

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

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<b>BEDGEAR, LLC</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Case No.:</b> _____
	§	
<b>v.</b>	§	
	§	<b><u>COMPLAINT</u></b>
<b>KATEKLEIN LLC</b>	§	
	§	<b>JURY TRIAL DEMANDED</b>
<b>Defendant.</b>	§	

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**COMPLAINT FOR PATENT INFRINGEMENT**

This is an action for patent infringement in which plaintiff, Bedgear, LLC (“Bedgear”), by its counsel, Bryan Cave LLP, makes the following allegations in support of its Complaint against defendant, KateKlein LLC (“KateKlein”):

**PARTIES**

1. Bedgear is a Delaware limited liability company with its principal place of business at 110 Bi-County Blvd., Suite 101, Farmingdale, NY, 11735.
2. Bedgear draws on its proprietary technology to innovate and develop various bedding products and accessories, including pillows, mattress protectors, and bed sheets. Among other things, Bedgear’s bedding products provide advanced functional properties that enhance performance and facilitate recovery during sleep. As a result of its many innovations, Bedgear pioneered, and has become the market leader in, the performance bedding industry.
3. On information and belief, KateKlein is a New York limited liability company with its principal place of business at 12 East 46<sup>th</sup> Street, Suite 6E, New York, NY 10017.

4. KateKlein manufactures, offers for sale, sells, and/or distributes pillows that infringe Bedgear's patents.

**JURISDICTION AND VENUE**

5. This action arises under the patent laws of the United States, Title 35 U.S.C. §§ 1, *et seq.* Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. On information and belief, KateKlein is subject to this Court's specific and general personal jurisdiction, pursuant to due process and/or the New York Long Arm Statute, due at least to its substantial ongoing business activities in this forum, including regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to persons or entities in New York and this District.

7. On information and belief, KateKlein has itself, and through various third parties, repeatedly transacted business with customers in New York and within this District, and has advertised, promoted, sold, and manufactured infringing products in New York, including this District, without Bedgear's authorization or permission. On information and belief, KateKlein operates an office and showroom located at 12 East 46<sup>th</sup> Street, Suite E, New York, NY where it manufactures, advertises, promotes, offers for sale and/or sells infringing products.

8. On information and belief, KateKlein also maintains and operates one or more websites on the Internet, including a website located at: <http://www.kateklein.com>, which is operational twenty-four (24) hours a day, seven days a week, are accessible to and regularly accessed by residents of this District and other persons throughout the United States, and through which KateKlein advertises, promotes, offers for sale, and sells infringing products. On information and belief, KateKlein has, through its websites and/or other third party websites,

repeatedly transacted business with customers throughout the United States, including customers within this District, and has advertised, promoted, offered for sale, sold, and shipped infringing products into this District without Bedgear's authorization or permission. Further, on information and belief, KateKlein has derived substantial revenue from interstate commerce and has interjected itself into this District by its operation of a nationwide business through commercial websites and third party distributors or resellers whereby KateKlein has sold and continues to sell infringing products. Accordingly, this Court's exercise of jurisdiction over KateKlein will not offend traditional notions of fair play and substantial justice.

9. Venue is proper in this District under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) at least because KateKlein is subject to personal jurisdiction in this District, was formed in the State of New York, has a principal place of business in the State of New York, regularly conducts business in the State of New York and this District, and has committed and continues to commit acts of infringement in the State of New York and this District.

## **BACKGROUND**

### **Bedgear's Performance Bedding Innovations**

10. Bedgear is a leading manufacturer of specialty bedding products and sleep essentials, including pillows and pillow covers, pillow protectors, mattress protectors and encasements, mattress toppers, blankets, and bed sheets.

11. Bedgear's philosophy is centered around designing, developing, and delivering bedding products that provide individuals with improved recovery during sleep in order to enhance their active lifestyles.

12. Bedgear was founded by nationally-recognized entrepreneur, Eugene Alletto, whose two decades of prior expertise with home furnishings and textiles laid the foundation for

Bedgear's unique approach to fabrics and manufacturing techniques, as well as its innovations across a wide array of specialty bedding products.

13. Since its inception, Bedgear has been dedicated to developing and perfecting bedding products and sleep essentials that are engineered using advanced textile fabrication techniques. Bedgear utilizes these proprietary technologies and techniques to provide consumers with a variety of high-tech, high-quality bedding products that have new and improved functional characteristics designed to improve sleep quality.

