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9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 Robert J. Cassity
Nevada Bar No. 9779
2 Jessica E. Whelan
Nevada Bar No. 14781
3 **HOLLAND & HART LLP**
9555 Hillwood Drive, 2nd Floor
4 Las Vegas, Nevada 89134
Telephone: (702) 669-4600
5 Facsimile: (702) 669-4650
bcassity@hollandhart.com
6 jewhelan@hollandhart.com
7 Kyle B. Fleming (*pro hac vice* to be filed)
RENNER OTTO
8 1621 Euclid Avenue, Floor 19
Cleveland, Ohio 44115
9 kfleming@rennerotto.com
Telephone: (216) 621-1113
10 Facsimile: (216) 621-6165

11 *Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

14 PERITAS BRANDS, LLC,
15 Plaintiff,
16 v.
17 LEAPHIGH ANIMALS, LLC,
18 Defendant.

Case No.

**COMPLAINT
JURY DEMAND**

19 Plaintiff, Peritas Brands, LLC (“**Peritas Brands**” or “**Plaintiff**”) hereby alleges as follows
20 for its complaint against defendant LeapHigh, LLC (“**LeapHigh**” or “**Defendant**”) as follows:

NATURE OF THE CLAIMS

22 1. Peritas Brands has been designing and selling pet bedding and cage liners for many
23 years, including through the Amazon Marketplace, one of the largest and most important retail
24 channels in the United States. LeapHigh, a competitor, submitted to Amazon a secret and
25 unfounded claim of infringement against Peritas Brands resulting in approximately twenty (20)
26 products being barred from Amazon. This false and deceptive accusation has and in causing
27 significant injury to Peritas Brands, casting a cloud over Peritas Brands and its products, and now
28

1 requires the Court to remove this cloud and uncertainty and allow Peritas Brands to sell these
2 products on Amazon.

3 **JURISDICTION AND VENUE**

4 2. This is a complaint for declaratory relief under the Federal Declaratory Judgment
5 Act, 28 U.S.C. §§ 2201 and 2202, and under Nevada Deceptive Trade Practices Act, NRS Chapter
6 598.

7 3. Peritas Brands is a limited liability company organized under the laws of the State
8 of Florida and having its principal place of business in Florida. Peritas Brands' members are
9 citizens of Florida.

10 4. On information and belief, LeapHigh is a limited liability company organized under
11 the laws of the State of Nevada and having its principal place of business in Las Vegas, Nevada.
12 Also on information and belief, LeapHigh's members are citizens of Illinois and California.

13 5. This Court has original and exclusive jurisdiction over the subject matter of this
14 action pursuant to 28 U.S.C. §§ 1331 and 1338(a). In addition, and independent of the foregoing,
15 this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because the parties' citizenship is
16 diverse and the amount in controversy exceeds \$75,000, exclusive of interest and costs. This Court
17 has jurisdiction over the related state and/or common law claims pursuant to 28 U.S.C. §§ 1338
18 and 1367.

19 6. This Court has personal jurisdiction over LeapHigh because LeapHigh is organized
20 under the law of, and registered in, Nevada, and has its principal place of business in Nevada.

21 7. Venue is proper at least under 28 U.S.C. § 1391 because LeapHigh resides in this
22 judicial district.

23 **RELEVANT FACTS**

24 **A. Peritas Brands' Products**

25 8. Peritas Brands designs, manufactures, and sells throughout the United States
26 various products for home pets, such as bed pads and cage liners for dogs, cats, and other small
27 animal such as guinea pigs. Most of Peritas Brands' products are offered under the PAW
28 INSPIRED® trademark.

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1 9. Among the products offered by Peritas Brands are the Paw Inspired® Critter Box
2 cage liner for pet cages. Paw Inspired® Critter Box liners—which utilize on materials, designs
3 and methods dating back to at least 2016 or earlier—come in different sizes, but the following
4 images are representative.



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21 10. Peritas Brands also offers the Paw Inspired® PopCorner cage liners. Paw
22 Inspired® PopCorner liners—which utilize on materials, designs and methods dating back to at
23 least 2016 or earlier—come in different colors and sizes, but the following images are
24 representative.

