to pay Plaintiff a varying commission percentage depending upon the particular account or sale of Defendant's products.

13. Defendant began paying Plaintiff its earned commissions on or about December of 2007.

14. Pursuant to the parties' agreement, commissions were to be paid to Plaintiff on a monthly basis.

15. Defendant unilaterally terminated the parties' agreement on or about May 28, 2010.

COUNT I – BREACH OF CONTRACT FOR FAILURE TO PAY COMMISSIONS

16. Plaintiff re-alleges the above paragraphs.

17. Defendant breached its agreement with Plaintiff by failing to compensate Plaintiff, in the form of the agreed upon commission, on all sales and accounts, per the parties' agreement.

18. As a result of Defendant's breach of the parties' agreement, Plaintiff has incurred substantial damages and will continue to suffer such damages in the future.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of \$25,000.00, or whatever different amount to which Plaintiff is found to be entitled, together with costs, interest and attorney fees so wrongfully incurred.

COUNT II – PROCURING CAUSE DOCTRINE

19. Plaintiff re-alleges the above paragraphs.
20. In the alternative, if no express agreement is found to have existed between Plaintiff and Defendant as to commissions to which Plaintiff would be entitled to in the event of termination, Plaintiff's entitlement to commissions is governed by the Procuring Cause Doctrine.
21. Under the Procuring Cause Doctrine, Plaintiff is entitled to a commission on all accounts, sales and orders of Defendant's products procured as a result of Plaintiff's efforts, even if the orders and sales take place after the termination of the parties' agreement.
22. Plaintiff successfully procured sales of Defendant's products, and/or accounts for Defendant, which Defendant has continued to do business with after Plaintiff's termination.
23. The sales and accounts procured by Plaintiff have and will likely continue to do substantial business with and for Defendant.
24. Pursuant to the Procuring Cause Doctrine, Plaintiff is entitled to a commission on all Defendant's accounts and/or sales procured as a result of Plaintiff's efforts.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of \$25,000.00, or whatever different amount to which Plaintiff is found to be entitled, together with costs, interest and attorney fees so wrongfully incurred. Plaintiff

also demands judgment against Defendant declaring that Defendant shall pay Plaintiff a commission on all accounts and sales of Defendant's products for which Plaintiff was the procuring cause.

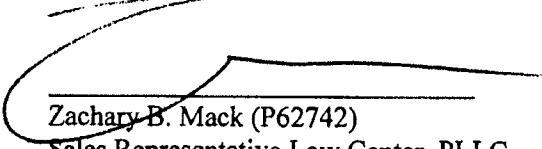
COUNT III – UNJUST ENRICHMENT

25. Plaintiff re-alleges the above paragraphs.
26. Should a trier of fact determine that the parties did not reach a meeting of the minds concerning the commissions due to Plaintiff, Plaintiff is entitled to the commissions claimed under the doctrine of unjust enrichment, since otherwise Defendant would reap the benefits of Plaintiff's services without proper compensation.

Jury Demand

Plaintiff hereby demands a jury trial of this matter.

Respectfully submitted,



Zachary B. Mack (P62742)
Sales Representative Law Center, PLLC
Attorneys for Plaintiff
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Waterford, MI 48327
Tele: (248) 904-0935
Fax: (248) 461-6990

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

APPLE MARKETING COMPANY,
a Michigan corporation,

Plaintiff

Case No. 11-116069-CK

v.

Hon. Wendy L. Potts

LINZER PRODUCTS CORPORATION,
a New York corporation,

Defendant

Zachary B. Mack (P62742)
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NOTICE OF APPEARANCE

TO Clerk of the Court

Zachary B. Mack, Esq.
Sales Representative Law Center, PLLC
1370 N. Oakland Boulevard, Suite 110
Waterford, MI 48327

PLEASE TAKE NOTICE THAT Paul D. Hudson of the law firm Miller, Canfield,
Paddock and Stone, PLC has this day entered an appearance as attorney of record for Defendant
Linzer Products Corporation in the above-entitled matter.

MILLER CANFIELD PADDOCK AND STONE, PLC

By: /s/ Paul D. Hudson
Paul D. Hudson (P69844)
Attorneys for defendant
150 W. Jefferson, Suite 2500
Detroit, MI 48226
(313) 963-6420
hudson@millercanfield.com

Dated: February 25, 2011

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2011, I electronically served and filed the Notice of Appearance via the WIZ-NET system with Oakland County Circuit Court. The Wiz-Net System shall serve the aforementioned documents upon the registered parties.

Also on February 25, 2011, I served the aforementioned document via First class, U.S. Mail to Zachary B. Mack, Esq., at Sales Representative Law Center, PLLC, located at 1370 N. Oakland Boulevard, Suite 110, Waterford, MI 48327. Said service was made by enclosing a true copy of the document in a pre-paid, correctly addressed envelope and depositing same in an official receptacle in the County of Wayne.

