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Superior Court of California,
County of Orange
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By Fidel Ibarra, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL DISTRICT

MARKET BROADCAST, LLC, and
GEORGE SHARP,

Plaintiffs,

v.

CROCS INC., BIOSTEM U.S.
CORPORATION, DWIGHT
BRUNOEHLER, JOHN SATINO, SCOTT
CRUTCHFIELD, LONDON FINANCE
GROUP, LTD., SHERMAN MAZUR,
ELCO SECURITIES, LTD., FOX
COMMUNICATIONS GROUP, STEVE
BECK and DOES 1 through 50, inclusive,

Defendants.

No. 30-2013-00669008-CU-CO-CJC

CROCS INC.'S NOTICE OF DEMURRER
AND DEMURRER TO PLAINTIFFS
MARKET BROADCAST, LLC AND
GEORGE SHARP'S THIRD AMENDED
COMPLAINT; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF

Date: November 19, 2014
Time: 10:00 a.m.
Dept: C22
Judge: Judge Sheila Fell
Action Filed: August 14, 2013

Reservation No.: 72015463

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on November 19, 2014, at 10:00 a.m., or as soon thereafter
3 as the matter may be heard in Department C22 of the Superior Court of the County of Orange,
4 Central Justice Center, located at 700 Civic Center Drive West, Santa Ana, CA 92701, Defendant
5 Crocs, Inc. ("Crocs") will, and hereby does, demur pursuant to Section 430.10 of the California
6 Civil Procedure Code to all of the causes of action asserted against it in the Third Amended
7 Complaint filed by Plaintiffs Market Broadcast, LLC and George Sharp (collectively,
8 "Plaintiffs"). This demurrer is based on this Notice of Demurrer and Demurrer, the
9 Memorandum of Points and Authorities in support thereof, the pleadings and records on file with
10 the Court, and any such further written and oral evidence and argument as may be presented at
11 the time of the hearing.

12 **DEMURRER TO THE SECOND CAUSE OF ACTION**
13 **Fraud**
14 **(Against Moving Defendant)**

15 1. Plaintiffs fail to state facts sufficient to constitute a cause of action for fraud
16 because Plaintiffs fail to plead fraud, or conspiracy to commit fraud, with sufficient particularity.
17 Cal. Civ. Proc. Code § 430.10(e).

18 2. Plaintiffs fail to state facts sufficient to constitute a cause of action for fraud, or
19 conspiracy to commit fraud, because Plaintiffs fail to allege one or more essential elements of the
20 cause of action or of the alleged conspiracy. Specifically, the Third Amended Complaint fails to
21 allege that Crocs participated in the formation and operation of any conspiracy, that Crocs made a
22 misrepresentation, or that Plaintiffs suffered damages therefrom. Cal. Civ. Proc. Code §
23 430.10(e).

24 **DEMURRER TO THE THIRD CAUSE OF ACTION**
25 **Negligent Misrepresentation**
26 **(Against Moving Defendant)**

27 3. Plaintiffs fail to state facts sufficient to constitute a cause of action for negligent
28 misrepresentation because Plaintiffs fail to plead negligent misrepresentation, or conspiracy to
29 make any negligent misrepresentation, with sufficient particularity. Cal. Code Civ. Proc, §
30 430.10(e).

1 4. Plaintiffs fail to state facts sufficient to constitute a cause of action for negligent
2 misrepresentation, or conspiracy to make any negligent misrepresentation, because Plaintiffs fail
3 to allege one or more essential elements of the cause of action. Specifically, the Third Amended
4 Complaint fails to allege that Crocs participated in the formation and operation of any conspiracy,
5 that Crocs made a misrepresentation, or that Plaintiffs suffered damages therefrom. Cal. Civ.
6 Proc. Code § 430.10(e).

7 5. In addition, Plaintiffs fail to state facts sufficient to constitute a cause of action for
8 conspiracy to make any negligent misrepresentation because the act of conspiracy requires two or
9 more persons agreeing to commit intentionally a wrongful act, *see Wyatt v. Union Mortgage Co.*,
10 24 Cal.3d 773, 784–85 (1979), and, therefore, the law does not recognize a cause of action for
11 conspiracy to commit negligence.