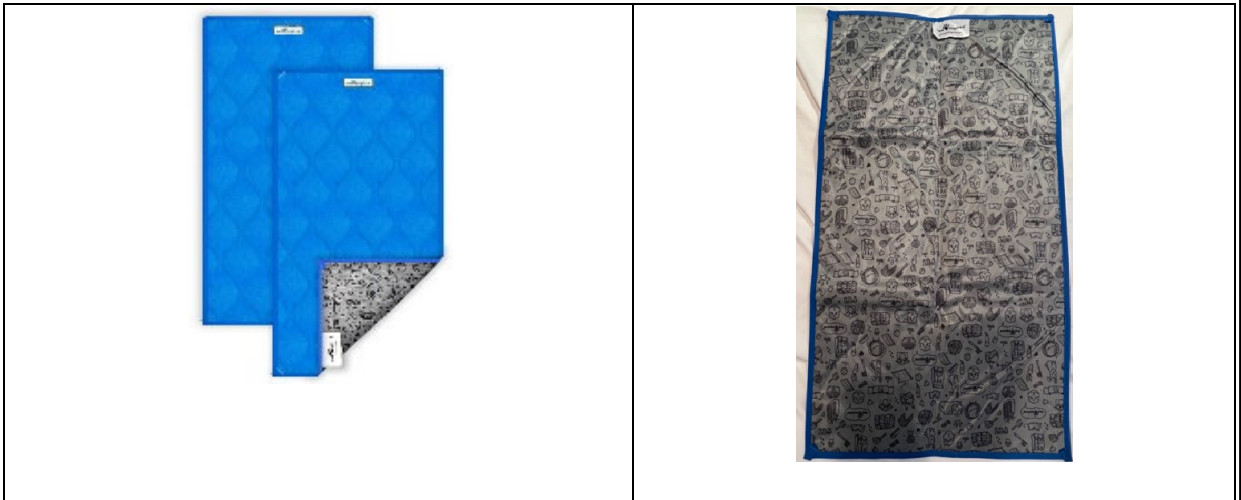
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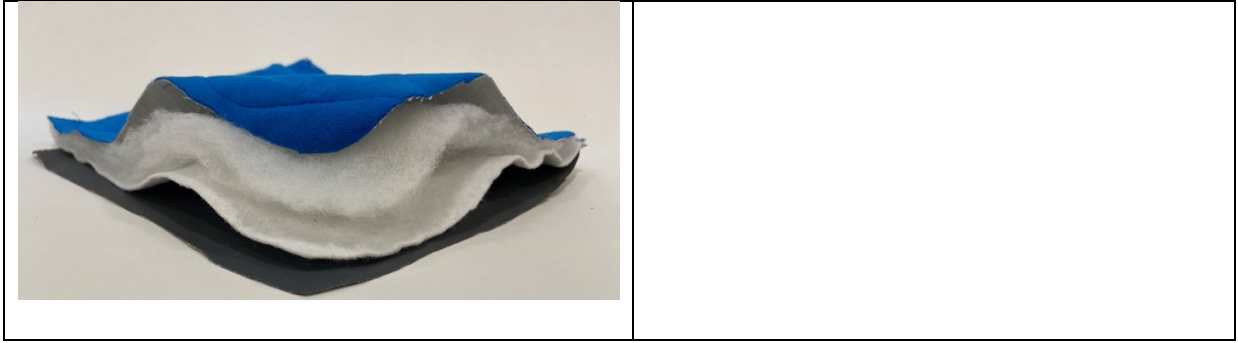
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11. Peritas Brands also offers the Paw Inspired® 29 x 16 Generic Absorbent liners. Paw Inspired® 29 x 16 Generic Absorbent liners—which utilize on materials, designs and methods dating back to at least 2016 or earlier—come in different colors, but the following images are representative.





B. Defendant’s Complaint to Amazon and Assertions of Patent Infringement

12. On information and belief, at some time on or before June 28, 2022, defendant filed Intellectual Property Takedown Complaint ID: 10294713221 with Amazon asserting that certain Peritas Brands’ products listed for sale on Amazon infringed LeapHigh’s U.S. patents.

13. Although Peritas Brands did not receive a copy of the Amazon complaint, Peritas Brands did receive a notice from Amazon, attached as Exhibit A.