/s/ Paul D. Hudson
Paul D. Hudson (P69844)
Miller, Canfield, Paddock & Stone P.L.C.
150 West Jefferson Avenue, Suite 2500
Detroit, Michigan 48226
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hudson@millercanfield.com

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

APPLE MARKETING COMPANY,
a Michigan corporation,

Plaintiff

Case No. 11-116069-CK

v.

Hon. Wendy L. Potts

LINZER PRODUCTS CORPORATION,
a New York corporation,

Defendant

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**DEFENDANT’S MOTION FOR
MORE DEFINITE STATEMENT**

Pursuant to MCR 2.115(A), defendant Linzer Products Corporation moves for a more definite statement of the complaint filed by plaintiff Apple Marketing Company.

1. MCR 2.111(A)(1) mandates that each allegation in a complaint must be “clear, concise, and direct.” *See Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 627 (2008).

2. MCR 2.115(A) provides that if a complaint is so vague or ambiguous that it fails to comply with these rules, the defendant may move for a more definite statement. *See Hoffman v Auto Club Ins Ass’n*, 211 Mich App 55, 90 (1995).

3. Apple's complaint is not clear, concise, or direct, but rather is vague and ambiguous.

4. Hence Linzer seeks a more definite statement as follows:

COUNT I
BREACH OF CONTRACT FOR FAILURE TO PAY COMMISSIONS

5. Although Count I of the complaint alleges that Linzer breached a contract to pay commissions, Apple's complaint fails to disclose:

- a. The terms of the alleged contract
- b. How Linzer supposedly breached it
- c. What damages Linzer allegedly suffered as a result of that supposed breach.

6. First, with respect to the terms of the alleged contract, Apple's complaint merely alleges that Linzer "was to pay Plaintiff a varying commission percentage depending upon the particular account or sale of Defendant's products." (Complaint ¶ 12.)

7. The complaint fails to allege the following terms of the alleged contract:

- a. The commission rate or rates.
- b. What commission rates applied to what accounts.
- c. What commission rates applied to what sales.
- d. Whether Apple's responsibilities were limited to a particular geographic territory, and, if yes, then what that territory was.
- e. Which of Linzer's products Apple was supposed to be selling.

8. Second, with respect to the alleged breach of contract, Apple's complaint alleges that Linzer breached the contract "by failing to compensate Plaintiff, in the form of the agreed upon commission, on all sales and accounts, per the parties' agreement." (Complaint ¶ 17.)

9. The complaint fails to allege:

- a. The sales for which Linzer supposedly failed to compensate Apple.
- b. The customers for which Linzer allegedly failed to compensate Apple.
- c. The rate or rates of the alleged "agreed upon commission."

10. Third, with respect to Apple's alleged damages, the complaint alleges that as a result of the alleged breaches "Plaintiff has incurred substantial damages and will continue to suffer such damages in the future." (Complaint ¶ 18.)

11. The complaint fails to set forth:

- a. The amount of the alleged damages.
- b. The formula by which the amount of the alleged damages can be calculated.
- c. Why Apple supposedly is going to continue suffering damages in the future, the contractual basis for such future damages, and for how long those damages allegedly will continue.

COUNT II
PROCURING CAUSE DOCTRINE

12. In Count II Apple alleges that if the parties didn't have an express contract then Apple is entitled to commissions under the procuring cause doctrine. (Complaint ¶ 20.)

13. Apple alleges that under the procuring cause doctrine, "Plaintiff is entitled to a commission on all accounts, sales and orders of Defendant's products procured as a result of Plaintiff's efforts, even if the orders and sales take place after the termination of the parties' agreement." (Complaint ¶ 21.)

14. Apple has failed to set forth or identify any of the following:
- a. The sales Apple allegedly procured.
 - b. The orders Apple allegedly procured.
 - c. The accounts Apple allegedly procured.
 - d. The products for which Apple is seeking commissions.
 - e. The geographic territory as to which Apple is seeking commissions.
 - f. The commission rate or rates.
 - g. The formula by which a person can calculate the commissions Apple is seeking.

COUNT III
UNJUST ENRICHMENT

15. In Count III Apple alleges that "[s]hould a trier of fact determine that the parties did not reach a meeting of the minds concerning the commissions due to Plaintiff, Plaintiff is entitled to the commissions claimed under the doctrine of unjust enrichment,

since otherwise Defendant would reap the benefits of Plaintiff's services without proper compensation." (Complaint ¶ 26.)

16. Apple has failed to set forth or identify any of the following:
 - a. The sales, orders, accounts, products, and territory as to which Apple seeks commissions.
 - b. The commission rates.
 - c. The method by which a person can calculate the commissions Apple is seeking.
 - d. The amount by which Apple claims Linzer has been enriched, or a method by which that amount can be calculated.
 - e. The amount by which Apple claims Linzer has been unjustly enriched, or a method by which that amount can be calculated.

WHEREFORE, defendant Linzer Products Corporation seeks an order compelling plaintiff Apple Marketing Company to file an amended complaint containing a more definite statement of its claims, including clear, concise, and direct allegations of all of the following:

- a. The terms of the alleged contract, including:
 1. The commission rate or rates.
 2. What commission rates applied to what accounts.
 3. What commission rates applied to what sales.
 4. Whether Apple's responsibilities were limited to a particular geographic territory, and, if yes, then what that territory was.