12 **DEMURRER TO FOURTH CAUSE OF ACTION**
13 **Violation of California Unfair Business Practices Act -**
14 **Business & Professions Code Section 17200**
 (Against Moving Defendant)

15 6. Plaintiffs fail to state facts sufficient to constitute a cause of action for violation of
16 California Unfair Competition Law, Section 17200 (“UCL”). Cal. Code Civ. Proc, § 430.10(e).

17 7. Plaintiffs fail to state facts sufficient to constitute a cause of action based on the
18 UCL because the Third Amended Complaint fails to plead an unlawful act, or conspiracy to
19 commit an unlawful act, as the predicate for a violation of the UCL. Cal. Code Civ. Proc, §
20 430.10(e).

21 Accordingly, Crocs respectfully requests that its demurrer to Plaintiffs’ second, third and
22 fourth causes of action be sustained without leave to amend, and that the Third Amended
23 Complaint be dismissed in its entirety as against Crocs with prejudice.

24 DATED: August 28, 2014

PERKINS COIE LLP

By: 

Charles H. Samel, Bar No. 182019

Attorneys for Defendant
Crocs, Inc.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 The Third Amended Complaint fails to state a cause of action because it does not contain
4 factual allegations that, if proven, would show a causal nexus or reasonable relationship between
5 the manipulation of Biostem stock and the purported acts of any Crocs employee that would
6 permit a finding that Crocs somehow could be held vicariously liable for the consequences of the
7 alleged fraud. The only connection between the alleged stock fraud scheme and Crocs is that a
8 Crocs employee (Scott Crutchfield), and a former employee (Steve Beck), were personal
9 investors, officers, and directors in a company called Biostem that made hair restoration products.
10 As the Court is aware, Crocs is a well-known brand of footwear, and there is no allegation that
11 the stock fraud involved any representations about Crocs products, or conduct by any Crocs
12 employee, other than Crutchfield and Beck. However, Plaintiffs have not alleged any facts that, if
13 proven, could show that the alleged involvement of Crutchfield and Beck in the purported
14 Biostem stock fraud scheme was an outgrowth of their employment with Crocs, so Crocs cannot
15 be liable for their conduct as a matter of law.

16 It is time for this lawsuit’s sojourn on the Court’s docket to come to an end. Plaintiffs
17 long ago dismissed their claims against both Crutchfield and Beck, and more recently dismissed
18 their case against Dwight Brunoehler, who was the CEO of Biostem. And it is Crocs’
19 understanding that Plaintiffs still have not yet served some of the other defendants. In any event,
20 it is likely that each of the other remaining defendants is judgment proof, which is apparently why
21 Plaintiffs are intent on pursuing this frivolous action against Crocs, a public company, for alleged
22 fraud. As a global consumer brand in the public eye, Crocs has had no choice but to litigate this
23 case and clear its good name. But Crocs has been fighting these baseless accusations for more
24 than one year. After *four* attempts, Plaintiffs have still failed to state any cause of action against
25 Crocs. The Court has given Plaintiffs reasonable leeway, and then some, and now should sustain
26 the demurrer without leave to amend and finally bring an end to the burden and expense that
27 Crocs has been forced to bear.

1 Most recently, the Court sustained Crocs' demurrer to the Second Amended Complaint.
2 In doing so, the Court held that Plaintiffs failed to plead facts to support the formation and
3 operation of the alleged conspiracy as to Crocs, and that Plaintiffs failed to plead that the conduct
4 of Crutchfield or Beck was an outgrowth of their employment with Crocs. The Court further held
5 that Plaintiffs failed to state a cause of action against Crocs for negligent misrepresentation
6 because parties cannot conspire to commit a negligent act as a matter of law. Finally, the Court
7 held that Plaintiffs failed to properly allege claims for fraud and negligent misrepresentation or
8 other misconduct that could constitute a Business & Professions Code section 17200 violation.

