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YONDR, INC.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

YONDR, INC., a Delaware corporation, Plaintiff, vs. WIN ELEMENTS LLC, a California limited liability company; JOHN NGUYEN, an individual; and DOES 1-10, inclusive, Defendants.	Case No.: 5:21-cv-2105-JGB (KKx) **PLAINTIFF'S FIRST AMENDED COMPLAINT FOR:** **1) WILLFUL PATENT INFRINGEMENT UNDER 35 U.S.C. § 271(A);** **2) INDUCED PATENT INFRINGEMENT UNDER 35 U.S.C. § 271(B);** **3) CONTRIBUTORY PATENT INFRINGEMENT UNDER 35 U.S.C. § 271(C);** **4) UNFAIR COMPETITION UNDER CAL. BUS. & PROF. CODE § 17200 *et seq.*;** **5) DECLARATION OF PATENT INVALIDITY** **JURY TRIAL DEMAND**

PLAINTIFF YONDR, INC. ("Plaintiff") hereby files this Complaint against DEFENDANTS WIN ELEMENTS LLC ("Win Elements"), JOHN NGUYEN ("Nguyen"), and DOES 1 to 10 (collectively, "Defendants"), and alleges as follows:

SUMMARY OF THE ACTION

1. Plaintiff is the sole owner of an innovative system and apparatus for selectively limiting user control of an electronic device, which is protected by United States Patent No. 9,819,788 (the "'788 Patent"). *See* **EXHIBIT A**.

2. Defendants have willfully and blatantly infringed the '788 Patent by offering for sale, and presumably selling, on at least its website www.winelements.com "Safe Pouch" products ("Infringing Products") having every limitation of at least one claim of the '788 Patent. *See* **EXHIBIT C**.

3. Though Plaintiff has unsuccessfully attempted to address Defendants' infringement by reaching out to Defendants directly, Defendants have ignored such attempts and persist in their wrongful conduct. Thus, Plaintiff now seeks relief from this Court to resolve this dispute and be compensated for the injury caused by Defendants' unlawful business practices.

PARTIES

4. Plaintiff Yondr, Inc. is now, and at all times relevant herein was, a Delaware corporation, having a principal place of business in Glendale, California.

5. Plaintiff is informed and believes, and on that basis alleges, that Defendant Win Elements LLC is, and at all times relevant herein was, a California limited liability company, having a principal place of business at 53233 Bonica St., Lake Elsinore, California 92532.

6. Plaintiff is informed and believes, and on that basis alleges, that Defendant John Nguyen is, and at all times relevant herein was, an individual, over the age of eighteen, and residing in Lake Elsinore, California.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES 1 through 10, inclusive (individual a "Doe

Defendant" and collectively, "Doe Defendants"), are unknown to Plaintiff at this time, and Plaintiff, therefore, sues Doe Defendants by such fictitious names. Plaintiff will ask leave of Court to amend this Complaint when the same shall have been ascertained. Plaintiff is informed and believes, and based thereon alleges that each Doe Defendant was responsible intentionally, or in some other actionable manner for the events and happenings referred to herein, which proximately caused injury and damage to Plaintiff, as hereafter alleged. Any reference to Defendants shall refer to each named Defendant and all Doe Defendants, and to each of them. Any reference to a particular Defendant shall refer to the named Defendant only.

8. Plaintiff is informed and believes, and on that basis alleges, that Defendants are responsible for their acts and for their conduct, which are the true legal causes of the damages herein alleged.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 (federal question), 1338(a) (patent infringement), and 1332 (diversity of citizenship).

10. Personal jurisdiction as to these Defendants is conferred on this Court because Defendants have purposefully availed themselves of the benefits and privileges of transacting business within the State of California. In particular, Defendant Win Elements has its principal place of business in the State of California and Defendant Nguyen is a resident of the State of California.

11. This Court also has personal jurisdiction over Defendants because Defendants have caused injury to Plaintiff within the State of California and within this judicial district. Defendants have committed and continue to commit unlawful acts expressly aimed at Plaintiff in California, knowing that the brunt of the harm resulting from this conduct will be suffered by Plaintiff in California.

12. Venue is proper in the Central District of California under 28 U.S.C. § 1400(a) and (b). Defendants reside in this district. Defendants have also committed

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acts of infringement of the '788 Patent in this district by offering for sale the Infringing Products and have a regular and established place of business in this district at 53233 Bonica St., Lake Elsinore, California 92532.

FACTUAL BACKGROUND

13. On April 21, 2015, a utility patent application for "System and Apparatus for Selectively Limiting User Control of an Electronic Device" was filed with the United States Patent and Trademark Office (USPTO) and assigned Application No. 14/692,530. On November 14, 2017, the '788 Patent was duly and lawfully issued by the USPTO as 9,819,788. The '788 Patent claims priority to Provisional Patent Application Serial No. 61/982,789, filed on April 22, 2014. A true and correct copy of the '788 Patent is attached hereto as **EXHIBIT A**.

