

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:16-cv-01002-MSK-MJW

NORMAN INTERNATIONAL, INC.,
RICHFIELD WINDOW COVERINGS, LLC d/b/a NIEN MADE U.S.A.,
NIEN ADVANCED SOLUTIONS d/b/a NORMAN WINDOW FASHIONS,
INTERNATIONAL WINDOW TREATMENTS, INC.,
NORMAN INTERNATIONAL COLORADO, LLC,
NORMAN INTERNATIONAL ARIZONA, LLC,
NORMAN INTERNATIONAL DALLAS, LLC,
NORMAN INTERNATIONAL FLORIDA, LLC,
NORMAN INTERNATIONAL ILLINOIS, LLC,
NORMAN INTERNATIONAL LAS VEGAS, LLC,
NORMAN INTERNATIONAL SAN JOSE, LLC, and
NORMAN INTERNATIONAL VIRGINIA, LLC,

Plaintiffs,

v.

HUNTER DOUGLAS, INC.,
HUNTER DOUGLAS WINDOW FASHIONS, INC., and
ANDREW J. TOTI TESTAMENTARY TRUST,

Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

This action is for declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, as well as for Colorado state law tort claims. Plaintiffs Norman International, Inc., Richfield Window Coverings, LLC, Nien Advanced Solutions, International Window Treatments, Inc., Norman International Colorado, LLC, Norman International Arizona, LLC, Norman International Dallas, LLC, Norman International Florida, LLC, Norman International Illinois, LLC, Norman International Las Vegas, LLC, Norman International San Jose, LLC, and Norman International Virginia, LLC (collectively, “Plaintiffs”) for their complaint against

Defendants Hunter Douglas, Inc., Hunter Douglas Window Fashions, Inc., and Andrew J. Toti Testamentary Trust (collectively, “Defendants”), allege as follows:

THE PARTIES

1. Norman International, Inc. is a corporation organized and existing under the laws of the State of California with its principal place of business at 12301 Hawkins Street, Santa Fe Springs, California 90670.

2. Richfield Window Coverings, LLC d/b/a Nien Made U.S.A. is a limited liability company organized and existing under the laws of the State of California with its principal place of business at 12301 Hawkins Street, Santa Fe Springs, California 90670.

3. Nien Advanced Solutions d/b/a Norman Window Fashions is a corporation organized and existing under the laws of the State of California with its principal place of business at 12301 Hawkins Street, Santa Fe Springs, California 90670.

4. International Window Treatments, Inc. is a corporation organized and existing under the laws of the State of California with its principal place of business at 12301 Hawkins Street, Santa Fe Springs, California 90670.

5. Norman International Colorado, LLC is a limited liability company organized and existing under the laws of the State of Colorado with its principal place of business at 4701 Dahlia Street, Unit D, Denver, Colorado 80216.

6. Norman International Arizona, LLC is a limited liability company organized and existing under the laws of the State of Arizona with its principal place of business at 2250 West Broadway Road, Unit 104, Mesa, Arizona 85202.

7. Norman International Dallas, LLC is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business at 2940 Eisenhower Street, Suite 100, Carrollton, Texas 75007.

8. Norman International Florida, LLC is a limited liability company organized and existing under the laws of the State of Florida with its principal place of business at 7100 TPC Drive, Suite 600, Orlando, Florida 32822.

9. Norman International Illinois, LLC is a limited liability company organized and existing under the laws of the State of Illinois with its principal place of business at 1040 Dupage Avenue, Lombard, Illinois 60101.

10. Norman International Las Vegas, LLC is a limited liability company organized and existing under the laws of the State of Nevada with its principal place of business at 4350 Arville Street, Suite B2-14, Las Vegas, Nevada 89103.

11. Norman International San Jose, LLC is a limited liability company organized and existing under the laws of the State of California with its principal place of business at 12301 Hawkins Street, Santa Fe Springs, California 90670.

12. Norman International Virginia, LLC is a limited liability company organized and existing under the laws of the State of Virginia with its principal place of business at 305 Ashcake Road, Ashland, Virginia 23005.

13. On information and belief, Hunter Douglas, Inc. (“Hunter Douglas”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1 Blue Hill Plaza, 20th Floor, Pearl River, New York 10965.

