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8 Attorneys for Plaintiff Arizona Leather Company, Inc.

9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12 Arizona Leather Company, Inc., a California
13 Corporation,

14 Plaintiff,

15 v.

16 Shane M. Khubchandani, an individual
17 doing business as Arizona Barstool
18 Company,

19 Defendant.

Case No.

COMPLAINT FOR

- 1) **FEDERAL SERVICE MARK AND TRADEMARK INFRINGEMENT;**
- 2) **FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN;**
- 3) **FEDERAL TRADE NAME INFRINGEMENT;**
- 4) **ARIZONA STATUTORY TRADEMARK AND TRADE NAME INFRINGEMENT**
- 5) **COMMON LAW UNFAIR COMPETITION;**
- 6) **COMMON LAW TRADEMARK AND TRADE NAME INFRINGEMENT;**
- 7) **INJUNCTIVE RELIEF; AND**
- 8) **BREACH OF CONTRACT**

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21
22 Plaintiff, Arizona Leather Company, Inc. alleges as follows:

23 **PARTIES**

24 1. Plaintiff, Arizona Leather Company, Inc. ("Arizona Leather" or
25 "Plaintiff"), is a California corporation having a principal place of business at 4235
26 Schaefer Ave., Chino, California, 91710.

27 2. Upon information and belief, Defendant Shane M. Khubchandani, doing
28

1 business as Arizona Barstool Company (“Arizona Barstool” or “Defendant”) is an
2 individual/company with a principal place of business at 14202 North Scottsdale Road,
3 Suite 169, Scottsdale, AZ 85254.

4 3. Plaintiff alleges that Arizona Barstool participated in and is in some manner
5 responsible for the acts described in this Complaint and the damage resulting therefrom.

6 **JURISDICTION AND VENUE**

7 4. This Court has jurisdiction of the subject matter of this action pursuant to
8 15 U.S.C. §1121, 28 U.S.C. §1338, and 28 U.S.C. §1367, and this Court has *in personam*
9 jurisdiction over Defendant because Defendant is engaging in the activities complained
10 of in this District, and elsewhere.

11 5. Venue is proper in this District, pursuant to 28 U.S.C. §1391, as Defendant
12 Arizona Barstool, at all relevant times mentioned herein, maintained its principal place of
13 business in Scottsdale, Arizona. The claims asserted herein arise in this District.

14 **BACKGROUND OF THE CONTROVERSY**

15 6. Plaintiff is and has been extensively engaged in the business of offering
16 high quality leather furniture products through its extensive network of retail stores, in
17 intrastate and interstate commerce. Plaintiff uses and has previously used in interstate
18 commerce and in the state of Arizona the trademark and service mark ARIZONA
19 LEATHER for furniture products and retail store services featuring leather furniture and
20 accessories (hereinafter the “Arizona Mark”). Due to the high quality of its products, as
21 well as the substantial sums expended in the advertising and promotion of its products,
22 Plaintiff has established an excellent reputation and substantial goodwill in connection
23 with its trademark.

24 7. The United States Patent and Trademark Office granted a federal trademark
25 registration to Plaintiff on May 30, 2006 for the mark ARIZONA LEATHER for
26 furniture, namely sofas, chairs, sectionals and ottomans, as well as retail stores featuring
27 leather furniture and accessories. A copy of this federal trademark registration,
28

1 Registration No. 3,097,629, is attached hereto as Exhibit “1.”

2 8. Plaintiff has used and continues to use the trademark and service mark
3 ARIZONA LEATHER in connection with furniture and retail store services since at least
4 as early as October 1, 2002.

5 9. Plaintiff has expended significant money in advertising and promoting
6 products and services under the Arizona Mark, including but not limited to under
7 Plaintiff’s website, www.arizonaleather.com. A printout from Plaintiff’s Website is
8 attached hereto as Exhibit “2.”

9 10. As a consequence of Plaintiff’s advertising, promotion and use of the
10 Arizona Mark, the mark has developed secondary meaning identifying the business
11 operated by Plaintiff.

12 11. To the best of its knowledge, since approximately at least as early as May
13 of 2001, Plaintiff has also used the ARIZONA LEATHER trademark, alone or in
14 combination with other words or designs, as a trade name in Arizona (collectively the
15 “Arizona Trade Name”). Plaintiff is informed and believes that the trade name
16 ARIZONA LEATHER COMPANY was registered in Maricopa County as a fictitious
17 business name in approximately 2001.

18 12. Upon information and belief, Defendant offers furniture, including
19 barstools, under the marks “Arizona Barstools,” “AZ Barstools” and/or “Arizona
20 Barstool Company” (collectively the “Accused Marks”) in at least one (1) location in
21 Scottsdale, Arizona.

22 13. Upon information and belief, Defendant has promoted and referred to its
23 services and products under the Accused Marks, including the answering of its phones as
24 “Arizona Barstools” and “Arizona Barstool Company.”

25 14. Defendant has advertised for and provided services to prospective
26 purchasers of furniture in the form of barstools under the Accused Marks.

27 15. Upon information and belief, prior to marketing its furniture products under
28 the Accused Marks, Defendant knew that Plaintiff offered its furniture products and retail

1 store services under the Arizona Mark.

2 16. Upon information and belief, despite Defendant's knowledge of Plaintiff's
3 prior use of the Arizona Mark, Defendant willfully adopted the Accused Marks for use on
4 furniture and retail services, including, but not limited to, on its storefront signage and in
5 business phone directories.

