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10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 AIRPLANE POCKETS LLC, a
 13 California limited liability
 14 company,

15 Plaintiff,

16 v.

17 JACK DANIELS, an individual;
 18 CAL WEST HOLDINGS, INC., a
 19 California corporation; and DOES
 20 1-10,

21 Defendants.

Case No. 2:22-cv-00062

COMPLAINT FOR

- (1) **PATENT INFRINGEMENT**
- (2) **TRADEMARK INFRINGEMENT**
- (3) **FALSE DESIGNATION OF ORIGIN**
- (4) **CYBERPIRACY**
- (5) **BREACH OF FIDUCIARY DUTY**
- (6) **CONVERSION**
- (7) **ACCOUNTING**
- (8) **VIOLATION OF PENAL C § 502**
- (9) **VIOLATION OF B&PC § 17200**
- (10) **VIOLATION OF B&PC § 17500**
- (11) **EXPULSION OF MEMBER**

JURY TRIAL DEMAND

22
 23
 24
 25 Plaintiff Airplane Pockets, Inc. alleges as follows:

PARTIES

26
 27 1. Plaintiff Airplane Pockets LLC (“Airplane Pockets”) is a limited
 28 liability company organized and existing under the laws of the State of California,

1 and has a principal place of business in the County of Los Angeles, State of
2 California.

3 2. Defendant Jack Daniels (“Daniels”) is an individual doing business
4 and residing in the County of Los Angeles, State of California. Daniels is one of
5 the original members of Airplane Pockets.

6 3. Defendant Cal West Holdings, Inc. (“Cal West”) is a corporation
7 organized and existing under the laws of the State of California, and has a principal
8 place of business in the County of Los Angeles, State of California. In 2021,
9 Daniels was authorized to transfer his membership interest in Airplane Pockets to
10 Cal West, an entity which, on information and belief, is owned and controlled in
11 whole or in part by Daniels. Neither Daniels nor Cal West has informed Airplane
12 Pockets if the transfer of Daniels’ membership interest to Cal West was effected.

13 4. The true names and capacities, whether individual, corporate,
14 associate, or otherwise, of the Defendants named herein as DOES 1-10, inclusive,
15 are unknown to Plaintiff at this time and therefore said Defendants are sued by such
16 fictitious names. Plaintiff will seek leave to amend this complaint to insert the true
17 names and capacities of said Defendants when the same become known to Plaintiff.
18 Plaintiff is informed and believes, and based thereupon alleges, that each of the
19 fictitiously named Defendants is responsible for the wrongful acts alleged herein
20 and are therefore liable to Plaintiff as alleged hereinafter.

21 5. Plaintiff is informed and believes, and based thereupon alleges, that at
22 all times relevant hereto, Defendants, and each of them, were the agents,
23 employees, managing agents, supervisors, coconspirators, parent corporation, joint
24 employers, alter egos, successors, and/or joint ventures of the other Defendants, and
25 each of them, and in doing the things alleged herein, were acting at least in part
26 within the course and scope of said agency, employment, conspiracy, joint
27 employer, alter ego status, successor status and/or joint venture and with the
28 permission and consent of each of the other Defendants.

1 California state law claims because either they arise under an Act of Congress
2 relating to patents pursuant to 28 U.S.C. § 1338 or the Court has supplemental
3 jurisdiction pursuant to 28 U.S.C. § 1367.

4 12. This Court has personal jurisdiction over Daniels and Cal West
5 because they have transacted business within this district and, upon information and
6 belief, have caused tortious injury to Airplane Pockets by the acts complained of
7 herein within this district.

8 13. Venue is proper in this district pursuant to 28 U.S.C. §1400(b) because
9 Daniels and Cal West have committed acts of infringement and other tortious acts
10 and have a regular and established place of business in this district. In addition,
11 venue is proper in this district pursuant to 28 U.S.C. §1400(b) and/or 28 U.S.C. §
12 1391(b)(1) because Daniels and Cal West reside within the Central District of
13 California as residence is defined in 28 U.S.C. §1391(c). Venue is also proper in
14 this Court pursuant 28 U.S.C. § 1391(b)(2) because a substantial part of the events
15 or omissions giving rise to the claim occurred, or a substantial part of property that
16 is the subject of the action is situated, in the Central District of California.

17 **GENERAL ALLEGATIONS**

18 14. Daniels is one of the founding members of Airplane Pockets, and was
19 and is an officer thereof and on its board of directors and/or managers.

20 15. On or about June 9, 2015, the United States Patent and Trademark
21 Office duly and legally issued United States Patent No. 9,051,087 (the “Patent”) for
22 a sanitary cover which fits over a commercial airplane tray table that allows the
23 traveler to place personal items therein (“Tray Table Cover”). The patent was
24 originally issued in the name of Daniels.

25 16. Daniels assigned the Patent to Airplane Pockets. Airplane Pockets was
26 and is in the business of exploiting the Patent, including by manufacturing,
27 marketing and selling the Tray Table Cover.

28 17. To exploit the Patent, Airplane Pockets used and uses the mark

1 “Airplane Pockets” (the “Mark”). The Mark is displayed on the Tray Table Cover
2 and/or its labeling and, without limitation, on promotional materials and other
3 advertising. Since its date of first use, the Mark has been and still is the subject of
4 substantial and continuous marketing and promotion by Airplane Pockets, which
5 has and continues to widely market and promote its Mark in the industry and to
6 consumers all over California and the United States. Through such widespread and
7 continuous use of the Mark, Airplane Pockets has acquired extensive goodwill,
8 developed a high degree of distinctiveness, and become known and recognized as
9 identifying its goods and services. As the only nationwide provider of legitimate
10 goods covered by the relevant patent, Airplane Pockets has the exclusive trademark
11 rights to use the Mark with the selling and promotion of Tray Table Covers.

