

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

<p>BEDGEAR, LLC</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>FREDMAN BROS. FURNITURE COMPANY, INC. D/B/A GLIDEAWAY SLEEP PRODUCTS</p> <p style="text-align: center;">Defendant.</p>	§ § § § § § § § § § § § § § §	<p>Case No.: 1:15-cv-6759</p> <p><u>THIRD AMENDED COMPLAINT</u></p> <p>JURY TRIAL DEMANDED</p> <p style="text-align: center;">(REDACTED)</p>
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This is an action for patent and trademark infringement, trade secret misappropriation, and related claims in which plaintiff, Bedgear, LLC (“Bedgear”), by its counsel, Bryan Cave LLP, makes the following allegations in support of its Third Amended Complaint against defendant, Fredman Bros. Furniture Company, Inc. d/b/a Glideaway Sleep Products (“Glideaway”):

PARTIES

1. Bedgear is a Delaware limited liability company with its principal place of business at 110 Bi-County Blvd., Suite 101, Farmingdale, NY.
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. Bedgear has also devoted significant resources and effort to creating and developing proprietary business strategies and marketing and sales methodologies in connection with commercializing its inventive performance bedding products.

As a result of its considerable investments and innovations, Bedgear pioneered and has become the market leader in the performance bedding industry.

3. On information and belief, Glideaway is an Illinois corporation with its principal place of business at 8226 Lackland Road, St. Louis, MO 63114.

4. Glideaway manufactures, imports, offers for sale, sells, and/or distributes bedding products, including pillows, that directly or indirectly infringe Bedgear's patents and trademarks.

5. On information and belief, rather than expending the necessary resources and time to independently create, develop, and market its own performance bedding products, Glideaway purposefully and unlawfully acquired Bedgear's valuable trade secrets and proprietary information and copied Bedgear's innovative products, technologies, and business practices in order to unfairly and undeservedly gain a head-start in the marketplace.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 U.S.C. §§ 1, *et seq.*, and the trademark laws of the United States, Title 15 U.S.C. §1114 and §1125.

Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

In addition, this Court has original jurisdiction pursuant to 15 U.S.C. § 1121 and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

7. Moreover, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because Bedgear (including its constituent members) and Glideaway are citizens of different States and the matter in controversy exceeds the sum or value of \$75,000 (exclusive of interest and costs).

8. On information and belief, Glideaway 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. On information and belief, Glideaway maintains and operates websites on the Internet, including <http://www.glideaway.com>, which are 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 Glideaway promotes and advertises its infringing products and directs consumers to purchase its infringing products from authorized third party distributors and resellers. On information and belief, Glideaway has, through its websites and/or various other authorized third party websites, repeatedly transacted business with customers throughout the United States, including customers within this District, and has advertised, promoted, sold, and shipped infringing products into this District without Bedgear's authorization or permission. Further, on information and belief, Glideaway 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 Glideaway has sold and continues to sell infringing products. Thus, this Court's exercise of jurisdiction over Glideaway 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 Glideaway is subject to personal jurisdiction in this District, does business in the State of New York and this District, and has committed and continues to commit acts of

infringement in this District. Further, Glideaway agreed to withdraw its challenges to personal jurisdiction and venue in this action with prejudice, pursuant to the Stipulation and Order Resolving Motion to Dismiss, Parallel Proceeding, and Related Issues, so-ordered on June 24, 2016. (*See* ECF Doc. No. 30.)

BACKGROUND

I. BEDGEAR'S PERFORMANCE BEDDING INNOVATIONS

A. Bedgear's Innovative Performance Bedding Products

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

11. Bedgear's philosophy is centered on 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\$street,” 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). As a result, these standard bedding products were usually not marketed or branded separately or thought of as high-value or revenue-generating items 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 willingly purchase Bedgear's performance products at significantly higher prices. In fact, unlike traditional bedding accessories, Bedgear's performance products help 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."

B. *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 of these novel pillows include a cover having two opposing panels, a gusset that perimetrically bounds and joins the two panels and is formed of an open cell construction, and a compliant fill material that is disposed within the cover.

27. Bedgear's patents on its technology relating to pillows and performance bedding also include U.S. Patent No. 8,887,332 ("the '332 Patent"), 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 of these novel pillows include two panels that both include an edge defining a perimeter, and a gusset that joins the two panels, which includes a material having greater porosity than a porous material that is included in the two panels.

30. Bedgear's patents on its technology relating to pillows and performance bedding also include U.S. Patent No. 9,015,883 ("the '883 Patent"), entitled "Pillow with Gusset of Open Cell Construction." The '883 Patent was filed on July 10, 2014 and issued on April 28, 2015.

31. Bedgear is the owner by assignment of the '883 Patent, with ownership of all substantial rights in the '883 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 '883 Patent is attached hereto as Exhibit C.

32. The claims of the '883 Patent are directed to, *inter alia*, new and improved pillows that support the head and/or neck of a person. For example, certain of these novel pillows include two panels both of which include an edge defining a perimeter, a gusset that joins the two panels, and an inner cavity that is defined by the inner surfaces of the two panels and the gusset. In certain embodiments, the pillow is configured to have air enter the cavity through pores in the two panels and exit the cavity through pores in the gusset.

33. Bedgear's patents on its technology relating to pillows and performance bedding further include U.S. Patent No. 9,155,408 ("the '408 Patent" and, together with the '134, '332, and '883 Patents, "the Asserted Patents"), entitled "Pillow Protector." The '408 Patent was filed on January 10, 2014 and issued on October 13, 2015.

34. Bedgear is the owner by assignment of the '408 Patent, with ownership of all substantial rights in the '408 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 '408 Patent is attached hereto as Exhibit D.

35. The claims of the '408 Patent are directed to, *inter alia*, new and improved bedding systems and pillow covers for covering and protecting pillows. For example, certain of these novel pillow covers include a first panel, a second panel that is perimetrically joined with the first panel such that their inner surfaces define a cavity, an opening extending through the inner surface and an outer surface of the first panel, a patch covering the opening that is made from a different material than the two panels, and a filter that engages the inner surface of the first panel. In certain embodiments, the opening is positioned between the patch and the filter

and the filter includes pores that alternate with pores included in the patch. In certain embodiments, the second panel does not include any openings that are the same size, shape and arrangement as the opening in the first panel.

36. The USPTO examined the Asserted Patents over a period of years. After thorough examination, the USPTO 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.

37. 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 applications that issued as the '332, '883, and '408 Patents, were published, and available to the public, on April 10th, October 30th, and July 10th, 2014, respectively.

38. Bedgear began selling performance pillow and pillow cover products that utilize its patented technology in 2011.

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

C. *Bedgear's AIR-X Trademark*

40. Bedgear has invested substantial resources building a strong reputation, goodwill and loyal customer following in connection with its valuable intellectual property. Among other things, Bedgear is the owner of more than 40 U.S. trademark registrations and trademark applications.

41. Since at least as early as 2011, Bedgear adopted and has consistently used the AIR-X mark in interstate commerce in connection with its advertising and sale of its bedding products throughout the United States.

42. Bedgear has used the AIR-X mark as a brand in connection with pillows and related products that feature ventilated panels that improve the air flow through the product and transfer heat away from the head, neck and shoulders of users, while also preventing allergens and dander from entering the bedding products.

43. Bedgear has invested substantial resources and efforts to develop its AIR-X brand, as well as the goodwill associated therewith.

44. Since at least as early as 2004, Bedgear has operated its website available at the URL: www.bedgear.com. Bedgear's website is an important resource used by the general public, which receives thousands of "hits" or visits each day.

45. Bedgear's AIR-X mark has been continuously and extensively used by Bedgear in interstate commerce since at least as early as 2011 on Bedgear's website, in nationwide newspapers, trade and consumer magazines, on television and radio, and through direct mail.

46. The AIR-X mark is prominently presented on Bedgear's website, bedding products, product packaging, advertisements, and promotional and informational literature.

47. Bedgear owns a registration for AIR-X that was granted by the USPTO on February 21, 2012, and assigned a registration number of 4102529, for pillows, pillow protectors and bed sheets, on the Principal Register ("Registration").

48. The Registration is currently valid, subsisting, and in full force and effect. A true and accurate copy of the Certificate of Registration is attached hereto as Exhibit E.

