

1 COREY A. DONALDSON (CA Bar No. 280,383)  
2 KOPPEL PATRICK HEYBL & PHILPOTT  
3 2815 Townsgate Road, Suite 215  
4 Westlake Village, California 91361  
5 Telephone: (805) 373-0060  
6 Facsimile: (805) 373-0051  
7 cdonaldson@koppelip.com

8 Attorneys for Plaintiff  
9 CABEAU, INC.

10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

12 CABEAU, INC., a California corporation,

13 Plaintiff,

14 vs.

15 BEDGEAR, LLC, a Delaware company,

16 Defendant.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CASE NO. 2:16-cv-9238**

**CABEAU, INC.’S COMPLAINT FOR  
DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT OF  
PATENTS**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Cabeau, Inc., for its complaint against defendant Bedgear, LLC, alleges as  
2 follows:

3  
4 **NATURE OF ACTION**

5 1. Plaintiff Cabeau, Inc. (“Cabeau”) seeks a declaratory judgment that its  
6 products do not infringe U.S. Patent No. 8,646,134 (the “’134 Patent”), U.S. Patent No.  
7 8,887,332 (the “’332 Patent”), or U.S. Patent No. 9,015,883 (the “’883 Patent”;  
8 collectively, with the ’134 Patent and the ’332 Patent, the “Bedgear Patents”).

9 2. This relief is necessary because defendant Bedgear, LLC (“Bedgear”) has  
10 improperly accused Cabeau of infringing each of the Bedgear Patents, threatening litigation  
11 against Cabeau if Cabeau does not stop selling certain products. Therefore, a substantial,  
12 continuing, and justiciable controversy exists between Cabeau and Bedgear.

13  
14 **PARTIES**

15 3. Plaintiff Cabeau, Inc. (“Cabeau” or “Plaintiff”) is a corporation duly  
16 organized and existing under the laws of the State of California, with a principal place of  
17 business located at 5850 Canoga Avenue, Suite 100, Woodland Hills, California 91367.

18 4. On information and belief, defendant Bedgear, LLC (“Bedgear” or  
19 “Defendant”) is a limited liability company organized and existing under the laws of the  
20 State of Delaware, with a principal place of business at 110 Bi-County Boulevard, Suite  
21 101, Farmingdale, New York 11735.

22  
23 **JURISDICTION AND VENUE**

24 5. This action includes claims for declaratory judgment arising under the laws of  
25 the United States, in particular the Patent Act under Title 35 of the United States Code.

26 6. This Court has subject matter jurisdiction over Cabeau’s claims for  
27 declaratory judgment under 28 U.S.C. §§ 1331 and 1338(a) because those claims arise  
28 under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Patent Act

1 of the United States, 35 U.S.C. § 101 *et seq.*

2 7. An actual controversy exists between Plaintiff and Defendant through  
3 Bedgear's assertion of its patents against Cabeau. In particular, Bedgear contests that  
4 Cabeau has infringed each of the Bedgear Patents. Cabeau contests that it has the right to  
5 make, use, sell, and/or offer to sell its products in the United States, and to import them  
6 into or export them from the United States unhampered by Bedgear.

7 8. This Court has personal jurisdiction over Bedgear because, among other  
8 things, Bedgear has established minimum contacts with the forum such that the exercise of  
9 jurisdiction over Bedgear will not offend traditional notions of fair play and substantial  
10 justice.

11 9. On information and belief, Bedgear is a company which designs,  
12 manufactures, markets, and sells bedding products such as bed pillows, mattress protectors,  
13 sheets, and blankets. On information and belief, Bedgear conducts business throughout the  
14 United States personally and through its agents, and actively transacts business in this  
15 judicial district in particular. Bedgear actively markets and sells its products throughout the  
16 United States and in this judicial district in particular, including by listing on its website  
17 where in this judicial district and other districts Bedgear's products can be purchased by  
18 consumers from retailers. On information and belief, Bedgear also regularly conducts  
19 business in this judicial district through its own sales from the Bedgear.com website.

