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ESIP Series 1, LLC and
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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

<p>ESIP SERIES 1, LLC, a Utah Limited Liability Company, and ESIP SERIES 2, LLC, a Utah Limited Liability Company,</p> <p>Plaintiffs,</p> <p>v.</p> <p>DOTERRA INTERNATIONAL, LLC, a Utah Limited Liability Company, PUZHEN LIFE USA, LLC, a New York Limited Liability Company, PUZHEN, LLC, a New York Limited Liability Company, and DOE COMPANIES 1-10,</p> <p>Defendants.</p>	<p>Case No. 2:16-CV-01011-RJS</p> <p>COMPLAINT</p> <p>Judge Robert J. Shelby</p>
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Plaintiff, ESIP Series 1, LLC and Plaintiff, ESIP Series 2, LLC (hereinafter collectively “ESIP”), hereby files this Complaint against Defendants, doTERRA International, LLC (hereinafter “doTERRA”), Puzhen Life USA, LLC (hereinafter “Puzhen Life”) and Puzhen, LLC (hereinafter “Puzhen”), and Doe Companies 1-10 (hereinafter “Doe Companies”) (hereinafter collectively “Defendants”), and alleges as follows:

THE PARTIES

1. ESIP Series 1 and ESIP Series 2 are limited liability companies duly organized and existing under the laws of the State of Utah and having a principal place of business located at 14008 West Highway 56, Cedar City, Utah 84720.
2. Upon information and belief, doTERRA International, LLC is a limited liability company duly organized and existing under the laws of the State of Utah and has a principal place of business located at 389 South 1300 West, Pleasant Grove, Utah 84062.
3. Upon information and belief, Puzhen Life USA, LLC is a limited liability company duly organized and existing under the laws of the State of New York and has a principal place of business located at 299 Park Avenue, 24th Floor, New York, New York 10167.
4. Upon information and belief, Puzhen, LLC is a limited liability company duly organized and existing under the laws of the State of New York and has a principal place of business located at 299 Park Avenue, 6th Floor, New York, New York 10171.
5. Upon information and belief, Doe Companies are business entities that are making, using, selling, offering to sell, or importing the Accused Diffuser (described *infra*) in the United States, including without limitation, business entities that obtain the Accused Diffuser directly or indirectly from Puzhen or Puzhen Life. Doe Companies may be identified during discovery and the Complaint may be appropriately amended to include such Doe Companies.

JURISDICTION AND VENUE

6. This is a civil action for patent infringement arising under the patent laws of the United States, including but not limited to 35 U.S.C. §271, *et seq.*

7. This is also a civil action for unfair competition pursuant to the laws of the State of Utah, including but not limited to Utah Code Ann. §13-5a-101, *et seq.*
8. This court has subject matter jurisdiction over ESIP's patent infringement and unfair competition claims pursuant to 28 U.S.C. §§1331, 1338(a), and 1367.
9. Upon information and belief, doTERRA is subject to general jurisdiction in this judicial district because doTERRA is a Utah limited liability company.
10. Upon information and belief, this court has personal jurisdiction over Puzhen Life USA, LLC pursuant to, at least, Utah Code Ann. §§78B-3-201 and 78B-3-205(1). Upon information and belief, Puzhen Life USA, LLC is subject to general jurisdiction in this judicial district because Puzhen Life has an ongoing and continuous business relationship with doTERRA. Upon information and belief, Puzhen Life has sufficient minimum contacts with Utah to support specific jurisdiction in this district based at least in part because Puzhen Life has transacted business in the State of Utah, including but not limited to, selling, offering to sell, or distributing to at least doTERRA the Accused Diffuser product (defined below), which is accused of patent infringement in this case.
11. Upon information and belief, this court has personal jurisdiction over Puzhen, LLC pursuant to, at least, Utah Code Ann. §§78B-3-201 and 78B-3-205(1). Upon information and belief, Puzhen is subject to general jurisdiction in this judicial district because Puzhen has an ongoing and continuous business relationship with doTERRA. Upon information and belief, Puzhen has sufficient minimum contacts with Utah to support specific jurisdiction in this district based at least in part because Puzhen has transacted business in the State of Utah, including but not limited to, selling, offering to sell, or

distributing to at least doTERRA the Accused Diffuser product (defined below), which is accused of patent infringement in this case.