12 18. As a result of Airplane Pockets’ investment of time and money into its
13 business, the sales of the Tray Table Cover and exploitation of the Patent and Mark
14 have grown.

15 19. Daniels and/or Cal West, however, have become disgruntled with this
16 arrangement, and no longer wish to conform to their obligations to Airplane
17 Pockets or recognize its rights. In retribution and an attack on Airplane Pockets,
18 Daniels and/or Cal West have acted and are acting outside the ordinary course of
19 Airplane Pockets activities, including by infringing on the Patent and Mark and
20 unfairly competing with Airplane Pockets by unilaterally manufacturing, marketing
21 and/or selling the Airplane Pockets Tray Table Cover for their own personal
22 benefit, refusing to account to Airplane Pockets for sales and profits generated by
23 the Patent and Mark infringement, otherwise interfering with Airplane Pockets
24 business and misappropriating Airplane Pockets’ business and/or other assets,
25 including without limitation by:

- 26 (a) Unilaterally commandeering, changing and misappropriating
27 Airplane Pockets’ company owned domain URL
28 www.airplanepockets.com (the “Domain”) without

- 1 authorization by Airplane Pockets to their sole benefit,
2 including by rerouting all traffic and sales from the
3 misappropriated Domain to funnel Airplane Pockets' business
4 and sales to their own bank accounts;
- 5 (b) Revoking permissions to the Amazon sellers' portal so that
6 Airplane Pockets cannot effect, manage and/or monitor sales;
- 7 (c) Attempting to move Airplane Pockets' Shopify account to a
8 separate account that Daniels and/or Cal West unilaterally owns
9 and controls and away from Airplane Pockets' control and
10 monitoring;
- 11 (d) Unilaterally deactivating the Airplane Pockets email addresses
12 of Airplane Pockets' members, managers and employees to
13 prevent those individuals from conducting business on behalf of
14 Airplane Pockets and to prevent Airplane Pockets from
15 monitoring their unlawful activities;
- 16 (e) Secretly opening and/or maintaining personal or otherwise
17 unauthorized bank account(s) to receive payments belonging to
18 Airplane Pockets (the "Secret Accounts"), unilaterally directing
19 Airplane Pockets client(s) to delay paying invoice(s) until the
20 Secret Accounts were opened and unilaterally directing
21 Airplane Pockets client(s) to send payment to the Secret
22 Accounts;
- 23 (f) Unilaterally moving funds from Airplane Pockets' account(s) to
24 their own personal account(s) without authorization;
- 25 (g) Causing Airplane Pockets to pay purported sales
26 "commissions" to Daniels' family member(s) and/or others on
27 sales which generated no commissions and/or were not earned
28 by and/or owed to them;

- 1 (h) Unilaterally selling product below cost;
- 2 (i) Secretly entering into unauthorized manufacturing deals for
- 3 their sole benefit;
- 4 (j) Purporting to license and/or sell the valuable branding of
- 5 Airplane Pockets without its authorization or any proper
- 6 restrictions or payment to Airplane Pockets;
- 7 (k) Falsely telling vendors that one of Airplane Pockets'
- 8 managers/members stole from the company and is withholding
- 9 inventory from the company; and
- 10 (l) Refusing to provide authorized representatives of Airplane
- 11 Pockets with copies of Defendants' contract(s) with Airplane
- 12 Pockets clients.

13 20. As a result of the unilaterally and unauthorized acts, and each of them,

14 Daniels and Cal West have severely damaged Airplane Pockets' business and

15 relationships with its customers, manufacturers and vendors.

16 **FIRST CLAIM FOR RELIEF**

17 **Patent Infringement Under 35 U.S.C. § 271 - Against All Defendants**

18 21. Airplane Pockets repeats and realleges the allegations in paragraphs 1

19 to 20 above as if fully set forth herein.

20 22. A true and correct copy of the Patent is attached as Exhibit 1.

21 23. A true and correct copy of the assignment of the Patent to Airplane

22 Pockets is attached as Exhibit 2.

23 24. Airplane Pockets is the sole owner of right and title to the Patent.

24 25. The Patent is presumed valid under 35 U.S.C. § 282.

25 26. Defendants, and each of them, have directly infringed, are directly

26 infringing and will continue to directly infringe, literally or under the doctrine of

27 equivalents, one or more claims of the Patent under 35 U.S.C § 271(a) by making,

28 using, selling, and/or offering for sale the Airplane Pockets Tray Table Cover,

1 which embodies one or more claims of the Patent, for their sole benefit in a
2 competing enterprise without Airplane Pockets' authorization.

3 27. Defendants, and each of them, have infringed, are infringing, and will
4 continue to infringe, literally and under the doctrine of equivalents, by inducing the
5 infringement of others, including without limitation manufactures and end users, of
6 one or more claims of the Patent under 35 U.S.C § 271(b) by making, using,
7 selling, and/or offering for sale the Airplane Pockets Tray Table Cover, which
8 embodies one or more claims of the Patent, for their sole benefit in a competing
9 enterprise without Airplane Pockets' authorization.

10 28. Defendants, and each of them, have infringed, are infringing, and will
11 continue to infringe, literally or under the doctrine of equivalents, by contributing to
12 the infringement of others, including without limitation manufacturers and end
13 users, of one or more claims of the Patent under 35 U.S.C § 271(c) by making,
14 using, selling, and/or offering for sale the Airplane Pockets Tray Table Cover,
15 which embodies one or more claims of the Patent, for their sole benefit in a
16 competing enterprise without Airplane Pockets' authorization.