6 17. Upon information and belief, Defendant used the domain name
7 www.arizonabarstoolcompany.com as a trademark and/or trade name.

8 18. Defendant's use of the Accused Marks as applied to its furniture products
9 and retail services creates a likelihood that a false association will be made between the
10 products and services marketed by Defendant and those of Plaintiff. The trade and
11 purchasing public are likely to be confused and believe that products and services
12 marketed and offered for sale by Defendant under the Accused Marks are connected with,
13 produced by or sponsored by Plaintiff.

14 19. In view of the similarity between Plaintiff's Arizona Mark and the Accused
15 Marks used by Defendant, and particularly in view of the related nature of the uses
16 thereof (i.e., in connection with the sale of furniture), as well as the geographic proximity
17 of at least one of Defendant's stores (next door to one of Plaintiff's stores in Scottsdale,
18 Arizona), Defendant's use of the Accused Marks constitutes and comprises matter which
19 may falsely suggest a connection between Defendant's goods and services and that of
20 Plaintiff.

21 20. Defendant's continued use of the Accused Marks constitutes
22 misrepresentation of the source of the goods and services offered in connection therewith
23 and falsely suggests an association between the goods and services of Defendant and
24 Plaintiff, which false designation, upon information and belief, was known to and
25 intentionally fostered by Defendant for its commercial benefit.

26 21. Notwithstanding Plaintiff's well known and prior common law and
27 statutory rights in the Arizona Mark and the Arizona Trade Name, Defendant, with at
28 least constructive notice of Plaintiff's Federal registration rights under 15 U.S.C. §1072,

1 and long after Plaintiff established its rights in the Arizona Mark and Arizona Trade
2 Name, adopted and used the Accused Marks for furniture products and services. Such
3 use of the Accused Marks constitutes trademark and trade name infringement and causes
4 a likelihood of confusion, deception and mistake.

5 **COUNT I**

6 **FEDERAL SERVICE MARK AND TRADEMARK INFRINGEMENT**

7 22. Plaintiff incorporates the above allegations by reference.

8 23. Defendant's use of the Accused Marks constitutes service mark and
9 trademark infringement of Plaintiff's Arizona Mark in violation of the Lanham Act, 15
10 U.S.C. §1114(1).

11 24. The Accused Marks are so similar to Plaintiff's Arizona Mark as to be
12 likely to cause consumer confusion, deception and mistake.

13 25. Upon information and belief, Defendant's adoption and use of the Accused
14 Marks is the result of willful copying by the Defendant of Plaintiff's Arizona Mark.

15 26. Upon information and belief, Defendant has made substantial profits to
16 which it is not entitled.

17 27. Plaintiff has been damaged by Defendant's infringement of the Arizona
18 Mark and is entitled to remedies provided for in 15 U.S.C. §1116 *et seq.*, including, but
19 not limited to, compensatory damages of no less than \$75,000, treble damages, attorneys'
20 fees and injunctive relief.

21 28. Unless restrained, Defendant will continue to violate Plaintiff's trademark
22 and service mark rights and cause Plaintiff irreparable harm, for which Plaintiff has no
23 adequate remedy at law.

24 **COUNT II**

25 **FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN**

26 29. Plaintiff incorporates the above allegations by reference.

27 30. By engaging in the activities described above, Defendant has made and is
28 making false, deceptive and misleading statements constituting false representations and

1 false advertising in connection with services distributed in interstate commerce in
2 violation of § 43 of the Lanham Act, 15 U.S.C. § 1125(a). Also by such conduct,
3 Defendant has unfairly and unlawfully competed with Plaintiff in violation of § 43 of the
4 Lanham Act, 15 U.S.C. § 1125(a).

5 31. Plaintiff has been damaged by Defendant's false advertising, false
6 designation of origin and unfair competition, entitling Plaintiff to the remedies provided
7 in 15 U.S.C. §1116 *et seq.*, including, but not limited to, compensatory damages of no
8 less than \$75,000, treble damages, attorneys' fees and injunctive relief.

9 32. Defendant's acts described above have caused irreparable injury to
10 Plaintiff's goodwill and reputation, and, unless enjoined, Defendant will cause further
11 irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law.

12 33. Upon information and belief, Defendant's use of the Accused Marks is and
13 has been willful and with the malicious intent of misappropriating and trading upon
14 Plaintiff's goodwill and reputation.

15 **COUNT III**
16 **FEDERAL TRADE NAME INFRINGEMENT**

17 34. Plaintiff incorporates the above allegations by reference.

18 35. Plaintiff has continuously used the Arizona Trade Name for its business
19 since at least May of 2001 in Arizona, well before Defendant's adoption and use of the
20 Accused Marks.

21 36. Given Plaintiff's investment of significant money and effort to establish
22 public recognition of its Arizona Trade Name, Plaintiff's trade name has acquired
23 "secondary meaning" with consumers of leather furniture.

24 37. Defendant's use of the Accused Marks constitutes trade name infringement
25 in violation of the Lanham Act, 15 U.S.C. §1125(a).

26 38. Upon information and belief, by its acts herein complained of, Defendant
27 has made substantial profits to which it is not entitled. Plaintiff has been damaged by
28 Defendant's infringement of the Arizona Trade Name and Plaintiff is entitled to remedies

1 provided for in 15 U.S.C. §1116 *et seq.*, including, but not limited to, treble damages,
2 attorneys' fees and injunctive relief.

