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Attorney for Plaintiff  
Free-Flow Packaging International, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Free-Flow Packaging International, Inc.,  
Plaintiff,  
v.  
Automated Packaging Systems, Inc.,  
Defendant.

CASE NO.  
COMPLAINT FOR PATENT INFRINGEMENT  
**DEMAND FOR JURY TRIAL**

Plaintiff Free-Flow Packaging International, Inc. (“FPI”), for its Complaint against Automated Packaging Systems, Inc. (“Automated Packaging”), alleges as follows:

# **I. INTRODUCTION**

1. This is a civil action for injunctive and monetary relief to remedy patent infringement by Automated Packaging of patents assigned to and owned by FPI. The infringed FPI patents asserted in this Complaint are U.S. Patent No. 8,323,774 (“774 Patent,” Exhibit A hereto) and U.S. Patent No. 9,003,743 (“743 Patent,” Exhibit B hereto).

## **II. THE PARTIES**

2. Plaintiff FPI is a corporation existing under the laws of the State of Delaware, with its principal place of business at 34175 Ardenwood Blvd., Suite 201, Fremont, CA 94555.

3. Defendant Automated Packaging is a corporation existing under the laws of the State of Ohio, with its principal place of business at 10175 Philipp Parkway, Streetsboro, OH 44241. Automated Packaging makes, uses, has used, sells, and has sold a system combining a machine and webs, for the manufacturing of inflated webs, to be used for the cushioning of objects transported in containers.

4. FPI and Automated Packaging are direct competitors.

## **III. JURISDICTION AND VENUE**

5. This Court has original subject matter jurisdiction over the claims alleged in this Complaint pursuant to 28 U.S.C. § 1331 & 1338(a), and 35 U.S.C. § 1 et seq.

6. This Court has personal jurisdiction over Automated Packaging pursuant to the California Long Arm Statute, Cal. Code Civ. Proc § 410.10, and the laws of the United States.

7. Automated Packaging regularly solicits business and maintains a persistent course of conduct by conducting business in the Northern District of California. Automated Packaging also maintains an established distribution network for offering for sale, selling and shipping products into the Northern District of California. The marketing and sale of the products at issue in this action infringes FPI’s patent rights within this State and elsewhere in the United States. Also, Automated Packaging’s conduct as described herein will cause tortious injury to FPI, a resident of this state, and permit Automated Packaging to wrongfully derive substantial revenue

1 from activities within this state. Upon information and belief, Automated Packaging derives  
 2 substantial revenue from activities within this state and has sold a substantial amount of products  
 3 into this state.

4 8. For example, Automated Packaging sells infringing products via its distributor,  
 5 Oakland Packaging & Supply, in Richmond, California (see, e.g.,  
 6 [http://ecom.oakpackaging.com/storefrontCommerce/itemDetail.do?item-id=32300&order-](http://ecom.oakpackaging.com/storefrontCommerce/itemDetail.do?item-id=32300&order-quantity=1&item-index=0&customer-item=108265500&order-uom=&warehouse-id=3&item-number=108265500)  
 7 [quantity=1&item-index=0&customer-item=108265500&order-uom=&warehouse-id=3&item-](http://ecom.oakpackaging.com/storefrontCommerce/itemDetail.do?item-id=32300&order-quantity=1&item-index=0&customer-item=108265500&order-uom=&warehouse-id=3&item-number=108265500)  
 8 [number=108265500](http://ecom.oakpackaging.com/storefrontCommerce/itemDetail.do?item-id=32300&order-quantity=1&item-index=0&customer-item=108265500&order-uom=&warehouse-id=3&item-number=108265500)).

9 9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and  
 10 1400(b).