9 While sustaining Crocs' demurrer, and despite three prior attempts to plead a cause of
10 action against Crocs, the Court afforded Plaintiffs another opportunity to try to cure the
11 deficiencies in their first three pleadings. Plaintiffs' effort to take advantage of that temporary
12 reprieve has proven futile. Apart from attaching a copy of the criminal indictment that was filed
13 against some of the other defendants, the *only difference* between the Second Amended
14 Complaint and the Third Amended Complaint is that Plaintiffs *added eleven paragraphs*, none of
15 which is sufficient to state any cause of action against Crocs. (See Third Amended Complaint
16 ("TAC"), ¶¶ 19-29.)

17 One of the new paragraphs merely purports to explain how "pump and dump" schemes
18 operate generally, and does not mention Crocs, Crutchfield, Beck, or any of the other defendants
19 for that matter. (TAC, ¶ 20.) Each of the remaining ten new paragraphs contain allegations that
20 again rely solely upon the conduct of the defendants not affiliated with Crocs at all, or on the
21 conduct of Crutchfield and Beck, which cannot serve as a basis for stating a claim against Crocs
22 as a matter of law unless Plaintiffs also allege facts sufficient to show how Crocs could be liable
23 under a theory of respondeat superior, which they do not. (See *id.*, ¶¶ 19, 21-29.) That is
24 because, once again, the amended pleading (including the criminal indictment that Plaintiffs
25 attached as an exhibit and purport to incorporate by reference) fails to contain any *factual*
26 allegations to show that the conduct of Crutchfield and Beck was an "outgrowth" of their
27 employment by Crocs, and that the risk of the alleged injury was "inherent" in the Crocs work
28 environment, or "typical" of Crocs' shoe enterprise.

1 Instead, Plaintiffs include one new paragraph (with four subparagraphs) that merely
2 parrots the legal conclusions that the purported conduct was an “outgrowth” or “within the course
3 and scope” of their “employment and affiliation with Crocs” (*see id.*, ¶¶ 29(a) and (d)), without
4 pleading any facts that could permit the Court to find that those legal conclusions are plausible.

5 Challenged by the Court’s prior rulings to plead facts that would show that the alleged
6 stock fraud was an outgrowth of Crutchfield and Beck’s employment with Crocs, Plaintiffs have
7 concocted an imaginative new theory. Plaintiffs now assert, for the first time, that Crutchfield
8 and Beck engaged in criminal stock fraud to generate “interest” in the purchase of *Biostem* stock
9 in order to increase the value of *Crocs* stock (*id.*, ¶¶ 29(b) and (c)), and so the theory goes, the
10 conspiracy to commit fraud was an outgrowth of their Crocs employment. In addition to being
11 patently implausible, and therefore not entitled to any credit by this Court, Plaintiffs’ new
12 formulation is inconsistent with the fundamental theory of their case: that defendants used
13 Crutchfield and Beck’s affiliation with Crocs to lend legitimacy to their scheme and “pump up”
14 *the value of Biostem stock*, not the other way around. *See id.*, ¶¶ 15, 40, 61, 69.

15 The truth is that Crocs had absolutely no involvement whatsoever with the Plaintiffs,
16 Biostem, the buying or selling of Biostem stock, or the allegations in this case. Crocs was not a
17 party to the contract with the Plaintiffs and did not benefit from any alleged conspiracy. Crocs’
18 only connection to this lawsuit is that Crutchfield and Beck were investors in Biostem and
19 members of the Biostem board. It is therefore becoming increasingly apparent, especially after
20 Plaintiffs’ newest failed attempt to cure the deficiencies in their pleading, that Plaintiffs, not the
21 defendants, are using Crocs’ world famous name as their sole grounds to pursue this frivolous
22 lawsuit against Crocs. Plaintiffs’ Third Amended Complaint demonstrates that no amount of re-
23 pleading will change the fact that the claims against Crocs are legally baseless and factually
24 insupportable. Accordingly, the Court should sustain Crocs’ demurrer without leave to amend.¹

25 _____
26 ¹ As the Court and Crocs were recently made aware, Plaintiff George Sharp apparently has
27 a long history as a vexatious litigant. See Attachment B to Defendant Dwight Brunoehler’s Case
28 Management Statement, dated July 10, 2014. However, in this case, Sharp has reached a new
height of audacity—after he personally “pumped” Biostem stock, and thereby effected the alleged
fraud, Sharp is suing for alleged damages because *his own shares* of Biostem stock became
worthless when the others “dumped.”