14. The notice stated that, as a result of LeapHigh’s accusations and assertions of infringement to Amazon against Peritas Brands, Amazon had removed the following products from Amazon Seller Central and prevented such items from being listed, offered for sale, or sold through Amazon Central:

ASIN: B09WMQ6RZH, B08N6PFL3M, B08ZJ9FCLY, B08S36644W, B09WHCKR1D, B0965B7LC4, B08NJ4V1MM, B09W4LXYKM, B0995H5BV2, B09WMQS7RB, B096598BNZ, B09659LCR8, B0965C7FMZ, B09658BT5J, B08TCC4JRY, B096579DPX, B08PCR5DZ8, B09WHMGQD5, B09659JMBQ, B09659RLMD, B09WH22F23, B09WH35Z43, B09WHL99GP, B08NZ7NXB6, B09XBB6TWS, B08D8BTFLY, B09P866RS1, B09WHLR442, B096596R2T, B0965BT359, B09WMMMB75, B09WHDZ77P, B0995H78SM, B09WH9GHMM, B091PXNMSG, B08HN8HLX8, B0B1TVPC7K, B08NZ947PD, B09659CB3P, B09WHQPHM9, B091PXWPJ7, B09WHJS5V6, B09P8546KG, B091XR97C1, B09WMNNW42, B09WGZ3PYS, B08G87FGL6, B08PZ6C98R, B09WHHVVB1, B0995HKTMN
Complaint ID: 10294713221

15. Not all of the ASINs (“Amazon Standard Identification Number”) listed were for products from Peritas Brands, but, and as stated in the notice, Amazon did in fact remove the following Peritas Brands products as a result of LeapHigh’s accusations of infringement (the “Accused Products”):

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Paw Inspired® Critter Box: B0995H5BV2, B0995H78SM, B0995HKTMN, B0B1TVPC7K	Paw Inspired® 29x16 Generic Absorbent: B09WMMMB75, B09WMNNW42, B09WMQ6RZH, B09WMQS7RB	Paw Inspired® PopCorner Cage Liner: B09WHHVVB1, B09WHDZ77P, B09WH35Z43, B09WH22F23, B09WGZ3PYS, B09WHCKR1D, B09WH9GHMM, B09WHJS5V6, B09WHL99GP, B09WHLR442, B09WHMGQD5, B09WHQPHM9
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16. The Amazon notice also stated, in part, that the Accused Products would be barred from sale through Amazon unless and until LeapHigh submitted a retraction of the infringement complaint, or Peritas Brands provided a written letter or agreement from LeapHigh that the Accused Products were authorized or did not infringe.

17. The Amazon notice directed Peritas Brands to contact LeapHigh’s lawyer, which it did. However, despite several conversations, LeapHigh would not withdraw the complaint vis-à-vis Peritas Brands or otherwise withdraw any of its allegations of infringement against Peritas Brands. LeapHigh also did not provide to Peritas Brands a copy of the complaint submitted to Amazon, and did not identify which of its U.S. patents or claims were allegedly infringed.

C. LeapHigh’s Patents

18. According to the current records of the United States Patent and Trademark Office, and on information and belief, LeapHigh is now and was at the time of the Amazon complaint the owner of three (3) active U.S. patents.

19. A copy of U.S. Design Patent No. D930,268 (the “’268 Patent”), is attached hereto as Exhibit B. On information and belief, LeapHigh owns all right, title, and interest in the ’268 Patent, including the right to use and enforce the ’268 Patent.

20. A copy of U.S. Patent No. 10,966,405 (the “’405 Patent”), is attached hereto as Exhibit C. On information and belief, LeapHigh owns all right, title, and interest in the ’405 Patent, including the right to use and enforce the ’405 Patent.

21. A copy of U.S. Patent No. 11,129,357 (the “’357 Patent”), is attached hereto as Exhibit D. On information and belief, LeapHigh owns all right, title, and interest in the ’357 Patent, including the right to use and enforce the ’357 Patent.

1 22. Peritas Brands denied, and continues to deny, that any of its products, including the
2 Accused Products, infringe any valid claim of any of LeapHigh’s U.S. patents, including but not
3 limited to the ’268 Patent, the ’405 Patent, or the ’357 Patent.

4 **D. Defendant’s Ongoing Refusal to Withdraw the Amazon Complaint or Identify Which**
5 **Patents or Claims are Allegedly Infringed by Which Products**

6 23. On March 8, 2023, counsel for Peritas Brands sent a letter to the attorney for
7 LeapHigh re-asserting that the Accused Products did not infringe any of LeapHigh’s patents, and
8 again asking that (i) the Amazon complaint be withdrawn, or a covenant to not sue be provided,
9 or (ii) LeapHigh otherwise specifically identify the patents and claims it alleged are infringed by
10 the Accused Products..