#### 11 **IV. SUMMARY OF THE DISPUTE**

12 10. Founded in 1967, FPI is a pioneer and award-winning manufacturer of innovative,  
 13 protective packaging products and packaging systems. FPI's innovative products include a wide  
 14 range of packaging technologies, including PMOS (Packaging-Made-On-Site), biodegradable,  
 15 sustainable and environmentally friendly packaging, void fill air cushions, and Kraft Bubble  
 16 mailers. FPI's industry-leading and best-in-class products allow customers to easily and reliably  
 17 utilize cost efficient effective solutions for all packaging needs. FPI's air cushion packaging  
 18 systems help reduce damage claims resulting from broken or damages products, and offer  
 19 environmentally-friendly technology to create a smaller carbon footprint. FPI also designs and  
 20 installs custom dispensing storage systems for air cushions.

21 11. FPI invests heavily in research and development and has a rich history of  
 22 innovation. FPI has been granted over 40 patents to protect various innovative proprietary  
 23 systems and methods, such as its patented "double cushion" technology, which allows for more  
 24 efficient use of air-filled bagging materials

25 12. Automated Packaging was founded in 1962 and also sells packaging systems.  
 26 Unable to compete by developing its own packaging technology, however, Automated  
 27 Packaging took FPI's patented technologies without permission. Automated Packaging' use,  
 28 sale, offer for sale, and/or importation of infringing products is damaging and will continue to

1 damage FPI's business, causing irreparable harm, for which there is no adequate remedy at law,  
 2 unless Automated Packaging' wrongful acts are enjoined by this Court.

3 **V. ACCUSED AUTOMATED PACKAGING WEBS**

4 13. Automated Packaging uses, has used, offers to sell, sells, and has sold in the  
 5 United States a line of webs called "Bubbles on Demand." This line of films includes at least  
 6 five products:

- 7 • DuraClear 2000™ Bubbles on Demand
- 8 • AirPouch FastWrap HD Bubbles on Demand
- 9 • AirPouch FastWrap Anti-Static Bubbles on Demand
- 10 • EarthAware® DuraClear 2000 Biodegradable Bubbles on Demand
- 11 • EarthAware Recycled EZ-Tear AirPouch Bubbles on Demand

12 14. The complaint collectively refers to these Automated Packaging products as the  
 13 "Accused Automated Bubbles Webs."

14 15. The Accused Automated Bubbles Webs are a type of film that can be inflated on  
 15 demand, meaning that the Accused Automated Bubbles Webs are not inflated until they are used  
 16 by a consumer. For example, according to Automated's brochure, the Accused Automated  
 17 Bubbles Webs are a "wrapping protective packaging solution" that can be "inflate[d] on  
 18 demand." The Accused Automated Bubbles Webs allow "multi-directional wrapping" of a  
 19 variety of products as needed by the user (see  
 20 [http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Materials-](http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Materials-Film/USA%20(English)/AirPouch-Wrapping-Brochure.pdf)  
 21 [Film/USA%20\(English\)/AirPouch-Wrapping-Brochure.pdf](http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Materials-Film/USA%20(English)/AirPouch-Wrapping-Brochure.pdf)).

22 16. The Accused Automated Bubbles Webs are described in greater detail on  
 23 Automated's website at <http://www.autobag.com/protective-packaging/wrapping-solutions>.

24 17. Automated Packaging uses, has used, offers to sell, sells, and has sold in the  
 25 United States a line of webs called "EZ-Tear Pillows." This line of films includes five products:

- 26 • EarthAware® Recycled EZ-Tear Pillows
- 27 • EarthAware Biodegradable EZ-Tear Pillows
- 28 • EarthAware XD Blend™ Biodegradable Premium EZ-Tear Pillows

- DuraClear 2000™ EZ-Tear Pillows
- Anti-Static EZ-Tear Pillows

18. This complaint collectively refers to these Automated Packaging products as the “Accused Automated EZ-Tear Webs.”

19. The Accused Automated EZ-Tear Webs are a type of film that can be inflated on demand. The Accused Automated EZ-Tear Webs are a “protective packaging product” that helps “ensure products remain damage free” when shipped (see [http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Materials-Film/USA%20\(English\)/AirPouch-Void-Fill-Brochure.pdf](http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Materials-Film/USA%20(English)/AirPouch-Void-Fill-Brochure.pdf)).