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ARGUMENT

I. THE THIRD AMENDED COMPLAINT STILL FAILS TO STATE A CAUSE OF ACTION AGAINST CROCS FOR FRAUD OR NEGLIGENT MISREPRESENTATION BECAUSE PLAINTIFFS' ADDITIONAL ALLEGATIONS ARE INSUFFICIENT TO SHOW THAT CROCS JOINED AND PARTICIPATED IN ANY CONSPIRACY

To plead a cause of action based on civil conspiracy, the complaint must allege facts that show: “(1) the formation and operation of the conspiracy; (2) the wrongful act or acts done pursuant thereto; and (3) the damage resulting.” *Mosier v. Southern California Physicians Insurance Exchange*, 63 Cal. App. 4th 1022, 1048 (1998). Plaintiffs’ Third Amended Complaint falls short of stating any cause of action against Crocs based on civil conspiracy. And since Plaintiffs have failed to cure the defects in their three prior complaints, Crocs’ demurrer to Plaintiffs’ Third Amended Complaint should be sustained without leave to amend. *See Blatty v. New York Times Co.*, 42 Cal. 3d 1033, 1040-41 (1986); *see also Hendy v. Losse*, 54 Cal. 3d 723, 742-43 (1991).

A. Plaintiffs’ Additional Allegations Are Still Insufficient To Show That Crocs Participated In The Formation And Operation Of Any Conspiracy

In order to plead that Crocs participated in the formation and operation of an alleged conspiracy, the complaint must include factual allegations that show that Crocs (i) knew about the alleged scheme to defraud Plaintiffs, (ii) intentionally joined the defendants in this scheme, and (iii) did so for the purpose of injuring Plaintiffs. *Kidron v. Movie Acquisition Corp.*, 40 Cal. App. 4th 1571 (1995). “The mere knowledge, acquiescence, or approval of the act, without co-operation or agreement to cooperate is not enough. . . .” *Wetherton v. Growers Farm Labor Assn.*, 275 Cal. App. 2d 168, 176 (1969), disapproved on another ground in *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 521, n. 10 (1994). It is insufficient to allege that that the purported co-conspirators “knew of an intended wrongful act, they had to agree—explicitly or tacitly—to achieve it.” *Choate v. County of Orange*, 86 Cal. App. 4th 312, 333 (2000). None of the added paragraphs in the Third Amended Complaint contain any new factual allegations that show that Crocs participated in the formation and operation of the conspiracy. (TAC, ¶¶ 19-29.)

1 The new allegations only pertain the conduct the other defendants who were not
2 employees or agents of Crocs, or the conduct of Crutchfield and Beck, and what each of them
3 purportedly did to join in and carry out the alleged conspiracy. Obviously, Plaintiffs cannot state
4 a cause of action by alleging that Crocs entered into and participated in the purported conspiracy
5 based on the conduct of individuals who have no affiliation whatsoever with Crocs. That leaves
6 the alleged acts of Crutchfield and Beck, and as discussed immediately below, those allegations
7 are insufficient to state a cause of action against Crocs.

8 **B. Plaintiffs' Additional Allegations Are Insufficient To Plead That Crocs Participated**
9 **In An Alleged Conspiracy Under The Doctrine Of Respondeat Superior**

10 Crocs also cannot be held liable for fraud and negligent misrepresentation for the alleged
11 actions of Crutchfield and Beck under the doctrine of respondeat superior. Ten of the eleven
12 "new" allegations again rely upon the conduct of Crutchfield and Beck (or the other defendants
13 who have no affiliation with Crocs), which cannot serve as a basis for stating a claim as a matter
14 of law unless Plaintiffs also allege facts sufficient to show how Crocs could be liable under a
15 theory of respondeat superior, which they do not. (See TAC, ¶¶ 19, 21-29.)

