

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Civil Action No.: 0:13-cv-60419

MARY DER OVANESIAN,

Plaintiff,

v.

MODULAR THERMAL TECHNOLOGIES, INC., a Delaware corporation; CVS PHARMACY, INC., a Rhode Island corporation; RITE AID CORPORATION, a Delaware corporation; RITE AID OF FLORIDA, INC., a Florida corporation; WALGREEN CO., an Illinois corporation; AMAZON.COM, INC., a Delaware corporation; DRUGSTORE.COM, INC., a Delaware corporation; FRUTH PHARMACY, INC., a West Virginia corporation; GIANT EAGLE, INC., a Pennsylvania corporation; HARRIS TEETER, INC., a North Carolina corporation; HARTIG DRUG COMPANY, an Iowa corporation; KERR DRUG, INC., a Delaware corporation; KINNEY DRUGS, INC., a New York corporation; LEWIS DRUGS, INC., a South Dakota corporation; MEIJER, INC., a Michigan corporation; NAVARRO DISCOUNT PHARMACIES, LLC, a Florida limited liability corporation; RALEY'S, a California corporation; SAVE MART SUPERMARKETS, a California corporation; TARGET CORPORATION, a Minnesota corporation; TARGET.COM, a Minnesota corporation; SUPERVALU STORES INC., a Delaware corporation; WHITE DRUG ENTERPRISES, INC., a North Dakota corporation; STEPHEN L. LAFRANCE PHARMACY, INC., an Arkansas corporation; and ASSOCIATED WHOLESALE GROCERS, INC., a Kansas corporation;

Defendants.

**COMPLAINT**

**Jury Demanded**

## **COMPLAINT**

Plaintiff, MARY DER OVANESIAN (“Der Ovanesian”), hereby sues Defendants, MODULAR THERMAL TECHNOLOGIES, INC. (“Modular Thermal”), CVS PHARMACY, INC. (“CVS”), RITE AID CORPORATION (“Rite Aid”), RITE AID OF FLORIDA, INC. (“Rite Aid of FL”), WALGREEN CO. (“Walgreens”), AMAZON.COM, INC. (“Amazon”), DRUGSTORE.COM, INC. (“Drugstore”), FRUTH PHARMACY, INC. (“Fruth”), GIANT EAGLE, INC. (“Giant Eagle”), HARRIS TEETER, INC. (“Harris Teeter”), HARTIG DRUG COMPANY (“Hartig Drug”), KERR DRUG, INC. (“Kerr Drug”), KINNEY DRUGS, INC. (“Kinney Drugs”), LEWIS DRUGS, INC. (“Lewis Drugs”), MEIJER, INC. (“Meijer”), NAVARRO DISCOUNT PHARMACIES, LLC (“Navarro”), RALEY’S (“Raley’s”), SAVE MART SUPERMARKETS (“Save Mart”), TARGET CORPORATION (“Target”), TARGET.COM (“Target.com”), SUPERVALU STORES, INC. (“Supervalu”), WHITE DRUG ENTERPRISES, INC. (“White Drug”), STEPHEN L. LAFRANCE PHARMACY, INC. (“Stephen LaFrance”) and ASSOCIATED WHOLESALE GROCERIES, INC. (“Associated Wholesale”) (collectively “Defendants”), and alleges:

## **THE PARTIES**

1. Der Ovanesian is an individual and an inventor who is a resident and citizen of the State of Florida.
2. Der Ovanesian alleges on information and belief that Defendant Modular Thermal is a Delaware corporation with its principal place of business located at 935 Roger Williams Way, North Kingstown, Rhode Island 02852.
3. Der Ovanesian alleges on information and belief that Defendant CVS is a Rhode Island corporation with its principal place of business located at One CVS Drive, Woonsocket,

Rhode Island 02895.

4. Der Ovanesian alleges on information and belief that Defendant Rite Aid is a Delaware corporation with its principal place of business located at 30 Hunter Lane, Camp Hill, Pennsylvania 17105.