14. Due to its many innovations and novel high-tech approach to bedding products, Bedgear is well-known for being a pioneer of performance bedding, and has already achieved significant commercial success and widespread brand recognition for its novel performance bedding products.

15. For example, Bedgear has been referred to in the media as "the company that invented 'performance sleep,'" based on its performance branded line of bedding products. (Bloomberg, "Small to Big" video segment, "The Company That Invented 'Performance Sleep,'" November 4, 2014). Bedgear and its performance branded bedding products have also been featured on numerous other media networks and outlets, including Health Magazine (Health Online, "The Best Sheets to Keep You Cool All Night Long," April 17, 2017), Outside Magazine (Outside Online, "All the gear you need for a perfect night's sleep," March 24, 2017), Sports Illustrated (Sports Illustrated Online, "Dallas Mavericks partner with Bedgear's sleep experts for performance bedding," October 13, 2016), O, the Oprah Magazine (O Magazine "The O List: A few things we think are just great!," NBC (NBC Weekend Today New York, "Best Gifts for Mother's Day," May 3, 2015), KHONTV (KHONTV, "Is Your Pillow Right For You," February 27, 2015), FIOS1 (FIOS1, "Money & Main\$trete," January 29, 2015), ABC (ABC World News

Now, “Sweet Dreams – High-Tech Bedding,” October 23, 2014), and The Daily (The Daily news app, “Sleeping on a Fortune,” December 11, 2012).

16. Bedgear has also been selected as the specialty bedding partner of a number of nationally-recognized professional sports teams, including the New York Mets, the Detroit Tigers, the San Diego Padres, the Denver Broncos, the New York Islanders, the Dallas Mavericks, and the Boston Red Sox.

17. Bedgear has also invested considerable resources and effort over many years to creating and developing various unique and proprietary business strategies, such as marketing and sales methodologies and practices, in connection with commercializing its innovative performance bedding products both at the retailer and consumer levels.

18. Traditional bedding accessories, such as standard bed pillows and mattress protectors, were largely designed as generic, one-size-fits-all products and generally considered to be secondary or ancillary items that were offered to consumers at little or no cost in connection with the sale of larger items, such as beds and mattresses (*e.g.*, as add-ons or give-aways). These standard bedding products were typically not marketed or branded separately, nor were they considered to be high-value items or revenue-generating products by themselves.

19. By contrast, due to its innovative, high-quality, and high-tech products, as well as its novel business strategies, Bedgear has built considerable good-will with consumers and achieved widespread brand recognition for its performance bedding products. Retailers and consumers seek out and purchase Bedgear’s bedding products and accessories independent from any other products (such as beds or mattresses), and, in so doing, willingly purchase Bedgear’s performance products at significantly higher prices than standard bedding products. In fact,

unlike traditional bedding accessories, Bedgear's performance bedding products frequently help to drive the sale of other, larger items, such as mattresses.

20. As a result, Bedgear has created, and become the market leader in, an entirely new market segment within the bedding industry referred to as "performance bedding."

### **Bedgear's Patented Pillow Technology**

21. One area in which Bedgear has devoted considerable resources and effort is in creating and developing pillows and pillow covers. Bedgear's founder, Eugene Alletto, came up with the idea of performance pillows and invented ground-breaking solutions that substantially improve an individual's sleep environment and sleep quality through novel pillow designs and innovative fabrics and materials.

22. Bedgear was the first to develop and introduce a line of performance pillows that utilize and implement these significant innovations. Among other things, Bedgear's inventive performance pillows provide improved head and neck support for different types of sleepers, enhance ventilation and air flow through the pillows, and provide a cooling and wicking effect during use.

23. Bedgear has protected various aspects of its inventive solutions and cutting-edge technologies with a range of intellectual property rights. In particular, as a result of its significant innovations, Bedgear has been granted a number of patents by the U.S. Patent and Trademark Office ("USPTO"), which protect various aspects of its novel performance pillows.

24. Among the patents that Bedgear has been awarded is U.S. Patent No. 8,646,134 ("the '134 Patent"), entitled "Pillow with Gusset of Open Cell Construction." The '134 Patent was filed on June 22, 2012 and issued on February 11, 2014.

