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Attorneys for Plaintiff,  
LALTITUDE LLC

11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13  
14 LALTITUDE LLC, a California limited  
15 liability company,

16 Plaintiff,

17 vs.

18 ADURO PRODUCTS LLC, an Ohio  
19 limited liability company; FIVE  
20 BELOW, INC., a Pennsylvania  
21 corporation; and DOES 1-10, inclusive,

22 Defendants.

Case No.: 2:22-cv-3042

**PLAINTIFF’S COMPLAINT FOR:**

- 1) **DESIGN PATENT INFRINGEMENT UNDER 35 U.S.C. § 271(a);**
- 2) **INDUCED PATENT INFRINGEMENT UNDER 35 U.S.C. § 271(b);**
- 3) **CONTRIBUTORY PATENT INFRINGEMENT UNDER 35 U.S.C. § 271(c);**
- 4) **UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE § 17200 et seq.**

**JURY TRIAL DEMAND**

1 PLAINTIFF LALTITUDE LLC (“Plaintiff”) hereby files this Complaint  
2 against DEFENDANTS ADURO PRODUCTS LLC, an Ohio limited liability  
3 company (“Aduro”), FIVE BELOW, INC., a Pennsylvania corporation (“Five  
4 Below”), and Does 1 to 10 (collectively, “Defendants”), and alleges as follows:

5 **SUMMARY OF THE ACTION**

6 1. Plaintiff is the inventor of an ornamental design for a Bluetooth shower  
7 speaker, which is protected by U.S. Patent No. D742,359 (the “Patent”). *See*

8 **EXHIBIT A.**

9 2. Defendants have willfully and blatantly infringed the Patent by offering  
10 for sale, and presumably selling Bluetooth shower speakers having a substantially  
11 similar, if not identical, ornamental design to that protected by Plaintiff’s Patent. *See*

12 3. Though Plaintiff has unsuccessfully attempted to directly address  
13 Defendants’ by way of written correspondence, Defendants persist in their wrongful  
14 conduct. Thus, Plaintiff now seeks relief from this Court to resolve this dispute and  
15 be compensated for the injury caused by Defendants’ unlawful business practices.

16 **PARTIES**

17 4. Plaintiff is now, and at all times relevant herein was, a California  
18 limited liability company, having a principal place of business in Hacienda Heights,  
19 California.

20 5. Plaintiff is informed and believes, and on that basis alleges, that  
21 Defendant Aduro Products LLC is, and at all times relevant herein was, a New Jersey  
22 limited liability company, having a principal place of business at 250 Liberty Street,  
23 Metuchen, New Jersey 08840.

24 6. Plaintiff is informed and believes, and on that basis alleges, that  
25 Defendant Five Below, Inc. is, and at all times relevant herein was, a Pennsylvania  
26 corporation, having a principal place of business at 701 Market Street, Suite 100,  
27 Philadelphia, Pennsylvania 19106.

7. The true names and capacities, whether individual, corporate, associate,

1 or otherwise, of Defendants DOES 1 through 10, inclusive (individual a “Doe  
2 Defendant” and collectively, “Doe Defendants”), are unknown to Plaintiff at this  
3 time, and Plaintiff, therefore, sues Doe Defendants by such fictitious names. Plaintiff  
4 will ask leave of Court to amend this Complaint when the same shall have been  
5 ascertained. Plaintiff is informed and believes, and based thereon alleges that each  
6 Doe Defendant was responsible intentionally, or in some other actionable manner  
7 for the events and happenings referred to herein, which proximately caused injury  
8 and damage to Plaintiff, as hereafter alleged. Any reference to Defendants shall refer  
9 to each named Defendant and all Doe Defendants, and to each of them. Any  
10 reference to a particular Defendant shall refer to the named Defendant only.

11 8. Plaintiff is informed and believes, and on that basis alleges, that  
12 Defendants are responsible for their acts and for their conduct, which are the true  
13 legal causes of the damages herein alleged.

#### 14 **JURISDICTION AND VENUE**

15 9. This Court has jurisdiction over the subject matter of this action under  
16 28 U.S.C. §§ 1331 (federal question), 1338(a) (patent infringement), and 1332  
17 (diversity of citizenship).

