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7

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 ACORN WEST LLC, a California
11 Limited Liability Company,

12 Plaintiff,

13 v.

14 BERKLEY INTERNATIONAL (NC),
LLC, a California Limited Liability
15 Company, BERKLEY
INTERNATIONAL, LLC, an Arizona
16 Limited Liability Company, and
BERKLEY INDUSTRIES, LLC, an
17 Arkansas Limited Liability Company,
BERKLEY MF LLC, a Nevada Limited
18 Liability Company, INTERNATIONAL
PAPER COMPANY, a New York
19 Corporation,

20 Defendants.
21

Case No. 2:21-cv-07821-CJC-SK

**SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT
AND BREACH OF CONTRACT**

JURY TRIAL DEMANDED

1 Plaintiff Acorn West LLC (“Acorn” or “Plaintiff”) through its undersigned
2 counsel, brings this action against Defendants Berkley International (NC), LLC,
3 Berkley International, LLC, and Berkley Industries, LLC (collectively “the Berkley
4 Defendants”), Berkley MF LLC, and International Paper Company (together with
5 all of the foregoing, “Defendants”). In support of the Complaint, Acorn alleges as
6 follows:

7 **NATURE OF THE ACTION**

8 1. This is the second time in three years that the Berkley Defendants have
9 intentionally infringed the intellectual property rights of Plaintiff Acorn by
10 manufacturing, making, using, marketing, offering for sale and/or selling infringing
11 beverage container packaging products.

12 **THE PARTIES**

13 2. Plaintiff Acorn West LLC is a California limited liability company
14 having its principal place of business at 3686 E. Olympic Boulevard, Los Angeles,
15 CA 90023.

16 3. On information and belief, Defendant Berkley International (NC) LLC
17 is a California limited liability company having a principal place of business at 2725
18 E El Presidio Street, Carson, California 90810.

19 4. On information and belief, Defendant Berkley International LLC is an
20 Arizona limited liability company with an address according to the California
21 Secretary of State at 2725 E El Presidio Street, Carson, California 90810.

22 5. On information and belief, Defendant Berkley Industries, LLC is an
23 Arkansas limited liability company having a principal place of business in
24 Bentonville, Arkansas.

25 6. On information and belief, Defendant Berkley MF LLC is a Nevada
26 limited liability company.

27 7. On information and belief, Defendant International Paper Company
28 (“International Paper”) is a New York corporation having a principal place of

1 business at 6400 Poplar Avenue, Memphis, Tennessee 38197.

2 8. On information and belief, Defendant Berkley MF LLC was a
3 subsidiary of Defendant Berkley International LLC.

4 9. On or around February 24, 2021, Defendant International Paper
5 acquired Berkley MF LLC.

6 **JURISDICTION AND VENUE**

7 10. This Court has original subject matter jurisdiction over the claims in
8 this action that relate to patent infringement pursuant to 28 U.S.C. §§ 1331 and
9 1338(a).

10 11. This Court has supplemental jurisdiction over the claim for breach of
11 contract pursuant to 28 U.S.C. § 1367(a) in that such a claim is so related to the patent
12 infringement claim that they form part of the same case or controversy.

13 12. This Court has personal jurisdiction over each of the Defendants.

14 13. The Settlement Agreement between Plaintiff and the Berkley
15 Defendants contains a forum-selection clause specifying that the U.S. District Court
16 for the Central District of California shall have and maintain jurisdiction in order to
17 enforce the Settlement Agreement. The Settlement Agreement specifically states:

18
19 This Agreement shall be interpreted, enforced, construed, and
20 controlled by the laws of the State of California, without reference to
21 principle of conflicts or choice of law provisions. The Parties stipulates
22 that the United States District Court for the Central District of
23 California shall have and maintain jurisdiction in order to enforce it and
24 also stipulate that it is enforceable per California Code of Civil
25 Procedure section 664.6, and also stipulate that this document shall be
26 admissible pursuant to California Evidence Code Section 1123, without
27 objections, in any action.

28 Settlement Agreement at § 8 (“Governing Law and Venue”). Accordingly, each of
the Berkley Defendants has consented to the personal jurisdiction of this Court for
the resolution of the present dispute regarding breach of the Settlement Agreement.

1 14. Defendant Berkley International (NC) is a California limited liability
2 company and has conducted and does conduct business within the State of
3 California.

4 15. On information and belief, Defendants International Paper and Berkley
5 MF LLC have conducted and do conduct business within the State of California. On
6 information and belief, International Paper, directly (via
7 <https://www.internationalpaper.com/>) or through subsidiaries—such as Berkley MF
8 LLC—or intermediaries, including distributors, retailers, and others, ships,
9 distributes, offers for sale and sells their products in the United States, the State of
10 California, and the Central District of California. On information and belief,
11 International Paper, directly and through subsidiaries—such as Berkley MF LLC—
12 or intermediaries, including distributors, retailers and others, have purposefully and
13 voluntarily placed the Berkley Stand-Up Products and/or the Modified Berkley
14 Stand-Up Product (described below) into the stream of commerce in the Central
15 District of California. International Paper and Berkley MF LLC have committed
16 acts of patent infringement and breach of contract within the State of California and,
17 more particularly, within the Central District of California. On information and
18 belief, International Paper has at least one location and facility in this district at 5991
19 Bandini Boulevard, Los Angeles, California 90040.

20 16. On information and belief, Defendants Berkley Industries and Berkley
21 International have conducted and do conduct business within the State of California.
22 On information and belief, Defendants Berkley Industries and Berkley International,
23 directly (via <http://goberkley.com/>) and or through subsidiaries or intermediaries,
24 including distributors, retailers, and others, ships, distributes, offers for sale and sells
25 their products in the United States, the State of California, and the Central District
26 of California. On information and belief, Defendants Berkley Industries and Berkley
27 International, directly and through subsidiaries or intermediaries, including
28 distributors, retailers and others, have purposefully and voluntarily placed the

Berkley Stand-Up Products and/or the Modified Berkley Stand-Up Product (described below) into the stream of commerce in the Central District of California. Defendants Berkley Industries and Berkley International have committed acts of patent infringement and breach of contract within the State of California and, more particularly, within the Central District of California.

17. Venue in this Judicial District is proper as to each of the Berkley Defendants as each is bound by the forum-selection clause of the Settlement Agreement.

18. Venue in this Judicial District is also proper as to each of the Defendants under 28 U.S.C. § 1391(b), given that a significant portion of the acts and transactions complained of herein were conceived, carried out, made effective, and had effect within the State of California and this Judicial District, and because each of the Defendants are subject to the personal jurisdiction of this Court.