5. Which of Linzer's products Apple was supposed to be selling.
- b. The details of Linzer's alleged breach, including:
 1. The sales for which Linzer supposedly failed to compensate Apple.
 2. The customers for which Linzer allegedly failed to compensate Apple.
 3. The rate or rates of the alleged "agreed upon commission."
 - c. The damages Apple has allegedly suffered, including:
 1. The amount of alleged damages.
 2. The formula by which the amount of the alleged damages can be calculated.
 3. The factual basis for why Apple supposedly is going to continue suffering damages in the future, the contractual basis for such future damages, and for how long those damages allegedly will continue.
 - d. The details of all sales for which Apple alleges it is entitled to commissions under the procuring cause doctrine, including:
 1. The sales Apple allegedly procured.
 2. The orders Apple allegedly procured.
 3. The accounts Apple allegedly procured.
 4. The products for which Apple is seeking commissions.

5. The geographic territory as to which Apple is seeking commissions.
 6. The commission rate or rates.
 7. The formula by which a person can calculate the commissions Apple is seeking.
- e. The factual basis for Apple's unjust enrichment claim, including:
1. The sales, orders, accounts, products, and territory as to which Apple seeks commissions.
 2. The commission rates.
 3. The method by which a person can calculate the commissions Apple is seeking.
 4. The amount by which Apple claims Linzer has been enriched, or a method by which that amount can be calculated.
 5. The amount by which Apple claims Linzer has been unjustly enriched, or a method by which that amount can be calculated.

MILLER CANFIELD PADDOCK AND STONE, PLC

By: /s/ Paul D. Hudson
Frederick A. Acomb (P44523)
Paul D. Hudson (P69844)
Attorneys for defendant
150 W. Jefferson, Suite 2500
Detroit, MI 48226
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Dated: February 25, 2011

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

APPLE MARKETING COMPANY,
a Michigan corporation,

Plaintiff

Case No. 11-116069-CK

v.

Hon. Wendy L. Potts

LINZER PRODUCTS CORPORATION,
a New York corporation,

Defendant

Zachary B. Mack (P62742)
Attorneys for plaintiff
SALES REPRESENTATIVE LAW CENTER, PLLC
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hudson@millercanfield.com

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendant's Motion for More Definite Statement will come on for hearing before Honorable Wendy L. Potts in the Oakland County Courthouse, 1200 North Telegraph Road, Pontiac, Michigan, on **Wednesday, March 9, 2011 at 8:30 a.m.** or as soon thereafter as it may be heard.

MILLER CANFIELD PADDOCK AND STONE, PLC

By: /s/ Paul D. Hudson
Frederick A. Acomb (P44523)
Paul D. Hudson (P69844)
Attorneys for defendant
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Dated: February 25, 2011



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TO BE FILED WITH THE CASE MANAGEMENT OFFICE BY 4:30 P.M. ON OR
BEFORE WEDNESDAY PRECEDING MOTION DAY
PRAECIPE FOR MOTION AND MISCELLANEOUS DOCKET

STATE OF MICHIGAN
The Circuit Court for the County of Oakland
1200 N. Telegraph Rd., Dept. 404, Pontiac, MI 48341-0404

Case Number : 2011-116069-CK
(YYYY-123456-XX)

Plaintiff APPLE MARKETING CC v. Defendant LINZER PRODUCTS CC

Judge: WENDY L. POTTS

Summary Disposition Motion:

Motion Date: Wednesday, 3/9/2011

Motion Title: Motion for More Definite Statement

YOUR MOTION WILL NOT BE SCHEDULED IF YOU DO NOT COMPLETE EITHER #1 OR #2 BELOW:

1. I hereby certify that I have made personal contact with Zachary B. Mack, Esq on 2/25/2011, requesting concurrence in the relief sought with this Motion and that concurrence has been denied.

OR

2. I have made reasonable and diligent attempts to contact counsel requesting concurrence in the relief sought with this motion on _____.

Is this a re-praecipe?
 No Yes
Notice: If this motion has been praecipied with no one appearing, the judge has an option of sanctioning parties or dismissing your motion.

Attorney: Paul D. Hudson, Esq. Phone: (313)963-6420

Moving Party: Linzer Products Corp.

Date: 2/25/2011 11:25:49 AM

Received for Filing Oakland County Clerk 2011 FEB 25 AM 11:30

Your electronic signature certifies that the above information is correct.

C-10 (11-07)46569

Local Rule 2.119

Received for Filing Oakland County Clerk 2011 FEB 25 AM 11:30



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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

APPLE MARKETING COMPANY,
a Michigan corporation,

Plaintiff

Case No. 11-116069-CK

v.

Hon. Wendy L. Potts

LINZER PRODUCTS CORPORATION,
a New York corporation,

Defendant

Zachary B. Mack (P62742)
Attorneys for plaintiff
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acomb@millercanfield.com
hudson@millercanfield.com

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2011, I electronically served and filed the Motion for More Definite Statement; Praecipe; Notice of Hearing; and this Proof of Service via the WIZ-NET system with Oakland County Circuit Court. The Wiz-Net System shall serve the aforementioned documents upon the registered parties.

