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FILED
 SUPERIOR COURT of CALIFORNIA
 COUNTY of SANTA BARBARA

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Darrel E. Parker, Executive Officer
 BY Renee Bradley *RB*
 Renee Bradley, Deputy Clerk

5 Attorneys for Plaintiff
 6 THE JULIA CHILD FOUNDATION FOR
 GASTRONOMY AND THE CULINARY ARTS

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF SANTA BARBARA

10 THE JULIA CHILD FOUNDATION FOR
 11 GASTRONOMY AND THE CULINARY
 12 ARTS, a Massachusetts charitable trust,

Plaintiff,

v.

14 WILLIAMS-SONOMA, INC., a Delaware
 15 corporation with its principal place of
 16 business located in San Francisco,
 California, and DOES 1-20, inclusive,

Defendants.

Case No. **1418727**

**COMPLAINT FOR DAMAGES AND
 INJUNCTIVE RELIEF FOR:**

**MISAPPROPRIATION OF RIGHT OF
 PUBLICITY (CALIFORNIA CIVIL
 CODE § 3344.1)**

DEMAND FOR JURY TRIAL

20 Plaintiff The Julia Child Foundation for Gastronomy and The Culinary Arts (herein,
 21 "The Julia Child Foundation" or "Plaintiff") hereby alleges as follows:

22 **SUMMARY OF THE ACTION**

23 1. The Julia Child Foundation owns certain of the intellectual property rights,
 24 including all rights of publicity, of and associated with legendary American cooking
 25 teacher, author and television personality, Julia Child.

26 2. Julia Child's name, photograph and likeness have tremendous commercial
 27 value, particularly in the industries associated with food, cooking and the culinary arts.

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1 3. Julia Child, throughout her entire career, which lasted in excess of forty (40)
2 years, famously refused to allow her name or image to be used to market or sell
3 commercial products, particularly culinary products such as pots, pans, stoves, food
4 brands, etc. The exception was the use of Mrs. Child's name and image on and in
5 connection with the many books that she wrote over her lifetime (primarily cookbooks)
6 and in connection with her television programs which were primarily broadcast on public
7 television. The Julia Child Foundation, which is charged with protecting the name, image,
8 reputation and legacy of Julia Child, likewise has adopted the same policy and generally
9 refuses all requests of companies and brands to allow her name or image to be used in
10 connection with their advertising, marketing or promotion.

11 4. In contravention of Mrs. Child's longstanding and widely-known policy of
12 politely refusing all requests to associate her name or image with commercial products and
13 brands, and The Julia Child Foundation's same well-publicized policy since her death in
14 July 2004, defendant Williams-Sonoma, Inc. ("Williams-Sonoma") prominently used Julia
15 Child's name and photograph *more than one hundred times* within its advertising,
16 marketing and promotional materials for the Williams-Sonoma brand and to sell its
17 hundreds of different commercial products including pots, pans, cookware, kitchenware,
18 and related kitchen, culinary and food products, including at Williams-Sonoma's
19 commercial website, as well as through Facebook, Twitter, Pinterest, Google+, and other
20 social media websites (enabling users to distribute such advertising, marketing and
21 promotionally materials virally to their friends and followers). Moreover, Williams-
22 Sonoma sent "email blasts" to its extensive mailing list of customers, and also ran a "Julia
23 Child Sweepstakes" further promoting its business and products.

24 5. Williams-Sonoma did not obtain the permission of The Julia Child
25 Foundation, nor did it obtain the permission of Mrs. Child prior to her death in July 2004,
26 to use the name, photograph and/or likeness of Julia Child. Nor did Williams-Sonoma
27 bother to ask The Julia Child Foundation, or any of its representatives, for such
28 permission. Nor did Williams-Sonoma pay or offer to pay The Julia Child Foundation

1 and Plaintiff will seek leave of Court to amend this Complaint to assert the true names and
2 capacities of such fictitiously-named defendants when the same have been ascertained.
3 For convenience, each reference to a named defendant herein shall also refer to Does 1
4 through 20. All defendants, including both Williams-Sonoma and those referred to herein
5 as Does 1 through 20, are sometimes collectively referred to herein as "Defendants."