14. Graham Dugoni is the inventor of the '788 Patent but Plaintiff is the true owner of all rights, title, and interest in the '788 Patent. Indeed, on or around February 25, 2022, Graham Dugoni assigned all rights, title, and interest in the '788 Patent to Plaintiff. Plaintiff, therefore, possesses the right to sue for and obtain equitable relief and damages for infringement of the '788 Patent.

15. Plaintiff exclusively markets, manufactures, and distributes the system and apparatus disclosed in the '788 Patent in an attempt to create phone-free spaces for artists, educators, organizations, and individuals. *See* **EXHIBIT B**. Plaintiff's system comprises (and the '788 Patent discloses) a case sized to receive a mobile device and which has a locking means to secure the device and further comprises a means for unlocking the case. In many embodiments, the case may be unlocked upon the occurrence of a predetermined condition, such as the physical presence of the case outside of a defined geographical region or the passage of time.

16. Plaintiff's innovative system and apparatus attracts customers from a variety of fields, including music, comedy, education, legal, as well as others. Notable individuals such as Dave Chappelle, Kanye West, Donald Glover/Childish Gambino, Madonna, Bruno Mars, Kevin Hart, Ali Wong, Joe Rogan, John Mayer,

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Chris Rock, Jennifer Lawrence, and Aziz Ansari as among Plaintiff's numerous satisfied customers.

17. To further demonstrate the extent of Plaintiff's success and public recognition, Plaintiff has been featured in a number of publications and broadcasts with international readership and viewership, respectively, including *The New York Times*, *The Wall Street Journal*, CNBC, *The Guardian*, *The Atlantic*, *Forbes*, *Cosmopolitan*, *Chicago Tribune*, *Wired*, CBS, *Rolling Stone*, *Newsweek*, *The Washington Post*, and *Billboard*, and ABC News.

18. The success and novelty of the '788 Patent has prompted third parties, including Defendants, to manufacture and/or distribute blatant counterfeits of Plaintiff's innovative system and apparatus to compete with and infringe the '788 Patent.

19. At least as early as October 2021, Defendants began offering for sale, and presumably selling, a "Safe Pouch" for "creating phone-free classrooms." Similarly, if not identically, to the '788 Patent, Defendants offer for sale, and presumably sell, a case sized to receive a mobile device and having a locking means for securing the device. Defendants' system also comprises a means for unlocking the case, which may occur under a predetermined condition. *See* **EXHIBIT C** for examples of Defendants' infringement of the '788 Patent.

20. Defendants' Infringing Products satisfy each and every limitation of at least Claims 2 and 3 of the '788 Patent, as set forth in greater detail below.

21. Claim 2 of the '788 Patent is reproduced below:

> A case for selectively limiting a user's ability to control such user's own mobile electronic device, comprising,
>
> a shell defining a cavity sized to accommodate the user's mobile electronic device and having an opening to receive the user's mobile electronic device therein;
>
> a locking means for at least partially securing the opening of the shell

so that the electronic device is rendered inaccessible to the user, the locking means being further non-disengageable by the user of the mobile electronic device;

wherein the predetermined condition is the passage of time.

22. It is well-established that the preamble of a patent claim does not limit the claim. However, the Infringing Products satisfy the preamble of Claim 2 of the '788 Patent. Specifically, the Infringing Products selectively limit a user's ability to control such user's own mobile electronic device. As explained on Defendants' website, the Infringing Products' "opening allows students access and control of their phones as needed and especially during an unexpected emergency." *See* **EXHIBIT D.** In this manner, the Infringing Products selectively limit students' ability to control their own mobile electronic devices.

23. The Infringing Products comprise a shell defining a cavity sized to accommodate the user's mobile electronic device and having an opening to receive the user's mobile electronic device therein. The Infringing Products further comprise a locking means for at least partially securing the opening of the shell so that the electronic device is rendered inaccessible to the user, the locking means being further non-disengageable by the user of the mobile electronic device. The locking means of the Infringing Products is non-disengageable by the user as evidenced by the separate means for unlocking the case, which, according to Defendants, can be "any strong-enough magnet." *See* **EXHIBIT D.** These elements are shown with reference to the image below (labeling added).

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24. The '788 Patent discloses that the "predetermined condition may relate to geographic location or timing" and that "the case may be used to render a mobile electronic device inaccessible during a communal event." *See* '788 Patent, 3:1-4. Similarly, as explained on Defendants' website, the Infringing Products also comprise "the predetermined condition is the passage of time" because users of the Infringing Products, namely, students, are unable to access their phone until "after school." *See* **EXHIBIT D**. Because a school day is necessarily marked by a specified time period, the passage of time is a predetermined condition. Moreover, a class may be considered "a communal event" and thus, falls squarely within the scope of the '788 Patent.