25. Bedgear is the owner by assignment of the '134 Patent, with ownership of all substantial rights in the '134 Patent, including the right to exclude others and to sue and recover damages for the past and future infringement thereof. A true and correct copy of the '134 Patent is attached hereto as Exhibit A.

26. The claims of the '134 Patent are directed to, *inter alia*, new and improved pillows that support the head and/or neck of a person. For example, certain embodiments of these novel pillows include a cover having two opposing panels, a gusset that perimetrically bounds and joins the two panels and has an open cell construction, and a compliant fill material that is disposed inside the cover. In certain embodiments the gusset includes 3D spacer material.

27. Bedgear's patents on this technology also include U.S. Patent No. 8,887,332 ("the '332 Patent" and, together with the '134 Patent, "the Asserted Patents"), entitled "Pillow with Gusset of Open Cell Construction." The '332 Patent was filed on December 16, 2013 and issued on November 18, 2014.

28. Bedgear is the owner by assignment of the '332 Patent, with ownership of all substantial rights in the '332 Patent, including the right to exclude others and to sue and recover damages for the past and future infringement thereof. A true and correct copy of the '332 Patent is attached hereto as Exhibit B.

29. The claims of the '332 Patent are directed to, *inter alia*, new and improved pillows that support the head and/or neck of a person. For example, certain embodiments of these novel pillows include two panels that both include an edge defining a perimeter, and a gusset that joins the two panels. In certain embodiments the gusset includes a material having greater porosity than a porous material that is included in the two panels. In certain

embodiments the gusset has an open cell construction formed by interlaced or spaced-apart strands.

30. The Patent Office examined the Asserted Patents over a period of several years. After thorough examination, the Patent Office found that the inventions described and claimed in the Asserted Patents are both new and not obvious in light of prior patents, publications, and other references.

31. Bedgear filed its initial patent application on this technology on June 22, 2011, and the first of the Asserted Patents, the '134 Patent, issued on February 11, 2014. The application that issued as the '332 Patent, was published, and available to the public, on April 10, 2014.

32. As a result of its proprietary and patented pillow technology and products, Bedgear has become known as the market leader in performance pillows and other performance bedding products. Bedgear's innovative performance pillows have received considerable media attention and industry recognition, and have achieved significant commercial success.

#### **KateKlein's Infringing Activities**

33. On information and belief, Defendant KateKlein is a bedding company, which was founded by Fabrice Klein in or around 2015, and which manufactures, sells, offers for sale, and/or distributes bed pillows.

34. On information and belief, in or around 2016, KateKlein introduced and began offering one or more pillow products having a mesh gusset, including a "Loa(6) Pillow," which is advertised as having a design that increases airflow and circulation through the pillow, reduces heat transfer into the interior of the pillow, and provided improved cooling effects for a user.



35. On information and belief, KateKlein has manufactured, offered for sale, and sold and continues to manufacture, offer for sale, and sell its Loa(6) Pillow, including at one or more retail or office locations in New York and via its website and/or the websites of one or more authorized third parties.

36. On information and belief, KateKlein's pillow and/or pillow cover products, including, but not limited to, its Loa(6) Pillow, infringe Bedgear's Asserted Patents. KateKlein's Loa(6) Pillow, and any equivalent products under different names, as well as any other product made, sold, offered for sale, used, purchased, manufactured, distributed in, or imported into the United States by or on behalf of KateKlein that has the same form or structure as the inventions claimed in any of the Asserted Patents, are referred to herein as the "Accused Products."

37. On information and belief, the Accused Products include, among other things, pillows having a cover with two opposing fabric panels that are joined together by a gusset and include compliant fill material(s) inside the cover. On information and belief, these fabric panels have a generally rectangular footprint, are bowed outwards (i.e., away from the center of the pillow), and include a moisture dispersing material.

38. On information and belief, the Accused Products include a gusset that perimetrically bounds and joins the two fabric panels. On information and belief, the gusset includes a material that has greater porosity than the material(s) used in the two panels. On information and belief, the gusset includes materials having an open cell construction, such as a mesh material formed with interlaced or spaced-apart strands, and/or 3D spacer fabrics.

39. On information and belief, the Accused Products include a zipper in the cover that provides access to the inside of the pillow.

40. By way of example, the Accused Products include KateKlein's so-called Loa(6) Pillow, an example of which is shown below:



*See* <https://kateklein.com/products/loa6-pillow>.