18 10. Personal jurisdiction as to Aduro is conferred on this Court because  
19 Aduro has personally availed itself of the benefits and privileges of transacting  
20 business within the State of California. In particular, on multiple occasions, Aduro  
21 has sold products to customers within the State of California on its own website,  
22 <https://www.aduroproducts.com/>, and through various online retail platforms,  
23 including Five Below, <https://www.fivebelow.com/>, Amazon,  
24 <https://www.amazon.com/>, Walmart, <https://www.walmart.com/>, and Groupon,  
25 <https://www.groupon.com/>.

26 11. Personal jurisdiction as to Five Below is conferred on this Court  
27 because Five Below has personally availed itself of the benefits and privileges of  
transacting business within the State of California. In particular, on multiple

1 occasions, Five Below has sold products to customers within the State of California  
2 at its physical storefronts in California and via its online storefront,  
3 <https://www.fivebelow.com/>.

4 12. This Court also has personal jurisdiction over Defendants because  
5 Defendants have caused injury to Plaintiff within the State of California and within  
6 this judicial district. Defendants have committed and continue to commit unlawful  
7 acts expressly aimed at Plaintiff in California, knowing that the brunt of the harm  
8 resulting from this conduct will be suffered by Plaintiff in California.

9 13. Venue is proper in the Central District of California under 28 U.S.C. §  
10 1400(b). Defendants have a regular and established place of business in this district  
11 and have committed acts of infringement of the Patent in this district by offering for  
12 sale infringing products.

### 13 FACTUAL BACKGROUND

14 14. On December 25, 2013, a design patent application for a “Bluetooth  
15 shower speaker” was filed with the United States Patent Office (USPTO). On  
16 November 3, 2015, the Patent was duly and lawfully issued by the USPTO. The  
17 Patent has an anticipated expiration date of November 3, 2029. A true and correct  
18 copy of the Patent is attached hereto as **EXHIBIT A**.

19 15. Plaintiff is the true owner of all rights, title, and interest in the Patent  
20 that encompasses the Bluetooth shower speaker design. Plaintiff possesses the right  
21 to sue for and obtain equitable relief and damages for infringement of the Patent.

22 16. The success and novelty of the Patent prompted third parties, including  
23 Defendants, to manufacture and/or distribute blatant counterfeits of Plaintiff’s  
24 innovative design to compete with and infringe the Patent. *See* **EXHIBIT B** and  
25 **EXHIBIT C** for examples of Defendants’ infringement of the Patent.

26 17. In particular, Aduro manufactures, offers for sale, and presumably sells  
27 at least two products that are substantially similar to the Patent, the Aconic wireless  
shower speaker (the “Aconic Speaker”) and the AquaSound wireless shower speaker

1 (the “AquaSound Speaker” and collectively, the “Infringing Products”). *See*  
 2 **EXHIBIT B**. Five Below offers for sale, and presumably sells, the Aconic Speaker,  
 3 on its online storefront <https://www.fivebelow.com/> and at its physical storefronts.  
 4 *See* **EXHIBIT C**.

5 18. Defendants have directly infringed and continue to directly infringe the  
 6 Patent by making, using, selling, and offering for sale in the United States, and/or  
 7 importing into the United States the Infringing Products (exemplified in **EXHIBIT**  
 8 **B** and **EXHIBIT C**), embodying the invention defined by one or more claims of the  
 9 Patent, without authority or license from Plaintiff. More particularly, Defendants  
 10 have infringed and continue to infringe at least Claim 1 of the Patent because  
 11 Infringing Products are substantially similar to the design protected by the Patent.



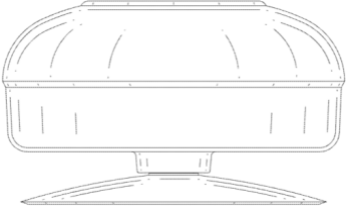



12 19. Plaintiff has complied with the marking and notice requirements of 35  
 13 U.S.C. § 287.