25. The '788 Patent further teaches that "the case [] may be configured to selectively limit access to a mobile electronic device [] in response to various predetermined conditions." *See* '788 Patent, 6:39-51. As one example,

> the case may be outfitted with locking means **[]** comprising a manual, key-operated latch wherein means for unlocking comprise a corresponding key. In such an embodiment, the case **[]** may be manually locked or unlocked by venue staff or other members in possession of such a key. Thus, the system for selectively limiting user control of an electronic device may involve a predetermined condition requiring the user of the electronic device **[]** to locate venue staff or other members in possession of the key to manually unlock the case **[]** on user's behalf.

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See id.

26. Equivalently, the Infringing Products are manually locked or unlocked by teachers or administrators of a school in possession of the means for unlocking, which may include "any strong-enough magnet." Thus, the predetermined condition requires the student to locate a teacher or administrator in possession of such "magnet" to manually unlock the case.

27. Claim 3 of the '788 Patent is reproduced below:

A system for selectively limiting a user's control of such user's own electronic device, comprising

a case sized to receive the user's mobile electronic device having

a front and a rear panel each having first and second longitudinally opposed side edges and laterally opposed lower edges,

the first, second, and lower edges being secured together to define an opening for receiving a mobile electronic device, the case operative to become locked so that the user is unable to access his own mobile electronic device contained therein until a predetermined condition is met;

a locking means for at least partially securing the opening; and

means for unlocking the case.

28. The Infringing Products comprise a case sized to receive the user's mobile electronic device having a front and a rear panel each having a first and second longitudinally opposed side edges and laterally opposed edges. The first, second, and lower edges of the Infringing Products are secured together to define an opening for receiving a mobile electronic device. Moreover, as explained with regard to Claim 2 of the '788 Patent, above, the Infringing Products are operative to become locked so that the user is unable to access his own mobile electronic device contained therein until a predetermined condition is met. For instance, the