17 29. Defendants, and each of them, had and have actual knowledge of the
18 Patent and Daniels' assignment thereof to Airplane Pockets.

19 30. The acts of Defendants, and each of them, which constitute patent
20 infringement are willful.

21 31. Defendants' patent infringement has caused and is causing irreparable
22 injury to Airplane Pockets and, unless enjoined, will continue to cause irreparable
23 injury.

24 32. As a result of Defendants' intentional and willful infringement,
25 Airplane Pockets is entitled to an injunction and damages in a sum to be determined
26 in accordance with 35 U.S.C. §§ 271, 281, 283, and 284.

27 **SECOND CLAIM FOR RELIEF**

28 **Violation of Lanham Act: Federal Trademark Infringement**

- Against All Defendants

1
2 33. Airplane Pockets repeats and realleges the allegations in paragraphs 1
3 to 32 above as if fully set forth herein.

4 34. Airplane Pockets has established valid and enforceable trademark
5 rights in the Mark, as described above, and is the sole owner of all right and title to
6 the Mark. Airplane Pockets has extensively and continuously used its Mark in
7 commerce in connection with its Patent and marketing and sales of the Tray Table
8 Cover.

9 35. As a result of Airplane Pockets' extensive promotion and use of its
10 Mark, the Mark is recognized as distinctive, and is identified by the purchasing
11 public with Airplane Pockets.

12 36. Notwithstanding Airplane Pockets' preexisting, valid and enforceable
13 rights in its Mark, Defendants, and each of them, have intentionally used the Mark
14 without Airplane Pocket's authorization and have directly infringed, are directly
15 infringing and will continue to directly infringe on the Mark by making, selling,
16 offering for sale and/or distributing the Tray Table Cover with the Mark displayed
17 thereon and/or in or on its labeling, promotional materials and other advertising, for
18 their sole benefit in a competing enterprise.

19 37. Defendants' use, and continuous use, in commerce of Airplane
20 Pockets' Mark in connection with their unauthorized sales and/or advertising
21 violates Airplane Pockets' common law trademark rights in that it is a counterfeit
22 mark as defined in 15 U.S.C. § 1117 and/or creates a false association between
23 Airplane Pockets' products and/or services and Defendants' renegade and
24 unauthorized products and/or services. In this manner, consumers are highly likely
25 to be confused and mistakenly believe that Defendants' and their products and/or
26 services are endorsed, approved, or sponsored by, or affiliated, connected, or
27 associated with, Airplane Pockets.

28 38. Defendants, and each of them, committed the acts alleged above with

1 knowledge of Airplane Pockets' prior rights to, and use of, the Mark, with the
2 intent to trade on Airplane Pockets' Mark.

3 39. As a direct and proximate result of the conduct of Defendants, and
4 each of them, Airplane Pockets is entitled to recover its actual damages, including
5 without limitation as a result of lost sales, lost profits, and efforts necessary to
6 minimize and/or prevent customer and other confusion.

7 40. Airplane Pockets is further entitled to disgorge Defendants' profits,
8 gains and advantages and is entitled to interest and to its attorney fees and costs
9 incurred in bringing this action, all in an amount to be proven at the time of trial.

10 41. Defendants' willful and intentional actions have caused and are
11 causing irreparable injury to Airplane Pockets and, unless enjoined, will continue to
12 cause irreparable injury and damage to its business, reputation and goodwill.

13 42. Defendants engaged in the foregoing conduct with oppression, fraud
14 and/or malice, and acted wantonly, willfully and with reckless disregard of the
15 rights of Airplane Pockets, thereby entitling Airplane Pockets to an award of
16 exemplary damages in an amount to be determined at trial.

17 **THIRD CLAIM FOR RELIEF**

18 **Violation of Lanham Act: False Designation of Origin**

19 **– Against All Defendants**

20 43. Airplane Pockets repeats and realleges the allegations in paragraphs 1
21 to 42 above as if fully set forth herein.

22 44. Airplane Pockets is informed and believes that, in violation of Section
23 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), Defendants, and each of them, are
24 making, using, selling, and/or offering for sale the Tray Table Cover in a manner
25 which falsely conveys to consumers and the public that Airplane Pockets is the
26 seller, when in fact Defendants, and each of them, are acting for their sole benefit in
27 a competing enterprise without Airplane Pockets' authorization. In so doing,
28 Airplane Pockets is informed and believes that Defendants, and each of them, have

1 used and are continuing to use in commerce word(s), term(s), name(s), symbol(s),
2 or device(s), or any combination thereof, and/or false designation(s) of origin, false
3 or misleading description(s) of fact, and/or false or misleading representation(s) of
4 fact, which

- 5 (a) are likely to cause confusion or mistake, or to deceive as to (i)
6 the affiliation, connection, or association of Defendants with
7 Airplane Pockets, or (ii) the origin, sponsorship, or approval of
8 Defendants' goods, services, or commercial activities by
9 Airplane Pockets, or
10 (b) in commercial advertising or promotion, misrepresents the
11 nature, characteristics, qualities, or geographic origin of
12 Defendants' goods, services, or commercial activities.

13 45. Said use will confuse and deceive the public into thinking that the
14 goods sold and services provided by Defendants, and each of them, are Airplane
15 Pockets' goods and services, or that there is some lawful connection or affiliation
16 between Airplane Pockets and Defendants' renegade acts.

17 46. Defendants, and each of them, knew or should have known that their
18 statements were false or likely to mislead.

