

JS 44 CAND (Rev. 12/11)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PUPGEAR CORPORATION

DEFENDANTS

PETER PALMER; MICROFINE, INC.; POOCH PAD PRODUCTS, INC.; POOCHPAD PRODUCTS, INC.; JOHN MARTIN; LISA MARIE MARTIN JOHN F. JOHNSTON; CHARLES BROWN; SOBERANIS AND ASSOC

(b) County of Residence of First Listed Plaintiff SANTA CLARA, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant SANTA CLARA, CA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
ROD K. TANNER, Rod K. Tanner Law Office,
1900 S. Norfolk Street, San Mateo, CA 94403

Attorneys (If Known)

CV 12-01856 JSC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
35 USC § 271; 15 USC § 1114

Brief description of cause:
Patent infringement; trademark infringement; trade secret; unfair competition; business torts

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 941,500.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE 04/13/2012

SIGNATURE OF ATTORNEY OF RECORD

[Handwritten Signature]

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1 ROD K. TANNER, (SBN 195479)
2 Rod K. Tanner Law Office
3 1900 S. Norfolk Street, Suite 350
4 San Mateo, CA 94403
5 Tel: (650) 931-2520
6 Fax: (650) 931-2521
7 rodtanner@comcast.net

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Filed

APR 18 2012

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

8 Attorney for Plaintiff
9 PUPGEAR CORPORATION

E-filing

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

JSC

a

13 PUPGEAR CORPORATION,
14 Plaintiff,

CV 12-01856

Case No.:

15 vs.

COMPLAINT

16 PETER PALMER; MICROFINE, INC.;
17 POOCH PAD PRODUCTS, INC.;
18 POOCHPAD PRODUCTS, INC.; JOHN
19 MARTIN; LISA MARIE MARTIN, JOHN F.
20 JOHNSTON; CHARLES BROWN;
21 SOBERANIS AND ASSOCIATES, INC.;
22 TINA SOBERANIS; and DOES 1 through 25,
23 inclusive,

1. Patent Infringement
2. Trademark Infringement
3. Dilution of Trademarks and Trade Names
4. Trade Secret Misappropriation
5. Unfair Competition Under Business & Professions Code § 17200
6. False Advertising Under Business & Professions Code § 17500
7. Intentional Interference with Prospective Economic Advantage
8. Tortious Interference with Contract
9. Breach of Confidential Relationship
10. Fraud and Intentional Deceit
11. Trade Libel
12. Conversion
13. Unjust Enrichment
14. Constructive Fraud

24 Defendants.

DEMAND FOR JURY TRIAL

25
26 Plaintiff PUPGEAR CORPORATION ("PUPGEAR") alleges:

27 JURISDICTION

- 28 1. This action arises under the United States Code, Title 28, Section 1330, as more

1 fully described below.

2 2. Pursuant to 28 U.S.C. § 1338(a), this Court has original jurisdiction of PupGear's
3 herein claims relating to patent and trademark laws, and the courts of the states have no
4 jurisdiction relating said claims relating to patent law.

5 3. Pursuant to 28 U.S.C. § 1338(b), this Court has original jurisdiction of PupGear's
6 herein claims relating to unfair competition because such claims are joined with substantial and
7 related claims under patent and trademark laws.

8 4. PupGear's claims for breach of confidential relationship, trade libel, fraud and
9 intentional deceit, intentional interference with prospective economic advantage, tortious
10 interference with contract, conversion, unjust enrichment, and constructive fraud are related to
11 PupGear's claims for infringement of patent, infringement of trademark, dilution of trademark
12 and tradename, unfair competition and false advertising to the extent that all claims form part of
13 the same case under Article III of the Constitution, in that they derive from a common nucleus of
14 operative fact and are such that a plaintiff would ordinarily be expected to try them in the same
15 proceeding. Supplemental jurisdiction over all PupGear's claims is thus proper under 28 U.S.C.
16 § 1367(a).

17 VENUE

18 5. Venue is proper in this Court because a substantial part of the events or omissions
19 giving rise to this claim occurred in this district.

20 PARTIES

21 6. Plaintiff PupGear Corporation ("PupGear") is a corporation formed and existing
22 under the laws of the State of Nevada, with its principal place of business located in Los Gatos,
23 California.

24 7. PupGear is informed and believes, and on that basis alleges, that defendant Peter
25 Palmer ("Palmer") is a sole proprietorship and California resident.

26 8. PupGear is informed and believes, and on that basis alleges, that defendant
27 Soberanis and Associates ("Soberanis") is a corporation formed and existing under the laws of
28 the State of California, with its principal place of business located in California.

1 9. PupGear is informed and believes, and on that basis alleges, that defendant
2 Soberanis and Associates is, and at all times herein mentioned was, the alter ego of defendant
3 and sole shareholder Tina Soberanis, and at all times herein mentioned there has existed a unity
4 of interest and ownership between those defendants such that any separateness has ceased to
5 exist, in that defendant Tina Soberanis used assets of the corporation for her personal benefit and
6 uses in perpetrating the wrongful acts which are the subject matter of this complaint.

7 10. PupGear is informed and believes, and on that basis alleges, that defendant
8 Microfine, Inc. (“Microfine”) is a corporation formed and existing under the laws of the State of
9 North Carolina, with its principal place of business in Winston-Salem, North Carolina.

10 11. PupGear is informed and believes, and on that basis alleges, that defendant Pooch
11 Pad Products, Inc. (“Pooch Pad FL”) is a corporation formed and existing under the laws of the
12 State of Florida, with its principal place of business in Kissimmee, Florida.

13 12. PupGear is informed and believes, and on that basis alleges, that defendant
14 PoochPad Products, Inc. (“PoochPad NC”) is a suspended corporation formed and existing under
15 the laws of the State of North Carolina, with its principal place of business in Pfafftown, North
16 Carolina.

