

1 Marc C. Forsythe – State Bar No. 153854
2 **GOE FORSYTHE & HODGES LLP**
3 18101 Von Karman Avenue, Ste. 1200
4 Irvine, CA 92619
5 Tel: 949-798-2460
6 Fax: 949-955-9437
7 Email: mforsythe@goeforlaw.com

8 Co-Counsel for Plaintiff Brian Horowitz

9 Darrell W. Gibby – Ark. Bar No. 2007307
10 **GIBBY LAW FIRM, PLLC**
11 903 S.E. 22nd Street, Suite 3
12 Bentonville, AR 72712
13 Tel: (479) 899-2857
14 Email: DarrellGibby@gibbylawfirm.com

15 Co-Counsel for Plaintiff Brian Horowitz
16 (Pro Hac Vice TBD)

17 **UNITED STATES DISTRICT COURT**

18 **CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**

19 **BRIAN HOROWITZ,**

20 **Plaintiff,**

21 **vs.**

22 **INTERNATIONAL E-Z UP, INC.,**

23 **Defendant**

24 **Case No.:** _____

25 **COMPLAINT**

1 COMES NOW, Plaintiff Brian Horowitz (“Plaintiff” or “Horowitz”) by and
2 through his attorney Marc C. Forsythe, and for his Complaint against Defendant
3 International E-Z Up, Inc. (“Defendant” or “E-Z Up”) states the following:
4

5 PARTIES, JURISDICTION, AND VENUE
6

7 1. Plaintiff is a United States Citizen currently residing in Riverside County,
8 California.

9 2. Defendant is a Delaware corporation registered as foreign corporation in
10 the State of California and with a principal place of business in Los Angeles,
11 California.
12

13 3. The claims in this case relate to violations of United States patent laws
14 codified at 35 USCS § 271 et. seq.
15

16 4. This Court has subject matter jurisdiction.
17

18 5. Venue is proper in this Court.
19

20 FACTUAL BACKGROUND

21 6. Plaintiff restates and incorporates all allegations in paragraphs 1 through
22 5.

23 7. On or about September 29, 2015, United States Patent Number 9,145,154
24 (“154 patent”) was granted to Plaintiff for the protection of a certain folding
25 wagon. A true and correct copy of the patent is attached herewith and incorporated
26 herein as “**Exhibit A**”.
27
28

1 COMES NOW, Plaintiff Brian Horowitz (“Plaintiff” or “Horowitz”) by and
2 through his attorney Marc C. Forsythe, and for his Complaint against Defendant E-
3 Z Up, Inc. (“Defendant” or “E-Z Up”) states the following:
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24 (“154 patent”) was granted to Plaintiff for the protection of a certain folding
25 wagon. A true and correct copy of the patent is attached herewith and incorporated
26 herein as “**Exhibit A**”.
27
28

1 8. From at least the time of filing the application for the ‘154 patent,
2 Plaintiff has from time to time manufactured and/or sold and/or authorized his
3 licensees to manufacture and/or sell products in the United States that embody one
4 or more claims his ‘154 patent. Such patented products included on their
5 packaging a notice of the patent including the ‘154 patent number.
6
7

8 9. Creative Outdoor Distributors USA, Inc., the company that employs
9 Plaintiff, and Defendant have a history of conducting business with one another.
10 Such business has involved the selling and purchasing of authorized wagons that
11 follow at least one claim of the ‘154 patent. As such, Defendant has been aware of
12 at least Plaintiff’s ‘154 patent from past business activities.
13
14

15 10. Defendant is not licensed or otherwise authorized to manufacture, import,
16 advertise for sale, sell, or use folding wagons that embody any of the claims of the
17 ‘154 patent.
18

19 11. Beginning in at least February 2022, Defendant had been manufacturing,
20 importing, advertising for sale, selling, and/or using folding wagons (“accused
21 products”) that embody all the elements of at least one claim of the ‘154 patent.
22 True and correct copies of images of such accused products are included as part of
23 Plaintiff’s letter to Defendant dated February 23, 2022 are attached herewith and
24 incorporated herein as “**Exhibit B.**”
25
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1 12. On or about February 23, 2022, on behalf of Plaintiff, Plaintiff’s attorney
2 drafted and mailed a letter to Defendant to place Defendant on notice of its
3 infringement of the ‘154 patent and to request Defendant cease and desist such
4 unauthorized acts and to request information regarding the scope of Defendant’s
5 wagon sales and communication for settlement. See “Exhibit B.”
6
7

8 13. Defendant declined to communicate with Plaintiff regarding the contents
9 of his February 23, 2022 letter.
10

11 14. Plaintiff has suffered damages in the form of lost profits and/or lost
12 royalties resulting from Defendant’s displaced sales of his or his authorized
13 licensees’ folding wagon products that embody the claims of the ‘154 patent.
14

15 15. Plaintiff is filing this action for enforcement against Defendant’s
16 infringement upon his rights under his ‘154 patent.
17

18 **COUNT I – Direct Patent Infringement of U.S. Patent No. 9,145,154**

19 16. Plaintiff restates and incorporates all allegations in paragraphs 1 through
20 20.
21

22 17. Plaintiff is the rightful owner of United States Patent Number 9,145,154.
23

24 18. Plaintiff’s ‘154 patent is valid.
25

26 19. From at least August 2021 until an undetermined time, Defendant has
27 manufactured, advertised for sale, sold, and/or used folding wagons, as shown in
28 “**Exhibit C,**” that embody all the elements of at least one claim of the ‘154 patent.