14 20. A comparison of the numerous substantially similar, if not nearly  
 15 identical, ornamental features are apparent with reference to the below charts:

U.S. Design Patent No. D742,359	AquaSound Speaker
	
	

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U.S. Design Patent No. D742,359	Aconic Speaker
	
	
	

21. To address Defendants’ infringement, beginning on or around November 25, 2015, Plaintiff, through counsel, sent letters to Defendants that informed Defendants of their infringement of the Patent and demanded that Defendants cease and desist further infringement. Most recently, on or around October 27, 2021 and January 4, 2022, Plaintiff, through counsel, sent letters to Five Below. *See* **EXHIBIT D** and **EXHIBIT E** for true and correct copies of these letters. In addition, on or around January 4, 2022, Plaintiff, through counsel, sent letters to Aduro. *See* **EXHIBIT F** for a true and correct copy of this letter.

22. On or around February 14, 2022, Aduro, through counsel, responded to Plaintiff’s January 4, 2022 letter denying Aduro’s infringement. Then, on or around March 16, 2022, Plaintiff, through counsel, responded to Aduro’s February 14<sup>th</sup> letter further explaining how Aduro is liable for infringement. *See* **EXHIBIT G** for a true and correct copy of this letter.

1 23. Plaintiff is informed and believes, and on that basis alleges, that at least  
2 on or before November 25, 2015, Aduro had actual notice of Plaintiff’s intellectual  
3 property rights. Aduro’s use and infringement of the Patent is therefore willful.  
4 Plaintiff is further informed and believes, and on that basis alleges, that at least as  
5 early as January 4, 2022, Five Below had actual notice of Plaintiff’s intellectual  
6 property rights. Five Below’s use and infringement of the Patent is therefore willful.

7 24. Defendants’ Infringing Products were, and have continued to be,  
8 marketed, manufactured, distributed, and/or offered for sale in a manner that  
9 infringes Plaintiff’s Patent. Indeed, both of the Infringing Products use a  
10 substantially similar design, characteristic, and size as Plaintiff’s Patent.

11 25. Defendants have unjustly benefited from copying Plaintiff’s invention  
12 for which Plaintiff took risks and made substantial investment to develop.

13 26. Defendants’ infringement of the Patent and other improper conduct has  
14 and continues to cause substantial damage and irreparable harm to Plaintiff.

15 **FIRST CLAIM FOR RELIEF**

16 **Design Patent Infringement – 35 U.S.C § 271(a)**

17 27. Plaintiff hereby restates and realleges the allegations set forth in  
18 paragraphs 1 through 26 above and incorporates them by reference.

19 28. Plaintiff is the sole owner of the entire right, title, and interest in the  
20 Patent, which was duly and lawfully issued by the USPTO.

21 29. Defendants have, and continue to, knowingly, intentionally, and  
22 willfully infringe the Patent by selling, offering for sale, and/or importing the  
23 Infringing Products that would appear to an ordinary observer to be substantially  
24 similar to the claim of the Patent.

25 30. Defendants undertook their acts of infringement of the Patent without  
26 permission or license.

27 31. Plaintiff is informed and believes, and on that basis alleges, that  
Defendants had actual knowledge of Plaintiff’s right in the design claimed in the

1 Patent. Defendants' actions constitute reckless disregard for Plaintiff's patent rights  
2 or otherwise willful and intentional infringement of the Patent.

3 32. As a direct and proximate result of Defendants' acts of infringement,  
4 Defendants have derived and received gains, profits, and advantages in an amount  
5 that is not presently known to Plaintiff.

6 33. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to damages for  
7 Defendants' infringing acts and treble damages together with interest and cost as  
8 fixed by this Court.

9 34. Pursuant to 35 U.S.C. § 285, Plaintiff is entitled to reasonable attorneys'  
10 fees for the necessity of bringing this claim.

11 35. Pursuant to 35 U.S.C. § 289, Plaintiff is entitled to recover Defendants'  
12 total profits from Defendants' infringement.

13 36. Due to Defendants' infringing acts, Plaintiff has suffered great and  
14 irreparable injury, for which Plaintiff has no adequate remedy at law.

15 37. Defendants will continue to infringe Plaintiff's patent rights and  
16 Plaintiff will continue to suffer irreparable harm unless enjoined by this Court.