19 47. Defendants' acts have injured or are likely to injure Airplane Pockets'
20 image, trade name, business reputation and good will within and among its
21 customers, vendors, manufacturers and the business community in this judicial
22 district and elsewhere in the world by creating confusion about and/or
23 dissatisfaction with Airplane Pockets' actual goods and services, a diminution of
24 the value of the goodwill associated with Airplane Pockets' business and a loss of
25 its business relationships.

26 48. Defendants' acts were a knowing, deliberate, intentional and willful
27 attempt to injure Airplane Pockets' business, to trade on Airplane Pockets' prior
28 success, reputation and business relationships, and to confuse, deceive and/or

1 interfere with Airplane Pockets’ customers and other business relationships.

2 49. As an actual and proximate result of Defendants’ willful and
3 intentional actions, Airplane Pockets has suffered damages in an amount to be
4 determined at trial, including without limitation as a result of lost sales, lost profits,
5 and efforts necessary to minimize and/or prevent customer and other confusion.

6 50. Airplane Pockets is further entitled to disgorge Defendants’ profits,
7 gains and advantages and is entitled to interest and to its attorney fees and costs
8 incurred in bringing this action, all in an amount to be proven at the time of trial.

9 51. Defendants’ willful and intentional actions have caused are causing
10 irreparable injury to Airplane Pockets and, unless enjoined, will continue to cause
11 irreparable injury and damage to its business, reputation and goodwill.

12 52. Defendants engaged in the foregoing conduct with oppression, fraud
13 and/or malice, and acted wantonly, willfully and with reckless disregard of the
14 rights of Airplane Pockets, thereby entitling Airplane Pockets to an award of
15 exemplary damages in an amount to be determined at trial.

16 **FOURTH CLAIM FOR RELIEF**

17 **Violation of 15 U.S.C. § 1125(d) of the Lanham Act – Against All Defendants**

18 53. Airplane Pockets repeats and realleges the allegations in paragraphs 1
19 to 52 above as if fully set forth herein.

20 54. In violation of the “cyberpiracy prevention” law of Section 43(d) of
21 the Lanham Act, 15 U.S.C. § 1125(d), Defendants, and each of them, with a bad
22 faith intent to profit from Airplane Pockets’ Mark, have trafficked in or used a
23 domain name, including without limitation <https://airplanepockets.com>, which is
24 the same as or similar to Defendants’ distinctive and/or famous Mark for their sole
25 benefit in a competing enterprise that is identical, confusingly similar to and/or
26 dilutive of Airplane Pockets’ domain and Mark without Airplane Pockets’
27 authorization.

28 55. As an actual and proximate result of Defendants’ willful and

1 intentional actions, Airplane Pockets has suffered damages in an amount to be
2 determined at trial, including without limitation as a result of lost sales, lost profits,
3 and efforts necessary to minimize and/or prevent customer and other confusion.

4 56. Airplane Pockets is further entitled to disgorge Defendants' profits,
5 and is entitled to interest and to its attorney fees and costs incurred in bringing this
6 action, all in an amount to be proven at the time of trial.

7 57. Defendants' willful and intentional actions have caused are causing
8 irreparable injury to Airplane Pockets and, unless enjoined, will continue to cause
9 irreparable injury and damage to its business, reputation and goodwill.

10 58. Defendants engaged in the foregoing conduct with oppression, fraud
11 and/or malice, and acted wantonly, willfully and with reckless disregard of the
12 rights of Airplane Pockets, thereby entitling Airplane Pockets to an award of
13 exemplary damages in an amount to be determined at trial.

14 **FIFTH CLAIM FOR RELIEF**

15 **Breach of Fiduciary and Other Duties – Against All Defendants)**

16 59. Airplane Pockets repeats and realleges the allegations in paragraphs 1
17 to 58 above as if fully set forth herein.

18 60. As an officer and board member of Airplane Pockets, Daniels owed
19 and owes fiduciary duties to Airplane Pockets, including, but not limited to, the
20 duties of loyalty, care and good faith and fair dealing pursuant to California
21 Corporations Code §§ 17704.09(b), 17704.09(c), 17704.09(d) and 17704.09(f)(1).

22 61. As a member of Airplane Pockets, Daniels and/or Cal West owed and
23 owes duties to Airplane Pockets, including, but not limited to, the duty of good
24 faith and fair dealing pursuant to California Corporations Code §§ 17704.09(d) and
25 17704.09(f)(2).

26 62. Daniels and/or Cal West also owed and owe continuing duties,
27 including fiduciary duties, by virtue of the trust and confidence previously reposed
28 in him or them by Airplane Pockets, including without limitation through Daniels'

1 assignment of the Patent to Airplane Pockets and Airplane Pockets' reasonable
2 reliance thereon to manufacture, market and sell the Tray Table Cover and build its
3 business thereon without unfair competition by Daniels.

4 63. Defendants, and each of them, breached their fiduciary duties to
5 Airplane Pockets by, without any authorization by, among other things, improperly
6 acting for their sole benefit in a competing enterprise without Airplane Pockets'
7 authorization and misappropriating Airplane Pockets' customers, funds, accounts
8 and other assets, as alleged above.

9 64. As a direct result of Defendants' conflict of interest, disloyalty and
10 dishonest acts, Defendants' breaches of fiduciary duty have proximately caused
11 damage to Airplane Pockets in an amount to be proven at trial.

12 65. Defendants engaged in the foregoing conduct with oppression, fraud
13 and/or malice, and acted wantonly, willfully and with reckless disregard of the
14 rights of Airplane Pockets, thereby entitling Airplane Pockets to an award of
15 exemplary damages in an amount to be determined at trial.