49. The AIR-X mark has been used by Bedgear within the United States for approximately the past five years. Substantial time, effort, and money have been expended over the years in ensuring that the purchasing public associates the AIR-X mark exclusively with Bedgear. Indeed, over the past five years, Bedgear has expended approximately \$6 million in advertising and promoting goods and services under the various Bedgear marks.

50. As a result of the time, effort, and money invested in its business, and the quality of its goods and services, Bedgear has achieved a reputation for excellence and enjoys substantial demand for its products and services under the AIR-X mark throughout the United States.

51. The AIR-X mark is inherently distinctive and has been uniquely associated with Bedgear's products and services among consumers.

52. Due to Bedgear's extensive use of AIR-X, the mark has acquired substantial secondary meaning in the minds of the purchasing public and business community, and is now famous and serves uniquely to identify Bedgear's products and services.

53. Through widespread and favorable public acceptance and recognition, the AIR-X mark enjoys tremendous goodwill and has become an asset of significant value as a source indicator of Bedgear's products and services.

54. On information and belief, no third party is currently using any trademark that includes AIR and a symbol or a single alphanumeric character for bedding products.

D. *Bedgear's Valuable Trade Secrets and Other Confidential and Proprietary Information*

55. In addition to its patented technologies and trademarks, Bedgear, has devoted considerable resources and effort over many years to creating, developing, and safeguarding various trade secrets and other confidential and proprietary information, such as innovative technologies, novel marketing techniques and strategies, and specialized sales and distribution methods, as well as other forms of confidential and proprietary business data and information.

56. By way of example, Bedgear's trade secrets and other confidential and proprietary information include cutting-edge fabric technologies and product designs, including new types and/or blends of fabrics and fill materials, and new methods for manufacturing, assembling, and/or arranging fabrics and materials into various types of performance bedding products.

57. Bedgear's trade secrets and other confidential and proprietary information also include product pricing and pricing strategies.

58. Bedgear's trade secrets and other confidential and proprietary information also include confidential marketing documents and materials, as well as product specifications and literature.

59. Bedgear's trade secrets and other confidential and proprietary information also include business plans and strategies, such as information about potential new products, product relationships and product lines, proprietary sales and distribution techniques, and sales training processes.

60. Bedgear's trade secrets and other confidential and proprietary information also include confidential sales and distribution data and information, product prioritization and product selection (*e.g.*, based on which products are and are not successful in the marketplace), product attachment rates, and customer preferences and demands.

61. These and other valuable trade secrets and other confidential and proprietary information have been developed and attained through extensive efforts and substantial expenditures of time and money by Bedgear over many years, including considerable investments into research and development activities for new products and technologies and the creation and improvement of product offerings and business strategies through a continual trial-and-error process with respect to the marketing, sale, and distribution of Bedgear's performance bedding products to both retailers and consumers.

62. These trade secrets and other confidential and proprietary information are vital to Bedgear's enterprise and have been instrumental to Bedgear's success in pioneering and becoming the market leader in the new performance bedding industry.

63. Bedgear has, at all times, maintained reasonable security measures to preserve the secrecy and confidentiality of its trade secrets and other confidential and proprietary information.

64. For example, Bedgear takes active steps to restrict access to its trade secrets and other confidential and proprietary information, such as by making it available on a "need to know" basis, storing sensitive information in protected files on a secure computer server and/or creating a limited number of copies of such information and requiring that they be checked-out and then checked-in by authorized individuals.

65. As another example, Bedgear employs various measures to limit the distribution of any trade secrets and other confidential and proprietary information to retailers and customers, such as by requiring its sales representatives to redact certain materials, *e.g.*, price lists and product literature, to only include information about specific products of interest to such retailers, and providing such information to retailers pursuant to a confidentiality agreement

and/or with the understanding that such information shall be used solely for the purpose of making purchase decisions.

66. Due to these and various other security measures, Bedgear's trade secrets and other confidential and proprietary information are not available for others in the bedding industry – or any other industry – to use through any legitimate means.

67. As a result, Bedgear's trade secrets and other confidential and proprietary information derive considerable independent economic value from not being generally known to, and not being readily ascertainable through proper means by, other persons who could obtain economic value from the disclosure or use of these trade secrets and other confidential and proprietary information.

II. GLIDEAWAY'S INFRINGING AND UNLAWFUL CONDUCT

68. On information and belief, Glideaway is a furniture and bedding company, which manufactures, imports, sells, offers for sale, and/or distributes, a range of bed products, including bed frames, mattresses, protectors, and pillows.

69. On information and belief, Glideaway was originally focused on developing and selling bed frames and other furniture items. On information and belief, although Glideaway expanded its business in the 1990s to include other bedding products, such as mattresses and conventional mattress protectors and pillows, it did not make or offer any performance bedding products until well after Bedgear created, developed, and achieved significant commercial success for its innovative performance bedding products.

70. On information and belief, in or about the 2013-2014 timeframe, Glideaway began exploring the possibility of making and selling performance bedding products and,

subsequently, began offering these products, including a line of performance pillows, in or around 2015.

71. On information and belief, rather than pursuing independent product development in connection with these newly offered performance bedding products, Glideaway deliberately and systematically copied Bedgear's products and technology and misappropriated Bedgear's trade secrets and other confidential and proprietary information with utter disregard for Bedgear's intellectual property rights.

72. On information and belief, Glideaway copied and used the same elements and features as Bedgear's performance pillows, mattress protectors, and other performance bedding products, including Bedgear's patented pillow and pillow cover inventions.

73. On information and belief, Glideaway also unlawfully used Bedgear's AIR-X trademark in connection with its copy-cat performance bedding products and even copied many of the features of the packaging, marketing and advertising materials used by Bedgear with its performance bedding products in an effort to exploit and improperly trade upon the substantial brand recognition and customer goodwill attributed to Bedgear's products.

74. On information and belief, Glideaway engaged in a purposeful campaign designed to unlawfully acquire Bedgear's trade secrets and other confidential and proprietary information, including willfully soliciting and extracting such information from Bedgear's sales representatives, and then misused these trade secrets and other confidential and proprietary information in order to gain an improper and undeserved head-start in the marketplace and unfairly compete with Bedgear.

75. On information and belief, Glideaway's effort to unlawfully obtain, copy, infringe, and misuse Bedgear's intellectual property was planned, deliberate, and strategic.

76. For example, [REDACTED]

[REDACTED]

77. Similarly, [REDACTED]

[REDACTED]

78. In fact, Glideaway's willful efforts to wrongfully exploit Bedgear's business have continued even during the litigation of this very action.

79. For example, [REDACTED]

[REDACTED]

80. Glideaway's top employees have also expressed a shocking lack of respect for Bedgear's intellectual property or any remorse for – or even apprehension about – their misconduct.

81. For example, [REDACTED]

[REDACTED]

A. *Glideaway's Infringement of Bedgear's Patents*

82. On information and belief, in or about August 2015, Glideaway introduced and began offering "Sleepharmony Revolution Tech Pillows," which have been described as a collection of pillows that "address[es] a consumer's need for support, cooling, and comfort benefits" and "feature Feran Ice and breathable Air+ mesh for cooling and breathability." See <http://glideaway.com/in-the-news/glideaway-introduces-newest-additions/> (accessed on or about October 11, 2016).

83. Glideaway continues to sell, offer for sale and distribute Revolution Tech Pillow branded products. Glideaway's Revolution Tech Pillow products, 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 Glideaway 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."

84. On information and belief, in connection with introducing its new line of Revolution Tech Pillows, Glideaway deliberately copied Bedgear's products and technology and is infringing the inventions claimed in Bedgear's Asserted Patents.

85. On information and belief, Glideaway's infringing Revolution Tech Pillow products include, among other things, pillows having a cover with two or more panels that are joined together by a gusset and an inner cavity that includes a fill material.

86. On information and belief, certain of Glideaway's infringing products include a gusset that perimetrically bounds two panels, is made of a material with greater porosity than the panels, and/or has an open cell construction.

87. On information and belief, certain of Glideaway's infringing products are configured to allow air to flow into a cavity through pores in the panels and out of the cavity through pores in the gusset.

88. On information and belief, certain of Glideaway's infringing products include two panels, a first panel having an opening that is positioned between a patch and a filter, wherein the patch is made from a different material than the panel and includes pores that alternate with pores in the filter, and the second panel does not include any openings that have the same size, shape, and arrangement as the first panel.

89. By way of example, the Accused Products include Glideaway's so-called Inspire pillow product, shown below:



See <http://www.glideaway.com/> (accessed on or about October 11, 2016).