12. Venue is proper in this judicial district pursuant to, at least, 28 U.S.C. §§1391(b), 1391(c) and 1400(b).

FACTUAL BACKGROUND

13. ESIP is a leader in the field of atomizers, especially as related to atomizers or diffusers (or atomizing diffusers) for use with essential oils and aroma therapy.
14. ESIP manufactures, markets, and sells atomizing diffusers for use with essential oils and aroma therapy through authorized licensees: ES Innovations, Inc. (hereinafter “ES Innovations”) manufactures atomizing diffusers; and Diffuser World, Inc. (hereinafter “Diffuser World”) markets and sells atomizing diffusers.
15. ESIP achieved its position as a market leader based in part on its determination to innovate and its substantial investment in research and development of quality products manufactured in the United States.
16. Many of ESIP’s technological innovations are protected, *inter alia*, by a portfolio of patents, trademarks, and copyrights.
17. ESIP is the owner of United States Patent No. 7,878,418 for INTEGRATED, ESSENTIAL-OIL ATOMIZER issued to Early [sic] Vaughn Sevy on February 1, 2011 (hereinafter “`418 Patent”). A copy of the `418 Patent is attached hereto as Exhibit A.
18. In general, the `418 Patent covers atomizers or diffusers, and methods of use.
19. ESIP’s atomizing diffuser product sold by Diffuser World, AROMA-ACE™, is marked with the `418 Patent.

20. ESIP is the owner of United States Patent No. 9,415,130 for INDUSTRIAL, GERMICIDAL, DIFFUSER APPARATUS AND METHOD issued to Earl Sevy on August 16, 2016 (hereinafter “`130 Patent”). A copy of the `130 Patent is attached hereto as Exhibit B.
21. In general, the `130 Patent covers methods for using atomizers or diffusers.
22. Upon information and belief, Puzhen Life and Puzhen make, use, sell, offer to sell, and/or import into the United States a nebulizing diffuser that doTERRA offers to sell, sells, and/or imports in the United States under the trade name “Cloud” (hereinafter “Accused Diffuser”).
23. Upon information and belief, a copy of a webpage brochure from doTERRA describing and offering to sell the Accused Diffuser is attached hereto as Exhibit C.
24. Upon information and belief, doTERRA owns the website using the URL www.doterra.com.
25. The webpage brochure describing the Accused Diffuser and included as Exhibit C states that one of the Product Features is that the Accused Diffuser “Utilizes a micro air pump and patent-pending technology.”
26. The Accused Diffuser has the word “Patented” visible on its base.
27. Upon information and belief, Puzhen Life and Puzhen manufacture, distribute and/or sell the Accused Diffuser to doTERRA.
28. Upon information and belief, doTERRA was aware of Diffuser World’s AROMA-ACE™ product, and also aware of the `418 Patent, at least prior to the filing of the Complaint in this case.

29. Upon information and belief, Puzhen Life and Puzhen were aware of Diffuser World's AROMA-ACE™ product, and also aware of the `418 Patent, at least prior to the filing of the Complaint in this case.
30. Upon information and belief, Puzhen Life and Puzhen had actual notice of the `418 Patent and this lawsuit prior to the filing of the Complaint in this case.
31. Upon information and belief, Puzhen Life and Puzhen had actual notice of the `130 Patent and this lawsuit as of the filing of the Complaint in this case.
32. Upon information and belief, doTERRA had actual notice of the `130 Patent and this lawsuit as of the filing of the Complaint in this case.
33. Upon information and belief, Puzhen Life and Puzhen own the website using the URL www.puzhen.com.
34. Upon information and belief, the Accused Diffuser as made, used, sold or offered for sale by Defendants infringes at least one claim in the `418 Patent, including but not limited to, by direct infringement, by contributory infringement, and/or by induced infringement.
35. Upon information and belief, Defendants have infringed and continue to infringe the `418 Patent by making, using, selling, offering to sell and importing into the United States the Accused Diffuser, which embodies or uses the inventions claimed in the `418 Patent.
36. Upon information and belief, the Accused Diffuser as made, used, sold or offered for sale by Defendants infringes at least one claim in the `130 Patent, including but not limited to, by direct infringement, by contributory infringement, and/or by induced infringement.
37. Upon information and belief, Defendants have infringed and continue to infringe the `130 Patent by making, using, selling, offering to sell and importing into the United States the Accused Diffuser, which embodies or uses the inventions claimed in the `130 Patent.