16 Under California law, "[a]n essential element of respondeat superior is a causal nexus or
17 reasonable relationship between the duties of employment and the conduct causing injury."
18 *Jeewarat v. Warner Bros. Entertainment, Inc.*, 177 Cal. App. 4th 427, 435 (2009) (citation
19 omitted). In other words, "the incident leading to the injury must be an "outgrowth" of the
20 employment [citation]; the risk of tortious injury must be "inherent in the working environment"
21 or "typical of or broadly incidental to the enterprise [the employer] has undertaken." *Id.*
22 (Citations omitted). Courts also use a related approach, which is "to ask 'whether the tort was, in
23 a general way, foreseeable from the employee's duties.'" *Id.* (Citations omitted). Applying that
24 test, "[r]espondeat superior liability should apply only to the types of injuries that "as a practical
25 matter are sure to occur in the conduct of the employer's enterprise." *Id.* (Citations omitted).
26 Plaintiffs do not allege any facts to show that Crutchfield and Beck's supposed participation in an
27 alleged conspiracy to commit fraud regarding Biostem stock and Biostem hair products was an
28 "outgrowth" of their employment with Crocs.

1 Instead, Plaintiffs purport to allege that the conduct of Crutchfield and Beck was within
2 the scope of their employment because they were attempting to increase the value of *Crocs* stock
3 by knowingly participating in a stock manipulation scheme involving Biostem stock. (TAC, ¶
4 29(a) and (c).) That allegation is nonsensical and implausible on its face and therefore entitled to
5 no credit by this Court. It is also directly contrary to Plaintiffs' fundamental theory of this case—
6 that defendants "took advantage of the investing public by touting the credibility of CROCS as a
7 billion dollar company, and among other things, conspired to ... make [BIOSTEM] seem an
8 appealing investment" (*see, e.g., id.*, ¶¶ 15, 40, 61, 69), not the other way around, as Plaintiffs
9 apparently would have this Court believe in a last-ditch effort to avoid dismissal of their lawsuit.

10 In any event, even if the factual allegations in paragraph 29(a) through (d) were taken as
11 true, Crocs cannot somehow be held liable for fraud based on the allegation that Crutchfield and
12 Beck engaged in the supposed scheme to artificially inflate the stock of Biostem in order to
13 increase the value of Crocs stock, which, according to Plaintiffs, would benefit the shareholders
14 of Crocs, as well as Crutchfield and Beck personally. As the Court explained in *Jeewarat, supra*,
15 "[r]espondeat superior liability should apply only to the types of injuries that "as a practical
16 matter are sure to occur in the conduct of the employer's enterprise." 177 Cal. App. 4th at 435
17 (Citations omitted). The notion that an employee would risk prosecution and engage in a criminal
18 stock fraud scheme to elevate the value of the stock of an unrelated company in order to increase
19 the value of the stock of the criminal's employer, besides being preposterous, is too attenuated
20 and unforeseeable as a matter of law to render the employer liable for the fraud. The remaining
21 allegations in paragraph 29(a) and (d) merely parrot the legal conclusion that the purported
22 conduct was an "outgrowth of their employment," "within the course and scope of their duties,"
23 or "foreseeable from their duties," without pleading any facts that could permit the Court to find
24 that those legal conclusions are plausible, and sufficient to plead a cause of action.

25 Finally, Plaintiffs attach as an exhibit to their pleading the criminal indictment that was
26 filed against several of the other defendants, and by doing so purport to incorporate the
27 allegations in the indictment into the Third Amended Complaint. However, the allegations in the
28 indictment also do not state a cause of action against Crocs.