GENERAL ALLEGATIONS

The '924 Patent

19. United States Patent No. 10,124,924 ("the '924 Patent") is titled "BEVERAGE CONTAINER PACKAGING" and was issued by the United States Patent and Trademark Office on November 13, 2018. A true and correct copy of the '924 Patent is attached hereto as **Exhibit A**.

20. Acorn owns by assignment the entire right, title, and interest in and to the '924 Patent. As the owner of the entire right, title, and interest in and to the '924 Patent, Acorn possesses the right to sue and to recover for infringement of the '924 Patent.

The Prior Lawsuit

21. On December 20, 2018, in this judicial district, Plaintiff sued the Berkley Defendants for direct and willful patent infringement of Plaintiff's '924 Patent, in a lawsuit styled, *Acorn West LLC v. Berkley International (NC) LLC et al.*, Case No. 2:18-cv-10568 (the "Prior Lawsuit").

1 22. Plaintiff alleged that the Berkley Defendants infringed the '924 Patent
2 by manufacturing, making, using, marketing, offering for sale and/or selling
3 container packaging products (the "Berkley Stand-Up Products").

4 **The Settlement Agreement**

5 23. With an effective date of January 8, 2020, Plaintiff entered into a
6 settlement agreement ("Settlement Agreement") with the Berkley Defendants,
7 thereby resolving the Prior Lawsuit.

8 24. In the Settlement Agreement, the Berkley Defendants executed a
9 binding agreement to pay Plaintiff royalty payments in exchange for a license to the
10 '924 Patent in order to continue manufacturing, marketing, and selling the Berkley
11 Stand-Up Products in the United States. More specifically, the Settlement
12 Agreement stated the following:

13 The Parties agree that Berkley is allowed to continue to manufacture,
14 to market and to sell Berkley Stand-Up Products in the United States in
15 exchange for the royalty payments described below in Section 3 subject
16 to the following license. Subject to the terms and conditions of this
17 Agreement, Acorn hereby grants to Berkley during the Term a
18 nontransferable, nonsublicensable, non-exclusive right and license
19 under the Acorn Patent to make, use, offer to sell, sell, and import
20 Berkley Stand-Up Products in the United States; provided, however,
21 that the right and license granted in this Section is expressly limited to
22 Berkley Stand-Up Products as defined in Section 1(c) of this
23 Agreement, provided, however, that such Berkley Stand-Up Products
24 must be sold, offered for sale, or distributed by Berkley. For the
25 avoidance of doubt, no "have made" rights are granted hereunder and
26 Berkley has no right to permit any third party to make any Berkley
27 Stand-Up Products. Except as expressly granted herein, all other rights
28 in and to the Acorn Patent are reserved to Acorn. No sublicensing is
permitted hereunder. Acorn shall be solely responsible for any
applications or maintenance related to the Acorn Patent and shall have
all rights in and to, without obligation to engage in, the defense of the
same. Berkley shall not directly or indirectly import, export or market
the Berkley Stand-Up Products except as is consistent with applicable
law. This license is granted without warranty of any kind.

1 Settlement Agreement at § 2(b) (“Agreements”). The Settlement Agreement
2 further provides:

3 Berkley shall pay Acorn royalties for the continuing sale of its Berkley
4 Stand-Up Products after the Effective Date as follows: Berkley shall
5 pay \$0.06 per unit sold of its 6 pack container product and \$0.12 per
6 unit sold of its 12 pack container product. Inventory of Berkley Stand-
7 Up Products manufactured and transferred internally between Berkley
8 companies is not considered “sold” for purposes of this Section 3 until
9 such Berkley Stand-Up Products are sold to an external Berkley
10 customer. Berkley shall make payment to Acorn for such royalties for
11 continuing sale within (30) calendar days of the last day of each
12 calendar quarter (*i.e.*, three month period) (“Royalty Payments”) and
13 shall include with its Royalty Payments a report of the total number of
14 Berkley Stand-Up Products units sold and a calculation of the royalty
15 owed. Any Royalty Payments made after the date such payment is due
16 and payable shall bear interest as of the day after the date such payment
17 was due and payable and shall continue to accrue such interest until
18 such payment is made at a rate equal to the lesser of either (a) two
19 percent (2%) above the prime rate as reported by Federal Reserve Bank
20 of New York, as of the date such payment was due and payable, or (b)
21 the maximum rate permitted by Applicable Law.

22 Settlement Agreement at § 3 (“Payment”).

23
24 25. The Settlement Agreement entitles the prevailing party in an action to
25 enforce or interpret the provisions of the Settlement Agreement to recover from the
26 non-prevailing party all of its costs and other out-of-pocket expenses incurred in
27 connection with the investigation and prosecution or defense of such action
28 including all attorneys’ fees.

Should either Party bring an action or arbitration to enforce or interpret
the provisions of this Agreement, the prevailing party in said action
shall be entitled to recover from the non-prevailing party all of its costs
and other out-of-pocket expenses incurred in connection with the
investigation and prosecution or defense of such action including all
attorneys’ fees.

Settlement Agreement at § 17 (“Prevailing Party”).

**Defendant Berkley MF LLC Sold Berkley Stand-Up
Products Without A License**

26. As noted above, as part of the Settlement Agreement, the Berkley Defendants agreed to pay Plaintiff royalty payments in exchange for a license to the ’924 Patent in order to continue manufacturing, marketing, and selling the Berkley Stand-Up Products in the United States.

27. Berkley MF LLC was not a signatory to the Settlement Agreement.

28. After the execution of the Settlement Agreement on January 8, 2020, on information and belief, Berkley MF LLC sold the Berkley Stand-Up Products without a license until November 2020.

**Defendant International Paper Company Acquires
Berkley MF LLC**

29. On or around February 24, 2021, Defendant International Paper acquired Berkley MF LLC.

30. On information and belief, upon acquisition, Berkley MF LLC became a subsidiary of International Paper.

Berkley Defendants Stop Paying Royalties

31. The Berkley Defendants made royalty payments through December 31, 2020.

32. After International Paper acquired Berkley MF LLC, the Berkley Defendants stopped making royalty payments.

33. Having not received a royalty payment, Counsel for Plaintiff sent a notice of breach to Berkley Defendant’s Counsel on March 16, 2021 pursuant to Section 11 of the Settlement Agreement. A true and correct copy of the March 16, 2021 notice of breach correspondence is attached hereto as **Exhibit B**.