3 39. Upon information and belief, Defendant's use of the Accused Marks is
4 willful and with the intent of misappropriating and trading upon Plaintiff's goodwill and
5 reputation.

6 40. Defendant's acts described above have caused irreparable injury to
7 Plaintiff's goodwill and reputation, and, unless enjoined, Defendant will cause further
8 irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law.

9 **COUNT IV**

10 **ARIZONA STATUTORY TRADEMARK AND TRADE NAME INFRINGEMENT**

11 41. Plaintiff incorporates the above allegations by reference.

12 42. As noted above, Plaintiff registered the Arizona Trade Name as a fictitious
13 business name in Maricopa County.

14 43. On May 15, 2008, Plaintiff filed a trademark registration in the State of
15 Arizona for the mark ARIZONA LEATHER for furniture products, namely sofas, chairs,
16 sectionals and ottomans, and retail store services featuring leather furniture and
17 accessories.

18 44. On May 15, 2008, Plaintiff also filed a registration in the State of Arizona
19 for the ARIZONA LEATHER trade name.

20 45. Defendant's use of confusingly similar variations of Plaintiff's Arizona
21 Mark and Arizona Trade Name has caused and is likely to cause confusion, mistake and
22 deception in the minds of the relevant public.

23 46. Defendant's use of the Accused Marks constitutes trademark and trade
24 name infringement under Arizona law in violation of A.R.S. § 44-1451(A), entitling
25 Plaintiff to all available remedies under § 44-1451(B), including, but not limited to,
26 Defendant's profits, all damages sustained by Plaintiff, presumed damages, injunctive
27 relief, attorneys' fees and costs, and all other available remedies.
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COUNT V
COMMON LAW UNFAIR COMPETITION

47. Plaintiff incorporates the above allegations by reference.

48. By engaging in the conduct alleged above, Defendant has unlawfully and unfairly competed with Plaintiff as a matter of common law.

49. Plaintiff has sustained damages in an amount to be proven at trial, but in no event less than \$75,000.

50. Upon information and belief, Defendant's use of the Accused Marks is willful and with the malicious intent of misappropriating and trading upon Plaintiff's goodwill and reputation. Plaintiff is entitled to punitive damages.

51. Defendant's acts described above have caused irreparable injury to Plaintiff's goodwill and reputation, and, unless enjoined, Defendant will cause further irreparable injury to Plaintiff, for which Plaintiff has no adequate remedy at law.

COUNT VI
COMMON LAW TRADEMARK AND TRADE NAME INFRINGEMENT

52. Plaintiff incorporates the above allegations by reference.

53. Defendant's use of substantially and confusingly similar variations of Plaintiff's Arizona Mark and Arizona Trade Name in interstate commerce without the consent of the Plaintiff, for the purpose of offering for sale or selling furniture products and promoting retail store services featuring furniture products, has caused and continues to cause confusion, mistake and deception in the minds of the public in violation of Arizona common law.

54. Defendant's actions constitute common law trademark and trade name infringement entitling Plaintiff to damages in an amount to be proven at trial, but in no event less than \$75,000.

55. Upon information and belief, Defendant's use of the Accused Marks is willful and with the malicious intent of misappropriating and trading upon Plaintiff's goodwill and reputation. Plaintiff is entitled to punitive damages.

1 Plaintiff invoices, purchase orders, and similar documents from vendors or contractors
2 evidencing the completion of work items on the Name Change Project and notice that
3 final payment was due to such vendor or contractor. Plaintiff was to make payments to
4 Defendant, its vendors, and contractors totaling no more than \$23,000 for the work
5 directly related to the Name Change Project.

6 64. Plaintiff is informed and believes that as of December 15, 2007, Defendant
7 had not completed all work on the Name Change Project. Plaintiff is further informed
8 and believes that as of December 15, 2007, Defendant had not even obtained any quotes
9 let alone completed the actual work on the exterior signage of Defendant's store locations
10 under the Name Change Project.

11 65. Plaintiff is informed and believes that on or about January 10, 2008,
12 Defendant acknowledged that it had failed to complete the work for the Name Change
13 Project within the deadline provided by the terms of the Settlement Agreement.

14 66. Plaintiff has performed all conditions and satisfied all obligations to be
15 performed on its part under the terms of the Settlement Agreement, except as to those
16 conditions and obligations which have been waived or excused by operation of law or as
17 a result of Defendant's breach.

18 67. Defendant has breached its duties and obligations under the Settlement
19 Agreement by failing to complete all work on the Name Change Project by December 15,
20 2007. Defendant has also breached the remaining terms of the Settlement Agreement,
21 including, but not limited to, failing to cease all use of the designation "Arizona" as a
22 trademark or trade name in its business affairs and to change its name to "Simply
23 Barstools" at all of Defendant's store locations.

24 68. Plaintiff has been deprived of the benefit of its bargain under the Settlement
25 Agreement which called for Plaintiff to forego bringing suit against Defendant for
26 Defendant's use of the designation "Arizona" in violation of Plaintiff's trademark,
27 service mark, and trade name rights, in return for Defendant's performance of its
28 obligations under the Settlement Agreement and completion of the Name Change Project.