1 To begin with, the Government never charged Crutchfield or Beck, let alone Crocs, and
2 ultimately dismissed the indictment in its entirety. (*See United States v. Mazur, et al., United*
3 *States District Court, Central District of California, Case No. CR 13-62-SVW [Doc #456 – Order*
4 *on Government’s Request for Dismissal and Related Orders, entered March 25, 2014].*) In any
5 event, the indictment does not contain any facts that would show that the alleged conduct of
6 Crutchfield or Beck was an “outgrowth” of their employment with Crocs. Accordingly, the Third
7 Amended Complaint fails to state a cause of action against Crocs for fraud or misrepresentation.

8 **C. Plaintiffs Fail To State A Cause of Action For Negligent Misrepresentation Because**
9 **Parties Cannot Conspire To Commit Negligence As A Matter Of Law**

10 Although Crocs is not aware of any published decision of the California Court of Appeal
11 or the California Supreme Court that addresses this issue, the federal court in *Koehler v. Pulvers,*
12 606 F. Supp. 164, 173, n.10 (S.D. Cal. 1985), applying California law, observed that “[t]his court
13 is unaware of California decisional law imposing liability for conspiring to commit negligence.
14 The allegation of civil conspiracy appears inherently inconsistent with the allegation of an
15 underlying act of negligence.” In reaching that conclusion, the *Koehler* court reasoned that there
16 could be no conspiracy to commit negligent misrepresentation as a matter of law because “[t]he
17 act of conspiracy requires two or more persons agreeing to commit intentionally a wrongful act.”
18 (*Id.*, citing *Wyatt v. Union Mortgage Co.*, 24 Cal.3d 773, 784–85 (1979)). By definition, a
19 conspiracy requires intentional agreement to commit or achieve a specific outcome.

20 It is, in other words, an intentional tort, and it is a non sequitur to argue that parties could
21 intentionally agree to fail to exercise due care, *i.e.*, to act negligently.² Accordingly, the Third
22 Amended Complaint also fails to state a cause of action for negligent misrepresentation because
23 Plaintiffs have conceded that they are alleging Crocs is liable for negligent misrepresentation only
24 as a co-conspirator, a claim that is not recognized under California law.

25
26 ² *See Sonnenreich v. Philip Morris Inc.*, 929 F. Supp. 416, 419-420 (S.D. Fla. 1996)
27 (because “it is impossible to conspire to act negligently ... [l]ogic and case law dictate that a
28 conspiracy to commit negligence is a non sequitur”); *Triplex Comm., Inc. v. Riley*, 900 S.W.2d
716, 719, n.2 (Tex. 1995) (“[g]iven the requirement of specific intent, parties cannot engage in a
civil conspiracy to be negligent”).

1 **II. THE THIRD AMENDED COMPLAINT FAILS TO STATE A CAUSE OF**
2 **ACTION AGAINST CROCS FOR VIOLATION OF SECTION 17200 BECAUSE**
3 **PLAINTIFFS STILL FAIL TO ALLEGE FACTS SUFFICIENT TO SHOW THAT**
4 **CROCS JOINED AND PARTICIPATED IN ANY CONSPIRACY**

5 Although conspiracy is not an element of unfair competition, when a plaintiff attempts to
6 allege a cause of action for violation of Section 17200 that, as pleaded, depends upon allegations
7 of a conspiracy, then the Unfair Competition Law claim also fails as a matter of law if the
8 complaint does not allege facts sufficient to show that the defendant participated in the purported
9 conspiracy. *Aguilar v. Atl. Richfield Co.*, 25 Cal. 4th 826, 866-67 (2001). Plaintiffs admitted in
10 their opposition to Crocs' initial demurrer, and again at the hearing on Crocs' demurrer to the
11 original complaint, that they are only alleging that Crocs can be found liable, if at all, as a co-
12 conspirator and participant in an alleged conspiracy. That is true for each cause of action against
13 Crocs, including Plaintiffs' claims for fraud, for negligent misrepresentation, and for unfair
14 competition. Indeed, the fourth cause of action incorporates by reference the preceding
15 paragraphs of the Third Amended Complaint (*See* TAC ¶ 85) that purport to contain factual
16 allegations supporting Plaintiffs' second and third causes of action.