34. Eventually, Counsel for Plaintiff was told to contact International

Paper directly regarding the breach of the Settlement Agreement.

35. Therefore, on April 27, 2021, Counsel for Plaintiff sent correspondence to International Paper asking to discuss the Settlement Agreement. A true and correct copy of the April 27, 2021 letter is attached hereto as **Exhibit C**.

36. On information and belief, on or after January 1, 2021, despite discontinuing royalty payments, the Berkley Defendants continued to manufacture, make, use, market, offer for sale and/or sell the Berkley Stand-Up Products, that were the subject of the Settlement Agreement.

37. On information and belief, the Berkley Defendants sold the Berkley Stand-Up Products via at least <http://goberkley.com/>.

38. Such conduct, on the part of Berkley Defendants, constitutes breach of the Settlement Agreement.

Defendants Start Offering For Sale Modified Berkley Stand-Up Product

39. On information and belief, in 2021, Defendants began manufacturing, making, using, marketing, offering for sale and/or selling a modified version of the Berkley Stand-Up Products (“Modified Berkley Stand-Up Product”).

40. On information and belief, the Defendants sell the Modified Berkley Stand-Up Product via at least <http://goberkley.com/> and <https://www.internationalpaper.com/>.

41. Defendants have infringed and continue to infringe one or more claims of the ’924 Patent by engaging in acts that constitute infringement under 35 U.S.C. § 271 et seq.

42. Defendants have infringed and continue to infringe the ’924 Patent by manufacturing, making, using, offering for sale, and/or selling within the United States the Modified Berkley Stand-Up Product which embody, or in combination embody, one or more claims of the ’924 Patent.

43. On information and belief, Defendants have offered for sale and sold the Modified Berkley Stand-Up Product that meets all of the limitations of at least

claim 1 of the '924 Patent. The following illustrates the Modified Berkley Stand-Up Product.



44. On information and belief, the Modified Berkley Stand-Up Product is sold by Defendants as shown below. (red box added):



45. As such, Defendants are infringing the '924 Patent in violation of 35 U.S.C. § 271.

FIRST CLAIM FOR RELIEF

(Breach of Contract for Settlement of Prior Lawsuit As to the Berkley Defendants)

46. Plaintiff incorporates by reference the foregoing paragraphs of this

1 Complaint as if fully set forth herein.

2 47. On or about January 8, 2020, Plaintiff entered into a binding and
3 enforceable contract with the Berkley Defendants, referred to herein as the
4 Settlement Agreement.

5 48. The Berkley Defendants are bound by the terms of the Settlement
6 Agreement.

7 49. The Berkley Defendants breached the Settlement Agreement by
8 selling the Berkley Stand-Up Products without paying Plaintiff the required royalty
9 payment.

10 50. On information and belief, on or after January 1, 2021, despite
11 discontinuing royalty payments, the Berkley Defendants continued to manufacture,
12 make, use, market, offer for sale and/or sell the Berkley Stand-Up Products, that
13 were the subject of the Settlement Agreement.

14 51. On information and belief, any and all conditions precedent, to the
15 extent such exist, have been fulfilled by Plaintiff.

16 52. By the Berkley Defendants' breach of the Settlement Agreement,
17 Plaintiff has been denied its expected benefits of the Settlement Agreement,
18 namely that Plaintiff would receive a royalty payment in exchange for giving the
19 Berkley Defendants a license to the '924 Patent to sell the Berkley Stand-Up
20 Products.

21 **SECOND CLAIM FOR RELIEF**

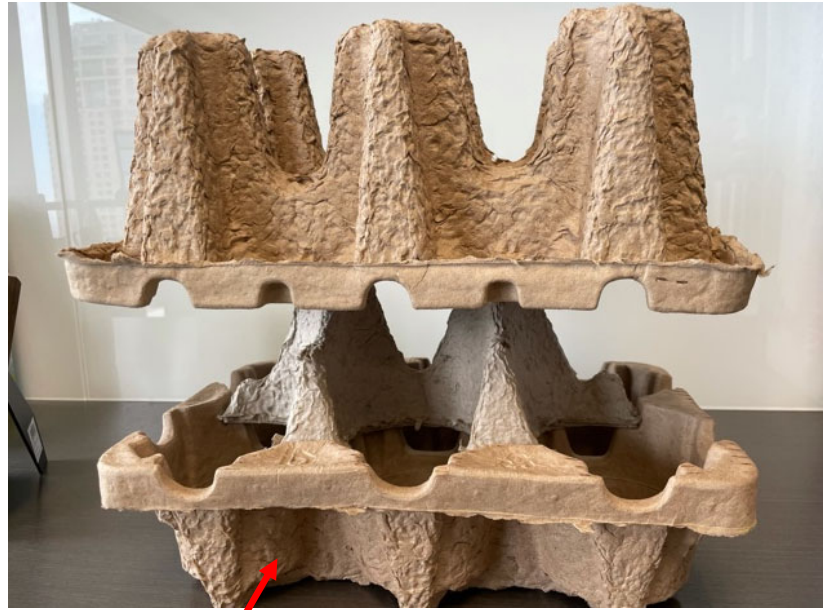
22 **(Patent Infringement of U.S. Patent No. 10,124,924 as to All Defendants**
23 **Relating to Modified Berkley Stand-Up Product)**

24 53. Plaintiff incorporates by reference the foregoing paragraphs of this
25 Complaint as if fully set forth herein.

26 54. On information and belief, Defendants, alone or by directing and
27 controlling others, have manufactured, used, imported, offered for sale, and/or sold
28 and continue to sell in this district and elsewhere in the United States, the Modified

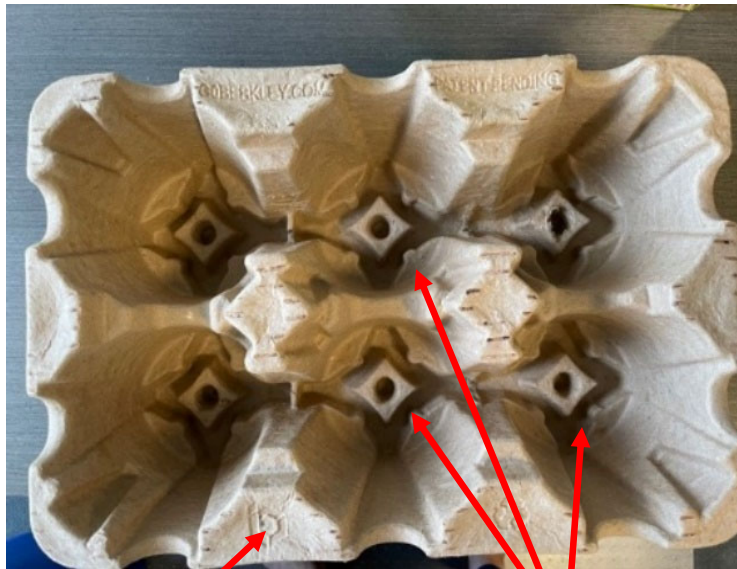
1 Berkley Stand-Up Product which infringes at least claim 1 of the '924 Patent, as
2 identified below in violation of 35 U.S.C. § 271.

