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6 Attorneys for Plaintiff
7 WEEMS & PLATH, LLC

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 WEEMS & PLATH, LLC,

11 Plaintiff,

12 vs.

13 SIRIUS SIGNAL, L.L.C., ANTHONY
14 COVELLI, ROBERT SIMONS, JR.,
15 EMLINQ, LLC, SCOTT MELE,
16 TEKTITE INDUSTRIES, INC., and
DOES 1-10, inclusive,

17 Defendants.

Case No.: '20CV0745 GPC BGS

COMPLAINT FOR:

- 1. BREACH OF CONTRACT
- 2. UNFAIR COMPETITION
- 3. TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE
- 4. CIVIL CONSPIRACY
- 5. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
- 6. FRAUD
- 7. PROMISSORY ESTOPPEL
- 8. UNJUST ENRICHMENT
- 9. DECLARATORY JUDGMENT OF UNENFORCEABILITY OF THE PATENTS DUE TO INEQUITABLE CONDUCT
- 10. FALSE PATENT MARKING
- 11. SHERMAN ACT, 15 U.S.C. § 1 (CONSPIRACY IN RESTRAINT OF TRADE)
- 12. SHERMAN ACT, 15 U.S.C. § 1, 2 AND CLAYTON ACT, 15 U.S.C. § 3 (TYING)
- 13. SHERMAN ACT, 15 U.S.C. § 2 (MONOPOLIZATION)
- 14. CALIFORNIA CARTWRIGHT ACT (ANTITRUST), BUSINESS AND PROFESSIONS CODE 3 §§ 16700-16758 (RESTRAINT OF TRADE)
- 15. CALIFORNIA CARTWRIGHT

1 3. The other founder of Weems, Carl Plath, developed the first
2 gyrocompass to be installed in a commercial vessel. Capt. Weems and Mr. Plath
3 teamed up in 1928 to form Weems in Annapolis, where it is still located today.

4 4. Over the years, Weems and W&P has developed strong goodwill in
5 the nautical community.

6 5. This Complaint is brought under the Sherman Antitrust Act and the
7 Clayton Antitrust Act, the laws of the State of California, and federal patent and
8 false advertising laws. W&P seeks compensatory damages, restitution,
9 disgorgement, treble damages, injunctive relief, and other relief, including but not
10 limited to an award of attorneys' fees and expenses, as well as pre-judgment and
11 post-judgment interest on the damages awarded, against Defendants, jointly and
12 severally, for conspiring in the unreasonable restraint of trade or commerce to
13 exclude W&P from competing in the development, production, and sale of
14 Electronic Visual Distress Signal Devices ("eVDSDs") by unlawfully terminating
15 its license and otherwise suppressing and eliminating competition in the sale and
16 marketing of eVDSDs in order to artificially fix, inflate, and maintain the price of
17 eVDSDs to unlawfully maximize economic gain by agreeing to, upon information
18 and belief: 1) fraudulently procure, assert, license, and attempt to license invalid
19 patents to Weems/W&P and Standard Fusee Corporation, Inc. doing business as
20 Orion Safety Products ("Orion") for the purpose of disproportionate economic gain
21 and increased distribution of the C-1001; 2) deceive the public, Weems, and W&P
22 regarding the validity of the Sirius IP; 3) control the information required to
23 manufacturer the eVDSDs; 4) control the supply of the eVDSDs and components
24 thereof including to the exclusive worldwide licensee of the eVDSDs via refusing
25 to manufacture, or artificially inflating the costs of manufacture of, the eVDSDs;
26 5) manipulate USCG federal regulations through participation in USCG
27 committees; 6) utilize information gleaned from the USCG committee meetings to
28 procure patents and withholding the issuance of such patents from the USCG and

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1 the other members of the USCG committee; 7) unlawfully tie the continued
2 licensing of the C-1001 to a new license for the C-1002 including a substantial
3 upfront payment of \$275,000 (in addition to the \$200,000 previously paid for the
4 license of the C-1001) despite the C-1002 being including in the initial Agreement,
5 8) when (7) was unsuccessful, eliminate competition by attempting to license a
6 sole competitor of the eVDSDs while simultaneously terminating, without cause,
7 the license to the current exclusive distributor in violation of the distributor’s Right
8 of First Offer; 9) commit multiple breaches of the Agreement including, but not
9 limited to, the manufacture and sale of Licensed Products during a period in which
10 Sirius does not dispute that the exclusive license to W&P was in full force and
11 effect; 10) implement an illegal Minimum Advertised Price (“MAP”) policy in
12 order to implement vertical price fixing and price maintenance; 11) harass at least
13 one customer of W&P by reporting it to a governmental agency both directly and
14 through use of the alias Peter Saxsby in order to suppress competition in the
15 eVDSD market; and 12) bind Weems/W&P to provisions that served anti-
16 competitive purposes by seeking to restrain Weems/W&P from activities that were
17 not prohibited by the Licensed Patents (the “Conspiracy”).

18 6. Upon information and belief, at least the Tektite/Sirius Defendants
19 conspired to fix, stabilize, inflate, and maintain the price of eVDSDs sold to
20 consumers and companies in the United States from at least as early as 2013, at
21 which time Covelli joined Special Committee 132, through at least December 31,
22 2019 (the “Conspiracy Period”), and this conspiracy still continues and is ongoing.

23 7. W&P seeks a full refund of the Agreement Payments paid for its
24 eVDSD license for the same actions by the Defendants and their co-conspirators.
25 Defendants’ and their co-conspirators’ actions caused consumers across the United
26 States to overpay for eVDSDs as a whole, as eVDSDs are the only electronic
27 option capable of meeting the USCG’s visual stress signal requirements to which
28 every boater must adhere. Plaintiff has needlessly paid to license the purported

1 rights to sell eVDSDs, and now seeks to recover damages they suffered from the
2 initiation of the conspiracy until the date of filing of this action (the “Injury
3 Period”). Upon information and belief, this anticompetitive behavior has not
4 ceased but rather is ongoing.

5 8. Covelli, Simons, and Mele as Defendants are individually liable for
6 the actions described herein because the conspiracy predated the formation of the
7 business entity Sirius that subsequently controlled the fraudulent patents and
8 purported licensing rights in question.

9 9. Covelli, Simons, and Mele as Defendants are individually liable for
10 the actions described herein because the conspiracy was committed on their
11 individual behalves including, but not limited to, Covelli and Simons acting in
12 their personal capacity as the inventors of the Sirius IP.

13 10. Defendants are manufacturers and distributors of eVDSDs, or
14 components thereof, used by boaters to meet the USCG’s visual stress signal
15 requirements to which every boater on a boat in open water must adhere.
16 Specifically, Defendants manufacture and/or distribute the C-1001, C-1002, and C-
17 1003 (the “C Series Lights”) eVDSDs purportedly designed and patented by Sirius
18 or components thereof. The C-1003 is sold by Sirius as the newer, upgraded
19 model of, and replacement for, the C-1001.

20 11. During the Conspiracy Period, upon information and belief,
21 Defendants and their co-conspirators conspired, combined, and contracted to fix,
22 raise, maintain, and stabilize the prices at which eVDSDs would be sold.

23 12. Upon information and belief, in order to facilitate the conspiracy,
24 Defendants and their co-conspirators, throughout the Conspiracy Period, engaged
25 in regular, often secret communications, verbally and through electronic mail, the
26 facts of which are set out elsewhere in this Complaint, to further the Conspiracy,
27 including, but not limited to communications regarding: 1) the procurement of
28 invalid and unenforceable patents referred to herein as the Sirius IP through the

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1 commission of fraud on the United States Patent and Trademark Office
2 f(“USPTO”) via, at a minimum, (a) the submission of false affidavits to the
3 USPTO and (b) the withholding of at least the Material Information from the
4 USPTO during prosecution of the Sirius IP; 2) licensing the invalid and
5 unenforceable Sirius IP to Weems/W&P through the issuance of false statements
6 including, but not limited to, false statements regarding inventorship of the Sirius
7 IP made to Weems’ during its due diligence performed prior to licensing the Sirius
8 IP; 3) falsely marking the C-1001 with U.S. Patent Nos. D720,247 and 9,171,436
9 for at least three years after Defendants’ received an opinion of counsel that the
10 ‘247 Patent and the ‘436 Patent do not cover the C-1001 product; 4) otherwise
11 falsely marking the C-1001, C-1002, and C-1003 products as “patent pending” or
12 with other patents of the Sirius IP knowing that the Sirius IP is invalid and
13 unenforceable; 5) controlling the supply of components and services required to
14 manufacture the C-1001 to suppress the supply of eVDSDs as a whole by
15 conspiring to implement a horizontal boycott by rejecting purchase orders placed
16 by W&P with its suppliers, or delaying and artificially inflating the price of
17 purchase orders placed by W&P with its suppliers, during a time in which it is not
18 disputed that W&P was the exclusive worldwide distributor of the C-1001 pursuant
19 to the Agreement, to prevent W&P from manufacturing and selling the C-1001
20 including sales during the Sell-Off Period; 6) controlling information required to
21 manufacture the C-1001 to suppress the supply of eVDSDs as a whole including
22 refusing to provide the information necessary to manufacture the C-1001 (e.g.,
23 Gerber Files) to W&P during a time in which it is not disputed that W&P was the
24 exclusive worldwide distributor of the C-1001 pursuant to the Agreement, to
25 prevent W&P from making the circuit board with an alternate supplier; 7)
26 distribution of an illegal MAP policy intended to implement vertical price fixing
27 and price maintenance of all single color eVDSDs available for sale in the relevant
28 market to \$89.95 and of all two color eVDSDs in the relevant market to \$299.95;

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1 8) abusing Covelli's position on the 132 Committee in order to obtain information
2 used for the fraudulent procurement of Sirius IP; 9) abusing Covelli's position on
3 the 132 Committee in order to manipulate the USCG Distress Signal Regulations
4 such that they would eliminate competition in the eVDSD relevant market by
5 removing the single color eVDSD from the pool of USCG acceptable eVDSDs,
6 thereby leaving the Defendants' C-1002 as the only USCG-approved eVDSD
7 available in the relevant market and artificially raising the price of eVDSDs from
8 \$89.95 to \$299.95; 10) lobbying for a change in the USCG Regulations to
9 eliminate all one color eVDSDs for the purpose of eliminating all competition in
10 the relevant market, securing a monopoly, and artificially inflating the price of an
11 eVDSD to \$299.95; 11) the termination of Weems/W&P's rights as the exclusive
12 distributor for the purpose of maintaining a monopoly and the high margins
13 associated therewith; 12) the illegal tying of a license agreement for C-1002s (the
14 tied product), including payment of an upfront license fee of \$275,000, to
15 execution of an amendment that would allow W&P to continue to distribute the C-
16 1001/C-1003 (the tying product) despite the fact that (a) W&P had already paid an
17 upfront license fee of \$200,000, (b) W&P had invested substantial money in
18 advertising and otherwise related to the C-1001, and (c) the Agreement already
19 granted a license to the C-1002; 13) attempting to wrongfully terminate W&P as
20 the exclusive worldwide distributor of the eVDSDs in breach of the Agreement
21 and to prevent W&P from development, production, and sale of eVDSDs in order
22 to force W&P to take a license to the C-1002 including payment of the \$275,000
23 upfront licensing fee; 14) attempting to wrongfully terminate W&P as the
24 exclusive worldwide distributor of the eVDSDs in breach of the Agreement and to
25 prevent W&P from development, production, and sale of eVDSDs in order to
26 divert the C-1001 sales of W&P to the Tektite/Sirius Defendants as C-1003 sales;
27 15) falsely claiming that the C-1001 was no longer being distributed by W&P; 16)
28 when W&P would not agree to license the C-1002 without receiving additional

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1 information from the Sirius Defendants, attempting to wrongfully terminate W&P
2 as the exclusive worldwide distributor of the eVDSDs in breach of the Agreement
3 in favor of licensing the fraudulent Sirius IP to the owner of the sole competitive
4 eVDSD product in order to obtain a monopoly; 17) harassing at least one customer
5 of W&P by reporting it to a governmental agency both directly and through use of
6 the alias Peter Saxsby in order to suppress competition in the eVDSD market; and
7 18) binding Weems/W&P to provisions that served anti-competitive purposes by
8 seeking to restrain Weems/W&P from activities that were not prohibited by the
9 Licensed Patents(the “Conspiracy Acts”).

10 13. Upon information and belief, as a result of Defendants’ and their co-
11 conspirators’ unlawful conduct, Plaintiff and consumers paid more for the right to
12 distribute and own, respectively, eVDSDs than they would have if a competitive
13 market had determined eVDSD prices.

14 14. Plaintiff sustained damages as a result of Defendants’ and their co-
15 conspirators’ anticompetitive conduct as alleged herein. Plaintiff also sustained
16 damages as a result of breach of contract, unfair competition, tortious interference
17 with business relations/expectancy, civil conspiracy, tortious interference with
18 contractual relations, fraud, promissory estoppel, direct and indirect unjust
19 enrichment, false marking, and false advertising as further set forth herein.

20 **PARTIES**

21 **Plaintiff**

22 15. Plaintiff W&P is a Maryland limited liability company with its
23 principal place of business at 214 Eastern Avenue, Annapolis, Maryland 21403.
24 The sole member of W&P, Michael Flanagan, is a citizen of New Jersey.

25 **Defendants**

26 16. Upon information and belief, Defendant Sirius is a limited liability
27 company organized under the laws of the State of California with its principal
28 place of business located in the State of California. All members of Sirius Signal,

1 L.L.C. are citizens of California. Although Sirius Signal, L.L.C. has represented
2 itself at times as a corporation (e.g., “Sirius Signal, Inc.”) in related documents, no
3 such corporation is known to exist, and Sirius’s representation as such appears to
4 be false, both as a matter of fact and as a matter of law.

5 17. Upon information and belief, Defendant Covelli resides in the State of
6 California at 6541 Vispera Place, Carlsbad, California 92009. Covelli is an owner
7 of, a member of, and the CEO of Plaintiff Sirius. Sirius has only three other
8 members, one of whom is Simons, who is a purported co-inventor with Covelli in
9 the Sirius IP (as defined below) that was purportedly licensed originally to W&P’s
10 predecessor-in-interest, (“Weems”) pursuant to the agreement Sirius entered with
11 Weems on December 31, 2015, as amended three times, i.e., the first amendment
12 executed February 8, 2016 (the “First Amendment”), the [Second] Amendment
13 made March 10, 2016 (the “Second Amendment”), and the Third Amendment
14 made August 18, 2017(the “Third Amendment”)(collectively, the “Agreement”),
15 which license was transferred thereafter to W&P on or about September 20, 2018.

16 18. Upon information and belief, Simons resides in the State of California
17 at 3634 7th Avenue, 8A, San Diego, California 92103. Simons is an owner and
18 member of Sirius and is a purported co-inventor with Covelli of the Sirius IP that
19 was purportedly licensed to Weems/W&P pursuant to the Agreement.

20 19. As members and owners of Sirius, Covelli and Simons are not
21 employees of Sirius under relevant federal and state laws pertaining to employment
22 and taxation. Rather, Covelli’s and Simons’ authority to bind, act on behalf of, and
23 in concert with, Sirius arises out of Covelli’s and Simons’ ownership and member
24 status relative to Sirius. Likewise, as individuals, Covelli and Simons are distinct
25 from the legal entity Sirius, and Covelli and Simons have acted independently on
26 their personal behalves and have also used Sirius to act as Covelli’s and Simons’
27 agent and alter ego in conduct described herein.

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1 20. Upon information and belief, Emlinq is a California limited liability
2 company with its principal place of business at 2125C Madera Rd., Simi Valley,
3 California 93065. Emlinq is a supplier of circuit boards for at least the C-1001
4 and, upon information and belief, also the C-1002 and C-1003.

5 21. Upon information and belief, Mele resides at 18 Amity Court,
6 Langhorne, PA 19047 and is owner and President of Tektite.

7 22. Upon information and belief, Tektite is a New Jersey corporation with
8 its principal place of business at 309 North Clinton Avenue, Trenton, New Jersey
9 08638. Tektite is a manufacturer of lights and strobes including, but not limited to,
10 the C-1001 and, upon information and belief, the C-1002 and C-1003. Tektite is
11 the owner of expired U.S. Patent No. 6,168,288, which discloses a product
12 materially relevant to the C Series Lights, and, upon information and belief, is the
13 developer and designer of the C Series Lights.

14 23. The true names and capacities, whether individual, corporate,
15 association or otherwise of Defendants DOES 1 through 10, inclusive, are
16 unknown to W&P who otherwise sues these Defendants by such fictitious names.
17 Each Defendant is sued individually and/or in his/her official capacity as defined in
18 this Complaint. W&P will seek leave to amend this Complaint to show the true
19 names and capacity of these Defendants when they have been ascertained. Each of
20 the fictitiously named Defendants is responsible in some manner for the conduct or
21 liabilities alleged herein, as set forth in more detail below.

22 **Unidentified Co-Conspirators**

23 24. Other individuals and entities, not named as Defendants in this
24 Complaint, may have participated as co-conspirators with Defendants in the
25 violations alleged herein, and aided and abetted Defendants and performed acts
26 and made statements, all in furtherance of the conspiracy.

27 25. The true names and capacities of some of these co-conspirators,
28 whether individual, corporate, associate, or representative, are unknown to Plaintiff

1 at this time. Plaintiff may amend this Complaint, as necessary, to allege the true
2 names and capacities of additional co-conspirators as their identities become
3 known through discovery or otherwise.

4 26. At all relevant times, other individuals and entities referred to herein
5 as “unidentified co-conspirators,” the identities of which are presently unknown,
6 conspired with Defendants in the unlawful conspiracy described herein.

7 27. The acts alleged herein that were performed by each of the
8 unidentified coconspirators were fully authorized by each of these unidentified co-
9 conspirators, or were ordered, or committed by duly authorized officers, managers,
10 agents, employees, or representatives of each unidentified co-conspirator, while
11 actively engaged in the management, direction, or control of its affairs.

12 JURISDICTION

13 28. This Court has federal question jurisdiction over the subject matter of
14 this action pursuant to 15 U.S.C. §§ 1 and 2 (Sherman Antitrust Act jurisdiction),
15 15 U.S.C. §§ 15 & 26 (Clayton Antitrust Act jurisdiction), 28 U.S.C. § 1331
16 (general federal question jurisdiction), & 28 U.S.C. § 1337 (antitrust jurisdiction)
17 and 35 U.S.C. 292(a) (false marking). The Court has jurisdiction over Plaintiff’s
18 state law claims pursuant to 28 U.S.C. § 1367 (pendent jurisdiction).

19 29. This Court has personal jurisdiction over the Defendants pursuant to
20 federal principles of due process and to California Code of Civil Procedure §
21 410.10 (California “Long Arm Statute”).

22 30. This Court has personal jurisdiction over Sirius, because it is a
23 Limited Liability Company organized and existing under the laws of the State of
24 California, with its principal place of business in California.

25 31. This Court has personal jurisdiction over Covelli, because he is a
26 resident and citizen of the State of California.

27 32. This Court has jurisdiction over Simons, because he is a resident and
28 citizen of the State of California.

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1 33. This Court has jurisdiction over Emlinq, because it is a Limited
2 Liability Company organized and existing under the laws of the State of California,
3 with its principal place of business in California.

4 34. This Court has jurisdiction over Tektite, because it regularly transacts
5 business and has substantial contacts in California, and as Tektite purposefully
6 availed itself of the privilege of conducting activities in California, and the claims
7 in this Complaint arise out of Tektite’s activities in California. Tektite is a
8 distributor of Sirius products since at least as early as August 15, 2015, and Tektite
9 derives substantial revenue from transacting business in the district via the
10 manufacturing for Sirius since of the C-1001 product, upon information and belief,
11 since as early as 2014, and upon information and belief, the manufacturing of the
12 C-1002 and C-1003 products since at least as early as 2018.

13 35. This Court has jurisdiction over Mele, because he personally regularly
14 transacts business and has substantial contacts in California, and as Mele
15 purposefully availed himself of the privilege of conducting activities in California,
16 and the claims in this Complaint arise out of his activities in California. Upon
17 information and belief, Mele is an owner of Tektite, and through Tektite’s business
18 in this forum, he derives substantial revenue from Tektite’s transacting business in
19 this forum via the manufacturing for Sirius since of the C-1001 product, upon
20 information and belief, since as early as 2014, and upon information and belief, the
21 manufacturing of the C-1002 and C-1003 products since at least as early as 2018.

22 36. Mele has acted independently on his personal behalf and has also used
23 Tektite to act as his agent and alter ego in conduct described herein.

24 37. Upon information and belief, Tektite is a façade and a vehicle for
25 Mele’s participation in the Conspiracy, and Tektite has no identity of its own.

26 38. Upon information and belief, at least Covelli, Simons, and Mele
27 conceived of the Conspiracy and personally managed every aspect of the

28 / /

1 Conspiracy as detailed above. There is sufficient identity of interest between Mele
2 and Tektite for the acts of one to be attributable to the other.

3 **VENUE**

4 39. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)
5 because a substantial part of the events or omissions giving rise to the claim
6 occurred in this district.

7 40. Venues is also proper in this district pursuant to 15 U.S.C. §§ 15 and
8 22, and 28 U.S.C. § 1391 (c) and (d), because Sirius, Covelli, and Simons reside,
9 are found, and/or have an agent, in this district, are domiciled in this district,
10 conduct business in this district, and are subject to the Court’s personal jurisdiction
11 with respect to this action in this district.

12 41. Additionally, venue is proper in this district pursuant to 15 U.S.C. §
13 22, and 28 U.S.C. § 1391(c) and (d), because Emlinq, Mele, and Tektite conduct
14 business in this district, and are subject to the Court’s personal jurisdiction with
15 respect to this action in this district.