90. As stated on Glideaway's website in October 2016, the Inspire pillow has been promoted as having "Premium Ventilated Latex," and "Feran Ice and Air+ Mesh Panels [with] breathable and wicking fabrics [that] keep you cool and fresh." See <http://glideaway.com/product/inspire/> (accessed on or about October 11, 2016). According to Glideaway's website in October 2016, the "Air+ Mesh material, gel-beads and ventilation promote breathability and aid Cooling components." See

<http://glideaway.com/products/pillows/revolution-tech-pillows/> (accessed on or about October 11, 2016).

91. On information and belief, Glideaway’s Inspire pillow product includes, among other things, a cover that has two opposing panels both with edges that define a perimeter, a gusset that joins and/or perimetrically bounds the two panels and is formed of an open cell construction and a base material, and an inner cavity defined by inner surfaces of the two panels and the gusset, which includes a fill material. On information and belief, the Inspire pillow allows air to enter the inner cavity through pores in the two panels and exit the inner cavity through pores in the gusset.

92. As another example, the Accused Products also include Glideaway’s so-called Intrigue pillow product, shown below:



See <http://www.glideaway.com/> (accessed on or about October 11, 2016).

93. Similar to the manner in which Glideaway has promoted its Inspire product, Glideaway’s website has stated that the Intrigue pillow includes “Premium Ventilated Latex,” and “Feran Ice and Air+ Mesh Panels [with] breathable and wicking fabrics [that] keep you cool

and fresh.” *See* <http://glideaway.com/product/intrigue/> (accessed on or about October 11, 2016).

According to Glideaway’s website in October 2016, the “Air+ Mesh material, gel-beads and ventilation promote breathability and aid Cooling components.” *See*

<http://glideaway.com/products/pillows/revolution-tech-pillows/> (accessed on or about October 11, 2016).

94. On information and belief, Glideaway’s Intrigue pillow product includes, among other things, a cover that has two opposing panels both with edges that define a perimeter, a gusset that joins and/or perimetrically bounds the two panels and is formed of an open cell construction and a base material, and an inner cavity defined by inner surfaces of the two panels and the gusset, which includes a fill material. On information and belief, the Intrigue pillow allows air to enter the inner cavity through pores in the two panels and exit the inner cavity through pores in the gusset.

95. As another example, the Accused Products also include Glideaway’s so-called Legend pillow product, shown below:



See <http://www.glideaway.com/> (accessed on or about October 11, 2016).

96. According to Glideaway's website in October 2016, the Legend pillow includes "Charcoal Infused Memory Foam," and "Ventilated, Feran Ice, and Air+ Mesh Panels [with] breathability and wicking fabrics [that] keep you cool and fresh." *See* <http://glideaway.com/product/legend/> (accessed on or about October 11, 2016).

97. On information and belief, Glideaway's Legend pillow product includes, among other things, a cover that has two opposing panels both with edges that define a perimeter, a gusset that joins the two panels and is formed of an open cell construction and a base material, and an inner cavity defined by inner surfaces of the two panels and the gusset, which includes a fill material. On information and belief, the Legend pillow allows air to enter the inner cavity through pores in the two panels and exit the inner cavity through pores in the gusset. On information and belief, the Legend pillow further includes an opening extending through inner and outer surfaces of one of the panels, a patch covering the opening that is made from a different material than the panels, a filter that engages the inner surface of the panel such that the opening is positioned between the patch and the filter and pores in the patch alternate with pores in the filter, and a second panel that does not include any openings with the same size shape and arrangement as the opening in the first panel.

98. As another example, the Accused Products also include Glideaway's so-called Vitalize pillow product, shown below:



See <http://www.glideaway.com/> (accessed on or about October 11, 2016).

99. According to Glideaway’s website in October 2016, the Vitalize pillow includes “Charcoal-Gel Infused Memory Foam,” “for a cooler night’s sleep,” and “Feran Ice and Air+ Mesh Panels [with] breathable and wicking fabrics [that] keep you cool and fresh.” *See* <http://glideaway.com/product/vitalize/> (accessed on or about October 11, 2016).

100. On information and belief, Glideaway’s Vitalize pillow product includes, among other things, a cover that has two opposing panels both with edges that define a perimeter, a gusset that joins and/or perimetrically bounds the two panels and is formed of an open cell construction and a base material, and an inner cavity defined by inner surfaces of the two panels and the gusset, which includes a fill material. On information and belief, the Vitalize pillow allows air to enter the inner cavity through pores in the two panels and exit the inner cavity through pores in the gusset.

101. As another example, the Accused Products also include Glideaway’s so-called Velocity pillow product, shown below:



See <http://www.glideaway.com/> (accessed on or about October 11, 2016).

102. According to Glideaway’s website in October 2016, the Velocity pillow includes “Charcoal Infused Memory Foam with TrueGel,” for “sleeping cooler,” and “Ventilated, Feran Ice, and Air+ Mesh Panels [with] breathab[le] and wicking fabrics [that] keep you cool and fresh.” *See* <http://glideaway.com/product/velocity/> (accessed on or about October 11, 2016).

103. On information and belief, Glideaway’s Velocity pillow product includes, among other things, a cover that has two opposing panels both with edges that define a perimeter, a gusset that joins and/or perimetrically bounds the two panels and is formed of an open cell construction and a base material, and an inner cavity defined by inner surfaces of the two panels and the gusset, which includes a fill material. On information and belief, the Velocity pillow allows air to enter the inner cavity through pores in the two panels and exit the inner cavity through pores in the gusset.

104. As another example, the Accused Products also include Glideaway’s so-called Triumph pillow product, shown below:



See <http://www.glideaway.com/> (accessed on or about October 11, 2016).

105. According to Glideaway’s website in October 2016, the Triumph pillow includes “Charcoal Infused Memory Foam,” “and “Ventilated, Feran Ice, and Air+ Mesh Panels [with] breathab[le] and wicking fabrics [that] keep you cool and fresh.” *See* <http://glideaway.com/product/triumph/> (accessed on or about October 11, 2016).

106. On information and belief, Glideaway’s Triumph pillow product includes, among other things, a cover that has two opposing panels both with edges that define a perimeter, a gusset that joins and/or perimetrically bounds the two panels and is formed of an open cell construction and a base material, and an inner cavity defined by inner surfaces of the two panels and the gusset, which includes a fill material. On information and belief, the Triumph pillow allows air to enter the inner cavity through pores in the two panels and exit the inner cavity through pores in the gusset.

107. Glideaway 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, Glideaway has infringed and continues to infringe Bedgear’s patents by making, using, selling, offering for sale or importing its Accused Products and/or having its Accused Products made, sold, offered for

sale, distributed, or imported on its behalf by third parties, such as manufacturers, resellers and distributors.

108. On information and belief, Glideaway has at all relevant times been aware of Bedgear's performance pillow products and patents and chose to disregard and knowingly infringe Bedgear's intellectual property rights. Glideaway has had actual knowledge of each of the Asserted Patents since at least November 25, 2015, when Bedgear sent a letter to Glideaway's President, Carmi Fredman, which identified each of the Asserted Patents and described Glideaway's infringing conduct. Based on the actual notice set forth in this November 25, 2015 letter, at least, Glideaway'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 Glideaway has acted and is continuing to act despite an objectively high likelihood that its actions constitute infringement of those patents and Glideaway knew or should have known of that objectively high risk. At least since its receipt of the November 25, 2015 letter, Glideaway's acts constitute willful and deliberate infringement of the Asserted Patents.

109. In addition, based on Glideaway's responses to interrogatories, Glideaway admits to being aware of one or more of the Asserted Patents as early as November 2014. Glideaway's ongoing acts of infringement of at least these Asserted Patent(s), have been committed and are being committed with full knowledge of Bedgear's rights in those patents, and Glideaway has acted and is continuing to act despite an objectively high likelihood that its actions constitute infringement of those patents and Glideaway knew or should have known of that objectively high risk. Accordingly, at least since November 2014, Glideaway's acts constitute willful and deliberate infringement of at least the Asserted Patents it admits to having learned of by that date.

110. As a result, Bedgear was forced to file this lawsuit to protect its patented technology and innovations and seek redress for Glideaway's ongoing, willful infringement.