Also on February 25, 2011, I served the aforementioned documents via First Class, U.S. Mail to Zachary B. Mack, Esq., at Sales Representative Law Center, PLLC, located at 1370 N. Oakland Boulevard, Suite 110, Waterford, MI 48327. Said service was made by enclosing true copies of the documents in a pre-paid, correctly addressed envelope and depositing same in an official receptacle in the County of Wayne.

/s/ Paul D. Hudson

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STATE OF MICHIGAN
IN THE OAKLAND COUNTY CIRCUIT COURT

APPLE MARKETING COMPANY,
a Michigan corporation,

Plaintiff,

Case No. 11-116096-CK
Hon. Wendy L. Potts

v.

LINZER PRODUCTS CORPORATION,
a New York corporation,

Defendant.

Zachary B. Mack (P62742)
Sales Representative Law Center, PLLC
Attorneys for Plaintiff
1370 N. Oakland Boulevard, Suite 110
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Fax: (248) 461-6990

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**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION FOR MORE DEFINITE STATEMENT**

Preliminary Statement

This is a straight-forward breach of an oral agreement for commissions due in exchange for sales representative services, with alternative claims under the procuring cause doctrine and unjust enrichment. Plaintiff's complaint satisfies all applicable rules and case law concerning proper pleadings.

What Defendant is requesting this Court to do is re-write the pleading requirements in Michigan, without any legal support, citation or reference to applicable case law or authority.

Based upon Defendant's motion, and conversations between the attorneys for the parties, it is clear this is nothing more than a backdoor attempt to improperly seek discovery in advance of having to respond to Plaintiff's interrogatories and document requests that were served in conjunction with the summons and complaint over a month and a half ago, and which are currently overdue.

Accordingly, Defendant's motion should be DENIED, and Defendant should simply answer the complaint as it would in any other case, and serve appropriate discovery requests on Plaintiff to satisfy its inquiry regarding any additional details of Plaintiff's claims that it wishes to know.

Response

1. Plaintiff admits that MCR 2.111(A) states that the allegations of a complaint need to be "clear, concise, and direct." However, Plaintiff denies that the allegations of its complaint are not so stated.

Aside from quoting a snippet of MCR 2.111, Defendant's citation to *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622 (2008) is completely misplaced. The complaint at issue in *Woods* was a single spaced, 295-page rambling by a pro per plaintiff alleging intentional infliction of emotional distress, libel, and various civil rights violations. *Woods*, 277 Mich App at 230. More importantly, it was not for a breach of contract, or any of the alternative claims that Plaintiff seeks recovery under here.

Indeed, Defendant provides **absolutely no** legal authority in its motion which suggests Plaintiff has not stated a valid claim for breach of contract, or alternative claims under the procuring cause doctrine or unjust enrichment.

Defendant's lack of authority is not surprising, as to plead a valid claim for breach of contract in Michigan, for instance, the plaintiff need only establish the elements of a valid contract, which are: 1) parties competent to contract; 2) a proper subject matter; 3) legal consideration; 4) mutuality of agreement; and 5) mutuality of obligation. *In re Brown*, 342 F3d 620, 628 (6th Cir. 2003), *citing*, *Pawlak v Redox Corp.*, 182 Mich App 758; 453 NW2d 304, 307 (1990); *Thomas v Leja*, 187 Mich App 418; 468 NW2d 58, 60 (1990).

Thereafter, in order to *recover*, a plaintiff must prove the "terms of the contract, that the defendant breached the terms of the contract, and that the breached [sic] caused the plaintiff's injury." *Id.* However, this is **not** a plaintiff's burden at the pleading stage.

In short, what Defendant is asking the Court to do through its motion is to *prove* its case in its complaint, above and beyond the simple pleading requirements.

2. Plaintiff denies that Defendant has cited to relevant case law in this paragraph. Plaintiff does admit that MCR 2.115(A) states that "[i]f a pleading is so vague or ambiguous that it fails to comply with the requirements of these rules, the opposite party may move for a more definite statement before filing a responsive pleading." However, Plaintiff's complaint **does** comply with the requirements of MCR 2.111(B)(1), which are simply to set forth a "statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary to reasonably inform the adverse party of the **nature of the claims** the adverse party is called on to defend." (emphasis added).

3. Denied.

4. No response required.

5. Denied. Plaintiff denies that it must state each and every term of the alleged contract in order to satisfy the pleading requirements for a proper breach of contract complaint. (*See*, response to paragraph 1 and 2 above).

Moreover, and contrary to Defendant's assertion, Plaintiff's complaint already states that Defendant breached the agreement "by failing to compensate Plaintiff, in the form of the agreed upon commission, on all sales and accounts, per the parties' agreement." (Plaintiff's complaint, ¶ 17).