3 55. Claim 1 recites: "1. A beverage container packaging assembly
4 comprising:" The Modified Berkley Stand-Up Product has this claim element as
5 shown below.



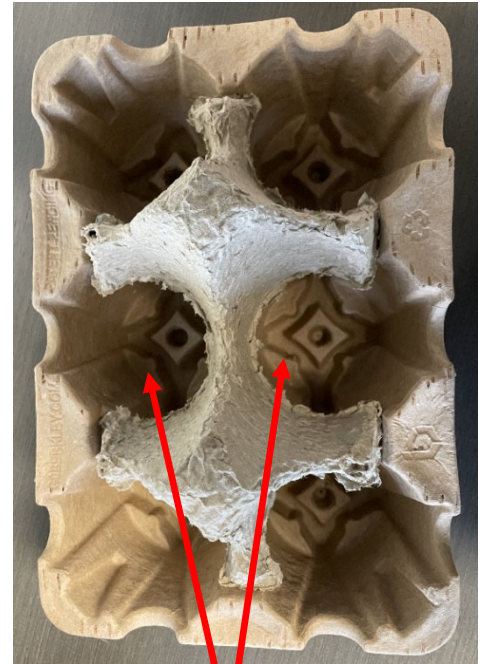
A beverage container packaging
assembly comprising:

19 56. Claim 1 further recites: "a bottom tray of molded paper pulp including
20 a plurality of cup-shaped elements, the cup-shaped elements configured to
21 accommodate a bottom portion of a beverage container, each cup-shaped element
22 including one or more deformable elements forming a cross shape." The Modified
23 Berkley Stand-Up Product has this claim element as shown below.



a bottom tray of
molded paper pulp

including a plurality of cup-
shaped elements, the cup-
shaped elements configured
to accommodate a bottom
portion of a beverage
container,



each cup-shaped element
including one or more
deformable elements
forming a cross shape

57. Claim 1 further recites: “a center support of molded paper pulp disposed between and in contact with the bottom tray and a top tray of molded paper pulp, the center support not extending to an outer edge of the beverage container packaging assembly, the center support including:” The Modified Berkley Stand-Up Product has this claim element as shown below.

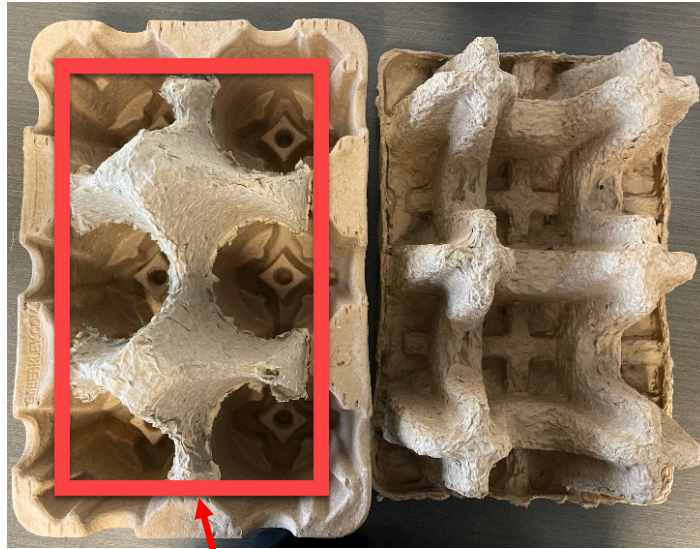


a center support of molded paper pulp

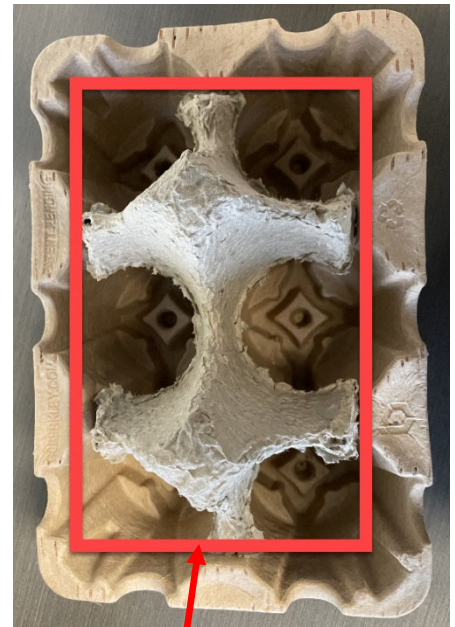
disposed between and in contact with the bottom tray and a top tray of molded paper pulp, the center support not extending to an outer edge of the beverage container packaging assembly, the center support including:

58. Claim 1 further recites, “a plurality of center support posts comprising at least one cross-shaped cavity.” The Modified Berkley Stand-Up Product has this claim element as shown below.

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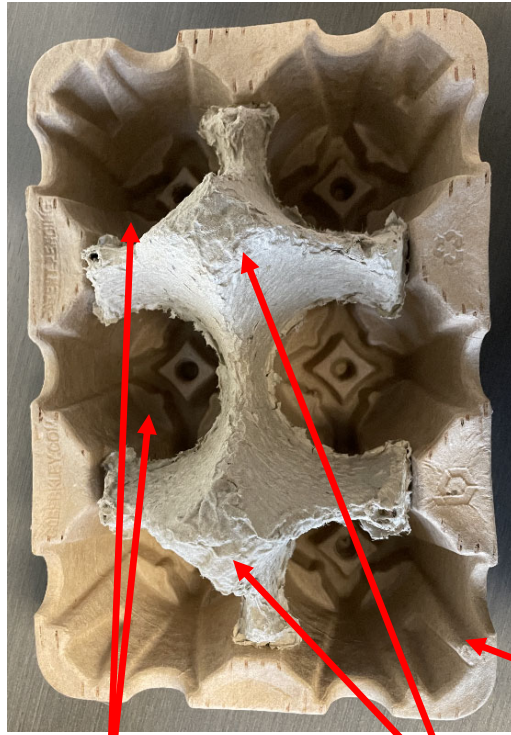
a plurality of center support posts comprising



at least one cross-shaped cavity

59. Claim 1 further recites: “a plurality of beverage container support cavities bounded by the center support posts, the support cavities configured to surround at least a portion of the beverage container; and” The Modified Berkley Stand-Up Product has this claim element as shown below.