16 **FACTS RELEVANT TO ALL CAUSES OF ACTION**

17 42. W&P repeats and re-alleges each of the foregoing allegations and
18 following allegations as though fully set forth herein.

19 **A. eVDSD Background**

20 43. eVDSD stands for “electronic visual distress signal devices.” The
21 USCG has promulgated regulations that require boaters in a boat on open water to
22 carry current, non-expired USCG-approved day and night signals, namely, 46 CFR
23 161.013 (the “Night Vision Distress Signal Regulations”) and 33 CFR 175.130 (the
24 “Day Vision Distress Signal Regulations)(collectively the “USCG Distress Signal
25 Regulations”).

26 44. Acceptable signals include the following combinations: 1) three hand-
27 held red flares (day and night) under 42 months of age; 2) one electric distress light
28 (night only) and one flag (day); and 3) (i) one hand-held red flare and two

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1 parachute flares (day and night), or (ii) one hand-held orange smoke signal, two
2 floating orange smoke signals (day) and one electric distress light (night only),
3 wherein the flares must be under 42 months of age.

4 45. As such, eVDSDs should provide a low cost alternative for boaters to
5 comply with the mandatory USCG Distress Signal Regulations because, unlike
6 pyrotechnic flares, eVDSDs do not require continual replenishment every forty-
7 two months. Further, eVDSDs are sold by at least Sirius as an “environmentally-
8 conscious legal alternative to toxic marine flares.”

9 46. At least the Sirius Defendants manufactured and sold a packaged
10 product including a C-1001 eVDSD along with a flag (the “C-1001 Kit”) and now
11 manufacture and sell a packaged product including a C-1003 eVDSD along with a
12 flag (the “C-1003 Kit”) that allows boaters to be fully compliant with the USCG
13 Distress Signal Regulations as the C-1001/C-1003 satisfies the Night Vision
14 Distress Signal Regulations and the flag satisfies the Day Vision Distress Signal
15 Regulations.

16 47. To date, the Sirius Defendants have procured a multitude of
17 fraudulently obtained eVDSD patents and have additional patent applications
18 pending including: U.S. Patent D720247 based on U.S. Patent Application
19 29/493,224 filed on June 6, 2014 (the “’247 Patent”); U.S. Patent 9171436 based
20 on U.S. Patent Application 14561197 filed on December 4, 2014 (the “’436
21 Patent”); U.S. Patent D784175 based on U.S. Patent Application 29557241 filed on
22 March 07, 2016 (the “’175 Patent”); U.S. Patent 9682754 based on U.S. Patent
23 Application 15095727 filed on April 11, 2016 (the “’754 Patent”); U.S. Patent
24 D811920 based on U.S. Patent Application 29595834 filed on March 02, 2017 (the
25 “’920 Patent”); U.S. Patent Application 15624033 filed on June 15, 2017 (the
26 “’033 Application”); U.S. Patent D844477 based on U.S. Patent Application
27 29638591 filed on February 28, 2018 (the “’477 Patent”); U.S. Patent 10227114
28 based on U.S. Patent Application 16004987 filed on June 11, 2018 (the “’114

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1 Patent”); U.S. Patent Application 16692449 filed on November 22, 2019 (the
2 “‘449 Application”); and U.S. Patent Application 16245947 filed on January 11,
3 2019 (the “‘947 Application”)(collectively the “Sirius IP”).

4 48. The Sirius Defendants have used, and continue to attempt to use, the
5 fraudulently procured Sirius IP as a tool in furthering the Conspiracy and in
6 committing the Conspiracy Acts as detailed elsewhere herein.

7 **B. History**

8 49. On August 5, 1999, a patent application was filed for a “Flashlight
9 with Light Emitting Diodes” naming Christian P. St. Claire as the inventor, which
10 patent application issued as U.S. Patent No. 6,168,288 (the “‘288 Patent”) on
11 January 2, 2001.

12 50. On July 23, 1999, the application for the ‘288 Patent was assigned
13 from the inventor to Tektite Industries West, LLC (“TIW”).

14 51. Upon information and belief, Mele, Elizabeth Mele, and Veronica
15 Mele were all involved in TIW as they are all listed as managers or members on
16 one or more of the TIW Limited Liability Company Statement of Information filed
17 with the State of California on March 22, 2002 and January 3, 2003.

18 52. On January 16, 2001, the ‘288 Patent was assigned from TIW to
19 Tektite.

20 53. The ‘288 Patent expired twice for nonpayment of maintenance fees.
21 The first time occurred on February 2, 2005, and Tektite petitioned to accept the
22 filing of a late maintenance fee payment, which was granted on September 21,
23 2005.

24 54. The ‘288 Patent expired again on January 28, 2013 due to failure to
25 pay the maintenance fee. Upon information and belief, despite the expiration of
26 the patent, Tektite and Mele continued to falsely mark the product associated with
27 the ‘288 Patent until 2020.

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1 55. Upon information and belief, despite the expiration of the patent and
2 the fact that Sirius did not own the patent, the Tektite/Sirius Defendants marked
3 the C-1001 product with the number of the '288 Patent and, at a time during which
4 the '288 Patent had expired, falsely represented to Weems that the '288 Patent was
5 valid and covered the C-1001 product.

6 56. Upon information and belief, at least Covelli, Simons, and Mele
7 began conspiring in or around 2013 to enter into the eVDSD business and to
8 commit the Conspiracy, including: 1) agreeing to apply for eVDSD patents in the
9 name of Covelli and Simons, thereby falsely naming inventors and/or intentionally
10 omitting at least one inventor to reduce the chance that the USPTO would correlate
11 the technology of the new eVDSD applications with the '288 Patent; and 2)
12 agreeing that Covelli join USCG Special Committee 132 (the "132 Committee"),
13 which is a committee of the Radio Technical Commission for Maritime Services
14 ("RTCM"), in order to manipulate the USCG to obtain a competitive advantage.

15 57. The 132 Committee was chartered in 2013 to create regulations and
16 issue standards relating to "Electronic Visual Distress Signals".

17 58. In furtherance of the Conspiracy, Covelli became a member of the 132
18 Committee, and, upon information and belief, remains a member of the 132
19 committee, and was personally involved in the 132 Committee's creation of
20 RTCM Standard 13200.0, that was published on June 21, 2018 and adopted on
21 December 21, 2018 (the "2018 RTCM Standard").

22 59. Upon information and belief, Covelli has obtained information from
23 these committee meetings and improperly used this information to fraudulently
24 attempt to patent eVDSD products that he did not invent, by falsely claiming
25 inventorship of the eVDSD devices and failing to submit material prior art to the
26 USPTO during prosecution of the eVDSD Patents including, without limitation: 1)
27 the USCG Distress Signal Regulations that dictate the specifications of any USCG-
28 approved eVDSD; 2) the 2018 RTCM Standard; 3) the '288 Patent; and 4) material

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1 relating to Covelli’s work on the USCG Committee (collectively referred to herein
2 as the “Material Information”).

3 60. Covelli and Simons failed to disclose to the USPTO anyone
4 associated with Tektite as an inventor of the Sirius IP despite the fact that: 1) Mele
5 claims that Tektite is responsible for the design of the C-1001 product; and 2) the
6 ‘288 Patent discloses an on/off switching mechanism identical to that of the C-
7 1001, in which the activation of the light is done via rotation of the lens through
8 which the light shines (the “On/Off Lens Switch”) as is claimed in Sirius’ ‘754
9 Patent.

10 61. At least as early as July 15, 2015, the C-1001 was being falsely
11 advertised as a patented product and was touted as the only eVDS approved by
12 the USCG.

13 62. At least as early as July 15, 2015, the Web page located at
14 www.siriussignal.com (the “Sirius Web Site”) depicted a picture of the C-1001 and
15 the following language to the left side thereof “Complies with all U.S. Coast Guard
16 requirements for ‘Night Visual Distress Signals’ 46 CFR 161.013. When
17 combined with the included daytime distress signal flag, meets all USCG Federal
18 Requirements for carriage of DAY and NIGHT VDS. Designed, engineered,
19 ***patented***, and produced in the USA” (emphasis added). At this time, no Sirius
20 U.S. Patent that purported covered the C-1001 product had been issued, and the
21 ‘288 Patent was expired.

22 63. Upon information and belief, at least as early as August 15, 2015,
23 Tektite and Mele were associated with the Sirius Defendants as the Sirius Web Site
24 listed Tektite as a distributor at least as early as that date, and, upon information
25 and belief, Mele is the owner of Tektite.

26 64. As early as September 14, 2015, the Sirius Defendants advertised its
27 C-1001 product as the *only* USCG-certified alternative to a pyrotechnic flare.

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1 65. On December 31, 2015, Weems and Sirius entered into the Agreement
2 for distribution of eVDSDs, which Weems believed were patented devices, and
3 pursuant to which Weems would have an exclusive license to manufacture,
4 distribute, advertise, publicize, market and sell the Licensed Products (as defined
5 below) (the “License”) and other rights including, without limitation, the Right of
6 First Offer pursuant to Section 6 of the Agreement (the “Exclusive Rights”) in
7 exchange for Weems making a substantial upfront payment to Sirius of two
8 hundred thousand dollars (\$200,000) and paying significant ongoing royalties to
9 Sirius (initially thirty percent) on sales of the Licensed Products (collectively, the
10 “Agreement Payments”).

11 66. At the time the Agreement was negotiated with Weems, the C-1001
12 product was falsely marked with at least “D720,247” as a part of the conspiracy to
13 inflate the prices of the C-1001 and to induce Weems into signing the Agreement
14 and paying excessive Agreement Payments due to the false belief that the C-1001
15 product was patented, that Weems was obtaining an exclusive license to valid and
16 enforceable patents, and that a license was required to sell the C-1001 and enter the
17 eVDSD market.

18 67. During negotiation of the Agreement, Covelli knowingly
19 misrepresented that the C-1001 was patented, and that additional patents were
20 being pursued, in order to induce Weems to execute and perform the Agreement,
21 including payment of the Agreement Payments.

22 68. Covelli knowingly directed W&P to falsely mark the products with
23 the numbers of patents that: 1) were expired; 2) did not cover the product; and 3)
24 which neither Covelli, Simons, nor Sirius owned or licensed.

25 69. Section 12b. Governing Law of the Agreement executed by Sirius and
26 Weems states, “This Agreement and the rights and obligations of the parties under
27 it are governed by and interpreted in accordance with the laws of the State of
28 Maryland (without regard to principles of conflicts of law).”

1 70. The Third Amendment of the Agreement states in Section 8 Binding
2 Agreement, “The Agreement as modified herein shall be binding on and inure to
3 the benefit of the ... legal representatives, ... owners, ... members, ... and any
4 other person or entity claiming under or through the parties.”

5 71. Covelli and Simons are legal representatives, owners, and members of
6 Sirius, and Covelli personally signed the Third Amendment, thereby personally
7 binding himself and Simons and making the Agreement binding on them as
8 individuals.

9 72. The Third Amendment further states in Section 9 Authority to
10 Execute, “The parties to the Third Amendment and the Agreement as modified
11 warrant, covenant and agree that the persons executing this Agreement are
12 authorized and empowered to enter into and execute this Agreement as modified
13 for and on behalf of the person or entity they represent, and that by their execution
14 of the Agreement, each respective person or entity they represent, and all persons,
15 partnerships, corporations, joint ventures and any person or entities affiliated with
16 them, shall be bound by the terms of this Agreement.”

17 73. Covelli signed the Third Amendment and was authorized and
18 empowered to personally bind himself and Simons, as individuals, thereby making
19 the Agreement binding on them individually.

20 74. “Know-How” is defined in the Agreement, as amended, to “have its
21 usual and accepted meaning such as, by way of example, but not of limitation, all
22 factual knowledge, proprietary information, trade secrets, procedures, processes,
23 methods, designs, discoveries, inventions, patent application, licenses, software
24 and source code, programs, prototypes, techniques, ideas, concepts, data,
25 engineering, manufacturing information, techniques, ideas, concepts, data,
26 engineering, manufacturing information, specifications, diagrams, schematics, or
27 rights or works of authorship, that give to the one acquiring it an ability to study,
28 test, produce, formulate, manufacture or market the SOS Distress Light SOS A-

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1 1001 sold by Sirius or variations thereof, which one otherwise would not have
2 known how to study, test, produce, formulate, manufacture or market in the same
3 way.” Although the Agreement refers to an A-1001, upon information and belief,
4 the A-1001 was never manufactured and sold and the product number used in
5 commerce for the intended A-1001 was C-1001.

6 75. “Licensed Products” are defined in the Agreement, as amended, to
7 include, *inter alia*, “[a]ny product made, used, sold, imported or offered for sale
8 that includes or is covered by any of the Patents or Know How.”

9 76. “Patents” are as defined in the Agreement, as amended, and include
10 “(b) all current and future patents related to the SOS Distress Light SOS A-1001
11 sold by Sirius or variations thereof that may be granted thereon [and] (c) any future
12 patents and/or patent applications owned by Sirius and covering one or more
13 aspects of the SOS Distress Light SOS A-1001 sold by Sirius as of December 30,
14 2015 or variations thereof.” As such, the patents licensed under the Agreement
15 include all of the Sirius IP including any future patents for the C-1002.

16 77. In executing the Agreement, the Sirius, Covelli, and Simons
17 unlawfully sought to do more than that which would have been authorized by a
18 limited monopoly due to its patents (if in fact the patents were valid) by requiring,
19 in Section 4 of the Agreement, entitled “Covenants of W&P”, that Weems, and
20 subsequently W&P, covenant that it “will not manufacture, sell, or distribute any
21 products that perform the same or a similar function as the Licensed Products other
22 than the Licensed Products.” This provision of the Agreement served anti-
23 competitive purposes because it sought to restrain Weems and W&P from
24 activities that were not purportedly prohibited by the Licensed Patents.

25 78. At least as early as April 24, 2018, Orion began offering an Electronic
26 SOS Beacon Locator Kit, which was/is manufactured and sold by Orion and
27 includes an eVDSD and a flag (the “Orion Kit”).

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1 79. On approximately April 30, 2018, Orion notified Sirius and Weems
2 via a letter (the “Orion Letter”) that the C-1001 Kit included packaging with
3 “incorrect statements” relating to its claim that it is the “ONLY ELECTRONIC
4 FLARE that meets U.S. Coast Guard Requirements” and that it is “the ONLY
5 ALTERNATIVE to traditional flares” (emphasis in the original). Orion further
6 indicated that the Weems Web Site indicated that the “SOS Distress Light is the
7 ONLY LED Visual Distress Signal Device that meets U.S. Coast Guard
8 requirements to completely replace traditional pyrotechnic flares” and that this was
9 also an incorrect statement, and asserted that these “statements violate Section
10 43(a) of the Lanham Act in that they are false and misleading statements of fact
11 that misrepresent the characteristics and qualities of both your company’s and
12 Standard Fusee’s products.”

13 80. Upon information and belief, in response to the Orion Letter, Sirius
14 and Weems phased out all use of this language. Further, at that point in time, it
15 was determined that Orion did not infringe upon any of the issued patents in the
16 Sirius IP, but it was understood by Weems that patents were being pursued upon
17 which the Orion Kit would infringe.

18 81. Upon information and belief, prior to the purported termination of the
19 Agreement, at least the Sirius Defendants held discussions about the termination of
20 the W&P Agreement and the potential licensing of the Sirius IP to Orion in
21 violation of W&P’s Right of First Offer pursuant to Section 6 of the Agreement
22 which states “[i]f at any time during the Term and for a period of one (1) year
23 thereafter, (i) Sirius shall desire to sell, transfer, assign or otherwise convey,
24 whether in whole or in part, the Know-How related to the Licensed Products, or
25 (ii) Sirius shall desire to grant control of Sirius to a person or entity other than to
26 W&P, or (iii) Sirius shall desire to grant licenses for other technologies, patents,
27 trademarks, or products that it may from time to time develop, Sirius agrees that it
28 shall provide W&P with sufficient notice of any such sale or licensing opportunity

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1 to permit W&P to enter into discussions with Sirius concerning such opportunity
2 and Sirius further agrees that it shall in good faith review any reasonable written
3 offer by W&P concerning any such opportunity. The term of this Section 7 [sic]
4 shall survive the expiration or earlier termination of this Agreement” (the “Right of
5 First Offer”).

6 82. At some point prior to purported termination of the Agreement by
7 Sirius, without the prior knowledge of W&P, the Sirius Defendants and Orion
8 engaged in discussion about at least the license of a portion of the Sirius IP without
9 offering W&P the Right of First Offer, in violation of at least Section 6 of the
10 Agreement.

11 83. Upon information and belief, at least prior to the purported
12 termination of the Agreement, the Sirius Defendants were conspiring to take all C-
13 1001 business from W&P by advertising the C-1001 as a discontinued product and
14 advertising the new C-1003 as the replacement for the C-1001.

15 84. Upon information and belief, the Sirius Defendants conspired to
16 deceive consumers and retailers into believing that the C-1001 was phased out, and
17 the C-1003 was needed to replace it and stay current with the USCG Regulations
18 when in reality, this was just an excuse to divert business from W&P to the
19 Tektite/Sirius Defendants and to increase profits for Emlinq via its manufacturing
20 of the circuit boards for same.

21 85. On April 23, 2019, the Sirius Defendants asked W&P to execute an
22 amendment to the Agreement (the “Fourth Amendment”) in which, *inter alia*, the
23 exclusive license would be amended to become a non-exclusive license, and Sirius
24 would have the rights to license its purported Sirius IP to any party. Upon
25 information and belief, the Sirius Defendants intended to create a monopoly by
26 converting W&P to a non-exclusive agreement to allow the Sirius Defendants to
27 place Orion under license to its fraudulent patents so that it would obtain a
28 monopoly in the eVDSD market.

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1 86. On April 26, 2019, Flanagan held a call with Covelli in which
2 Flanagan indicated that the amendment was not acceptable in its current form, to
3 which Covelli responded that if the amendment was not acceptable in its current
4 form, Flanagan would need to negotiate an agreement for the license of the new
5 multi-colored light contemporaneously with negotiation of the amendment, the
6 new license to include an upfront payment of \$275,000. Flanagan confirmed this
7 conversation in writing on Monday, April 29, 2019 and asked for a proposal for the
8 multi-colored light.

9 87. On May 1, 2019, Covelli replied that “[i]n order to work the model
10 through I need to know what you are proposing in regard to a royalty reduction in
11 our current agreement.” In other words, the negotiation of the royalty and other
12 terms of the licensing of the C-1001/C-1003 was dependent upon W&P licensing
13 the C-1002 multi-colored light under favorable terms to Sirius, and as such,
14 Covelli could not price the license for the C-1002 without knowing the fees to be
15 paid to license the C-1001/C-1003.

16 88. On May 24, 2019, the Sirius Defendants again asked W&P to execute
17 an amendment to the Agreement in which, *inter alia*, the exclusive license would
18 be amended to become a non-exclusive license, and Sirius would have the rights to
19 license its purported Sirius IP to any party.

20 89. On May 29, 2019, Flanagan replied with a marked up amendment in
21 which Sirius would only have the rights to license the Sirius IP to one other party,
22 namely Orion.

23 90. On June 1, 2020, Covelli texted Flanagan that he “sent your
24 amendment to Annapolis counsel.”

25 91. On June 10, 2020, Covelli held a phone call with Flanagan in which
26 he refused to execute the Fourth Amendment unless W&P simultaneously licensed
27 the C-1002 including an upfront payment of \$275,000.

28 / /

1 92. The following day, Sirius followed up with a written offer to W&P for
2 a license to the C-1002 in exchange for an upfront payment of \$275,000 plus
3 ongoing royalties despite the fact that the C-1002 is a Licensed Product. If for any
4 reason the multi-colored light is not considered to be a Licensed Product, then
5 Sirius is in breach of the express terms of the Agreement, because, upon
6 information and belief, Sirius negotiated with at least Orion to license, the new,
7 multi-colored light prior to offering this opportunity to W&P in violation of
8 W&P's Right of First Refusal.

9 93. Even when Sirius eventually did purportedly offer the C-1002 to
10 W&P on June 11, 2019, Sirius did so without providing support for projected sales
11 or other material information, such as estimated manufacturing costs, which would
12 be critical for W&P to make an informed decision. Sirius then retracted the offer
13 while refusing to provide the additional information, thereby further depriving
14 W&P of its Right of First Offer.

15 94. Upon information and belief, the Defendants conspired to cut off the
16 supply of circuit boards and finished C-1001s to W&P in an effort to effectuate the
17 diversion of W&P's business to Sirius, and this conspiracy was carried out prior to,
18 and after, the date upon which Sirius contends the Agreement was terminated.

19 95. On June 26, 2019, Covelli sent a letter to W&P declaring that "we
20 have chosen not to renew the licensing agreement when it expires on December 31
21 of this year" (the "First Declaration of Intent to End Agreement"). There was no
22 mention by Covelli of any alleged breach of the Agreement by W&P in the First
23 Notice of Intent to End Agreement.

24 96. On July 26, 2019, Covelli wrote another letter to Flanagan alleging
25 that (a) W&P had breached the Agreement and (b) the Agreement would terminate
26 on August 25, 2019 (the "Second Declaration of Intent to End Agreement"). The
27 July 26, 2019 letter was the first time Covelli notified W&P that the Sirius
28 Defendants considered W&P in breach of the Agreement.

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1 97. On July 2, 2019, Covelli confirmed to Flanagan that “there was no
2 going forward with Weems & Plath” because he was licensing the Sirius IP to
3 Orion. Flanagan restated these sentiments in an email to Covelli a few days later
4 on July 8, 2019, and he did not refute them.