16 **SIXTH CLAIM FOR RELIEF**

17 **Conversion - Against All Defendants**

18 66. Airplane Pockets repeats and realleges the allegations in paragraphs 1
19 to 65 above as if fully set forth herein.

20 67. At all times relevant herein, Airplane Pockets owned, possessed,
21 and/or had a right to possess, and still owns and/or has the right to possess any and
22 all of its tangible and intangible property which it generated in house from its
23 exploitation of the patent, including without limitations moneys in Airplane
24 Pockets' bank accounts, the Tray Table Covers which Airplane Pockets
25 manufactured and paid for and the sales proceeds generated from Airplane Pockets'
26 contracts with and sales directly to its customers.

27 68. Defendants, and each of them, intentionally, wrongfully and
28 substantially converted this property for their own use and for their personal benefit

1 and gain as alleged above, including without limitation by taking possession of
2 Airplane Pockets' funds on account, Airplane Pockets' existing inventory of Tray
3 Table Covers and/or intercepting the sales proceeds from Airplane Pockets' prior
4 sales of Tray Table Covers and otherwise preventing Plaintiff from having access to
5 the same.

6 69. Airplane Pockets has demanded the immediate return of the above-
7 mentioned property but Defendants failed and refused, and continue to fail and
8 refuse, to return the property to Airplane Pockets.

9 70. As a proximate result of these conversions, Airplane Pockets has been
10 damaged in an amount to be proven at trial.

11 71. Defendants engaged in the foregoing conduct with oppression, fraud
12 and/or malice, and acted wantonly, willfully and with reckless disregard of the
13 rights of Airplane Pockets, thereby entitling Airplane Pockets to an award of
14 exemplary damages in an amount to be determined at trial.

15 **SEVENTH CLAIM FOR RELIEF**

16 **Accounting - Against All Defendants**

17 72. Airplane Pockets repeats and realleges the allegations in paragraphs 1
18 to 71 above as if fully set forth herein.

19 73. As described above, Defendants, and each of them, have received
20 monies belonging to Airplane Pockets, including without limitation for the sales of
21 Airplane Pockets' existing inventory of Tray Table Covers. Airplane Pockets is
22 further unaware of the exact amounts owed to it as a result of Defendants' breach of
23 fiduciary duties and/or conversions as alleged above.

24 74. Defendants, and each of them, owed and owe a duty to account in
25 detail to Airplane Pockets the specifics of these transactions and to hold this money,
26 real property, personal property, and other items of value in trust for Airplane
27 Pockets.

28 75. Plaintiffs have demanded a fair and accurate accounting, but

1 Defendants, and each of them, have failed and refused, and continue to fail and
2 refuse, to provide any accounting of monies belonging to Airplane Pockets,
3 including without limitation for the sales of Airplane Pockets' existing inventory of
4 Tray Table Covers. The amount of money and/or other items of value received by
5 Defendants is unknown to Airplane Pockets and cannot be ascertained without
6 Defendants' accounting thereof.

7 **EIGHTH CLAIM FOR RELIEF**

8 **Violation of California Penal Code § 502 - Against All Defendants**

9 76. Airplane Pockets repeats and realleges the allegations in paragraphs 1
10 to 75 above as if fully set forth herein.

11 77. Defendants, and each of them, have engaged in tampering,
12 interference, damage, and/or unauthorized access to lawfully created computer data
13 and computer systems within the meaning of California's Penal Code § 502,
14 including without limitation by:

15 (a) *Penal Code § 502(c)(1)*: Knowingly accessing and without
16 permission altering or otherwise using Airplane Pocket's data,
17 computer, computer system, and/or computer network to (i)
18 wrongfully control or obtain Airplane Pocket's money,
19 property, and/or data, such as by causing Airplane Pocket's
20 funds to be transferred to their Secret Accounts and/or
21 misappropriating Airplane Pocket's customer information for a
22 competing enterprise and/or (ii) devise or execute a scheme or
23 artifice to deceive Airplane Pockets;

24 (b) *Penal Code § 502(c)(2)*: Knowingly accessing and without
25 permission taking, copying, and/or making use of data from
26 Airplane Pockets' computer, computer system, or computer
27 network, such as by causing Airplane Pocket's funds to be
28 transferred to their Secret Accounts and/or misappropriating

1 Airplane Pocket’s customer information for a competing
2 enterprise;

3 (c) *Penal Code § 502(c)(4)*: Knowingly accessing and without
4 permission altering data, computer software, or computer
5 programs, without limitation by (i) unilaterally deactivating the
6 Airplane Pockets email addresses of Airplane Pockets’
7 members, managers and employees to prevent those individuals
8 from conducting business on behalf of Airplane Pockets and to
9 prevent Airplane Pockets from monitoring their unlawful
10 activities; (ii) changing and/or misappropriating Airplane
11 Pockets’ company owned domain to their sole benefit; (iii)
12 building “permissions” to funnel Airplane Pockets’ business
13 and sales to their new domain; (iv) revoking permissions to the
14 Amazon sellers’ portal so that Airplane Pockets cannot effect,
15 manage and/or monitor sales; and/or (v) attempting to move
16 Airplane Pockets’ Shopify account to a separate account that
17 Daniels and/or Cal West unilaterally owns and controls and
18 away from Airplane Pockets’ control and monitoring; and