20 10. This Court also has specific jurisdiction over Bedgear because the cause of  
21 action arises directly from Bedgear's contacts with California. Bedgear contacted Plaintiff  
22 Cabeau, a California corporation, by sending a letter alleging infringement directed to  
23 Cabeau's CEO, David Sternlight, at Cabeau's office in Woodland Hills, California on or  
24 around October 28, 2016. After receiving Cabeau's response detailing reasons for non-  
25 infringement sent on or around November 16, 2016, Bedgear sent a demand letter on or  
26 around November 29, 2016. The November 29, 2016 letter demanded that Cabeau "provide  
27 [Bedgear] with a detailed proposal indicating how Cabeau intends to address its infringing  
28 conduct and the steps it will take to cease any further infringement of Bedgear's intellectual

1 property.” The letter further stated that “[i]f Cabeau is not willing to provide a meaningful  
2 response, Bedgear will be forced to protect its intellectual property and move forward with  
3 filing a lawsuit.”

4 11. Venue in this Court is proper at least under the provisions of 28 U.S.C.  
5 §§ 1391 and 1400.

## 7 **BACKGROUND**

8 12. Cabeau is a multi-million dollar leader in the travel product industry. As a  
9 result of its significant investment in innovation and careful attention to detail, Cabeau has  
10 developed distinctive designs and a unique level of craftsmanship that have revolutionized  
11 the market for travel products. In particular, Cabeau’s flagship product, the  
12 EVOLUTION® PILLOW, is one of the best-selling travel pillows worldwide, and is an  
13 innovative product recognized and utilized by consumers throughout the world.

14 13. As a direct result of its advanced design, the EVOLUTION PILLOW was an  
15 instant success. Analysts and consumers alike praised the product as a game-changer. For  
16 instance, People Magazine listed the EVOLUTION PILLOW as one of its top “Travel  
17 Picks.”

18 14. Cabeau has invested significant time, effort and capital in presenting the  
19 EVOLUTION PILLOW at trade shows across the United States. Cabeau’s EVOLUTION  
20 PILLOW has been extensively advertised throughout the United States in a variety of  
21 media channels, including the Internet, magazines, newsletters, catalogs and newspapers.  
22 Cabeau has invested millions of dollars in advertising expenditures for this single product  
23 since its launch. As such, those in the travel industry are well aware of the innovative design  
24 of Cabeau’s EVOLUTION PILLOW.

25 15. Cabeau has offered the EVOLUTION PILLOW for sale in SkyMall  
26 magazine, which at one time could be found on almost all domestic flights in the United  
27 States and reached hundreds of millions of air travelers annually. Cabeau likewise sells the  
28 EVOLUTION PILLOW via its own website at <http://www.cabeau.com> and through major

1 online distributors such as Amazon. Additionally, the EVOLUTION PILLOW is sold in  
2 retail stores in over 100 countries throughout the world.

3 16. Cabeau's EVOLUTION PILLOW has received unsolicited comment and  
4 attention in print and broadcast media throughout the United States, including mainstream  
5 media outlets such as ABC News, The New York Times, the Los Angeles Times, USA  
6 Today, MSNBC, Gizmodo, and The Washington Post. The EVOLUTION PILLOW is  
7 routinely the subject of positive commentary and receives unsolicited praise from  
8 independent commentators.

9 17. At least as early as 2015, Cabeau began the development of the next in its line  
10 of groundbreaking and innovative travel pillows, the EVOLUTION COOL® TRAVEL  
11 PILLOW. At least as early as February of 2016, Cabeau began selling the EVOLUTION  
12 COOL TRAVEL PILLOW. The EVOLUTION COOL TRAVEL PILLOW utilizes dual  
13 density memory foam to provide the support and comfort desired by frequent travelers, and  
14 also includes cooling air circulation vents to aid in preventing the overheating of the user's  
15 neck area, a common problem among traditional travel pillows.

16 18. The EVOLUTION COOL TRAVEL PILLOW was an instant success and has  
17 earned rave reviews. For example, in 2016, the EVOLUTION COOL TRAVEL PILLOW  
18 won the prestigious Silver Edison Award in the "Sports & Travel" category, an award  
19 granted by Edison Universe, a 501(c)(3) non-profit organization dedicated to fostering  
20 innovation; and further won a Buzz Award at the International Travel Goods Show.

21 19. The EVOLUTION COOL TRAVEL PILLOW is the subject of numerous  
22 issued and pending utility and design patent rights throughout the world, such as U.S.  
23 Design Patent No. D762,400.