5 98. It is well established that a patentee’s termination of a licensee in
6 concert with a competing licensee as occurred in this case, is not entitled to an
7 antitrust exemption. The patent system has no interest in permitting the patentee’s
8 monopoly to be used as a screen for the maintenance of a horizontal cartel at the
9 licensee level. Defendants, in furtherance of their conspiracy and in breach of the
10 Agreement, decided to terminate W&P in an effort to reduce the competition in the
11 eVDSD marketplace from W&P and Orion, to solely Orion.

12 99. On July 27, 2019, Covelli wrote a letter to Flanagan/W&P falsely
13 accusing W&P of breaching the Agreement and further stating that “the breaches
14 ... are incapable of being cured” and “[a]s a result, the agreement will terminate on
15 August 25, 2019.”

16 100. Upon information and belief, when Flanagan/W&P disputed the
17 breach, the Defendants set out on a course of conduct to cease manufacturing and
18 supplying W&P with the C-1001 and components thereof in order to prevent W&P
19 from selling the C-1001 in accordance with its Exclusive Rights.

20 101. Upon information and belief, the Defendants are now conspiring to
21 further raise the cost of an eVDSD from approximately \$89.99 (for a C-1003) to
22 \$299.95 (for a C-1002) via continuance of the aforementioned actions of the
23 Conspiracy including, but not limited to, agreeing to the acts of continuing to
24 obtain fraudulent patents, and eliminating Sirius’s sole competition (the Orion Kit)
25 by attempting to license Orion under the false patents.

26 **(1) Emlinq.**

27 102. Emlinq is a circuit board manufacturer, from which Weems/W&P
28 repeatedly, for a period of nearly four years, obtained circuits boards for use in the

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1 manufacturing of the C-1001, and with which Weems/W&P had an ongoing
2 customer-supplier business relationship. On July 16, 2019, W&P sent a purchase
3 order to Emlinq, for five thousand (5,000) circuit boards for use in manufacturing
4 the C-1001 (the “Emlinq Purchase Order”).

5 103. On July 29, 2019, Emlinq informed W&P that it had a call with
6 Covelli regarding the Emlinq Purchase Order.

7 104. Upon information and belief, in furtherance of the Sirius Defendants’
8 activities to manufacture the Licensed Products, and in breach of the Agreement,
9 Covelli, Simons, and/or Sirius placed an order with Emlinq for the same
10 components that W&P had ordered from Emlinq.

11 105. On July 29, 2019, for the first time in nearly four years, Emlinq
12 informed W&P that it was “unable” (or implicitly unwilling) to fulfill the W&P
13 order.

14 106. Upon information and belief, Covelli is a close acquaintance of a
15 representative of Emlinq, and Covelli conspired with the Emlinq representative and
16 exerted inappropriate influence on Emlinq to interfere with the filling of the
17 Emlinq Purchase Order.

18 107. Upon information and belief, Covelli and Sirius made to Emlinq
19 statements that were literally false and/or likely to mislead, confuse or deceive
20 regarding W&P’s rights to manufacture the Licensed Products, and Covelli’s and
21 Sirius’s statements caused commercial injury to W&P by harming W&P’s ability
22 to manufacture, and therefore sell, the Licensed Products, including introducing
23 inappropriate competition from Sirius in breach of W&P’s Exclusive Rights under
24 the Agreement.

25 108. Upon information and belief, because of Covelli’s inappropriate
26 influence on Emlinq, Emlinq permanently stopped supplying the circuit boards to
27 W&P.

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1 109. Without the additional circuit boards, W&P was limited in W&P's
2 ability to manufacture and sell the C-1001, including during a time period that
3 Sirius does not dispute the Agreement was still in effect and during the Sell-Off
4 Period (as defined below).

5 **(2) Tektite.**

6 110. Tektite is a manufacturer of various products including lights and
7 strobes, from which Weems/W&P repeatedly has obtained C-1001s and with
8 which Weems/W&P had an ongoing customer-supplier business relationship for
9 nearly four consecutive years. After this length of doing business, unexpectedly,
10 on August 15, 2019, Tektite notified W&P that, for all future orders, it would no
11 longer accept customer supplied parts from W&P with the exception of the
12 clamshell insert card.

13 111. On August 26, 2019, W&P sent purchase order 19-6009PO to Tektite
14 for ten thousand (10,000) SOS Body with Lens, "Complete Assembly includes
15 packaging in supplied clamshell, card insert and 15pcs per Master Carton)(i.e., for
16 completely assembled C-1001s).

17 112. Mele replied to the August 26, 2019 email and: 1) stated that it "can
18 not accept/confirm it at this time, as the price will be different;" 2) requested the
19 contact information for all suppliers of the floats and flags, with prior invoices; and
20 3) indicated that he was going away and would not have a price until mid-
21 September."

22 113. After continued delay, Flanagan wrote to Mele on September 25, 2019
23 and asked him to provide W&P with the "boards and bodies (including the lens,
24 cup with catalyst and contractor)" so that W&P could assemble the components.

25 114. In a reply email of same date to Flanagan's September 25, 2019 email,
26 Mele refused to provide the products and stated that the only way they would
27 continue providing the C-1001 to W&P was if they provided "finished product
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1 pricing” despite the fact that they had never operated in this manner in the nearly
2 four years of Weems/W&P’s and Tektite’s business relationship.

3 115. On September 27, 2019, W&P supplied Mele with the names of its
4 suppliers in an attempt to get a finished product price.

5 116. On October 8, 2019, when Flanagan emailed Mele to follow-up, he
6 said “I have not received any responses to my Sept. 27 RFQs to the 2 vendors.
7 This is not entirely unexpected due to the holiday week in China.”

8 117. When W&P followed up with one of the Chinese suppliers, Pan-U
9 Ind. Co. Ltd (“Pan-U”), it was informed on October 13, 2019 that it had never
10 received a request or RFP from Mele or Tektite.

11 118. Upon information and belief, Mele wrote literally false statements to
12 W&P for the purpose of deceiving it into believing it was working on a quote when
13 in fact it was not, to delay production of the C-1001 and to avoid W&P finding
14 another supplier because Mele and Tektite were conspiring with at least the Sirius
15 Defendants to divert all of W&P’s customers to Sirius by depleting the inventory
16 of W&P by refusing to manufacture the C-1001.

17 119. Upon information and belief, in furtherance of Covelli’s and Sirius’s
18 activities to manufacture the Licensed Products, and in breach of the Agreement,
19 Covelli placed an order with Tektite for the same components that W&P had
20 ordered from Tektite.

21 120. Flanagan had sent a letter to Mele and Tektite on August 7, 2019
22 advising them that such activities (i.e., manufacturing the C-1001 or components
23 thereof for Sirius) would be a violation of W&P’s rights, and asked Mele to notify
24 him of any such activities. Upon information and belief, Mele did not notify
25 Flanagan and instead proceeded to fill the order placed by the Sirius Defendants
26 behind the back of W&P.

27 / /

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1 121. Upon information and belief, Covelli is a close acquaintance of Mele,
2 and Mele, Tektite, or both have a financial interest in Sirius and/or the profitability
3 of the C Series Lights.

4 122. Upon information and belief, at least Covelli conspired with Mele and
5 Tektite and exerted inappropriate influence on them to interfere with W&P's order
6 for the C-1001.

7 123. At least on October 5, 2019, at least Covelli and Sirius made
8 statements to Mele and Tektite that were literally false or likely to mislead, confuse
9 or deceive regarding W&P's rights to manufacture the Licensed Products, and
10 Covelli's and Sirius's statements caused commercial injury to W&P by harming
11 W&P's ability to manufacture, and therefore sell, the C-1001, including, at a
12 minimum, introducing inappropriate competition from Sirius in breach of W&P's
13 Exclusive Rights under the Agreement.

14 124. Because of Covelli's inappropriate influence on Tektite, Tektite
15 refused to do business with W&P on its regular terms and greatly increased the
16 cost to W&P for supplying the C-1001.

17 125. Without the additional C-1001 supply, W&P was limited in W&P's
18 ability to manufacture and sell the C-1001, including sale of its C-1001 inventory
19 during the Sell-Off Period (as defined below).

20 **(3) Customer A.**

21 126. Weems/W&P have been selling the C-1001 to Customer A since
22 around 2015. Weems/W&P have had business and contractual relations with
23 Customer A since at least the middle of the 1970s, and W&P reasonably has an
24 expectation of ongoing prospective business and contractual relations with
25 Customer A. Customer A is representative of W&P's customers similarly
26 impacted by the Defendants', which have put W&P's customers in the middle of
27 the dispute between the Plaintiff and Defendants.

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1 127. Prior to August 25, 2019, Covelli informed Customer A that Customer
2 A would no longer be able to obtain the Licensed Products from W&P and that
3 Customer A would need to buy from Sirius the Licensed Products manufactured by
4 Sirius.

5 128. Covelli’s assertion to Customer A is untrue. Covelli’s untrue
6 comments to at least Customer A constitute fraud, deceit, trickery, bad faith, and/or
7 unfair methods. Upon information and belief, Covelli made to Customer A
8 statements that were literally false and/or likely to mislead, confuse or deceive
9 regarding W&P’s rights to manufacture the Licensed Products, and Covelli’s
10 statements caused commercial injury to W&P by harming W&P’s ability to sell the
11 C-1001 and potentially other products to Customer A, including introducing
12 inappropriate competition from Sirius in breach of W&P’s Exclusive Rights.

13 129. Even if the Defendants contend that the Agreement ended on August
14 25, 2019, Section 11 of the Agreement states that: “Upon the termination or
15 expiration of this Agreement for whatever reason, W&P ... shall be able to
16 continue to sell, on a non-exclusive basis, existing Licensed Products [in]
17 inventory....” This period is defined herein as the “Sell-Off Period.”

18 130. Covelli’s and Sirius’s actions caused at least Customer A to stop
19 buying the Licensed Products from W&P, causing W&P to lose existing and future
20 sales to at least Customer A of the Licensed Product and potentially other products.
21 Customer A has indicated to W&P that so long as there is a dispute over whether
22 W&P has the right to manufacture and sell the Licensed Products, Customer A will
23 not buy the Licensed Products from W&P or Sirius, however, upon information
24 and belief, Customer A has continued to purchase eVDSDs from Orion.

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COUNT I
BREACH OF CONTRACT
(PLAINTIFF AGAINST THE SIRIUS DEFENDANTS)

131. W&P repeats and re-alleges each of the foregoing and following allegations as though fully set forth herein.

132. The Agreement between W&P and Sirius is a contract and forms the basis of a contractual relationship between W&P and the Sirius Defendants.

133. The Sirius Defendants and Weems/W&P, for valuable consideration, entered into an Agreement on December 31, 2015 (with three subsequent amendments) to grant Weems/W&P “an exclusive license ... in and to the Know-How with respect to the Patents and the Trademarks to manufacture, distribute, advertise, publicize, market and sell Licensed Products to consumers and retail entities” in return for the Agreement Payments from Weems/W&P to Sirius.

134. As set forth herein with reference to specific sections of the Agreement, the Sirius Defendants have breached numerous provisions of the Agreement as set forth in this section, causing damage to W&P financially and non-monetarily including, at a minimum, W&P’s reputation and W&P’s goodwill.

135. Pursuant to the Third Amendment that Covelli personally signed, Covelli personally bound himself and Simons by the Agreement and made the Agreement binding on him and Simon, by virtue of Covelli and Simons being any of a “legal representatives ... owners ... members” of Sirius.

136. As members and owners of Sirius, Covelli and Simons are not employees of Sirius, Covelli and Simons are distinct from the legal entity Sirius, and Covelli, Simons, and potentially others have used Sirius to act as their agent in conduct described herein.

137. Being personally bound by the Agreement, Covelli and Simons have breached the Agreement with W&P, as individuals, and through the intentional and improper actions of Sirius as Covelli’s and Simons’ agent and of Covelli and

1 Simons on behalf of and/or in concert with Sirius, described above with respect to
2 at least Orion, Emlinq, and Customer A and the breaches set forth below.

3 138. Covelli's and Simons' actions as individuals, and through the
4 intentional and improper actions of Sirius as Covelli's and Simons' agent and of
5 Covelli and Simons on behalf of and/or in concert with Sirius described above,
6 have violated W&P's rights under the Agreement and impaired W&P's ability to
7 obtain the full benefits of the Agreement.

8 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND**
9 **FAIR DEALING OF THE AGREEMENT**

10 139. The Sirius Defendants breached an implied covenant of good faith and
11 fair dealing by knowingly misrepresenting that the C-1001 was patented, in order
12 to induce Weems/W&P to execute and perform the Agreement, including
13 Weems/W&P making Agreement Payments for sales of the Licensed Products.

14 140. The Sirius Defendants breached an implied covenant of good faith and
15 fair dealing by knowingly misrepresenting that patents obtained, owned, and/or
16 claimed to be owned by Sirius were valid when, in fact, it knew that they were
17 invalid due to fraud, inequitable conduct, and violation of the duty to disclose
18 material art to the USPTO.

19 141. The Sirius Defendants have breached an implied covenant of good
20 faith and fair dealing by threatening to not renew the Agreement if W&P did not
21 license a new, multi-colored light and pay a significant upfront payment of
22 \$275,000 (in addition to the initial upfront payment of \$200,000 paid for the initial
23 Agreement). Assuming arguendo that Sirius's claim is correct that the multi-color
24 light is not a Licensed Product covered under the Agreement, Sirius breached its
25 duty of good faith and fair dealing regarding the Agreement by improperly
26 attempting to tie continuation of the existing Agreement to W&P's acceptance of
27 the newly-proposed license agreement to the multi-colored light. Nothing in the
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1 Agreement requires W&P to license new products as a condition to continuing to
2 license the existing products.

3 142. Conversely, assuming, as W&P does, that that the multi-color light is
4 a Licensed Product covered under the Agreement, the Sirius Defendants breached
5 its duty of good faith and fair dealing regarding the Agreement by improperly
6 attempting to tie continuation of the existing Agreement to W&P's acceptance of
7 the newly-proposed, unnecessary, and exorbitant license agreement to the multi-
8 colored light, for which W&P already has a license under the Agreement. Beyond
9 improperly attempting to tie continuation of the Agreement to acceptance of the
10 unnecessary license, Sirius's demand that W&P pay an extra exorbitant upfront fee
11 to license the new multi-color light is in breach of good faith and fair dealing,
12 because the multi-colored light falls under the definition of Licensed Products, is
13 thus already part of W&P's License, for which a previous upfront fee already had
14 been paid, and pursuant to which royalties on sales of the multi-colored light
15 would accrue on behalf of Sirius just as sales of the existing products do already.

16 143. The Sirius Defendants also breached an implied covenant of good
17 faith and fair dealing by fabricating the unsubstantiated claim that W&P breached
18 the Agreement as a basis for its Second Declaration of Intent to End Agreement.
19 The Sirius Defendants only made this claim after the Sirius Defendants realized
20 that they had no legal justification for the First Declaration of Intent to End
21 Agreement, and the First Declaration of Intent to End Agreement was sent to W&P
22 only after and because W&P declined to accept Sirius's demands that W&P enter
23 into a separate license agreement for the new multi-color light and pay an
24 enormous upfront fee, which is not a valid basis for terminating the Agreement.

25 **BREACH OF SECTION 2 OF THE AGREEMENT**

26 144. Under Section 2a of the Agreement (listed as Section 3 in the First
27 Amendment to the Agreement, but still referred to as Section 2 within the amended
28 section), W&P has the exclusive right to "manufacture, distribute, advertise,

1 publicize, market, sell, offer for sale and/or import Licensed Products” which is a
2 part of W&P’s Exclusive Rights.

3 145. In breach of W&P’s Exclusive Rights under the Agreement, prior to
4 August 25, 2019, at a minimum, the Sirius Defendants undertook activities to
5 manufacture the Licensed Products by, at a minimum, the Sirius Defendants
6 having ordered floats from one of W&P’s suppliers, Pan-U, for use in Tektite’s
7 manufacturing of the Licensed Products.

8 146. In further breach of W&P’s Exclusive Rights by the Sirius
9 Defendants, prior to August 25, 2019, Sirius contacted third parties, including but
10 not limited to, Emlinq to manufacture circuit boards for the Licensed Products for
11 Sirius, for use in Tektite’s manufacturing of the Licensed Products.

12 147. In further breach of W&P’s Exclusive Rights by the Sirius Defendants
13 under the Agreement, Sirius has been marketing Sirius-manufactured Licensed
14 Products to at least one of W&P’s customers, including Customer A, in an attempt
15 to divert sales from W&P to Sirius and make direct sales to these customers of
16 Licensed Products. Customer A is representative of W&P’s customers similarly
17 impacted by the Defendants’ activities, which have put W&P’s customers in the
18 middle of the dispute with Plaintiff and Defendants, thereby damaging W&P’s
19 goodwill and reputation.

20 148. In further breach of W&P’s Exclusive Rights by Sirius under the
21 Agreement, on August 26, 2019, Sirius published a press release announcing, “the
22 upcoming launch of its dual color eVDSD model C-1002 device and the updated
23 C-1003 model, both of which will be manufactured and distributed exclusively by
24 Sirius Signal.” The press release continues that these models “are currently
25 undergoing testing and certification.”

26 149. The C-1002 and C-1003 devices are Licensed Products in accordance
27 with the terms of the Agreement.

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1 150. In further breach of W&P’s Exclusive Rights by Sirius under the
2 Agreement, the Sirius Defendants offered and continue to offer C-1003s for sale,
3 and, in doing so, disparage the C-1001 sold by W&P by marketing the new model
4 C-1003 as a replacement that “promises to be vastly more effective than the current
5 white light models,” wherein the current white light models are the C-1001 sold by
6 W&P. As such, the Sirius Defendants are implying that the W&P C-1001 product
7 is outdated, inferior, and less effective. Even if the Agreement is deemed to have
8 an early termination date, the Sirius Defendants are well aware that these
9 statements affect the ability of W&P to sellout its inventory during the Sell-Off
10 Period as per the terms of the Agreement.

11 151. Section 2a of the Agreement also states that “Sirius shall in a timely
12 manner make available to W&P such materials as may be necessary or desirable
13 for use in exercising W&P’s rights hereunder.”

14 152. In breach of these express terms of Section 2a of the Agreement, in an
15 attempt to frustrate W&P’s ability to manufacture the products, Emlinq and the
16 Sirius Defendants have refused, and continue to refuse, to provide manufacturing
17 specifications for the Licensed Products to W&P, including, but not limited to,
18 circuit board design specifications, known as “Gerber” files (“Gerber Files”),
19 which are necessary to manufacture the circuit boards.

20 **BREACH OF SECTION 3 OF THE AGREEMENT**

21 153. Section 3 of the Agreement states, in part, that “[t]he parties agree to
22 renew for additional twenty-four (24) month periods thereafter ... unless one party
23 after a mandated negotiation at the end of the prior term gives the other party sixty
24 (60) days’ notice to terminate the Agreement. In this way, the License could be for
25 the life of the patents....”

26 154. The Agreement was amended in Section D of the Third Amendment
27 to state that the Agreement “will automatically renew” unless intentionally
28 terminated by 60-days’ notice and only then, after a “mandated negotiation.”

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1 Section 2 of the Third Amendment states that “prior to renewal of a ‘Term’ in
2 Section 3 under the Agreement, in order to terminate the ‘Initial Term’ or a
3 ‘Renewal Term’, the ‘mandated negotiation’ prior to the termination must occur at
4 least sixty (60) days prior to the end of the ‘Term’, and each party must give the
5 other party sixty (60) days [sic] notice to terminate the ‘Term’ prior to the end of
6 each ‘Term’, unless agreed by the parties in writing.”

7 155. In breach of these express terms of the Agreement, Sirius violated
8 Section 3 of the Agreement by not performing the required “mandated negotiation”
9 prior to declaring the termination of the Agreement.

10 **BREACH OF SECTION 5 OF THE AGREEMENT**

11 156. Section 5 of the Agreement states that “Sirius will not license to any
12 party other than W&P, to manufacture, sell or distribute any products that perform
13 the same or a substantially similar function as the Licensed Products.”

14 157. In breach of Sirius’s obligations under Section 5, Sirius negotiated
15 with at least one third party, Orion to license the Sirius IP to Orion.

16 158. In breach of Sirius’s obligations under Section 5, Sirius negotiated
17 with at least Orion to license the new multi-colored light.

18 159. In breach of Sirius’s obligations under Section 5, Sirius gave at least
19 Orion an implied license to sell Licensed Products by not enforcing the patents
20 against Orion.

21 160. In breach of these express terms of the Agreement, Sirius has thus
22 effectively licensed rights to manufacture and sell the Licensed Products to Orion
23 by failing to enforce the Sirius IP, and has not decreased the cost paid by W&P to
24 Sirius accordingly despite the fact that W&P effectively had a non-exclusive
25 license to manufacture and sell the Licensed Products since the introduction of the
26 Orion Kit in 2018.

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BREACH OF SECTION 6 OF THE AGREEMENT

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2 161. Section 6 of the Agreement gives W&P a Right of First Offer to any
3 new technologies or products developed by the Sirius Defendants that are not
4 Licensed Products.

5 162. Upon information and belief, Sirius negotiated with Orion to make the
6 multi-colored light before offering to W&P the opportunity to make the multi-
7 colored light. If for any reason the multi-colored light is not considered to be a
8 Licensed Product, then the Sirius Defendants are in breach of the express terms of
9 the Agreement, because the Sirius Defendants negotiated with at least Orion to
10 license, implicitly or explicitly, the new, multi-colored light without first offering
11 such opportunity to W&P. Even when the Sirius Defendants eventually did offer
12 the new product to W&P, the Sirius Defendants did so without providing support
13 for projected sales or other material information, such as estimated manufacturing
14 costs, which would be critical for W&P to make an informed decision. The Sirius
15 Defendants then retracted the offer while refusing to provide the additional
16 information, thereby further depriving W&P of its right of first offer.