6 10. Plaintiff is informed and believes and based thereon alleges that Defendants,
7 and each of them, were and are the agents, licensees, employees, partners, joint-venturers,
8 co-conspirators, owners, principals, and employers of the remaining Defendants, and each
9 of them are, and at all times herein mentioned were, acting within the course and scope of
10 that agency, license, partnership, employment, conspiracy, ownership, or joint venture.
11 Plaintiff further is informed and believes and based thereon alleges that the acts and
12 conduct herein alleged of each of the Defendants were known to, authorized by, and/or
13 ratified by the other Defendants, and each of them.

14 **JULIA CHILD**

15 11. Julia Child was born on August 15, 1912 in Southern California, and was
16 raised in Southern California. She lived in many places during her life besides California,
17 including New York, Washington D.C., Paris, France, and Cambridge, Massachusetts.
18 Mrs. Child owned a secondary residence in Santa Barbara County, California from 1981
19 through 2001 and, in late 2001, permanently relocated and retired to Santa Barbara
20 County, California, after donating her house in Cambridge to her *alma mater*, Smith
21 College, and her entire kitchen from that home to the Smithsonian Institute, both donations
22 being made in late 2001. As of January 2002, Mrs. Child was a permanent domiciliary,
23 resident and taxpayer of the State of California and remained so for rest of her life. Mrs.
24 Child passed away on August 13, 2004, two days before her 92nd birthday. Her 100th
25 birthday was celebrated on August 15, 2012, and her 101st birthday was recently
26 celebrated on August 15, 2013.

27 12. Beginning in the early 1960s, and until her death in 2004, Julia Child was a
28 famous American cooking teacher, author and television personality. Her career began in

1 earnest in 1961, at the age of 39, when her first book, *Mastering the Art of French*
2 *Cooking*, was published by Alfred A. Knopf, becoming a best-seller and receiving critical
3 acclaim. In 2009, nearly 50 years after its first publication, the book topped the *New York*
4 *Times* best-seller list in the advice and how-to category. In 1963, Julia Child's celebrated
5 television program, *The French Chef*, debuted on public television and was an immediate
6 hit. It was quickly syndicated to local Public Broadcasting Service ("PBS") stations
7 throughout the United States and was broadcast nationally for ten years, totaling
8 approximately 200 episodes, many of which remain widely available today including
9 through channels such as www.PBS.com, iTunes and DVD sets. *The French Chef* won
10 numerous accolades including an Emmy Award and Peabody Award. The success of the
11 show led to several other successful series and PBS specials, resulting in Mrs. Child
12 winning two additional Emmy Awards, and the publication of several companion books.
13 Mrs. Child wrote or co-wrote a total of eighteen (18) books, nearly all of them educational
14 books about food, cooking and the culinary arts. Her final book, the autobiographical *My*
15 *Life in France*, published posthumously in 2006, was a critically acclaimed bestseller and
16 recounted Mrs. Child's life with her husband, Paul Child, in post-World War II France.

17 13. Throughout her life and career, Julia Child had many opportunities for
18 commercial advancement, including commercial endorsement and spokesperson
19 opportunities with companies in the food and culinary industry. She could have created a
20 lifestyle brand like Martha Stewart or Oprah Winfrey, and could have become a
21 spokesperson for multi-billion dollar commercial brands in the kitchen, culinary and food
22 industry—brands such as Williams-Sonoma—for large sums of money. Instead, she
23 steadfastly refused all such commercial opportunities and instead focused her career on
24 public education.