17 13. PupGear is informed and believes, and on that basis alleges, that defendant John
18 Martin is the husband of defendant Lisa Marie Martin and is, and at all times herein mentioned
19 was a resident of North Carolina.

20 14. PupGear is informed and believes, and on that basis alleges, that defendant Lisa
21 Marie Martin is the wife of defendant John Martin and is, and at all times herein mentioned was
22 a resident of North Carolina.

23 15. PupGear is informed and believes, and on that basis alleges, that defendant John
24 F. Johnston (“Johnston”) is, and at all times herein mentioned was a resident of Florida.

25 16. PupGear is informed and believes, and on that basis alleges, that defendant
26 Charles Brown (“Brown”) is, and at all times herein mentioned was a resident of Florida.

27 17. PupGear is informed and believes, and on that basis alleges, that defendants John
28 Martin, Lisa Marie Martin, Johnston, and Brown are officers, shareholders, and directors of

1 Microfine, Pooch Pad FL, and PoochPad NC.

2 18. The individual above-referenced defendants identified as Microfine, Pooch Pad
3 FL, PoochPad NC, John Martin, Lisa Marie Martin, John Johnston, and Charles Brown shall be
4 referred to herein collectively as the "Microfine Defendants."

5 19. PupGear is not presently aware of the true names and capacities of the persons or
6 entities sued herein as Does 1 through 25, and therefore sues them under such fictitious names.
7 On information and belief, PupGear alleges that Does 1 through 25, and each of them, assisted,
8 aided, or participated in the unlawful and wrongful acts which are the subject matter of this
9 complaint. PupGear will seek leave of court to amend this complaint to allege the true names
10 and capacities of Does 1 through 25 at such time as they become apparent.

11 PUPGEAR'S BUSINESS

12 20. Plaintiff PupGear has, since 2004, engaged in the manufacture and distribution of
13 consumer pet products.

14 21. PupGear has created strong brand loyalty and preference through product
15 innovation, and emphasis on high-quality, pet-safe products.

16 22. In 2004, PupGear invented and pioneered the marketing of indoor dog potties
17 which consist of a collection tray, a drainage mat, and synthetic grass; PupGear's Pup-Head®,
18 brand accounts for the majority of the company's sales.

19 23. That same year, PupGear developed its proprietary Pup-Grass®, a synthetic grass
20 containing antimicrobials and a specialized weaved style backing with that allowed liquids to
21 drain instantly. PupGear continually improved Pup-Grass by adding odor control and scent
22 attractant to the product. As less expensive imitations of Pup-Head® emerged, PupGear
23 maintained its dominant market presence via the trade secrets of its Pup-Grass® product which
24 were known only to PupGear Management.

25 24. PupGear located a manufacturer unknown to the trade that could provide high-
26 quality Pup-Grass® spec product for reasonable cost, and entered into an agreement with that
27 manufacturer to provide the grass to PupGear.

28 25. In May 2008, PupGear began purchasing absorbent pads for use in its Pup-Head®

1 product from defendant Microfine. At that time, and continuing through October 2011, the only
2 pet products Microfine marketed were absorbent pads in a variety of configurations which they
3 sold under the brand name PoochPads.

4 26. PupGear recently invented, developed, and applied for patents for new products
5 Roll'n'Go®, a roll-up, portable version of the Pup-Head®, and Go-Spot®, a round version of
6 Pup-Head®.

7 27. Founded in 2004 as a garage-startup, by August 2010 PupGear had revenues of
8 \$970,000, \$1.9 million in net worth, and debt of only \$75,000, all in current payables.

9 28. In September, 2010, PupGear engaged defendant Palmer to serve as PupGear
10 president; over the following 12 months Palmer caused a 46 percent decrease in sales, a 58
11 percent decrease in net worth, and 250 percent increase in debt, the debt increase having caused
12 serious credit difficulties.

13 29. PupGear is informed and believes, and on that basis alleges, that Palmer
14 purposefully caused PupGear financial decline in order to facilitate his self-dealing with the
15 Microfine Defendants.

16 30. Defendant Soberanis provided consulting services to PupGear prior to Palmer's
17 presidency without incident; PupGear is informed and believes, and on that basis alleges, that
18 after Palmer joined PupGear, Soberanis formed an allegiance with Palmer at the expense of
19 PupGear, and, in order to aid and enable Palmer's self-dealing, acted in its business dealings with
20 Palmer and the Microfine Defendants in a self-dealing manner.

21 THE MICROFINE DEFENDANTS' BUSINESS

22 31. PupGear is informed and believes, and on that basis alleges, that defendant
23 Microfine manufactures medical and industrial nondurable goods including absorbent padding.

24 32. Defendant PoochPad NC is a suspended North Carolina corporation whose
25 officers and directors include defendants John Martin and Lisa Marie Martin.

26 33. PupGear is informed and believes, and on that basis alleges, that defendant
27 PoochPad NC markets or did absorbent pads manufactured by Microfine as a product for non-
28 housebroken, ailing, or incontinent pets; the pads are marketed without drainage trays or

1 synthetic grass.

2 34. Defendant Pooch Pad FL is a Florida corporation whose officers and directors
3 include defendants John Martin, John Johnston, and Charles Brown; PupGear does not presently
4 know the particulars of the relationship(s) between Pooch Pad FL the other Microfine
5 Defendants, but will discover said particulars during the course of litigation.

6 35. PupGear is informed and believes, and on that basis alleges, that until sometime
7 after Palmer left PupGear in October 2010, PoochPad absorbent pads were the only pet products
8 Microfine manufactured and sold.