14. On information and belief, Hunter Douglas Window Fashions, Inc. (“Hunter Douglas Window Fashions”) is a wholly owned subsidiary of Hunter Douglas, and a corporation organized and existing under the laws of the State of Delaware with its principal place of business at One Duette Way, Broomfield, Colorado 80020.

15. On information and belief, the Andrew J. Toti Testamentary Trust (“Toti”) is a testamentary trust described and set forth in an order dated September 9, 2009, by the Superior Court of California, County of Stanislaus, in Case No. 368364.

JURISDICTION AND VENUE

16. This Court has jurisdiction over Plaintiffs’ declaratory judgment claims pursuant to 28 U.S.C. §§ 1331, 1338, and 28 U.S.C. §§ 2201, 2202. An actual, substantial, and continuing justiciable controversy exists between Plaintiffs and Defendants Hunter Douglas and Toti based on Defendants having filed patent infringement complaints against Plaintiffs and Plaintiffs’ customers. First, Defendants filed a complaint in the Central District of California against Plaintiffs and Global Custom Commerce, Inc. d/b/a Blinds.com alleging infringement of U.S. Patent Nos. 8,720,525 (“the ’525 patent”) and 8,887,788 (“the ’788 patent”). That complaint was transferred to this Court as Case No. 1:16-cv-01316, and then consolidated into this case. *See* Dkt. No. 35. Second, Defendants filed a complaint against Plaintiffs’ customer, Budget Blinds, LLC, alleging that Budget Blinds, LLC infringes the following patents through the manufacture, use, sale, offer for sale and/or importation of Norman products: the ’525 patent, the ’788 patent, and U.S. Patent Nos. 6,648,050 (“the ’050 patent”), 6,283,192 (“the ’192 patent”), 9,328,554 (“the ’554 patent”), and 9,359,814 (“the ’814 patent”). *See* Case No. 1:16-cv-01938. Plaintiffs have already asserted counterclaims for a declaratory judgment of non-

infringement and invalidity of the '192 patent and the '050 patent in administratively consolidated Case No. 1:13-cv-01412. Plaintiffs seek a declaration of their rights by this Court in this action with respect to the '525 patent, '788 patent, '554 patent, and '814 patent (collectively, the “patents-in-suit”). Specifically, the controversy concerns the non-infringement and invalidity of the patents-in-suit and Defendants’ right to maintain suit for alleged infringement of the patents-in-suit.

17. This substantial controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Accordingly, a case or controversy exists under 28 U.S.C. § 2201.

18. This Court has jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367(a). Specifically, this District has supplemental jurisdiction over Plaintiffs’ state-claims against Defendants Hunter Douglas and Hunter Douglas Window Fashions for tortious interference with a contract and tortious interference with prospective business relations because these state law claims are so related to the claims for declaratory judgment that they form part of the same case or controversy. The relationship between these state-law claims and the declaratory judgment claims is set forth below.

19. The Court has personal jurisdiction over Defendants, including because Defendants Hunter Douglas and Toti have submitted to the personal jurisdiction of the Court by filing related patent infringement actions against Plaintiffs and its customers titled *Hunter Douglas, Inc.* et al. v. *Norman International, Inc.* et al., Case No. 1:13-cv-01412-MSK-MJW (D. Colo. filed May 31, 2013), *Hunter Douglas, Inc.*, et al. v. *Norman International, Inc.*, et al., Case

No. 2:16-cv-01308 (C.D. Cal. filed Feb. 25, 2016), and *Hunter Douglas, Inc., et al. v. Budget Blinds, LLC*, Case No. 1:16-cv-1938 (D. Colo. filed July 29, 2016).

20. The Court also has personal jurisdiction over Defendants Hunter Douglas and Hunter Douglas Window Fashions because, on information and belief, Hunter Douglas and Hunter Douglas Window Fashions maintain offices at One Duette Way, Broomfield, Colorado 80020, from which they transact business and operate the Window Fashions Division of Hunter Douglas. Additionally, Defendants Hunter Douglas and Hunter Douglas Window Fashions have registered to transact business with the Colorado Secretary of State. On further information and belief, Hunter Douglas and Hunter Douglas Window Fashions also sell products to consumers located in the State of Colorado.

