

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Select Comfort Corporation,

Court File No. \_\_\_\_\_

Plaintiff,

vs.

**COMPLAINT FOR PATENT  
INFRINGEMENT**

The Sleep Better Store, LLC, The Merrick  
Group, LLC, and Merrick Group Capital 1,  
Ltd,

**JURY TRIAL DEMANDED**

Defendants.

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Plaintiff Select Comfort Corporation (“Select Comfort”) for its Complaint for Patent Infringement against Defendant The Sleep Better Store, LLC, The Merrick Group, LLC, and Merrick Group Capital 1, Ltd (collectively, “Defendants”) states:

**NATURE OF THIS ACTION**

1. This is an action by Select Comfort to enforce six United States patents that are being infringed by Defendants. Select Comfort is a Minnesota corporation that designs, manufactures and markets unique air bed products, many features of which are protected by the patent laws of the United States. Select Comfort’s Sleep Number® beds use uniquely designed air chambers to provide a gentle cushion of support which can be wirelessly adjusted to an individual’s preference, comfort, and firmness.

2. Select Comfort’s U.S. Patent Nos. 5,509,154 (the “154 Patent”), 5,562,484 (the “484 Patent”), 5,903,941 (the “941 Patent”), and 6,037,723 (the “723 Patent”) generally relate to and claim a control system for controlling the firmness of an

air bed and, more particularly for purposes of this action, to systems that use a wireless remote control unit. Select Comfort's U.S. Patent No. 5,904,172 (the "'172 Patent") generally relates to and claims improved valve enclosure assemblies for use with an inflatable mattress, a pump, and a processor. Select Comfort's U.S. Patent No. 6,397,419 (the "'419 Patent") generally relates to and claims systems and methods for adjusting and leveling the sleeping surface of an air bed. Together, the patents identified above are the "Patents-In-Suit."

3. Defendants are Texas limited liability companies that, upon information and belief, are owned, operated, and/or controlled by Philip Krim and are involved in the make, use, sale, offer for sale, and importation of air beds and air bed control systems under the Sleep Better Store and Dream Number Bed brands. Defendants' air beds compete with Select Comfort's air beds and infringe the Patents-in-Suit.

### **PARTIES**

4. Select Comfort is a Minnesota corporation with its principal place of business in Minnesota.

5. The Sleep Better Store, LLC is a Texas limited liability company with its principal place of business in Houston, Texas. According to the public records available from the Texas Comptroller of Public Accounts, The Merrick Group Capital 1, Ltd is a Member of The Sleep Better Store, LLC.

6. The Merrick Group, LLC is a Texas limited liability company with its principal place of business in Houston, Texas. According to the public records available from the Texas Comptroller of Public Accounts, Phillip Krim is the Director and

Manager of The Merrick Group, LLC. Upon information and belief, and according to The Merrick Group, LLC's website, The Merrick Group, LLC, and its stated Founder and CEO, Phillip Krim, own, operate, and/or control The Sleep Better, LLC and/or its business operations, including, without limitation, the sale of air beds that infringe the Patents-In-Suit through, for example, online websites and brands such as [www.sleepbetterstore.com](http://www.sleepbetterstore.com), [www.dreamnumberbeds.com](http://www.dreamnumberbeds.com), and [www.thesleepbetterstore.com](http://www.thesleepbetterstore.com).

7. The Merrick Group Capital 1, Ltd. is a Texas limited company with its principal place of business in Houston, Texas. According to the public records available from the Houston Better Business Bureau, Merrick Group Capital, Ltd operates under alternative business names that include, inter alia, [sleepbetterstore.com](http://sleepbetterstore.com) and [dreamnumberbeds.com](http://dreamnumberbeds.com).

### **JURISDICTION AND VENUE**

8. This Complaint asserts claims of patent infringement arising under 35 U.S.C. §§ 271 and 281, 283-85.

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338.

10. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b) because Defendants reside in this district for purposes of venue, because a substantial part of the events giving rise to Select Comfort's claims occurred in this district, and because Defendants have committed acts of infringement in this district.

11. This Court has personal jurisdiction over Defendants. Defendants have purposefully, continuously and systematically conducted business in Minnesota by, *inter alia*, advertising, offering for sale, and selling in Minnesota air beds that, as more fully described below, infringe the Patents-In-Suit. Defendants' advertising, promotion and selling is conducted primarily through interactive websites including, *inter alia*, [www.sleepbetterstore.com](http://www.sleepbetterstore.com), [www.dreamnumberbeds.com](http://www.dreamnumberbeds.com), [www.thesleepbetterstore.com](http://www.thesleepbetterstore.com), [www.sleepnumbercomparison.com](http://www.sleepnumbercomparison.com), [www.mattress-find.com](http://www.mattress-find.com), and [www.merrick-group.com](http://www.merrick-group.com) through which Defendants advertise, offer for sale, and sell infringing air beds to Minnesota residents. Defendants thus transact business over the internet with Minnesota residents, enter into contracts with Minnesota residents via the internet, and collect payment for products from Minnesota residents via the internet.