9 36. PupGear is informed and believes, and on that basis alleges, that defendants
10 Microfine, PoochPad NC, and Pooch Pad FL, and each of them are, and at all times herein
11 mentioned were, the alter egos of defendants John Martin, Lisa Marie Martin, Johnston, and
12 Brown, that there exists, and at all times herein mentioned has existed, a unity of interest and
13 ownership between the defendants such that any separateness has ceased to exist, and that
14 defendants John Martin, Lisa Marie Martin, Johnston, and Brown abused corporate privilege for
15 their personal benefit in perpetrating the unlawful and wrongful acts which are the subject matter
16 of this complaint, such that adherence to the fiction of the separate existence of the corporation
17 would, under the circumstances alleged, sanction fraud or promote injustice.

18 37. PupGear is informed and believes, and on that basis alleges, that defendants
19 PoochPad FL and PoochPad NC, and each of them, are, and at all times herein mentioned were,
20 the alter egos of defendant Microfine, and there exists, that at all times herein mentioned there
21 existed a unity of interest and ownership between defendants, such that any separateness between
22 them has ceased to exist, that defendant Microfine completely controlled, dominated, managed,
23 and operated the other corporate defendants and intermingled the assets of each to suit the
24 convenience of Microfine in perpetrating the unlawful and wrongful acts which are the subject
25 matter of this complaint, such that adherence to the fiction of the separate existence of the
26 corporation would, under the circumstances alleged, sanction fraud or promote injustice.

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3 FIRST CAUSE OF ACTION

4 (Patent Infringement)

5 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie Martin,
6 Johnston, and Brown)

7 38. PupGear incorporates by reference paragraphs 1 through 37, inclusive, as though
8 fully set forth herein.

9 39. As PupGear president, Palmer assumed responsibility for and affirmed to
10 PupGear that he filed patent applications for PupGear's newly-invented Roll'n'Go®, and Go-
11 Spot® products, and informed PupGear that those patents are pending.

12 40. In October, 2011, upon departing PupGear's employ at PupGear's request, Palmer
13 misappropriated PupGear's entire patent files, including the above-referenced patent
14 applications, the patent application for PupGear's newly-invented Ballstopper® product, and
15 product designs and prototypes; Palmer has refused PupGear's requests to return said items.

16 41. In February 2012, without PupGear's consent, Palmer and the Microfine
17 Defendants used and offered for sale at Global Pet Expo, the nation's leading pet products trade
18 show, products identical or nearly identical to PupGear's Roll'n'Go® and Go-Spot® products.

19 42. PupGear is the owner of the patents for the Roll'n'Go® and Go-Spot® products.

20 43. PupGear's patent counsel has since informed PupGear that it is unable to access
21 the subject patent applications because Palmer filed them in his name instead of PupGear's
22 name; PupGear is informed and believes, and on that basis alleges, that Palmer submitted the
23 subject patent applications in a manner intended to take control over PupGear's ownership of the
24 patents and underlying intellectual property.

25 44. Palmer and the Microfine Defendants imported into the United States and offered
26 a for sale at the Global Pet Expo trade show Pup-Grass®, a synthetic grass PupGear innovated
27 and developed for use in its patented Roll'n'Go® and Go-Spot® products; said defendants knew
28 the grass was especially made and adapted by PupGear for use in those patented products.

1 45. By reason of Palmer's and the Microfine Defendants' infringement of PupGear's
2 patents, PupGear has been damaged in an amount to be proven, and stands to be further damaged
3 by further such infringement if not enjoined.

4 SECOND CAUSE OF ACTION

5 (Trademark Infringement)

6 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie Martin,
7 Johnston, and Brown)

8 46. PupGear incorporates by reference paragraphs 1 through 45, inclusive, as though
9 fully set forth herein.

10 47. Palmer and the Microfine Defendants displayed and offered for sale at Global Pet
11 Expo PupGear's trademarked Pup-Grass® product; said defendants offered, displayed, and
12 advertised the product under the trade name PoochGrass, a colorable imitation of PupGear's
13 trademark.

14 48. PupGear is the owner of the registered Pup-Grass® mark.

15 49. Palmer and the Microfine Defendants used the colorable imitation of the
16 registered PupGrass mark without PupGear's consent.

17 50. The above-described use of PupGear's trademark likely caused a reasonable
18 consumer to be confused or mistake as to the origin of such goods or services, and such or
19 similar further use is likely to cause further confusion.

20 51. By reason of Palmer's and the Microfine Defendants' infringement of PupGear's
21 trademarks, PupGear has been damaged in an amount to be proven, and stands to be further
22 damaged by further such infringement if not enjoined.

23 THIRD CAUSE OF ACTION

24 (Dilution of Trademarks and Tradenames)

25 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie Martin,
26 Johnston, and Brown)

27 52. PupGear incorporates by reference paragraphs 1 through 51, inclusive, as though
28 fully set forth herein.

1 53. Palmer and the Microfine Defendants offered for sale and advertised at Global Pet
2 Expo PupGear's Pup-Grass® product and products identical or nearly identical to PupGear's
3 Roll'n'Go®, and Go-Spot® products.

4 54. PupGear is the owner of registered Pup-Grass®, Roll'n'Go®, and Go-Spot®
5 trademarks.

6 55. Palmer and the Microfine Defendants offered for sale and advertised, under
7 different tradenames, products either identical to or so similar to PupGear's Pup-Grass®,
8 Roll'n'Go®, and Go-Spot® products that a reasonable consumer is likely to have been confused
9 or mistaken as to the origin of such goods or services, and further offering for sale of or
10 advertising of such products is likely to cause further confusion.

11 56. By reason of the infringing actions of Palmer and the Microfine Defendants,
12 dilution and erosion of the distinctive quality of PupGear's trademarks and of the public's
13 identification of PupGear's trademarks has occurred, and is likely to continue to occur by such
14 infringement if not enjoined.

15 FOURTH CAUSE OF ACTION, FIRST COUNT

16 (Trade Secret Misappropriation [California Civil Code §§3426 et seq.]

17 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie Martin,
18 Johnston, and Brown)

19 57. PupGear incorporates by reference paragraphs 1 through 55, inclusive, as though
20 fully set forth herein.