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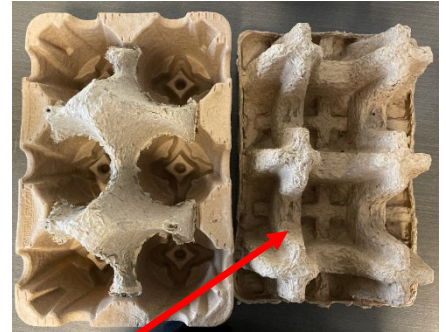


a plurality of beverage
container support
cavities

bounded by the center
support posts,

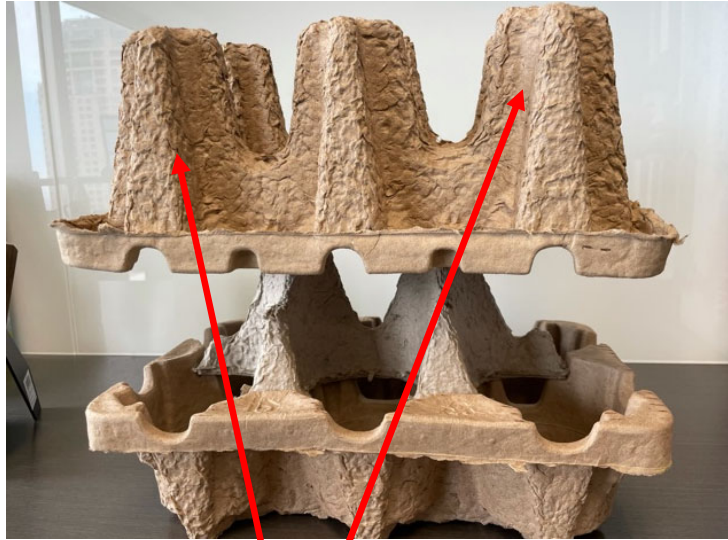
the support cavities
configured to surround at
least a portion of the beverage
container

60. Claim 1 further recites: “the top tray of molded paper pulp including:”
The Modified Berkley Stand-Up Product has this claim element as shown below.

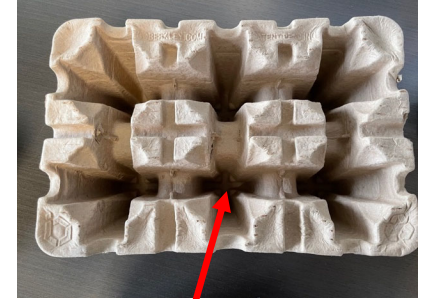


the top tray of molded paper
pulp including:

61. Claim 1 further recites: “a plurality of vertical members comprising at least one deformable element; and.” The Modified Berkley Stand-Up Product has this claim element as shown below.



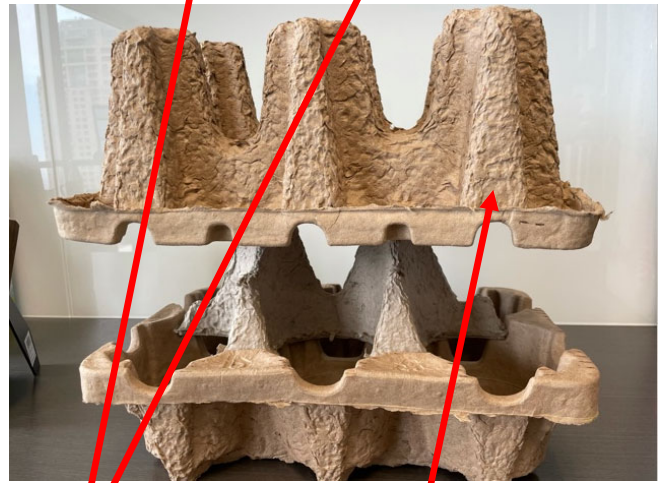
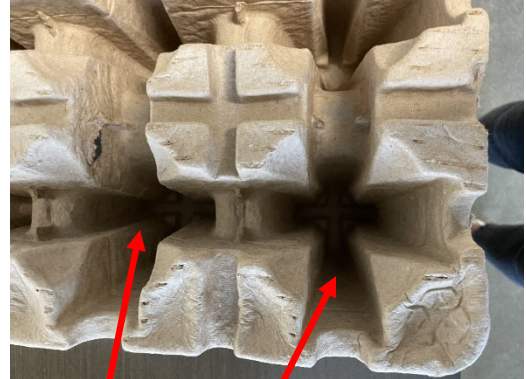
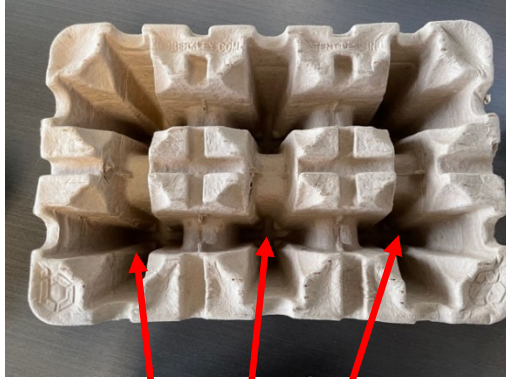
a plurality of vertical members comprising



at least one deformable element

62. Claim 1 further recites: “a plurality of bottle neck accommodating spaces each bounded by the at least one deformable element, the bottle neck accommodating spaces each configured to accommodate a neck portion of the beverage container.” The Modified Berkley Stand-Up Product has this claim element as shown below.

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a plurality of bottle neck
accommodating spaces
each bounded by the at
least one deformable
element

the bottle neck
accommodating
spaces

each configured to
accommodate a neck
portion of the beverage
container

63. The Berkley Defendants, being bound by the Settlement Agreement, have acknowledged the validity and enforceability of the '924 Patent. Accordingly, the Berkley Defendants are estopped from contesting the validity and/or enforceability of the '924 Patent.

64. The Berkley Defendants and Berkley MF LLC obtained knowledge of the '924 Patent at least as early as their receipt of the complaint filed in the Prior Lawsuit.