1 Brian W. LaCorte (012237) (bwl@gknet.com)
2 Donna H. Catalfo (021827) (dhc@gknet.com)
3 GALLAGHER & KENNEDY, P.A.
4 2575 East Camelback Road
5 Phoenix, Arizona 85016-9225
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8 Attorneys for Plaintiff Arizona Leather Company, Inc.

9 **UNITED STATES DISTRICT COURT**
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11 Arizona Leather Company, Inc., a California
12 Corporation,

13 Plaintiff,

14 v.

15 Shane M. Khubchandani, an individual
16 doing business as Arizona Barstool
17 Company,

18 Defendant.

19 Case No.

20 **EXHIBITS TO COMPLAINT**

21 Ex. No.	22 Description
23 1	24 Federal Trademark Registration
25 2	26 Printout from Plaintiff's Website
27 3	28 Settlement Agreement

EXHIBIT 1

Int. Cls.: 20 and 35

Prior U.S. Cls.: 2, 13, 22, 25, 32, 50, 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,097,629

Registered May 30, 2006

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



ARIZONA LEATHER COMPANY, INC. (CALI-
FORNIA CORPORATION)
4235 SCHAEFER AVENUE
CHINO, CA 91710

FOR: FURNITURE, NAMELY, SOFAS, CHAIRS,
SECTIONALS AND OTTOMANS, IN CLASS 20 (U.S.
CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 10-1-2002; IN COMMERCE 10-1-2002.

FOR: RETAIL STORES FEATURING LEATHER
FURNITURE AND ACCESSORIES, IN CLASS 35
(U.S. CLS. 100, 101 AND 102).

FIRST USE 10-1-2002; IN COMMERCE 10-1-2002.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "LEATHER", APART FROM THE
MARK AS SHOWN.

SER. NO. 78-558,208, FILED 2-1-2005.

KIMBERLY FRYE, EXAMINING ATTORNEY

EXHIBIT 2

ARIZONA LEATHER
We are the leather experts.

- New Styles
- Fabric Styles
- Stationary
- Motion
- Sleepers
 - Queen
 - Full
 - Twin
- Sectionals
 - 2 piece curved
 - L shaped
 - Chaise
 - Sleeper
- Conversation Sofas
 - 4 seat
 - 3 seat
- Cinema Seating
- Accent Chairs
- Recliners



Style Gallery

Regardless of your tastes, regardless of your special needs, Arizona Leather can deliver exactly what you want—including custom sectionals.

We have over 100 styles and 400 leather colors. We have Sofas, Sectionals Sleepers, Chairs and Recliners. All hand crafted in America and 100% Guaranteed for a lifetime.

Just pick a style, pick a leather and we do the rest.



Styles

Construction



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MEMORIAL DAY TRUCK LOAD SALE

SAVE \$1600
ON 4-PIECE SECTIONALS*

SAVE \$800
ON 2-PIECE SECTIONALS*

SAVE \$400
ON SOFAS*

SAVE \$200
ON CHAIRS*

PLUS TAX FREE OR 24 EASY PAYMENTS*

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ARIZONA LEATHER
We are the leather experts.



WE SHIP ANYWHERE

Nobody does what we do with leather. Nobody creates quality leather furniture in over 100 styles in 400 colors so you can chose sofas, sectionals and chairs designed specifically for you, your family and your home. Our experts have years, even decades of experience. One of them can help you select the exact piece you're looking for.

Whether it be Retro, Contemporary, Traditional or Casual, the results will be unique and the designs you put together will bring to life not a designer's vision but your own. Then you will realize we're not called the leather experts for nothing. We're called the leather experts for everything.



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Store Locations

888-669-LEATHER

A leather furniture expert is available
Monday thru Friday 9:00 AM to 5:00PM PST.

Feel free to call with any questions you may
have, we would love to help you.

Store hours for our showroom locations.

Monday thru Friday:

10:00 AM till 7:00 PM (Tustin - till 9 PM)

All Locations:

Saturday 10:00 AM till 6:00 PM

Sunday 11:00 AM till 6:00 PM

Clearance Center

Monday thru Saturday:

10:00 AM till 5:00 PM

Sunday: 11:00 AM till 5:00 PM

CORONA

280 Teller #150
Corona, CA 92879
(951) 735-8885

Show me a map

LAGUNA HILLS

16163 Lake Forest Dr. Unit A
Irvine, CA 92618
(949) 788-0050

Show me a map

SAN MARCOS

1050 Los Vallecitos BLVD #100
San Marcos, CA 92069
(760) 761-0770

Show me a map

SCOTTSDALE

14202 North Scottsdale Rd.
Scottsdale, AZ 85254
(480) 443-8300

Show me a map

TEMPE

1746 West Ruby Dr.
Tempe, AZ 85284
(480) 763-5800

Show me a map

HUNTINGTON BEACH

7662 Edinger
Huntington Beach, CA 92647
(714) 841-5253

Show me a map

ONTARIO

701 N. Milliken Ave. Suite A
Ontario, CA 91764
(909) 944-9800

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MURRIETA

39809 Avenida Acacias Unit D
Murrieta, CA 92563
(951) 698-8886

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CHINO • CLEARANCE CENTER

4235 Schaefer Ave.
Chino, CA 91710
(909) 993-5101

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TORRANCE, CA

20329 Hawthorne Blvd.
Torrance, CA 90503
(310) 698-0355

Show me a map

IRVINE

13370 Jamboree Rd.
Irvine, CA 92602
(714) 669-1717

Show me a map

SAN DIEGO

2431 Fenton Parkway
San Diego, CA 92108
(619) 640-5700

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ARROWHEAD/GLENDALE

6910 West Bell Rd.
Glendale, AZ 85308
(623) 412-0400

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CONCORD

1150 Concord Ave.
Concord, CA 94520
(925) 825-5202

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PLEASANTON

NOW OPEN
5745 Johnson Dr.
Pleasanton, CA 94588
(925) 474-1335

Show me a map



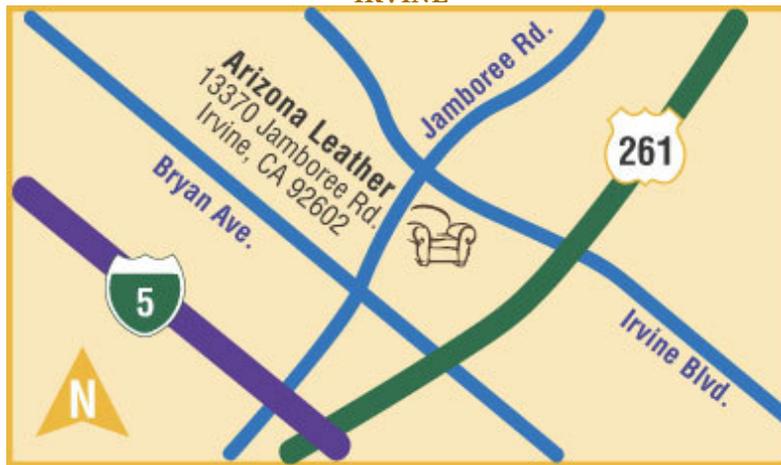
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IRVINE



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MURRIETA



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ARROWHEAD/GLENDALE



SCOTTSDALE



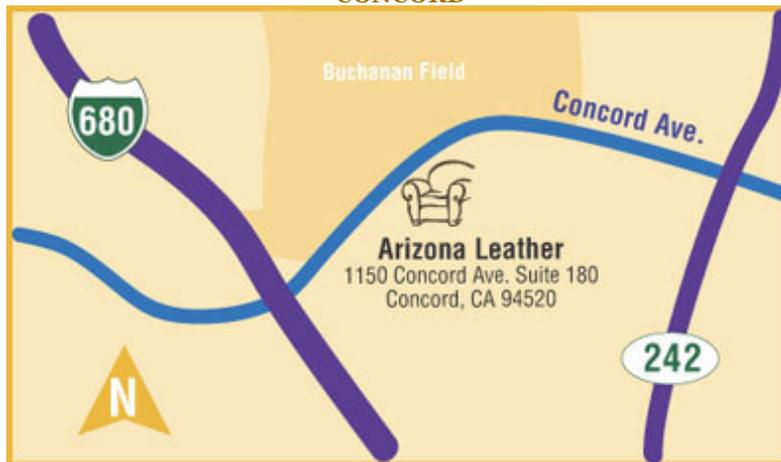
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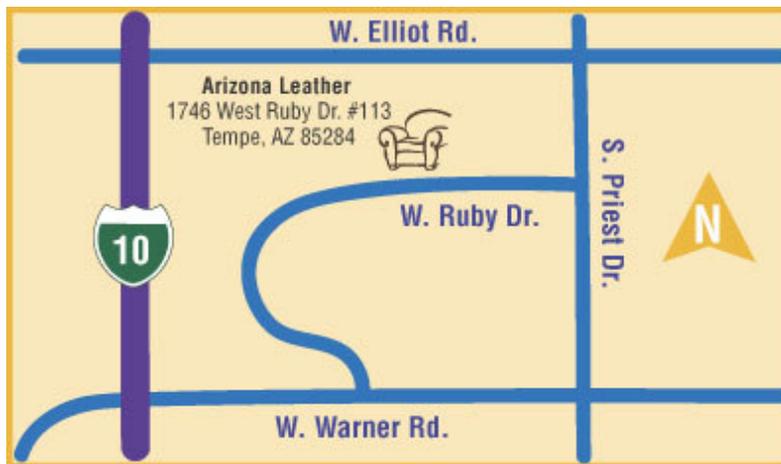
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EXHIBIT 3

SETTLEMENT AGREEMENT AND RELEASE

This Settlement and Release Agreement (hereinafter, the “Agreement”), effective as of the date of the last signature hereto, is entered into by and between Arizona Leather., a California Corporation, with its principal place of business located at ARIZONA LEATHER COMPANY, 4235 Shaefer Avenue, Chino, CA 91710 (hereinafter “ARIZONA”) and Arizona Barstool Company, 14202 North Scottsdale Road, Suite 169, Scottsdale, AZ 85254 (hereinafter, “BARSTOOL”). ARIZONA and BARSTOOL will be collectively referred to in the Agreement as the “Parties”.

RECITALS

WHEREAS, ARIZONA is the owner of United States Trademark Registration Nos. 2,627,091 and 3,097,629, and United States Trademark Serial No. 78/558,239. Attached as **EXHIBIT A** is a true and correct copy of United States Registration No. 2,627,091, which is incorporated herein by reference as though fully set forth. Attached as **EXHIBIT B** is a true and correct copy of United States Registration No. 3,097,629, which is incorporated herein by reference as though fully set forth. Attached as **EXHIBIT C** is a true and correct copy of United States Serial No. 78/558,239, which is incorporated herein by reference as though fully set forth.