5. Der Ovanesian alleges on information and belief that Defendant Rite Aid of FL is a Florida corporation with its principal place of business located at 30 Hunter Lane, Camp Hill, Pennsylvania 17105.

6. Der Ovanesian alleges on information and belief that Defendant Walgreens is an Illinois corporation with its principal place of business located at 200 Wilmot Road, Deerfield, Illinois 60015.

7. Der Ovanesian alleges on information and belief that Defendant Amazon is a Delaware corporation with its principal place of business located at 1516 2<sup>nd</sup> Avenue, Seattle, Washington 98101.

8. Der Ovanesian alleges on information and belief that Defendant Drugstore is a Delaware corporation with its principal place of business located at 411 108<sup>th</sup> Avenue N.E., Suite 1400, Bellevue, Washington 98004.

9. Der Ovanesian alleges on information and belief that Defendant Fruth is a West Virginia corporation with its principal place of business located at 4016 Ohio River Road, Point Pleasant, West Virginia 25550.

10. Der Ovanesian alleges on information and belief that Defendant Giant Eagle is a Pennsylvania corporation with its principal place of business located at 101 Kappa Drive, Pittsburgh, Pennsylvania 15238.

11. Der Ovanesian alleges on information and belief that Defendant Harris Teeter is a

North Carolina corporation with its principal place of business located at 701 Crestdale Road, Matthews, North Carolina 28105.

12. Der Ovanesian alleges on information and belief that Defendant Hartig Drug is an Iowa corporation with its principal place of business located at 703 Main Street, Dubuque, Iowa 52004.

13. Der Ovanesian alleges on information and belief that Defendant Kerr Drug is a Delaware corporation with its principal place of business located at 3220 Spring Forest Road, Raleigh, North Carolina 27616.

14. Der Ovanesian alleges on information and belief that Defendant Kinney Drugs is a New York corporation with its principal place of business located at 29 East Main Street, Gouverneur, New York 13642.

15. Der Ovanesian alleges on information and belief that Defendant Lewis Drugs is a South Dakota corporation with its principal place of business located at 2701 S. Minnesota Avenue, Suite 1, Sioux Falls, South Dakota 57105.

16. Der Ovanesian alleges on information and belief that Defendant Meijer is a Michigan corporation with its principal place of business located at 2929 Walker Avenue Northwest, Grand Rapids, Michigan 49544.

17. Der Ovanesian alleges on information and belief that Defendant Navarro is a Florida limited liability company with its principal place of business located at 9400 N.W. 104<sup>th</sup> Street, Medley, Florida 33178.

18. Der Ovanesian alleges on information and belief that Defendant Raley's is a California corporation with its principal place of business located at 500 W. Capitol Avenue, West Sacramento, California 95605.

19. Der Ovanesian alleges on information and belief that Defendant Save Mart is a California corporation with its principal place of business located at 1800 Standiford Avenue, Modesto, California 95350.

20. Der Ovanesian alleges on information and belief that Defendant Target is a Minnesota corporation with its principal place of business located at 1000 Nicollet Mall, TPS-2672, Minneapolis, Minnesota 55403.

21. Der Ovanesian alleges on information and belief that Defendant Target.com is a Minnesota corporation with its principal place of business located at 1000 Nicollet Mall, TPS-2672, Minneapolis, Minnesota 55403.

22. Der Ovanesian alleges on information and belief that Defendant Supervalu is a Delaware corporation with its principal place of business located at 7075 Flying Cloud Drive, Eden Prairie, Minnesota 55344.

23. Der Ovanesian alleges on information and belief that Defendant White Drug is a North Dakota corporation with its principal place of business located at 6055 Nathan Lane N., Suite 200, Plymouth, Minnesota 55442.

24. Der Ovanesian alleges on information and belief that Defendant Stephen LaFrance is an Arkansas corporation with its principal place of business located at 2100 Brookwood Drive, Little Rock, Arkansas 72202.

25. Der Ovanesian alleges on information and belief that Defendant Associated Wholesale is a Kansas corporation with its principal place of business located at 500 Kansas Avenue, Kansas City, Kansas 66106.