17 163. Upon information and belief, in breach of the express terms of the
18 Agreement, the Sirius Defendants negotiated with at least Orion to license,
19 implicitly or explicitly, certain Know How without first offering such opportunities
20 to W&P.

BREACH OF SECTION 8(C) OF THE AGREEMENT

21
22 164. Section 8c of the Agreement obligates Sirius to take diligent steps to
23 enforce the Patents against third parties.

24 165. Section 8c of the Agreement states, in part: Defense of Patents and
25 Trademarks. In the event either party becomes aware of any infringement by a
26 third party of the Patents or Trademarks, Sirius shall, at its sole cost and discretion,
27 take diligent steps, including, but not limited to, filing a lawsuit or injunction if
28 necessary, to protect and defend Sirius's rights to the Patents and trademarks.

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1 166. Upon information and belief, at least Orion is selling a product that
2 Sirius indicates infringes at least one claim of one of the Patents.

3 167. Orion’s purported infringement of the Licensed Patents has been
4 ongoing since on or about May 2018.

5 168. W&P notified Sirius that such infringement was causing financial
6 harm to W&P.

7 169. W&P put Sirius on notice of the financial damage caused by Orion’s
8 purported infringement at least as early as October 2018.

9 170. Upon information and belief, and in breach of the express terms of the
10 Agreement, Sirius has not “take[n] diligent steps, including, but not limited to,
11 filing a lawsuit or injunction if necessary,” to prevent Orion from infringing the
12 Licensed Patents.

13 171. In breach of the express terms of the Agreement, Sirius has not
14 brought a lawsuit against Orion or any other third party to prevent them from
15 infringing the Licensed Patents.

16 172. One of the benefits of the Agreement obtained by W&P in exchange
17 for the Agreement Payments is the exclusive right to manufacture, distribute,
18 advertise, publicize, market, and sell the Licensed Products.

19 173. Section 2a of the Agreement states that “Sirius understands and agrees
20 that the representations and warranties set forth in this Section 2(a) are a material
21 inducement to W&P entering into this Agreement.”

22 174. W&P has been damaged financially by Sirius not enforcing the
23 Licensed Patents against Orion in the form of, at a minimum, lost sales.

24 175. To the contrary, in clear breach of Sections 2a and 8c of the
25 Agreement, Sirius is actively encouraging Orion to infringe the Patents by
26 negotiating a license to the Sirius IP with Orion.

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1 176. Sirius's failure to "take diligent steps ... to protect and defend Sirius's
2 rights to the Patents" to the clear disadvantage of W&P also breaches Sirius's duty
3 of good faith and fair dealing.

4 **BREACH OF SECTION 10 OF THE AGREEMENT**

5 177. Section 10 of the Agreement provides a minimum of a 30-day
6 window to cure any breach to the Agreement. The minimum window to cure is 30
7 days, except in the case that the breach "is not capable of reasonably being cured
8 within thirty (30) days." In such instance, the time for cure "shall be extended as
9 reasonably necessary provided the defaulting party commences to cure such
10 default within thirty (30) days and diligently prosecutes the cure to completion."
11 Likewise, nowhere does the Agreement provide Sirius with the right to unilaterally
12 terminate either: (1) based on Sirius's unilateral perception that an alleged breach
13 is "incapable of being cured;" or (2) before at least 30 days of notice have passed
14 and the alleged breach has not been cured or corrected or begun to be cured or
15 corrected.

16 178. In the Second Declaration of Intent to End Agreement, Sirius stated
17 that W&P allegedly had breached of the Agreement by selling to a distributor in
18 Finland the Licensed Products with a red light that does not conform to USCG
19 standards and by labeling these products with the same product number as those
20 sold with a white light that does conform to USCG standards, despite the fact that
21 Sirius, after extensive communications with W&P, approved the sale of this exact
22 light to the Finnish distributor.

23 179. In the Second Declaration of Intent to End Agreement, Sirius first
24 instructed W&P, in three enumerated commands, to "Take all steps necessary" to
25 cure specified aspects of the alleged breach. Immediately thereafter, Sirius
26 illogically, and in contradiction to the three enumerated commands, asserted that
27 "[b]y their very nature, these breaches of the agreement are incapable of being
28 cured, much less cured within 30 days or within a reasonable time period."

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1 Sirius's own enumerated commands set forth how Sirius would propose to cure the
2 alleged breaches, directly undermining and contradicting Sirius's claim that such
3 "breaches of the agreement are incapable of being cured," clearly demonstrating,
4 *inter alia*, Sirius's lack of good faith, in breach of Sirius's duty of good faith and
5 fair dealing, and Sirius's breach of the cure provisions of Section 10. Sirius's
6 assertion of the unilateral discretion to deem an alleged breach to be "incapable of
7 being cured" is itself a breach of the Agreement, as is Sirius's assertion that Sirius
8 unilaterally may terminate the Agreement based on Sirius's perception of an
9 alleged breach being "incapable of being cured."

10 180. In addition to Sirius's breach of the Section 10 cure provisions, Sirius
11 also fabricated the breach allegations by basing the unsupported allegations on
12 illusory references to aspects of the Agreement. In contradiction to Sirius's breach
13 allegations, there is no express provision in the Agreement or in any other
14 documentation that the Licensed Products are required to have a white light or to
15 conform to USCG standards.

16 181. There also is no requirement in any of the Sirius IP that the products
17 described therein must have a white light or conform to USCG standards.

18 182. Furthermore, Sirius approved the Finnish Light prior to the shipment
19 of the Finnish Light to Finland.

20 183. Nevertheless, although not in breach of the Agreement, in a sign of
21 good faith, W&P submitted a plan to Sirius to address Sirius's concerns within the
22 thirty-day cure period.

23 184. In breach of the express terms of Section 10 of the Agreement,
24 through the Second Declaration of Intent to End Agreement, Sirius is attempting to
25 terminate the Agreement early, even though W&P had cured, or had commenced
26 to cure, any alleged breach within 30 days of notification, and even though the
27 breach allegations are not supported by any express terms of the Agreement, and as
28 such, no express terms of the Agreement were breached.

1 185. W&P has complied with its obligations under the Agreement.
2 Nonetheless, Sirius has interfered with W&P's sales of the Finnish Light and
3 W&P's relationships with W&P's customers purchasing the Finnish Light.

4 186. The Sirius Defendants' tortious actions in breach of the Agreement
5 have damaged or will damage W&P financially in an amount exceeding \$75,000.

6 **COUNT II**
7 **UNFAIR COMPETITION**
8 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

9 187. W&P repeats and re-alleges each of the foregoing and following
10 allegations as though fully set forth herein.

11 188. Through the actions set forth above with respect to at least Orion,
12 Emlinq, and Customer A, Defendants have damaged, impaired, and/or jeopardized
13 W&P's business through fraud, deceit, trickery, bad faith, and/or unfair methods.
14 Upon information and belief, Defendants committed unfair competition inasmuch
15 as: (1) Covelli personally interfered with the fulfillment of an order for five
16 thousand (5000) circuit boards to be manufactured by Emlinq for W&P; (2)
17 Emlinq refused to provide the circuit boards to W&P and instead provided circuit
18 boards to Sirius in violation of the Agreement; (3) Mele and Tektite refused to
19 provide C-1001s to W&P in accordance with their previously negotiated terms;;
20 (5) the Sirius Defendants issued a press release on August 26, 2019 that was
21 literally false and/or likely to mislead, confuse or deceive by leading consumers to
22 believe that the Agreement had expired; (6) the Sirius Defendants issued a press
23 release on October 22, 2019 that was literally false and/or likely to mislead,
24 confuse or deceive stating that effective Jan 1, 2020, Sirius Signal will no longer
25 license or manufacture the model C-1001 and indicating that the "C-1003 will be
26 available as a direct replacement for the light you currently carry"; and (7) at least
27 these actions of the Defendants caused commercial injury to W&P by harming
28 W&P's ability to manufacture and sell, the C-1001 during a time in which neither

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1 party disputes that the Agreement was in full force and effect and during the Sell-
2 Off Period, such action including introducing inappropriate competition from
3 Sirius in breach of W&P's Exclusive Rights under the Agreement.

4 189. Due to the untrue communications to Customer A, and these
5 Customers' reliance thereon, and the inability of W&P to manufacture and sell the
6 C-1001 product, W&P's ability to: 1) sell the C-1001 to Customer A has been
7 impaired; and 2) sell other products to Customer A has been jeopardized, because
8 the inappropriate uncertainty caused by the Sirius Defendants' untrue
9 communications has undermined these Customers' faith in W&P as a supplier.

10 190. Also due to these untrue communications to Customer A and the
11 Customers' reliance thereon, and the inability of W&P to manufacture and sell the
12 C-1001 product, W&P's reputation and goodwill in the perspective of Customer A
13 have been damaged by Defendants' actions, because Defendants' untrue
14 communications have undermined these Customers' faith in W&P in general.

15 191. The Defendants' tortious actions have financially damaged W&P in
16 an amount exceeding \$75,000.

17 **COUNT III**
18 **TORTIOUS INTERFERENCE WITH**
19 **PROSPECTIVE BUSINESS ADVANTAGE**
20 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

21 192. W&P repeats and re-alleges each of the foregoing and following
22 allegations as though fully set forth herein.

23 193. Defendants' actions described above have impaired W&P's ability to
24 reliably and predictably obtain the circuit boards from Emlinq and the C-1001s
25 from Tektite.

26 194. When W&P is not able to obtain the circuit boards and the C-1001s,
27 W&P is unable to manufacture the C-1001. Therefore, Defendants' actions have
28 impaired W&P's ability to reliably and predictably manufacture the C-1001,

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1 thereby damaging W&P's ability to sell the C-1001 and exercise W&P's Exclusive
2 Rights under the Agreement.

3 195. Defendants' actions described above were performed intentionally
4 and were reasonably calculated to cause damage to W&P's business. W&P has
5 had ongoing business relations with Emlinq and Tektite, and but for Defendants'
6 interference, W&P has had a reasonable probability of ongoing and future business
7 opportunities with Emlinq and Tektite.

8 196. Defendants' actions described above with respect to Emlinq and
9 Tektite were done with the unlawful purpose to cause damage and loss to W&P,
10 without right or justifiable cause.

11 197. W&P has been damaged financially and reputationally from
12 Defendants' actions described above with respect to Emlinq and Tektite.

13 198. Due to Defendants' actions described above, W&P's ability to sell the
14 C-1001 to its customers including, without limitation, Customer A has been
15 impaired.

16 199. Due to Defendants' actions described above, W&P's ability to sell
17 other products to its customers including, without limitation, Customer A has been
18 jeopardized.

19 200. Defendants' actions described above with respect to Emlinq, Tektite,
20 and Customer A were performed intentionally and were reasonably calculated to
21 cause damages to W&P's business. W&P has had ongoing business relations with
22 Customer A, and but for Defendants' interference, W&P has had a reasonable
23 probability of ongoing and future business opportunities with at least Customer A.

24 201. Defendants' actions described above with respect to Customer A were
25 done with the unlawful purpose to cause damage and loss, without right or
26 justifiable cause.

27 202. W&P has been damaged financially and reputationally from
28 Defendants' actions described above with respect to at least Customer A.

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1 203. Defendants' actions with respect to at least Emlinq and Customer A
2 were wrongful or unlawful because they frustrated W&P's ability to perform
3 W&P's Exclusive Rights under, and obtain the benefit of, the Agreement, to which
4 Covelli and Simons personally bound themselves explicitly in the Third
5 Amendment, and they breached an implied covenant of good faith and fair dealing.

6 204. The Defendants' actions were additionally wrongful or unlawful
7 because they breached Section 2 of the Agreement by: (1) violating W&P's
8 exclusive license to advertise, publicize, market or sell the C-1001 to at least
9 Customer A; and (2) attempting to advertise, publicize, market or sell to at least
10 Customer A Licensed Products not purchased from W&P for resale.

11 205. Defendants' actions intentionally have interfered tortiously with
12 W&P's business and contractual relations with Emlinq, Tektite, and at least
13 Customer A. Defendants' actions intentionally have interfered tortiously with
14 W&P's prospective business advantage with at least Customer A. Namely,
15 Defendants' actions have proximately caused W&P's ability to manufacture and
16 sell the Licensed Products to decrease and have damaged W&P at least in terms of
17 lost current and future sales, decreased product turnover, and associated decreased
18 profits. Due to Defendants' tortious interference, W&P has been damaged
19 financially and reputationally in W&P's existing and prospective business
20 relationships with Emlinq, Tektite, and at least Customer A.

21 206. Defendants committed tortious interference with W&P's business
22 relations inasmuch as: (1) W&P had beneficial business relations with at least
23 Customer A, Emlinq, and Tektite; (2) Defendants' knew of W&P's beneficial
24 business relations; (3) Defendants' intended to impair or cause a detriment to
25 W&P's business relations; (4) Defendants' lacked any privilege to impair or cause
26 a detriment to W&P's business relations; (5) Defendants' impaired or caused a
27 detriment to W&P's business relations; and (6) Defendants' actions caused damage
28 to W&P.

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COUNT IV
CIVIL CONSPIRACY BY DEFENDANTS
(PLAINTIFF AGAINST ALL DEFENDANTS)

207. W&P repeats and re-alleges each of the foregoing and following allegations as though fully set forth herein.

208. Upon information and belief, Sirius was formed by Covelli and Simons in California on March 05, 2015 and identified as entity 201506810315.

209. Upon information and belief, no legal entity possibly associated with Sirius is known to have existed prior the formation of Sirius on March 05, 2015.

210. Upon information and belief, Sirius has as members, *inter alia*, Covelli and Simons, who are the co-inventors listed on Sirius IP covered in the Agreement executed by Covelli on behalf of Sirius.

211. Upon information and belief, co-inventors Covelli and Simons claim to have created the initial devices and initial technology associated with the Sirius IP, the earliest of which was filed June 06, 2014, at least nine months before the formation of Sirius as a legal entity on March 05, 2015.

212. Upon information and belief, co-inventors Covelli and Simons initially owned the Sirius IP by act of law upon filing of the associated patent applications, in the absence of any written assignment assigning ownership thereof to a third party.

213. Upon information and belief, co-inventors Covelli and Simons executed on April 06, 2016, and recorded with the United States Patent and Trademark Office (“USPTO”) on June 11, 2018, a written assignment purporting to assign the ‘114 Patent to “Sirius Signal Co.” of 1042 North El Camino Real, Suite B-200, Encinitas, CA 92024. The ‘114 Patent is based on U.S. Patent Application 16004987 filed on June 11, 2018.

214. Upon information and belief, co-inventors Covelli and Simons, executed on April 06, 2016, and recorded with the USPTO on April 11, 2016, a

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1 written assignment purporting to assign the ‘754 Patent to “Sirius Signal Co.” of
2 1254 Scott Street, San Diego, CA 92106. The ‘754 Patent is based on U.S. Patent
3 Application 15095727 filed on April 11, 2016.

4 215. Upon information and belief, co-inventors Covelli and Simons,
5 executed on February 25, 2016, and recorded with the USPTO on March 07, 2016,
6 a written assignment purporting to assign the ‘175 Patent to “Sirius Signal Co.”
7 and identified in the USPTO Assignment Records as “Asirius Signal Co.” of 1254
8 Scott Street, San Diego, CA 92106. The ‘175 Patent is based on U.S. Patent
9 Application 29557241 filed on March 07, 2016.

10 216. Upon information and belief, co-inventors Covelli and Simons,
11 executed on February 25, 2016, and recorded with the USPTO on March 02, 2017,
12 a written assignment purporting to assign the ‘920 Patent to “Sirius Signal Co.” of
13 1254 Scott Street, San Diego, CA 92106. The ‘920 Patent is based on U.S. Patent
14 Application 29595834 filed on March 02, 2017.

15 217. Upon information and belief, co-inventors Covelli and Simons,
16 executed on January 05, 2019, and recorded with the USPTO on January 24, 2019,
17 a written assignment purporting to assign the ‘477 Patent to “Sirius Signal, LLC”
18 of 1042 North El Camino Real, Suite B-200, Encinitas, CA 92024. The ‘477
19 Patent is based on U.S. Patent Application 29638591 filed on February 28, 2018.

20 218. Upon information and belief, co-inventors Covelli and Simons,
21 executed on April 06, 2016, and recorded with the USPTO on June 15, 2017, a
22 written assignment purporting to assign the ‘033 Application, published as U.S.
23 Patent Publication 20170349248, to “Sirius Signal Co.” of 1254 Scott Street, San
24 Diego, CA 92106. The ’033 Application was filed on June 15, 2017.

25 219. Upon information and belief, co-inventors Covelli and Simons,
26 executed on April 06, 2016, and recorded with the USPTO on January 11, 2019, a
27 written assignment purporting to assign the ‘947 Application, published as U.S.
28 Patent Publication 20190161149, to “Sirius Signal Co.” and identified in the

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1 USPTO Assignment Records as “Sirius Signal, LLC” of 1042 North El Camino
2 Real, Suite B-200, Encinitas, CA 92024. The ‘947 Application was filed on
3 January 11, 2019.

4 220. Under California Code of Regulations (CCR) section
5 21001(d)(1)(B)&(G), the unitary business entity identifiers “Co.” and “Company”
6 apply only to corporations, and not to limited liability companies, in the absence of
7 the words or abbreviations for “limited” and “liability.”

8 221. Upon information, belief, and a diligent search, “Sirius Signal Co.”
9 does not exist as a legal entity in California or elsewhere.

10 222. Upon information, belief, and a diligent search, “Sirius Signal, Inc.”
11 does not exist as a legal entity in California or elsewhere.

12 223. Upon information and belief, the patent assignments purporting to
13 assign patents and patent applications to “Sirius Signal Co.” are legal nullities and
14 void, because “Sirius Signal Co.” does not exist, either as a legal entity or as an
15 assignee, and thus cannot own the purported assigned patents and patent
16 applications. Therefore, co-inventors Covelli and Simons retained their ownership
17 of the assets purportedly assigned to “Sirius Signal Co.” and remained the owners
18 of those assets through at least 12/31/2019.

19 224. Upon information and belief, co-inventors Covelli and Simons, know
20 that “Sirius Signal Co.” does not exist, and Sirius, as a legal entity, knows that
21 “Sirius Signal Co.” does not exist, at least by virtue of Covelli knowing that “Sirius
22 Signal Co.” does not exist.

23 225. Upon information and belief, at least the Sirius Defendants knew that
24 Sirius did not own at least a portion of the Sirius IP covered in the Agreement
25 during the term of the Agreement and intentionally misrepresented to
26 Weems/W&P that Sirius owned all of the Sirius IP.

27 226. Upon information and belief, at least Covelli and Sirius intentionally
28 misrepresented to Weems/W&P that the C-1001 was patented.

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1 227. Upon information and belief, at least Covelli and Sirius intentionally
2 misrepresented to Weems/W&P that it should falsely mark the products with the
3 numbers of patents that did not cover the product.

4 228. Upon information and belief, at least Covelli and Sirius intentionally
5 misrepresented to Weems/W&P that patents obtained, owned, and/or claimed to be
6 owned by Sirius were valid when, in fact, the Tektite/Sirius Defendants knew that
7 they were invalid due to obviousness, fraud, inequitable conduct, inventor
8 misrepresentation, submission of fraudulent statements to the USPTO, and
9 violation of the duty to disclose material art to the USPTO.

10 229. Upon information and belief, the Tektite/Sirius Defendants were all
11 aware of the duty to provide all relevant material art to the USPTO, and Covelli
12 and Simons signed a declaration that they would do so, and in violation of that
13 declaration, both inventors intentionally failed to disclose at least the “Material
14 Information” to the USPTO.

15 230. In executing and purchasing the Agreement, Weems and W&P,
16 respectively, detrimentally relied on at least Covelli’s and Sirius’ misrepresentation
17 and omission of these material facts relating to the inventorship, ownership, scope,
18 and validity of the Sirius IP, and in performing under the Agreement, Weems’ and
19 W&P’s detrimental reliance on at least Covelli’s personal material
20 misrepresentations and omissions caused Weems and W&P to incur monetary
21 damage by paying substantial Agreement Payments to license from Sirius the
22 Sirius IP that is invalid, unenforceable, does not cover the distributed product, and
23 a portion of which is not owned by Sirius.

24 231. When W&P refused to pay an additional exorbitant licensing fee to
25 the Sirius Defendants to license its new C-1002 light, the Tektite/Sirius Defendants
26 conspired with Emlinq to stop W&P’s production of the C-1001 light so that the
27 Defendants could, *inter alia*, profit from the increase in sales of the C-1002 and C-

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1 1003 products either directly or in the form of being paid for an increase in
2 production of the C-1001s or components thereof.

3 232. As set forth above in the Facts section, Emlinq intentionally and
4 knowingly denied a circuit board order placed by W&P after nearly four years of
5 supplying circuit boards to W&P for the sole purpose of conspiring with the other
6 Defendants to disrupt W&P's sale of the C-1001 Product.

7 233. Emlinq further refused to supply W&P with the Gerber Files to allow
8 them to place its circuit board order with another supplier despite Flanagan
9 emailing Emlinq on August 2019 and demanding that Emlinq "immediately
10 provide me all design files for the board."

11 234. As set forth above in the Facts section, Mele and Tektite intentionally
12 and knowingly delayed, raised the price of, and then denied a C-1001 order placed
13 by W&P after nearly four years of supplying C-1001s to W&P for the sole purpose
14 of conspiring with the other Defendants to disrupt W&P's sale of the C-1001
15 Product.