### **GENERAL ALLEGATIONS**

#### **I. The Patents-In-Suit.**

12. On April 23, 1996, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '154 Patent, which claims a system for controlling the firmness of a fluid supported mattress. The '154 Patent issued to Select Comfort as assignee of the inventors David C. Shafer and Eugene F. Duval. Select Comfort is the owner of the entire right, title and interest in and to the '154 Patent.

13. On July 29, 1997, the USPTO duly and legally issued the '484 Patent, which claims a system for controlling the firmness of a fluid supported mattress. The '484 Patent issued to Select Comfort as assignee of the inventors David C. Shafer and Eugene F. Duval. Select Comfort is the owner of the entire right, title and interest in and

to the '484 Patent.

14. On May 18, 1999, the USPTO duly and legally issued the '941 Patent, which claims a system for controlling the firmness of a fluid supported mattress. The '941 Patent issued to Select Comfort as assignee of the inventors David C. Shafer and Eugene F. Duval. Select Comfort is the owner of the entire right, title and interest in and to the '941 Patent.

15. On March 14, 2000, the USPTO duly and legally issued the '723 Patent, which claims a system for controlling the firmness of a fluid supported mattress. The '723 Patent issued to Select Comfort as assignee of the inventors David C. Shafer and Eugene F. Duval. Select Comfort is the owner of the entire right, title and interest in and to the '723 Patent.

16. On May 18, 1999, the USPTO duly and legally issued the '172 Patent, which claims an improved valve enclosure assembly for use in controlling the pressure in an air inflatable mattress and related methods. The '172 Patent issued to Select Comfort as assignee of the inventors James Edwin Giffit and Paul James Mahoney. Select Comfort is the owner of the entire right, title and interest in and to the '172 Patent.

17. On June 4, 2002, the USPTO duly and legally issued the '419 Patent, which claims a system and methods for adjusting and leveling the sleeping surface of an air bed with two fluid chambers. The '419 Patent issued to Select Comfort as assignee of the inventor Susan Mechache. Select Comfort is the owner of the entire right, title and interest in and to the '419 Patent.

## **II. Select Comfort's Development and Commercialization of the Inventions.**

18. Select Comfort was founded in 1987 in Minneapolis, Minnesota to develop, manufacture, and sell air beds. The company has grown from having only three retail stores in 1992 to a large and successful manufacturer and retailer with over 375 stores across the United States today. Annual sales have grown from \$14 million in 1993 to over \$740 million in 2011.

19. Select Comfort's current line of products represents over 25 years of research and development by the company, designed to improve and revolutionize the way people sleep. Select Comfort's air beds come with a firmness control system which allows a person to wirelessly and easily customize the firmness of the mattress at the touch of a button. Many of Select Comfort's air beds are available with independent air chambers for each side of the mattress, allowing customized firmness for each sleep partner, and include a wireless remote control unit for selectively adjusting the level of mattress firmness to allow the person to more easily adjust and readjust the firmness level based on personal preference.

20. Select Comfort maintains its own research and development department and developed its innovative firmness and wireless control system, its improved valve enclosure assembly system, and its sleep surface adjustment system and methods at its own expense. Select Comfort features its innovative technology including its wireless remote as a prominent part of the company's advertising.

21. As a result of the innovation and quality of its products, together with the widespread advertising and promotion thereof, Select Comfort has acquired a reputation

for quality, integrity and innovation, and it is well-known as the leading seller of premium air-supported sleep products. Select Comfort was ranked the number one bedding retailer in the United States by *Furniture/Today* for nine consecutive years.

### **III. Defendants and Its Infringing Products.**

22. Upon information and belief, Defendants are each involved and/or engaged in the making, use, sale, offering for sale, and/or importation of competing air beds under the Sleep Better Store and Dream Number Bed brands. Defendants' air beds compete with Select Comfort's air beds and incorporate systems and features that infringe the Patents-In-Suit. Defendants offer for sale and sell air beds in Minnesota primarily through interactive websites including, *inter alia*, [www.sleepbetterstore.com](http://www.sleepbetterstore.com), [www.dreamnumberbeds.com](http://www.dreamnumberbeds.com), [www.mattress-find.com](http://www.mattress-find.com), [www.thesleepbetterstore.com](http://www.thesleepbetterstore.com); [www.sleepnumbercomparison.com](http://www.sleepnumbercomparison.com), and [www.merrick-group.com](http://www.merrick-group.com). Defendants also sell air beds through two physical storefronts located in Houston, Texas.