24 20. On or around October 28, 2016, David Sternlight, CEO of Cabeau, received  
25 a letter from Bedgear's attorney Joseph J. Richetti, claiming that the EVOLUTION COOL  
26 TRAVEL PILLOW infringed the Bedgear Patents, specifically claim 1 of the '134 Patent,  
27 claims 34 of the '332 Patent, and claim 1 of the '883 Patent (collectively, the Asserted  
28 Claims). Each of the Bedgear Patents and the Asserted Claims is directed toward gusseted

1 bed pillows. Copies of the '134 Patent, the '332 Patent, and the '883 Patent are hereto  
2 attached as Exhibit 1, Exhibit 2, and Exhibit 3, respectively. A true and correct copy of the  
3 October 28, 2016 letter from Mr. Richetti to Mr. Sternlight is attached hereto as Exhibit 4.

4 21. In the October 28, 2016 letter, Mr. Richetti included claim charts comparing  
5 the Asserted Claims to Cabeau's EVOLUTION COOL TRAVEL PILLOW, alleging that  
6 the claims charts "demonstrate[d] that Cabeau's Evolution Cool pillow is infringing certain  
7 of Bedgear's patents."

8 22. Further, Mr. Richetti noted that "these charts are exemplary in nature and are  
9 not intended to be exhaustive. Accordingly, for purposes of illustration, we have only  
10 charted one independent claim from each patent."

11 23. On information and belief, Bedgear is the current owner of all right, title, and  
12 interest to the '134 Patent, the '332 Patent, and the '883 Patent, and on information and  
13 belief, Bedgear has the right to sue for infringement of the '134 Patent, the '332 Patent,  
14 and the '883 Patent.

15 24. On or around November 16, 2016, counsel for Cabeau sent a response letter  
16 to Mr. Richetti containing an inexhaustive list of reasons that Cabeau's EVOLUTION  
17 COOL TRAVEL PILLOW does not infringe the Asserted Claims. A true and correct copy  
18 of the letter is attached hereto as Exhibit 5.

19 25. Mr. Richetti replied to Mr. Donaldson with a demand letter on or around  
20 November 29, 2016. In the letter, Mr. Richetti, on behalf of Bedgear, demanded "a detailed  
21 proposal indicating how Cabeau intends to address its infringing conduct and the steps it  
22 will take to cease any further infringement of Bedgear's intellectual property." Mr. Richetti  
23 also stated that "[i]f Cabeau is not willing to provide a meaningful response, Bedgear will  
24 be forced to protect its intellectual property and move forward with filing a lawsuit." A  
25 true and correct copy of the letter is attached hereto as Exhibit 6.

26 26. On information and belief, Bedgear has never designed or sold a travel pillow.

27 27. As a result of the aforementioned communications from Bedgear to Cabeau  
28 which identify a specific product Bedgear alleges is infringing, specific claims Bedgear

1 alleges are infringed, and a specific threat that unless Cabeau ceases selling the  
2 EVOLUTION COOL TRAVEL PILLOW in its current form, “Bedgear will be forced to  
3 protect its intellectual property and move forward with filing a lawsuit,” Cabeau has a  
4 reasonable fear and apprehension that patent infringement litigation will be brought against  
5 it. Giving in to Bedgear’s demands in order to avoid such patent infringement litigation  
6 would put Cabeau at a significant competitive disadvantage and damage its business. An  
7 actual justiciable controversy therefore exists among the parties.

8  
9 **FIRST CAUSE OF ACTION**

10 **(Declaratory Relief Regarding Non-Infringement of All Claims of the ’134 Patent)**

11 28. Cabeau realleges and incorporates by reference the full text of all of the  
12 foregoing numbered paragraphs as though each such paragraph has been fully set forth  
13 herein.

14 29. Bedgear claims it is the owner of the ’134 Patent.

15 30. As described above, Bedgear has accused Cabeau’s EVOLUTION COOL  
16 TRAVEL PILLOW product of infringing one or more claims of the ’134 Patent in multiple  
17 communications to Cabeau.

18 31. Cabeau, however, does not infringe, has not infringed, and cannot infringe  
19 claim 1 of the ’134 Patent. For example, the EVOLUTION COOL TRAVEL PILLOW  
20 does not include “a cover having opposing first and second panels, and a gusset  
21 perimetrically bounding, and joining, said first and second panels, said gusset being formed  
22 of an open cell construction, said open cell construction is formed by interlaced or spaced-  
23 apart strands,” as required by independent claim 1.