16 235. Upon information and belief, Mele and Tektite also conspired to hide
17 the fact that Mele or another individual associated with Tektite developed and
18 invented the C-1001 from the USPTO, Weems, and W&P, to allow the Sirius
19 Defendants to fraudulently re-patent the technology of its expired '288 Patent.

20 236. Upon information and belief, the Defendants conspired to commit the
21 Conspiracy Acts and other acts in order to carry out the Conspiracy as set forth
22 otherwise herein.

23 237. Upon information and belief, the Defendants committed the tort of
24 civil conspiracy by: (1) combining or agreeing with a common purpose to commit
25 an unlawful act or do an otherwise lawful act by unlawful means, through the
26 Conspiracy Acts and other overt acts described herein in furtherance of the
27 Conspiracy; (2) committing the overt acts as described herein in furtherance of the
28 common purpose, or Conspiracy; and (3) causing Weems and W&P to incur actual

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1 damages, including monetary damages of the Agreement Payments to license from
2 Sirius the Patents that were obtained fraudulently, do not cover the scope of the
3 distributed product, and at least a portion of which are not actually owned by
4 Sirius, as well as lost profits from the inability to manufacture the C-1001 and
5 reputational damage.

6 **COUNT V**

7 **TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**
8 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

9 238. W&P repeats and re-alleges each of the foregoing and following
10 allegations as though fully set forth herein.

11 239. The Defendants committed tortious interference with W&P's
12 contractual relations inasmuch as: W&P had beneficial contractual relations and a
13 legally protected interest with at least Customer A (to sell product including the C-
14 1001 thereto), Emlinq (to purchase circuit boards therefrom), Tektite (to purchase
15 assembled C-1001s therefrom), and Sirius (the Agreement), and, upon information
16 and belief, the Defendants knew of W&P's beneficial contractual relations and
17 legally protected interest with each of these parties.

18 240. The Defendants intentionally and willfully induced third parties to
19 breach or otherwise render impossible the performance of the contract by: (1) the
20 non-Emlinq Defendants intentionally and willfully conspired to induce Emlinq to
21 refuse W&P's order for 5000 circuit boards; (2) the non-Tektite Defendants
22 intentionally and willfully conspired to induce Tektite to change the terms of its
23 orders with W&P for the assembled C-1001s, to delay the provision of new terms
24 of orders to W&P for the assembled C-1001s, and to quote unreasonable terms to
25 W&P for orders of the assembled C-1001s; (3) all of the Defendants intentionally
26 and willfully conspired to induce at least Customer A to cease doing business with
27 W&P including, but not limited to, the making of false statements to Customer A,
28 and/or for W&P to be unable to supply at least Customer A with the C-1001; and

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1 (4) all of the non-Sirius Defendants intentionally and willfully conspired to (i)
2 deprive W&P of its Exclusive Rights pursuant to the Agreement including, without
3 limitation, its exclusive rights to manufacture and sell the C-1001 and its Right of
4 First Offer and (ii) to induce Sirius to breach the Agreement in multiple ways as set
5 forth herein including, without limitation, breach of the Right of First Offer in its
6 negotiations with Orion for license of the C-1002.

7 241. The Defendants lacked any justification or privilege to impair, cause a
8 detriment to, or cause a breach of W&P’s contractual relations, and the Third Party
9 Defendants impaired, caused a detriment to, and/or caused a breach of W&P’s
10 contractual relations in that W&P could not manufacture circuit boards, W&P
11 could not manufacture C-1001s, W&P could not supply its customers with C-
12 1001s, Sirius attempted to prematurely terminate the Agreement, and W&P’s
13 reputation with at least Customer A has been damaged.

14 242. The Third Party Defendants’ actions caused damage to W&P in the
15 form of lost sales, damage to its reputation, and damaged relationships with at least
16 Customer A.

17 243. Due to the Tektite/Sirius Defendants as described above, W&P has
18 been impaired at least in W&P’s ability to obtain the full benefits of the Agreement
19 by being unable to reliably and predictability manufacture or sell Licensed
20 Products; and by the premature termination of the Agreement and the relationship
21 with Sirius.

22 244. W&P’s reputation and goodwill have been damaged by the
23 Defendants’ actions.

24 245. The Defendants tortious actions have damaged W&P financially in an
25 amount exceeding \$75,000.

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COUNT VI

FRAUD

(PLAINTIFF AGAINST TEKTITE/SIRIUS DEFENDANTS)

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4 246. W&P repeats and re-alleges each of the foregoing and following
5 allegations as though fully set forth herein.

6 247. Upon information and belief, at least the Sirius Defendants committed
7 the tort of fraud, fraudulent inducement, and/or fraudulent misrepresentation by (1)
8 making false representations to Weems/W&P regarding the validity, scope,
9 ownership, inventorship, and enforceability of the Sirius IP and Licensed Patents;
10 (2) the falsity of the representations regarding the Sirius IP was either known to the
11 Sirius Defendants or the representation was made with reckless indifference to its
12 truth; (3) the misrepresentations were made for the purpose of defrauding
13 Weems/W&P to induce them to execute the Agreement and make the Agreement
14 Payments; (4) Weems/W&P relied on the misrepresentation after receiving the
15 advice of patent counsel, and had the right to rely on them; and (5) Weems/W&P
16 suffered compensable injury as a result of the misrepresentations including
17 damages in the amount of the Agreement Payments, lost profits that W&P would
18 have obtained if it had manufactured its own eVDSD, which it did not do due to
19 the false belief that the eVDSD product it was exclusively licensing was patented,
20 and damage to its reputation.

21 248. Upon information and belief, Covelli and Simons knew that Sirius did
22 not own at least a portion of the Sirius IP licensed pursuant to the Agreement
23 during the term of the Agreement and intentionally misrepresented to
24 Weems/W&P that Sirius owned all of the Sirius IP by executing the Agreement
25 which stated that “Sirius is the owner of issued and pending U.S. and foreign
26 patents.”

27 249. Upon information and belief, Covelli and Simons knew and
28 intentionally misrepresented to W&P that the C-1001 was patented.

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1 250. Upon information and belief, Covelli and Simons knew and
2 intentionally misrepresented to W&P that it should falsely mark the C-1001 with
3 the numbers of patents that did not cover the C-1001.

4 251. Upon information and belief, Covelli and Simons knew and
5 intentionally misrepresented to W&P that patents obtained, owned, and/or claimed
6 to be owned by Sirius were valid when, in fact, they knew that they were invalid
7 due to fraud, the submission of fraudulent inventorship statements to the USPTO,
8 inequitable conduct, and violation of the duty to disclose Material Information to
9 the USPTO.

10 252. Upon information and belief, co-inventors Covelli and Simons were
11 both aware of the duty to provide all relevant material art to the USPTO and
12 signed a declaration that they would do so, and in violation of that declaration,
13 both inventors intentionally failed to disclose at least the Material Information to
14 the USPTO.

15 253. The Sirius Defendants led Weems to believe during the negotiations
16 of the Agreement that the C-1001 was covered by the Sirius IP.

17 254. As part of Weems' due diligence in evaluating the Sirius IP, on
18 December 13, 2015, Trogdon emailed Covelli to request extensive information
19 regarding the Sirius IP. In response thereto, Covelli knowingly provided false
20 information to Weems in writing in an email to Trogdon dated December 17, 2015
21 (the "Due Diligence Email"). Specifically, Weems asked Covelli for the "[n]ame
22 of all associated parties in the design and development" of the C-1001 and Covelli
23 falsely replied in writing with "Anthony Covelli Robert Simons" and did not name
24 Tektite, Mele, nor any other agent or employee of Tektite as an inventor of the C-
25 1001, nor did he name the inventor of the '288 Patent. Weems also requested
26 "[a]ll documents ...related to the development of the product" to which Covelli
27 replied "none" and failed to disclose the '288 Patent or any of the work done by
28 / /

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1 Tektite. This was done despite Mele stating in writing that he is the designer of the
2 C-1001.

3 255. Upon information and belief, the Sirius Defendants falsely led Weems
4 to believe that the C-1001 was covered by the ‘247 Patent, the ‘288 Patent, and the
5 ‘436 Patent by, at a minimum, falsely marking the C-1001 with these product
6 numbers and agreeing that Weems should also mark the C-1001 with these patent
7 numbers.

8 256. On December 15, 2015, when asked for marketing material for the C-
9 1001 and presented with “Model C-1001 Patent D720.2475 6,168,288& Pend,”
10 Covelli approved the marketing material.

11 257. The ‘247 Patent is a design patent that bears little resemblance to the
12 C-1001. Indeed, Covelli, Simons, and Sirius acknowledged this lack of
13 resemblance by later filing a new design patent application that issued as the ‘175
14 Patent, which does resemble the C-1001.

15 258. At the time that Covelli made the misrepresentation to Weems
16 regarding the ‘288 Patent, the ‘288 Patent did not cover anything because it had
17 expired on January 28, 2013, for failure to pay maintenance fees, and neither
18 Sirius, Simons, nor Covelli owned the ‘288 Patent.

19 259. After pushback regarding the patent markings, on December 30, 2015,
20 the day before the Agreement was executed, Covelli wrote in an email “[t]he
21 device will carry singly the Sirius patent number "9,171,436 [sic]” to intentionally
22 mislead Weems into believing that the C-1001 device was covered by the ‘436
23 Patent.

24 260. Further, the ‘436 Patent did not pertain to the C-1001 product to be
25 sold in accordance with the Agreement because all of the claims require a
26 “floodable lower compartment.” The C-1001 never included any floodable
27 compartment, lower or otherwise, and still does not include such a compartment.

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1 261. Covelli and Simons both also signed Declarations (37 CFR 1.63) for
2 Utility or Design Application Using an Application Data Sheet (“Declarations”) in
3 their personal capacities as inventors of the Sirius IP. All Declarations specifically
4 state, “I hereby acknowledge that any willful false statements made in this
5 declaration is punishable under 18 U.S.C. 1001 by fine or imprisonment of not
6 more than five (5) years or both” and “I believe that I am the original inventor or
7 an original joint inventor of a claimed invention in the application.”

8 262. Upon information and belief, Covelli and Simons committed fraud in
9 execution of all of the Declarations associated with the Sirius IP because Covelli
10 and Simons knew that they were not “the original inventor or an original joint
11 inventor” of the Sirius IP.

12 263. The invention disclosed in the Sirius IP includes an On/Off Lens
13 Switch, which is identical or nearly identical to the switch disclosed in the ‘288
14 Patent, which lists, on its face, an inventor of Christian P. St. Claire, and which has
15 been assigned to Tektite.

16 264. Without discovery, W&P cannot determine the exact date upon which
17 the Sirius Defendants learned of the ‘288 Patent, but Covelli was aware of the ‘288
18 Patent, and its relevance and materiality to the C-1001 product and the Sirius IP, at
19 least as early as December 18, 2015 as evidenced by an email exchange between
20 Trogdon and Covelli that occurred on that same date in which Covelli led Trogdon
21 to believe he should mark the C-1001 product with the ‘288 Patent (the “288
22 Email”).

23 265. The Sirius Defendants were likely aware of the ‘288 Patent much
24 earlier than December 18, 2015 as Tektite was listed as one of Sirius’s distributors
25 on the Sirius Web Site at least as early as August 15, 2015.

26 266. Despite having personal knowledge of the ‘288 Patent and other
27 Material Information relevant to the Sirius IP at least as early as December 18,
28 2015 and having the knowledge that they did not invent the Sirius IP, Covelli and

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1 Simons committed fraud on the USPTO as described in detail in Count IX of this
2 Complaint.

3 267. Covelli and Simons committed this fraud personally, as their duty to
4 disclose the Material Information to the USPTO, to disclose true inventorship, and
5 to refrain from submitting false documents to the USPTO, arose in their personal
6 capacities as inventors and did not arise pursuant to their positions within, or
7 ownership of Sirius.

8 268. Covelli and Simons retained ownership of the Sirius IP as individuals
9 for months or years after the individual filings thereof, and as such, these
10 omissions and actions occurred in their personal capacities as personal owners of
11 the respective patents and patent applications.

12 269. The duty to disclose only pertains to prior art of which the inventors
13 are aware, and Covelli and, upon information and belief, Simons, as individuals,
14 were the only one in a position to know that they had personal knowledge of the
15 ‘288 Patent and its materiality to the Sirius IP at the time they were obligated to
16 disclose it to the USPTO.

17 270. At least Covelli committed fraud in the inducement when negotiating
18 the Agreement with Trogdon.

19 271. During negotiation of the Agreement, Trogdon consulted with his
20 intellectual property counsel, Mr. Brian Belles (“Belles”), regarding the patents to
21 be licensed, and Belles raised concerns regarding the enforceability and scope of
22 the ‘247 and ‘436 Patents.

23 272. Trogdon communicated those concerns to Covelli, who shared them
24 with his patent attorney, Mr. Richard Clarke (“Clarke”).

25 273. Clarke disagreed with Belles’ assessment of the ‘247 and ‘436 Patents
26 and emailed Covelli to say that, either way, Clarke was bolstering the Sirius IP
27 through the pursuit of a new continuation-in-part application (“CIP”) and a new
28 design patent application which matured into the ‘754 Patent and the ‘247 Patent

1 (the “Bolstering Patents”). Covelli shared this information with Trogdon on
2 December 30, 2015 in an attempt to induce Trogdon to execute the Agreement.

3 274. Covelli knew that these statements were false at the time they were
4 made as he knew the Bolstering Patents would not bolster the portfolio because
5 they would also be unenforceable due to his and Simons’ intended future fraud on
6 the USPTO and the fraudulent statements that Covelli and Simons had submitted,
7 and intended to keep submitting, to the USPTO during prosecution of these
8 Bolstering Patents.

9 275. In reliance upon Covelli’s fraudulent statements, Trogdon executed
10 the Agreement the very next day on December 31, 2015.

11 276. Upon information and belief, Belles had no idea about the fraud being
12 perpetrated on the USPTO by Covelli and Simons and, as such, he was not in a
13 position to counsel Trogdon regarding such fraud.

14 277. Weems did not learn that the C-1001 was not protected by any of the
15 Sirius IP until it received an email from Belles on March 4, 2016, but, at this time,
16 Weems believed that the Bolstering Patents would cure this deficiency because
17 Sirius had retained Belles for this purposes. At this time, Trogdon and Belles were
18 unaware of the fraud on the USPTO and the resulting unenforceability of the
19 Bolstering Patents.

20 278. At the time the Agreement was executed on December 31, 2015,
21 Covelli and Simons, and potentially Mele, were the only ones who knew that they
22 had already committed fraud on the USPTO, and that they intended to continue to
23 commit fraud on the USPTO, which rendered the licensed patents unenforceable
24 and would render all future patents unenforceable.

25 279. In executing and purchasing the Agreement, Weems and W&P,
26 respectively, reasonably and detrimentally relied on at least the Sirius Defendants
27 intentional misrepresentation of these material facts relating to the scope, validity,
28 and ownership of the Patents. In performing under the Agreement, Weems/W&P’s

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1 detrimental reliance on Covelli’s and Simons’ material misrepresentations caused
2 Weems/W&P to incur monetary damage by paying substantial Agreement
3 Payments for an exclusive license to Sirius IP that is invalid, unenforceable, does
4 not cover the products distributed under the Agreement, and a portion of which are,
5 or were, not actually owned by Sirius.

6 280. The Sirius Defendants entered the Agreement without the intention of
7 delivering an exclusive license to valid, enforceable patents covering the scope of
8 the product to be distributed in accordance with the Agreement. As such, the Sirius
9 Defendants induced Weems/W&P to part with at least the Agreement Payments by
10 means of a promise which Sirius Defendants had no intention or ability to perform.

11 281. Weems/W&P had no knowledge of the fraud and reasonably could
12 not have discovered that fraud had been committed in the inducement and on the
13 USPTO until at least November 27, 2020 (the “Fraud Discovery Date”) at which
14 time W&P’s current intellectual property counsel, Rita Chipperson
15 (“Chipperson”), discovered the ‘288 Email that disclosed: 1) the existence of the
16 ‘288 Patent; 2) Covelli’s knowledge of the ‘288 Patent; and 3) Covelli’s
17 knowledge of the ‘288 Patent’s materiality to the C-1001 product. Thereafter,
18 Chipperson cross checked the ‘288 Email with the prosecution history of the Sirius
19 IP to determine the failure to disclose the ‘288 Patent to the USPTO, and
20 subsequently notified Flanagan and, therefore, W&P of the fraud.

21 282. On the date that the original Agreement was executed, neither Weems
22 nor Belles knew, or reasonably could have known, that the Sirius Defendants had
23 committed fraud in the inducement, fraud on the USPTO and/or that the Sirius
24 Defendants intended to continue committing fraud on the USPTO, thereby
25 rendering the licensed patents unenforceable.

26 283. With regards to fraud on the USPTO, the duty to disclose applies only
27 if an inventor is aware of prior art *and* its materiality to the pending patent

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1 application, in which case such prior art must be disclosed to the USPTO at any
2 point up until issuance of a patent.

3 284. Even if Belles had knowledge of the ‘288 Patent, he would not have
4 known that Covelli had knowledge of the ‘288 patent and that Covelli knew of the
5 ‘288 Patents’ materiality to the Sirius IP during the time period in which he was
6 required to disclose the ‘288 Patent to the USPTO.

7 285. It was reasonable for Trogdon to rely upon the advice of Belles as his
8 intellectual property counsel in assessing the validity of the Sirius IP.

9 286. After execution of the Agreement, Belles took over prosecution of the
10 Sirius IP and filed Information Disclosure Statements for both the ‘754 Patent and
11 the ‘114 Patent on April 11, 2016 and June 11, 2018, respectively, both of which
12 did not include the ‘288 Patent.

13 287. Belles also owes a duty of disclosure to the USPTO pursuant to 37
14 CFR 1.56, and it is unlikely that Belles would not have disclosed the ‘288 Patent to
15 the USPTO if he was aware of it.

16 288. Furthermore, fraud in the inducement occurred in the execution of
17 each of the First Amendment, Second Amendment, and Third Amendment, which
18 were executed on February 8, 2016, March 10, 2016, and August 18, 2017,
19 respectively. All of the patents referenced in the Agreement and its amendments
20 are all unenforceable due to the fraud of the Sirius Defendants, and neither
21 Trogdon, Weems, nor W&P were aware of the fraudulent conduct until at least the
22 Fraud Discovery Date.

23 289. The harm perpetrated by the Sirius Defendants is continuing in nature
24 because Sirius repeatedly received on a monthly basis royalty payments for the
25 licensing of invalid, unenforceable patents up until this Court granted the escrow of
26 such royalties with the Court.

27 290. Upon information and belief, Tektite and Mele committed the tort of
28 fraud, fraudulent inducement, and/or fraudulent misrepresentations by making

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1 false representations to W&P regarding the status of W&P’s orders to W&P, (2)
2 the falsity of the representations was either known to Tektite and Mele or the
3 representations were made with reckless indifference to its truth, (3) the
4 misrepresentations were made for the purpose of delaying and preventing W&P
5 from seeking another manufacturer for the C-1001, (4) W&P relied on the
6 misrepresentation and had the right to rely on them, and (5) W&P suffered
7 compensable injury as a result of the misrepresentations including damages in the
8 amount of lost profits due to its inability to manufacture the C-1001 and damage to
9 its reputation in not being able to supply the C-1001 to its customers.

10 291. Upon information and belief, the false statements of Mele and Tektite
11 include, but are not limited to, when Flanagan emailed Mele on October 8, 2019 to
12 inquire about the status of his quote, Mele responded on the same day stating “I
13 have not received any responses to my Sept. 27 RFQs to the 2 vendors. This is not
14 entirely unexpected due to the holiday week in China.” Mele knew this statement
15 was false since, upon information and belief, Mele had never requested the RFQs
16 from China because when W&P followed up with one of the Chinese suppliers,
17 Pan-U, it was informed on October 13, 2019 that it had never received a request or
18 RFP from Mele or Tektite.

19 **COUNT VII**

20 **PROMISSORY ESTOPPEL**

21 **(PLAINTIFF AGAINST THE SIRIUS DEFENDANTS)**

22 292. W&P repeats and re-alleges each of the foregoing and following
23 allegations as though fully set forth herein.

24 293. The Sirius Defendants are liable to W&P for equitable remedies under
25 the doctrine of promissory estoppel because: (1) during negotiations of the
26 Agreement with Weems, (2) Covelli, on behalf of himself personally, Sirius, and
27 Simons, represented and promised that the Agreement “could be for the life of the
28 patents” so long as it was “renewed every 24 months within the 24th month

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1 negotiations”; (3) Weems relied on Covelli’s representations and promises in
2 executing the Agreement, W&P relied on Covelli’s representation in purchasing
3 the Agreement, and both Weems/W&P relied on Covelli’s representations in
4 performing under the Agreement; (4) Weems’ and W&P’s reliance was to W&P’s
5 detriment, including payments of the substantial Agreement Payments and lost
6 profits that W&P would have obtained if it had manufactured its own eVDSD,
7 which it did not do due to the false belief that the eVDSD product it was
8 exclusively licensing was patented; (5) Covelli and Simons failed to uphold the
9 representations and promises by terminating the Agreement prior to the expiration
10 of the life of the patents without cause and for fraudulent reasons as otherwise set
11 forth herein including, without limitation, Covelli’s actions in breach of Section 6
12 of the Agreement; and (6) it would be unfair, inequitable, and/or unconscionable
13 for the Sirius Defendants to retain the benefits of the Agreement and/or the benefits
14 of early termination of the Agreement in view of the failure to uphold the
15 representations and promises. Covelli and Simons benefit from the Agreement in
16 light of their ownership interests and the distributions to them personally pursuant
17 thereto.