Furthermore, because Plaintiff's damages include sales that occurred after the parties' contract was terminated by Defendant, it would be impossible, without discovery, to state each and every element of damage at this junction, as Defendant stopped providing sales information to Plaintiff following termination of the agreement. As such, this is a rather ridiculous requirement that Defendant seeks - again, which is probably why it has not provided any authority to require Plaintiff to do so.

6. Denied. Plaintiff's complaint also alleges Plaintiff's responsibilities under the parties' agreement, including "among other things, the procurement of accounts and/or sales of Defendant's products, as well as the products of American Brush Company." (Plaintiff's complaint, ¶ 11).

7. Plaintiff absolutely denies that the information requested by Defendant is required to be pled in the complaint. Again, this is best emphasized by the lack of **any** authority cited by Defendant which require Plaintiff to do so in its initial pleading. If Defendant is not already aware of this information, they may seek it through appropriate discovery requests.

8. Plaintiff's complaint speaks for itself.

9. Plaintiff absolutely denies that the information requested by Defendant is required to be pled in the complaint. Again, this is best emphasized by the lack of any authority cited by Defendant which require Plaintiff to do so in its initial pleading. If Defendant is not already aware of this information, they may seek it through appropriate discovery requests.

10. Plaintiff's complaint speaks for itself.

11. Plaintiff absolutely denies that the information requested by Defendant is required to be pled in the complaint. Again, this is best emphasized by the lack of any authority cited by Defendant which would require Plaintiff to do so in its initial pleading. Indeed, because Defendant has failed to provide sales information to Plaintiff (and has failed to respond to Plaintiff's discovery requests), a specified sum certain cannot be made without discovery, and is not required under MCR 2.111(B)(2).

12. Plaintiff's complaint speaks for itself.

13. Plaintiff's complaint speaks for itself.

14. Plaintiff absolutely denies that the information requested by Defendant is required to be pled in the complaint. Again, this is best emphasized by the lack of any authority cited by Defendant which would require Plaintiff to do so in its initial pleading.

The principle underlying the procuring cause doctrine is simply that fair dealing requires prevention of a manufacturer such as Defendant "from unfairly taking the benefit of [Plaintiff's] services without compensation . . ." *Reed v Kurdziel*, 352 Mich 287, 294 (1958). According to the Court of Appeals in *Reed*, an "agent is entitled to recover his commission whether or not he has personally concluded and completed the sale, it being sufficient if his efforts were the procuring cause of the sale." *Id.*

In reading Plaintiff's complaint in its entirety, it is clear that Plaintiff has pled the necessary background and elements to apprise Defendant that Plaintiff is seeking recovery under the procuring cause doctrine, should the parties' agreement be found to be silent on the issue of commissions in the event the agreement was terminated. (*See*, Plaintiff's Complaint ¶¶ 19-24).

15. Plaintiff's complaint speaks for itself.

16. Plaintiff absolutely denies that the information requested by Defendant is required to be pled in the complaint to seek alternative relief under the theory of unjust enrichment. Again, this is best emphasized by the lack of any authority cited by Defendant which would require Plaintiff to do so in its initial pleading.

All that is required to properly set forth a claim for unjust enrichment are allegations of, 1) the receipt of a benefit by the defendant from plaintiff's services, and 2) a resultant inequity if defendant were to retain those benefits without compensation to plaintiff. *See, Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 546 (1991).

WHEREFORE, Plaintiff respectfully requests this Honorable Court to DENY Defendant's motion with prejudice, and enter an Order requiring Defendant to file its answer to Plaintiff's complaint within seven (7) days of the date of the hearing on Defendant's motion.

Respectfully submitted,

/s/Zachary B. Mack
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Sales Representative Law Center, PLLC
Attorneys for Plaintiff
1370 N. Oakland Boulevard, Suite 110
Waterford, MI 48327
Tele: (248) 904-0935
Fax: (248) 461-6990

Proof of Service

The undersigned hereby certifies that a copy of the foregoing document was filed with the Clerk of the Court using the Wiznet E-Filing and Serve system on March 4, 2011, which will sent notification and a copy of such filing to the following attorneys of record for the Defendant:

Frederick A. Acomb, Esq. (P44523)
acomb@millercanfield.com

Paul D. Hudson, Esq. (P69844)
hudson@millercanfield.com

/s/Zachary B. Mack
Zachary B. Mack (P62742)
Attorneys for Plaintiff

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STATE OF MICHIGAN
IN THE OAKLAND COUNTY CIRCUIT COURT

APPLE MARKETING COMPANY,
a Michigan corporation,

Plaintiff,

Case No. 11-116069-CK
Hon. Wendy L. Potts

v.

FINZER PRODUCTS CORPORATION,
a New York corporation,

Defendant.

Zachary B. Mack (P62742)
Sales Representative Law Center, PLLC
Attorneys for Plaintiff
1370 N. Oakland Boulevard, Suite 110
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FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL PD

Plaintiff, Apple Marketing Company, by and through its attorneys, Sales Representative Law Center, PLLC, and for its First Amended Complaint states as follows:

General Allegations

1. Plaintiff, Apple Marketing Company, is a Michigan corporation with its principal place of business located in Commerce Township, in the county of Oakland, state of Michigan.