21 58. PupGear's Pup-Head®, Pup-Pad®, Pup-Grass®, Roll'n'Go®, and Go-Spot®
22 products utilize trade secret information including devices, designs, patterns, compilations,
23 methods, techniques, and processes.

24 59. PupGear's branded Pup-Zymes® Odor and Stain Eliminator, Pup-Fresh® Odor
25 Control and Absorbent Granules, and Dog Potty Center Point of Purchase Display for retailers
26 utilize trade secret information including formulas, devices, designs, methods, and programs.

27 60. PupGear's product-related trade secret information derives independent economic
28 value, actual and potential, from not being generally known to the public or to other persons who

1 can obtain economic value from its disclosure or use.

2 61. PupGear's product-related trade secret trade secret information is the subject of
3 efforts that are reasonable under the circumstances to maintain its secrecy.

4 62. Defendant Palmer obtained knowledge of all PupGear's product-related trade
5 secret trade secret information while employed as PupGear's president.

6 63. Palmer was under a fiduciary and contractual duty to PupGear to maintain the
7 secrecy of all the above-referenced trade secrets, and all other PupGear trade secrets.

8 64. Palmer executed a non-disclosure agreement that encompassed all of PupGear's
9 trade secret information, and knew that any disclosure or use of the above-referenced PupGear
10 trade secrets, or any PupGear trade secrets, for the benefit of himself or any person or entity
11 other than PupGear was improper.

12 65. The Microfine Defendants knew or had reason to know that it was improper for
13 Palmer to disclose the above-referenced trade secrets to them, and knew that he improperly
14 disclosed said trade secrets to them without express or implied consent of PupGear.

15 66. Palmer and the Microfine Defendants misappropriated and employed PupGear
16 product-related trade secrets in order to create products so substantially similar to PupGear
17 products that they are likely to cause confusion as to their source; Palmer disclosed to the
18 Microfine Defendants the prototype of PupGear's new Roll'n'Go® product prior to the parties'
19 later discussion of forming a strategic partnership between them; Palmer and the Microfine
20 Defendants referred to the product in private correspondence as the "*pooch pad roll n go.*"

21 67. Palmer and the Microfine Defendants employed PupGear's product-related trade
22 secrets in order to offer for sale at the Global Pet Expo trade show products identical to or so
23 substantially similar to PupGear products that they are likely to cause confusion as to their
24 source, including products that imitate PupGear's Pup-Head®, Pup-Pad®, Pup-Grass®,
25 Roll'n'Go®, Go-Spot®, Pup-Zymes®, Pup-Fresh®, and Dog Potty Center Point of Purchase
26 Display.

27 68. By reason of Palmer's and the Microfine Defendants' misappropriation and
28 employment of PupGear's product-related trade secrets, PupGear has been damaged in an

1 amount to be proven, and stands to be further damaged unless Palmer and the Microfine
2 Defendants are enjoined from selling, offering for sale, distributing, or advertising products that
3 employ PupGear trade secrets, or in any way attempting to associate themselves with PupGear
4 trade secrets.

5 FOURTH CAUSE OF ACTION, SECOND COUNT

6 (Trade Secret Misappropriation [California Civil Code §§3426 et seq.]

7 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie
8 Martin, Johnston, and Brown)

9 69. PupGear incorporates by reference paragraphs 1 through 68, inclusive, as though
10 fully set forth herein.

11 70. PupGear's proprietary customer lists and vendor lists are trade secret information
12 compilations; Palmer misappropriated said lists upon leaving PupGear's employ, and has refused
13 to return them.

14 71. The identities of PupGear's sales agents are trade secret information compilations;
15 Palmer obtained said information while serving in his fiduciary capacity as PupGear president.

16 72. Palmer and the Microfine Defendants misappropriated and employed PupGear's
17 customer lists in order to contact PupGear customers in attempt to solicit sales; on one occasion
18 Microfine sent emails to the entire list of PupGear customers which email prompted comments
19 from PupGear customers that it was confusingly similar to customer communications employed
20 by PupGear.

21 73. Palmer and the Microfine Defendants misappropriated and employed PupGear's
22 vendor lists in order to contact PupGear vendors in attempt to persuade them to supply to them
23 trade secret materials and items.

24 74. Palmer and the Microfine Defendants misappropriated and employed the
25 identities of PupGear's sales agents in order to contact said sales agents in attempt to solicit them
26 to leave PupGear and join Palmer and the Microfine Defendants.

27 75. By reason of Palmer's and the Microfine Defendants' misappropriation and
28 employment of PupGear's trade secret customer, vendor, and sales agent lists, PupGear has been

1 damaged in an amount to be proven, and stands to be further damaged unless Palmer and the
2 Microfine clients are enjoined from using said lists for any purpose, and from profiting in any
3 manner by having employed said lists.

4 FIFTH CAUSE OF ACTION

5 Unfair Competition under Business & Professions Code §17200

6 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie Martin,
7 Johnston, and Brown)

8 76. PupGear incorporates by reference paragraphs 1 through 75, inclusive, as though
9 fully set forth herein.

10 77. Palmer and the Microfine Defendants misappropriated and utilized PupGear's
11 trade secrets in order to offer for sale as their own PupGear patented and trademarked products,
12 which act constitutes an unlawful, unfair, and fraudulent business practice.

13 78. Palmer and the Microfine Defendants misappropriated PupGear's trade secret
14 customer lists and employed them to contact PupGear customers in attempt to acquire said
15 customers in an unfair manner.

16 79. Palmer and the Microfine Defendants misappropriated PupGear's trade secret
17 vendor lists and employed them to contact PupGear vendors in attempt to persuade them to cease
18 dealing with PupGear and to instead deal with Palmer and the Microfine Defendants.