18 294. The Sirius Defendants are liable to W&P for equitable remedies under
19 the doctrine of promissory estoppel, because: (1) during negotiations of the
20 Agreement with Weems, (2) Covelli, on behalf of himself personally, Sirius, and
21 Simons, represented and promised that Sirius would be able to grant, and would
22 grant, to Weems an exclusive license to valid patents under the Agreement, the
23 scope of which would cover the C-1001 product; and (3) Covelli, on behalf of
24 himself personally, Sirius, and Simons, represented and promised that Sirius would
25 maintain the exclusive license via enforcement of the patents licensed under the
26 Agreement; (3) Weems relied on Covelli’s representations and promises in
27 executing the Agreement and performing under the Agreement, such performance
28 including payment of significant Agreement Payments, and W&P relied on

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1 Covelli’s representations and promises in purchasing the Agreement and
2 performing under the Agreement, such performance also including payment of
3 significant royalties due to the exclusive license procured under the Agreement; (4)
4 Weems’ and W&P’s reliance was to Weems and W&P’s detriment, including
5 payments of the substantial Agreement Payments and lost profits that W&P would
6 have obtained if it had manufactured its own eVDSD, which it did not do due to
7 the false belief that the eVDSD product it was exclusively licensing was patented;
8 (5) Covelli failed to uphold the representations and promises by failing to provide
9 an exclusive license and by failing to enforce the patents against Orion; and (6) it
10 would be unfair, inequitable, and/or unconscionable for Sirius, or Covelli and
11 Simons (as owners and members of Sirius), to retain the benefits of the Agreement
12 in view of the failure to uphold the representations and promises.

13 295. Equitable remedies that the Court may award W&P include, but are
14 not limited to: 1) voiding the Agreement; 2) modifying the Agreement; 3)
15 disgorging from the Sirius Defendants and paying to W&P the Agreement
16 Payments, the increased profits obtained by the Sirius Defendants due to the breach
17 of the Agreement, the interference with W&P’s ability to manufacture and sell the
18 C-1001, and the early termination of the Agreement; 4) disgorging from the Sirius
19 Defendants the profits of any sale or license of the Sirius IP to any third party in
20 violation of Section 6 of the Agreement; and 5) the profits that accrued to Sirius
21 instead of W&P because W&P refrained from manufacturing its own eVDSD due
22 to the false belief that the eVDSD product it was exclusively licensing was
23 patented; and 6) lost profits from the Sirius Defendants failure to renew the
24 Agreement for the life of the patents.

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COUNT VIII

UNJUST ENRICHMENT

(PLAINTIFF AGAINST THE SIRIUS DEFENDANTS)

296. W&P repeats and re-alleges each of the foregoing and following allegations as though fully set forth herein.

297. The Sirius Defendants are liable to W&P for equitable remedies under the doctrine of unjust enrichment, because: (1) Covelli negotiated and executed the Agreement with Weems on behalf of the Sirius Defendants, in which Covelli represented to Weems that Sirius owned valid and enforceable Sirius IP having a scope that covered the C-1001 when Covelli and Simons knew the patents were invalid; (2) Covelli and Sirius purported to grant to Weems/W&P an exclusive license to the Sirius IP, in exchange for the Agreement Payments, and then failed to take diligent steps to enforce the Sirius IP against Orion; (3) the Sirius Defendants attempted to sell the Sirius IP, or a portion thereof, to Orion without offering the opportunity to W&P in violation of W&P’s Right of First Offer, which resulted in Sirius’ premature termination of the Agreement; and 4) the Sirius Defendants engaged in activities to hinder the ability of W&P to manufacture and sell the C-1001 pursuant to its rights under the Agreement.

298. The Sirius Defendants were and will continue to be directly unjustly enriched by the receipt of the Agreement Payments, the profits from the sale of products to W&P’s customers due to the interference with W&P’s ability to manufacture and sell its products and the defamation of W&P; the increased profits to be derived throughout the life of the patents due to the Sirius Defendants’ premature termination of the Agreement; and profits that accrued to Sirius instead of W&P because W&P refrained from manufacturing its own eVDSD due to the false belief that the eVDSD product it was exclusively licensing was patented. Covelli and Simons were and will continue to be, personally enriched via their member distributions based upon Sirius’s unjust enrichment; and it would be

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1 unfair, inequitable, and/or unconscionable for the Sirius Defendants to benefit from
2 the Agreement at the expense of, and detriment to W&P, which did not receive the
3 bargained-for benefit of the exclusive license under the Agreement for the life of
4 the patents.

5 299. Equitable remedies that the Court may award W&P include, but are
6 not limited to: 1) voiding the Agreement; 2) modifying the Agreement; 3)
7 disgorging from the Sirius Defendants and paying to W&P the Agreement
8 Payments and the increased profits obtained by the Sirius Defendants due to the
9 breach of the Agreement, the interference with W&P's ability to manufacture and
10 sell the C-1001, the early termination of the Agreement; 4) disgorging from the
11 Sirius Defendants the profits of any sale or license of the Sirius IP to any third
12 party in violation of Section 6 of the Agreement; and 5) the profits that accrued to
13 Sirius instead of W&P because W&P refrained from manufacturing its own
14 eVDSD due to the false belief that the eVDSD product it was exclusively licensing
15 was patented; and 6) lost profits from the Sirius Defendants failure to renew the
16 Agreement for the life of the patents.

17
18 **COUNT IX**

19 **DECLARATORY JUDGMENT OF UNENFORCEABILITY OF THE**
20 **PATENTS DUE TO INEQUITABLE CONDUCT**
21 **(PLAINTIFF AGAINST COVELLI AND SIMONS)**

22 300. W&P repeats and re-alleges each of the foregoing and following
23 allegations herein as though fully set forth herein.

24 301. Every patent applicant, inventor, and person or entity associated with
25 the filing or prosecution of a U.S. patent application before the USPTO
26 (“Application Participants”) has a statutory duty of disclosure and duty of candor
27 and good faith in prosecuting said patent application pursuant to Federal
28 Regulation 37 CFR §1.56.

1 302. Application Participants are required to disclose to the USPTO any
2 material, non-cumulative prior art reference that is known to the Application
3 Participant and is relevant to the patentability of a claim of a pending patent
4 application in which the Application Participant is participating.

5 303. Failure to disclose a known, material, non-cumulative prior art
6 reference that “compels a conclusion that a claim is unpatentable” (37 CFR
7 §1.56(b)) may be interpreted as a knowing and intentional failure to disclose with
8 the intent to deceive the USPTO where the evidence shows that individual
9 associated with the application suspected that the reference might render a claim
10 unpatentable, but chose to not disclose the reference nonetheless.

11 304. As the Court of Appeals for the Federal Circuit stated in *Therasense,*
12 *Inc. v. Becton, Dickinson and Company*, 649 F.3d 1276 (Fed. Cir. 2011) (*en banc*),
13 “Inequitable conduct is an equitable defense to patent infringement that, if proved,
14 bars enforcement of a patent,” making the entire patent unenforceable against
15 anyone. “Direct evidence of intent [to deceive] is not, however, required,” the
16 Federal Circuit’s decision reads. “A court may infer intent from circumstantial
17 evidence.”

18 305. Upon information and belief, Simons and Covelli, the co-inventors of
19 the Patents under the Agreement, knew, and therefore Sirius knew, at least as early
20 as December 18, 2015, of the ‘288 Patent assigned to Tektite, and its materiality to
21 the patentability of the Sirius IP.

22 306. Upon information and belief, Simons and Covelli believed, and
23 therefore Sirius believed, at least as early as December 18, 2015, that the ‘288
24 Patent was relevant to or covered the model C-1001 Licensed Product, and Covelli
25 informed, and therefore Sirius informed, Weems in writing on December 18, 2015
26 that the ‘288 Patent was relevant to, or covered the model C-1001 in agreeing that
27 the C-1001 product should be marked or otherwise marketed in conjunction with
28 the number of the ‘288 Patent.

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1 307. As of December 31, 2019, neither Covelli nor Simons disclosed the
2 ‘288 Patent or any other Material Information to the USPTO during the
3 prosecution of any of the Sirius IP having publicly available prosecution histories,
4 and, upon information and belief, Covelli and Simons, with the intent to deceive,
5 intentionally withheld and failed to disclose the ‘288 Patent to the USPTO during
6 prosecution of the Sirius IP. Covelli, Simons, and Sirius had knowledge of items
7 (1) and (3) of the Material Information and, upon information and belief, had
8 knowledge of item (2) of the Material Information.

9 308. Upon information and belief, the Sirius Defendants intentionally
10 falsely listed, and submitted false documents claiming Covelli and Simons as the
11 inventors of the Sirius IP, and neither Covelli nor Simons invented the Sirius IP.

12 309. Upon information and belief, the Sirius Defendants intentionally and
13 knowingly omitted at least one true inventor of the Sirius IP with the intent of
14 deceiving the USPTO.

15 310. The ‘754 Patent was issued as a CIP of the ‘436 patent and a
16 substantial amount of new subject matter was added to the application for the ‘754
17 Patent, which was filed on April 11, 2016, while Covelli participated as a member
18 of the 132 Committee. Upon information and belief, Covelli had access to USCG
19 information obtained from discussions held during meetings of the 132 Committee
20 and used this information to supplement the material in the application for the ‘754
21 Patent without disclosing same to the USPTO.

22 311. Upon information and belief, Sirius and Covelli committed
23 inequitable conduct and/or fraud on the USPTO in and during prosecution of at
24 least one of the patent applications associated with the Patents, by: (1) knowing of
25 multiple material, non-cumulative prior art references; (2) failing to disclose the
26 references to the USPTO during prosecution of said patent application; (3) failing
27 to disclose the true inventors of the Sirius IP to the USPTO; (4) submitting false
28 statements indicating false inventorship to the USPTO, and (5) breaching the duty

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1 of disclosure and the duty of candor and good faith during prosecution of said
2 patent application by said failure to disclose involving a material misstatement or
3 omission with intent to deceive.

4 312. Upon information and belief, the Sirius Defendants intended to
5 deceive the USPTO in hiding the Material Information because they knew that the
6 Sirius IP would not be found patentable in light of the Material Information since
7 the body of the device was known (it was disclosed in the '288 Patent), the On/Off
8 Switch of the Sirius IP is identical to that disclosed in the '288 Patent, and the
9 other specifications of the Sirius IP were dictated by the USCG.

10 313. Upon information and belief, the Sirius Defendants intentionally
11 withheld the Material Information for the purpose of increasing the likelihood of
12 being granted a patent.

13 314. Upon information and belief, the Sirius Defendants withheld the true
14 inventorship of the Sirius IP because they did not want an Examiner to find the
15 '288 Patent via an inventor search or a search of patents owned by Tektite.

16 315. As a consequence of Sirius's aforementioned inequitable conduct
17 and/or fraud on the USPTO, said patent application and any resulting patent issued
18 therefrom are unenforceable.

19 316. W&P requests a declaration that all patents issued from patent
20 applications for which the Sirius Defendants intentionally failed to disclose
21 Material Information and fraudulently misstated inventorship are unenforceable,
22 and that W&P therefore cannot infringe any of such patents because such patents
23 or patent applications are unenforceable.

24 **COUNT X**

25 **FALSE PATENT MARKING**

26 **(PLAINTIFF AGAINST COVELLI, SIMONS, TEKTITE, MELE)**

27 317. W&P repeats and re-alleges each of the foregoing and following
28 allegations as though fully set forth herein.

1 318. The false patent marking statute 35 U.S.C. §292(a) criminalizes false
2 marking of products with patent information, including, “[w]hoever marks upon, or
3 affixes to, or uses in advertising in connection with any unpatented article, the
4 word “patent” or any word or number importing that the same is patented, for the
5 purpose of deceiving the public; ... Shall be fined not more than \$500 for every
6 such offense.” Subsection (b) provides, “A person who has suffered a competitive
7 injury as a result of a violation of this section may file a civil action in a district
8 court of the United States for recovery of damages adequate to compensate for the
9 injury.”

10 319. At least as early as July 11, 2015, the C-1001 was being falsely
11 advertised as a patented product including, without limitation, on the Web page
12 located at www.siriussignal.com (the “Sirius Web Site”), which, at that time,
13 depicted a picture of the C-1001 and the following language to the left side thereof
14 “Designed, engineered, patented, and produced in the USA.” The Sirius Web Site
15 was under the control of Sirius and its members Covelli and Simons, and as such,
16 they were all responsible for its content.

17 320. Upon information and belief, the Tektite/Sirius Defendants were
18 further responsible for this false marking as they caused to be manufactured, or
19 assembled, floats that included “Patent #D720.247S” (“False Marking”) thereon
20 (“Falsely Marked Floats”). These Falsely Marked Floats are one of the
21 components of the C-1001 and the False Marking is clearly visible on such floats.
22 Covelli, Simons, and Sirius caused to be manufactured, assembled and packaged,
23 and Tektite and Mele manufactured, assembled, and packaged the C-1001
24 incorporating the Falsely Marked Floats. C-1001s were then distributed and sold
25 with the False Marking.

26 321. The Tektite/Sirius Defendants undertook the above actions despite the
27 fact that anyone could easily tell from viewing the ‘247 Patent that the design
28 patented therein clearly did not resemble that of the C-1001, and therefore the ‘247

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1 Patent clearly did not cover the model C-1001, and despite the fact they knew that
2 all of the patents in the Sirius IP are invalid for at least the following reasons:
3 obviousness, fraud, inequitable conduct, inventor misrepresentation, submission of
4 fraudulent statements to the USPTO, and violation of the duty to disclose material
5 art to the USPTO for reasons set forth elsewhere in this Complaint. This false
6 advertising was done with the intent to deceive the public into believing that the C-
7 1001 was patented in an effort to suppress competition, inflate prices, and further
8 the Tektite/Sirius Defendants' conspiracy of licensing fraudulent patents to
9 Weems/W&P for the purpose of disproportionate economic gain and increased
10 distribution of the C-1001.

11 322. The Sirius Defendants further falsely advertised to Weems,
12 specifically Trogdon, that the '436 Patent covered the C-1001. Upon information
13 and belief, the '436 Patent was also affixed to the float of the C-1001 for a period
14 of time.

15 323. The Sirius Defendants also included the '436 Patent in Schedule B of
16 the Agreement before it was executed, thereby advertising to Weems and Trogdon
17 that the '436 Patent covered the C-1001 product.

18 324. These false markings and false advertising were done with the intent
19 to deceive the public, including Trogdon and Weems, into believing the C-1001
20 was patented to suppress competition, inflate prices, and further the Tektite/Sirius
21 Defendants' conspiracy of licensing fraudulent patents to Weems for the purpose
22 of disproportionate economic gain and increased distribution of the C-1001.

23 325. Further, Covelli directed Mele verbally around December 30, 2015 to
24 mark the C-1001 with the '436 Patent.

25 326. The Tektite/Sirius Defendants caused at least "Patent #D720.247S" to
26 be affixed to the C-1001, from at least as early as July 11, 2015 until
27 approximately April 4, 2016, at which point Weems notified Mele and Tektite via
28 email to remove the "current patent numbers," and Covelli was cc'd on this email.

1 This action was taken on advice of Belles, who notified Weems, Trogdon, and
2 Covelli in writing via email on March 4, 2016 that the “issued patents do not cover
3 the product” in reference to the ‘247 Patent, the ‘436 Patent, and the C-1001
4 (“Notification of False Marking Email).

5 327. Despite receiving the Notification of False Marking Email, the Sirius
6 Defendants continued to falsely advertise the C-1001 product to the public as
7 patented. Evidence of this includes, without limitation, at least the Sirius Twitter
8 posts of May 18, 2018, May 31, 2016, June 4, 2016, August 5, 2016, August 12,
9 2016, September 29, 2016, October 21, 2016, November 25, 2016, December 19,
10 2016 and February 2, 2017. These posts all depict the C-1001 in a position in
11 which “Patent #D720.247S” of the Falsely Marked Floats is visible to a reader. A
12 slight turn of the C-1001 would have obscured the False Marking.

13 328. The February 2, 2017 Twitter post, which was posted nearly 11
14 months after Covelli received the Notification of False Marking, includes an
15 enlarged view of the patent marking and was clearly meant to knowingly and
16 intentionally deceive the public into believing the C-1001 was a patented product,
17 despite at least Covelli’s knowledge that the ‘247 Patent did not cover the C-1001.
18 Upon information and belief, this picture did not even depict the C-1001 as it was
19 sold at the time of the Twitter post.

20 329. Furthermore, as late as July 1, 2019, the Sirius Web Site still depicted
21 the C-1001 with the words “Patent Numbers: 9,171,436 and D720,247” and
22 despite at least Covelli’s receipt of the Notification of False Marking Email.

23 330. This false marking continues to present day as the Sirius Web Site, as
24 of March 30, 2020, continues to list the C-1001 as being covered by the ‘754
25 Patent, the ‘114 Patent, the ‘175 Patent, the ‘920 Patent, and the ‘477 Patent, and
26 the patents page of the Sirius Web Site specifically states that “this page is
27 intended to serve as notice under 35 U.S.C. § 287(a).” This advertising also
28 constitutes false marking as the Sirius Defendants know that all of the patents in

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1 the Sirius IP are invalid for at least the following reasons: obviousness, fraud,
2 inequitable conduct, inventor misrepresentation, submission of fraudulent
3 statements to the USPTO, and violation of the duty to disclose material art to the
4 USPTO for reasons set forth elsewhere in this Complaint. This marking is
5 performed with the intent to deceive the public into believing the C-1001 is
6 patented.

7 331. In at least the ways mentioned above and otherwise herein in this
8 Complaint, the Sirius Defendants deceived the public in general, and Weems and
9 W&P in particular, that model C-1001 was a patented product covered by the '247
10 Patent, the '436 Patent, and the other Sirius IP in violation of 35 U.S.C. §292(a).

11 332. Weems and W&P suffered numerous competitive injuries due to the
12 false marking of the Sirius Defendants.

13 333. Prior to execution of the Agreement, Weems and Sirius were
14 competitors for at least the reason that they both sold marine products directly to
15 consumers. The false marking actions, and other actions of the Sirius Defendants
16 that were performed to advertise the C-1001 and other Sirius products as patented,
17 caused Weems to enter licensing negotiations with Sirius, and subsequently
18 fraudulently induced Weems to license purported exclusive rights from Sirius,
19 because it believed that the C-1001 product was patented and a license was
20 required to distribute it.

21 334. These same false marking actions caused W&P to purchase the
22 Agreement as it believed that the C-1001 product was patented and a license was
23 required to distribute it. As such, Weems and W&P incurred significant damages
24 in the form of, at least, excessive Agreement Payments for an exclusive license to
25 license a product that was not in fact covered by valid patents and lost profits due
26 to not manufacturing its own eVDSD due to the false belief that a license was
27 required to manufacture and sell the eVDSD.

28 / /

1 335. W&P further suffered a competitive injury due to the false marking
2 because it lost sales of the C-1001 to at least Customer A because Customer A
3 believed the product was patented, there was a dispute about the right to
4 manufacture the C-1001 product, and Customer A decided to wait to purchase the
5 product from W&P until the issue was resolved.

6 **COUNT XI**

7 **SHERMAN ACT, 15 U.S.C. § 1:**

8 **CONSPIRACY IN RESTRAINT OF TRADE**

9 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

10 336. W&P repeats and re-alleges each of the foregoing and following
11 allegations as though fully set forth herein.

12 **INTERSTATE TRADE AND COMMERCE**

13 337. Throughout the Injury Period, there was and continues to be a
14 continuous and uninterrupted flow of interstate trade and commerce throughout the
15 United States and worldwide in the sale of eVDSDs by Defendants and their co-
16 conspirators to their customers located throughout the United States and
17 worldwide.

18 338. Throughout the Injury Period, Defendants' and their co-conspirators'
19 unlawful conspiracy and agreement took place within, and substantially affected
20 the flow of, interstate commerce and had a direct, substantial, and reasonably
21 foreseeable effect upon commerce throughout the United States and worldwide.

22 **RELEVANT MARKET**

23 339. The relevant product market alleged herein is the market for eVDSDs.
24 The relevant geographic market is worldwide.

25 340. Pyrotechnic flares are not a part of the relevant market because buyers
26 will not purchase flares in lieu of eVDSDs due to a price increase in eVDSDs.
27 Most eVDSD buyers purchase eVDSDs as an alternative to flares because
28 eVDSDs do not have an expiration date, but flares need to be replaced when they

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1 are 42 months old in order to comply with USCG Distress Signal Regulations.
2 Further, many purchasers avoid buying flares because they believe they are toxic
3 for the environment.

4 341. As Plaintiff was an exclusive worldwide distributor and is a Maryland
5 entity and the C-1001 is marketed as a Made in America product, the inability to
6 manufacture the products in the United States due to the attempted enforcement of
7 fraudulent patents has an effect worldwide on the price of eVDSDs.

8 **FACTS**

9 342. A violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 requires:
10 (1) there was a contract, combination or conspiracy, (2) the agreement
11 unreasonably restrained trade, and (3) the restraint affected interstate commerce.

12 343. Defendants engaged in an unlawful conspiracy, as outlined herein, by
13 agreeing to fix, stabilize, inflate, and maintain the price of, eVDSDs licensed and
14 sold to companies and customers in the United States and worldwide, in violation
15 of Section 1 of the Sherman Act, 15 U.S.C. § 1.