25 14. As a testament to Mrs. Child's longstanding and well known policy of
26 refusing commercial endorsement opportunities, and also her impact on the food and
27 culinary industry, in August 2012, during celebrations for Mrs. Child's 100th birthday,
28 famed chef, bestselling author, and television host Anthony Bourdain reportedly stated:

1 “Julia Child was the single most important, influential and game-changing
2 figure in the history of American gastronomy. Everything tracks back to her.
3 And though uniquely situated to do so, she never endorsed a thing: not a pot,
4 not a pan, not a chain of restaurants, not a spice blend, apron, or boil-in-the-
5 bag dinner. She will be remembered for what she did on this earth, which
6 was to inspire millions to cook — and eat — better.”

7 15. From the early 1960s, through to the present, the name, identity, and persona
8 of Julia Child have been and are instantly recognized by the public and have substantial
9 commercial value.

10 16. Upon her passing on August 13, 2004, Mrs. Child’s rights of publicity,
11 including the right to use her name, photograph and likeness for commercial purposes (the
12 “Julia Child Publicity Rights”) were transferred by her will to The Julia Child Foundation,
13 a charitable trust that she had created approximately nine years earlier, in 1995. Mrs.
14 Child’s will was probated in the Santa Barbara County Superior Court, State of California.

15 17. The Julia Child Foundation is a grant-giving private foundation dedicated to
16 advancing the matters that Julia Child valued: educating and encouraging others to live
17 well through the joys of cooking and eating well.

18 18. The Julia Child Foundation exercises careful consideration before permitting
19 the use of any of the Julia Child Publicity Rights. The Julia Child Foundation generally
20 does not grant permission for the Julia Child Publicity Rights to be used for commercial
21 purposes, including the marketing and sale of commercial products and services, because
22 Julia Child herself, during her lifetime and long career as a world-famous cooking teacher,
23 author and television personality, likewise did not grant permission for the Julia Child
24 Publicity Rights to be used for commercial purposes, other than in connection with her
25 books and television programs.

26 19. Neither Julia Child, nor The Julia Child Foundation, ever granted to any of
27 the Defendants any right, license or permission to use any of the Julia Child Publicity
28 Rights for any purpose whatsoever.

DEFENDANTS' WRONGFUL CONDUCT

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2 20. Plaintiff is informed and believes and based thereon alleges that Williams-
3 Sonoma advertises, markets, promotes, distributes, offers for sale, and sells kitchen,
4 culinary and food products under the "Williams-Sonoma" brand, among other brands.
5 According to its website, "Williams-Sonoma, Inc. is the premier specialty retailer of home
6 furnishings and gourmet cookware in the United States. . . . the brand has expanded to
7 hundreds of products from around the world, more than 250 stores nationwide, a direct-
8 mail business that distributes millions of catalogs a year, and a highly successful e-
9 commerce site."

10 21. Defendants intentionally and prominently used the Julia Child Publicity
11 Rights, owned by The Julia Child Foundation, within numerous advertisements, marketing,
12 and promotional materials for Williams-Sonoma and its products, including at Williams-
13 Sonoma.com, and through social media including Facebook, Instagram and Pinterest
14 (collectively, the "Advertisements"), commencing in or about 2012 and continuing through
15 the present.

16 22. Defendants used the Julia Child Publicity Rights for the purpose of attracting
17 attention to Williams-Sonoma and its commercial products and services, and enhancing the
18 advertising and marketing thereof.

19 23. At no time did Julia Child, or The Julia Child Foundation, ever give
20 permission to Defendants, or any of them, or to Williams-Sonoma, the right to use the Julia
21 Child Publicity Rights for any purpose whatsoever, including the right or permisison to
22 advertise, market, and promote Williams-Sonoma and/or its products.

23 24. Plaintiff is informed and believes and based thereon alleges that Defendants
24 intentionally, negligently, and/or knowingly used the Julia Child Publicity Rights in the
25 Advertisements for the purpose of advertising and promoting Williams-Sonoma and its
26 commercial products and services. Defendants have, without any right, title or
27 authorization, misappropriated Plaintiff's valuable rights and the resulting success and
28 popularity of Julia Child by unlawfully using the Julia Child Publicity Rights for the

1 aforesaid commercial purposes.

