COMPLAINT

Plaintiff California Costume Collections, Inc. ("CCC" or "Plaintiff"), by and through its attorneys, brings this Complaint against Pandaloon, LLC ("Defendant"), and alleges as follows:

NATURE OF THE ACTION

- 1. This case concerns Defendant's allegations that CCC has infringed United States Design Patent No. D806,325 ("the '325 Patent"), resulting in the takedown of CCC's product sales listings on Amazon.com.
- 2. CCC asserts claims for declaratory judgment of non-infringement, invalidity, and unenforceability of the '325 Patent pursuant to the patent laws of the United States, 35 U.S.C. §§ 102, 103, 282, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. This action is necessary to resolve the controversy regarding Defendant's claims of infringement made against CCC and allow CCC to resume selling its accused products.
- 3. CCC also asserts affirmative claims of intentional interference with contract, intentional interference with prospective business relations and unfair competition pursuant to Cal. Bus. & Prof. Code § 17200, *et seq*.

PARTIES

- 4. CCC is a California corporation having its principal place of business at 210 Anderson St., Los Angeles, CA 90033.
- 5. On information and belief, Defendant is a limited liability corporation organized and existing under the laws of the State of California having a place of business at 1020 B. St., Ramona, CA 92065.
- 6. Upon information and belief, Defendant is the owner and assignee of all right, title and interest in the '325 Patent, described more fully below.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action involves claims arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and under the Federal

- Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the state claims because they are related to the patent claims and form part of the same case and controversy.
- 8. There exists a real and immediate controversy between CCC and Defendant concerning Defendant's allegations that CCC infringes Defendant's '325 Patent.
- 9. Defendant claims to be the assignee of all rights, title and interest in the '325 Patent and has alleged in writing to CCC and Amazon that certain of CCC's products infringe the '325 Patent.
- 10. Defendant also obtained the suspension of CCC's accused product listings, and the listings of CCC's customers selling CCC's accused products, on Amazon.
- 11. CCC has tried to get Defendant to withdraw its Amazon complaints against CCC's product listings, contacting Defendant's attorneys multiple times via email, letter and phone calls. Defendant's attorneys have refused to reply to CCC's correspondence and phone messages.
- 12. The Amazon listings for CCC's accused products remain down, harming CCC and CCC's customers.
- 13. This Court has general personal jurisdiction over Defendant because it has engaged in systematic and continuous business activities in this District and, upon information and belief, hast its principal place of business in California.
- 14. In addition, as described below, this Court has specific personal jurisdiction over Defendant because Defendant has accused CCC of patent infringement and purposefully directed its '325 Patent enforcement activities at CCC, a California resident, within this District. Defendant sent a cease and desist letter to CCC in this District. Defendant also obtained the take down of CCC's sales listings of the accused products from Amazon which seeks to refrain CCC's

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activities in this District directed to manufacturing, importing, offering to sell, selling and using the accused products. CCC's declaratory judgment claims arise out of and relate to those activities by Defendant.

15. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b). CCC is a California corporation and a substantial part of the events giving rise to CCC's claims occurred in this District. As Defendant is located here, litigating here will not unduly burden Defendant and the District has a substantial interest in protecting its residents from unwarranted patent infringement claims.

FACTUAL ALLEGATIONS

- 16. Founded in 1992, CCC is headquartered in Los Angeles and is a worldwide industry leader and year round supplier of costumes, wigs and accessories. CCC sells its products through brick and mortar retailers and third party online stores.
- 17. In 2010, CCC developed and marketed a line of pet costumes which were introduced commercially in 2011.
 - Since then, CCC has produced over 60 unique styles of pet costumes. 18.
- 19. In 2011, CCC developed, and put into commerce in 2012, a series of pet costumes that featured faux front limbs and a body suit covering the pet's actual front limbs, creating an illusion of a stand up pet-faced character.
- 20. Since 2012, CCC has developed over 10 styles of pet costumes using the same design concept.
- 21. In September 2019, CCC received a cease and desist letter from Defendant's attorneys dated August 29, 2019. A true and correct copy of Defendant's cease and desist letter is attached hereto as Exhibit 1.
- 22. Defendant's letter accused CCC of infringing the '325 Patent and demanded that CCC stop "advertising, listing, distribution, selling, or offering for sale" its Panda Pooch PET20163 costume ("Accused Product") from all online and physical stores.