16 344. Defendants agreed to engage in all activities necessary to provide the
17 Sirius Defendants with a monopoly in the eVDSD market including the elimination
18 of W&P as a competitor and the other Conspiracy Acts, and in furtherance of this
19 goal, the Sirius Defendants would profit from the monopoly and associated sales of
20 the eVDSDs, and the remaining Defendants would profit financially through the
21 provision of goods and services related to manufacturing of the eVDSDs to the
22 Sirius Defendants in accordance with the monopoly.

23 345. The conspiracy alleged herein is a per se violation of Section 1 of the
24 Sherman Act. 381. At a minimum, Defendants engaged in vertical price fixing via
25 implementation of an illegal MAP. Alternatively, the conspiracy alleged herein is a
26 rule of reason violation of Section 1 of the Sherman Act. 382. There was no
27 procompetitive business justification for Defendants' unlawful conspiracy. Even if
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1 there were some ostensible procompetitive justification, the Defendants’ conduct
2 was not the least restrictive alternative method to achieve such a purpose.

3 346. Defendants illegally conspired to raise the price of eVDSs by using
4 the Sirius MAP Policy as defined below. Sirius maintains a written MAP policy
5 (the “Sirius MAP Policy”). The purpose of the Sirius MAP Policy as stated therein
6 is to “allow our resellers to maintain high profit margins.”

7 347. As also stated in the Sirius MAP Policy, “[a]ll Sirius Signal
8 Authorized Resellers must agree to the terms and conditions of the following MAP
9 Policy” and “[a]ny and all dealers selling Sirius Signal products which have not
10 signed a Sirius Signal MAP Policy agreement are classified as “Unauthorized
11 Resellers” and “Unauthorized Resellers should not be sold to or provided a feed
12 from any distributor whatsoever.”

13 348. Upon information and belief, Sirius requires every entity selling a
14 Sirius product to execute its Sirius MAP Policy, and although the policy indicates
15 that “Resellers are free to set the actual resale price of any product,” it is
16 understood that resellers were not to set the product to different prices without the
17 approval of Sirius.

18 349. If prices were to be set to a lower level, it had to be done with the
19 express, advance approval of Sirius as stated in the Sirius MAP Policy, i.e., “From
20 time to time, Sirius Signal may permit resellers to advertise MAP Products at
21 prices lower than the MAP price. In such events, Sirius Signal reserves the right to
22 modify or suspend the MAP price with respect to the affected products for a
23 specified period of time by providing advance notice to all resellers of such
24 changes.”

25 350. Upon information and belief, the Sirius MAP Policy was also
26 designed to impede the sales of its goods over the Internet at a price less than the
27 MAP price.

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1 351. Defendants engaged in a horizontal boycott in agreeing to not sell
2 goods and services to W&P in order to prevent W&P from competing in the
3 eVDSD marketplace, which resulted in the inability of W&P to manufacture the C-
4 1001, even during a time period in which the Defendants do not dispute that the
5 Agreement was in effect. The inability of W&P to compete with Sirius due to lack
6 of inventory resulted in increased eVDSD pricing to resellers and, potentially the
7 end consumer, due to lack of competition.

8 352. Defendants and their co-conspirators furthered and effectuated their
9 conspiracy, and restrained trade of eVDSDs by, inter alia, performance of the
10 Conspiracy Acts as set forth above. The facts supporting these allegations are set
11 forth throughout this Complaint including, but not limited to, in the Introduction
12 and Facts sections.

13 353. The agreement of the Defendants to commit the Conspiracy
14 unreasonably restrained trade by, at a minimum, artificially inflating prices to meet
15 the MAP pricing levels, and preventing competition via assertion, licensing, and
16 enforcement of fraudulent patents, and this restraint has affected interstate
17 commerce by removing competition (there are only two sellers of eVDSDs and
18 they are in license negotiations with each other) and maintaining the price of
19 eVDSDs at the artificially high level of \$89.95.

20 354. The restraint of trade of eVDSDs affected interstate commerce by
21 falsely inflating the price of eVDSDs in the relevant market through the
22 elimination and suppression of competition.

23 355. The anticompetitive effect of the Conspiracy is to maintain
24 competitors in the eVDSD market to one or two, depending on the timing. First, in
25 2015, the only competitor was Sirius as it claimed that its device was patented and
26 it was the only eVDSD approved by the USCG. Thereafter, after execution of the
27 Agreement on December 31, 2015, the sole competitor was Weems/W&P under

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1 license to Sirius until approximately April 2018, at which point Orion entered the
2 relevant market.

3 356. Upon Orion's entry into the market, the Defendants conspired to drop
4 the current exclusive licensee, W&P, in favor of offering a license to the sole
5 competitor they could not get rid of otherwise. In this manner, the Defendants
6 conspired to maintain a monopoly in the eVDSD.

7 357. The market share of Sirius prior to Orion entering the market was
8 100%. Upon information and belief, after entry of Orion, and without placing
9 Orion under a license agreement, Orion has continually worn away at Sirius'
10 market share such that the share is approximately 50%.

11 358. Once the Tektite/Sirius Defendants decided to terminate W&P and
12 compete against W&P, the Defendants acted in concert to limit the supply of the
13 C-1001 by ceasing supply of same and the components thereof to W&P in an
14 attempt to eliminate competition from W&P such that Sirius could maintain prices
15 for the eVDSDs at a fixed price point.

16 359. The sole competitor Orion conspicuously lists its Orion Kit at the
17 same price as the Sirius Map Policy price, namely, \$89.95 despite the fact that the
18 cost of manufacturing an eVDSD kit is approximately twenty dollars.

19 360. The Defendants have attempted to and have conspired to monopolize
20 and, deliberately and by conscious parallelism, have monopolized trade and
21 commerce in the eVDSD industry by Conspiracy Acts enumerated herein in
22 violation of the anti-trust laws, including Sections 1 and 2 of the Sherman Act.

23 **A. The eVDSD Market in the United States is Susceptible to Collusion**

24 361. Publicly available data on the eVDSD market in the United States
25 demonstrates that it is susceptible to cartelization by the Defendants and their co-
26 conspirators. Factors that make the eVDSD market susceptible to collusion during
27 the Conspiracy Period include: (1) a standardized product for which competition
28 was principally on the basis of price; (2) stable or declining input costs for much of

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1 the Conspiracy Period; (3) the lack of available economic substitutes; (4) high
2 barriers to entry; and (5) industry concentration.

3 **(1) eVDSDs are a standardized product for which competition is**
4 **principally on the basis of price**

5 362. eVDSDs are standardized products for which competition is
6 principally based upon price.

7 363. To date, the only available economic substitute available to the Sirius
8 C-1001 Kit is the Orion Kit. Defendants have attempted to place Orion under
9 Defendants' control via a licensing agreement.

10 364. A comparison of the C-1001 Kit and the Orion Kit shows that the
11 products are essentially the same and include a handle, a float, a lens, and a light
12 shining through the lens when such light is activated.

13 365. Further, these two eVDSD models must both comply with the USCG
14 Regulations which dictate many aspects of the product including, without
15 limitation, light brightness, light color, signaling manner, independent power
16 source, float ability in fresh water, waterproof switches, and that the electric light
17 may not be equipped with a switch mechanism which permits continuous display
18 of a beam of light except that the light may be equipped with a switch which
19 returns to the off position when pressure is released. As such, due to the similarity
20 of eVDSDs, competition between eVDSD is principally based upon price.

21 **(2) Stable or Declining Input Costs**

22 366. The cost of producing an eVDSD has very slightly declined over the
23 years. For example, the cost of manufacturing the C-1001 bodies with lens and
24 assembling the C-1001 in a clamshell package with a card insert has slightly
25 declined over the years that it has been sold, and the costs of the other components
26 (e.g., the flag) have remained constant, yet the sales price has remained constant at
27 \$89.95 - \$99.99 per unit. For example, in 2016, the cost of manufacturing the C-
28 1001 excluding the cost of the float, flag, circuit board and packaging was \$10.03,

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1 which dipped to \$9.13 in 2017, and then settled out at \$9.67 in 2019. The total
2 cost to manufacturer the C-1001 as a whole has remained relatively stable at
3 approximately \$19.53 throughout the Conspiracy Period.

4 **(3) Lack of Available Economic Substitutes**

5 367. Economists regard products as economic substitutes for one another if
6 a nominal change in price for one product results in increased demand for the other
7 product. The change in price necessary to cause consumers to switch to a substitute
8 good is often considered to be around five percent.

9 368. There is no economic substitute for eVDSDs, and the lack of available
10 economic substitutes for a product facilitates collusion among producers, because
11 customers are not reasonably able to avoid supra-competitive prices by switching
12 to another product.

13 **(4) There Are Significant Barriers to Entry in the eVDSD Market**

14 369. Supra-competitive pricing in a market typically attracts additional
15 competitors attempting to avail themselves of the inflated prices. Significant
16 barriers to entry, however, make new competition more difficult and facilitate the
17 formation and maintenance of a cartel.

18 370. There are significant barriers to entry which have prevented potential
19 competitors from effectively competing in the eVDSD market in the United States
20 during the Injury Period. A first barrier to entry is the assertion of fraudulently
21 procured patents by Defendants against potential competitors and the deterring of
22 potential competitors due to the knowing false marking of its C Series Products
23 with “patent pending,” or patent numbers that are either expired, did not cover the
24 product, or are unenforceable due to inequitable conduct before the USPTO.

25 371. Further barriers include satisfaction of regulatory requirements, i.e.,
26 obtaining USCG approval under regulations that, upon information in belief,
27 constantly changed in part due to the influence of Covelli’s presence on the USCG
28 committee. Access to distribution channels was also limited as Defendants sought

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1 to lock up all marine distribution channels through the Agreement and its MAP
2 policies. The eVDSD market had one new entrant during the Conspiracy Period,
3 namely, Orion.

4 372. Defendants are further suppressing competition by attempting to
5 influence the USCG Distress Signal Regulations such that they would exclude
6 single color eVDSDs, which would leave the improved C-1002 Sirius eVDSD as
7 the only USCG-approved eVDSD, thereby resulting in a monopoly.

8 **(5) The eVDSD Industry Is Highly Concentrated**

9 373. The eVDSD industry is dominated by a small number of companies.
10 Prior to its attempted termination of the Agreement, eVDSDs were sold by two
11 companies, namely, W&P and Orion. After attempting to wrongfully terminate the
12 Agreement and license the Sirius IP to Orion, if successful, only Orion would
13 remain. If unsuccessful, two competitors will remain, Sirius and Orion.

14 374. The concentration in the eVDSD industry is further exacerbated by
15 agreements among Defendants and their co-conspirators to distribute one another's
16 products. For example, Tektite distributes at least the C-1001 on its website, and
17 Sirius distributes Tektite's products on the Sirius Web Site. Such swaps, trades,
18 and selling and distribution agreements among competitors in a consolidated
19 market facilitate collusion among ostensible competitors.

20 **B. Opportunities To Collude Facilitated The Conspiracy**

21 375. There were countless opportunities for Defendants to communicate
22 and conspire with each other. Upon information and belief, Defendants regularly
23 met and/or discussed each other's business. Defendants hid the nature of their
24 relationship, and their conspiracy, from others.

25 376. Defendants secretly targeted a business relationship with their only
26 competitor Orion at some point prior to termination of the Agreement in breach of
27 the Right of First Offer to their exclusive worldwide distributor W&P.

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1 377. Upon information and belief, throughout the Conspiracy Period, at
2 least the Tektite/Sirius Defendants were in regular communication to facilitate the
3 conspiracy.

4 378. Defendants and their co-conspirators enjoyed supra-competitive profit
5 margins on the sale of eVDSDs, or the cost of producing the eVDSDs or
6 components thereof, and inflated royalties during the Conspiracy Period due to the
7 false belief that Defendants owned valid patents that protected the eVDSDs. Thus,
8 potential sellers of eVDSDs could have entered the market and sold eVDSDs at
9 considerably lower prices and still make a profit, however, these potential sellers
10 were deterred by the anti-competitive conduct of the Defendants. Among the
11 reasons for Defendants and their co-conspirators to hide their conspiracy and the
12 invalidity of the Sirius Patents was to protect their supra-competitive profit
13 margins.

14 **C. Policing and Enforcement Efforts**

15 379. Upon information and belief, Defendants also undertook specific
16 efforts to monitor and enforce the conspiracy.

17 **D. Defendants and Their Co-Conspirators Maintained, and Continue to**
18 **Cause Injury Through and Benefit from, Their Unlawful Conspiracy**

19 380. Defendants, each having joined and participated in the unlawful
20 conspiracy described herein, and each having performed overt acts in furtherance
21 of this unlawful conspiracy, needed to affirmatively withdraw from the unlawful
22 conspiracy in order to terminate their participation therein.

23 381. None of the Defendants and their co-conspirators did so. To the
24 contrary, upon information and belief, the Defendants continue to communicate
25 with each other about the subject matter of the conspiracy, continue to conceal the
26 conspiracy from customers and the general public, and continue to substantially
27 maintain (and, in some cases, even increase) the supra-competitive prices they
28 charged for eVDSDs.

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1 382. Concealing the conspiracy from their licensees, customers and the
2 general public enabled Defendants and their co-conspirators to maintain, and
3 continue to cause injury through and benefit from, their unlawful conspiracy
4 concerning eVDSD as evidenced, inter alia, by their ability to substantially
5 maintain, or even increase, the supra-competitive prices they charged their
6 customers for eVDSD.

7 383. Defendants' eVDSD pricing behavior cannot be justified by higher
8 component or manufacturing costs, as the prices for the components used to
9 manufacture eVDSDs and the cost of manufacturing the eVDSDs has slightly
10 decreased during the Conspiracy Period.

11 384. As a result of the conspiracy among Defendants and their co-
12 conspirators, Plaintiff has been forced to pay supra-competitive royalties for
13 eVDSD under the false belief that they were protected by patents.

14 385. As a result of Defendants' unlawful conspiracy, Plaintiff sustained
15 damages to their business or property. The full amount of such damages will be
16 determined after discovery and upon proof at trial and, include, at a minimum
17 future lost profits from failure of the Sirius Defendants to offer W&P the Right of
18 First Offer for the license of the C-1002.

19 386. The conspiracy had its intended effect, and the Sirius Defendants
20 benefitted by reaping inflated royalties, revenues, and profits from their supra-
21 competitive eVDSD pricing in the form of Amazon sales and sales to resellers, and
22 Emlinq and the Tektite Defendants benefitted from inflated profits from sales of
23 the components of, or manufacturing of, the eVDSD to the Sirius Defendants.

24 387. Defendants' unlawful conduct as alleged herein poses a significant,
25 continuing threat of antitrust injury for which injunctive relief is appropriate under
26 Section 16 of the Clayton Antitrust Act.

27 388. Plaintiff reserve the right to add additional Defendants as information
28 is developed as to other parties.

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1 **E. Fraudulent Concealment**

2 389. Defendants and their co-conspirators engaged in a successful unlawful
3 conspiracy which, by its very nature, was self-concealing.

4 390. Upon information and belief, Defendants and their co-conspirators
5 used non-public means of communication, such as electronic email
6 communications and verbal communications to conceal their agreements to
7 eliminate competition by committing the Conspiracy through performance of the
8 Conspiracy Acts. Upon information and belief, Defendants and their co-
9 conspirators wrongfully concealed and carried out their illegal conduct in a manner
10 that was designed to, and did, preclude detection.

11 391. Plaintiff did not have actual or constructive knowledge of Defendants'
12 and their co-conspirators' unlawful scheme until on or about November 1, 2019,
13 when its counsel investigated the facts of the claims in preparing a first amended
14 complaint in the pending litigation having Case No. 1:19-cv-02330-RDB (Hon.
15 Richard D. Bennett). Because Defendants' and their co-conspirators'
16 anticompetitive conduct was both self-concealing and affirmatively concealed by
17 Defendants and their co-conspirators', neither Plaintiff nor any other eVDSD
18 purchasers learned, or could have learned or discovered, the operative facts giving
19 rise to this Complaint until sometime after November 1, 2019. No information,
20 actual or constructive, was ever made available to Plaintiff or any other eVDSD
21 purchasers that would have led a reasonably diligent person to investigate whether
22 an unlawful conspiracy with regard to eVDSD existed prior to November 1, 2019.

23 392. W&P's discovery of the '288 Patent alone and the Sirius Defendants'
24 failure to disclose the '288 Patent to the USPTO during prosecution of the Sirius
25 Patents was not sufficient to put Plaintiff or any other reasonable United States
26 purchaser of eVDSD on notice that an extensive conspiracy to suppress
27 competition and fix the price of eVDSDs may have existed. Not only did
28 Defendants and their co-conspirators conduct their conspiracy in secret, they also

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1 affirmatively misled their customers, including Plaintiff, as to the existence of their
2 unlawful conspiracy.

3 393. In selling the eVDSDs, Defendants and their co-conspirators often
4 falsely asserted that their eVDSDs were patent protected and that in the near
5 future, would be the only eVDSDs licensed by the USCG thereby providing an
6 excuse concealing the true cause of the inflated price of the eVDSDs – the
7 unlawful conspiracy – from eVDSD purchasers.

8 394. The affirmative misrepresentations Defendants and their co-
9 conspirators made to Plaintiff and other eVDSD purchasers, were meant to, and
10 did, prevent Plaintiff from discovering the actual reason for the artificially-inflated
11 prices and royalties. Because of the self-concealing nature of Defendants’ and their
12 co-conspirators’ unlawful conspiracy and the affirmative acts of concealment
13 described above, Plaintiff were unaware of Defendants’ and their co-conspirators’
14 unlawful conspiracy and were unaware that they were paying artificially inflated
15 royalties for eVDSDs during the Injury Period. The self-concealing nature of
16 Defendants’ and their co-conspirators’ conspiracy, coupled with the affirmative
17 acts of concealment described herein, prevented Plaintiff from discovering through
18 reasonable diligence that Defendants and their co-conspirators had engaged in the
19 unlawful conspiracy described herein. Accordingly, Defendants’ their co-
20 conspirators’ fraudulent concealment tolled all statutes of limitations applicable to
21 Plaintiff’s claims. No applicable statute of limitations began to run on Plaintiff’s
22 claims until, at the earliest, November 1, 2019, the day upon which Plaintiff’s
23 counsel uncovered facts suggesting the need to further investigate the claims set
24 forth herein.

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COUNT XII

**SHERMAN ACT, 15 U.S.C. § 1, 2: CLAYTON ACT, 15 U.S.C. § 3 TYING
(PLAINTIFF AGAINST THE SIRIUS DEFENDANTS)**

395. Plaintiff incorporate by reference the preceding and following paragraphs as though set forth fully herein.

396. Impermissible tying arrangements arise when a party agrees to sell one product (the tying product, i.e., the C-1001/C-1003) but only on the condition that the buyer also purchases a different (or tied) product, i.e., the C-1002. To establish a per se tying claim under §§ 1 and 2 of the federal Sherman Antitrust Act, a Plaintiff must prove (1) the existence of two separate products, i.e., in this case, the C-1001/C-1003 (one color light) and the C-1002 (two color light); (2) an agreement conditioning purchase of the tying product upon purchase of the tied product (or at least upon an agreement not to purchase the tied product from another party); (3) the seller's possession of sufficient economic power in the tying product market to restrain competition in the tied product market; and (4) a not insubstantial impact on interstate commerce.

397. The conspiracy alleged herein is a per se violation of Sections 1 and 2 of the Sherman Act.

398. During negotiation of a fourth amendment to the Agreement (the “Fourth Amendment”), the Sirius Defendants conditioned the signing of the Fourth Amendment and the licensing of the C-1001/C-1003 upon the execution of a new license for the C-1002 including payment of a substantial upfront fee of two hundred and seventy thousand dollars (\$275,000).

399. The Sirius Defendants possessed sufficient economic power in the tying product market to restrain competition in the tied product market. Upon information and belief, at the time of the attempted tying agreement, the Sirius Defendants had at least fifty percent market share of the eVDSD market. Further, the Sirius Defendants claimed that its eVDSD and the Orion eVDSD were covered

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1 by the Sirius IP, and as such, implied to other potential suppliers of eVDSDs and
2 W&P that it would likely achieve a monopoly in the eVDSD market through
3 enforcement, or licensing, of the Sirius IP against Orion.

4 400. As described herein, the Sirius Defendants demonstrated market
5 power by reducing output of eVDSD products by controlling the information
6 required to manufacture the eVDSD and by conspiring with manufacturers to deny
7 and delay orders and to artificially increase the costs of manufacturing eVDSDs for
8 W&P.

9 401. The requisite market power for a tying agreement may be inferred
10 when the tying product (i.e., the C-1001 or C-1003) is patented, which Sirius
11 claims it is, because a buyer is unable to buy the product elsewhere. If Orion takes
12 a license under the Sirius IP, there would be no alternative, USCG-approved
13 eVDSD product available for a purchaser to buy elsewhere.

14 402. The Sirius Defendants wished to use its market power in the eVDSD
15 market to force W&P to do something it would not otherwise do, i.e., pay
16 \$275,000 for an upfront licensing fee for the C-1002 (in addition to ongoing
17 royalties) despite the fact that W&P had already licensed the C-1002 under the
18 Agreement. The Sirius Defendants coerced W&P to license the C-1002 in order to
19 license the product it definitely wanted, namely the C-1001/C-1003.

20 403. The C-1001/C-1003 and C-1002 have separate demand functions such
21 that customers would never buy them together. A customer buying either the C-
22 1001/C-1003 or the C-1002 will have no need for the other product because the
23 products perform the same function, (i.e., night distress signal), and only one of
24 such lights is required to be carried aboard a boat in order to comply with USCG
25 regulations. However, the C-1002 is at a price point triple of the C-1001/C-1003
26 and arguably has better recognition than the C-1001/C-1003 for first aid responders
27 or the like.