11 24. Although LeapHigh’s counsel responded, LeapHigh (i) did not withdraw any of the
12 infringement contentions, (ii) did not withdraw the Amazon complaint in whole or part, (iii) did
13 not provide any covenant to not sue, and (iv) did not provide any identification of LeapHigh’s
14 infringement contentions against the Accused Products.

15 25. On information and belief, and for which Peritas Brands will likely have evidentiary
16 support after a reasonable opportunity for further investigation or discovery, LeapHigh’s initial
17 and ongoing assertion to Amazon of infringement was knowingly false.

18 26. As a result of LeapHigh’s Amazon Complaint ID: 10294713221 and its subsequent
19 conduct, including but not limited to its refusal to withdraw the complaint or provide a written
20 statement that the Accused Products do not infringe or provide a covenant to not sue, or to provide
21 any identification of which patents or claims are allegedly infringement by which Accused
22 Products, the Accused Products have been and remain blocked from being offered for sale or sold
23 by Peritas Brands to and through Amazon.

24 27. LeapHigh’s Amazon Complaint ID: 10294713221 and its subsequent actions and
25 inactions have interfered with Peritas Brands’ relations with customers and Amazon, and placed a
26 cloud over Peritas Brands ability to conduct business so long as these issues regarding LeapHigh’s
27 patents remain unresolved.

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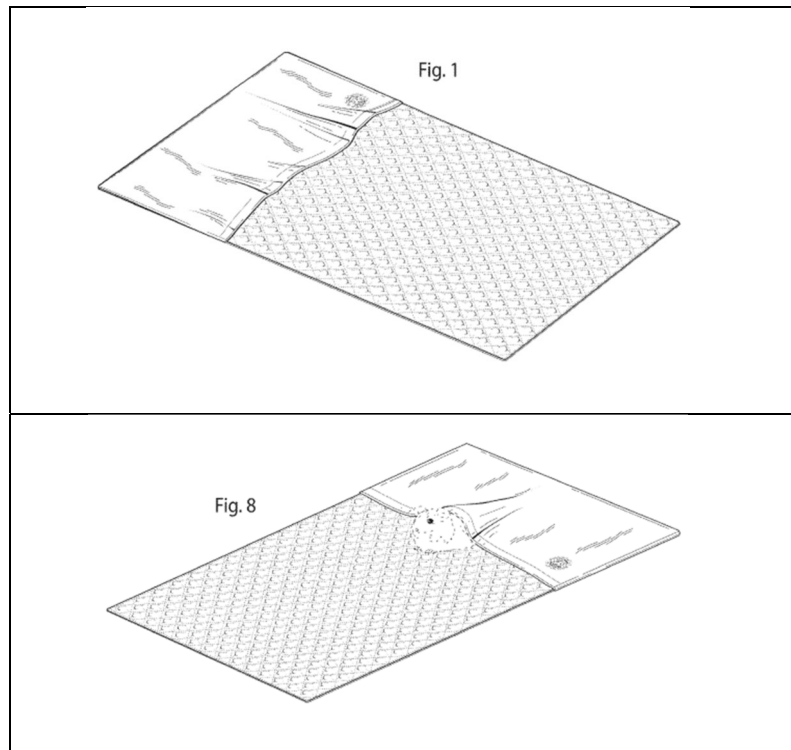
1 28. Based on the foregoing and under all circumstances, there is a substantial
2 controversy, between the parties having adverse legal interests, of sufficient immediacy and
3 reality to warrant the issuance of a declaratory judgment.

4 **FIRST COUNT**

5 **(Declaratory Judgment of Non-Infringement of the '268 Patent)**

6 29. Peritas Brands incorporates the preceding paragraphs as though fully set forth
7 herein.

8 30. The '268 Patent is a design patent claiming an ornamental design for animal
9 bedding as depicted below:



23 31. None of the Accused Products include the claimed and depicted pocket, and Peritas
24 Brands denies that any of the Accused Products infringe the '268 Patent.

25 32. An actual and justiciable case or controversy exists as to whether the Accused
26 Products infringe the '268 Patent.

27 33. This Court can declare the rights of the parties.