20. The Accused Automated EZ-Tear Webs are described in greater detail on Automated’s website at <http://www.autobag.com/protective-packaging/void-fill-solutions>.

## **VI. ACCUSED AUTOMATED PACKAGING SYSTEM**

21. Automated Packaging uses, has used, offers to sell, sells, and has sold in the United States a machine called the AirPouch® Express 3™.

22. The AirPouch® Express 3™ is a void-fill inflation machine. For example, Automated’s brochure for the AirPouch® Express 3™ states that “The AirPouch Express 3 Tabletop Void-fill System provides on-demand, easy-to-use air pillows for high packing productivity.” (see <http://www.autobag.com/Media/Autobag/Autobag-AirPouch/Technical-Datasheets/Machinery/USA-English/AirPouch-Express-3-Void-fill-System-Technical-Data-Sheet.pdf>).

23. The AirPouch® Express 3™ can be used in combination with the Accused Automated EZ-Tear Webs to create a system for manufacturing void-fill units. The combination of these elements is referred to herein as the “Accused Automated System.”

## **VII. AUTOMATED’S INFRINGEMENT OF FPI’S PATENTS**

### **COUNT 1 (Direct Infringement of U.S. Patent No. 8,323,774)**

24. FPI incorporates by reference the allegations in paragraphs 1-23 above.

25. On December 4, 2012, the United States Patent & Trademark Office issued U.S. Patent No. 8,323,774 for “Apparatus for Inflating and Sealing Pillows in Packaging Cushions.”

1 A copy of the '774 Patent is attached hereto as Exhibit A. By assignment from the inventors in  
2 August of 2011, FPI is the sole owner of the '774 Patent.

3 26. On information and belief, Automated Packaging has infringed and continues to  
4 infringe one or more claims of the '774 patent, including claim 1, literally or under the doctrine  
5 of equivalents, by making, using, selling, and/or offering to sell in the United States without  
6 authority, at least the Accused Automated Bubbles Webs.

7 27. The Accused Automated Bubbles Webs comprise preconfigured plastic film for  
8 use in air-filled packing cushions, the film comprising a web of material having a leading end  
9 and a trailing end, wherein the web of material is adapted for continuous inflation of a series of  
10 inflatable chambers positioned along the length of the web as the web is advanced through an  
11 inflation machine (for example, the AirPouch FastWrap HD Bubbles are a film that has a leading  
12 and trailing end with a number of chambers that can be continuously inflated by an inflation  
13 machine).

14 28. The Accused Automated Bubbles Webs have a longitudinal channel extending  
15 near an edge of the material and extending the entire length of the material without interruption,  
16 wherein the channel is open at the leading end of the material (for example, the AirPouch  
17 FastWrap HD Bubbles have a longitudinal channel at the top of the material).

18 29. As shown in the graphic below, the Accused Automated Bubbles Webs have a  
19 plurality of generally rectangular inflatable chambers each having three sides closed and a fourth  
20 side with an unsealed opening into the longitudinally extending channel, and preformed seal line  
21 elements within the interior of the chambers to permit the chambers to be folded along a line  
22 extending through the seal line elements (for example, each chamber of the AirPouch FastWrap  
23 HD Bubbles has four sides, one of which has an unsealed opening; and as shown below, each  
24 chamber has preformed elements within the chambers that permit the chambers to be folded  
25 along the preformed seal line elements).

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30. The Accused Automated Bubbles Webs have a plurality of laterally extending perforations separating each chamber or a plurality of chambers, wherein the laterally extending perforations extend at least partway across the width of the material (for example, the AirPouch FastWrap HD Bubbles has lateral perforations that separate chambers of the film).

31. Automated Packaging has constructive knowledge of FPI's rights under the '774 patent by virtue of FPI's website <http://www.fpintl.com/patent.aspx>, which identifies the Cell-O air cushions, the POWER PAK'R™ air cushions, the PRO PAK'R™ air cushions, and the MINI PAK'R™ air cushions with the '774 patent. Furthermore, Automated has had actual knowledge that its activities infringe the '774 patent since at least the date of the filing of this Complaint.