19 (d) *Penal Code § 502(c)(5)*: Knowingly and without permission
20 disrupting or causing the disruption of computer services or
21 denying or causing the denial of computer services to an
22 Airplane Pockets’ authorized user(s) of its computer, computer
23 system, or computer network, without limitation by (i)
24 unilaterally deactivating the Airplane Pockets email addresses
25 of Airplane Pockets’ members, managers and employees to
26 prevent those individuals from conducting business on behalf of
27 Airplane Pockets and to prevent Airplane Pockets from
28 monitoring their unlawful activities; (ii) changing and/or

1 misappropriating Airplane Pockets’ company owned domain to
2 their sole benefit; (iii) building “permissions” to funnel
3 Airplane Pockets’ business and sales to their new domain; (iv)
4 revoking permissions to the Amazon sellers’ portal so that
5 Airplane Pockets cannot effect, manage and/or monitor sales;
6 and/or (v) attempting to move Airplane Pockets’ Shopify
7 account to a separate account that Daniels and/or Cal West
8 unilaterally owns and controls and away from Airplane
9 Pockets’ control and monitoring.

10 78. These acts constitute one or more felonies under Penal Code § 502.

11 79. In doing these act(s), Defendants, and each of them, caused injury to
12 Airplane Pockets as defined in Penal Code § 502 by, without limitation, the
13 alteration and/or deletion of Airplane Pockets’ computer system, computer network,
14 computer program, and/or or data, and by the denial of access to legitimate users of
15 Airplane Pockets’ computer system, network, or program.

16 80. Pursuant to Penal Code § 502, Airplane Pockets is entitled to
17 compensatory damages, including any expenditures to verify that its computer
18 system, computer network, computer program, or data was or was not altered,
19 damaged, or deleted by the access and its reasonable attorney fees.

20 81. Defendants engaged in the foregoing conduct with oppression, fraud
21 and/or malice, and acted wantonly, willfully and with reckless disregard of the
22 rights of Airplane Pockets, thereby entitling Airplane Pockets to an award of
23 exemplary damages in an amount to be determined at trial.

24 **NINTH CLAIM FOR RELIEF**

25 **Violation of California Business and Professions Code**

26 **§ 17200 et seq. - Against All Defendants**

27 82. Airplane Pockets repeats and realleges the allegations in paragraphs 1
28 to 81 above as if fully set forth herein.

1 83. Defendants, and each of them, have engaged in unfair competition
2 within the meaning of California’s Business and Professions Code § 17200,
3 because, the conduct alleged above constitutes:

4 (a) *Unlawful Business Act(s) or Practice(s)*: Among other
5 violations, Defendants have engaged in unlawful competitive
6 practices which violate 15 U.S.C. §§ 1125(a) and 1125(d) and
7 engaged in tampering, interference, damage, and/or
8 unauthorized access to lawfully created computer data and
9 computer systems which violate Penal Code § 502;

10 (b) *Unfair Business Act(s) or Practice(s)*: Defendants’ acts alleged
11 above are unfair under any test of unfairness in that the utility
12 of Defendant’s conduct in unfairly competing against Airplane
13 Pockets, including by misappropriating its customers, funds,
14 accounts and other assets, have caused or will cause substantial
15 injury to Airplane Pockets and/or consumers and countervailing
16 benefits to consumers or competition do not outweigh the
17 gravity of said injury; Defendants’ conduct otherwise offends
18 public policy as it has been established by statutes, the common
19 law, or otherwise, is immoral, unethical, oppressive, and/or
20 unscrupulous, and/or causes substantial injury to consumers,
21 competitors and/or other businessmen; and/or there is a causal
22 link between Defendants’ business practices and a harm to
23 Airplane Pockets and consumers which cannot reasonably be
24 avoided;

25 (c) *Fraudulent Business Act(s) or Practice(s)*: As a result of
26 Defendants falsely conveying to consumers and the public that
27 Airplane Pockets is the seller, when in fact Defendants, and
28 each of them, are acting for their sole benefit in a competing

1 enterprise without Airplane Pockets’ authorization, ordinary
2 consumers acting reasonably under the circumstances are likely
3 to be deceived as to the true source of the product;

4 (d) *Unfair, Deceptive, Untrue, or Misleading Advertising*: As a
5 result of Defendants falsely conveying to consumers and the
6 public that Airplane Pockets is the seller, when in fact
7 Defendants, and each of them, are acting for their sole benefit
8 in a competing enterprise without Airplane Pockets’
9 authorization, ordinary consumers acting reasonably under the
10 circumstances are likely to be deceived about the true source of
11 the product; and

12 (e) *Acts Prohibited by Sections 17500-17577.5*: Defendant have
13 violated California’s Business and Professions Code § 17500,
14 *et seq.* as alleged in more detail in the Seventh Claim below and
15 incorporated herein by this reference.

16 84. As a result of Defendants’ acts of unfair competition, Airplane Pockets
17 has suffered injury in fact and lost money or property.

18 85. Pursuant to California’s Business and Professions Code §§ 17203 and
19 17206, Airplane Pockets is entitled to injunctive relief, restitution and disgorgement
20 of Defendants’ profits obtained through its unfair competitive practices and civil
21 penalties to the maximum extent permitted by law.

22 **TENTH CLAIM FOR RELIEF**
23 **Violation of California Business and Professions Code**
24 **§ 17500 et seq - Against All Defendants**

25 86. Airplane Pockets repeats and realleges the allegations in paragraphs 1
26 to 85 above as if fully set forth herein.