2. Defendant, Linzer Products Corp., is a New York corporation with its principal place of business located in New York, and which sells its products throughout the country, including at all times pertinent hereto in the state of Michigan, and in the county of Oakland.

3. The amount in controversy in this matter, exclusive of interest, costs and attorney fees, exceeds \$25,000.00.

Statement of Claim

4. Plaintiff is a manufacturers' sales representative agency.

5. Defendant is a manufacturer of painting products and brushes, among other things, and which sells its products to retailers throughout the country via the services of sales representatives, such as Plaintiff.

6. Upon information and belief, Defendant is the corporate parent to American Brush Company, an Oregon corporation, which also manufactures various brushes for commercial purposes, and which also utilizes the services of sales representatives such as Plaintiff.

7. In November of 2007, Plaintiff entered into an agreement with Sam Solomon Associates, Inc. ("Solomon"), a Michigan corporation and current/former sales representative agency, whereby Solomon assigned and transferred to Plaintiff all of their rights, title and interest to represent certain manufacturer accounts, including Defendant.

8. Prior to the agreement between Plaintiff and Solomon, Plaintiff met with a representative of Defendant, Larry Finnegan, upon information and belief, Defendant's current/former National Sales Manager, and informed Defendant of the agreement.

9. Plaintiff and Defendant, through its representative, Larry Finnegan, agreed to the assignment, thereby appointing Plaintiff as Defendant's sales representative based upon a verbal agreement, certain material terms of which are discussed below.

10. Pursuant to the parties' verbal agreement, Plaintiff was appointed as Defendant's sales representative to sell its entire line of 'Linzer' and 'American Brush Company' products.

11. Pursuant to the parties' verbal agreement, Plaintiff's responsibility was to procure accounts to sell the products, to procure orders for the sale of the products, and to represent Defendant at certain trade shows.

12. Pursuant to the parties' verbal agreement, Plaintiff's territory included, but was not necessarily limited to, the list of accounts/customers attached hereto as Exhibit A.

13. Accordingly, and in or about November of 2007, Plaintiff began representing Defendant as its manufacturer's sales representatives.

14. In consideration of Plaintiff's efforts on behalf of Defendant, as well as on behalf of American Brush Company, Defendant was to pay Plaintiff a varying commission percentage depending upon the particular account or terms of sale of Defendant's products.

15. More specifically, Plaintiff was to receive a 10% commission on accounts and orders sold via Defendant's bulletin pricing and distributor price sheets, and a 5% commission on orders sold on certain discounts, including on some occasions to accounts that purchased products through buying groups, unless otherwise agreed to by the parties.

16. Upon information and belief, Defendant is in possession of copies of commission statements and sales reports that Defendant was obligated to provide Plaintiff on regular

basis pursuant to the parties' verbal agreement. Such commission statements and sales reports provide evidence of the commissions paid depending on the particular account/customer, order, and products.

17. Defendant began paying Plaintiff its earned commissions in or about December of 2007

18. Pursuant to the parties' agreement, commissions were to be paid to Plaintiff on a monthly basis.

19. Defendant unilaterally terminated the parties' agreement on or about May 28, 2010 and, upon information and belief, has only paid commissions to Plaintiff on orders received by Defendant within 30 days of this date, contrary to the parties' verbal agreement.

20. More specifically, the parties had agreed that Plaintiff would be paid its commission on all accounts and orders that were procured through Plaintiff's efforts, regardless of whether the accounts and orders resulted in sales following the termination of Plaintiff's services.

21. Following the unilateral termination of the parties' agreement, Defendant has failed to provide invoices, sales reports, or commission statements to Plaintiff for all sales that occurred beyond the effective date of termination.

22. More specifically, Defendant appears to have only paid Plaintiff its earned commissions on sales through June 30, 2010.

23. Prior to the unilateral termination of the parties' agreement, Plaintiff had procured additional accounts, orders and/or sales, including but not limited to Boswick-Braun Co., The Andersons, Self Serve Lumber, Ace Stores, Hardware Distributors, and Aco

Hardware, which, upon information and belief, has resulted in sales of Defendant's products beyond June 30, 2010 which Plaintiff is owed its rightfully earned commissions.

COUNT I – BREACH OF CONTRACT FOR FAILURE TO PAY COMMISSIONS

24. Plaintiff re-alleges the above paragraphs.

25. Defendant breached its agreement with Plaintiff by failing to compensate Plaintiff, in the form of the agreed upon commission, on all sales and accounts procured as a result of Plaintiff's efforts, per the parties' agreement.

26. As a result of Defendant's breach of the parties' agreement, Plaintiff has incurred substantial damages and will continue to suffer such damages in the future.

27. Such damages include, but are not necessarily limited to, the agreed upon and applicable commission rate on all sales of Defendant's products that were made as a result of Plaintiff's efforts prior to the unilateral termination of the parties' agreement by Defendant.