32. Upon information and belief, Automated Packaging has profited from and will continue to profit from its infringing activities. FPI has been and will be damaged by Automated Packaging's infringing activities and is entitled to recover damages adequate to compensate it for such infringement, but, in no event, less than a reasonable royalty. The amount of monetary damages FPI has suffered by the acts of Automated Packaging set forth above cannot be determined without an accounting.

33. The harm to FPI within this judicial district and elsewhere in the United States resulting from the acts of infringement of the '774 Patent by Automated Packaging is irreparable, continuing, not fully compensable by money damages, and will continue unless Automated Packaging's infringing activities are enjoined.

1           34. Automated Packaging's infringing activities relating to the Accused Automated  
2 Bubbles Webs make this an exceptional case entitling FPI to the recovery of its reasonable  
3 attorneys' fees under 35 U.S.C. § 285 or other applicable law.

4                   **COUNT 2 (Direct Infringement of U.S. Patent No. 9,003,743 )**

5           35. FPI incorporates by reference the allegations in paragraphs 1-34 above.

6           36. On April 14, 2015, the United States Patent & Trademark Office issued U.S.  
7 Patent No. 9,003,743 for "Apparatus for Inflating and Sealing Pillows in Packaging Cushions."  
8 A true and correct copy of the '743 Patent is attached hereto as Exhibit B. By assignment from  
9 the inventors in May of 2009, FPI is the sole owner of the '743 Patent.

10           37. On information and belief, Automated Packaging has infringed and continues to  
11 infringe one or more claims of the '743 patent, including claim 1, literally or under the doctrine  
12 of equivalents, by making, using, selling, and/or offering to sell in the United States without  
13 authority, at least the Accused Automated EZ-Tear Webs.

14           38. The Accused Automated System is a system for manufacturing air cushions for  
15 use as packaging dunnage (for example, the AirPouch<sup>®</sup> Express 3<sup>™</sup> in combination with the  
16 Accused Automated Films is a system for making packaging dunnage).

17           39. As shown in the graphic below, the Accused Automated System utilizes the  
18 Accused Automated EZ-Tear Webs, which are a longitudinally extending plastic film comprising  
19 a relatively narrow longitudinally extending channel, at least one row of generally rectangular  
20 presealed inflatable chambers each having three sides closed and a fourth side with an unsealed  
21 opening into the longitudinally extending channel, and a plurality of laterally extending  
22 perforations separating the inflatable chambers, wherein the laterally extending perforations  
23 extend the entire width of the film (for example, as shown below, the Accused Automated EZ-  
24 Tear Webs define chambers with four sides that are separated by perforations that extend the  
25 entire width of the film).





40. The Accused Automated System includes an inflation machine for inflating the inflatable chambers of the plastic film (for example, the AirPouch<sup>®</sup> Express 3<sup>™</sup> is a machine for inflating plastic film).

41. The Accused Automated System contains a feed mechanism that causes the plastic film to be gripped at or near the narrow longitudinally extending channel and drawn in a continuous and uninterrupted manner through inflation, sealing and slitting mechanisms in a planar path (for example, the AirPouch<sup>®</sup> Express 3<sup>™</sup> contains a feed mechanism that pulls in the film having a sealing and slitting mechanism in a planar path).

42. The Accused Automated System includes an inflation mechanism that comprises a source of inflation gas and an air outlet which together cause inflation gas to be injected into the relatively narrow longitudinally extending channel of the plastic film as the plastic film is drawn through the inflation mechanism (for example, the AirPouch<sup>®</sup> Express 3<sup>™</sup> contains an inflation mechanism with a source of gas that injects air into the film as it is drawn through the

1 machine).

2 43. The Accused Automated System includes a sealing mechanism that comprises an  
3 electrically energized heating element that generates heat to be delivered to the inflation side of  
4 one or more of the inflatable chambers to seal the unsealed opening and trap the inflation gas  
5 within the inflatable chambers as the plastic film is drawn through the sealing mechanism (for  
6 example, the AirPouch<sup>®</sup> Express 3<sup>™</sup> seals the edge of the Accused Automated EZ-Tear Webs  
7 after they are filled and as they are drawn through the machine).

