

501 West Broadway, Suite 1700
San Diego, CA 92101
e agiannetto@bremerwhyte.com
e mbaker@bremerwhyte.com
t (619) 236-0048
f (619) 236-0047
bremerwhyte.com

NICOLE WHYTE^{1,2,10,*}
KEITH G. BREMER¹
RAYMOND MEYER, JR.¹
PETER C. BROWN^{1,2,3,4,10}
JOHN V. O'MEARA^{1,2,4}
TYLER D. OFFENHAUSER¹
PATRICK AU¹
JEREMY S. JOHNSON¹
JOHN H. TOOHEY^{1,5}
VIK NAGPAL¹
KAREN M. BAYTOSH^{1,2}
MONIQUE R. DONAVAN¹
ARASH S. ARABI¹
JOHN J. BELANGER¹
ALISON K. HURLEY¹
LUCIAN J. GRECO, JR.¹
ANTHONY T. GARASI¹
RACHEL A. MIHAJ¹
MICHAEL A. D'ANDREA¹
SHEILA C. STILES¹
BENJAMIN L. PRICE¹
ALEXANDER M. GIANNETTO^{1,10,12}
ADAM B. CAMPBELL^{1,10}
JOSEPH JACKSON BRISCOE IV¹
KYLE P. CARROLL¹
DANIEL A. CRESPO¹
LANCE J. PEDERSEN¹
JEFFREY W. SAAB¹
NICOLE L. SCHMIDT¹
NICOLE NUZZO^{1,2}
JARED G. CHRISTENSEN^{1,2,3,4,14}
SCOTT W. ULM¹
RICK L. PETERSON¹

JONATHAN A. KAPLAN¹
KATHERINE SHRAGER¹
JASON S. DIGIOIA¹
CHATA N. HOLT¹
AUGUST B. HOTCHKIN^{1,2}
NICHOLAS C. YOUNG¹
KERRY R. PLUCK²
KENNETH L. MARIBOHO II¹
NICHOLAS S. KAM¹
MERRITT E. COSGROVE¹
MATTHEW E. PRIMM¹
MADELINE M. ARCELLANA¹
LESLEY A. POWERS¹
HAASTY S. BURNS¹
MATTHEW B. MEEHAN¹
BRYAN STOFFERAHN¹
CECILIA K. LEINWEBER¹
RUKHSAR SIDDIQUI¹
YVONNE RUIZ¹
STEPHEN C. DREHER^{1,5,10}
JOHNPAUL N. SALEM¹
BITA M. AZIMI¹
ELIZABETH M. DEANE^{1,2}
JOSHUA D. BRADUS¹
DEVIN R. GIFFORD^{1,2}
TYLER J. ALLEN¹
MARK W. PRAGER¹
LORIN M. HERZFELDT¹
JOHN CAYANGYANG¹
FRANCESCA S. KOTIK¹
MATTHEW L. BREMONT¹
NICHOLAS HALEY²
DAMON L. BOOTH^{1,2}
DEVIN BRUNSON⁴
PATRICK M. MALONE¹
CHRISTOPHER J. CUMMISKEY¹
FARID ZAKARIA¹
JOCELYN M. RUSSO^{1,21}
CARLA MOORE¹
COURTNEY M. SERRATO¹
CYRUS J. MOSHIRI¹
JONATHAN P. COTHRAIN¹
ANGELO Z. PERILLO¹
MORGAN H. PIERCY¹
JENNIFER R. TOGHIAN¹
RYAN T. KARRER^{1,15}
DANIELLE C. CARTER¹
ALLISON K. HOWARD¹
AJAY AHLUWALLIA¹
RYAN W. JEBREH¹
EILEEN J. GAISFORD¹
CATHY PANTELIC¹
KEIAN VAHEDI¹
TYLER B. McQUILLAN¹
KAITLIN D. SEARS¹
SOHAIB LATIF¹
TERRY W. STRAUGHN¹
DELEELA M. WEINERMAN^{1,2}
SARVNAZ TORABI¹
CASEY B. NATHAN¹
LILYA DISHCHYAN¹
JESSICA L. COLLINS¹
KEVIN F. BARRETT^{1,10,4,12}
HEATHER A. BOURNE¹
AVA VAHDAT¹