21. The Court also has personal jurisdiction over Defendants Hunter Douglas and Hunter Douglas Window Fashions because the tortious acts that are the subject of Plaintiffs' state-law tort claims took place in the State of Colorado. Specifically, on information and belief, at all relevant times Plaintiffs' former expert resided in the State of Colorado, Plaintiffs' former expert was contacted by one or more Defendants in the State of Colorado, and one or more Defendants interfered with Plaintiffs' contract with their former expert witness in the State of Colorado.

22. Venue is proper in this Court, including because Defendants Hunter Douglas and Toti submitted to the venue of this Court by filing related patent infringement actions against Plaintiffs and Plaintiffs' customers titled *Hunter Douglas, Inc. et al. v. Norman International, Inc. et al.*, Case No. 1:13-cv-01412-MSK-MJW (D. Colo. filed May 31, 2013) and *Hunter*

Douglas, Inc., et al. v. Budget Blinds, LLC, Case No. 1:16-cv-01938 (D. Colo. filed July 29, 2016).

23. Venue is also proper in the Court because, on information and belief, Defendants Hunter Douglas and Hunter Douglas Window Fashions maintain offices at One Duette Way, Broomfield, Colorado 80020, from which they transact business and operate the Window Fashions Division of Hunter Douglas. Additionally, Defendants Hunter Douglas and Hunter Douglas Window Fashions have registered to transact business with the Colorado Secretary of State. On further information and belief, Hunter Douglas and Hunter Douglas Window Fashions also sell products to consumers located in the State of Colorado.

24. Venue is also proper in this Court because Colorado is the location of the tortious acts that are the subject of Plaintiffs' state law tort claims. Namely, on information and belief, at all relevant times Plaintiffs' former expert resided in the State of Colorado, Plaintiffs' former expert was contacted by one or more Defendants in the State of Colorado, and one or more Defendants interfered with Plaintiffs' contract with their former expert witness in the State of Colorado.

FACTUAL BACKGROUND

Defendants File A First Patent Infringement Action In Colorado

25. On May 31, 2013, Defendants Hunter Douglas and Toti filed an action in this Court in Case No. 1:13-cv-01412-MSK-MJW alleging that Plaintiffs and Global Custom Commerce, Inc. d/b/a Blinds.com infringe three U.S. patents (the "2013 Colorado Litigation"). By way of amended complaint, Defendants later added allegations of patent infringement relating to a fourth U.S. patent. The asserted patents in the 2013 Colorado Litigation are U.S.

Patent Nos. 6,283,192 (“the ’192 patent”), 6,648,050 (“the ’050 patent”), 6,968,884, and 8,230,896.

26. On information and belief, Defendant Toti is the lawful owner of all right, title, and interest to the ’192 and ’050 patents, and Defendant Hunter Douglas is the exclusive licensee of the ’192 and ’050 patents in the field of window covering products.

27. On information and belief, the ’192 and ’050 patents purport to claim priority to U.S. Patent Application No. 08/963,774, filed on November 4, 1997, now abandoned.

28. Defendants allege in the 2013 Colorado Litigation that Plaintiffs, jointly and severally, make, use, have made, offer for sale, sell, and/or import into the United States window coverings and ready-made window blinds, including a cordless lift cellular shade product with a spring drive/motor, that infringe one or more claims of the four U.S. patents asserted in the 2013 Colorado Litigation.

29. The 2013 Colorado Litigation is currently pending before Chief Judge Krieger.

**Defendants File A Second Patent Infringement Action
On Related Patents In California**

30. On information and belief, on June 14, 2013, approximately two weeks after filing the 2013 Colorado Litigation, counsel for Defendants Hunter Douglas and Toti filed new U.S. Patent Application Nos. 13/918,526 and 13/918,600. These applications purport to claim priority to the ’050 patent, the ’192 patent, and U.S. Patent Application No. 08/963,774, filed on November 4, 1997, now abandoned.

31. On information and belief, U.S. Patent No. 8,720,525, entitled “Methods for Operating Window Covers” (“the ’525 patent”), was issued by the U.S. Patent and Trademark

Office on May 13, 2014, from U.S. Patent Application No. 13/918,600. A true and correct copy of the '525 patent is attached hereto as **Exhibit A**.