27 87. Defendants, and each of them, have violated California’s Business and
28 Professions Code § 17500, *et seq.*, because, Defendants, with intent directly or

1 indirectly to dispose of property or perform services, have made or disseminated or
2 caused to be made or disseminated before the public in California and other state,
3 through publication and/or advertising, including over the internet, statements
4 concerning Defendants' property or services which are untrue or misleading,
5 including by purporting to sell and/or offer for sale the Tray Table Cover in a
6 manner which falsely conveys to consumers and the public that Airplane Pockets is
7 the seller, when in fact Defendants, and each of them, are acting for their sole
8 benefit in a competing enterprise without Airplane Pockets' authorization.

9 88. Defendants knew or should have known these statements were untrue
10 or misleading, and these statements are in fact likely to mislead consumers.

11 89. As a direct and proximate result of Defendants' misleading and false
12 advertisements, Airplane Pockets has suffered injury in fact and lost money.

13 90. Pursuant to California's Business and Professions Code §§ 17535 and
14 17536, Airplane Pockets is entitled to injunctive relief, restitution and disgorgement
15 of Defendants' profits obtained through its unfair competitive practices, and civil
16 penalties to the maximum extent permitted by law.

17 **ELEVENTH CLAIM FOR RELIEF**

18 **Violation of California Business and Professions Code**

19 **Expulsion of Member - Against All Defendants**

20 91. Airplane Pockets repeats and realleges the allegations in paragraphs 1
21 to 90 above as if fully set forth herein.

22 92. Pursuant to California Corporations Code § 17706.02(e), Airplane
23 Pockets applies to expel Daniels and/or Cal West (to the extent either or both hold a
24 member interest) as a member by judicial order because they have through the acts
25 complained of above:

- 26 (a) Engaged, or are engaging, in wrongful conduct that has
27 adversely and materially affected, or will adversely and
28 materially affect, Airplane Pockets' activities;

1 (b) Willfully or persistently committed, or are willfully and
2 persistently committing, a material breach of their duties or
3 obligations under Section 17704.09; and/or

4 (c) Engaged, or are engaging, in conduct relating to the Airplane
5 Pockets' activities that makes it not reasonably practicable to
6 carry on the activities with the person as a member.

7

8

PRAYER FOR RELIEF

9 WHEREFORE, Airplane Pockets demands judgment in its favor on its
10 Complaint and requests the following relief:

On the First Claim for Patent Infringement

11
12 1. A judgment that Defendants, and each of them, have infringed and/or
13 are infringing one or more claims of the Patent under 35 U.S.C. § 271;

14 2. A preliminary and/or permanent injunction against Defendants, and
15 each of them, prohibiting them, and their respective affiliates, employees, agents,
16 officers, directors, attorneys, successors, and assigns and all those acting on behalf
17 of or in active concert or participation with any of them, from directly or indirectly
18 infringing the Patent or inducing or contributing to the infringement by others of
19 the Patent, in accordance with 35 U.S.C. § 283;

20 3. An award of damages adequate to compensate for the infringing acts,
21 including at a minimum a reasonable royalty, in accordance with 35 U.S.C. § 284,
22 in an amount of at least \$1 million;

23 4. In view of Defendants' willful infringement, an increase of Airplane
24 Pockets' damages award up to three times in accordance with 35 U.S.C. § 284;

25 5. An award of interest and costs pursuant to 35 U.S.C. § 284;

26 6. A declaration that this case is exceptional under 35 U.S.C. § 285 and
27 an award to Airplane Pockets of its attorney fees, expenses and costs incurred in
28 this action; and

1 7. Such other relief as this Court deems just and proper.

2 ***On the Second , Third and Fourth Claims for Lanham Act Violations***

3 1. A judgment that Defendants have violated 15 U.S.C. §§ 1125(a) and/or
4 1125(d);

5 2. A preliminary and/or permanent injunction against Defendants, and
6 each of them, prohibiting them, and their respective affiliates, employees, agents,
7 officers, directors, attorneys, successors, and assigns and all those acting on behalf
8 of or in active concert or participation with any of them, from directly or indirectly
9 violating 15 U.S.C. §§ 1125(a) and/or 1125(d), in accordance with 15 U.S.C. §§
10 1116;

11 3. An award of damages adequate to compensate for Defendants’
12 unlawful acts and/or an award of restitution or disgorgement, without limitation in
13 accordance with 15 U.S. Code § 1117(a), in an amount of at least \$1 million;

14 4. In view of Defendants’ intentional violations and/or use of a
15 counterfeit mark, treble damages of the amounts awarded under 15 U.S. Code §
16 1117(a) in accordance with 15 U.S. Code § 1117(b);

17 5. Statutory damages for the use of a counterfeit mark in accordance with
18 15 U.S. Code § 1117(c), in an amount of at least \$1 million;

19 6. All statutory damages permitted by law, without limitation in
20 accordance with 15 U.S. Code §§ 1118(c) and/or 1117(d), in an amount of at least
21 \$1 million;

22 7. A judgment ordering Defendants, and each of them, to deliver up to
23 Airplane Pockets all labels, signs, prints, packages, wrappers, websites, social
24 media accounts and any and all other personal property, both tangible and
25 intangible, in accordance with 15 U.S.C. § 1118;

26 8. A judgment ordering the forfeiture or cancellation of all domain
27 name(s) or the transfer of all domain name(s) to Airplane Pockets pursuant to 15
28 U.S.C. § 1125(d);

1 9. A declaration that this case is exceptional under 15 U.S.C. § 1117 and
2 an award to Airplane Pockets of its attorney fees incurred in this action;

3 10. Punitive damages according to proof in an amount of at least \$2
4 million;

5 11. An award of interest and costs; and

6 12. Such other relief as this Court deems just and proper.