41. As stated on KateKlein's website, the Loa(6) Pillow is promoted as having a "multilayer shell with airflow and moisture management capabilities," such that "[a]ir flowing within the layers of the shell reduces the transfer of body heat to the pillow, and side vents enable fresh air to circulate through the core." *See* <https://kateklein.com/pages/pillow>.

42. According to KateKlein's website, the pillow shell includes top and bottom sleep surfaces in which "[t]he middle layer is a 3D mesh fabric made of polyester [that] provides cushioning and enables air to circulate within the surface to keep things cool," and "air vents on the left and right sides of the pillow shell [that] are made of another polyester 3D mesh fabric

[and] facilitate airflow in and out of the pillow away from the user to keep things cool and pure.”

See <https://kateklein.com/pages/information>.

43. KateKlein has not sought permission to use Bedgear’s patented inventions and is not licensed under any of the Asserted Patents. As a result, in each instance, KateKlein has infringed and continues to infringe Bedgear’s patents by making, using, selling, or offering for sale its Accused Products and/or having its Accused Products made, sold, offered for sale, or distributed on its behalf by third parties, such as manufacturers, resellers and distributors.

44. On information and belief, KateKlein has at all relevant times been aware of Bedgear’s performance pillow products and patents and chose to wantonly disregard and knowingly infringe Bedgear’s intellectual property rights.

45. Before launching KateKlein, its founder, Fabrice Klein, was an executive-level representative at Bedgear from approximately September 2012 through approximately July 2014. As a result, Mr. Klein was and is fully aware of Bedgear’s proprietary and patented pillow technology, and has had actual knowledge of Bedgear’s patents and patent applications, including the Asserted Patents, since at least 2014.

46. On information and belief, KateKlein’s ongoing acts of infringement of the Asserted Patents have been committed and are being committed with full knowledge of Bedgear’s rights in those patents, and KateKlein has acted and is continuing to act despite an objectively high likelihood that its actions constitute infringement of those patents and KateKlein knew or should have known of that objectively high risk. Accordingly, KateKlein’s acts constitute willful and deliberate infringement of the Asserted Patents.

47. Bedgear is forced to file this lawsuit to protect its patented technology and innovations and seek redress for KateKlein’s ongoing, willful infringement.

**KateKlein's Infringement Irreparably Harms Bedgear**

48. Bedgear is harmed by KateKlein's use of Bedgear's patented technologies in a way that cannot be remedied by monetary damages alone. On information and belief, KateKlein has received substantial revenue and increased market share by selling and distributing products that practice the technology and/or designs described and claimed in the Asserted Patents and without having to incur the costs of independently developing or licensing this technology.

49. On information and belief, KateKlein's infringement has caused, and will continue to cause, Bedgear to suffer irreparable harm due to, among other things, lost business opportunities and lost market share. Even if KateKlein were to subsequently pay past due royalties, lost profits, or other damages, there is no reason to believe that KateKlein would stop infringing, and it would still enjoy the market share it has developed while infringing upon, the Asserted Patents. Due to the difficulty in predicting whether, if at all, Bedgear can fully recover these losses, Bedgear's harm cannot be compensated by payment of monetary damages alone.

**COUNT I**  
**(Infringement of U.S. Patent No. 8,646,134)**

50. Bedgear incorporates by reference and realleges the averments set forth in the preceding paragraphs.

51. On February 11, 2014, the Patent Office duly and legally issued the '134 Patent. Bedgear is the owner, by assignment, of all right, title, and interest in and to the '134 Patent, including the right to recover damages for past and future infringement.

52. KateKlein has infringed and continues to infringe the '134 Patent in this District and throughout the United States in violation of 35 U.S.C. § 271 by making, using, selling, or offering for sale and/or causing others to make, use, sell, or offer for sale, one or more of the Accused Products that practice one or more claims of the '134 Patent.

53. For example, KateKlein has infringed and continues to infringe the '134 Patent by making, using, selling, and/or offering for sale its Loa(6) Pillow product, which includes each and every feature recited in at least claims 1-5, 17, and 22 of the '134 Patent.

54. As a direct and proximate result of KateKlein's infringement of the '134 Patent, Bedgear has suffered and continues to suffer damage. Bedgear is entitled to recover damages from KateKlein to compensate for such infringement, in an amount to be determined at trial.