24 32. Cabeau does not infringe, has not infringed, and cannot infringe claim 11 of  
25 the ’134 Patent. For example, the EVOLUTION COOL TRAVEL PILLOW does not  
26 include “a cover having first opposing first and second panels, and a gusset perimetrically  
27 bounding, and joining, said first and second panels, said gusset being formed of an open  
28 cell construction and a base material, and said open cell construction is formed by apertures

1 defined in said base material, said apertures being larger than any pores inherently defined  
2 in said base material,” as required by independent claim 11.

3 33. Cabeau does not infringe, has not infringed, and cannot infringe claim 17 of  
4 the '134 Patent. For example, the EVOLUTION COOL TRAVEL PILLOW does not  
5 include “a cover having opposing first and second panels, and a gusset perimetrically  
6 bounding, and joining, said first and second panels, said gusset being formed of an open  
7 cell construction and a base material, and said open cell construction is formed by porosity  
8 of said base material being substantially greater than porosity of material forming said first  
9 panel and substantially greater than porosity of material forming said second panel,” as  
10 required by independent claim 17.

11 34. Cabeau does not infringe, has not infringed, and cannot infringe claim 22 of  
12 the '134 Patent. For example, the EVOLUTION COOL TRAVEL PILLOW does not  
13 include “a cover having opposing first and second panels, and a gusset perimetrically  
14 bounding, and joining, said first and second panels, said gusset being formed of an open  
15 cell construction, said gusset including 3D spacer material,” as required by independent  
16 claim 22.

17 35. Cabeau does not infringe, has not infringed, and cannot infringe claims 2-10,  
18 12-16, 18-21, and 23-24 of the '134 Patent, which ultimately depend from independent  
19 claims 1, 11, 17, and 22, respectively.

20 36. An actual and justiciable controversy exists between Cabeau and Bedgear as  
21 to the non-infringement of the claims of the '134 Patent.

22 37. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*,  
23 Cabeau requests the declaration of the Court that Cabeau does not infringe and has not  
24 infringed, either literally or under the doctrine of equivalents and either directly or  
25 indirectly, any claim of the '134 Patent.

26  
27  
28 ///



**SECOND CAUSE OF ACTION**

**(Declaratory Relief Regarding Non-Infringement of All Claims of the '332 Patent)**

38. Cabeau realleges and incorporates by reference the full text of all of the foregoing numbered paragraphs as though each such paragraph has been fully set forth herein.

39. Bedgear claims it is the owner of the '332 Patent.

40. As described above, Bedgear has accused Cabeau's EVOLUTION COOL TRAVEL PILLOW product of infringing one or more claims of the '332 Patent in multiple communications to Cabeau.

41. Cabeau, however, does not infringe, has not infringed, and cannot infringe claim 1 of the '332 Patent. For example, the EVOLUTION COOL TRAVEL PILLOW does not include "a first panel having an edge defining a perimeter; a second panel having an edge defining a perimeter; and a gusset joining said first and second panels, wherein said first panel and said second panel each comprise a porous material, and wherein said gusset comprises a material having a greater porosity than the porous material," as required by independent claim 1.

42. Cabeau does not infringe, has not infringed, and cannot infringe claim 31 of the '332 Patent. For example, the EVOLUTION COOL TRAVEL PILLOW does not include "a first panel; a second panel opposite the first panel; and a gusset perimetrically bounding and joining said first and second panels, wherein said first panel, said second panel and said gusset define a cover having an inner surface defining a chamber for fill material; wherein an interface between said first panel and said gusset comprises a zipper configured to provide access to the chamber," as required by independent claim 31.

43. Cabeau does not infringe, has not infringed, and cannot infringe claim 33 of the '332 Patent. For example, the EVOLUTION COOL TRAVEL PILLOW does not include "a first panel having an edge defining a perimeter; a second panel having an edge defining a perimeter; and a gusset joining said first and second panels, wherein said gusset is formed of an open cell construction, said open cell construction being formed by

1 interlaced strands,” as required by independent claim 33.

2 44. Cabeau does not infringe, has not infringed, and cannot infringe claim 34 of  
3 the ’332 Patent. For example, the EVOLUTION COOL TRAVEL PILLOW does not  
4 include “a first panel having an edge defining a perimeter; a second panel having an edge  
5 defining a perimeter; and a gusset joining said first and second panels, wherein said gusset  
6 is formed of an open cell construction, said open cell construction being formed by spaced-  
7 apart strands,” as required by independent claim 34.

8 45. Cabeau does not infringe, has not infringed, and cannot infringe claims 2-30  
9 and 32 of the ’332 Patent, which ultimately depend from independent claims 1 and 31,  
10 respectively.