23. Defendants currently sell at least one air bed model, the 8-Series, that includes a wireless remote for use in controlling the firmness of the air mattress in the same manner as claimed in the '154 Patent, the '484 Patent, the '941 Patent, and the '723 Patent. This air bed model includes a pump that utilizes a valve enclosure assembly described and claimed in the '172 Patent. This air bed model also practices the sleep surface adjustment system described and claimed in the '419 Patent.

24. Defendants have offered to sell and, upon information and belief, have sold its infringing air bed in Minnesota under its own brand.

25. Defendants have profited through infringement of the Patents-In-Suit. As a

result of Defendants' unlawful infringement of the Patents-In-Suit, Select Comfort has suffered and will continue to suffer damage. Select Comfort is entitled to recover from Defendants the damages it has suffered as a result of Defendant's unlawful acts.

26. Upon information and belief, Defendants intend to continue their unlawful infringing activity, and Select Comfort continues to and will continue to suffer irreparable harm therefrom unless Defendants are enjoined by this Court.

**COUNT ONE**

**Patent Infringement under 35 U.S.C. § 271**

**U.S. Patent No. 5,509,154**

27. The foregoing paragraphs are incorporated in this Count as if repeated herein in their entirety.

28. Defendants are infringing claims of the '154 Patent by making, using, offering to sell, selling and/or importing adjustable firmness air beds with a control system for controlling the firmness of an air mattress using a wireless remote. This activity infringes the '154 Patent under one or more of the subsections of 35 U.S.C. § 271.

29. Defendants may also be contributing and/or inducing infringement by others by ordering and/or supplying air beds, control systems, or portions thereof which when used or sold directly infringes the '154 Patent. Defendants may also be actively contributing and/or inducing infringement of claims of the '154 Patent by others, in that Defendants are intentionally aiding and abetting third parties to infringe claims of the patents, including by offering products which have no substantial non infringing use or

purpose.

30. Select Comfort has been damaged by Defendants' infringement of the '154 Patent, and will continue to be damaged and irreparably harmed in the future unless Defendants are enjoined from infringing the patent.

## **COUNT TWO**

### **Patent Infringement Under 35 U.S.C. § 271**

#### **U.S. Patent No. 5,562,484**

31. The foregoing paragraphs are incorporated in this Count as if repeated herein in their entirety.

32. Defendants are infringing claims of the '484 Patent by making, using, offering to sell, selling and/or importing adjustable firmness air beds with a control system for controlling the firmness of an air mattress using a wireless remote. This activity infringes the '484 Patent under one or more of the subsections of 35 U.S.C. § 271.

33. Defendants may also be contributing and/or inducing infringement by others by ordering and/or supplying air beds, control systems, or portions thereof which when used or sold directly infringes the '484 Patent. Defendants may also be actively contributing and/or inducing infringement of claims of the '484 Patent by others, in that Defendants are intentionally aiding and abetting third parties to infringe claims of the patents, including by offering products which have no substantial non infringing use or purpose.

34. Select Comfort has been damaged by Defendants' infringement of the '484

Patent, and will continue to be damaged and irreparably harmed in the future unless Defendants are enjoined from infringing the patent.

**COUNT THREE**

**Patent Infringement Under 35 U.S.C. § 271**

**U.S. Patent No. 5,903,941**

35. The foregoing paragraphs are incorporated in this Count as if repeated herein in their entirety.

36. Defendants are infringing claims of the '941 Patent by making, using, offering to sell, selling and/or importing adjustable firmness air beds with a control system for controlling the firmness of an air mattress using a wireless remote. This activity infringes the '941 Patent under one or more of the subsections of 35 U.S.C. § 271.

37. Defendants may also be contributing and/or inducing infringement by others by ordering and/or supplying air beds, control systems, or portions thereof which when used or sold directly infringes the '941 Patent. Defendants may also be actively contributing and/or inducing infringement of claims of the '941 Patent by others, in that Defendants are intentionally aiding and abetting third parties to infringe claims of the patents, including by offering products which have no substantial non infringing use or purpose.

38. Select Comfort has been damaged by Defendants' infringement of the '941 Patent, and will continue to be damaged and irreparably harmed in the future unless Defendants are enjoined from infringing the patent.