28

SECOND COUNT

(Declaratory Judgment of Non-Infringement of the '405 Patent)

34. Peritas Brands incorporates the preceding paragraphs as though fully set forth herein.

35. The '405 Patent is a utility patent directed to animal bedding with a pocket attached to the main section. Claim 1 is illustrative:

1. Animal bedding comprising:

a main section comprising:

a top layer;

a middle layer comprising a hydrophilic material; and

a bottom layer, wherein at least a part of the bottom layer is hydrophobic;

wherein the top layer is attached to the bottom layer; and

wherein the top layer is attached to the middle layer;

a pocket, wherein the pocket is attached to the main section, the pocket covering less than half of a surface area of the top layer.

36. None of the Accused Products include a pocket, and Peritas Brands denies that any of the Accused Products infringe any claim of the '405 Patent.

37. An actual and justiciable case or controversy exists as to whether the Accused Products infringe the '405 Patent.

38. This Court can declare the rights of the parties.

THIRD COUNT

(Declaratory Judgment of Non-Infringement of the '357 Patent)

39. Peritas Brands incorporates the preceding paragraphs as though fully set forth herein.

40. The '357 Patent is a utility patent directed to animal bedding. Claim 9 is illustrative:

9. Animal bedding, comprising:

an upper layer;

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1 at least one middle layer, wherein the at least one middle layer comprises a less
 2 rigid layer that is at least partly absorbent of liquid or at least partly composed of a
 3 synthetic material; and a more rigid layer, the more rigid layer being more rigid
 4 than the less rigid layer; and
 5 a lower layer, wherein at least a part of the lower layer is hydrophobic;
 6 wherein the less rigid layer and the more rigid layer are between the upper layer
 7 and the lower layer;
 8 wherein a first attachment attaches the upper layer to the lower layer;
 9 wherein a second attachment attaches the upper layer to the at least one middle
 10 layer; and
 11 wherein the second attachment is separate from the first attachment.

12 41. None of the Accused Products include the “more rigid layer” as claimed, and
 13 Peritas Brands denies that any of the Accused Products infringe any claim of the ’357 Patent.

14 42. An actual and justiciable case or controversy exists as to whether the Accused
 15 Products infringe the ’357 Patent.

16 43. This Court can declare the rights of the parties.

FOURTH COUNT

(Nevada Deceptive Trade Practices Act)

17 44. Peritas Brands incorporates the preceding paragraphs as though fully set forth
 18 herein.

19 45. LeapHigh’s initial and ongoing representations to Amazon that the Accused
 20 Products infringe LeapHigh’s patents constitute “consumer fraud” within the meaning of NRS
 21 41.600(e) as a deceptive trade practice in violation of NRS 598.0915-598.0925. Specifically,
 22 LeapHigh’s representations constitute violations of at least NRS 598.0915(5), “knowingly
 23 [making] a false representation as to the characteristics, ingredients ... of goods or services for
 24 sale,” or NRS 598.0915(8), “[disparaging] the goods of another person ... by false or misleading
 25 representation of fact,” or NRS 598.0915(15), “knowingly [making] any other false representation
 26 in a transaction.”

27 46. Peritas Brands has sustained damages as a direct and proximate result of
 28 LeapHigh’s deceptive trade practices in an amount in excess of \$75,000.00.

FIFTH COUNT

(Defamation/Defamation Per Se)

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3 47. Peritas Brands incorporates the preceding paragraphs as though fully set forth
4 herein.

5 48. On information and belief, and for which Peritas Brands will likely have evidentiary
6 support after a reasonable opportunity for further investigation or discovery, LeapHigh's
7 complaint to Amazon of Peritas Brands' infringement contained statements concerning Peritas
8 Brands that were knowingly or at least negligently false, defamatory or defamatory per se, and not
9 privileged.

10 49. The statements published by LeapHigh to Amazon concerning Peritas Brands
11 attacks Peritas Brands' reputation and imputes to Peritas Brands a lack of fitness for its trade,
12 business or profession, and tends to injure Peritas Brands in its business.

13 50. As a direct and proximate result of LeapHigh's statements, Peritas Brands suffered
14 damages to its reputation and was further damaged by having its products removed from Amazon
15 and losing sales thereby in an amount in excess of \$75,000.00.