111. Bedgear is harmed by Glideaway's use of Bedgear's patented technologies in a way that cannot be remedied by monetary damages alone. Glideaway has received substantial revenue and increased market share by selling and distributing (and having others sell and distribute) products that practice the technology described in the '134, '332, '883, and '408 Patents without having to incur the costs of developing or licensing this technology.

112. On information and belief, Glideaway's infringement has caused Bedgear to suffer irreparable harm due to, among other things, lost business opportunities, lost market share, and price erosion. Even if Glideaway were to subsequently pay past due royalties, lost profits, or other damages, there is no reason to believe that Glideaway would stop infringing, and it would still enjoy the market share it has developed while infringing upon, the '134, '332, '883, and '408 Patents. Due to the difficulty in predicting whether, if at all, Bedgear can recover this market share, Bedgear's harm cannot be compensated by payment of monetary damages alone.

B. *Glideaway's Infringement of Bedgear's AIR-X Trademark*

113. On information and belief, Glideaway offers and sells various bedding products through a number of brick-and-mortar and online third party retailers, including Raymour & Flanigan and Amazon.

114. On information and belief, Glideaway is the registrant of the website located at the URL www.glideaway.com, which features information about various Glideaway products and redirects consumers to order and purchase such Glideaway products via Amazon.

115. On information and belief, Glideaway adopted and has been using in commerce the mark AIR+ in connection with goods that are identical or substantially similar to products sold by Bedgear under its AIR-X mark.

116. On information and belief, Glideaway's first use of the AIR+ mark was in or around late 2013, which is well after the date of first use of the AIR-X mark by Bedgear.

117. On information and belief, Glideaway has prominently and repeatedly used and continues to use the AIR+ mark on its website, products, product packaging, and advertisements that are identical to and/or confusingly similar to Bedgear's distinctive and famous AIR-X mark.

118. For example, Glideaway has used and continues to use the confusingly similar AIR+ mark in connection with the advertising, offering for sale, and sale of Glideaway products, including (without limitation) various pillows and pillow cases. Glideaway has used and continues to use such marks on various pages of its website, to advertise, promote and/or sell its products, as well as, on information and belief, on the products and/or product packaging and in advertising and/or informational materials related to such products. These website pages include (among others):

- <http://glideaway.com/products/pillows/revolution-tech-pillows/>;
- <http://glideaway.com/product/vitalize/>;
- <http://glideaway.com/product/velocity/>;
- <http://glideaway.com/product/inspire/>;
- <http://glideaway.com/product/intrigue/>;
- <http://glideaway.com/product/transcend/>;
- <http://glideaway.com/product/legend/>;
- <http://glideaway.com/product/triumph/>;and

- <http://glideaway.com/in-the-news/glideaway-introduces-newest-additions/>.

(accessed in or about October 11, 2016).

119. On information and belief, Glideaway also has used and uses the AIR+ mark in the packaging and/or inserts, as well as advertisements, for the Accused Products, including (without limitation) its Revolution Tech Pillow branded products, such as Vitalize, Velocity, Inspire, Intrigue, Transcend, Legend, and Triumph.

120. On information and belief, well after Bedgear's first use of the AIR-X mark, Glideaway adopted and used the confusingly similar AIR+ mark repeatedly and without permission or authorization from Bedgear, and with actual or constructive knowledge of Bedgear's rights in the AIR-X mark.

121. On information and belief, Glideaway has prominently and repeatedly used and continues to use the AIR+ mark in connection with the manufacture, distribution, sale and promotion of bedding products.

122. Glideaway's use of AIR+, which is essentially identical to Bedgear's AIR-X mark – with the only difference being the rotation of the “X” in AIR-X to a “+” in AIR+ – is likely to cause confusion as to the source of the bedding products being advertised, sold and distributed by Glideaway.

123. Glideaway's manufacture, distribution, sale and promotion using the AIR+ mark creates the false and deceptive commercial impression that Bedgear sponsors, is affiliated with or in some manner endorses Glideaway's products and services and/or Glideaway's website.

124. The use by Glideaway of AIR+ is likely to cause confusion, initial interest confusion, mistake or deception of purchasers as to the source, sponsorship, and affiliation of Glideaway's products and services.

125. Consumers are likely to believe that Bedgear is sponsoring, approving of, or affiliated with Glideaway, thereby resulting in Bedgear losing potential sales to Glideaway.

126. Bedgear has no control over the quality of Glideaway's goods or services and, therefore, such confusion and deception threatens to irreparably injure Bedgear's goodwill, business reputation, and intellectual property.

127. Glideaway's use, distribution, and sale of products and services under the AIR+ mark will dilute and tarnish the distinctive quality of Bedgear's brand, thereby damaging the AIR-X mark and the significant goodwill associated therewith.

128. Bedgear seeks the intervention of this Court to prevent Glideaway from further damaging Bedgear's business by creating and continuing to create confusion, public deception, and dilution of the AIR-X mark.

C. *Glideaway's Misappropriation of Bedgear's Trade Secrets and Other Confidential and Proprietary Information*

129. As discussed above, on information and belief, Glideaway did not make or offer any performance pillows or other performance bedding products until well after Bedgear pioneered the performance bedding market by creating and selling its innovative and patented performance bedding products.

130. On information and belief, Glideaway not only copied and infringed Bedgear's patents and trademarks, but also misappropriated Bedgear's valuable trade secrets and other confidential and proprietary information.

131. Glideaway unlawfully acquired and/or learned of Bedgear's trade secrets and other confidential and proprietary information through various improper means, such as by soliciting and receiving the trade secrets and other confidential and proprietary information from

a number of Bedgear's sales representatives, including [REDACTED]
[REDACTED].

132. [REDACTED] was a sales representative for Bedgear from about June 2009 through about July 2016. [REDACTED] was also a sales representative for Bedgear from about November 2009 through about April 2015.

133. Both [REDACTED] and [REDACTED] entered into written agreements to represent Bedgear in connection with the marketing, sale, and distribution of Bedgear's products within certain geographic areas.

134. Specifically, [REDACTED] was required to, and did, sign a sales representative agreement [REDACTED] and did, sign an additional confidentiality agreement [REDACTED]
[REDACTED].

135. [REDACTED] was required to, and did, sign a sales representative agreement [REDACTED]
[REDACTED] and did, sign an additional confidentiality agreement [REDACTED].

136. Under the agreements [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

■

[REDACTED]

137. Under the additional confidentiality agreements [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■

[REDACTED]

[REDACTED]

138. Bedgear performed all of its obligations under its agreements with [REDACTED] and [REDACTED], including (without limitation) by (i) paying each of them their respective commissions in accordance with their respective agreements, and (ii) making available trade secrets and other confidential and proprietary information pursuant to these agreements.

139. Accordingly, both [REDACTED] and [REDACTED] were, and still are, under an obligation to protect and not disclose Bedgear's trade secrets and other confidential and proprietary information.

140. Further, both [REDACTED] and [REDACTED] were, and still are, aware of their obligation of confidentiality to Bedgear.

141. In addition, as a result of their longstanding relationship with Bedgear, [REDACTED] and [REDACTED] owed fiduciary duties of loyalty, due care, and good faith to Bedgear.

142. Accordingly, by virtue of such fiduciary duties (as well as their contractual duties), [REDACTED] and [REDACTED] were, and still are, under an obligation to protect and not disclose Bedgear's trade secrets and other confidential and proprietary information.

143. The foregoing duties [REDACTED] and [REDACTED] owed, and owe, to Bedgear were never waived or modified, by contract or otherwise.

144. Over the course of Bedgear's relationship with [REDACTED] and [REDACTED], Bedgear disclosed various trade secrets and other confidential and proprietary information to [REDACTED] and [REDACTED], including (without limitation) the trade secrets and other confidential and proprietary information discussed above.

145. Bedgear disclosed this information to [REDACTED] and [REDACTED] for the sole purpose of furthering Bedgear's business. Bedgear took reasonable measures to notify [REDACTED] and [REDACTED] that the information it disclosed to them constituted trade secrets and other confidential and proprietary information that were subject to protection, including (without limitation) the measures set forth above.

146. Bedgear reasonably believed and expected that [REDACTED] and [REDACTED] would maintain the secrecy and confidentiality of this information and would only use it in connection with carrying out their duties as Bedgear's sales representatives, which [REDACTED] and [REDACTED] were under a duty to do.

147. On information and belief, both [REDACTED] and [REDACTED] knew that the information and materials being disclosed and/or provided by Bedgear were confidential and proprietary.