67. This objective risk was either known or so obvious that it should have been known to Defendants. Accordingly, Plaintiff seeks enhanced damages pursuant to 35 U.S.C. § 284.

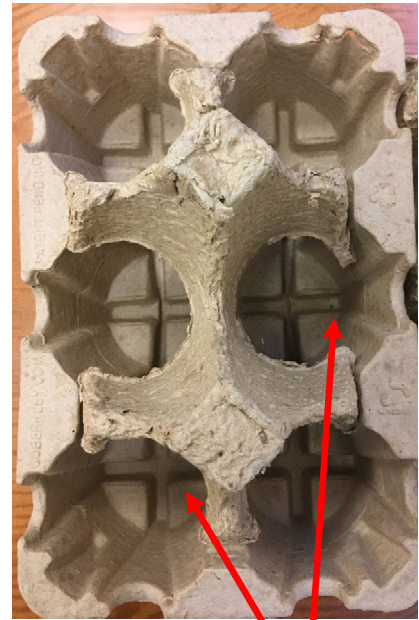
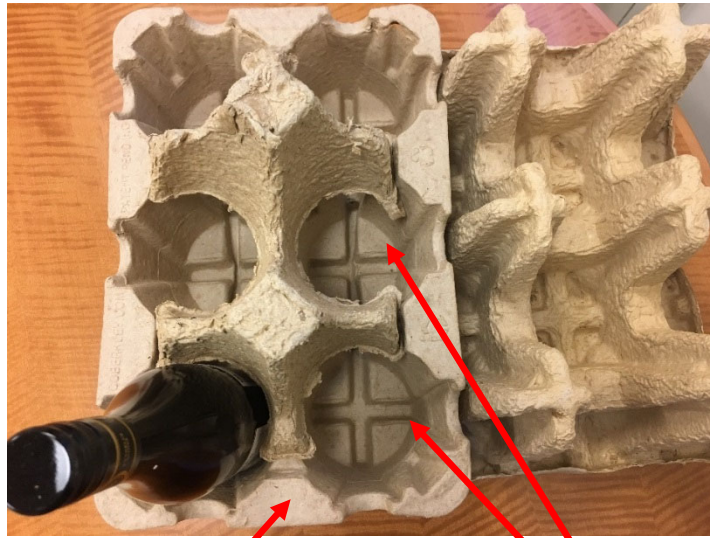
**(Patent Infringement of U.S. Patent No. 10,124,924 as to Berkley MF LLC
Relating to Berkley Stand-Up Product)**

70. Claim 1 recites: “1. A beverage container packaging assembly comprising:” The Berkley Stand-Up Product has this claim element as shown below.



A beverage container packaging assembly comprising:

71. Claim 1 further recites: “a bottom tray of molded paper pulp including a plurality of cup-shaped elements, the cup-shaped elements configured to accommodate a bottom portion of a beverage container, each cup-shaped element including one or more deformable elements forming a cross shape.” The Berkley Stand-Up Product has this claim element as shown below.



a bottom tray of
molded paper pulp

including a plurality of cup-
shaped elements, the cup-
shaped elements configured
to accommodate a bottom
portion of a beverage
container,

each cup-shaped element
including one or more
deformable elements
forming a cross shape

72. Claim 1 further recites: “a center support of molded paper pulp disposed between and in contact with the bottom tray and a top tray of molded paper pulp, the center support not extending to an outer edge of the beverage container packaging assembly, the center support including:” The Berkley Stand-Up Product has this claim element as shown below.

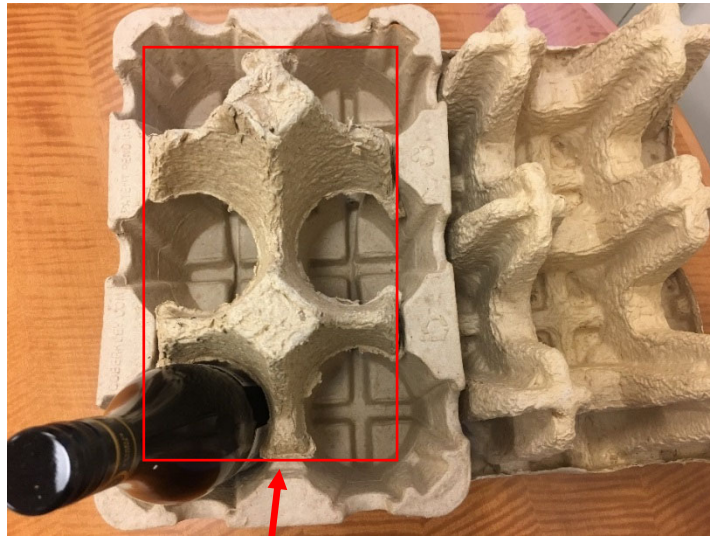
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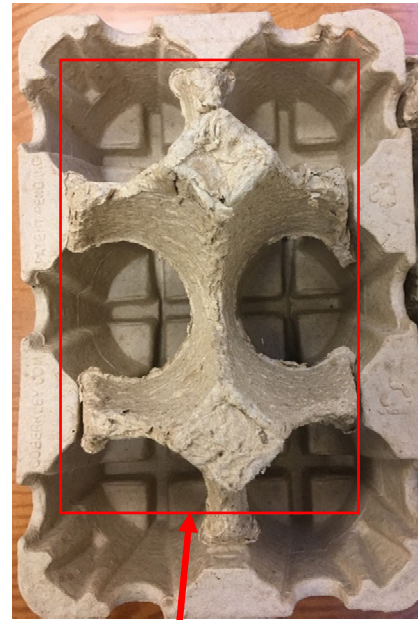
a center support of molded paper pulp

disposed between and in contact with the bottom tray and a top tray of molded paper pulp, the center support not extending to an outer edge of the beverage container packaging assembly, the center support including:

73. Claim 1 further recites, “a plurality of center support posts comprising at least one cross-shaped cavity.” The Berkley Stand-Up Product has this claim element as shown below.