38. The Accused Diffuser includes a reservoir for a liquid, an eductor, and a separator operably connected to one another.
39. The Accused Diffuser includes a motor that can drive a pump.
40. The Accused Diffuser includes a pump that pumps air and an electronic controller that can control the pump.
41. The Accused Diffuser pumps air through an eductor, which draws liquid from a reservoir and entrains droplets of an essential oil into the air flow.
42. The Accused Diffuser includes a separating chamber and a separating plate, which combination separates larger droplets of liquid from smaller droplets of liquid in a manner that lets the smaller droplets escape the separating chamber while retaining the larger droplets.
43. The Accused Diffuser includes a cyclonic aspirator that separates larger droplets of liquid from smaller droplets of liquid in a manner that lets the smaller droplets escape the separating chamber while retaining the larger droplets.
44. The Accused Diffuser operates in a manner that diffuses a scent into the air surrounding the Accused Diffuser.
45. The Accused Diffuser can be adjusted to diffuse different amounts of scent into the air surrounding the Accused Diffuser.
46. Upon information and belief, Defendants have been and are inducing infringement of the `418 Patent by actively and knowingly inducing others to make, use, sell, offer for sale, or import into the United States the Accused Diffuser, which embodies or uses the inventions claimed in the `418 Patent.

47. Upon information and belief, Puzhen Life and Puzhen have a business relationship with doTERRA.
48. Upon information and belief, Puzhen Life and Puzhen have provided and intend to continue to provide the Accused Diffuser to doTERRA.
49. doTERRA has sold the AROMA-ACE™ diffuser since approximately May of 2010. The AROMA-ACE™ diffuser has been marked with the `418 Patent since approximately August of 2011.
50. doTERRA obtained the Accused Diffuser from Puzhen and Puzhen Life as an additional or alternative product to the AROMA-ACE™ diffuser.
51. Defendants were aware of the AROMA-ACE™ diffuser, and knew about the `418 Patent, before the Accused Diffuser was developed, manufactured, or sold.
52. Defendants knew the Accused Diffuser would compete with the AROMA-ACE™ diffuser.
53. The structure of the Accused Diffuser, including the similar structures when compared with the AROMA-ACE™ diffuser, and its use as described in Exhibit C indicate that Puzhen Life and Puzhen knew about the AROMA-ACE™ diffuser and the `418 Patent before Puzhen Life and Puzhen designed, developed, and manufactured the Accused Diffuser.
54. The structure of the atomizer unit in the Accused Diffuser, including at least its configuration with a bottle of essential oil, is virtually identical to the atomizer unit described in Figures 1, 3, 7, and 8 of the `418 Patent.
55. The structure of the atomizer unit in the Accused Diffuser, including at least its configuration with a bottle of essential oil and its cyclonic aspirator, is virtually identical

to the atomizer unit described in Figure 12 of the `130 Patent. *See also, e.g.*, Exhibit D attached hereto, picture of atomizer unit and cyclonic aspirator from Accused Diffuser.