JULIE L. BATZ¹
CODY K. MARRIOTT^{2,19}
NEGIN NAZI¹
JACQUELYN J. KELLEY²
KYLE A. RIDDLES¹
THOMAS E. ST. GERMAIN¹
DANA H. HASSAN¹
SARAH V. VEGA¹
KATIE COY¹
VERONICA N. FINK²
RYAN EFROS^{2,4}
WESLEY R. STINER¹
NEIL J. PATEL¹
MELISSA WOOD¹
VIRETHA R. WRIGHT¹
CHRISTOPHER H. FILER¹
CHRISTINE C. MCCOY¹
WILLIAM A. HADIKUSUMO¹
JUSTIN C. VANCE¹
ANDREW H. STEINBERG¹
KEVIN B. WHEELER^{2,14}
KEVIN KUMAR¹
COURTNEY B. LOCKHART¹
ALEXANDER H. KHARAZMI¹
JUSTIN S. BLAYLOCK¹
FARNOUSH HAMIDI¹
JC CHIMOURES¹
MELISSA INGLEBY²
ERIC J. BABA¹
REGINA S. ZERNAY¹
LYLE B. TRAINER^{1,12}
BRIAN D. MURPHY¹
VICKY ZUBER¹
CYRUS S. WHITTAKER^{1,2}
MATTHEW P. HYTTREK¹
MICHELLE N. GONZALEZ¹
TIMOTHY G. MCNULTY^{1,5}
ANNA KARABACHBEV²
EMILY C. CUNION¹
STEVEN A. FLAXMAN⁴
LAILA THOMPSON¹
LEESA GOODWIN¹
CAITLIN M. SALATA¹
MYRALEIGH A. ALBERTO¹
ALEXANDER C. GREEN¹
JOSHUA L. FABIAN¹
MEHRAN D. ALAHI¹
EVELYN L. SOLIS¹
DEAN B. SOLOMON¹
JUSTIN A. MALLORY¹
LORIN M. TAYLOR¹
GIANNA N. LIDDY¹
SHAWN A. CALAYAG¹
MELISSA A. YOUNGPETER⁴
DANIEL J. KLETT¹
MATTHEW R. BAKER¹
DEBRA A. STEVENS¹
NICOLE D. ALLEN¹
JEANNETTE GARCIA¹
SHY L. ROUS¹
PATRICIA K. GANDY¹
ERICA A. BOBAK²
RONALDO A. BUMBASI¹
DANIELLE M. VICINO¹
DAMON STEMEN²

- 1 Admitted in California
- 2 Admitted in Nevada
- 3 Admitted in Arizona
- 4 Admitted in Colorado
- 5 Admitted in Ohio
- 6 Admitted in Washington D.C.
- 7 Admitted in Oregon
- 9 Admitted in Texas
- 10 Admitted in Washington
- 11 Admitted in New Jersey
- 12 Admitted in New York
- 13 Admitted in Illinois
- 14 Admitted in Utah
- 15 Admitted in Pennsylvania
- 16 Admitted in New Mexico
- 17 Admitted in Delaware
- 18 Admitted in Idaho
- 19 Admitted in Oklahoma
- 20 Admitted in Georgia
- 21 Admitted in Connecticut
- * Certified Family Law Specialist
The State Bar of California Board
of Legal Specialization

October 3, 2019

CONFIDENTIAL SETTLEMENT AND MEDIATION PRIVILEGED
COMMUNICATION PURSUANT TO
EVIDENCE CODE §§ 1119 AND 1152

VIA E-MAIL

jimmy@sдинjurylaw.com

David T. Achord
Zhiming Wang
San Diego Injury Law Center, Executive Suites
4025 Camino Del Rio S., Suite 100
San Diego, CA 92108

Re: **Cuc Kim Le v. SF San Diego Inc dba SF Supermarket, et al.**
BWB&O Client/Insured: SF San Diego Inc dba SF Supermarket
BWB&O File No.: 1438.104
Subject: **Demand for Dismissal**

Dear Mr. Wang:

David T. Achord
BWB&O File No.: 1438.104
October 3, 2019
Page - 2 -

PRIVILEGED COMMUNICATION
PURSUANT TO EVIDENCE CODE §§
1119 AND 1152

As you know, Bremer Whyte Brown & O'Meara, LLP, has been retained to represent the interests of SF San Diego Inc. dba SF Supermarket ("SF Supermarket") in the above-referenced matter. SF Supermarket recently produced surveillance footage of Cuc Kim Le ("Plaintiff") on May 2, 2017. Based upon our review of the video and statements made by Plaintiff in the Customer Accident Report dated May 2, 2017, there is no basis for liability against our client. Accordingly, please consider this our demand for dismissal in exchange for waiver of fees and costs.