### **JURISDICTION AND VENUE**

26. This is a civil action for patent infringement arising under the patent laws of the

United States, including 35 U.S.C. § 271; and for violation of the Florida Deceptive and Unfair Trade Practices Act (hereinafter “FDUTPA”) under Fla. Stat. § 501.201, *et seq.*

27. This court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1338(a) and 28 U.S.C. § 1338(b).

28. The state law claims asserted herein are so related to those over which this Court has original jurisdiction as to form part of the same case or controversy. This Court therefore has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the state law claims asserted herein.

29. Der Ovanesian alleges on information and belief that Modular Thermal has sent infringing goods into the stream of commerce knowing or understanding those goods would be sold within the State of Florida, including this District, to Der Ovanesian’s injury, which relate to the claims asserted by Der Ovanesian, and out of which Der Ovanesian’s claims, in part, arise.

30. Der Ovanesian alleges on information and belief that Modular Thermal has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over Modular Thermal is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

31. Der Ovanesian alleges on information and belief that Defendant CVS maintains the website located at [www.cvs.com](http://www.cvs.com) (“CVS Website”), which is a commercially active website where consumers from the State of Florida can enter into transactions with CVS to purchase CVS’s infringing goods. True and correct copies of webpages from the CVS Website are attached hereto as **Exhibit “A.”**

32. Der Ovanesian alleges on information and belief that Defendant CVS has

operated, conducted, engaged in and/or carried on business within the State of Florida, has physical store locations within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court's exercise of personal jurisdiction over CVS is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

33. Der Ovanesian alleges on information and belief, that Defendant Rite Aid maintains the web site located at [www.riteaid.com](http://www.riteaid.com) ("Rite Aid Website"), which is a commercially active website where consumers from the State of Florida can enter into transactions with Rite Aid to purchase Rite Aid's infringing goods. True and correct copies of webpages from the Rite Aid Website are attached hereto as **Exhibit "B."**

34. Der Ovanesian alleges on information and belief that Defendant Rite Aid has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court's exercise of personal jurisdiction over Rite Aid is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

35. Der Ovanesian alleges on information and belief that Defendant Rite Aid of FL has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court's exercise of personal jurisdiction over Rite Aid of FL is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

36. Der Ovanesian alleges on information and belief, that Defendant Walgreens maintains the website located at [www.walgreens.com](http://www.walgreens.com) ("Walgreens Website"), which is a

commercially active website where consumers from the State of Florida can enter into transactions with Walgreens to purchase Walgreen's infringing goods. True and correct copies of webpages from the Walgreens Website are attached hereto as **Exhibit "C."**

37. Der Ovanesian alleges on information and belief that Defendant Walgreens has operated, conducted, engaged in and/or carried on business within the State of Florida, has physical store locations within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court's exercise of personal jurisdiction over Walgreens is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

38. Der Ovanesian alleges on information and belief, that Defendant Amazon maintains the web site located at [www.amazon.com](http://www.amazon.com) ("Amazon Website"), which is a commercially active website where consumers from the State of Florida can enter into transactions with Amazon to purchase Amazon's infringing goods. True and correct copies of webpages from the Amazon Website are attached hereto as **Exhibit "D."**

39. Der Ovanesian alleges on information and belief that Defendant Amazon has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court's exercise of personal jurisdiction over Amazon is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

40. Der Ovanesian alleges on information and belief, that Defendant Drugstore maintains the web site located at [www.drugstore.com](http://www.drugstore.com) ("Drugstore Website"), which is a commercially active website where consumers from the State of Florida can enter into transactions with Drugstore to purchase Drugstore's infringing goods. True and correct copies of



webpages from the Drugstore Website are attached hereto as **Exhibit “E.”**

41. Der Ovanesian alleges on information and belief that Defendant Drugstore has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over Drugstore is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

42. Der Ovanesian alleges on information and belief, that Defendant Fruth maintains the web site located at [www.fruthpharmacy.com](http://www.fruthpharmacy.com) (“Fruth Website”), which is a commercially active website where consumers from the State of Florida can frequently enter into commercial transactions with Fruth and have goods shipped to Florida residences. True and correct copies of webpages from the Fruth Website are attached hereto as **Exhibit “F.”**