19 80. The above-referenced acts by Palmer and the Microfine Defendants constitute
20 unlawful, unfair, and fraudulent business acts by which PupGear has been damaged, and will be
21 further damaged unless such acts are enjoined.

22 SIXTH CAUSE OF ACTION

23 False Advertising under Business & Professions Code §17500

24 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie Martin,
25 Johnston, and Brown)

26 81. PupGear incorporates by reference paragraphs 1 through 80, inclusive, as though
27 fully set forth herein.

28 82. Palmer and the Microfine Defendants promoted the infringing goods they offered

1 for sale at the Global Pet Expo with advertising devices confusingly similar to those developed
2 by and employed by PupGear, by which use said devices have come to be identified with
3 PupGear.

4 83. The above-referenced advertising devices are false and misleading because
5 reasonable consumers are likely to be deceived into believing that the offered products and goods
6 are PupGear products, and are therefore likely to be deceived.

7 84. Palmer and the Microfine Defendants acted intentionally in employing the false
8 and misleading advertising, and also knew or reasonably should have known that the subject
9 advertising was likely to cause confusion.

10 85. The above-referenced false advertising by Palmer and the Microfine Defendants
11 constitutes false advertising by which PupGear has been damaged, and will be further damaged
12 unless such acts are enjoined.

13 SEVENTH CAUSE OF ACTION

14 (Intentional Interference with Prospective Economic Advantage)

15 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie Martin,
16 Johnston, and Brown)

17 86. PupGear incorporates by reference paragraphs 1 through 85, inclusive, as though
18 fully set forth herein.

19 87. Palmer and Microfine acted in concert to misappropriate PupGear's products,
20 product ideas, and trade secrets.

21 88. Palmer and the Microfine Defendants misappropriated PupGear customer lists
22 and vendor lists and employed those lists in order to contact PupGear customers and vendors and
23 falsely informing them that PupGear was in dire financial difficulty and no longer in business,
24 thereby injuriously interfering with PupGear's relationships with those customers and vendors.

25 89. Palmer and the Microfine Defendants further attempted to convert the customers
26 and vendors they contacted to their own business.

27 90. Among the vendors the Microfine Defendants interfered with was the
28 manufacturer of PupGear's proprietary Pup-Grass® product; against PupGear instructions, paid

1 an outstanding balance for a prior order of Pup-Grass®, and ordered an additional quantity of
2 Pup-Grass®, which PupGear did not require and could not afford; PupGear is informed and
3 believes, and on that basis alleges, that the Microfine Defendants intended that PupGear would
4 be unable to pay for the grass and fall into arrears with Microfine, providing the Microfine
5 Defendants access to PupGear’s proprietary Pup-Grass® without needing to attempt to persuade
6 the manufacturer to breach his exclusive agreement with PupGear.

7 91. Among the economic advantages the Microfine Defendants interfered with was
8 PupGear’s development and manufacture of in-store display racks for a 220-store chain of pet
9 stores; without PupGear’s consent, the Microfine Defendants paid for the racks expecting they
10 would be shipped to Microfine; the racks were instead shipped to the customer, whereupon the
11 Microfine Defendants had them withdrawn, causing PupGear to lose the account.

12 92. Palmer and the Microfine Defendants knew of and intended to interfere with
13 PupGear’s prospective business advantage and contrived their “capital partner” scheme as a
14 means of weakening PupGear financially in order to take control of PupGear’s products, patents,
15 trademarks, customers, and vendors.

16 93. By reason of Palmer’s and the Microfine Defendants’ interference with PupGear’s
17 proprietary business relationships, PupGear has been damaged and such damage is likely to
18 continue unless enjoined.

19 EIGHTH CAUSE OF ACTION

20 (Tortious Interference with Contract)

21 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie Martin,
22 Johnston, and Brown)

23 94. PupGear incorporates by reference paragraphs 1 through 93, inclusive, as though
24 fully set forth herein.

25 95. PupGear had a valid existing exclusive contract for supply of its proprietary
26 PupGrass® product with a vendor unknown to and lower in cost than any other pet product
27 manufacturer.

28 96. Palmer and the Microfine Defendants were aware of the exclusive contract

1 between PupGear and said manufacturer.

2 97. Palmer and the Microfine Defendants intended to induce breach of the contract of
3 the contractual relationship between PupGear and said manufacturer.

4 98. Palmer and the Microfine Defendants employed the misappropriated PupGear
5 vendor lists in order to locate the vendor and act to cause a disruption in the contractual
6 relationship between PupGear and the manufacturer attempting to persuade it to cease supplying
7 goods to PupGear and instead supply goods to Palmer and the Microfine Defendants.

8 99. The unjustified conduct of Palmer and the Microfine Defendants is the procuring
9 cause of the manufacturer's breach of its contract with PupGear.

10 100. By reason of the unjustified conduct of Palmer and the Microfine Defendants,
11 PupGear has been damaged in an amount to be proven, stands to be further damaged by further
12 efforts to disrupt PupGear's contract with the vendor, which efforts should be enjoined, and is
13 entitled to punitive damages.

14 NINTH CAUSE OF ACTION

15 (Breach of Confidential Relationship)

16 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie Martin,
17 Johnston, and Brown)

18 101. PupGear incorporates by reference paragraphs 1 through 100, inclusive, as though
19 fully set forth herein.

20 102. A confidential relationship existed between PupGear and Palmer in that Palmer
21 had gained the confidence of PupGear and purported to act and advise with PupGear's interest in
22 mind.

23 103. PupGear conveyed confidential and novel information to Palmer in reliance upon
24 the advice of Palmer.

25 104. Palmer knew PupGear disclosed said information in confidence.

26 105. There was a mutual understanding between PupGear and Palmer that the
27 confidence be maintained.

28 106. Palmer disclosed confidential information to the Microfine Defendants without

1 the consent of PupGear.