28. Upon information and belief, and because Defendant failed to provide invoices to Plaintiff prior to the termination of the parties' agreement, Plaintiff is further entitled to commissions on the sale of Defendant's products prior to the effective termination of the parties' agreement.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of \$25,000.00, or whatever different amount to which Plaintiff is found to be entitled, together with costs, interest and attorney fees so wrongfully incurred.

COUNT II – PROCURING CAUSE DOCTRINE

29. Plaintiff re-alleges the above paragraphs.

30. In the alternative, if no express agreement is found to have existed between Plaintiff and Defendant as to commissions to which Plaintiff would be entitled to in the event of termination, Plaintiff's entitlement to commissions is governed by the Procuring Cause Doctrine.

31. Under the Procuring Cause Doctrine, Plaintiff is entitled to a commission on all accounts, sales and orders of Defendant's products procured as a result of Plaintiff's efforts, even if the orders and sales take place after the termination of the parties' agreement.

32. Plaintiff successfully procured sales of Defendant's products, and/or accounts for Defendant, which Defendant has continued to do business with after Plaintiff's termination, including but not limited to those referenced above.

33. The sales and accounts procured by Plaintiff have and will likely continue to do substantial business with and for Defendant, based upon Plaintiff's efforts prior to the unilateral termination of the parties' agreement by Defendant.

34. Pursuant to the Procuring Cause Doctrine, Plaintiff is entitled to a commission on all Defendant's accounts and/or sales procured as a result of Plaintiff's efforts.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of \$25,000.00, or whatever different amount to which Plaintiff is found to be entitled, together with costs, interest and attorney fees so wrongfully incurred. Plaintiff also demands judgment against Defendant declaring that Defendant shall pay Plaintiff a commission on all accounts and sales of Defendant's products for which Plaintiff was the procuring cause.

COUNT III – UNJUST ENRICHMENT

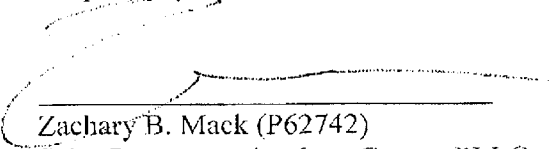
35. Plaintiff re-alleges the above paragraphs.

36. Should a trier of fact determine that the parties did not reach a meeting of the minds concerning the commissions due to Plaintiff, including but not limited to upon the termination of Plaintiff's services, Plaintiff is entitled to the commissions claimed under the doctrine of unjust enrichment, including the value of the agreed upon commissions on accounts, orders and sales procured through Plaintiff's efforts for which Defendant has not paid Plaintiff its applicable commission, since otherwise Defendant would reap the benefits of Plaintiff's services without paying Plaintiff's commissions.

Jury Demand

Plaintiff hereby relies upon the jury demand previously filed in this matter.

Respectfully submitted,



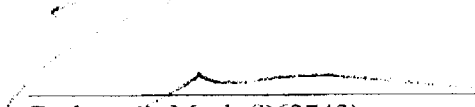
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Proof of Service

The undersigned hereby certifies that a copy of the foregoing document was filed with the Clerk of the Court using the Wiznet E-Filing and Serve system on March 15, 2011, which will sent notification and a copy of such filing to the following attorneys of record for the Defendant:

Frederick A. Acomb, Esq. (P44523)
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Paul D. Hudson, Esq. (P69844)
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Zachary B. Mack (P62742)
Attorneys for Plaintiff

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Customer	Customer
AAA True Value	M&J Hardware
Ace Hardware & Sports	Manistee Ace Hardware
Ace Hwd Of Calumet	Manton Hardware & Sporting Goods
Acme Ladder & Supply	Mark's Hardware
Aco Hardware	McLean's Ace
Amtek Tool & Supply Co.	Meyer Ace
Andrews Shopping Ctr.	Mid-States Bolt & Screw
Baker's Ace	Mid-States Bolt-Burton
Ball Park Hardware	Mid-States Bolt-Caddillac
Benjamin Hardware	Millburg Red & White
Bernard Building Supply	North Cromwell Paint
Bigari Ace	Northshore Ace
Blanton Sales	Notions Marketing
Bloomfield Ace	Pine Lumber
Bob's True Value	Pioneer Sales (Ace)
Boswick-Braun Co.	Preferred Tool & Equipment
Bradley	Quality Ace
Bradley Ace Hardware	Ray's Marine Supply
Brown Hardware	Reed City Hardware
Burnips Equipment Co.	Rochester Ace
Clarkston Ace	Rothbury Hardware
Concrete Central Inc.	Salem Hardware
Construction Fasteners	Scheers Ace
Cronk Ace	Self Serve Lumber
Curtis Hardware	Seven's Paint & Wallpaper
Ebinger Manufacturing	Shady Lane Pro Hardware
Fairway Sales Corp	Shannon Supply Inc.
Family Hardware (Ace)	Spartan Stores Inc
Foster's Ace	Spring Lake Ace
Fremont Ace	St. Clair Shores Ace
Friendship Hardware	Stone City
Geisler Co.	Suburban Bolt & Supply
Green Ace	Swan Lake Store
Hardware Distributors	The Andersons
Hastings Ace	The Boomer Co.
High Smith Contracting	The Eldcan Co.
Holton Hardware	Tom & Tom's Hardware
Honor Building Supply	Township True Value
Iverson T.V. Home Ctr.	Tow's Country Store
Kingsland True Value	Triangle Distributing
Kitts Industria Tool	Tuff Shed
L&M Pro Lumber	Unger's Rent All
Lake Ann Grocery	Vasser TV
Larson & Son LTD. (Ace)	Village Ace
Larson Salvage	Water Dept.
Larson's Ace Hardware	Waterville Hardware
Leatherman Hardware	Werkheiser Pro Hardware
Legg Lumbertown	West End Hardware
Leroy Milling	Wholesale Tool Co.
Livonia True Value	Woodside Ace
Loveland Hardware	Parker Ace
Lozon Ace	Clark Ace
Ludington Paint & Glass	Allen Wick-Delaware