148. On information and belief, both [REDACTED] and [REDACTED] were later hired and/or engaged by Glideaway with the full knowledge that they were both sales representatives at Bedgear.

149. On information and belief, Glideaway hired and/or engaged by [REDACTED] and [REDACTED] in order to acquire and exploit information they had learned while working for Bedgear.

150. On information and belief, Glideaway knew that the information it solicited and received from [REDACTED] and [REDACTED] consisted of Bedgear's trade secrets and other confidential

and proprietary information. Indeed, some of the documents Glideaway improperly acquired even were marked as “CONFIDENTIAL.”

151. On information and belief, Glideaway has obtained other trade secrets and other confidential and proprietary information of Bedgear through other improper means.

152. On information and belief, Glideaway misappropriated and misused Bedgear’s trade secrets and other confidential and proprietary information to improperly gain a head-start in the performance bedding market and exploit the substantial efforts and resources invested by Bedgear.

153. On information and belief, Glideaway has improperly acquired and has continued to misappropriate and misuse Bedgear’s trade secrets and other confidential and proprietary information after May 11, 2016.

D. *Specific Examples of Glideaway’s Misappropriation and Improper Use of Bedgear’s Trade Secrets and Proprietary Information*

154. Below are certain examples of Glideaway’s improper acquisition and use of Bedgear’s trade secrets and other confidential and proprietary information (and, on information and belief, there are numerous others).

155. On information and belief, the trade secrets and other confidential and proprietary information unlawfully acquired and used by Glideaway include Bedgear’s innovative product designs and fabric technologies, such as proprietary fill materials and cooling fabrics.

156. For example, [REDACTED]
[REDACTED]
[REDACTED]

157. As another example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

160. On information and belief, the trade secrets and other confidential and proprietary information unlawfully acquired and used by Glideaway also include Bedgear's product pricing and pricing strategies.

161. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

163. Similarly, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

164. As another example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

165. As yet another example, [REDACTED]

[REDACTED]

166. On information and belief, the trade secrets and other confidential and proprietary information unlawfully acquired and used by Glideaway include Bedgear's confidential marketing materials and product specifications and literature.

167. For example, [REDACTED]

[REDACTED]

168. On information and belief, the trade secrets and other confidential and proprietary information unlawfully acquired and used by Glideaway also include Bedgear's business plans and strategies, such as potential new products, product relationships and product lines, sales and distribution techniques, and sales training processes.

169. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

170. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

172. Additionally, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

173. As another example [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

174. On information and belief, the trade secrets and other confidential and proprietary information unlawfully acquired and used by Glideaway include Bedgear's sales and distribution data and information, such as product prioritization and product selection (*e.g.*, based on which products were and were not successful and profitable in the marketplace) and customer preferences and demands.

175. For example, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

176. As another example, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

177. [REDACTED]

[REDACTED] Glideaway was well aware that the Bedgear information it was obtaining from [REDACTED], [REDACTED], and (on information and belief) others was confidential and proprietary, and was well aware of its value and importance to Bedgear.

178. [REDACTED]

181. Bedgear has been, and continues to be, harmed by Glideaway's misappropriation and misuse of Bedgear's trade secrets and other confidential and proprietary information in a way that cannot be remedied by monetary damages alone. Glideaway has received substantial revenue and increased market share by unlawfully copying Bedgear's trade secrets and other confidential and proprietary to develop, market, sell and distribute products without having to

incur the costs of independently developing business plans and marketing strategies for launching and commercializing these products.

182. On information and belief, Glideaway's misconduct has resulted in (among other things) Bedgear losing sales and/or being forced to lower prices.

183. On information and belief, Glideaway is aware of – and even proud of – the harm it is causing to Bedgear through its misconduct. [REDACTED]

[REDACTED]

[REDACTED]

184. On information and belief, Glideaway's misappropriation and misuse of Bedgear's trade secrets and other confidential and proprietary information has caused, and will continue to cause, Bedgear to suffer irreparable harm due to (among other things) interference with Bedgear's customer relationships and contracts and lost business opportunities. Due to (among other things) the difficulty in predicting whether, if at all, Bedgear can recover this market share, Bedgear's harm cannot be compensated by payment of monetary damages alone.

COUNT I

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

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

186. On February 11, 2014, the USPTO 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.

187. Glideaway 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, offering for sale, importing and/or causing others to make, use, sell, offer for sale and/or import, one or more of the Accused Products that practice one or more claims of the '134 Patent.

188. For example, Glideaway has infringed and continues to infringe the '134 Patent by making, using, selling, offering for sale, and/or importing its Sleepharmony Revolution Tech Pillow products, including, but not limited to, its Inspire, Intrigue, Vitalize, Velocity, and Triumph pillow products, that include each and every feature recited in at least claims 1-5, 11, 12, and 16 of the '134 Patent.

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

190. Glideaway has had actual knowledge of each of the Asserted Patents since at least November 25, 2015, when Bedgear sent a letter to Glideaway's President, Carmi Fredman, which identified each of the Asserted Patents and described Glideaway's infringing conduct. Based on the actual notice set forth in this November 25, 2015 letter, at least, Glideaway'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 Glideaway has acted and is continuing to act despite an objectively high likelihood that its actions constitute infringement of those patents and Glideaway knew or should have known of that objectively high risk. At least since its receipt of the November 25, 2015 letter, Glideaway's acts constitute willful and deliberate infringement of the Asserted Patents.

191. In addition, based on Glideaway's responses to interrogatories, Glideaway was aware of at least one of the Asserted Patents as early as November 2014. Glideaway's ongoing acts of infringement of at least the Asserted Patent(s) it admits to having learned of by at least November 2014, have been committed and are being committed with full knowledge of Bedgear's rights in those patents, and Glideaway has acted and is continuing to act despite an objectively high likelihood that its actions constitute infringement of those patents and Glideaway knew or should have known of that objectively high risk. Accordingly, at least since November 2014, Glideaway's acts constitute willful and deliberate infringement of at least the Asserted Patents it admits to having learned of by that date.

192. To the extent that facts uncovered during discovery show that Glideaway's past infringement of the '134 Patent has been willful, Bedgear reserves the right to seek enhanced damages under 35 U.S.C. § 284, as well as reasonable attorneys' fees and costs.

193. The acts of infringement by Glideaway 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 Glideaway 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)

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

195. On November 18, 2014, the USPTO 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.

196. Glideaway 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, importing and/or causing others to make, use, sell, offer for sale and/or import, one or more of the Accused Products that practice one or more claims of the '332 Patent.

197. For example, Glideaway has infringed and continues to infringe the '332 Patent by making, using, selling, offering for sale, and/or importing its Sleepharmony Revolution Tech Pillow products, including, but not limited to, its Inspire, Legend, Intrigue, Vitalize, Velocity, and Triumph pillow products, that include each and every feature recited in at least claims 1-6, 8-10, 13, 15, 16, 20, 22, 23, 28, 33, and 34 of the '332 Patent.

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

199. As set forth above, since at least November 2015 and at least as early as November 2014 with respect to one of the Asserted Patents, Glideaway's ongoing acts of infringement of the '332 Patent have been committed and are being committed with full knowledge of Bedgear's rights in the '332 Patent, and Glideaway has acted and is continuing to act despite an objectively high likelihood that its actions constitute infringement of the '332 Patent and Glideaway knew or should have known of that objectively high risk. Therefore, at least since November 2015 (and since November 2014 with respect to at least one of the Asserted Patents), Glideaway's acts constitute willful and deliberate infringement.

200. To the extent that facts uncovered during discovery show that Glideaway's past infringement of the '332 Patent has been willful, Bedgear reserves the right to seek enhanced damages under 35 U.S.C. § 284, as well as reasonable attorneys' fees and costs.

201. The acts of infringement by Glideaway 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 Glideaway 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 III

(Infringement of U.S. Patent No. 9,015,883)

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

203. On April 28, 2015, the USPTO duly and legally issued the '883 Patent. Bedgear is the owner, by assignment, of all right, title, and interest in and to the '883 Patent, including the right to recover damages for past and future infringement.

204. Glideaway has infringed and continues to infringe the '883 Patent in this District and throughout the United States in violation of 35 U.S.C. § 271 by making, using, selling, offering for sale, importing and/or causing others to make, use, sell, offer for sale and/or import, one or more of the Accused Products that practice one or more claims of the '883 Patent.