The surveillance videos from the Thuan Phat Supermarket shows the produce department and location of your client's fall, beginning at 12:32 p.m. and ending at 1:04 p.m. Your client fell at 12:41 p.m. As you will see in the video, the timeline of events clearly exculpates our client from any liability whatsoever. We provide a brief overview of that timeline here for your reference:

At 12:38 p.m. – Plaintiff is first seen on the footage shopping in the produce section.

At 12:40:15 p.m. – an unknown male customer walks through the immediate area of Plaintiff's fall and does not observe, maneuver around, or appear to indicate the presence of any hazard or "empty box left on the floor" as described in Plaintiff's Complaint.

At 12:41:00 p.m. – another unknown male customer is seen walking through the immediate area of Plaintiff's fall and does not drop anything or indicate that the existence of any hazard.

At 12:41:28 p.m. – an employee walks out from the back of the store and past the immediate area where the incident occurs. She does not drop anything and walks past the direct area of the fall without stopping or indicating there was a hazard present.

At 12:41:30 p.m. – Plaintiff leaves her cart up against a produce display, takes about one step around her cart, and while looking left and not paying attention to where she was going, falls. There is no indication of any hazard on the floor that caused Plaintiff to fall.

In addition to the surveillance footage which fails to show the existence of any "empty box left on the floor" in the immediate area of the fall, Plaintiff never informed any SF Supermarket employee that a box was what caused her to fall. The Customer Incident Report, described the incident as "customer fell on the floor when she turned with her shopping cart, she was wearing slipper." These are Plaintiff's words as they were told to the employee drafting the report. Furthermore, none of Plaintiff's medical records indicate that the cause of the incident

David T. Achord
BWB&O File No.: 1438.104
October 3, 2019
Page - 3 -

PRIVILEGED COMMUNICATION
PURSUANT TO EVIDENCE CODE §§
1119 AND 1152

was an empty box left on the floor. Rather the records repeatedly indicate that Plaintiff tripped and fell while ambulating through the produce area.

As outline above, the timeline of events demonstrates no possibility of liability against our client. As you are aware, Plaintiff maintains the burden of proof to establish negligence. The evidence sufficiently shows that SF Supermarket not only exercised care in maintaining the property, it also shows that there was no empty box left on the floor in the produce area and that Plaintiff fell as a result of her own failure to pay attention to where she was walking. This removes any possibility for our client to have been considered to have actual or constructive notice of the condition, with reasonable opportunity to cure the same, because no such empty box existed on the floor of the area when Plaintiff fell.

In light of the foregoing, we demand dismissal in exchange for a waiver of fees and costs. Although it is unfortunate Plaintiff slipped and fell and may have been injured as a result of the same, this accident was exclusively the result of Plaintiff's own failure to pay attention to where and how she was walking because there no hazard existed in the immediate area where Plaintiff fell at any time, before or after, the incident. There is clearly no liability.

Should you refuse to dismiss our client in exchange for waiver of costs, we will be moving for summary judgment and an award of our costs as prevailing party. Our offer for dismissal in exchange for waiver shall remain open until **October 15, 2019**. Accordingly, please allow this correspondence to further notify you that our willingness to waive fees and costs in relation to her defense would be withdrawn should you disregard this letter. After that time, we will proceed with filing a Motion for Summary Judgment.

Thank you for your professional courtesy and cooperation with respect to the above-referenced matter. Should you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Very Truly Yours,

BREMER WHYTE BROWN & O'MEARA LLP

/s/ Matthew Baker
Alex M. Giannetto
Matthew Baker

mbaker@bremerwhyte.com
AMG/MRB