32. On information and belief, Defendant Toti is the lawful owner of all right, title, and interest in and to the '525 patent, and Defendant Hunter Douglas is the exclusive licensee of the '525 patent in the field of window covering products.

33. On information and belief, U.S. Patent No. 8,887,788, entitled "Methods for Operating Window Covers" ("the '788 patent"), was issued by the U.S. Patent and Trademark Office on November 18, 2014, from U.S. Patent Application No. 13/918,526. A true and correct copy of the '788 patent is attached hereto as **Exhibit B**.

34. On information and belief, Defendant Toti is the lawful owner of all rights, title, and interest in and to the '788 patent, and Defendant Hunter Douglas is the exclusive licensee of the '788 patent in the field of window covering products.

35. On February 26, 2016, Defendants Hunter Douglas and Toti filed a Complaint for Patent Infringement in the Central District of California titled *Hunter Douglas Inc. et al. v. Nien Made Enterprise Co. Ltd.*, Case No. 2:16-cv-01308-SJO-KS ("the California Complaint"). A true and correct copy of the California Complaint is attached hereto as **Exhibit C**.

36. Defendants allege in the California Complaint that Plaintiffs, jointly and severally, make, use, have made, offer for sale, sell, and/or import into the United States window coverings and ready-made cordless window blinds that infringe claims 1-29 of the '525 patent and claims 1-11, 13-15, 17-22, and 25-28 of the '788 patent. *See* Exhibit C.

37. On May 23, 2016, the California court transferred the California Complaint to this District after holding that the California Complaint and the original -01412 case were sufficiently

related to support the transfer. *See* Case No. 2:16-cv-01308-SJO-KS (C.D. Cal.), Dkt. 68 at 12-13. Once transferred to this District, the California Complaint became captioned as *Hunter Douglas, Inc. et al. v. Nien Made Enterprise Co. Ltd. et al.*, Case No. 1:16-cv-01316 (“the -1316 case”).

Defendants File A Third Patent Infringement Action Against Plaintiffs’ Customer

38. On or about July 29, 2016, Defendants filed a Complaint for Patent Infringement against Budget Blinds alleging that Budget Blinds infringes the ’192, ’050, ’788, ’525, ’814, and ’554 patents (“the Budget Blinds Complaint”) in Case No. 1:16-cv-01938. A true and correct copy of the Budget Blinds Complaint is attached hereto as **Exhibit D**.

39. Defendants allege in the Budget Blinds Complaint that Budget Blinds makes, uses, has made, offers for sale, sells, and/or imports into the United States window coverings and cordless window blinds that infringe one or more claims of the patents-in-suit, including but not limited to Norman Puresafe Cordless Honeycomb Cordless2 products.

40. On information and belief, the ’554 patent, entitled “Spring Drive Systems for Window Covers,” was issued by the U.S. Patent and Trademark Office on May 3, 2016. A true and correct copy of the ’554 patent is attached hereto as **Exhibit E**.

41. On information and belief, the ’814 patent, entitled “Systems for Maintaining Window Covers,” was issued by the U.S. Patent and Trademark Office on June 7, 2016. A true and correct copy of the ’814 patent is attached hereto as **Exhibit F**.

42. On information and belief, Defendant Toti Trust is the lawful owner of all right, title, and interest in and to the patents-in-suit, and Defendant Hunter Douglas is the exclusive licensee of the patents-in-suit in the field of window covering products.

43. On October 20, 2016, Defendants filed a First Amended Complaint for Patent Infringement, wherein Plaintiffs removed their patent infringement claims based on infringement of the '554 patent.

Defendants' Interfere with Plaintiffs' Technical Expert

44. In connection with the 2013 Colorado Litigation, Plaintiffs retained Patrick E. Foley in July 2014 as a technical expert with expertise in the area of window coverings.

45. In connection with Plaintiffs' retention of Mr. Foley as a technical expert, Plaintiffs and Mr. Foley entered into a contract entitled Engagement Letter for Expert Consulting Services on or about July 11, 2014 ("the Agreement").

46. As part of the Agreement, Mr. Foley agreed that all materials prepared in connection with his engagement belonged to Plaintiffs.

47. As part of the Agreement, Mr. Foley agreed not to consult directly or indirectly with Hunter Douglas or Toti in the litigation.