SCHEDULING ORDER

STATE OF MICHIGAN
6th JUDICIAL CIRCUIT COURT
1200 N. TELEGRAPH ROAD
PONTIAC, MICHIGAN 48341

SO-05-2011-116069-CK

APPLE MARKETING CO

V LINZER PRODUCTS CORP

FREDERICK A. ACOMB
150 W JEFFERSON AVE STE 2500
DETROIT MI 48226-4415

IT IS ORDERED THAT:

- ALL PARTIES SHALL NAME THEIR EXPERTS BY 07/01/2011.
THIS CASE SHALL BE EVALUATED ON OR ABOUT SEPTEMBER OF 2011.
THE COURT WILL SEND A CASE EVALUATION NOTICE IN ACCORDANCE WITH MCR 2.403(G)(1).
- EACH PARTY SHALL SUBMIT ITS WITNESS LIST AND A LIST OF PROPOSED EXHIBITS TO OPPOSING COUNSEL AND THE COURT BY 07/05/2011.
- ALL DISPOSITIVE AND MOTIONS IN LIMINE SHALL BE HEARD BY THE COURT BY 10/03/2011; OTHERWISE, SUCH MOTIONS WILL BE DEEMED WAIVED.
- DISCOVERY SHALL BE COMPLETED BY 08/04/2011. ANY DISCOVERY ISSUE REGARDING ELECTRONICALLY STORED INFORMATION IS GOVERNED BY MCR 2.401(B)(2)(C) AND MUST BE BROUGHT TO THE COURT'S ATTENTION NO LATER THAN 90 DAYS BEFORE THE CLOSE OF DISCOVERY; OTHERWISE, THOSE DISCOVERY ISSUES WILL BE DEEMED WAIVED.
- THIS CASE IS SET FOR TRIAL ON 11/21/2011, AT 8:30 A.M.
- ALL DEPOSITIONS TO BE USED AT TRIAL SHALL BE PURGED NOT LATER THAN TWO WEEKS BEFORE THE TRIAL OR THE OBJECTIONS SHALL BE DEEMED WAIVED.
- THE APPROPRIATENESS OF THIS CASE FOR SOME FORM OF ALTERNATE DISPUTE RESOLUTION SHALL BE BROUGHT TO THE COURT'S ATTENTION AFTER CASE EVALUATION BUT BEFORE TRIAL.
- IN JURY CASES, PROPOSED JURY INSTRUCTIONS SHALL BE SUBMITTED IN WRITING TO THE COURT AT THE COMMENCEMENT OF THE TRIAL. IN NON-JURY CASES, TRIAL BRIEFS SHALL BE SUBMITTED ONE WEEK BEFORE THE TRIAL DATE.
- THE APPEARANCE OF COUNSEL UPON A PLEADING SHALL BE DEEMED TO BE THE APPEARANCE OF EVERY MEMBER OF HIS/HER LAW FIRM. ADJOURNMENTS OF CASE EVALUATION OR TRIAL MUST BE REQUESTED BY MOTION. ANY ADJOURNMENTS AFTER THE FIRST REQUEST SHALL REQUIRE THE SIGNATURES OF THE LITIGANTS.
- OBJECTIONS TO THIS SCHEDULE MUST BE MADE WITHIN 14 DAYS OF THE DATE OF THIS ORDER OR THEY ARE DEEMED WAIVED. OBJECTIONS SHALL BE ACCOMPANIED BY A GOOD CAUSE SHOWING AND A PROPOSED ALTERNATIVE SCHEDULING ORDER AGREED TO BY ALL THE PARTIES.
- THE COURT PROVIDES A COPY OF THIS ORDER TO PARTIES FILING APPEARANCES THROUGH 04/30/2011. PLAINTIFF IS RESPONSIBLE FOR PROVIDING A COPY OF THIS ORDER TO ADDED PARTIES OR PARTIES FILING APPEARANCES AFTER 04/30/2011.

DATE: 03/19/2011

/s/WENDY L. POTTS
WENDY L. POTTS
CIRCUIT JUDGE

ANY QUESTIONS CONCERNING THIS ORDER SHOULD BE DIRECTED TO THE ASSIGNED JUDGE'S CLERK.