- 23. On or around August 2020, CCC was contacted by three of its customer resellers who had their Amazon listings for CCC's Accused Product taken down as a result of a complaint from Pandaloon to Amazon alleging that the Accused Product listings infringed Defendant's '325 Patent.
- 24. CCC, through its attorneys, sent Defendant a letter on September 1, 2020 explaining why the Accused Product does not infringe the '325 Patent and that the '325 Patent is invalid.
- 25. CCC included evidence of several prior art pet costumes hat were available on the market years before Defendant filed its application for the '325 Patent.
- 26. One example of prior art provided was the Teddy Bear pet costume from Rubies, which was widely available in the marketplace, including Amazon, at least as early as February 23, 2016. A sample picture of the Teddy Bear costume is shown below:



- 1 2 3 4 28. 29. 5 6 7 30. 8 9 10 31. 32. 11 12 13 14 33. 15 16 17 34. 18 19 20 21 22 35. 23 24 25 36. below: 26 27 28
- 27. The letter further asked Defendant to withdraw its Amazon complaints against CCC's Accused Product listings. A true and correct copy of CCC's September 1, 2020 letter is attached hereto as Exhibit 2.
 - 28. Defendant never responded to CCC's letter.
 - 29. CCC's attorneys attempted to contact Defendant's attorneys by email and phone multiple times but all communications went unanswered.
 - 30. Upon information and belief, Defendant wrongfully accused CCC's Accused Product of infringing the '325 Patent for the improper, anti-competitive purpose of interfering with CCC's business.
 - 31. Amazon listings for the Accused Products remain down.
 - 32. Since August 2020, CCC has been unable to sell its Accused Product on Amazon.com through its resellers, resulting in a significant loss in revenue and profits for CCC and CCC's customers.
 - 33. CCC's Accused Product ranking on Amazon has also been adversely affected, damaging CCC's reputation, reviews and standing.

Patent-in-Suit

- 34. On December 26, 2017, the United States Patent and Trademark Office ("USPTO") issued the '325 Patent," titled "Pet Costume." The '325 Patent issued from U.S. Patent Application No. 29/606,387 ("the '387 Application") filed on June 4, 2017. A true and correct copy of the '325 Patent is appended to Defendant's cease and desist letter attached to this Complaint as Exhibit 1.
- 35. Upon information and belief, Defendant is the assignee of all right, title and interest in the '325 Patent, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times.
- 36. Figure 8 of the '325 Patent showing the claimed design is shown below:



37. Defendant submitted an Information Disclosure Statement (IDS) at the time the '325 Application was filed. In the submitted (IDS), no mention was made of the readily available prior art costumes such as those disclosed in CCC's letter.

COUNT 1

Declaratory Judgement of Non-Infringement of the '325 Patent

- 38. CCC incorporates the foregoing paragraphs by reference as though fully set forth herein.
- 39. CCC has not infringed and does not infringe the claim of the '325 Patent either directly, contributorily, or by inducement, literally or under the doctrine of equivalents, including through its making, use, importation into the United States, sale, and/or offer for sale of the Accused Product.
- 40. Claim 1 of the '325 Patent is directed to only the ornamental design of the pet costume shown in Figures 1-8 of the patent.
- 41. The Accused Product does not infringe the '325 Patent because it does not include every claim limitation. As one example, the claimed design requires the

and Defendant with respect to alleged infringement of the '325 Patent of sufficient

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immediacy and reality to warrant the issuance of a declaratory judgment as to whether the asserted claim of the '325 Patent is infringed.