48. As part of the Agreement, Mr. Foley agreed not to testify or consult during the pendency of the 2013 Colorado Litigation in any arbitration or litigation adverse to any of Plaintiffs.

49. As part of the Agreement, Mr. Foley agreed not to contact Hunter Douglas, Toti, or any other party regarding any matter adverse to any Plaintiff, for any purpose, without previously notifying Plaintiffs or their counsel and obtaining advance written approval from each Plaintiff.

50. As part of the Agreement, Mr. Foley agreed to keep strictly confidential all materials sent to him by and communications with Plaintiffs and Plaintiffs' counsel.

51. As part of the Agreement, Mr. Foley agreed that he would not use any information disclosed to him by Plaintiffs or Plaintiffs' counsel without express written permission from Plaintiffs.

52. As part of the Agreement, Mr. Foley agreed that his confidentiality obligations under the agreement would continue even after the engagement was complete.

53. As part of the Agreement, Mr. Foley agreed that at the conclusion of the engagement, he would deliver his file, as well as any materials he received from Plaintiffs, to Plaintiffs' counsel.

54. In connection with Mr. Foley's engagement, Plaintiffs' counsel sent and shared materials with Mr. Foley, including information related to the '192 patent, the '050 patent, and their prosecution histories.

55. On information and belief, the '192 and '050 patents purport to claim priority to the same patent application as the patents-in-suit (U.S. Patent Application No. 13/918,526), and are thus intricately related.

56. Mr. Foley participated in numerous in-person meetings and teleconferences with Plaintiffs' counsel in which litigation strategy was discussed, including litigation strategy regarding the '192 patent, the '050 patent, and their prosecution histories.

57. Mr. Foley prepared and submitted five declarations in support of *inter partes* review proceedings before the Patent Trial and Appeal Board regarding each of the four patents asserted by Hunter Douglas and Toti against Plaintiffs in the 2013 Colorado Litigation, including the '192 patent and the '050 patent.

58. The final declaration Mr. Foley submitted on behalf of Plaintiffs was executed and filed in December 2014.

59. On information and belief, Defendants Hunter Douglas and/or Hunter Douglas Window Fashions, through an agent, contacted Mr. Foley and set up an employment interview in or around April 2015.

60. On April 20, 2015, counsel for Plaintiffs contacted counsel for Hunter Douglas and Toti and reminded them of Mr. Foley's relationship with Plaintiffs and his ongoing confidentiality obligations.

61. On information and belief, Defendants Hunter Douglas and/or Hunter Douglas Window Fashions met with Mr. Foley in person on or about April 21, 2015.

62. On May 6, 2015, counsel for Plaintiffs again contacted counsel for Hunter Douglas and Toti to remind them of Mr. Foley's ongoing relationship with Plaintiffs and his confidentiality obligations.

63. Hunter Douglas and Toti's counsel responded to Plaintiffs' counsel on May 7, 2015, stating only that Hunter Douglas had not at that time sought information from Mr. Foley about his engagement by Plaintiffs. Hunter Douglas and Toti's counsel made no representations that Hunter Douglas would not seek such information in the future.

64. On information and belief, Defendants Hunter Douglas and/or Hunter Douglas Window Fashions met with Mr. Foley in person again in May 2015.

65. On June 24, 2015, Mr. Foley sent an email to counsel for Plaintiff resigning as an expert witness. Mr. Foley did not provide any explanation for his resignation, did not respond to

attempts by Plaintiffs' counsel to contact him, and eventually disconnected the phone number he had provided to Plaintiffs' counsel.

66. On information and belief, Mr. Foley is now the manager of Defendants Hunter Douglas' and Hunter Douglas Window Fashions' Honeycomb product line. On further information and belief, this product line includes Defendants Hunter Douglas' and Hunter Douglas Window Fashions' cordless cellular shade products and implicates U.S. patents that are the subject of the 2013 Colorado Litigation and the California Complaint, including but not limited to the '192, '050, '525, and '788 patents.

67. On information and belief, Mr. Foley is employed at Defendants Hunter Douglas' and Hunter Douglas Window Fashions' offices at One Duette Way, Broomfield, Colorado 80020.