205. For example, Glideaway has infringed and continues to infringe the '883 Patent by making, using, selling, offering for sale, and/or importing its Sleepharmony Revolution Tech

Pillow products, including, but not limited to, its Inspire, Legend, Intrigue, Vitalize, Velocity, and Triumph pillow products, that include each and every feature recited in at least claims 1-10, 12, 14, and 17-19 of the '883 Patent.

206. As a direct and proximate result of Glideaway's infringement of the '883 Patent, Bedgear has suffered and continues to suffer damage. Bedgear is entitled to recover damages from Glideaway to compensate for such infringement, in an amount to be determined at trial.

207. As set forth above, since at least November 2015 and at least as early as November 2014 with respect to one of the Asserted Patents, Glideaway's ongoing acts of infringement of the '332 Patent have been committed and are being committed with full knowledge of Bedgear's rights in the '332 Patent, and Glideaway has acted and is continuing to act despite an objectively high likelihood that its actions constitute infringement of the '332 Patent and Glideaway knew or should have known of that objectively high risk. Therefore, at least since November 2015 (and since November 2014 with respect to at least one of the Asserted Patents), Glideaway's acts constitute willful and deliberate infringement.

208. To the extent that facts uncovered during discovery show that Glideaway's past infringement of the '883 Patent has been willful, Bedgear reserves the right to seek enhanced damages under 35 U.S.C. § 284, as well as reasonable attorneys' fees and costs.

209. The acts of infringement by Glideaway 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 Glideaway 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 IV

(Infringement of U.S. Patent No. 9,155,408)

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

211. On October 13, 2015, the USPTO duly and legally issued the '408 Patent. Bedgear is the owner, by assignment, of all right, title, and interest in and to the '408 Patent, including the right to recover damages for past and future infringement.

212. Glideaway has infringed and continues to infringe the '408 Patent in this District and throughout the United States in violation of 35 U.S.C. § 271 by making, using, selling, offering for sale, importing and/or causing others to make, use, sell, offer for sale and/or import, one or more of the Accused Products that practice one or more claims of the '408 Patent.

213. For example, Glideaway has infringed and continues to infringe the '408 Patent by making, using, selling, offering for sale, and/or importing its Sleepharmony Revolution Tech Pillow products, including, but not limited to, its Legend pillow product, that include each and every feature recited in at least claim 12 of the '408 Patent.

214. As a direct and proximate result of Glideaway's infringement of the '408 Patent, Bedgear has suffered and continues to suffer damage. Bedgear is entitled to recover damages from Glideaway to compensate for such infringement, in an amount to be determined at trial.

215. As set forth above, since at least November 2015 and at least as early as November 2014 with respect to one of the Asserted Patents, Glideaway's ongoing acts of infringement of the '332 Patent have been committed and are being committed with full knowledge of Bedgear's rights in the '332 Patent, and Glideaway has acted and is continuing to act despite an objectively high likelihood that its actions constitute infringement of the '332

Patent and Glideaway knew or should have known of that objectively high risk. Therefore, at least since November 2015 (and since November 2014 with respect to at least one of the Asserted Patents), Glideaway's acts constitute willful and deliberate infringement.

216. To the extent that facts uncovered during discovery show that Glideaway's past infringement of the '408 Patent has been willful, Bedgear reserves the right to seek enhanced damages under 35 U.S.C. § 284, as well as reasonable attorneys' fees and costs.

217. The acts of infringement by Glideaway 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 Glideaway 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 V

(Federal Trademark Infringement – 15 U.S.C. §1114)

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

219. Bedgear's AIR-X trademark is federally registered with the USPTO. *See* Exhibit E (Reg. No. 4102529).

220. The AIR-X trademark is used in commerce and is inherently distinctive, and has also acquired substantial secondary meaning in the marketplace.

221. Glideaway's use of AIR+ for mesh panels used for making bedding products, which are being sold in commerce, is nearly identical to Bedgear's AIR-X mark for ventilated

panels used for making bedding products. Glideaway's manufacture, distribution, sale and promotion of AIR+ is likely to deceive, mislead, and confuse the relevant public. Consumers seeing AIR+ in the marketplace will likely believe that it comes from, is sponsored or licensed by, or is associated or affiliated with, Bedgear's AIR-X line of products.

222. On information and belief, Glideaway's infringement has been done willfully and knowingly, and Glideaway has profited and been unjustly enriched by this unlawful conduct or stands to profit from this unlawful conduct.

223. As a proximate result of the acts of Glideaway as alleged herein, Bedgear has suffered and will continue to suffer great damage to its business, goodwill, reputation, and profits, while Glideaway profits at Bedgear's expense, in an amount that cannot be ascertained at this time, leaving Bedgear with no adequate remedy at law.

224. Glideaway's deceptive marketing and sales practices in connection with its AIR+ bedding products constitute infringement of the registered AIR-X trademark, in violation of 15 U.S.C. § 1114.

225. By reason of the foregoing, Bedgear is entitled to injunctive relief against Glideaway, restraining Glideaway from any further acts of trademark infringement and, after trial, recovery of any provable damages.

COUNT VI

(Federal Unfair Competition – 15 U.S.C. §1125(a))

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

227. Glideaway's unauthorized use of the AIR+ mark in connection with bedding products and services and its distribution and sale of such products and services constitute a false designation of origin, or false or misleading representation of fact which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Glideaway with Bedgear's AIR-X mark, or as to the origin, sponsorship or approval of Glideaway's commercial activities by Bedgear, and as a consequence, are likely to divert and have diverted customers away from Bedgear.

228. Bedgear has no control over the nature and quality of Glideaway's goods and services. Any failure, neglect or default by Glideaway in providing such goods or services will reflect adversely on Bedgear as the believed source of origin thereof, hampering substantial efforts by Bedgear to continue to protect its outstanding reputation for high quality goods and services, resulting in loss of sales thereof and the considerable expenditure to promote its products and services under the AIR-X mark, all to the irreparable harm of Bedgear.

229. On information and belief, Glideaway's acts of false designation of origin have been done willfully and knowingly, and Glideaway has profited and been unjustly enriched by this unlawful conduct or stands to profit from this unlawful conduct.

230. Glideaway's deceptive marketing and sales practices in connection with its AIR+ bedding products constitute false designation of origin in violation of 15 U.S.C. § 1125(a).

231. By reason of the foregoing, Bedgear is entitled to injunctive relief against Glideaway, restraining Glideaway from any further acts of false designation of origin and, after trial, recovery of any provable damages.

COUNT VII

(Federal Trademark Dilution – 15 U.S.C. §1125(c))

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

233. The AIR-X mark is distinctive and famous, and became famous prior to Glideaway's first unauthorized use of AIR+ in connection with Glideaway's goods and services.

234. Glideaway's unauthorized use of, and distribution, and sale of products and services bearing the AIR+ mark have caused and are continuing to cause actual dilution of the distinctive quality of Bedgear's AIR-X mark.

235. On information and belief, Glideaway willfully intended to trade on Bedgear's reputation and/or to cause dilution of Bedgear's AIR-X mark.

236. Glideaway's deceptive marketing and sales practices in connection with its AIR+ bedding products blur and tarnish the distinctiveness of the famous AIR-X trademark.

237. Glideaway's dilution has caused and will continue to cause Bedgear irreparable harm unless enjoined by this Court.

COUNT VIII

(Common Law Trademark Infringement Under New York Law)

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

239. Glideaway's unauthorized use, advertising, marketing, and sale of products and services under the AIR+ mark and variants thereof are likely to cause confusion with Bedgear's AIR-X mark, and to deceive as to the source or origin of Glideaway's goods or services.

240. On information and belief, Glideaway's infringement has been with knowledge of Bedgear's rights and in bad faith.

241. The acts of Glideaway as described above constitute trademark infringement under New York common law, as preserved by N.Y. Gen. Bus. Law § 360-o.

242. Glideaway's acts described above have irreparably harmed Bedgear, and will continue to cause irreparable harm to Bedgear, including to its valuable reputation and goodwill, such that Bedgear has no adequate remedy at law.

COUNT IX

(Unfair Competition – Related to Palming Off – Under New York Law)

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

244. Glideaway's unauthorized use, advertising, marketing, and sale of products and services under the AIR+ mark and variants thereof, as described above, are likely to cause confusion and to deceive the public into believing falsely that Glideaway's goods or services are associated with Bedgear's AIR-X mark or originate from or are sold sponsored or approved by Bedgear. Glideaway has unfairly competed with Bedgear in violation of New York common law.