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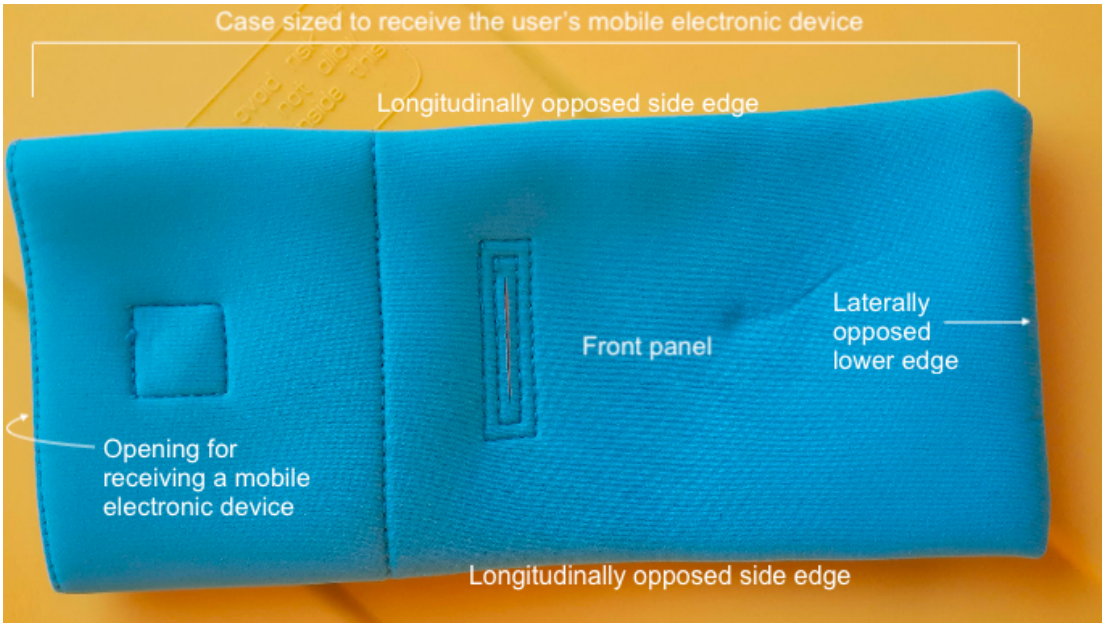
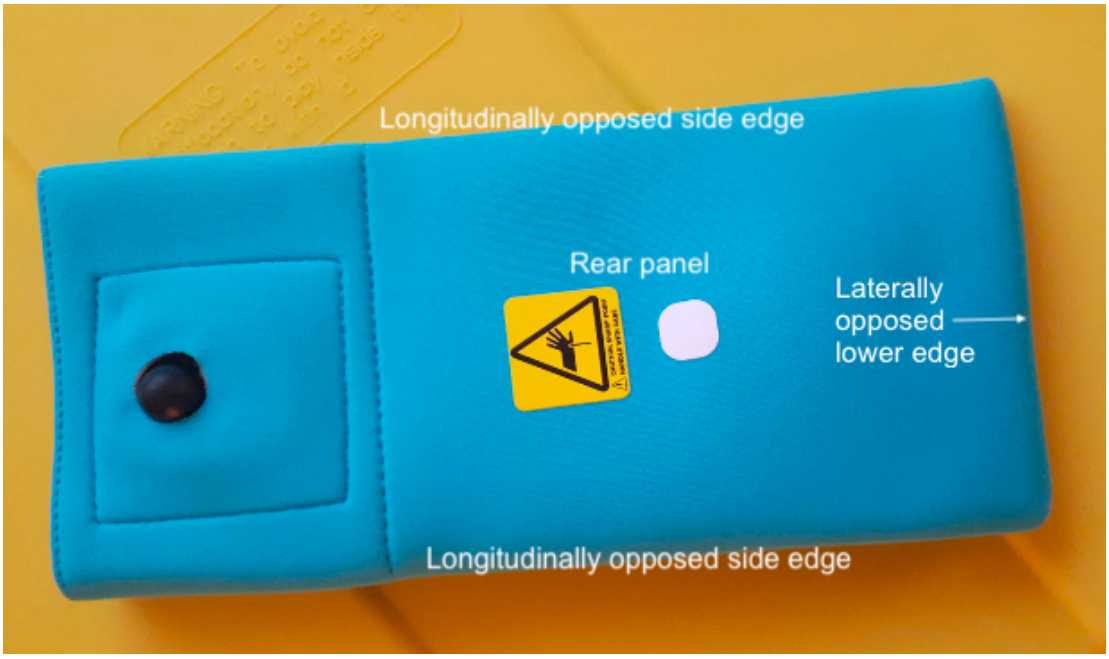
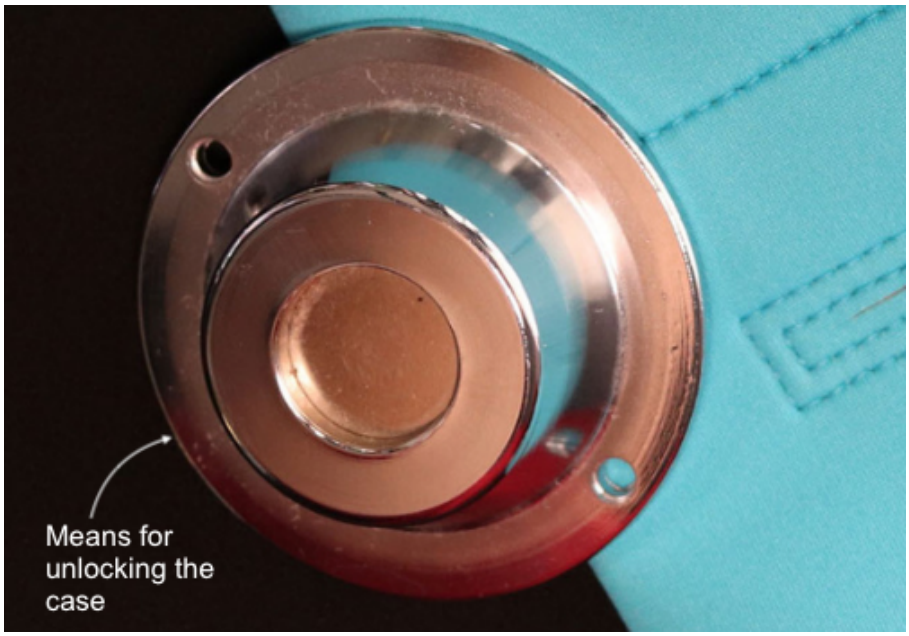
predetermined condition may be the passage of time, such as "after school." These elements are shown with reference to the images below (labeling added).





29. The Infringing Products further comprise a means for unlocking the case. For instance, on Defendants' website, it is explained that the means for unlocking the case can be "any strong-enough magnet." *See* **EXHIBIT D**. This element is shown with reference to the image below (labeling added).



30. The operation of Defendants' Infringing Products can be further understood with reference to a video posted on Vimeo.com by Defendants at the following link: https://vimeo.com/552199052. *See* **EXHIBIT E**.