2 107. By reason of Palmer's disclosure of confidential information, PupGear has been
3 damaged in an amount to be proven, and is entitled to punitive damages and attorney's fees.

4 TENTH CAUSE OF ACTION

5 (Fraud and Intentional Deceit)

6 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie Martin,
7 Johnston, and Brown)

8 108. PupGear incorporates by reference paragraphs 1 through 107, inclusive, as though
9 fully set forth herein.

10 109. Palmer misrepresented to PupGear that it would be in PupGear's interest to enter
11 into a strategic partnership agreement with the Microfine Defendants whereby the Microfine
12 Defendants would act as capital partners and provide the capital required for PupGear to
13 effectuate its innovative products and product ideas; Palmer represented to PupGear that the
14 partnership would benefit the Microfine Defendants who were weak at product innovation.

15 110. The misrepresentation was material and essential to PupGear's decision to act in a
16 manner that disclosed trade secrets in order to give effect to the proposed strategic agreement.

17 111. In truth, Palmer misrepresented that it would be in PupGear's interest to enter into
18 the strategic agreement in order that Palmer and the Microfine Defendants could easily
19 misappropriate PupGear's products, product ideas, and trade secrets while rendering PupGear
20 financially unable.

21 112. Palmer and the Microfine Defendants enticed PupGear with the promise of capital
22 investment which PupGear needed; PupGear had engaged Palmer with generous compensation
23 in large part because he represented he was experienced at acquiring capital, however he
24 produced none.

25 113. Palmer and the Microfine Defendants then informed PupGear that Microfine
26 would not participate in the proposed strategic alliance unless PupGear agreed Microfine would
27 be the exclusive manufacturer for all PupGear products.

28 114. Palmer and the Microfine Defendants then informed PupGear Microfine required

1 access to PupGear's customer and vendor databases; PupGear agreed provided that Microfine's
2 access was limited to specific purposes; Palmer subsequently made the entire database accessible
3 to Microfine; Microfine subsequently used the database to contact PupGear's customers and
4 vendors.

5 115. Palmer and the Microfine Defendants then created an elaborate three-part contract
6 approval process consisting of a "Pre Final Agreement," a "Letter of Intent," and the final
7 "Manufacturing Agreement;" Palmer and the Microfine Defendants represented to PupGear that
8 the two "pre-agreements" must be executed or Microfine would not agree to facilitate the
9 transition from other manufacturers in order to maintain product flow; both "pre-agreements"
10 contained cloaked contractual terms injurious to PupGear; PupGear did not devote its full
11 attention to either because Palmer and the Microfine Defendants represented both to be merely
12 preludes to the final agreement.

13 116. The "Pre Final Agreement" provided that if the parties did not enter into strategic
14 agreement, the Microfine Defendants could invoice PupGear the cost of goods plus 22 percent
15 for goods purchased on PupGear's behalf prior to cessation of negotiations regarding formation
16 of a strategic partnership; the "Pre Final Agreement" further provided that if PupGear fell into
17 arrears on paying said invoices, the Microfine Defendants were entitled to liquidate the goods.

18 117. Upon PupGear's execution of the "Pre Final Agreement," Palmer and the
19 Microfine Defendants purchased large quantities of goods from PupGear vendors knowing that
20 PupGear could not afford said goods; said purchases were made solely on Palmer's authority
21 without consent of PupGear; the goods Palmer and the Microfine Defendants purchased included
22 all the elements required to manufacture and market PupGear products.

23 118. Palmer had previously used his position at PupGear to implement a pricing plan
24 in which he badly understated PupGear's costs of goods sold by not including direct labor costs;
25 under the plan, PupGear experienced loss on each sale it made; PupGear was thus certain to fall
26 into arrears on paying the invoices for the goods the Microfine Defendants purchased on
27 PupGear's behalf.

28 119. PupGear is informed and believes, and on that basis alleges, that Palmer and the

1 Microfine Defendants intended to induce PupGear to enter into a “strategic partnership,” which
2 partnership would result in PupGear being financially weakened, thereby enabling Palmer and
3 the Microfine Defendants to take PupGear’s business.

4 120. PupGear is informed and believes, and on that basis alleges, that Palmer and the
5 Microfine Defendants intended to and did construct the “Pre Final Agreement,” a “Letter of
6 Intent,” and “Manufacturing Agreement” in such a way that even if PupGear decided to not enter
7 into the “strategic partnership,” Palmer and the Microfine Defendants would have the goods
8 required to begin manufacturing imitation PupGear products, and PupGear’s customer, vendor,
9 and sales agent lists, and PupGear would be so financially weakened that it could not prevent the
10 conversion of its customers, vendors, and sales agents.

11 121. PupGear justifiably relied upon Palmer’s misrepresentation and upon its belief
12 that Palmer, as PupGear president, was acting in a fiduciary role and in PupGear’s interest;
13 PupGear justifiably relied upon the Microfine Defendants’ misrepresentations because they were
14 passed entirely through Palmer.

15 122. By reason of PupGear’s reliance on the misrepresentations of Palmer and the
16 Microfine Defendants, PupGear was damaged in an amount to be proved; PupGear is informed
17 and believes, and on that basis alleges, that its damages include the loss of a 220-store retail
18 account.

19 ELEVENTH CAUSE OF ACTION

20 (Trade Libel)

21 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie Martin,
22 Johnston, and Brown)

23 123. PupGear incorporates by reference paragraphs 1 through 122, inclusive, as though
24 fully set forth herein.

25 124. Palmer and the Microfine Defendants misappropriated PupGear’s customer lists
26 and vendor lists, and employed those lists in order to contact PupGear customers and vendors
27 and falsely stated that PupGear was unable to pay its bills and its employees, and that PupGear
28 was no longer in business.

1 125. The false statements made by Palmer and the Microfine Defendants disparaged
2 PupGear's relationships with its customers and vendors, and also PupGear's trade goodwill.