- CCC seeks and is entitled to a declaratory judgment that the 52. manufacture, importation, offer for sale, sale and use of the Accused Product does not infringe the '325 Patent.
- 53. CCC seeks and is entitled to a declaratory judgment that neither it, nor its customers, infringe the '325 Patent, either literally or under the doctrine of equivalents.
- 54. CCC seeks and is entitled to a declaratory judgment that neither it, nor its customers, have induced others to infringe or contributed to the infringement by others of the '325 Patent, either literally or under the doctrine of equivalents. A judicial declaration is necessary and appropriate so that CCC may ascertain its rights or responsibilities regarding the '325 Patent and the Accused Product.

COUNT 2

Declaratory Judgement of Invalidity of the '325 Patent

- CCC incorporates the foregoing paragraphs by reference as though 55. fully set forth herein.
- The design purportedly claimed in the '325 Patent does not qualify for 56. patent protection. For example and without limitation, the '325 Patent is invalid as anticipated and/or obvious in view of the prior public use and sale of the Teddy Bear pet costume from Rubies, which was widely available for sale on Amazon.com more than one year prior to the effective filing date of the '325 Patent.
- As a direct and proximate result of Defendant's complaints to Amazon asserting the invalid '325 Patent against CCC's Accused Product, CCC has suffered damages that are substantial, continuing and irreparable.
- 58. An actual controversy exists between CCC and Defendant regarding the validity of the '325 Patent.

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59. CCC seeks and is entitled to declaratory judgment that the '325 Patent is invalid for failure to satisfy one or more conditions of patentability. Without such declaratory relief, CCC is and will continue to be irreparably harmed and damaged.

COUNT 3

Declaratory Judgment of Unenforceability of the '325 Patent

- 60. CCC incorporates the foregoing paragraphs by reference as though fully set forth herein.
- 61. On June 4, 2017, when Eugenia Judy Chen and her attorney, Stanton Braden from Mu Patents, filed the patent application that later issued as the '325 Patent, they knew that the Teddy Bear pet costume from Rubies, and CCC's Gingerbread Pup costume, were widely available for sale in the marketplace.
- 62. Ms. Chen and Mr. Braden were aware of their duty of candor to the U.S. Patent and Trademark Office ("USPTO") to disclose all known and relevant prior art.
- 63. Upon information and belief, Ms. Chen and Mr. Braden knew that the Teddy Bear and/or Gingerbread pet costumes were material to patentability of the '325 Patent, and that the USPTO would not have issued the '325 Patent had it been aware of either of these prior art costumes.
- 64. Ms. Chen and Mr. Braden made a deliberate decision not to disclose the Teddy Bear or Gingerbread pet costumes to the patent examiner and thus committed fraud upon the USPTO.
- 65. Ms. Chen's and Mr. Braden's conduct before the USPTO was inequitable and the '325 Patent is unenforceable.
- 66. As a result of Pandaloon asserting the unenforceable '325 Patent against CCC's Accused Product listings on Amazon, CCC has suffered damages that are substantial, continuing and irreparable.