31. On or around October 1, 2021, Plaintiff, through counsel, sent a letter to Defendants that informed Defendants of their infringement of the '788 Patent and demanded that Defendants cease and desist further infringement. *See* **EXHIBIT F** for a true and correct copy of that letter, which was transmitted via United States Postal Service Priority Mail.

32. Plaintiff is informed and believes, and on that basis alleges, that at least on or before October 2021, Defendants had actual notice of Plaintiff's intellectual property rights. Defendants' use and infringement is therefore willful.

33. Because no response was received in reply to Plaintiff's October 1, 2021 letter, on or around November 16, 2021, Plaintiff, through counsel, resent the same letter to Defendants. This time, the letter was transmitted via electronic mail as well as via United States Postal Service Priority Mail. The letter was sent via electronic mail to info@winelements.com, an address provided on Defendants' website. Because this message was successfully transmitted in that it did not produce any indication of a lack of transmittal, Plaintiff is informed and believes, and on that

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basis alleges, that Defendants received Plaintiff's November 16, 2021 communication.

34. As a result of Defendants' receipt of Plaintiff's November 16, 2021 communication, Plaintiff is informed and believes, and on that basis alleges, that at least on or before November 2021, Defendants had actual notice of Plaintiff's intellectual property rights. Defendants' use and infringement is therefore willful.

35. As of the current date, no response to Plaintiff's October 1, 2021 letter has been received.

36. Defendants' Infringing Products were, and have continued to be, marketed, manufactured, distributed, and/or offered for sale in a manner that infringes Plaintiff's '788 Patent.

37. Defendants have unjustly benefited from copying Plaintiff's technology for which Plaintiff took risks and made substantial investment to develop.

38. Defendants' infringement of the '788 Patent and other improper conduct has and continues to cause substantial damage and irreparable harm to Plaintiff.

39. Nguyen purports to be the sole inventor and applicant of U.S. Patent No. 10,980,324 for a "receptacle with multiple openings for concealing a screen of a mobile electronic device and permitting a user to access and control the mobile electronic device housing inside the pouch at the discretion of the user" (the "'324 Patent"). *See* **EXHIBIT G**.

40. Claim 1, the sole claim, of the '324 Patent, is reproduced below:

A pouch to house a mobile electronic device, the pouch comprising:

> a shell constructed of a fabric and defining an interior space, the shell further defining an outer wall with through access openings for a user to access and manually control operation of the mobile electronic device when the device is inserted inside the interior space of the shell;

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a locking mechanism including a tag and a pin, the locking mechanism disposed on the shell at a defined insertion opening of the shell between opposite wall portions of the shell, the insertion opening allows insertion of the mobile electronic device into the shell;

the locking mechanism including a locking assembly with a passage in the tag to receive an elongated rod of the pin, insertion of the elongated rod into the passage will lock the pin to the tag and secure the opposite wall portions of the shell to each other to partially close the defined opening and leaving two smaller openings of the defined opening on opposite sides of the locking mechanism, the smaller openings preventing removal of the mobile electronic device from the shell, but allowing appropriately smaller accessories to be inserted through the smaller openings into the interior space of the shell.

41. Claim 1 of the '324 Patent is invalid as being anticipated and/or non-obvious over the '788 Patent, as described in greater detail below. The '324 Patent was filed on December 12, 2019. The '788 Patent was filed on April 21, 2015, but claims priority to a provisional patent application filed on April 22, 2014, both of which predate the filing date of the '324 Patent.

42. The "shell" of Claim 1 of the '324 Patent is equivalent to the "shell" or "case," respectively, of Claims 2 and 3 of the '788 Patent. In particular, both shells and the case are sized to receive a mobile electronic device, that is, both comprise an interior space through which a mobile electronic device is inserted.

43. The "locking mechanism" of Claim 1 of the '324 Patent is equivalent to the "locking means" of Claims 2 and 3 of the '788 Patent. In particular, the "locking means" of the '788 Patent "at least partially secur[es] the opening" of the shell/case. The only mention of the "locking mechanism" of the '324 Patent in the specification thereof provides that "a locking mechanism, which focus on sealing and securing an opening…" Further, the "locking means" of the '788 Patent is not