2 **FIRST CAUSE OF ACTION**

3 **(Misappropriation of Right of Publicity**

4 **California Civil Code §3344.1 – Against All Defendants)**

5 25. Plaintiff repeats, re-alleges, adopts and incorporates each and every
6 allegation contained in Paragraphs 1-24, inclusive, as though fully set forth herein.

7 26. The conduct of Defendants, as alleged hereinabove, constitutes a violation of
8 Section 3344.1 of the California Civil Code, due to the knowing and unauthorized use of
9 the legendary Julia Child's name, photograph and likeness for commercial purposes, which
10 have substantial commercial value.

11 27. As a direct and proximate result of the aforesaid wrongful acts of
12 Defendants, Plaintiff has been damaged in an amount that is not yet fully ascertainable, but
13 which exceeds the jurisdictional minimum of this Court. When Plaintiff has ascertained
14 the full amount of its damages, it will seek leave of Court to amend this Complaint
15 accordingly.

16 28. As a direct and proximate result of the aforesaid wrongful acts of
17 Defendants, Plaintiff has incurred, and will continue to incur, attorneys' fees and costs.
18 Plaintiff is entitled to an award of its attorneys' fees and costs incurred in connection with
19 this action pursuant to Section 3344.1(a)(1) of the California Civil Code.

20 29. By reason of the aforesaid wrongful acts of Defendants, in addition to the
21 relief sought hereinabove, Plaintiff is entitled to an accounting of all of Defendants'
22 revenues and profits associated with the unauthorized use of Julia Child's name,
23 photograph and likeness, and to an award of all such sums.

24 30. By reason of Defendants' wrongful acts as alleged hereinabove, Defendants
25 are involuntary trustees holding all revenues and profits associated with the unauthorized
26 use of Julia Child's name, photograph and likeness, in their possession under a
27 constructive trust for the benefit of Plaintiff with a duty to transfer the same to Plaintiff
28 forthwith.

1 31. Plaintiff is informed and believes, and based thereon alleges, that
2 Defendants, in doing the things herein alleged, acted willfully, maliciously, and
3 oppressively, and with full knowledge of the adverse effects of their actions on Plaintiff,
4 and with willful and deliberate disregard for the consequences to Plaintiff. By reason
5 thereof, Plaintiff is entitled to recover punitive and exemplary damages from Defendants in
6 an amount to be determined at the time of trial.

7 32. Plaintiff also seeks a preliminary and permanent injunction to prohibit
8 Defendants from any further commercial use of the Julia Child Publicity Rights, including
9 Julia Child's name, photograph, likeness, image, voice or signature.

10 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them,
11 jointly and severally, as follows:

- 12 1. General and special damages in accordance with proof at trial;
 - 13 2. An award of the revenues and profits received by Defendants as a result of
14 the unauthorized use of the Julia Child publicity rights;
 - 15 3. Imposition of a constructive trust on all monies and sums received by
16 Defendants as a result of their infringement of the Julia Child publicity rights;
 - 17 4. Punitive and exemplary damages in accordance with proof at trial;
 - 18 5. An award of Plaintiff's attorneys' fees;
 - 19 6. Preliminary and permanent injunction prohibiting Defendants and their
20 affiliated companies from any further use of Julia Child's name, photograph, likeness,
21 voice, signature, identity, or other publicity rights.
 - 22 7. For all costs of suit incurred herein;
 - 23 8. Interest at the maximum legal rate; and
 - 24 9. For such other and further relief as the Court may deem to be just and proper.
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Dated: September 4, 2013

HARDER MIRELL & ABRAMS LLP

By: 

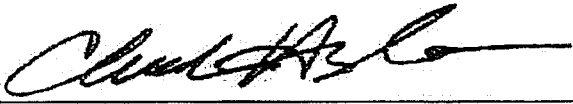
CHARLES J. HARDER
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THE JULIA CHILD FOUNDATION FOR
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ARTS

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: September 4, 2013

HARDER MIRELL & ABRAMS LLP

By: 

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