43. Der Ovanesian alleges on information and belief that Defendant Fruth has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over Fruth is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

44. Der Ovanesian alleges on information and belief, that Defendant Giant Eagle maintains the web site located at [www.gianteagle.com](http://www.gianteagle.com) (“Giant Eagle Website”), which is a commercially active website where consumers from the State of Florida can enter into transactions with Giant Eagle to purchase Giant Eagle’s infringing goods. True and correct copies of webpages from the Giant Eagle Website are attached hereto as **Exhibit “G.”**

45. Der Ovanesian alleges on information and belief that Defendant Giant Eagle has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to

supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court's exercise of personal jurisdiction over Giant Eagle is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

46. Der Ovanesian alleges on information and belief that Defendant Harris Teeter has operated, conducted, engaged in and/or carried on business within the State of Florida, has physical store locations within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court's exercise of personal jurisdiction over Harris Teeter is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

47. Der Ovanesian alleges on information and belief, that Defendant Hartig Drug maintains the web site located at [www.hartigdrug.com](http://www.hartigdrug.com) ("Hartig Drug Website"), which is a commercially active website where consumers from the State of Florida can frequently enter into commercial transactions with Hartig Drug and have goods shipped to Florida residences. True and correct copies of webpages from the Hartig Drug Website are attached hereto as **Exhibit "H."**

48. Der Ovanesian alleges on information and belief that Defendant Hartig Drug has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court's exercise of personal jurisdiction over Hartig Drug is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

49. Der Ovanesian alleges on information and belief, that Defendant Kerr Drug maintains the web site located at [www.kerrdrug.com](http://www.kerrdrug.com) ("Kerr Drug Website"), which is a commercially active website where consumers from the State of Florida can frequently enter into

commercial transactions with Kerr Drug and have goods shipped to Florida residences. True and correct copies of webpages from the Kerr Drug Website are attached hereto as **Exhibit “I.”**

50. Der Ovanesian alleges on information and belief that Defendant Kerr Drug has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over Kerr Drug is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

51. Der Ovanesian alleges on information and belief, that Defendant Kinney Drugs maintains the web site located at [www.kinneydrugs.com](http://www.kinneydrugs.com) (“Kinney Drugs Website”), which is a commercially active website where consumers from the State of Florida can frequently enter into commercial transactions with Kinney Drugs and have goods shipped to Florida residences. True and correct copies of webpages from the Kinney Drugs Website are attached hereto as **Exhibit “J.”**

52. Der Ovanesian alleges on information and belief that Defendant Kinney Drugs has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over Kinney Drugs is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

53. Der Ovanesian alleges on information and belief, that Defendant Lewis Drugs maintains the web site located at [www.lewisdrugs.com](http://www.lewisdrugs.com) (“Lewis Drugs Website”), which is a commercially active website where consumers from the State of Florida can frequently enter into commercial transactions with Lewis Drugs and have goods shipped to Florida residences. True

and correct copies of page(s) from the Lewis Drugs Website are attached hereto as **Exhibit “K.”**

54. Der Ovanesian alleges on information and belief that Defendant Lewis Drugs has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over Lewis Drugs is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

55. Der Ovanesian alleges on information and belief, that Defendant Meijer maintains the web site located at [www.meijer.com](http://www.meijer.com) (“Meijer Website”), which is a commercially active website where consumers from the State of Florida can frequently enter into commercial transactions with Meijer and have goods shipped to Florida residences. True and correct copies of page(s) from the Meijer Website are attached hereto as **Exhibit “L.”**

56. Der Ovanesian alleges on information and belief that Defendant Meijer has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over Meijer is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

57. Der Ovanesian alleges on information and belief that Defendant Navarro has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over Navarro is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

58. Der Ovanesian alleges on information and belief, that Defendant Raley’s maintains the web site at [www.raleys.com](http://www.raleys.com) (“Raley’s Website”), which is a commercially active

website where consumers from the State of Florida can frequently enter into commercial transactions with Raley's and have goods shipped to Florida residences. True and correct copies of webpages from the Raley's Website are attached hereto as **Exhibit "M."**