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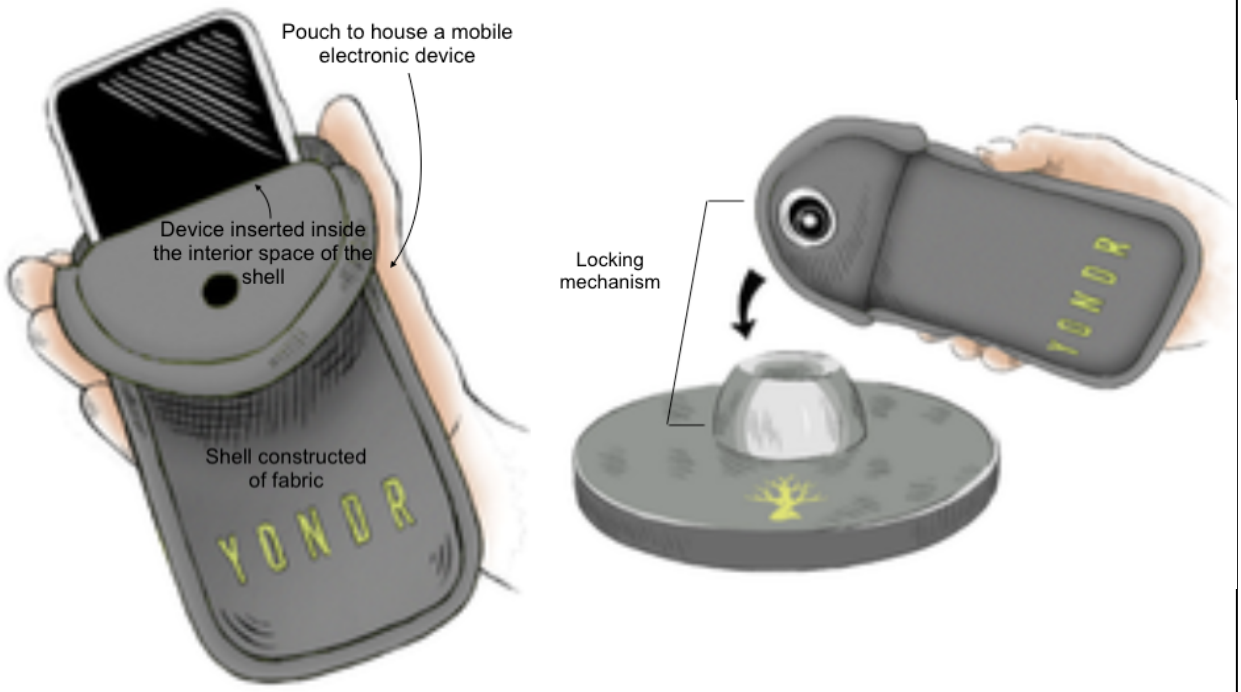
limited to any particular mechanism and therefore encompasses the tag and pin mechanism disclosed in the '324 Patent.

44. Claim 1 of the '324 Patent is further invalid as being anticipated and/or non-obvious over Plaintiff's "Yondr" system and apparatus. The '324 Patent was filed on December 12, 2019. Years prior, in or around 2014, Plaintiff introduced its "Yondr" system and apparatus. The similarities between Plaintiff's "Yondr" system and apparatus and Claim 1 of the '324 Patent are shown with reference to the image below.



45. Nguyen is also the owner and chief executive officer of Win Elements. Plaintiff is informed and believes, and on that basis alleges, that Nguyen is responsible for directing and controlling the activities and business affairs of Win Elements. Indeed, Nguyen holds himself out as the inventor of the Infringing Products.

46. In addition, Nguyen has personally marketed the Infringing Products. As one example, throughout Defendants' website, Nguyen promotes the Infringing Products through his own personal testimony regarding their purported advantages:

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> *After the death of a boy from my feeder middle school, I spent hundreds hours inventing Safe Pouch to stop cyberbullying and bullying in school. However, it is more. Safe Pouch solve many other challenging problems that forever transforms learning and school cultures*
>
> *There are no social or academic benefits higher than our students' safety. Safe Pouch's opening allow students access and control of their phones as needed and especially during an unexpected emergency*
>
> *Educators are not phone polices. We are influencers, motivators, and agent of changes. There are no Lock and Key; instead, it uses any strong-enough magnet to release the dividing mechanism. Students' safety is our highest priority*

See **EXHIBIT D**.

47. Nguyen has also personally marketed the Infringing Products through his appearance in the aforementioned video appearing on Vimeo.com. *See* **EXHIBIT E**.

48. Nguyen has further personally marketed the Infringing Products by writing and publishing the song, "Pouch It Up," which can be found on his personal YouTube channel at https://www.youtube.com/watch?v=w9AGNxY14l0. *See* **EXHIBIT H**.

49. Plaintiff is informed and believes, and on that basis alleges, that Nguyen has and continues to utilize Win Elements for the transfer of assets for his own personal benefit. At all times relevant hereto, Nguyen had a personal material financial interest in Win Elements. As a result, there exists a unity of interest and ownership between Nguyen and Win Elements such that any individuality and separateness between Nguyen and Win Elements has ceased, and Win Elements is nothing more than a shell entity acting as the alter ego of Nguyen.

50. Plaintiff is informed and believes, and on that basis alleges, that

adherence to the fiction of the separate existence of Nguyen, on the one hand, and Win Elements, on the other, as distinct from one another would permit an abuse of the corporate privilege and would sanction fraud or promote injustice.