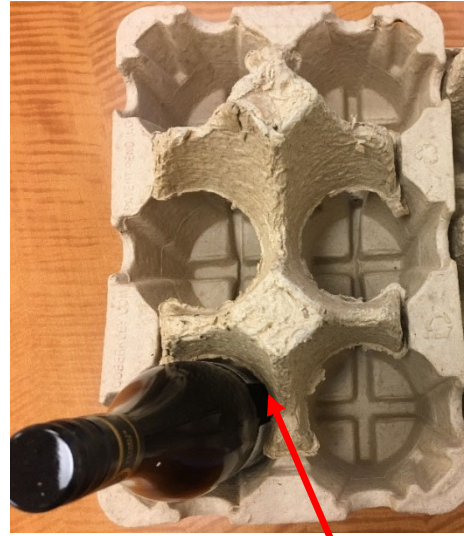
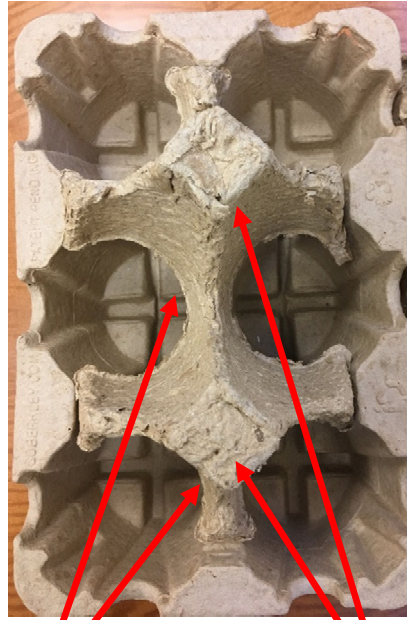
a plurality of center support posts comprising



at least one cross-shaped cavity

74. Claim 1 further recites: “a plurality of beverage container support cavities bounded by the center support posts, the support cavities configured to surround at least a portion of the beverage container; and” The Berkley Stand-Up Product has this claim element as shown below.

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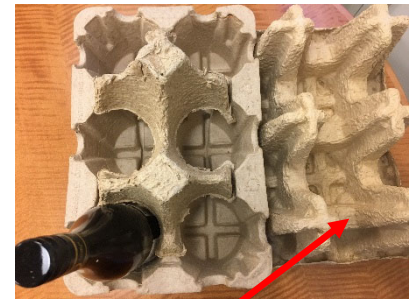
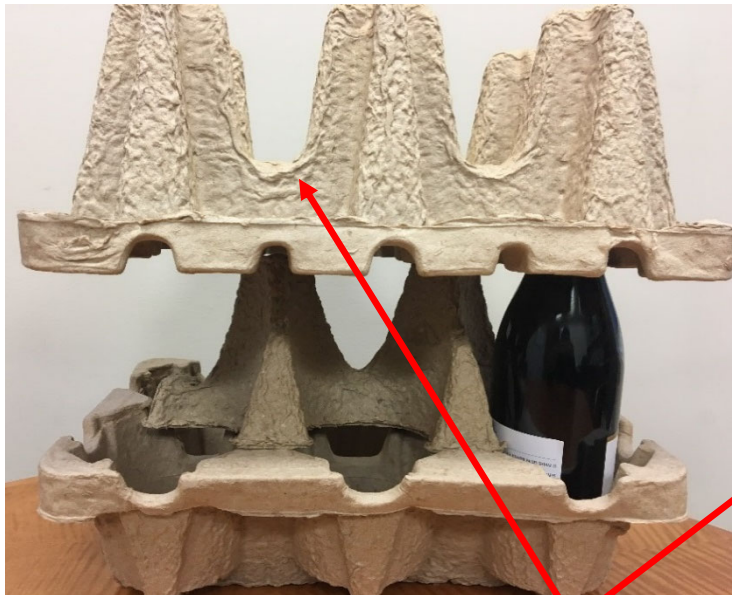


a plurality of beverage
container support
cavities

bounded by the center
support posts,

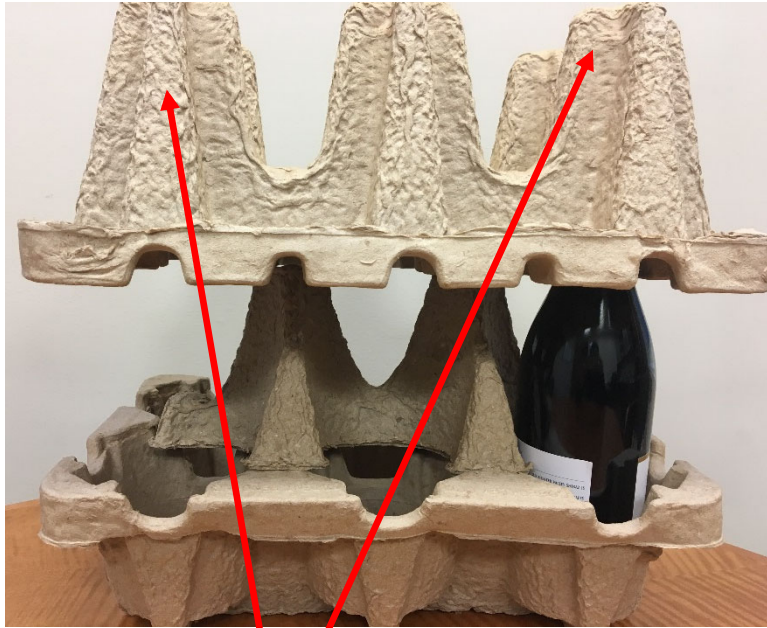
the support cavities
configured to surround at
least a portion of the beverage
container

75. Claim 1 further recites: “the top tray of molded paper pulp including:”
The Berkley Stand-Up Product has this claim element as shown below.

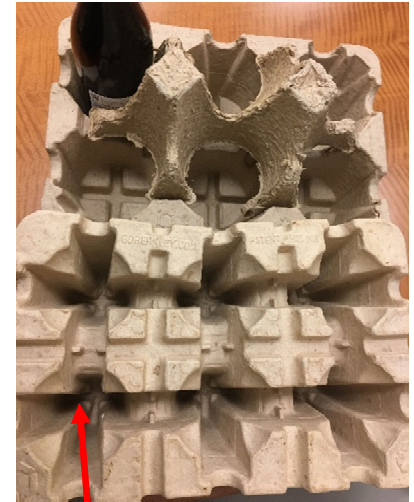


the top tray of molded paper
pulp including:

76. Claim 1 further recites: “a plurality of vertical members comprising at least one deformable element; and.” The Berkley Stand-Up Product has this claim element as shown below.