16 51. Leap High's statements and actions toward Peritas Brands were malicious and
17 oppressive, entitling Peritas Brands to recover exemplary damages in an amount to be proven at
18 trial.

SIXTH COUNT

(Business Disparagement)

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21 52. Peritas Brands incorporates the preceding paragraphs as though fully set forth
22 herein.

23 53. On information and belief, and for which Peritas Brands will likely have evidentiary
24 support after a reasonable opportunity for further investigation or discovery, LeapHigh's complaint
25 to Amazon of Peritas Brands' infringement contained statements concerning Peritas Brands'
26 products that were knowingly or at least negligently false, defamatory or defamatory per se, and
27 not privileged.
28

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54. The statements published by LeapHigh to Amazon concerning Peritas Brands attacks Peritas Brands’ reputation and imputes to Peritas Brands a lack of fitness for its trade, business or profession, and tends to injure Peritas Brands in its business.

55. LeapHigh’s statements were made with malice toward Peritas Brands in that they were made, without limitation, with the intent to harm Peritas Brands’ pecuniary interests by disparaging Peritas Brands’ products in order to cause Amazon to restrict Peritas Brands’ ability to sell these products through Amazon, and/or Leap High’s statements regarding Peritas Brands’ products were made with knowledge of the statements’ falsity or with reckless disregard for their truth.

56. Peritas Brands has suffered special damages as a direct and proximate result of LeapHigh’s false and disparaging statements regarding Peritas Brands’ products by having its products removed from Amazon and losing sales thereby in an amount in excess of \$75,000.00 and by being forced to incur attorney’s fees to pursue relief.

57. Leap High’s statements and actions toward Peritas Brands were malicious and oppressive, entitling Peritas Brands to recover exemplary damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Peritas Brands respectfully requests that this Court:

- a. declare that none of the Accused Products infringe any valid, enforceable claim of the '268 Patent;
- b. declare that none of the Accused Products infringe any valid, enforceable claim of the '405 Patent;
- c. declare that none of the Accused Products infringe any valid, enforceable claim of the '357 Patent;
- d. award damages sustained by Peritas Brands pursuant to NRS 41.600(3)(a);
- e. award presumed and/or actual damages as a due to LeapHigh’s defamatory statements;

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- f. enter a preliminary and permanent injunction ordering that LeapHigh, its agents, servants, employees, and all other persons in privity or acting in concert with them be enjoined and restrained from asserting, alleging, representing, claiming, that the Accused Products allegedly infringe LeapHigh’s patents;
- g. enter a preliminary and permanent injunction ordering that LeapHigh, its agents, servants, employees, and all other persons in privity or acting in concert withdraw Amazon Complaint ID 10294713221 with respect to any Peritas Brands product, including B0995H5BV2, B0995H78SM, B0995HKTMN, B0B1TVPC7K, B09WMMMB75, B09WMNNW42, B09WMQ6RZH, B09WMQS7RB, B09WHHVVB1, B09WHDZ77P, B09WH35Z43, B09WH22F23, B09WGWZ3PYS, B09WHCKR1D, B09WH9GHMM, B09WHJS5V6, B09WHL99GP, B09WHLR442, B09WHMGQD5, B09WHQPHM9;
- h. award Peritas Brands costs in the action and reasonable attorney’s fees at least pursuant to NRS 41.600(3)(c);
- i. award punitive damages in an amount to be proven at trial; and
- j. award such other and further relief as the Court deems just and equitable.

DATED this 3rd day of April 2023.

HOLLAND & HART LLP

/s/ Robert J. Cassity
 Robert J. Cassity
 Nevada Bar No. 9779
 Jessica E. Whelan
 Nevada Bar No. 14781
HOLLAND & HART LLP
 9555 Hillwood Drive, 2nd Floor
 Las Vegas, Nevada 89134

Kyle B. Fleming (*pro hac vice* to be filed)
RENNER OTTO
 1621 Euclid Avenue, Floor 19
 Cleveland, Ohio 44115
kfleming@rennerotto.com

Attorneys for Plaintiff

INDEX OF EXHIBITS

Exhibit	Description	Page Nos.
Exhibit A	Notice from Amazon	001 - 003
Exhibit B	U.S. Design Patent No. D930,268	004 - 013
Exhibit C	U.S. Patent No. 10,966,405	014 - 037
Exhibit D	U.S. Patent No. 11,129,357	038 - 075

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