51. Plaintiff is informed and believes, and on that basis alleges, that Nguyen utilized the corporate form of Win Elements to perpetrate a fraud, circumvent statutory law, and accomplish a wrongful and inequitable purpose. In particular, Nguyen has utilized the corporate form of Win Elements to make, offer for sale, and presumably sell, the Infringing Products, despite Nguyen's actual knowledge that the Infringing Products infringe the '788 Patent. In such circumstances, this Court should ignore the corporate entity, under the alter ego doctrine, and deem Win Elements' acts to be those of persons or organizations (namely, Nguyen) actually controlling the corporation.

FIRST CLAIM FOR RELIEF

Willful Patent Infringement – 35 U.S.C. § 271(a)

52. Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1 through 51 above and incorporates them by reference.

53. On November 14, 2017, the USPTO duly and legally issued the '788 Patent, entitled "System and Apparatus for Selectively Limiting User Control of an Electronic Device." The claims of the '788 Patent carry a presumption of validity under 35 U.S.C. § 282(a) and are enforceable.

54. Plaintiff is the owner of the entire right, title and interest in the '788 Patent and possesses the right to sue for and obtain equitable relief and damages for infringement of the '788 Patent.

55. Defendants have directly infringed and continue to directly infringe the '788 Patent by making, using, selling, and offering for sale in the United States, and/or importing into the United States the Infringing Products, referred to by Defendants as the "safe pouch," which embodies the invention defined by one or more claims of the '788 Patent, without authority or license from Plaintiff. More

particularly, upon information and belief, Defendants have infringed and continue to infringe at least Claims 2 and 3 of the '788 Patent because the Infringing Products includes every limitation of at least Claims 2 and 3, as explained in greater detail above.

56. Plaintiff has complied with the marking and notice requirements of 35 U.S.C. § 287.

57. Plaintiff is informed and believes, and on that basis alleges, that Defendants had actual knowledge of Plaintiff's rights in the invention claimed in the '788 Patent. Defendants' actions constitute reckless disregard for Plaintiff's patent rights or otherwise willful and intentional infringement of the '788 Patent.

58. As a direct and proximate result of Defendants' acts of infringement, Defendants have derived and received gains, profits, and advantages in an amount that is not presently known to Plaintiff.

59. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to damages for Defendants' infringing acts and treble damages together with interest and cost as fixed by this Court.

60. Pursuant to 35 U.S.C. § 285, Plaintiff is entitled to recover Defendants' total profits from Defendants' infringement.

61. Pursuant to 35 U.S.C. § 289, Plaintiff is entitled to recover Defendants' total profits from Defendants' infringement.

62. Plaintiff has suffered injury, including irreparable injury, as a result of Defendants' infringement. Plaintiff is therefore entitled to preliminary and permanent injunctive relief restraining and enjoining Defendants from infringing the '788 Patent.

63. By reason of Defendants' infringement, Plaintiff is suffering and will continue to suffer substantial damages in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF

Induced Patent Infringement – 35 U.S.C. § 271(b)

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64. Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1 through 63 above and incorporates them by reference.

65. Plaintiff is informed and believes, and on that basis alleges, that Defendants have actively induced infringement, and continue to actively induce infringement, by others of the '788 Patent under 35 U.S.C. §271(b).

66. Defendants' customers directly infringe (literally or under the doctrine of equivalents) at least one of the claims of the '788 Patent when they make, use, offer to sell, or sell the Infringing Products. The customers infringe these claims as shown above with reference to the images in paragraphs 23, 28, and 29 above.

67. Defendants had actual knowledge of the '788 Patent and its infringement thereof since at least the time it received Plaintiff's October 1, 2021 letter, attached as **EXHIBIT F** and described in paragraph 31 above. Defendants have knowingly and actively induced customers to directly infringe the '788 Patent with the specific intent to encourage such infringement and Defendants knew (or should have known or were willfully blind) that the induced acts constitute patent infringement. Defendants' inducement includes, for example, providing technical and/or installation guides, hardware specifications, demonstrations, and other actions that induce its customers to directly infringe the '788 Patent.

THIRD CLAIM FOR RELIEF

Contributory Patent Infringement – 35 U.S.C. § 271(c)

68. Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1 through 67 above and incorporates them by reference.

69. Plaintiff is informed and believes, and on that basis alleges, that Defendants have contributorily infringed and continue to infringe the '788 Patent under 35 U.S.C. § 271(c).

70. Defendants have offered to sell, sold, or sell within the United States or import into the United States the Infringing Products. Each Infringing Products is a material part of the invention of at least one of the claims of the '788 Patent. The

Infringing Products is not a staple article nor a commodity of commerce suitable for substantial use that does not infringe at least one of the claims of the '788 Patent.