**COUNT FOUR**

**Patent Infringement Under 35 U.S.C. § 271**

**U.S. Patent No. 6,037,723**

39. The foregoing paragraphs are incorporated in this Count as if repeated herein in their entirety.

40. Defendants are infringing claims of the '723 Patent by making, offering to sell, selling and/or importing adjustable firmness air beds with a control system for controlling the firmness of an air mattress using a wireless remote. This activity infringes the '723 Patent under one or more of the subsections of 35 U.S.C. § 271.

41. Defendants may also be contributing and/or inducing infringement by others by ordering and/or supplying air beds, control systems, or portions thereof which when used or sold directly infringes the '723 Patent. Defendants may also be actively contributing and/or inducing infringement of claims of the '723 Patent by others, in that Defendants are intentionally aiding and abetting third parties to infringe claims of the patents, including by offering products which have no substantial non infringing use or purpose.

42. Select Comfort has been damaged by Defendants' infringement of the '723 Patent, and will continue to be damaged and irreparably harmed in the future unless Defendants are enjoined from infringing the patent.

**COUNT FIVE**

**Patent Infringement Under 35 U.S.C. § 271**

**U.S. Patent No. 5,904,172**

43. The foregoing paragraphs are incorporated in this Count as if repeated herein in their entirety.

44. Defendants are infringing claims of the '172 Patent by making, using, offering to sell, selling and/or importing adjustable firmness air beds with an improved valve enclosure assembly for use in controlling the pressure in an air inflatable mattress. This activity infringes the '172 Patent under one or more of the subsections of 35 U.S.C. § 271.

45. Defendants may also be contributing and/or inducing infringement by others by ordering and/or supplying air beds, valve enclosure assemblies, or portions therefore which when used or sold directly infringes the '172 Patent. Defendants may also be actively contributing and/or inducing infringement of claims of the '172 Patent by others, in that Defendants are intentionally aiding and abetting third parties to infringe claims of the patents, including by offering products which have no substantial non infringing use or purpose.

46. Select Comfort has been damaged by Defendants' infringement of the '172 Patent, and will continue to be damaged and irreparably harmed in the future unless Defendants are enjoined from infringing the patent.

**COUNT SIX**

**Patent Infringement Under 35 U.S.C. § 271**

**U.S. Patent No. 6,397,419**

47. The foregoing paragraphs are incorporated in this Count as if repeated herein in their entirety.

48. Defendants are infringing claims of the '419 Patent by making, using, offering to sell, selling and/or importing adjustable firmness air beds with a system for adjusting and leveling the sleeping surface of the air bed. This activity infringes the '419 Patent under one or more of the subsections of 35 U.S.C. § 271.

49. Defendants may also be contributing and/or inducing infringement by others by ordering and/or supplying air beds, systems for adjusting and leveling the sleeping surface of air beds, or portions therefore which when used or sold directly infringes the '419 Patent. Defendants may also be actively contributing and/or inducing infringement of claims of the '419 Patent by others, in that Defendants are intentionally aiding and abetting third parties to infringe claims of the patents, including by offering products which have no substantial non infringing use or purpose.

50. Select Comfort has been damaged by Defendants' infringement of the '419 Patent, and will continue to be damaged and irreparably harmed in the future unless Defendants are enjoined from infringing the patent.

### **WILLFULL INFRINGEMENT**

51. Upon information and belief, the acts of infringement described above have been taken with knowledge of the Patents-In-Suit and were, and continue to be, willful and deliberate.

### **PRAYER FOR RELIEF**

52. WHEREFORE, Select Comfort prays for the following relief:

53. A judgment that Defendants have infringed each of the Patents-In-Suit.

54. Preliminary and permanent injunctions under 35 U.S.C. § 283 enjoining

and restraining Defendants and its officers, directors, agents, servants, employees and all others acting under, through, or in concert with Defendants, directly or indirectly, from infringing the Patents-In-Suit.

55. A judgment requiring Defendants to pay damages under 35 U.S.C. § 284, including a judgment that infringement has been willful and deliberate, along with trebling of damages, with interest;

56. A judgment requiring Defendants to pay the costs, expenses, and disbursements of this action and attorney's fees as provided by 35 U.S.C. §§ 284 and 285, with interest;

57. A judgment holding Defendants jointly and severally liable for any and all awards, judgments, damages, payments, interest, costs, or fees awarded by the Court; and

5. Such other and further relief as the Court may deem just and equitable.

**JURY DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Select Comfort requests a trial by jury on all claims and issues triable by jury.

Dated: May 11, 2012

**OPPENHEIMER WOLFF & DONNELLY LLP**

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