| 1 | 67. An actual controversy exists between CCC and Defendant as to |
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| 2 | whether the '325 Patent is unenforceable. |
| 3 | 68. CCC is entitled to a declaratory judgment that the '325 Patent is |
| 4 | unenforceable due to Ms. Chen's and Mr. Braden's inequitable conduct before the |
| 5 | USPTO. Without such declaratory relief, CCC is and will continue to be |
| 6 | irreparably harmed and damaged. |
| 7 | COUNT 4 |
| 8 | Intentional Interference with Prospective Economic Advantage |
| 9 | 69. CCC incorporates the foregoing paragraphs by reference as though |
| 10 | fully set forth herein. |
| 11 | 70. CCC had an existing and ongoing economic relationship with its |
| 12 | resellers that had the probability of future economic benefit to CCC from sales of |
| 13 | the Accused Product to its resellers, and by those resellers on Amazon. |
| 14 | 71. Defendant was aware of the relationships between CCC, these reseller |
| 15 | and Amazon. Defendant specifically targeted CCC's Accused Product listings on |
| 16 | Amazon for each reseller. |
| 17 | 72. Defendant filed complaints with Amazon in which it knowingly made |
| 18 | false and misleading statements that the '325 Patent was valid and infringed by |
| 19 | CCC's Accused Product. |
| 20 | 73. Defendant's false and misleading statements to Amazon disrupted |
| 21 | CCC's relationships with its resellers and Amazon. Amazon disabled the product |
| 22 | listings for CCC's Accused Product, preventing CCC and its resellers from selling |
| 23 | the Accused Product. |
| 24 | 74. Defendant's false and misleading statements have thus proximately |
| 25 | caused substantial, continuous and irreparable harm to CCC. |
| 26 | COUNT 5 |
| 27 | Unfair Competition |
| 28 | (Cal. Bus. & Prof. Code §§ 17200, et seq.) |
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COMPLAINT

1 75. CCC incorporates the foregoing paragraphs by reference as though set 2 forth fully herein. 3 Defendant has engaged in unfair competition in violation of the 4 California Unfair Competition Law ("UCL") by engaging in the unlawful conduct 5 alleged above. 6 77. As a result of Defendant's unfair competition, CCC has been injured in 7 fact and lost money or property, including without limitation lost sales of the 8 Accused Products. 9 78. Defendant's conduct has caused damages to CCC that are substantial, continuing, and irreparable. CCC and its resellers have sustained economic harm 10 11 and continue to face the real and imminent threat of continuing and future harm 12 from Defendant's unfair competition. 13 CCC is entitled to injunctive relief enjoining the unfair competition, 79. restitution and other appropriate equitable relief under UCL §§ 17203-04. 14 15 PRAYER FOR RELIEF WHEREFORE, CCC respectfully requests that the Court: 16 17 1. Issue a declaration that CCC's Accused Product has not infringed, and is not infringing, either directly or indirectly, the '325 Patent; 18 19 2. Issue a declaration that the '325 Patent is invalid; 20 3. Issue a declaration that the '325 Patent is unenforceable; 4. Order that Defendant and any of its agents are restrained and enjoined 21 22 from filing or pursuing any infringement claims on Amazon that allege the Accused Product infringes the '325 Patent; 23 5. Order that Defendant is restrained and enjoined from further unfair 24 25 competition; 6. Award CCC its damages attributable to Defendant's unwarranted 26 27 infringement claims in an amount equal to compensate CCC for its 28 economic losses;

| 1 | 7. Award CCC restitution in an amount equal to the value of the money or | | | | |
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| 2 | property taken by Defendant from CCC or in which CCC has a vested | | | | |
| 3 | 3 interest; | | | | |
| 4 | 8. Award CCC its costs in this action; | | | | |
| 5 | 9. Find that this is an exceptional case under 35 U.S.C. § 285 and award | | | | |
| 6 | CCC its reasonable attorneys' fees; and | | | | |
| 7 | 10.Order such other and further relief as this Court may deem just and | | | | |
| 8 | proper. | | | | |
| 9 | JURY DEMAND | | | | |
| 10 | In accordance with the Federal Rules of Civil Procedure 38 and Local Rule | | | | |
| 11 | 38-1, CCC respectfully demands a trial by jury on all issues so triable | 38-1, CCC respectfully demands a trial by jury on all issues so triable. | | | |
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| 13 | Dated: February 12, 2021 Respectfully submitted, LOZA & LOZA, LLP. | | | | |
| 14 | 14 DOZA & LOZA, ELI . | | | | |
| 15 16 | By: Alla Sucara | | | | |
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