68. One or more Plaintiffs sell and offer for sale cordless cellular shade products that allegedly compete with Defendant Hunter Douglas' and Hunter Douglas Window Fashions' Honeycomb product line, including the products Defendants Hunter Douglas and Toti have accused of infringement in both the 2013 Colorado Litigation and the California Complaint.

69. On information and belief, Defendants Hunter Douglas and Hunter Douglas Window Fashions had knowledge that Mr. Foley was retained by Plaintiffs as an expert witness by no later than July 2014.

70. On information and belief, Defendants Hunter Douglas and Hunter Douglas Window Fashions were aware of Mr. Foley's contractual obligations to Plaintiff, including his confidentiality obligations.

71. On information and belief, Defendants Hunter Douglas and Hunter Douglas Window Fashions intentionally caused Mr. Foley to resign as an expert witness and terminate his Agreement with Plaintiffs.

72. Mr. Foley has not returned his file to Plaintiffs.

73. Mr. Foley has not returned the materials he received and prepared in the course of his engagement to Plaintiffs.

74. Mr. Foley has not sought written consent from Plaintiffs to use information disclosed to him by Plaintiffs.

75. Mr. Foley has not sought written consent from Plaintiffs to contact Defendants since his interviews.

76. On information and belief, as the manager of Defendants Hunter Douglas' and Hunter Douglas Window Fashions' Honeycomb product line, Mr. Foley has consulted with and/or contacted Defendant Hunter Douglas, Hunter Douglas Window Fashions, and/or its counsel during the pendency of the 2013 Colorado Litigation.

77. On information and belief, it would be impossible for Mr. Foley to partition the confidential knowledge he learned from Plaintiffs during his expert services for Plaintiffs from his employment as a manager of Defendants Hunter Douglas' and Hunter Douglas Window Fashions' Honeycomb product line.

78. On information and belief, as the manager of Defendants Hunter Douglas' and Hunter Douglas Window Fashions' Honeycomb product line, Mr. Foley has used and/or failed to keep strictly confidential information he received from Plaintiffs.

79. On information and belief, Defendants Hunter Douglas and Hunter Douglas Window Fashions, without justification, intentionally caused Mr. Foley to breach his obligations under the Agreement and terminate the Agreement, as described above.

80. On information and belief, Defendants Hunter Douglas and Hunter Douglas Window Fashions improperly caused Mr. Foley to breach his obligations under the Agreement and terminate the Agreement to gain an advantage in the 2013 Colorado Litigation and/or a financial advantage to Plaintiffs' detriment.

81. Because Defendants Hunter Douglas and Hunter Douglas Window Fashions caused Mr. Foley to breach his contract with Plaintiffs, Plaintiffs have suffered harm, including but not limited to the loss of their expert in the 2013 Colorado Litigation and injury from disclosure of Plaintiffs' confidential information and litigation strategy related to this family of patents to a competitor and adversary.

COUNT I

(Declaration of Non-Infringement - Patent No. 8,720,525 Against Defendants Hunter Douglas and Toti)

82. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully set forth herein.

83. Defendants have brought suit against Plaintiffs alleging that Plaintiffs directly infringe the '525 patent.

84. Plaintiffs have not infringed any valid claim of the '525 patent.

85. An actual case or controversy exists between Plaintiffs and Defendants based on Defendants having filed the California Complaint against Plaintiffs alleging infringement of the '525 patent.

86. Plaintiffs have been injured and damaged by Defendants filing the California Complaint asserting infringement of a patent that Plaintiffs do not infringe.

87. Declaratory relief is both appropriate and necessary to establish that Plaintiffs have not infringed any valid claim of the '525 patent.

COUNT II

(Declaration of Non-Infringement - Patent No. 8,887,788 Against Defendants Hunter Douglas and Toti)

88. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully set forth herein.

89. Defendants have brought suit against Plaintiffs alleging that Plaintiffs directly infringe the '788 patent.

90. Plaintiffs have not infringed any valid claim of the '788 patent.

91. An actual case or controversy exists between Plaintiffs and Defendants based on Defendants having filed the California Complaint against Plaintiffs alleging infringement of the '788 patent.

92. Plaintiffs have been injured and damaged by Defendants filing the California Complaint asserting infringement of a patent that Plaintiffs do not infringe.

