

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT  
CASE TYPE: PRODUCT LIABILITY

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Linda Anderson, James Feser and  
Judith Peskar,

Court File No. 10-CV-11-706  
Hon. Richard G. Perkins

Plaintiffs,

v.

Simpson and Associates, Inc.,

Defendant.

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**NOTICE OF MOTION  
AND MOTION TO DISMISS  
PLAINTIFFS' COMPLAINT**

TO: Plaintiffs above-named and their attorneys, Sheila A. Bjorklund, Lommen, Abdo, Cole, King & Stageberg, P.A., 2000 IDS Center, 80 South 8<sup>th</sup> Street, Minneapolis, MN 55402; Altom M. Maglio, Maglio Christopher & Toale, PA, 1751 Mound Street, Second Floor, Sarasota, FL 34236; and Brian Franciskato, Nash & Franciskato Law Firm, 2300 Main Street, Kansas City, MO 64108:

**PLEASE TAKE NOTICE** that on the 28th day of July, 2011 at 8:30 a.m., before the Honorable Richard G. Perkins, Judge of the District Court, First Judicial District, Carver County Justice Center, 604 East Fourth Street, Chaska, Minnesota 55318, Defendant Simpson and Associates, Inc. will move the Court for entry of an order dismissing all of Plaintiffs' claims against it, upon the following grounds:

1. Counts I, II and III of Plaintiffs' Complaint are barred by the Minnesota distributor's statute, Minn. Stat. § 544.41; and,
2. Count IV of Plaintiffs' Complaint has not been pled with specificity, as required by Rule 9.02 of the Minnesota Rules of Civil Procedure.

This Motion is subject to the briefing schedule set forth in Rule 115.03 of the General Rules of Practice for the District Courts.

This Motion is supported by the accompanying Affidavit of Richard Simpson, an accompanying Memorandum of Law, and accompanying Exhibit, all prior pleadings and other documents filed with the Court in this matter, and the arguments of counsel.

Dated June 15, 2011

NILAN JOHNSON LEWIS PA

By: 

Tracy J. Van Steenburgh – Reg. No. 141173

Scott A. Smith – Reg. No. 174026

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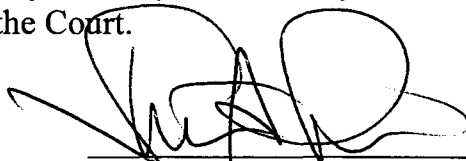
612.305.7500

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*Attorneys for Defendant Simpson and Associates,  
Inc.*

### **ACKNOWLEDGEMENT**

The above-signed hereby acknowledges that, pursuant to Minn. Stat. §549.211, costs, disbursements and reasonable attorney fees and other sanctions may be awarded to the opposing party or parties in this litigation if the Court should find the above-signed acted in bad faith, asserted a claim or defense that is frivolous and costly to the other party, asserted an unfounded position solely to delay the ordinary course of proceedings or to harass, or committed a fraud upon the Court.

  
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Scott A. Smith