3 126. Palmer and the Microfine Defendants published the statements orally via
4 telephone conversations.

5 127. Said publication played a material and substantial part in inducing customers and
6 vendors to not to deal with PupGear.

7 128. By reason of Palmer's and the Microfine Defendants' false and disparaging
8 statements, PupGear has been damaged in an amount to be proven, stands to be further damaged
9 by further similar statements which should be enjoined, and is entitled to punitive damages.

10 TWELFTH CAUSE OF ACTION

11 (Conversion)

12 (Against Palmer)

13 129. PupGear incorporates by reference paragraphs 1 through 128, inclusive, as though
14 fully set forth herein.

15 130. When Palmer left PupGear's employ, he manually took PupGear's: 1) patent files
16 in entirety, which files included its recent patent applications; 1) new product designs and
17 prototypes; 2) customer lists; 3) vendor lists; and 4) stock certificates from its recent
18 incorporation under the laws of the State of New Jersey.

19 131. PupGear is the rightful owner and has the right to possession of all the above-
20 referenced property that Palmer misappropriated.

21 132. By reason of Palmer's converting PupGear property, PupGear has been injured
22 and is entitled to compensatory and punitive damages, and injunction to prevent dissipation of
23 the wrongfully obtained res.

24 THIRTEENTH CAUSE OF ACTION

25 (Unjust Enrichment)

26 (Against Palmer, Microfine, Pooch Pad FL, PoochPad NC, John Martin, Lisa Marie Martin,
27 Johnston, and Brown)

28 133. PupGear incorporates by reference paragraphs 1 through 132, inclusive, as though

1 fully set forth herein.

2 134. Palmer and the Microfine Defendants have received benefit from their unlawful
3 infringement on PupGear's patents and trademarks, their interference with PupGear's
4 prospective economic advantage, their tortious interference with PupGear's contracts, and
5 Palmer's conversion of property rightfully owned by PupGear which property has also provided
6 benefit to the Microfine Defendants.

7 135. Palmer and the Microfine Defendants have unjustly retained the above-described
8 benefits at PupGear's expense.

9 136. PupGear is entitled to restitution of the benefit Palmer and the Microfine
10 Defendants received by reason of unjust enrichment at PupGear's expense.

11 FOURTEENTH CAUSE OF ACTION, SECOND COUNT

12 (Constructive Fraud)

13 (Against Palmer)

14 137. PupGear incorporates by reference paragraphs 1 through 136, inclusive, as though
15 fully set forth herein.

16 138. As PupGear's president, Palmer acted in a fiduciary relationship with PupGear
17 and owed PupGear a fiduciary duty.

18 139. Palmer breached his fiduciary duty to PupGear by implementing a pricing plan
19 that did not include direct labor costs in the calculation of costs of goods sold, resulting in
20 PupGear selling each of its products at a loss.

21 140. Palmer's breach provided him economic advantage in that it enabled him to
22 execute the Palmer and Microfine Defendants plan to take over PupGear's business by
23 weakening PupGear financially,

24 141. PupGear justifiably relied upon Palmer's misrepresentations due to his willingly
25 assuming responsibilities as PupGear president, and his continuing assurances that he was
26 employing his business experience and expertise for PupGear's benefit and interest and in order
27 to grow PupGear's business.

28 142. By reason of misrepresentation and breach of fiduciary duty by Palmer and

1 Soberanis, and each of them, PupGear suffered injury in an amount to be proved and is entitled
2 to recover compensatory and punitive damages.

3 FOURTEENTH CAUSE OF ACTION, SECOND COUNT

4 (Constructive Fraud)

5 (Against Palmer, Soberanis, and Tina Soberanis)

6 143. PupGear incorporates by reference paragraphs 1 through 142, inclusive, as though
7 fully set forth herein.

8 144. As PupGear's president, Palmer acted in a confidential and fiduciary relationship
9 with PupGear and owed PupGear a fiduciary duty.

10 145. As consultant to PupGear, Soberanis acted in a confidential and fiduciary
11 relationship with PupGear and owed PupGear a fiduciary duty.

12 146. Palmer breached his fiduciary duty to PupGear by acts, omissions, and
13 concealment which involved breaches of legal or equitable duty, trust, and confidence that
14 resulted in damage to PupGear, including: a) misappropriating and using PupGear patents,
15 trademarks, trade secrets, customer lists, and vendor lists; b) implementing a pricing structure
16 which caused PupGear to sell products at below cost; c) extending unwarranted refunds to
17 customers; d) incurring unnecessary freight and operating expenses; and e) purchasing more
18 goods than required for manufacture, thereby causing PupGear financial difficulty and
19 weakening PupGear's ability to continue in business.

20 147. Soberanis breached its fiduciary duty to PupGear by, upon information and belief,
21 aiding and assisting Palmers wrongful acts although it knew or reasonably should have known
22 that Palmer's acts reasonably would cause damage to PupGear; thus, Soberanis' acts, omissions,
23 and concealment involved breaches of legal or equitable duty, trust, and confidence that resulted
24 in damage to PupGear.

25 148. Soberanis worked closely with Palmer and was aware that Palmer consistently
26 acted contrary to PupGear's interest; as a consultant to PupGear, Soberanis had a fiduciary duty
27 to inform PupGear that Palmer's actions might be damaging PupGear; instead, Soberanis acted
28 to facilitate Palmer's contrary actions.

1 149. Soberanis was aware that Palmer and the Microfine Defendants were colluding to
2 develop a product they referred to as “the hybrid pooch pad roll n go,” was aware that PupGear’s
3 Roll’n’Go product was newly invented, was patented, and was a trade secret, and knew or
4 reasonably should have known that it was inappropriate for the Microfine Defendants to have
5 been informed of the product; in breach of its fiduciary duty to PupGear, Soberanis did not inform
6 PupGear that Palmer and the Microfine Defendants were preparing to infringe upon the product.