1 20. Specifically, Defendant's folding wagons embody all the elements of
2 claim 19 of his '154 patent including the following:
3

- 4 a. A front and rear;
- 5 b. With a basket to carry articles;
- 6 c. A collapsible frame that folds between an expanded open
7 configuration and a compacted closed configuration;
- 8 d. With the basket outstretched when in an expanded, open
9 configuration;
- 10 e. A pair a front wheels that are separated from one another and are
11 connected to the front of the wagon;
- 12 f. A pair of rear wheels that are separated from one another and
13 connected to the rear of the wagon;
- 14 g. With at least one of the pairs of wheels being movable toward and
15 away from one another so that the wheels of one pair can be moved
16 toward one another while the wheels of the other pair can remain
17 separated so that when the wagon is folded to the compact
18 configuration the wheels moved toward one another are located
19 between the wheels of the pair that remain separated from one another
20 and allows for the front pair of wheels to be axially aligned and with a
21 parallel axis of rotation with the rear pair of wheels.
22
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1 21. Defendant's accused products also infringe on claim 20 of the '154
2 patent as they include all the elements of claim 19 along with each pair of wheels
3
4 being spaced outwardly to lie ahead and beyond the basket of the wagon.

5 22. Defendant's accused products also infringe on claim 21 of the '154
6 patent as they include all the elements of claim 19 along with a wheel support track
7
8 located at either the front or the rear of the wagon with one of the pairs of wheels
9
10 being coupled to and movable along the track such that the wheels move toward
11 and away from one another.

12 23. Defendant's accused products also infringe on claim 22 of the '154
13 patent as they include all the elements of claim 21 along with first and second
14
15 collars that surround and slide along the wheel support track that allows the wheels
16
17 of one of the pairs of front or rear wheels to move toward and away from one
18 another.

19 24. Defendant's accused products also infringe on claim 23 of the '154
20 patent as they include all the elements of claim 22 along with one of the collars
21
22 having a locking sleeve extending therefrom and the other collar having a locking
23
24 receptacle such that the locking sleeve and is received within the locking
25
26 receptacle when the collars slide along the support track toward one another,
27
28 whereby the wheels of one of the pairs of wheels correspondingly move side-by-
side one another.

1 25. Defendant is not authorized to manufacture, import, advertise for sale,
2 sell, nor use folding wagons that embody any of the claims of the '154 patent.
3

4 26. Plaintiff and/or his licensees have, prior to September 19, 2014, and from
5 time to time manufactured and/or sold folding wagons that are marked with the
6 entirety of Plaintiff's '154 patent number.
7

8 27. Upon information and belief, Defendant's activities of infringement upon
9 Plaintiff's '154 patent have been and continue to be intentional.
10

11 28. As a result of Defendant's willful infringement upon Plaintiff's patent,
12 Plaintiff has suffered damages in the amount Defendants have profited by their
13 infringement; or, alternatively, Plaintiff has suffered damages in the amount of
14 reasonable royalties he should have been paid for use of his '154 patent.
15

16 29. Pursuant to 35 USC § 271, Defendants should be held liable for
17 infringement of Plaintiff's '154 patent.
18

19 30. Plaintiff reserves the right to amend his Complaint if necessary or
20 otherwise seek relief for infringement of all of Defendant's accused products in
21 any variations that Plaintiff discovers during the course of this lawsuit.
22
23

24 RELIEF SOUGHT

25
26 31. Plaintiff restates and incorporates all allegations in paragraphs 1 through
27 48.
28

1 32. For Count I – Patent Infringement of U.S. Patent no. 9,145,154, Plaintiff
2 seeks the following:

- 3
- 4 a. Pursuant 35 USCS §83, a preliminary and permanent injunction to
5 compel Defendants to immediately discontinue the manufacturing,
6 importing, advertising for sale, selling and/or using any unauthorized
7 folding wagon that embodies any one or more of the claims of
8 Plaintiff’s ‘154 patent;
9
10
11 b. Damages as provided in 35 USCS § 284 to be determined by the
12 Court to compensate Plaintiff for Defendant’s infringement of his
13 ‘154 patent but not less than \$75,000.
14
15 c. Pursuant 35 USCS §83, treble damages for Defendants willful
16 infringement of Plaintiff’s ‘154 patent; and
17
18 d. Reasonable attorney’s fees and costs.

19
20 Dated this 9th day of May, 2022.

21
22 **GOE FORSYTHE & HODGES LLP**

23
24 By: 

25 Marc C. Forsythe
26 Counsel for Plaintiff Brian Horowitz
27
28