11 46. An actual and justiciable controversy exists between Cabeau and Bedgear as  
12 to the non-infringement of the claims of the ’332 Patent.

13 47. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*,  
14 Cabeau requests the declaration of the Court that Cabeau does not infringe and has not  
15 infringed, either literally or under the doctrine of equivalents and either directly or  
16 indirectly, any claim of the ’332 Patent.

17  
18 **THIRD CAUSE OF ACTION**

19 **(Declaratory Relief Regarding Non-Infringement of All Claims of the ’883 Patent)**

20 48. Cabeau realleges and incorporates by reference the full text of all of the  
21 foregoing numbered paragraphs as though each such paragraph has been fully set forth  
22 herein.

23 49. Bedgear claims it is the owner of the ’883 Patent.

24 50. As described above, Bedgear has accused Cabeau’s EVOLUTION COOL  
25 TRAVEL PILLOW product of infringing one or more claims of the ’883 Patent in multiple  
26 communications to Cabeau.

27 51. Cabeau, however, does not infringe, has not infringed, and cannot infringe  
28 claim 1 of the ’883 Patent. For example, the EVOLUTION COOL TRAVEL PILLOW

1 does not include “a first panel having an edge defining a perimeter; a second panel having  
2 an edge defining a perimeter; and a gusset joining said first and second panels, wherein  
3 inner surfaces of said first panel, said second panel, and said gusset define an inner cavity;  
4 and said pillow is configured to have air enter the cavity through pores in the first and  
5 second panels and have the air exit the cavity through pores in the gusset,” as required by  
6 independent claim 1.

7 52. Cabeau does not infringe, has not infringed, and cannot infringe claims 2-20  
8 of the '883 Patent, which ultimately depend from independent claim 1.

9 53. An actual and justiciable controversy exists between Cabeau and Bedgear as  
10 to the non-infringement of the claims of the '883 Patent.

11 54. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*,  
12 Cabeau requests the declaration of the Court that Cabeau does not infringe and has not  
13 infringed, either literally or under the doctrine of equivalents and either directly or  
14 indirectly, any claim of the '883 Patent.

15  
16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff Cabeau, Inc. prays for relief as follows:

- 18 1. A declaration that Plaintiff has not infringed and is not now infringing upon  
19 any valid and enforceable claim of United States Patent Nos. 8,646,134,  
20 8,887,332, and 9,015,883 in any way, whether directly, indirectly,  
21 contributorily, or through inducement, either literally or under the doctrine of  
22 equivalents;
- 23 2. For an order preliminarily and permanently enjoining Defendant, its officers,  
24 agents, servants, employees, and attorneys, and all those acting in concert with  
25 Defendant or on its behalf, from asserting or threatening to assert any claim  
26 for infringement of United States Patent Nos. 8,646,134, 8,887,332, and  
27 9,015,883 related to the accused products against Plaintiff, Plaintiff's  
28 customers, or users of Plaintiff's accused products;

3. For an award of attorneys' fees pursuant to 35 U.S.C. § 285;
4. For the costs and expenses of suit herein;
5. For a jury trial on all claims and issues so triable; and
6. For such additional further relief that the Court may deem just and proper under the circumstances.

DATED: 14 December 2016

Respectfully submitted,

By: /s/ Corey A. Donaldson

Corey A. Donaldson  
KOPPEL PATRICK HEYBL & PHILPOTT  
2815 Townsgate Road, Suite 215  
Westlake Village, California 91361  
Telephone: (805) 373-0060  
Facsimile: (805) 373-0051  
cdonaldson@koppelip.com

Attorneys for Plaintiff  
CABEAU, INC.

1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 38-  
3 1, Plaintiff Cabeau, Inc. hereby demands a trial by jury of any and all issues triable of right  
4 by a jury pursuant to the Seventh Amendment to the United States Constitution or as given  
5 by a statute of the United States.

6  
7  
8 DATED: 14 December 2016

9 By: /s/ Corey A. Donaldson  
10 Corey A. Donaldson  
11 KOPPEL PATRICK HEYBL & PHILPOTT  
12 2815 Townsgate Road, Suite 215  
13 Westlake Village, California 91361  
14 Telephone: (805) 373-0060  
15 Facsimile: (805) 373-0051  
16 cdonaldson@koppelip.com  
17  
18 Attorneys for Plaintiff  
19 CABEAU, INC.  
20  
21  
22  
23  
24  
25  
26  
27  
28