17 **SECOND CLAIM FOR RELIEF**

18 **Induced Patent Infringement – 35 U.S.C. § 271(b)**

19 38. Plaintiff hereby restates and realleges the allegations set forth in  
20 paragraphs 1 through 37 above and incorporates them by reference.

21 39. Plaintiff is informed and believes, and on that basis alleges, that  
22 Defendants have actively induced infringement, and continue to actively induce  
23 infringement, by others of the Patent under 35 U.S.C. §271(b).

24 40. Defendants' customers directly infringe (literally or under the doctrine  
25 of equivalents) at least one claim of the Patent when they make, use, offer to sell, or  
26 sell the Infringing Products. The customers infringe these claims as shown above  
27 with reference to the images in paragraph 20 above.

41. Aduro had actual knowledge of the Patent and its infringement thereof



1 since at least the time it received Plaintiff’s November 25, 2015 letter, described in  
2 paragraph 21 above, but no later than at least the time it received Plaintiff’s January  
3 4, 2022 letter, attached as **EXHIBIT F** and described in paragraph 21 above. Five  
4 Below had actual knowledge of the Patent and its infringement thereof since at least  
5 the time it received Plaintiff’s October 27, 2021 letter, attached as **EXHIBIT D** and  
6 described in paragraph 21 above, but no later than at least the time it received  
7 Plaintiff’s January 4, 2022 letter, attached as **EXHIBIT E** and described in  
8 paragraph 21 above.

9 42. Defendants have knowingly and actively induced customers to directly  
10 infringe the Patent with the specific intent to encourage such infringement and  
11 Defendants knew (or should have known or were willfully blind) that the induced  
12 acts constitute patent infringement. Defendants’ inducement includes, for example,  
13 providing technical and/or installation guides, hardware specifications,  
14 demonstrations, and other actions that induce its customers to directly infringe the  
15 Patent.

16 **THIRD CLAIM FOR RELIEF**

17 **Contributory Patent Infringement – 35 U.S.C. § 271(c)**

18 43. Plaintiff hereby restates and realleges the allegations set forth in  
19 paragraphs 1 through 42 above and incorporates them by reference.

20 44. Plaintiff is informed and believes, and on that basis alleges, that  
21 Defendants have contributorily infringed and continue to infringe the Patent under  
22 35 U.S.C. § 271(c).

23 45. Defendants have offered to sell, sold, or sell within the United States or  
24 import into the United States the Infringing Products. Each of the Infringing  
25 Products are a material part of the invention of at least one claim of the Patent. The  
26 Infringing Products are not staple articles nor commodities of commerce suitable for  
27 substantial use that does not infringe at least one of the claims of the Patent.

46. Defendants’ customers directly infringe (literally or under the doctrine

1 of equivalents) at least one claim of the Patent when they make, use, offer for sale,  
2 or sell the AquaSound Speaker or the Aconic Speaker. The limitations of at least one  
3 claim of the Patent are met by the Infringing Products, as illustrated in the images in  
4 paragraphs 20 above.

5 47. Aduro had actual knowledge of the Patent and its infringement thereof  
6 since at least the time it received Plaintiff's November 25, 2015 letter, described in  
7 paragraph 21 above, but no later than at least the time it received Plaintiff's January  
8 4, 2022 letter, attached as **EXHIBIT F** and described in paragraph 21 above. Five  
9 Below had actual knowledge of the Patent and its infringement thereof since at least  
10 the time it received Plaintiff's October 27, 2021 letter, attached as **EXHIBIT D** and  
11 described in paragraph 21 above, but no later than at least the time it received  
12 Plaintiff's January 4, 2022 letter, attached as **EXHIBIT E** and described in  
13 paragraph 21 above.

14 48. Defendants have offered to sell, sold, or imported into the United States  
15 the Infringing Products knowing (or should have known or were willfully blind) that  
16 such products were especially made or especially adapted for use in an infringement  
17 of the Patent and not staple articles or commodities of commerce suitable for  
18 substantial non-infringing use.

19 **FOURTH CLAIM FOR RELIEF**

20 **Unfair Competition – Cal. Bus. & Prof. Code § 17200 *et seq.***

21 49. Plaintiff hereby restates and realleges the allegations set forth in  
22 paragraphs 1 through 48 above and incorporates them by reference.