WHEREAS, a genuine dispute has arisen as to BARSTOOL’s use of the name “Arizona Barstool Company” and the use of the designation “Arizona”.

WHEREAS, the Parties wish to resolve their differences amicably without the necessity of a civil lawsuit.

NOW THEREFORE, in consideration for the promises and releases contained herein and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **RECITALS**: The recitals set forth above are incorporated by this reference as a part of the Agreement between the parties.
2. **SETTLEMENT**: The Parties agree as follows:
 - (a) ARIZONA and BARSTOOL agree to bear their own attorneys’ fees and costs.
 - (b) Within thirty (30) days of the effective date of this Agreement, BARSTOOL to provide invoices, purchase orders, checks and similar documents to ARIZONA evidencing that BARSTOOL has made a deposit payment to all vendors and/or contractors to be retained by BARSTOOL

to perform work directly related to the change of BARSTOOL's name from "Arizona Barstool Company" to Simply Barstools at all of BARSTOOL's locations (hereinafter "the Name Change Project"). Examples of authorized expenses directly related to the Name Change Project include the modification of BARSTOOL's name on employee uniforms and signage. Upon completion of a vendor or contractor's work on the Name Change Project, BARSTOOL is to immediately provide ARIZONA with invoices, purchase orders, and similar documents from such vendor or contractor indicating completion of such work and notice that final payment is due to such vendor or contractor on the Name Change Project. Upon ARIZONA's receipt of such work completion and final payment documents on the Name Change Project from BARSTOOL, ARIZONA to pay within five (5) business days by corporate check directly to the vendors and/or contractors retained by BARSTOOL the amount of final payment owed for work performed on the Name Change Project. Further, upon ARIZONA's receipt of such work completion and final payment documents on the Name Change Project from BARSTOOL, ARIZONA to reimburse directly to BARSTOOL within five (5) business days by corporate check the amount of BARSTOOL's deposit payment to vendors and/or contractors retained for the Name Change Project. The total amount collectively to be paid by ARIZONA in the reimbursement of all deposit fees to BARSTOOL and all final payments to vendors and/or contractors retained for work performed on the Name Change Project shall not exceed \$23,000 for expenses directly related to the Name Change Project. BARSTOOL represents and warrants that the invoices, purchase orders, and similar documents it provides to ARIZONA evidence that BARSTOOL is contractually obligated to pay such vendors and/or contractors for products or services in the amounts indicated for the Name Change Project, and no other amount(s), to effectuate a name change from "Arizona Barstool Company" to Simply Barstools. BARSTOOL further represents and warrants that it shall not renegotiate the amounts it owes to vendors and/or contractors for work performed on the Name Change Project after providing ARIZONA with such documents.

- (c) In order to comply with the terms of this Agreement, BARSTOOL represents and warrants that it will modify its signage from "Arizona Barstool Company" to Simply Barstools at the following addresses: 14202 N. Scottsdale, 1925 S. Sossaman, 10401 E. McDowell, Mtn. Ranch, and 1550 N. Dysart.
- (d) BARSTOOL to stop all use of the designation "Arizona" in all of its business affairs, including but not limited to promotional matters and all forms of advertising in the United States of America no later than upon ARIZONA's payment of all deposit fees and final payments under par. 2(b) following completion of all work performed on the Name Change Project, said work being completed by no later than December 15, 2007.

(e) BARSTOOL to stop all use of its domain name arizonabarstoolcompany.com upon ARIZONA's payment of all deposit fees and final payments under par. 2(b) following completion of all work performed on the Name Change Project, said work being completed by no later than December 15, 2007..

(f) BARSTOOL to adopt Simply Barstools as the replacement for the name "Arizona Barstool Company" in its business affairs and begin use of such designation in the United States of America upon ARIZONA's payment of all deposit fees and final payments under par. 2(b) following completion of all work performed on the Name Change Project, said work being completed by no later than December 15, 2007.

(g) BARSTOOL to adopt a new domain name thebarstoolfactory.com as the replacement for the arizonabarstoolcompany.com domain and begin use of the new domain name upon ARIZONA's payment of all deposit fees and final payments under par. 2(b) following completion of all work performed on the Name Change Project, said work being completed by no later than December 15, 2007..

(h) BARSTOOL or its assignees will not use any mark having the word "Arizona", alone or in combination with other words or designs, in relation to any business other than as described above.

(i) BARSTOOL or its assignees will not file or assist in the filing of any trademark registration using the word "Arizona", alone or in combination with other words or designs.

(j) Neither ARIZONA, BARSTOOL, or their respective assignees shall expressly or impliedly claim any association with the other party, or use the other party's trademarks or service marks in any manner which is calculated to or would be likely to, trade upon the goodwill of the other party relative to that party's trademarks or service marks, or cause confusion or mistake vis-à-vis the other party's trademarks or service marks.

3. ARIZONA agrees to forego the filing of a civil lawsuit against BARSTOOL arising from BARSTOOL's use of the designation "Arizona" and domain name arizonabarstoolcompany.com, so long as BARSTOOL is in compliance with the terms of this Agreement.