55. On information and belief, KateKlein has at all relevant times been aware of Bedgear's performance pillow products and patents and chose to wantonly disregard and knowingly infringe Bedgear's intellectual property rights. Through his prior executive-level role at Bedgear, KateKlein's founder, Mr. Klein was and is fully aware of Bedgear's proprietary and patented pillow technology, and has had actual knowledge of Bedgear's patents and patent applications, including the '134 Patent, since at least 2014. As a result, KateKlein's acts constitute willful and deliberate infringement of the '134 Patent.

56. The acts of infringement by KateKlein identified herein have caused and will continue to cause irreparable injury to Bedgear, for which it has no adequate remedy at law, unless and until KateKlein is enjoined from further infringement by this Court in accordance with 35 U.S.C. § 283. Considering the competitive relationship and balance of the hardships between the parties, a remedy in equity, such as a permanent injunction is warranted and would be in the public interest.

**COUNT II**  
**(Infringement of U.S. Patent No. 8,887,332)**

57. Bedgear incorporates by reference and realleges the averments set forth in the preceding paragraphs.

58. On November 18, 2014, the Patent Office duly and legally issued the '332 Patent. Bedgear is the owner, by assignment, of all right, title, and interest in and to the '332 Patent, including the right to recover damages for past and future infringement.

59. KateKlein has infringed and continues to infringe the '332 Patent in this District and throughout the United States in violation of 35 U.S.C. § 271 by making, using, selling, offering for sale and/or causing others to make, use, sell, or offer for sale, one or more of the Accused Products that practice one or more claims of the '332 Patent.

60. For example, KateKlein has infringed and continues to infringe the '332 Patent by making, using, selling, and/or offering for sale its Loa(6) Pillow product, which includes each and every feature recited in at least claims 1-9, 15, 22, 28, 31, 33, and 34 of the '332 Patent.

61. As a direct and proximate result of KateKlein's infringement of the '332 Patent, Bedgear has suffered and continues to suffer damage. Bedgear is entitled to recover damages from KateKlein to compensate for such infringement, in an amount to be determined at trial.

62. On information and belief, KateKlein has at all relevant times been aware of Bedgear's performance pillow products and patents and chose to wantonly disregard and knowingly infringe Bedgear's intellectual property rights. Through his prior executive-level role at Bedgear, KateKlein's founder, Mr. Klein was and is fully aware of Bedgear's proprietary and patented pillow technology, and has had actual knowledge of Bedgear's patents and patent applications, including the '332 Patent, since at least 2014. As a result, KateKlein's acts constitute willful and deliberate infringement of the '332 Patent.

63. The acts of infringement by KateKlein identified herein have caused and will continue to cause irreparable injury to Bedgear, for which it has no adequate remedy at law, unless and until KateKlein is enjoined from further infringement by this Court in accordance

with 35 U.S.C. § 283. Considering the competitive relationship and balance of the hardships between the parties, a remedy in equity, such as a permanent injunction is warranted and would be in the public interest.

**PRAYER FOR RELIEF**

Wherefore, Bedgear respectfully requests that this Court enter judgment and provide relief as follows:

- A. That KateKlein has infringed, and continues to infringe, the '134 and '332 Patents;
- B. That KateKlein, and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents and all others acting in active concert or privity therewith, either directly or indirectly, be permanently enjoined from any further direct, indirect and/or joint infringement of the '134 and '332 Patents pursuant to 35 U.S.C. § 283;
- C. That KateKlein be ordered to account for and pay to Bedgear the damages resulting from KateKlein's infringement of the Asserted Patents, including lost profits, costs and expenses, together with pre-judgment and post-judgment interest thereon, and all other damages permitted pursuant to 35 U.S.C. § 284, including enhanced damages up to three times the amount of damages found or measured and costs, and in any event an amount no less than a reasonable royalty;
- D. That KateKlein be ordered to account for any infringing sales not presented at trial and an award by the Court of additional damages to Bedgear for any such infringing sales;
- E. That this case be adjudged to be an exceptional case pursuant to 35 U.S.C. § 285 and awarding Bedgear its reasonable attorney's fees and costs incurred in connection with this action; and

F. That Bedgear be awarded any and all further legal and equitable relief that the Court may deem just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Bedgear hereby respectfully requests a trial by jury on all issues in this action so triable by right pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: June 8, 2017

Respectfully submitted,

**BRYAN CAVE LLP**

By:           /s/ Joseph J. Richetti          

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