245. On information and belief, Glideaway's acts of false designation of origin have been done willfully and knowingly and in bad faith, and Glideaway has profited and been unjustly enriched by this unlawful conduct or stand to profit from this unlawful conduct.

246. The acts of Glideaway as described above constitute unfair competition in violation of Bedgear's rights under New York State common law, as preserved by N.Y. Gen. Bus. Law § 360-o.

247. As a result of Glideaway's misconduct (described above), Bedgear has been harmed.

248. Glideaway's misconduct has irreparably harmed Bedgear, and will continue to cause irreparable harm to Bedgear, including to its valuable reputation and goodwill, such that Bedgear has no adequate remedy at law.

COUNT X

(Deceptive Acts and Practices Under New York Statutory Law)

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

250. On information and belief, Glideaway's unauthorized use, advertising, marketing, and sale of products and services under the AIR+ mark and variants thereof in the course of its business, as described above, have created and will continue to create confusion or misunderstanding in the marketplace as to the source, sponsorship, or approval by Bedgear of Glideaway's goods or services in violation of New York General Business Law § 349.

251. On information and belief, Glideaway's unauthorized use, advertising, marketing, and sale of products and services under the AIR+ mark and variants thereof in the course of its business, as described above, have created and will continue to create confusion or misunderstanding in the marketplace as to the affiliation, connection, or association of

Glideaway's goods and services with those of Bedgear in violation of New York General Business Law § 349.

252. On information and belief, Glideaway's acts of deceptive trade practices have been done willfully and knowingly, for which Bedgear is entitled to relief

253. Glideaway's conduct is oriented and directed towards consumers, is deceptive or misleading in a material way, and, on information and belief, is causing harm to consumers and the public interest.

254. Bedgear has suffered injury as a result of Glideaway's past misconduct (described above).

255. Glideaway's ongoing misconduct has irreparably harmed Bedgear, and will continue to cause irreparable harm to Bedgear, including to its valuable reputation and goodwill, such that Bedgear has no adequate remedy at law.

COUNT XI

(Trademark Dilution Under New York Statutory Law)

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

257. On information and belief, Glideaway's unauthorized use, advertising, marketing, and sale of products and services under the AIR+ mark and variants thereof, as described above, has caused and will continue to cause a likelihood of injury to Bedgear's business reputation and/or dilution of the distinctive quality of Bedgear's AIR-X mark in violation of New York General Business Law § 360-1.

258. On information and belief, Glideaway willfully intended to trade on Bedgear's reputation and/or to cause dilution of Bedgear's AIR-X mark.

259. Glideaway's acts and the dilution of Bedgear's marks discussed above have caused and will continue to cause Bedgear irreparable harm unless enjoined by this Court.

COUNT XII

(Violation of Defend Trade Secrets Act)

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

261. Bedgear owns and possesses certain trade secrets, as alleged above.

262. Bedgear's trade secrets relate to products and services used, sold, shipped and/or ordered in, or intended to be used, sold, shipped and/or ordered in, interstate or foreign commerce.

263. Bedgear has taken reasonable measures to keep such information secret and confidential.

264. As a result of these measures, Bedgear's trade secrets are not available for others in the bedding industry – or any other industry – to use through any legitimate means.

265. Bedgear's trade secrets derive independent economic value from not being generally known to, and not being readily ascertainable through proper means by, another person who could obtain economic value from the disclosure or use of the information.

266. Both [REDACTED] and [REDACTED] were, and are, under a duty, by contract and by virtue of their duties of loyalty and good faith to Bedgear to protect Bedgear's trade secrets and other confidential and proprietary information.

267. On information and belief, Glideaway improperly acquired Bedgear's trade secrets from [REDACTED] and [REDACTED] (among others), both of whom were under a duty to preserve the confidentiality of such information.

268. At least certain of the documents Glideaway improperly obtained were labeled as confidential.

269. Glideaway knew or had reason to know that the information disclosed by Bedgear to [REDACTED] and [REDACTED] was confidential and proprietary and was intended to be used solely for the furtherance of Bedgear's business in the marketplace.

270. Accordingly, Glideaway obtained Bedgear's trade secrets, without consent, by improper means, including (without limitation) through breach of a duty to maintain the secrecy of such information.

271. On information and belief, Glideaway has used and misappropriated, and continues to use and misappropriate, Bedgear's trade secrets, without consent, by improper means, including (without limitation) through breach of a duty to maintain the secrecy of such information.

272. On information and belief, Glideaway has improperly acquired and used at least certain of Bedgear's trade secrets after May 11, 2016.

273. On information and belief, if Glideaway is not enjoined, Glideaway will continue to misappropriate and use Bedgear's trade secret information for its own benefit and to Bedgear's detriment.

274. Glideaway misused this information for the purpose of obtaining a competitive advantage in the marketplace at the expense of Bedgear.

275. On information and belief, Glideaway's acts have been done willfully, knowingly, and maliciously, and Glideaway has profited and been unjustly enriched by this unlawful conduct or stands to profit from this unlawful conduct.

276. Given the foregoing, Glideaway is liable to Bedgear under the Defend Trade Secrets Act, including (*inter alia*) 18 U.S.C. § 1836 and 1839.

277. As a result of Glideaway's misconduct (described above), Bedgear has been harmed.

278. In addition, Glideaway's ongoing misconduct has irreparably harmed Bedgear, and will continue to cause irreparable harm to Bedgear, such that Bedgear has no adequate remedy at law.

COUNT XIII

(Violation of Missouri Trade Secrets Act, § 417.50 R.S. Mo. et seq.)

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

280. Bedgear owns and possesses certain trade secrets, as alleged above.

281. Bedgear's trade secrets derive independent economic value from not being generally known.

282. Bedgear has taken reasonable measures to keep such information secret and confidential.

283. Both [REDACTED] and [REDACTED] were under a duty, by contract and by virtue of their duties of loyalty and good faith to Bedgear, to protect Bedgear's trade secrets.

284. Bedgear's trade secrets give Bedgear an opportunity to obtain an advantage over competitors who do not know or use it.

285. Glideaway obtained Bedgear's trade secrets, without consent, by improper means, including (without limitation) through breach of a duty to maintain the secrecy of such information.

286. At least certain of the documents Glideaway improperly obtained were labeled as confidential.

287. At the time Glideaway obtained Bedgear's trade secrets, Glideaway knew or had reason to know that knowledge of this information was derived from or through persons (including, without limitation, [REDACTED] and [REDACTED]) who had utilized improper means to acquire it or who owed a duty to Bedgear to maintain its secrecy or limit its use.

288. On information and belief, Glideaway has improperly acquired, used and misappropriated, and continues to use and misappropriate, Bedgear's trade secrets, without consent, by improper means, including (without limitation) through breach of a duty to maintain the secrecy of such information.

289. On information and belief, Glideaway's acts have been done willfully and knowingly, and Glideaway has profited and has been unjustly enriched by this unlawful conduct or stands to profit from this unlawful conduct.

290. Given the foregoing, Glideaway has violated, and is liable to Bedgear under, the Missouri Trade Secrets Act, § 417.50 R.S. Mo. *et seq.*

291. As a result of Glideaway's misconduct (described above), Bedgear has been harmed.

292. In addition, Glideaway's ongoing misconduct has irreparably harmed Bedgear, and will continue to cause irreparable harm to Bedgear, such that Bedgear has no adequate remedy at law.

COUNT XIV

(Misappropriation of Trade Secrets under New York Law)

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

294. In the event that it is determined that Missouri law does not apply to the misappropriation of Bedgear's trade secrets, as described above, Glideaway is liable to Bedgear for misappropriation of trade secrets under New York law, as set forth below.

295. Bedgear owns and possesses certain trade secrets, as alleged above

296. Bedgear uses its trade secrets in its business.

297. Bedgear's trade secrets give Bedgear an opportunity to obtain an advantage over competitors who do not know or use them.

298. Both [REDACTED] and [REDACTED] were under a duty, by contract and by virtue of their duties of loyalty and good faith to Bedgear to protect Bedgear's trade secrets.

299. Glideaway obtained Bedgear's trade secrets, without consent, by improper means, including (without limitation) through breach of a duty to maintain the secrecy of such information.

300. At least certain of the documents Glideaway improperly obtained were labeled as confidential.

301. At the time Glideaway obtained Bedgear's trade secrets, Glideaway knew or had reason to know that knowledge of this information was derived from or through persons (including, without limitation, [REDACTED] and [REDACTED]) who had utilized improper means to acquire it or who owed a duty to Bedgear to maintain its secrecy or limit its use.