4. In entering to this agreement, ARIZONA is induced by and relies on, amongst others, the representations and warranties made by BARSTOOL concerning its agreement

(i) not to use the designation "Arizona" as stated in 2(d);

(ii) not to use the domain name arizonabarstoolcompany.com or any domain name containing the word “Arizona” as stated in 2(e);

(iii) to adopt thebarstoolfactory.com as its new domain name, as stated in 2(g);

(iv) not to use any mark having the word “Arizona” as stated in 2(f) and 2(h);

to timely present invoices, purchase orders, and similar documents to ARIZONA for the Name Change Project as stated in 2(b).

5. BARSTOOL or its assignees will not challenge the validity or enforceability of ARIZONA’S trademarks, or use thereof.

6. The Parties agree that if one Party learns of an instance of actual confusion by third parties directly involving the use of the designation “Arizona” or the ARIZONA trademarks, such party will notify the other Party of the circumstances in a timely fashion so that one or the other party or both Parties may take steps to minimize or eliminate subsequent confusion. To the extent that the minimization or elimination of actual confusion between the marks or names of Parties requires an affirmative action or actions by a Party, then each Party agrees to take such reasonable actions as may be appropriate in the circumstances to achieve such elimination or minimization of any actual confusion.

7. Should a dispute or controversy arise from the interpretation, application, or performance of any of the terms of this Agreement, the losing party shall bear all costs, including attorney’s fees, of the prevailing party. This Agreement is governed by the law of the jurisdiction where the Party being sued in a dispute or controversy arising under the terms of this Agreement is domiciled, and the Parties accept the jurisdiction of such sued Party’s domicile as the exclusive venue of any dispute involving this Agreement;

8. The Parties to this Agreement, and each of them, understand and agree that the execution of this Agreement represents a full and complete compromise of disputed claims, and shall not constitute or be construed as, or deemed to be evidence of an admission of any alleged liability or wrongdoing whatsoever by either of the Parties. The parties expressly deny any allegations of liability, fault or wrongdoing;

9. The provisions of this Agreement shall be binding upon and be deemed to obligate, extend to and inure to the benefit of the Parties, their respective legal representatives, successors and assigns, transferees, grantees and heirs, devisees, legatees, executor, administrators, and all parent subsidiaries and affiliates of the Parties and upon and to their officers, directors, agents, managers, members, general partners, limited partners, principals, employees and other designees who may assume any and all of the above-described capacities subsequent to the execution of this Agreement.

10. The Parties agree that each has mutually participated in the drafting of this Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the Parties.

11. This Agreement contains the entire agreement, understanding and settlement of the Parties with respect to the subject matter stated herein. This Agreement supersedes

and replaces all prior negotiations and any proposed agreement or agreements, whether written or oral, if any with respect to the subject matter stated herein. The Parties, and each of them, acknowledge that no other Party and no agent of or attorney of any other Party, has made any promise, representation or warranty whatsoever, express or implied, which is not contained herein, concerning the subject matters hereof, to induce them to execute this Agreement, and each of them acknowledge that they have not executed this Agreement in reliance upon any promise, representation or warranty not contained herein.

12. Neither this Agreement nor any provision of this Agreement can be amended, modified or waived in any way, except by an agreement in writing signed by the Parties, and each of them, expressly consenting to such amendment, modification or waiver.

13. This Agreement may be signed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all such counterparts shall together or separately constitute one and the same agreement. The Parties agree that any signed Agreement transmitted by facsimile machine will be treated as an original Agreement and the signature of any Party to any Agreement hereto transmitted by facsimile machine from the respective Party's legal counsel will be considered an original signature.

14. Each individual executing the Agreement on behalf of any of the Parties hereto represents and warrants that such individual is authorized on behalf of that Party to enter into this Agreement and that this Agreement binds that Party and its assignees.

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15. If any provision of this Agreement shall be held invalid in any respect, such invalidity shall not affect any other provision hereof, and the remaining provisions of this Agreement shall continue in full force and effect.

WHEREUPON, the Parties have each caused this Agreement to be signed below by their respective duly authorized representatives, acting in the capacities therein stated, effective as of the date first above given.

ARIZONA BARSTOOL COMPANY

Date: 10/14/07 By: [Signature]
Name: Stan R. Khuschewski
Title: President

APPROVED AS TO FORM AND CONTENT

ARIZONA LEATHER COMPANY

Date: 10/18/2007 By: [Signature]
Name: LEWIS FRIEDL
Title: CEO/President

STETINA BRUNDA GARRED & BRUCKER

[Signature]

Kathy Stetina, Reg. No. 29,443
Stephen Z. Vegh, Reg. No. 48,550
75 Enterprise, Suite 250
Aliso Viejo, CA 92656
Attorney for Househunt, Inc.

APPROVED AS TO FORM AND CONTENT

T:\Client Documents\ARZN\100054\arzn00.doc

EXHIBIT A

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,627,091

Registered Oct. 1, 2002

SERVICE MARK
PRINCIPAL REGISTER

ARIZONA
Leather Company

ARIZONA LEATHER COMPANY (PARTNER-
SHIP)
43016 CALLE REVA
TEMECULA, CA 92592

FOR: RETAIL STORES FEATURING LEATHER
FURNITURE AND ACCESSORIES, IN CLASS 35
(U.S. CLS. 100, 101 AND 102).

FIRST USE 12-26-1995; IN COMMERCE 6-30-1996.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "LEATHER COMPANY", APART
FROM THE MARK AS SHOWN.

SEC. 2(F) AS TO "ARIZONA".

SER. NO. 75-712,700, FILED 5-24-1999.