71. Defendants' customers directly infringe (literally or under the doctrine of equivalents) at least one of the claims of the '788 Patent when they make, use, offer for sale, or sell an Infringing Products. The limitations of at least one claim of the '788 Patent are met by the Infringing Products, as illustrated in the images in paragraphs 23, 28, and 29 above.

72. Defendants had actual knowledge of the '788 Patent and its infringement thereof since at least the time it received Plaintiff's October 1, 2021 letter, attached as **EXHIBIT F** and described in paragraph 31 above. Defendants have offered to sell, sold, or imported into the United States the Infringing Products knowing (or should have known or were willfully blind) that such products were especially made or especially adapted for use in an infringement of the '788 Patent and not a staple article or a commodity of commerce suitable for substantial non-infringing use.

FOURTH CLAIM FOR RELIEF

Unfair Competition – Cal. Bus. & Prof. Code § 17200 *et seq.*

73. Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1 through 72 above and incorporates them by reference.

74. California Business and Professions Code, Section 17200 states, in pertinent part: "...unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

75. At all times mentioned herein, Defendants have engaged in "unfair" business practices. Defendants have maliciously disrupted Plaintiff's business by offering for sale and selling the Infringing Products, which infringe Plaintiff's '788 Patent. Such acts by Defendants are unlawful.

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76. As a direct and proximate result of Defendants' wrongful acts, Plaintiff has been, is now, and will be irreparably injured and damaged by Defendants' aforementioned acts. Unless Defendants are enjoined by this Court, Plaintiff will suffer further harm to its business. This harm constitutes an injury for which Plaintiff has no adequate remedy at law.

77. Defendants have acted with the intent to disrupt Plaintiff's business and thus, its acts are willful and intentional.

78. Defendants should be required to restore to Plaintiff its lost revenue as a result of Defendants' unlawful business acts or to provide Plaintiff with any other restitutionary relief as the Court deems appropriate.

FIFTH CLAIM FOR RELIEF

Declaration of Patent Invalidity

79. Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1 through 80 above and incorporates them by reference.

80. Nguyen is the named inventor and applicant of the '324 Patent.

81. Claim 1 of the '324 Patent is invalid for failing to satisfy one or more of the requirements for patentability specified in Title 35 of the United States Code, including without limitation Sections 101, 102, 103, and 112.

82. Claim 1 of the '324 Patent is invalid as being anticipated and/or obvious over at least U.S. Patent No. 9,819,788.

83. Claim 1 of the '324 Patent is also invalid as being anticipated and/or obvious over Plaintiff's aforementioned "Yondr" system and apparatus.

84. There exists an actual controversy between Plaintiff and Defendants regarding the validity of the '324 Patent, and a judicial declaration of invalidity is necessary and appropriate at this time.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants as follows:

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A. Entry of a judgment that Defendants have infringed one or more claims of U.S. Patent No. 9,819,788;

B. Entry of a judgment that Defendants willfully and deliberately infringed U.S. Patent No. 9,819,788;

C. Entry of a judgment that Claim 1 of U.S. Patent No. 10,980,324 is invalid;

D. An order preliminarily and permanently restraining and enjoining Defendants, its officers, agents, attorneys and employees, and those acting in privity or concert with Defendants, from engaging in the manufacture, use, offer for sale or sale within the United States, or importation into the United States, of the Infringing Products until after the expiration date of the '788 Patent;

E. An order requiring Defendants to deliver and be impounded during the pendency of this action all material in Defendants' possession, custody, or control that includes or incorporates products that infringe Plaintiff's patent rights, including but not limited to, any products, containers, packages, labels, and advertisements in their possession or under their control utilizing Plaintiff's '788 Patent, or any simulation, reproduction, counterfeit, copy, or colorable imitation thereof;

F. An order of an independent accounting of all of Defendants' financial records relating to their infringing activities in order to determine the sums of money owed to Plaintiff;

G. An order requiring Defendants to pay to Plaintiff all damages or other monetary relief, including but not limited to all gains, profits, and advantages derived by Defendants as a result of Defendants' infringement of the '788 Patent;

H. An order requiring Defendants to pay to Plaintiff treble damages and/or exemplary damages because of Defendants' willful conduct pursuant to 35 U.S.C. § 284;

I. Costs and reasonable attorneys' fees relating to this action pursuant to 35 U.S.C. § 285;

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J. Pre-judgment and post-judgment interest and costs in bringing this action against Defendants; and

K. Such other and further relief as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff requests a jury trial of all issues that may be tried to a jury in this action.

RESPECTFULLY SUBMITTED this 8th day of March, 2022.

OMNI LEGAL GROUP

/s/ Omid E. Khalifeh
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