302. Glideaway has improperly acquired, used and misappropriated, and continues to use and misappropriate, Bedgear's trade secrets, without consent, by improper means, including (without limitation) through breach of a duty to maintain the secrecy of such information.

303. On information and belief, Glideaway's acts have been done willfully and knowingly, and Glideaway has profited and has been unjustly enriched by this unlawful conduct or stands to profit from this unlawful conduct.

304. As a result of Glideaway's misconduct (described above), Bedgear has been harmed.

305. In addition, Glideaway's ongoing misconduct has irreparably harmed Bedgear, and will continue to cause irreparable harm to Bedgear, such that Bedgear has no adequate remedy at law.

COUNT XV

(Unfair Competition – Related to Bedgear's Confidential and Proprietary Information – under Missouri or New York Law)

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

307. In the event, and to the extent, that Bedgear's trade secrets and other confidential and proprietary information, as described above, are determined not to be trade secrets, Glideaway is liable to Bedgear for unfair competition as set forth below.

308. On information and belief, Glideaway misappropriated Bedgear's significant labors, skills, expenditures and good will for the commercial advantage and benefit of Glideaway by unlawfully acquiring and using Bedgear's confidential and proprietary information in order to develop and market a copycat line of performance bedding products, usurp the good will and brand recognition Bedgear has achieved for its products, and interfere with Bedgear's business relationships.

309. Glideaway's acquisition and use of Bedgear's confidential and proprietary information has been without consent and by improper means, including (without limitation) through breach of a duty to maintain the secrecy of such information.

310. On information and belief, Glideaway's acts of misappropriation have been done willfully and knowingly and in bad faith, and Glideaway has profited and been unjustly enriched by this unlawful conduct or stand to profit from this unlawful conduct.

311. The acts of Glideaway as described above constitute unfair competition under Missouri or New York law.

312. As a result of Glideaway's misconduct (described above), Bedgear has been harmed.

313. In addition, Glideaway's ongoing misconduct has irreparably harmed Bedgear, and will continue to cause irreparable harm to Bedgear, such that Bedgear has no adequate remedy at law.

COUNT XVI

(Aiding and Abetting Breach of Fiduciary Duty under New York Law)

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

315. Both [REDACTED] and [REDACTED] were under a duty, by contract and by virtue of their duties of loyalty and good faith to Bedgear, to protect Bedgear's confidential information.

316. [REDACTED] and [REDACTED] each owed fiduciary duties to Bedgear, including (without limitation) the duty to protect Bedgear's confidential information.

317. The conduct of [REDACTED] and [REDACTED], as set forth above, constituted breaches of their fiduciary duties to Bedgear, including breaches of their duties of loyalty, due care, and good faith.

318. The breaches of fiduciary duty by [REDACTED] and [REDACTED] included, without limitation, (i) disclosure of Bedgear's confidential and proprietary information to Glideaway without consent, and (ii) [REDACTED]'s and [REDACTED]'s actively strategizing with Glideaway to make use of such information to compete with Bedgear.

319. On information and belief, Glideaway knew that [REDACTED] and [REDACTED] owed and were breaching fiduciary duties to Bedgear.

320. On information and belief, Glideaway knowingly induced and participated in the breaches of their fiduciary duties, and provided substantial assistance and encouragement to [REDACTED] and [REDACTED] in those breaches, including (without limitation) strategizing with [REDACTED] and [REDACTED] to maximize the value and use of Bedgear's confidential and proprietary information for Glideaway's benefit.

321. As a result of Glideaway's misconduct, Bedgear has suffered damages in an amount which has yet to be fully ascertained.

COUNT XVII

(Unjust Enrichment Under Missouri or New York Law)

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

323. In the event, and to the extent, that Bedgear's trade secrets and other confidential and proprietary information, as described above, are determined not to be trade secrets, Glideaway is liable to Bedgear for unjust enrichment under Missouri or New York law as set forth below.

324. Glideaway has been, and continues to be, unjustly enriched by the misappropriation and misuse of Bedgear's confidential and proprietary information, at Bedgear's expense.

325. Without Bedgear's consent, Bedgear was forced to confer the benefit of its confidential and proprietary information upon Glideaway.

326. Glideaway was aware that it was receiving Bedgear's confidential and proprietary information.

327. In light of Glideaway's misconduct and under the circumstances described above, Glideaway accepted and retained the benefit of Bedgear's confidential and proprietary information under circumstances that make such retention inequitable.

328. Equity and good conscience dictate that Glideaway may not retain the benefit of Bedgear's confidential and proprietary information.

PRAYER FOR RELIEF

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

A. That Glideaway has infringed, and continues to infringe, the '134, '332, '883, and '408 Patents;

B. That Glideaway, and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents and all others acting in active concert or privity with any of them, either directly or indirectly (collectively, "Glideaway Parties"), be permanently enjoined from any further direct, indirect and/or joint infringement of the '134, '332, '883, and '408 Patents pursuant to 35 U.S.C. § 283;

C. That Glideaway be ordered to account for and pay to Bedgear the damages resulting from Glideaway'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 Glideaway 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 that Bedgear be awarded its reasonable attorney's fees and costs incurred in connection with this action; and

F. That Glideaway has infringed and is infringing Bedgear's AIR-X mark by using AIR+;

G. That the Glideaway Parties be preliminarily and permanently enjoined from (i) infringement of Bedgear's marks; (ii) infringement of the AIR-X mark; (iii) dilution of Bedgear's trademarks; (iv) injuring Bedgear's business reputation; (v) unfairly competing with Bedgear; and (vi) engaging in unfair and deceptive trade practices;

H. That Glideaway be preliminarily and permanently enjoined from adopting, using and registering any name or mark similar to Bedgear's AIR-X mark;

I. That Glideaway be ordered to surrender for destruction all products, labels, signs, advertisements, promotional material, web pages, articles, and other materials in its possession or control constituting infringement of Bedgear's designation of origin and/or infringement of the AIR-X mark, pursuant to 15 U.S.C. § 1118;

J. That Glideaway be ordered to file with this Court and serve upon Bedgear within thirty days after entry of the injunction a report in writing under oath, setting forth in detail the manner and form in which it has complied with the injunction, pursuant to 15 U.S.C. § 1116(a);

K. That Bedgear be awarded actual damages and an accounting of Glideaway's profits, including all statutory and other enhancements, as provided by 15 U.S.C. § 1117 and N.Y. Gen. Bus. Law § 349(h);

L. That Bedgear be awarded exemplary and punitive damages under New York law for Glideaway's willful, intentional, and/or tortious acts;

M. That the Glideaway Parties be preliminarily and permanently enjoined from disclosing or utilizing Bedgear's trade secrets and other proprietary and confidential information;

N. That the Glideaway Parties be preliminarily and permanently enjoined from engaging in unfair competition;

O. That Glideaway be preliminarily and permanently enjoined from engaging in the marketing and/or sale of any bedding products whose sale and/or marketing is in any way based on any use of Bedgear's trade secrets and/or confidential and/or proprietary information for the period of time that would be needed for Glideaway to independently obtain such information without relying in any way upon Glideaway's trade secret and/or confidential and/or proprietary information;

P. That Bedgear be awarded compensation, monetary damages and punitive damages for Glideaway's misappropriation, unfair competition, aiding and abetting breach of fiduciary duty, and unjust enrichment, in an amount to be ascertained at trial, together with interest thereon;

Q. That Bedgear be awarded pre-judgment and post-judgment interest on the damages awarded;

R. That Bedgear be awarded its costs and reasonable attorneys' fees, expenses and costs, incurred in connection with this action pursuant to 35 U.S.C. § 285, 15 U.S.C. § 1117, 18 U.S.C. § 1836, and the laws of Missouri or New York (as applicable); and

S. 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 12, 2017

Respectfully submitted,

BRYAN CAVE LLP

By: /s/ Joseph J. Richetti

Joseph J. Richetti
Erik Wolff Kahn
Thomas J. Schell
1290 Avenue of the Americas
New York, New York 10104
Tel: (212) 541-2000
Fax: (212) 541-4630
joe.richetti@bryancave.com
erik.kahn@bryancave.com
tjschell@bryancave.com

*Attorneys for Plaintiff -
Bedgear, LLC*