LESLEY LAMOTHE, EXAMINING ATTORNEY

EXHIBIT B

Int. Cls.: 20 and 35

Prior U.S. Cls.: 2, 13, 22, 25, 32, 50, 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,097,629

Registered May 30, 2006

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



ARIZONA LEATHER COMPANY, INC. (CALI-
FORNIA CORPORATION)
4235 SCHAEFER AVENUE
CHINO, CA 91710

FOR: FURNITURE, NAMELY, SOFAS, CHAIRS,
SECTIONALS AND OTTOMANS, IN CLASS 20 (U.S.
CLS. 2, 13, 22, 25, 32 AND 50).

FIRST USE 10-1-2002; IN COMMERCE 10-1-2002.

FOR: RETAIL STORES FEATURING LEATHER
FURNITURE AND ACCESSORIES, IN CLASS 35
(U.S. CLS. 100, 101 AND 102).

FIRST USE 10-1-2002; IN COMMERCE 10-1-2002.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "LEATHER", APART FROM THE
MARK AS SHOWN.

SER. NO. 78-558,208, FILED 2-1-2005.

KIMBERLY FRYE, EXAMINING ATTORNEY

EXHIBIT C

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2008-06-03 11:10:05 ET

Serial Number: 78558239 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark



(words only): [ARIZONA](#)

Standard Character claim: [No](#)

Current Status: [A request for the fourth extension of time to file a statement of use has been granted.](#)

Date of Status: [2008-05-06](#)

Filing Date: [2005-02-01](#)

The Notice of Allowance Date is: [2006-05-30](#)

Transformed into a National Application: [No](#)

Registration Date: (DATE NOT AVAILABLE)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 102](#)

Attorney Assigned:
[SHAW THOMAS V](#)

Current Location: [700 -Intent To Use Section](#)

Date In Location: [2007-12-18](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [ARIZONA LEATHER COMPANY, INC.](#)

Address:

[ARIZONA LEATHER COMPANY, INC.](#)
[4235 SCHAEFER AVENUE](#)
[CHINO, CA 91710](#)

[United States](#)

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [California](#)**Phone Number:** [\(909\) 393-6776](#)**Fax Number:** [\(909\) 393-2265](#)

GOODS AND/OR SERVICES

International Class: [020](#)**Class Status:** [Active](#)[Furniture, namely, sofas, chairs, sectionals and ottomans](#)**Basis:** [1\(b\)](#)**First Use Date:** [\(DATE NOT AVAILABLE\)](#)**First Use in Commerce Date:** [\(DATE NOT AVAILABLE\)](#)

ADDITIONAL INFORMATION

[\(NOT AVAILABLE\)](#)

MADRID PROTOCOL INFORMATION

[\(NOT AVAILABLE\)](#)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

[2008-05-06 - Extension 4 granted](#)[2008-05-06 - Extension 4 filed](#)[2008-05-06 - TEAS Extension Received](#)[2007-12-20 - Extension 3 granted](#)[2007-11-29 - Extension 3 filed](#)[2007-12-03 - PAPER RECEIVED](#)[2007-08-25 - Extension 2 granted](#)[2007-05-23 - Extension 2 filed](#)[2007-05-29 - PAPER RECEIVED](#)[2007-04-23 - Extension 1 granted](#)[2006-11-30 - Extension 1 filed](#)[2007-03-06 - Assigned To Examiner](#)[2007-03-06 - Petition Granted - Extension Request Filed](#)[2007-02-16 - Petition To Revoke Received](#)

Case 2:08-cv-01395-FJM

Document 1-4

Filed 07/21/2008

Page 14 of 15

2007-02-16 - PAPER RECEIVED

2007-01-30 - Abandonment Notice Mailed - No Use Statement Filed

2007-01-30 - Abandonment - No use statement filed

2006-05-30 - Notice of allowance - mailed

2006-03-07 - Published for opposition

2006-02-15 - Notice of publication

2006-01-24 - Law Office Publication Review Completed

2006-01-06 - Assigned To LIE

2006-01-04 - Approved for Pub - Principal Register (Initial exam)

2006-01-04 - Amendment From Applicant Entered

2005-12-09 - Communication received from applicant

2005-12-09 - PAPER RECEIVED

2005-08-31 - Non-final action mailed

2005-08-30 - Non-Final Action Written

2005-08-30 - Assigned To Examiner

2005-02-09 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

MATTHEW A. NEWBOLES

Correspondent

MATTHEW A. NEWBOLES
STETINA, BRUNDA, GARRED & BRUCKER
75 ENTERPRISE, STE. 250
ALISO VIEJO, CA 92656-2681
Phone Number: (949) 855-1246
Fax Number: (949) 855-6371

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE _____

SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

District of Arizona

Arizona Leather Company, a California corporation, Plaintiff,

SUMMONS IN A CIVIL CASE

V.

Shane M. Khubchandani, an individual doing business as Arizona Barstool Company, CASE Defendant.

TO: (Name and address of Defendant) Shane M. Khubchandani d/b/a Arizona Barstool Company
14202 North Scottsdale Road, Suite 169
Scottsdale, Arizona 85254

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Brian W. LaCorte (bwl@gknet.com)
Donna H. Catalfio (dhc@gknet.com)
Gallagher & Kennedy, P.A.
2575 E. Camelback Road
Phoenix, Arizona 85016
(602) 530-8000

an answer to the complaint which is served on you with this summons, within twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