7 ***On the Fifth Claim for Breach of Fiduciary Duty***

8 1. An award of damages adequate to compensate for Defendants'
9 unlawful acts and/or an award of restitution or disgorgement in an amount of at
10 least \$1 million;

11 2. A preliminary and/or permanent injunction against Defendants, and
12 each of them, prohibiting them, and their respective affiliates, employees, agents,
13 officers, directors, attorneys, successors, and assigns and all those acting on behalf
14 of or in active concert or participation with any of them, from directly or indirectly
15 violating their fiduciary duties as alleged above;

16 3. Punitive damages according to proof in an amount of at least \$2
17 million;

18 4. Attorney fees as permitted by statute, contract and/or other law;

19 5. Prejudgment interest as allowed by law; and

20 6. Such other relief as this Court deems just and proper.

21 ***On the Sixth Claim for Conversion***

22 1. An award of damages adequate to compensate for Defendants'
23 unlawful acts and/or an award of restitution or disgorgement in an amount of at
24 least \$1 million;

25 2. A preliminary and/or permanent injunction against Defendants, and
26 each of them, prohibiting them, and their respective affiliates, employees, agents,
27 officers, directors, attorneys, successors, and assigns and all those acting on behalf
28 of or in active concert or participation with any of them, from directly or indirectly

1 converting Airplane Pockets' monies and/or other property;

2 3. Punitive damages according to proof in an amount of at least \$2
3 million;

4 4. Attorney fees as permitted by statute, contract and/or other law;

5 5. Prejudgment interest as allowed by law; and

6 6. Such other relief as this Court deems just and proper.

7 ***On the Seventh Claim for Accounting***

8 1. An accounting from Defendants of all money, property, and other
9 items of value received by Defendants which belong to Airplane Pockets, and an
10 award of all amounts due and owing, in an amount of at least \$1 million;

11 2. Attorney fees as permitted by statute, contract and/or other law;

12 3. Prejudgment interest as allowed by law; and

13 4. Such other relief as this Court deems just and proper.

14 ***On the Eighth Claim for Violation of Penal Code § 520***

15 1. A preliminary and/or permanent injunction against Defendants, and
16 each of them, prohibiting them, and their respective affiliates, employees, agents,
17 officers, directors, attorneys, successors, and assigns and all those acting on behalf
18 of or in active concert or participation with any of them, from directly or indirectly
19 violating Penal Code § 520;

20 2. Pursuant to California's Penal Code § 520, a judgment for
21 compensatory damages, including any expenditures to verify that its computer
22 system, computer network, computer program, or data was or was not altered,
23 damaged, or deleted by the access, in an amount of at least \$1 million;

24 3. Attorney fees as permitted by statute, contract and/or other law;

25 4. Punitive damages according to proof in an amount of at least \$2
26 million;

27 5. Prejudgment interest as allowed by law; and

28 6. Such other relief as this Court deems just and proper.

1 ***On the Ninth Claim for Violation of B&P Code § 17200***

2 7. Pursuant to California’s Business and Professions Code § 17203, a
3 preliminary and/or permanent injunction against Defendants, and each of them,
4 prohibiting them, and their respective affiliates, employees, agents, officers,
5 directors, attorneys, successors, and assigns and all those acting on behalf of or in
6 active concert or participation with any of them, from directly or indirectly
7 violating Business and Professions Code § 17200, *et seq.*;

8 8. Pursuant to California’s Business and Professions Code § 17203, a
9 judgment of restitution and/or disgorgement of Defendants’ profits obtained
10 through its unfair competitive practices, in an amount of at least \$1 million;

11 9. Pursuant to California’s Business and Professions Code § 17206, civil
12 penalties to the maximum extent permitted by law;

13 10. Attorney fees as permitted by statute, contract and/or other law;

14 11. Punitive damages according to proof in an amount of at least \$2
15 million;

16 12. Prejudgment interest as allowed by law; and

17 13. Such other relief as this Court deems just and proper.

18 ***On the Tenth Claim for Violation of B&P Code § 17500***

19 1. Pursuant to California’s Business and Professions Code § 17535, a
20 preliminary and/or permanent injunction against Defendants, and each of them,
21 prohibiting them, and their respective affiliates, employees, agents, officers,
22 directors, attorneys, successors, and assigns and all those acting on behalf of or in
23 active concert or participation with any of them, from directly or indirectly
24 violating Business and Professions Code § 17500, *et seq.*;

25 2. Pursuant to California’s Business and Professions Code § 17535, a
26 judgment of restitution and/or disgorgement of Defendants’ profits obtained
27 through its unfair competitive practices, in an amount of at least \$1 million;

28 3. Pursuant to California’s Business and Professions Code § 17536, civil

1 penalties to the maximum extent permitted by law, in an amount of at least \$1
2 million;

3 4. Attorney fees as permitted by statute, contract and/or other law;

4 5. Punitive damages according to proof in an amount of at least \$2
5 million;

6 6. Prejudgment interest as allowed by law; and

7 7. Such other relief as this Court deems just and proper.

8 ***On the Eleventh Claim to Expel Member***

9 1. Pursuant to California Corporations Code § 17706.02(e), a judgment
10 expelling Daniels and/or Cal West as member(s) of Airplane Pockets;

11 2. Attorney fees as permitted by statute, contract and/or other law; and

12 3. Such other relief as this Court deems just and proper.

13 ***Demand for a Jury Trial***

14 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and/or other
15 applicable law, Airplane Pockets respectfully requests a jury trial of all issues that
16 may be tried to a jury in this action.

17

18 DATED: January 5, 2022

19 FOUNDATION LAW GROUP LLP

20
21 /s/ Eric Beane
22 Attorneys for Defendants

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