8 44. The Accused Automated System includes a slitting mechanism comprising a  
9 blade that slices open the relatively narrow longitudinally extending channel of the plastic film as  
10 the film is drawn through the slitting mechanism (for example, the AirPouch<sup>®</sup> Express 3<sup>™</sup> slices  
11 open the narrow channel in the film with a blade as it is drawn through the machine).

12 45. Automated Packaging has constructive knowledge of FPI's rights under the '743  
13 patent by virtue of FPI's website <http://www.fpintl.com/patent.aspx>, which identifies the Cell-O  
14 air cushions, the POWER PAK'R<sup>™</sup> air cushions, the PRO PAK'R<sup>™</sup> air cushions, and the MINI  
15 PAK'R<sup>™</sup> air cushions with the '743 patent. Furthermore, Automated has had actual knowledge  
16 that its activities infringe the '743 patent since at least the date of the filing of this Complaint.

17 46. Upon information and belief, Automated Packaging has profited from and will  
18 continue to profit from its infringing activities. FPI has been and will be damaged by Automated  
19 Packaging's infringing activities and is entitled to recover damages adequate to compensate it for  
20 such infringement, but, in no event, less than a reasonable royalty. The amount of monetary  
21 damages FPI has suffered by the acts of Automated Packaging set forth above cannot be  
22 determined without an accounting.

23 47. The harm to FPI within this judicial district and elsewhere in the United States  
24 resulting from the acts of infringement of the '743 Patent by Automated Packaging is irreparable,  
25 continuing, not fully compensable by money damages, and will continue unless Automated  
26 Packaging's infringing activities are enjoined.

27 48. Automated Packaging's infringing activities relating to the Accused Automated  
28 System make this an exceptional case entitling FPI to the recovery of its reasonable attorneys'

1 fees under 35 U.S.C. § 285 or other applicable law.

2 **VIII. PRAYER FOR RELIEF**

3 WHEREFORE, FPI respectfully requests that this Court enter judgment against  
4 Automated Packaging as follows:

- 5 a. That Automated Packaging is liable for infringement, inducing the infringement,  
6 and/or contributing to the infringement of one or more claims of the '774 Patent and  
7 the '743 Patent, as alleged herein;
- 8 b. That Automated Packaging and its parents, subsidiaries, affiliates, successors,  
9 predecessors, assigns, and the officers, directors, agents, servants and employees of  
10 each of the foregoing, customers and/or licensees and those persons acting in concert  
11 or participation with any of them, are preliminarily and permanently enjoined and  
12 restrained from continued infringement, including but not limited to using, making,  
13 importing, offering for sale and/or selling products that infringe, and from  
14 contributing to and/or inducing the infringement of each of the Asserted Patents prior  
15 to their expiration, including any extensions;
- 16 c. An award of damages adequate to compensate FPI for the infringement that has  
17 occurred, pursuant to 35 U.S.C. § 284, including prejudgment and postjudgment  
18 interest;
- 19 d. An award of treble damages for willful infringement pursuant to 35 U.S.C. § 284;
- 20 e. An award of attorneys' fees based on this being an exceptional case pursuant to 35  
21 U.S.C. § 285 and 15 U.S.C § 1117(a), including prejudgment interest on such fees;
- 22 f. An award of costs and expenses in this action;
- 23 g. An award of any further relief that this Court deems just and proper.
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Respectfully submitted,

By /s/ Richard G. Frenkel

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FREE-FLOW PACKAGING  
INTERNATIONAL, INC.

**DEMAND FOR JURY TRIAL**

In accordance with Federal Rule of Civil Procedure 38(b), and Northern District Local Rule 3-6(a), Plaintiff hereby demands a jury trial on all issues triable by a jury.

Dated: March 31, 2017

Respectfully submitted,

By /s/ Richard G. Frenkel

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