93. Declaratory relief is both appropriate and necessary to establish that Plaintiffs have not infringed any valid claim of the '788 patent.

COUNT III

**(Declaration of Non-Infringement - Patent No. 9,328,554
Against Defendants Hunter Douglas and Toti)**

94. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully set forth herein.

95. Defendants brought suit against Plaintiffs' customer, Budget Blinds, alleging that Budget Blinds infringes the '554 patent based on the manufacture, use, sale, offer for sale and/or importation of Norman products. Defendants did not include this claim for infringement of the '554 patent in the First Amended Complaint for Patent Infringement, but Defendants have not provided any assurances that Defendants do not intend to file another suit for patent infringement against Norman, Budget Blinds, LLC, or another Norman customer based on the '554 patent.

96. Plaintiffs and Budget Blinds have not infringed any valid claim of the '554 patent.

97. An actual case or controversy exists between Plaintiffs and Defendants based on Defendants having filed a Complaint against Budget Blinds, LLC alleging infringement of the '554 patent based on Norman products.

98. Plaintiffs have been injured and damaged by Defendants filing a complaint asserting infringement of a patent that Plaintiffs and Budget Blinds, LLC do not infringe.

99. Declaratory relief is both appropriate and necessary to establish that Plaintiffs have not infringed any valid claim of the '554 patent.

COUNT IV

**(Declaration of Non-Infringement - Patent No. 9,359,814
Against Defendants Hunter Douglas and Toti)**

100. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully set forth herein.

101. Defendants brought suit against Plaintiffs' customer, Budget Blinds, LLC, alleging that Budget Blinds infringes the '814 patent based on the manufacture, use, sale, offer for sale and/or importation of Norman products.

102. Plaintiffs and Budget Blinds have not infringed any valid claim of the '814 patent.

103. An actual case or controversy exists between Plaintiffs and Defendants based on Defendants having filed a Complaint for Patent Infringement against Budget Blinds, LLC alleging infringement of the '814 patent based on Norman products.

104. Plaintiffs have been injured and damaged by Defendants filing a complaint asserting infringement of a patent that Plaintiffs and Budget Blinds, LLC do not infringe.

105. Declaratory relief is both appropriate and necessary to establish that Plaintiffs have not infringed any valid claim of the '814 patent.

COUNT V

**(Declaration of Invalidity - Patent No. 8,720,525
Against Defendants Hunter Douglas and Toti)**

106. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully set forth herein.

107. On information and belief, the '525 patent is invalid and unenforceable for failure to comply with one or more of the requirements of the Patent Act, 35 U.S.C. §§ 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and/or 112.

108. The claims of the '525 patent are invalid as anticipated or obvious in view of the prior art, including but not limited to Japanese Patent Application Publication S54-38648; U.S. Patent No. 6,056,036; and U.S. Patent No. 6,149,094.

109. An actual case or controversy exists between Plaintiffs and Defendants based on Defendants having filed the California Complaint against Plaintiffs alleging infringement of the '525 patent.

110. Plaintiffs have been injured and damaged by Defendants filing the California Complaint asserting infringement of an invalid patent.

111. Declaratory relief is both appropriate and necessary to establish that the '525 patent is invalid and thus cannot be asserted against Plaintiffs.

COUNT VI

(Declaration of Invalidity - Patent No. 8,887,788 Against Defendants Hunter Douglas and Toti)

112. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully set forth herein.

113. On information and belief, the '788 patent is invalid and unenforceable for failure to comply with one or more of the requirements of the Patent Act, 35 U.S.C. §§ 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and/or 112.

114. The claims of the '788 patent are invalid as anticipated or obvious in view of the prior art, including but not limited to Japanese Patent Application Publication S54-38648; U.S. Patent No. 6,056,036; and U.S. Patent No. 6,149,094.

115. An actual case or controversy exists between Plaintiffs and Defendants based on Defendants having filed the California Complaint against Plaintiffs alleging infringement of the '788 patent.

116. Plaintiffs have been injured and damaged by Defendants filing the California Complaint asserting infringement of an invalid patent.

117. Declaratory relief is both appropriate and necessary to establish that the '788 patent is invalid and thus cannot be asserted against Plaintiffs.