56. The structure of the separator plate, or cyclonic aspirator, in the Accused Diffuser is virtually identical to the separator plate, or cyclonic aspirator, in the AROMA-ACE™ diffuser.
57. The structure of the Accused Diffuser and its use as described in Exhibit C indicate that Defendants intend users to use the Accused Diffuser in a manner that infringes the `418 Patent. Defendants also knew that such use would constitute infringement of the `418 Patent.
58. The structure of the Accused Diffuser and its use as described in Exhibit C indicate that Defendants intend users to use the Accused Diffuser in a manner that infringes the `130 Patent. Defendants know that such use would constitute infringement of the `130 Patent.
59. Upon information and belief, Defendants have been and are continuing to contributorily infringe the `418 Patent by selling or offering to sell the Accused Diffuser knowing it to be especially made or specially adapted for practicing the invention of the `418 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.
60. Upon information and belief, Defendants contributorily infringe the `130 Patent by selling or offering to sell the Accused Diffuser knowing it to be especially made or specially adapted for practicing the invention of the `418 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.
61. The Accused Diffuser has one substantial use, diffusing essential oils into the surrounding environment. *See*, Exhibit C.

62. Defendants knew the Accused Diffuser would compete with the AROMA-ACE™ diffuser.
63. Defendants knew the Accused Diffuser to be especially made for a use that is both patented and infringing.
64. Upon information and belief, Defendants have known of the existence of the `418 Patent, and its acts of infringement have been willful and in disregard for the `418 Patent, without any reasonable basis for believing that it had a right to engage in the infringing conduct.
65. Puzhen Life and Puzhen became aware of the AROMA-ACE™ diffuser, and the `418 Patent, at least as early as the filing of the Complaint in this case.
66. ESIP notified Puzhen Life and Puzhen of the `418 Patent at least as early as November 18, 2015.

FIRST CAUSE OF ACTION
(Patent Infringement – The `418 Patent)

67. The allegations of Paragraphs 1 - 66 are incorporated herein by reference as if fully set forth herein.
68. Upon information and belief, Defendants have been and are infringing the `418 Patent by making, using, selling, offering to sell, or importing into the United States, including within this judicial district, the Accused Diffuser, in violation of 35 U.S.C. §271(a).
69. Upon information and belief, the Accused Diffuser infringes at least one claim in the `418 Patent, including without limitation claims 1 and 14 of the `418 Patent.
70. Upon information and belief, Defendants have been and are contributing to the infringement of and inducing the infringement of the `418 Patent by making, using,

selling, offering to sell, or importing into the United States, including within this judicial district, the Accused Diffuser, in violation of at least 35 U.S.C. §§ 271 and 281.

71. Upon information and belief, Defendants' actions have been, and continue to be knowing, intentional, willful and deliberate.
72. Defendants' acts of infringement of the `418 Patent have caused and will continue to cause ESIP damages for which ESIP is entitled to compensation pursuant to 35 U.S.C. §284.
73. Defendants' acts of infringement of the `418 Patent have caused and will continue to cause ESIP immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. §283. ESIP has no adequate remedy at law.
74. This case is exceptional and, therefore, ESIP is entitled to an award of attorneys' fees pursuant to 35 U.S.C. §285.
75. By reason of the foregoing, ESIP is entitled to injunctive and monetary relief against Defendants pursuant to at least 35 U.S.C. §§ 284 and 285.

**SECOND CAUSE OF ACTION
(Patent Infringement – The `130 Patent)**

76. The allegations of Paragraphs 1 - 75 are incorporated herein by reference as if fully set forth herein.
77. Upon information and belief, Defendants have been and are infringing the `130 Patent by making, using, selling, offering to sell, or importing into the United States, including within this judicial district, the Accused Diffuser, in violation of 35 U.S.C. §271(a).
78. Upon information and belief, the Accused Diffuser infringes at least one claim in the `130 Patent, including without limitation claims 1 and 17 of the `130 Patent.