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1 404. The impact on interstate commerce of the proposed tying agreement
2 would not have been insubstantial. No other two color eVDSD exists in the market
3 so a successful tying arrangement would have affected 100% of the two color
4 eVDSD market. Additionally, the only other eVDSDs available for sale at the time
5 of the proposed tying agreement and today are the single color Sirius C-1001/C-
6 1003 eVDSD and the single color Orion eVDSD. At the time of the proposed
7 tying agreement, upon information and belief, Sirius intended to license its Sirius
8 IP to Orion to cover the Orion eVDSD, thereby monopolizing the eVDSD market.
9 The tying of the C-1002 to the C-1001/C-1003 would have allowed Sirius to retain
10 a monopoly on the entire eVDSD marketplace by allowing only W&P and Orion to
11 distribute eVDSDs rather than allowing a third company to independently license
12 the C-1002.

13 405. Also, the tying of the eVDSD to the C-1001/C-1003 will have the
14 impact of raising the price of these products as the licensee would need to raise
15 prices in order to be compensated for the \$275,000 upfront licensing fee for the C-
16 1002.

17 406. Alternatively, the conspiracy alleged herein is a rule of reason
18 violation of Section 1 of the Sherman Act. 382. There was no procompetitive
19 business justification for Defendants’ unlawful conspiracy. Even if there were
20 some ostensible procompetitive justification, the Defendants’ conduct was not the
21 least restrictive alternative method to achieve such a purpose.

COUNT XIII

SHERMAN ACT, 15 U.S.C. § 2:

MONOPOLIZATION

(PLAINTIFF AGAINST ALL DEFENDANTS)

26 407. W&P repeats and re-alleges each of the foregoing and following
27 allegations as though fully set forth herein.

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1 408. The facts as set forth herein in the Complaint indicate that the
2 Defendants had: (1) a specific intent to monopolize the eVDSD market; (2)
3 predatory or anticompetitive acts in furtherance of the intent including, but not
4 limited to the Conspiracy Acts; and (3) a dangerous probability of success in that
5 the Defendants, *inter alia*, have blocked the exclusive distributor W&P from
6 manufacturing and selling the product to decrease supply of eVDSDs, the
7 Defendants are attempting to license the Sirius IP to the sole eVDSD competitor,
8 Orion, and simultaneously the Defendants are conspiring to change the USCG
9 Distress Signal Regulations such that only its new two color light (the C-1002) will
10 be USCG-approved, in which case the Defendants will again achieve a full
11 monopoly and will achieve the supra-competitive price of \$299.99 for all USCG-
12 approved eVDSDs.

13 409. The predatory and anticompetitive acts are, at a minimum, the
14 Conspiracy Acts and other acts set forth above and included elsewhere in this
15 Complaint.

16 410. Defendants have a dangerous probability of success as they have shut
17 out the exclusive licensee of the eVDSDs, W&P, via a false breach of contract
18 claim and a horizontal boycott of W&P's supply of the C-1001 eVDSD, and
19 components thereof, in order to license the only other competitor in the eVDSD
20 market, Orion, and are currently in negotiations with Orion. If these negotiations
21 are successful, there will be a true monopoly in the eVDSD market, i.e., Sirius will
22 control 100% of the eVDSD market through its sole licensee, Orion. Even if these
23 negotiations are not successful, Sirius has still gained at least a 50% share in the
24 eVDSD market via wrongfully terminating its exclusive licensee, W&P.

25 411. The Sirius Defendants have willfully acquired and maintained
26 monopoly power in the relevant market through the Conspiracy Acts including,
27 without limitation the ongoing procurement, licensing, and assertion of fraudulent
28 U.S. Patents, the control of information and manufacturers necessary to

1 manufacture eVDSDs, and manipulation of the USCG regulations vis a vis
2 Covelli's position as a member of the 132 Committee.

3 412. The Sirius Defendants have the power to control eVDSD prices and
4 do control prices through the implementation of the Sirius MAP Policy. Sirius is
5 attempting to exclude competition and obtain a monopoly by forcing the sole
6 competitor, Orion, to license its fraudulent patents and comply with the Sirius
7 MAP Policy.

8 413. Upon information and belief, Sirius has a market share of 50% or
9 higher and, if successful in licensing negotiations with Orion, it will own 100% of
10 the market share.

11 **COUNT XIV**

12 **CALIFORNIA CARTWRIGHT ACT (ANTITRUST)**

13 **Business and Professions Code 3 § § 16700-16758**

14 **RESTRAINT OF TRADE**

15 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

16 414. W&P repeats and re-alleges each of the foregoing and following
17 allegations as though fully set forth herein.

18 415. The Defendants by agreement and conspiracy with each other
19 unreasonably restrained trade or commerce via perpetrating the Conspiracy Acts
20 and other acts set forth herein.

21 416. Defendants engaged in an unlawful conspiracy by agreeing to fix,
22 stabilize, inflate, and maintain the price of eVDSDs sold to companies,
23 municipalities, and governmental subdivisions in, among other places, the State of
24 California, in violation of the California Antitrust laws and the Cartwright Act.

25 417. Plaintiff is a Maryland limited liability company and has standing to
26 maintain an action to recover damages sustained as a result of a violation of the
27 California Antitrust laws and the Cartwright Act regardless of whether Plaintiff
28 purchased directly or indirectly with a person who committed the violation.

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1 418. The conspiracy alleged herein is a per se violation of the California
2 Antitrust laws and the Cartwright Act. Alternatively, the conspiracy alleged herein
3 is a rule of reason violation of the Cartwright Act.

4 419. There was no procompetitive business justification for Defendants'
5 unlawful conspiracy. Even if there were some ostensible procompetitive
6 justification, the Defendants' conduct was not the least restrictive alternative
7 method to achieve such a purpose.

8 420. Defendants and their co-conspirators furthered and effectuated their
9 conspiracy, inter alia, by committing the Conspiracy Acts and other acts alleged
10 herein.

11 421. As the result of Defendants' unlawful conspiracy, Plaintiff sustained
12 damage to its business or property. The full amount of such damages will be
13 determined after discovery and upon proof at trial.

14 422. The conspiracy had its intended effect, and Defendants benefitted by
15 reaping inflated revenues from their supra-competitive eVDSD pricing.

16 423. Defendants' unlawful conduct as alleged herein poses a significant,
17 continuing threat of antitrust injury for which injunctive relief is appropriate under
18 the California Antitrust laws and the Cartwright Act.

19 424. Plaintiff reserves the right to add additional Defendants as information
20 is developed as to other parties.

21 **COUNT XV**

22 **CALIFORNIA CARTWRIGHT ACT (ANTITRUST)**

23 **Business and Professions Code 3 § § 16700-16758**

24 **ATTEMPT AND CONSPIRACY TO MONOPOLIZE**

25 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

26 425. W&P repeats and re-alleges each of the foregoing and following
27 allegations as though fully set forth herein.

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1 426. The Defendants monopolized, attempted to monopolize, and
2 combined and conspired with each other to monopolize the eVDS D trade or
3 commerce worldwide for the purpose of excluding competition or of controlling,
4 fixing, or maintaining prices in trade or commerce.

5 427. Defendants engaged in an unlawful conspiracy by agreeing to fix,
6 stabilize, inflate, and maintain the price of eVDS Ds sold to companies,
7 municipalities, and governmental subdivisions in, among other places, the State of
8 California, in violation of the California Cartwright Act.

9 428. Plaintiff is a Maryland limited liability company and has standing to
10 maintain an action to recover damages sustained as a result of a violation of the
11 California Cartwright Act regardless of whether Plaintiff purchased directly or
12 indirectly with a person who committed the violation.

13 429. The conspiracy alleged herein is a per se violation of the California
14 Cartwright Act. Alternatively, the conspiracy alleged herein is a rule of reason
15 violation of California Cartwright Act.

16 430. There was no procompetitive business justification for Defendants'
17 unlawful conspiracy. Even if there were some ostensible procompetitive
18 justification, the Defendants' conduct was not the least restrictive alternative
19 method to achieve such a purpose.

20 431. Defendants and their co-conspirators furthered and effectuated their
21 conspiracy, inter alia, by committing the Conspiracy Acts and other acts alleged
22 herein.

23 432. As the result of Defendants' unlawful conspiracy, Plaintiff sustained
24 damage to its business or property. The full amount of such damages will be
25 determined after discovery and upon proof at trial.

26 433. The conspiracy had its intended effect, and Defendants benefitted by
27 reaping inflated revenues from their supra-competitive eVDS D pricing.

28 / /

1 434. Defendants' unlawful conduct as alleged herein poses a significant,
2 continuing threat of antitrust injury for which injunctive relief is appropriate under
3 the California Cartwright Act.

4 435. Plaintiff reserves the right to add additional Defendants as information
5 is developed as to other parties.

6 **COUNT XVI**

7 **BUSINESS DEFAMATION**

8 **(PLAINTIFF AGAINST THE SIRIUS DEFENDANTS)**

9 436. W&P repeats and re-alleges each of the foregoing and following
10 allegations as though fully set forth herein.

11 437. Upon information and belief, Covelli and Sirius committed
12 defamation by: (1) making defamatory statements regarding W&P to the Finnish
13 Safety and Chemicals Agency; (2) the statements were false; (3) Sirius was legally
14 at fault in making the statement and (4) W&P suffered harm thereby.

15 438. On or about August through October 2019, Covelli had an email
16 exchange with Jenni Mutka of the Finnish Safety and Chemicals Agency in which
17 he made false statements to the detriment of W&P.

18 439. On or about August 9, 2019, Covelli told the Finnish Safety and
19 Chemicals Agency that their licensee W&P sent the product at issue with a red lens
20 to a supplier in Finland. The email continued "The items were supplied and sent
21 by Weems & Plath (Annapolis MA) and, incorrectly identified by the same model
22 number as the US government required version. This incorrect labeling on the unit
23 can lead to confusion as to which light is legal for the US should the lights sold in
24 Finland make there [sic] way outside of Finland. They could cause more serious
25 issues should the lights be deployed by boaters and ships crew as the color and
26 flash characteristics (SOS) of a red light mean nothing in other countries,
27 particularly in the US. Our company as holders of the IP have great liability
28 because these two lights carry the same C-1001 model #. See attached photo's

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1 Additional these light were received with no packaging as per Finnish
2 requirements.”

3 440. Sirius knew or should have known that the following statement
4 identified in at least paragraph 492 is false: “Our company as holders of the IP
5 have great liability because there two lights carry the same C-1001 model #.”
6 Sirius knew that the license agreement provided them indemnification, and they
7 were not subject to great liability, and Sirius had previously approved shipment of
8 the red lights to Finland in the same form in which they were sent.

9 441. Sirius intended to deceive the Finnish Safety and Chemicals Agency
10 by this statement so that the agency would pull the product from the market in
11 Finland and would contact W&P’s client Multimarine, thereby damaging W&P’s
12 relationship with Multimarine and its ability to sell product to Multimarine at a
13 future date.

14 442. On or about September 8, 2019, Covelli emailed Jenni Mutka at the
15 Finnish Safety and Chemicals Agency and stated in part: “The company in Finland
16 is Multimarine ... This incorrectly marked and labeled life-saving device (selling
17 in Finland right now) must be corrected ... Same Unit labeled C-1001 with RED
18 FLASHING SOS and identical US bar code (as the [sic] WHITE version), sold in
19 Finland. This is a not acceptable, as only the WHITE SOS VERSION MODEL C-
20 1001 is authorized for carriage ... It is imperative this be enforced by the Finnish
21 authorities as the confusion can lead to boaters believing that the light Model C-
22 1001 in RED can lead to recognition and rescue. Model C-1001 markings can only
23 be on the WHITE SOS. This type of confusion can lead to a grave situation with a
24 unfortunate outcome. Each incorrectly labeled unit sold increases the chance of
25 tragedy. Risk in this case, can be mitigated with swift enforcement. Please
26 confirm you are taking action for the safety of boaters in the United Sates [sic] as
27 well as the EU. I will forward a copy of your corrective action to the proper US
28 Governmental agencies.”

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1 443. Sirius knew or should have known that at least the following
2 statement identified in paragraph 495 above is false: “and identical US bar code (as
3 the [sic] WHITE version)” as Sirius was notified in writing on August 1, 2019 that
4 the Finnish Light carried a “different UPC code from the lights sold in the U.S.”

5 444. Sirius intended to deceive the Finnish Safety and Chemicals Agency
6 by this statement so that the agency would pull the product from the market in
7 Finland and would contact W&P’s client Multimarine, thereby damaging W&P’s
8 relationship with Multimarine and its ability to sell product to Multimarine at a
9 future date.

10 445. As a result of the statements identified in paragraph 495 above, the
11 Finnish Safety and Chemicals Agency contacted the Finnish importer of the
12 product and requested additional information and pictures regarding the product.

13 446. The statements identified in paragraph 495 above caused harm to
14 W&P’s business reputation, as they placed W&P’s customer, Multimarine, in the
15 position of having a conflict with a governmental agency, specifically, the Finnish
16 Safety and Chemicals Agency and are thus defamation per se.

17 447. Additionally, the statements identified in paragraph 495 above
18 directly caused W&P damage in loss of future sales to the Finnish importer.

19 **COUNT XVII**

20 **LANHAM ACT**

21 **FALSE ADVERTISING**

22 **(PLAINTIFF AGAINST THE TEKTITE AND SIRIUS DEFENDANTS)**

23 448. W&P repeats and re-alleges each of the foregoing and following
24 allegations as though fully set forth herein.

25 449. To establish a Lanham Act false advertising claim, a Plaintiff must
26 prove that: (1) the defendant made a false or misleading description of fact or
27 representation of fact in a commercial advertisement about his own or another's
28 product; (2) the misrepresentation is material, in that it is likely to influence the

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1 purchasing decision; (3) the misrepresentation actually deceives or has the
2 tendency to deceive a substantial segment of its audience; (4) the defendant placed
3 the false or misleading statement in interstate commerce; and (5) the plaintiff has
4 been or is likely to be injured as a result of the misrepresentation, either by direct
5 diversion of sales or by a lessening of goodwill associated with its products.

6 450. On August 25, 2019, during the time that the Agreement was still in
7 effect, the Tektite/Sirius Defendants made the false or misleading description of
8 fact or representation of fact in a commercial advertisement, namely, *inter alia*, in
9 at least a press release on the Sirius Web Site, that (1) “as a part of this roll out,
10 Sirius Signal will no longer license its technology, and will be the sole manager of
11 all distribution and retailer partnerships” and (2) “[w]ith the expiration of Sirius
12 Signal’s patent license agreement with Weems & Plath, Sirius Signal will be the
13 sole manufacturer of its patented SOS Distress Light.”

14 451. Statement (1) is false because the Agreement had not expired and as
15 such Sirius was still licensing its technology, and, even if Sirius argues that it had
16 expired, W&P still had the right to sell the C-1001 inventory on hand during the
17 Sell-Off Period.

18 452. Statement (2) is false because the Agreement never expired, rather it
19 was terminated without cause. Nor would the Agreement have expired on
20 December 31, 2020 because it included an automatic renewal provision.

21 453. These statements are material and influenced the purchasing decisions
22 of at least Customer A, who decided to stop purchasing the C-1001 until the issue
23 was resolved.

24 454. These representations actually deceived a substantial segment of its
25 audience to believe that W&P did not have the right to sell the C-1001 and, that the
26 C-1001 was being replaced by the C-1003.

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1 455. The Tektite/Sirius Defendants placed the false and misleading
2 statement into interstate commerce by placing the statement on, at a minimum, the
3 Sirius Web Site, and otherwise issuing it as a press release.

4 456. W&P has been injured as a result of the misrepresentation, by direct
5 loss of sales (with respect to Customer A who stopped purchasing the C-1001),
6 potential diversion of sales, and by a lessening of goodwill associated with its
7 products.

8 **PRAYER FOR RELIEF AGAINST DEFENDANTS**

9 WHEREFORE, W&P prays for the following:

10 **PRIMARY SET OF PRAYERS FOR RELIEF:**

- 11 A. An order declaring that the Defendants' conspiracy and the acts
12 performed in furtherance thereof be adjudged to have violated Section 1
13 of the Sherman Antitrust Act, 15 U.S.C. § 1 and the California antitrust
14 laws;
- 15 B. With respect to the state law claims asserted herein, that the Defendants'
16 conduct be adjudged to have violated California state laws;
- 17 C. An order declaring that the Defendants be preliminarily and permanently
18 enjoined and restrained from continuing and maintaining the conspiracy
19 described herein;
- 20 D. An order declaring each patent Assignment to "Sirius Signal Co." null
21 and void;
- 22 E. An order declaring the Agreement null and void for fraud;
- 23 F. An order requiring Defendants to pay to W&P the substantial upfront fee
24 and all royalties paid by W&P to date, including those held in the court's
25 registry;
- 26 G. An order declaring that the patents are unenforceable due to the
27 inequitable conduct of Covelli, Simons, and Sirius;

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- 1 H. An order declaring that the patents are unenforceable due to the fraud
2 committed on the USPTO by Covelli and Simons for failure to disclose
3 Material Information to the USPTO during prosecution of the Sirius IP
4 and the misrepresentation of the inventorship of the Sirius IP, and the
5 submission of false documents to the USPTO;
- 6 I. An order declaring that W&P suffered a competitive injury due to the
7 Tektite/Sirius Defendants' false patent marking, and compensating W&P
8 accordingly;
- 9 J. An order requiring Sirius, Covelli, and Simons to indemnify W&P for
10 any liability for infringement of any future patents issued to Sirius,
11 Covelli, or Simons;
- 12 K. An order requiring Covelli, Simons, and Sirius to pay compensation for
13 its unjust enrichment;
- 14 L. An order requiring Covelli to cease its unfair competition, civil
15 conspiracy, and tortious interference with the business
16 relations/expectancy and contractual relations of W&P and to pay
17 compensation to W&P for its lost sales and other damages caused by
18 same;
- 19 M. An order requiring Covelli to pay compensation for the damage to the
20 reputation of W&P due to the Tektite/Sirius Defendants' defaming of
21 W&P;
- 22 N. An award to W&P of compensatory and punitive damages in an amount
23 to be determined at trial;
- 24 O. An award of enhanced damages to Plaintiff of treble the amount of
25 compensatory damages caused by Defendants' violation of federal and
26 state antitrust laws, and in accordance with such laws pursuant to Section
27 3 of the Clayton Act;
- 28 P. An award to W&P of interests, costs, and attorneys' fees;

1 Q. That Defendants pay pre-judgment and post-judgment interest on the
2 damages awarded; and

3 R. Such further relief as this Court may deem just and equitable.

4 **SECONDARY SET OF PRAYERS FOR RELIEF:**

5 In the event that the Court decides not to follow the Primary Set of
6 Prayers for Relief by virtue of deciding that the Agreement will not be
7 held null and void, W&P prays that the Court follow this Secondary Set
8 of Prayers for Relief that includes the following:

- 9 A. An order declaring that the Defendants' conspiracy and the acts
10 performed in furtherance thereof be adjudged to have violated Section 1
11 of the Sherman Antitrust Act, 15 U.S.C. § 1 and the California antitrust
12 laws;
- 13 B. With respect to the state law claims asserted herein, that the Defendants'
14 conduct be adjudged to have violated California state laws;
- 15 C. An order declaring that the Defendants be preliminarily and permanently
16 enjoined and restrained from continuing and maintaining the conspiracy
17 described herein;
- 18 D. An order declaring each patent Assignment to "Sirius Signal Co." null
19 and void;
- 20 E. An order declaring that the Sirius, Covelli, and Simons breached the
21 Agreement;
- 22 F. An order requiring Defendants to refund a portion of the initial license
23 fee in accordance with the repayment schedule of the Agreement;
- 24 G. An order declaring that the patents are unenforceable due to the
25 inequitable conduct of Covelli, Simons, and Sirius;
- 26 H. An order declaring that the patents are unenforceable due to the fraud
27 committed on the USPTO by Covelli and Simons for failure to disclose
28 Material Information to the USPTO during prosecution of the Sirius IP

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- 1 and the misrepresentation of the inventorship of the Sirius IP, and the
2 submission of false documents to the USPTO;
- 3 I. An order declaring that W&P suffered a competitive injury due to the
4 Tektite/Sirius Defendants' false patent marking, and compensating W&P
5 accordingly;
- 6 J. An order requiring Sirius, Covelli, and Simons to indemnify W&P for
7 any liability for infringement of any future patents issued to Sirius,
8 Covelli, or Simons;
- 9 K. An order requiring Covelli, Simons, and Sirius to pay compensation for
10 its unjust enrichment;
- 11 L. An order requiring Covelli to cease its unfair competition, civil
12 conspiracy, and tortious interference with the business
13 relations/expectancy and contractual relations of W&P and to pay
14 compensation to W&P for its lost sales and other damages caused by
15 same;
- 16 M. An order requiring Covelli to pay compensation for the damage to the
17 reputation of W&P due to the Tektite/Sirius Defendants' defaming of
18 W&P;
- 19 N. An award to W&P of compensatory and punitive damages in an amount
20 to be determined at trial;
- 21 O. An award of enhanced damages to Plaintiff of treble the amount of
22 compensatory damages caused by Defendants' violation of federal and
23 state antitrust laws, and in accordance with such laws;
- 24 P. An award to W&P of interests, costs, and attorneys' fees;
- 25 Q. That Defendants pay pre-judgment and post-judgment interest on the
26 damages awarded; and
- 27 R. Such further relief as this Court may deem just and equitable.

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REQUEST FOR JURY TRIAL

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457. W&P hereby requests a jury trial on all issues so triable.

Dated: April 17, 2020

Respectfully submitted,

By: /s/ Richard A. Lazenby _____
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