COUNT VII

(Declaration of Invalidity - Patent No. 9,328,554 Against Defendants Hunter Douglas and Toti)

118. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully set forth herein.

119. On information and belief, the '554 patent is invalid and unenforceable for failure to comply with one or more of the requirements of the Patent Act, 35 U.S.C. §§ 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and/or 112.

120. The claims of the '554 patent are invalid as anticipated or obvious in view of the prior art.

121. An actual case or controversy exists between Plaintiffs and Defendants based on Defendants having filed a Complaint against Plaintiffs' customer alleging infringement of the '554 patent by Norman Products. Defendants did not include this claim for infringement of the

'554 patent in the First Amended Complaint for Patent Infringement, but Defendants have not provided any assurances that Defendants do not intend to file another suit for patent infringement against Norman, Budget Blinds, LLC, or another Norman customer based on the '554 patent.

122. Plaintiffs have been injured and damaged by Defendants filing a complaint asserting infringement by Plaintiffs' products of an invalid patent.

123. Declaratory relief is both appropriate and necessary to establish that the '554 patent is invalid and thus cannot be asserted against Plaintiffs.

COUNT VIII

(Declaration of Invalidity - Patent No. 9,359,814 Against Defendants Hunter Douglas and Toti)

124. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully set forth herein.

125. On information and belief, the '814 patent is invalid and unenforceable for failure to comply with one or more of the requirements of the Patent Act, 35 U.S.C. §§ 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and/or 112.

126. The claims of the '814 patent are invalid as anticipated or obvious in view of the prior art.

127. An actual case or controversy exists between Plaintiffs and Defendants based on Defendants having filed a Complaint for Patent Infringement against Budget Blinds, LLC alleging infringement of the '814 patent based on Norman products.

128. Plaintiffs have been injured and damaged by Defendants filing a complaint asserting infringement by Plaintiffs' products of an invalid patent.

129. Declaratory relief is both appropriate and necessary to establish that the '814 patent is invalid and thus cannot be asserted against Plaintiffs.

COUNT IX

**(Tortious Interference With Contract Under Colorado State Law
Against Defendants Hunter Douglas and Hunter Douglas Window Fashions)**

130. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully set forth herein.

131. Plaintiffs had a contract with Mr. Foley.

132. Defendants knew or reasonably should have known of this contract.

133. Defendants intentionally interfered with Plaintiffs' contract with Mr. Foley by causing Mr. Foley to breach his obligations under the contract and terminate the contract.

134. Defendants' interference with the contract was improper and without justification.

135. Defendants' actions interfering with Plaintiffs' contract with Mr. Foley have caused Plaintiffs damage in an amount to be determined at trial.

COUNT X

**(Tortious Interference With Prospective Business Relations Under Colorado State Law
Against Defendants Hunter Douglas and Hunter Douglas Window Fashions)**

136. Plaintiffs repeat and re-allege each and every allegation in the foregoing paragraphs as if fully set forth herein.

137. Plaintiffs had a continuing business relationship with Mr. Foley.

138. Defendants knew of this relationship.

139. Defendants intentionally interfered with this relationship by improperly and without justification causing Mr. Foley to terminate his contract with Plaintiffs.

140. Defendants' actions interfering with Plaintiffs' prospective business relations with Mr. Foley have caused Plaintiffs damages in an amount to be determined at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief:

- A. that judgment be entered that Plaintiffs have not infringed any valid claim of the patents-in-suit either literally or under the doctrine of equivalents;
- B. that judgment be entered declaring that the claims of the patents-in-suit are invalid and/or unenforceable;
- C. that judgment be entered awarding Plaintiffs their damages in an amount to be determined at trial;
- D. that judgment be entered awarding Plaintiffs their costs incurred in the prosecution of this action;
- E. that judgment be entered declaring this case to be exceptional under 35 U.S.C. § 285, and awarding Plaintiffs their reasonable attorneys' fees incurred in the prosecution of this action; and
- F. that judgment be entered awarding Plaintiffs such other and further relief as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Plaintiffs demand a trial by jury of all issues so triable in this action.

DATED: January 4, 2017

Respectfully submitted,

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By: *s/ Douglas L. Sawyer*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record through the Court's CM/ECF system on January 4, 2017:

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