7 150. Soberanis’ agreement with PupGear included reimbursement of incidental
8 expenditures Soberanis made on behalf of PupGear; prior to Palmer’s arrival Soberanis made
9 and PupGear reimbursed appropriate expenditures; following Palmer’s arrival, without
10 PupGear’s consent, Soberanis expended more than \$34,000 for items PupGear would not have
11 paid itself and which it could not afford under its declining finances; PupGear is informed and
12 believes, and on that basis alleges, that the expenditures intended to benefit Palmer and the
13 Microfine Defendants more than PupGear.

14 151. PupGear is informed and believes, and on that basis alleges, that discovery in this
15 matter will reveal more examples of Soberanis dealings that were intended to benefit Palmer and
16 the Microfine Defendants.

17 152. The breaches of duty by Palmer and Soberanis, and each of them, led to
18 advantages gained by those breaching parties, and each of them; Palmer’s breach enabled him to
19 execute his plan to take over PupGear’s business; on information and belief, Soberanis’ breach
20 assured her status with Palmer that promised participation in the PupGear takeover Palmer and
21 Microsoft Defendant intended.

22 153. PupGear justifiably relied upon Palmer’s misrepresentations due to his willingly
23 assuming responsibilities as PupGear president, and his continuing assurances that he was
24 employing his business experience and expertise for PupGear’s benefit and interest and in order
25 to grow PupGear’s business.

26 154. PupGear justifiably relied upon Soberanis’ misrepresentations due to it having
27 provided PupGear consulting services for nearly a year without incident prior to Palmer joining
28 PupGear, and PupGear’s reasonable belief that Soberanis would continue providing service and

1 care appropriate of a fiduciary.

2 155. By reason of misrepresentation and breach of fiduciary duty by Palmer and
3 Soberanis, and each of them, PupGear suffered injury in an amount to be proved and is entitled
4 to recover compensatory and punitive damages.

5 PRAAYER FOR RELIEF

6 Wherefore, plaintiff PupGear Corporation demands judgment against defendants Peter
7 Palmer, Soberanis and Associates, Tina Soberanis, Microfine, Inc., PoochPad Products, Inc.,
8 Pooch Pad Products, Inc. John Martin, Lisa Marie Martin, and John F. Johnston, and each of
9 them, as follows:

- 10 1. For general damages in the sum of \$941,500.00, or other amount to be proved at trial;
- 11 2. For interest on the damages at an annual rate of ten percent (10%) per annum from
12 January 1, 2011;
- 13 3. For a preliminary and permanent injunction *prohibiting* the defendants and their agents,
14 servants, and employees, and all persons acting under, in concert with, or for the
15 defendants from:
- 16 a) creating, manufacturing, offering for sale, selling, marketing, advertising,
17 distributing, or displaying at trade events or elsewhere, any PupGear product
18 which is patented or for which a patent application is pending, or any colorable
19 imitation of any such PupGear product;
- 20 b) creating, manufacturing, offering for sale, selling, marketing, advertising,
21 distributing, or displaying at trade events or elsewhere, any product packaged,
22 branded, or bearing a tradename such as might cause a reasonable consumer to be
23 confused about whether PupGear is the source of the product;
- 24 c) contacting for any purpose any individual or entity whose identity is included in
25 any PupGear customer list, vendor list, or sales agent list, including making or
26 having any further with any such individual or entity any defendant or its agent,
27 etc., has previously contacted;
- 28

1 d) having any contact or relationship with the manufacturer of PupGear's proprietary
2 Pup-Grass®, which distributor's identity PupGear will disclose to the Court *in*
3 *camera*;

- 4 4. This court set for hearing plaintiffs' request for a preliminary injunction enjoining the
5 defendants and their agents, servants, and employees from taking any actions as set forth
6 above;
- 7 5. For a preliminary and permanent injunction *mandating* that defendants return to PupGear
8 the originals and all copies, reproductions, imitations, and simulations in their possession
9 or control, of PupGear's: a) patent files; b) product designs; c) and product prototypes.
- 10 6. For recall of all infringing goods from the market;
- 11 7. For destruction of all materials infringing upon PupGear's patents and trademarks, and all
12 materials likely to cause dilution of PupGear's trademarks;
- 13 8. For an accounting of revenues realized by Palmer and the Microfine Defendants from the
14 acts herein alleged;
- 15 9. For disgorgement and restitution of said revenues;
- 16 10. For a constructive trust;
- 17 11. For punitive damages according to proof;
- 18 12. For reasonable attorney's fees, pursuant to California Civil Code section 3426.4; and
19 *Landsberg v. Scrabble Crossword Game Players, Inc.*, 802 F. 2d 1193, 1199 (9th Cir.
20 1986, in an amount to be determined by the court;
- 21 13. For costs of suit herein incurred; and
- 22 14. For such other and further relief as the court may deem proper.

23
24 Dated: April 13, 2012

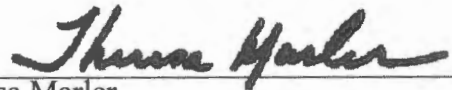
Respectfully submitted,
ROD K. TANNER LAW OFFICE

25
26
27 
28 Rod K. Tanner, Attorney for Plaintiff
PUPGEAR CORPORATION

VERIFICATION OF COMPLAINT

1
2 THERESA MARLER, being duly sworn, deposes and says that she resides at 2034 Lynn
3 Avenue, Los Gatos, California 95124; that she is the Chief Executive Officer of Plaintiff Puggear
4 Corporation in this action; and that she has read the foregoing complaint and knows the contents
5 of it and that the contents of the complaint are true of her own knowledge, except as to matters
6 stated in the complaint on information and belief, and as to those matters she believes them to be
7 true.

8
9 Dated: April 13, 2012



Theresa Marler
2034 Lynn Avenue
Los Gatos, California 95124
(408) 358-1114