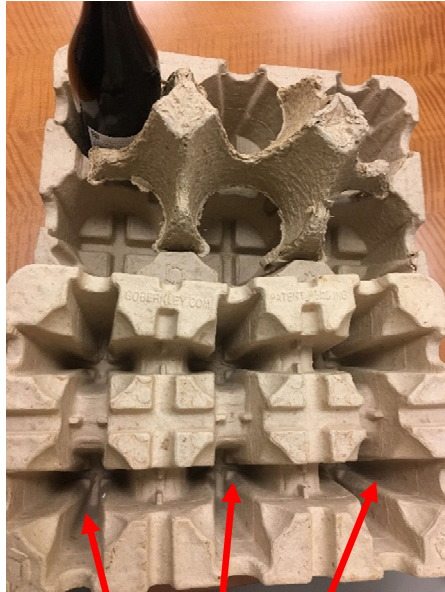
a plurality of vertical members comprising



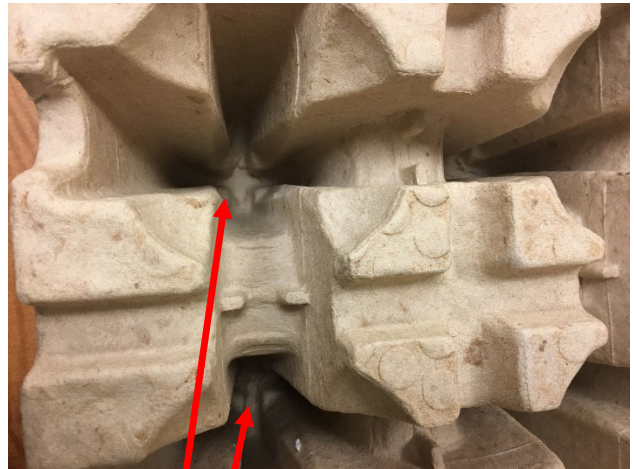
at least one deformable element

77. Claim 1 further recites: “a plurality of bottle neck accommodating spaces each bounded by the at least one deformable element, the bottle neck accommodating spaces each configured to accommodate a neck portion of the beverage container.” The Berkley Stand-Up Product has this claim element as shown below.

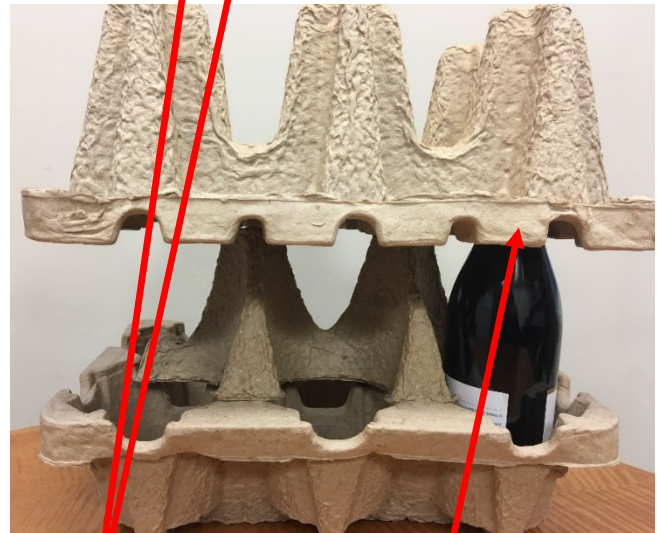
VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2300
LOS ANGELES, CA 90067
310-229-9900



a plurality of bottle neck
accommodating spaces
each bounded by the at
least one deformable
element



the bottle neck
accommodating
spaces



each configured to
accommodate a neck
portion of the beverage
container

78. Defendant Berkley MF LLC obtained knowledge of the '924 Patent at least as early as the effective date of the Settlement Agreement (January 8, 2020).

79. Notwithstanding this knowledge, Defendant Berkley MF LLC knowingly or with reckless disregard willfully infringed the '924 Patent. Defendant Berkley MF LLC thus had actual notice of infringement of the '924 Patent and acted

1 despite an objectively high likelihood that its actions constituted infringement of
2 Plaintiff's valid patent rights.

3 80. This objective risk was either known or so obvious that it should have
4 been known to Defendant Berkley MF LLC. Accordingly, Plaintiff seeks enhanced
5 damages pursuant to 35 U.S.C. § 284.

6 **PRAYER FOR RELIEF**

7 1. WHEREFORE, Plaintiff demands judgment against Defendants as
8 follows:

- 9 a. That it has jurisdiction of the parties and of the subject matter of this
10 action;
- 11 b. That the '924 Patent is valid and owned by Plaintiff;
- 12 c. That the Berkley Defendants breached the Settlement Agreement;
- 13 d. That Plaintiff be awarded expectation damages in the amount of
14 Plaintiff's lost profits for each Berkley Stand-Up Product sold by the
15 Berkley Defendants;
- 16 e. That Berkley MF LLC committed acts of patent infringement by their
17 manufacture, importation, use, offer for sale and/or sale of the Berkley
18 Stand-Up Product without a license;
- 19 f. That Berkley MF LLC's infringement relating to the Berkley Stand-Up
20 Product was willful;
- 21 g. That Defendants have committed acts of patent infringement by their
22 manufacture, importation, use, offer for sale and/or sale of the Modified
23 Berkley Stand-Up Product;
- 24 h. That Defendants' infringement relating to the Modified Berkley Stand-
25 Up Product was willful;
- 26 i. That Defendants and all affiliates, subsidiaries, officers, employees,
27 agents, representatives, licensees, successors, assigns, and all those
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acting in concert with, or for or on behalf of Defendants, be enjoined from further infringing the '924 Patent.

- j. That Defendants be required by mandatory injunction to deliver up to Plaintiff for destruction any and all of the Berkley Stand-Up Product or Modified Berkley Stand-Up Product in Defendants' possession, custody or control, as well as any promotional literature and packaging which display the Berkley Stand-Up Product or Modified Berkley Stand-Up Product;
- k. That Plaintiff be awarded damages covered by the acts of patent infringement of Defendants in an amount not less than a reasonable royalty pursuant to 25 U.S.C. § 284 or in an amount equal to Defendants' profits pursuant to 35 U.S.C. § 289, whichever is greater and that such damages be trebled in accordance with the provisions of 35 U.S.C. § 284;
- l. That Defendants pay Plaintiff prejudgment interest on all infringement damages;
- m. That Plaintiff recover their costs in this action, including attorneys' fees; and
- n. That Plaintiff has such other or further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

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1 DATE: September 28, 2022

VENABLE, LLP

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3 By: /s/ Sarah S. Brooks

4 Sarah S. Brooks

Alicia Sharon

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6 *Attorney for Plaintiff ACORN WEST*
LLC

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