17 Similarly, Plaintiffs have failed to allege facts sufficient to show that Crocs committed a
18 violation of the California Corporations Code, §§ 25400, et seq. (TAC, ¶ 86), which creates
19 liability for certain securities law violations; nor could they, since Plaintiffs cannot allege the
20 Crocs bought, sold, or issued, Biostem stock. *See Kamen v. Lindly*, 94 Cal.App.4th 197, 206,
21 (2001). The paragraphs in the fourth cause of action of the Third Amended Complaint do not
22 contain any new facts at all, let alone facts that could state a claim against Crocs for alleged
23 misconduct apart from its alleged participation in any conspiracy, whether under the "unlawful"
24 prong or the "unfair" prong of Section 17200 (TAC, ¶¶ 85-89.) Therefore, Plaintiffs have once
25 more failed to state a cause of action for violation of the Unfair Competition Law.
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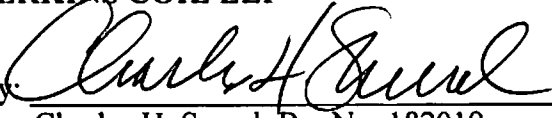
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CONCLUSION

For all of the foregoing reasons, Crocs respectfully requests that its demurrer to Plaintiffs' second, third and fourth causes of action in the Third Amended Complaint be sustained without leave to amend, and since those are the only causes of action alleged against Crocs, that the Third Amended Complaint be dismissed in its entirety, with prejudice, as against Crocs.

DATED: August 28, 2014

PERKINS COIE LLP

By: 
Charles H. Samel, Bar No. 182019

Attorneys for Defendant
Crocs, Inc.

1 **PROOF OF SERVICE**

2 I, Caroline Mallahi, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am over
4 the age of eighteen years and not a party to the within-entitled action. My business address is
5 1888 Century Park East, Suite 1700, Los Angeles, CA 90067-1721.

6 On August 28, 2014, I served a copy of the within document(s):

7 **NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFFS MARKET**
8 **BROADCAST, LLC AND GEORGE SHARP'S THIRD AMENDED COMPLAINT;**
9 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

10 ___ by transmitting via FACSIMILE the document(s) listed above to the fax number set forth
11 below on this date before 5:00 p.m.

12 ~~XXX~~ by placing the document(s) listed above in a sealed envelope with postage thereon fully
13 prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

14 ___ by placing the document(s) listed above in a sealed envelope and affixing a pre-
15 paid air bill, and causing the envelope to be delivered to a agent for delivery.

16 ___ By Federal Express, I caused said documents to be delivered for overnight/next business to
17 the office(s) at the address(es) set forth below.

18 **Attorneys for Plaintiffs Market Broadcast, LLC and George Sharp:**

19 David J. Harter
20 Law Offices of David J. Harter
21 13681 Newport Avenue, Suite 8-608
22 Tustin, CA 92780

23 **Attorneys for Defendant Dwight Brunoehler:**

24 John B. Wallace, Esq.
25 Rosen & Associates, P.C.
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27 444 S. Flower Street, Ste 3010
28 Los Angeles, CA 90071
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Victoria Gomez, Esq.: vgomez@rosen-law.com
Lisa Hiraide, Esq.: lhiraide@rosen-law.com)
(Courtesy Copy)

1 **Attorneys for Defendant Scott Crutchfield and Special & Limited Appearance Only for**
2 **Steve Beck:**

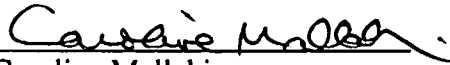
3 Eugene Illovsky
4 Morrison Foerster
5 755 Page Mill Road
6 Palo Alto, CA 94303-1018
7 (Courtesy Copy)

8 I am readily familiar with the firm's practice of collection and processing correspondence for
9 mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day
10 with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion
11 of the party served, service is presumed invalid if postal cancellation date or postage meter date is
12 more than one day after date of deposit for mailing in affidavit.

13 I declare that I am employed in the office of a member of the bar of this court at whose direction
14 the service was made.

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

17 Executed on August 28, 2014 at Los Angeles, California.

18 
19 Caroline Mallahi