23 50. California Business and Professions Code, Section 17200 states, in  
24 pertinent part: "...unfair competition shall mean and include any unlawful, unfair or  
25 fraudulent business act or practice and unfair, deceptive, untrue or misleading  
26 advertising and any act prohibited by Chapter 1 (commencing with Section 17500)  
27 of Part 3 of Division 7 of the Business and Professions Code."

1 51. At all times mentioned herein, Defendants have engaged in “unfair”  
2 business practices. Defendants have maliciously disrupted Plaintiff’s business by  
3 offering for sale and selling the Infringing Products, which infringe Plaintiff’s  
4 Patent. Such acts by Defendants are unlawful.

5 52. As a direct and proximate result of Defendants’ wrongful acts, Plaintiff  
6 has been, is now, and will be irreparably injured and damaged by Defendants’  
7 aforementioned acts. Unless Defendants are enjoined by this Court, Plaintiff will  
8 suffer further harm to its business. This harm constitutes an injury for which Plaintiff  
9 has no adequate remedy at law.

10 53. Defendants have acted with the intent to disrupt Plaintiff’s business and  
11 thus, its acts are willful and intentional.

12 54. Defendants should be required to restore to Plaintiff its lost revenue as  
13 a result of Defendants’ unlawful business acts or to provide Plaintiff with any other  
14 restitutionary relief as the Court deems appropriate.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff respectfully prays for judgment against Defendants  
17 as follows:

18 A. Entry of a judgment that Defendants have infringed one or more claims  
19 of U.S. Patent No. D742,359;

20 B. Entry of a judgment that Defendants willfully and deliberately  
21 infringed U.S. Patent No. D742,359;

22 C. Entry of a judgment that Defendants have induced infringement of U.S.  
23 Patent No. D742,359;

24 D. Entry of a judgment that Defendants have contributed to infringement  
25 U.S. Patent No. D742,359;

26 E. An order preliminarily and permanently restraining and enjoining  
27 Defendants, its officers, agents, attorneys and employees, and those acting in privity  
or concert with Defendants, from engaging in the manufacture, use, offer for sale or

1 sale within the United States, or importation into the United States, of the Infringing  
2 Products until after the expiration date of U.S. Patent No. D742,359;

3 F. An order requiring Defendants to deliver and be impounded during the  
4 pendency of this action all material in Defendants' possession, custody, or control  
5 that includes or incorporates products that infringe Plaintiff's patent rights, including  
6 but not limited to, any products, containers, packages, labels, and advertisements in  
7 their possession or under their control utilizing Plaintiff's U.S. Patent No. D742,359,  
8 or any simulation, reproduction, counterfeit, copy, or colorable imitation thereof;

9 G. An order of an independent accounting of all of Defendants' financial  
10 records relating to their infringing activities in order to determine the sums of money  
11 owed to Plaintiff;

12 H. An order requiring Defendants to pay to Plaintiff all damages or other  
13 monetary relief, including but not limited to all gains, profits, and advantages  
14 derived by Defendants as a result of Defendants' infringement of U.S. Patent No.  
15 D742,359;

16 I. An order requiring Defendants to pay to Plaintiff treble damages and/or  
17 exemplary damages because of Defendants' willful conduct pursuant to 35 U.S.C. §  
18 284;

19 J. Costs and reasonable attorneys' fees relating to this action pursuant to  
20 35 U.S.C. § 285;

21 K. Pre-judgment and post-judgment interest and costs in bringing this  
22 action against Defendants; and

23 L. Such other and further relief as the Court may deem just and proper.

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1 **DEMAND FOR A JURY TRIAL**

2 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff  
3 requests a jury trial of all issues that may be tried to a jury in this action.  
4

5 RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of May, 2022.  
6

7 **OMNI LEGAL GROUP**

8  
9 /s/ Omid E. Khalifeh

10 Omid E. Khalifeh

11 Ariana Santoro

12 Lara A. Petersen

13 Attorneys for Plaintiff,

14 LALTITUDE LLC  
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