79. Upon information and belief, Defendants have been and are contributing to the infringement of and inducing the infringement of the `130 Patent by making, using, selling, offering to sell, or importing into the United States, including within this judicial district, the Accused Diffuser, in violation of at least 35 U.S.C. §§ 271 and 281.
80. Upon information and belief, Defendants' actions have been, and continue to be knowing, intentional, willful and deliberate.
81. Defendants' acts of infringement of the `130 Patent have caused and will continue to cause ESIP damages for which ESIP is entitled to compensation pursuant to 35 U.S.C. §284.
82. Defendants' acts of infringement of the `130 Patent have caused and will continue to cause ESIP immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. §283. ESIP has no adequate remedy at law.
83. This case is exceptional and, therefore, ESIP is entitled to an award of attorneys' fees pursuant to 35 U.S.C. §285.
84. By reason of the foregoing, ESIP is entitled to injunctive and monetary relief against Defendants pursuant to at least 35 U.S.C. §§ 284 and 285.

**THIRD CAUSE OF ACTION
(Unfair Competition)**

85. The allegations of Paragraphs 1-84 are incorporated herein by reference as if fully set forth herein.
86. Upon information and belief, Defendants are engaging in intentional business acts or practices that are unlawful, unfair, and/or fraudulent and that have caused a material diminution in the value of ESIP's `418 Patent and `130 Patent in violation of, *inter alia*, Utah Code Ann. §§ 13-5a-102(4) and 103(1).

87. Upon information and belief, Defendants are engaging in conduct that gives rise to a cause of action for unfair competition and related wrongs under the statutory and common laws of the State of Utah and other states, including at least the Utah Code Ann. §§ 13-5a-101, *et seq.*
88. Upon information and belief, ESIP has suffered actual damages and irreparable harm as a result of Defendants' actions.
89. By reason of the foregoing, ESIP is entitled to actual and punitive damages from Defendants, including attorneys' fees, expenses and costs, pursuant to at least Utah Code Ann. §§ 13-5a-103(1)(b).

PRAYER FOR RELIEF

Wherefore, ESIP prays that:

- A. The claims of the `418 Patent be adjudged and declared valid and enforceable;
- B. Defendants be adjudged and declared to have infringed at least one claim of the `418 Patent, whether by direct infringement, contributory infringement, and/or inducement to infringe;
- C. The claims of the `130 Patent be adjudged and declared valid and enforceable;
- D. Defendants be adjudged and declared to have infringed at least one claim of the `130 Patent, whether by direct infringement, contributory infringement, and/or inducement to infringe;
- E. Defendants be adjudged and declared to have committed unfair competition;
- F. Defendants and their agents, sales representatives, distributors, employees, members, attorneys, affiliates, subsidiaries, successors, and assigns, and any and all persons acting with, through, under or in active concert or participation with any or all of them,

be enjoined and restrained preliminarily during the pendency of this action, and thereafter permanently, from infringing, actively inducing others to infringe, and/or contributorily infringing any patent claims in the `418 Patent;

- G. Defendants and their agents, sales representatives, distributors, employees, members, attorneys, affiliates, subsidiaries, successors, and assigns, and any and all persons acting with, through, under or in active concert or participation with any or all of them, be enjoined and restrained preliminarily during the pendency of this action, and thereafter permanently, from infringing, actively inducing others to infringe, and/or contributorily infringing any patent claims in the `130 Patent;
- H. Judgment be entered that Defendants be required to provide an accounting and pay over to ESIP all damages sustained by ESIP due to such patent infringement and that such damages be trebled pursuant to 35 U.S.C. §284 for the willful acts of infringement alleged herein;
- I. This case be adjudged and declared exceptional pursuant to 35 U.S.C. §285 and ESIP be awarded its costs and reasonable attorneys' fees in bringing this action;
- J. Defendants be required to file with the Court within thirty (30) days after entry of final judgment of this case a written statement under oath setting forth the manner in which Defendants have complied with the final judgment;
- K. ESIP be awarded its costs and prejudgment interests on all damages awarded;
- L. ESIP be awarded its reasonable attorneys' fees; and
- M. ESIP be awarded such further and other relief as the court deems just and proper.

ESIP demands trial by jury on all claims and issues so triable.

DATED: September 29, 2016.

/s/ Gordon K. Hill

Gordon K. Hill

A. John Pate

PATE BAIRD

Attorneys for Plaintiff

ESIP Series 1, LLC