59. Der Ovanesian alleges on information and belief that Defendant Raley's has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court's exercise of personal jurisdiction over Raley's is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

60. Der Ovanesian alleges on information and belief, that Defendant Save Mart maintains the web site located at [www.savemart.com](http://www.savemart.com) ("Save Mart Website"), which is a commercially active website where consumers from the State of Florida can frequently enter into commercial transactions with Save Mart and have goods shipped to Florida residences. True and correct copies of webpage(s) from the Save Mart Website are attached hereto as **Exhibit "N."**

61. Der Ovanesian alleges on information and belief that Defendant Save Mart has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court's exercise of personal jurisdiction over Save Mart is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

62. Der Ovanesian alleges on information and belief that Defendant Target has operated, conducted, engaged in and/or carried on business within the State of Florida, has physical store locations within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court's exercise of personal jurisdiction over Target is consistent with the

Constitution of the United States and Fla. Stat. § 48.193.

63. Der Ovanesian alleges on information and belief, that Defendant Target.com maintains the web site located at [www.target.com](http://www.target.com) (“Target.com Website”), which is a commercially active website where consumers from the State of Florida can enter into transactions with Target.com to purchase Target.com’s infringing goods. True and correct copies of webpages from the Target.com Website are attached hereto as **Exhibit “O.”**

64. Der Ovanesian alleges on information and belief that Defendants Target and operated, conducted, engaged in and/or carried on has transacted business within the State of Florida, has physical store locations within the State of Florida contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over Target.com is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

65. Der Ovanesian alleges on information and belief that Defendant Supervalu has operated, conducted, engaged in and/or carried on business within the State of Florida, has physical store locations within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over Supervalu is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

66. Der Ovanesian alleges on information and belief, that Defendant White Drug maintains the web site located at [www.thriftywhite.com](http://www.thriftywhite.com) (“White Drug Website”), which is a commercially active website where consumers from the State of Florida can frequently enter into commercial transactions with White Drug and have goods shipped to Florida residences. True and correct copies of webpages from the White Drug Website are attached hereto as

## **Exhibit “P.”**

67. Der Ovanesian alleges on information and belief that Defendant White Drug has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over White Drug is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

68. Der Ovanesian alleges on information and belief that Defendant Stephen LaFrance has operated, conducted, engaged in and/or carried on business within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over Stephen LaFrance is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

69. Der Ovanesian alleges on information and belief that Defendant Associated Wholesale has operated, conducted, engaged in and/or carried on business within the State of Florida, has physical locations within the State of Florida, contracted to supply services or goods within the State of Florida, and/or caused injury within the State of Florida. By virtue of its actions described herein, this Court’s exercise of personal jurisdiction over Associated Wholesale is consistent with the Constitution of the United States and Fla. Stat. § 48.193.

70. Venue is proper in this judicial district pursuant to, at least, 28 U.S.C. §§ 1391(b) and/or 1400(b).

### **FACTUAL BACKGROUND**

71. Der Ovanesian developed certain novel therapeutic devices that are protected by United States Patent No. 6,074,415 (“the ’415 patent”) and United States Patent No. 6,083,256

(“the ’256 patent”). A true and correct copy of the ’415 patent is attached hereto and incorporated herein as **Exhibit “Q.”** A true and correct copy of the ’256 patent is attached hereto and incorporated herein as **Exhibit “R.”**

72. Der Ovanesian is the owner and holder of all of the rights, title and interests in the ’415 patent and the ’256 patent.

73. Der Ovanesian has not licensed the ’415 patent or the ’256 patent to any of the Defendants.

74. The ’415 patent claims a device for heating or cooling a surface with a first volume filled with a first high thermal capacity material and a second volume filled with a second high thermal capacity material.

75. The ’256 patent claims a heating or cooling pad with an envelope containing a high thermal capacity first material and at least one inner pouch that includes a high thermal capacity second material wherein the first and second materials cannot mix.

76. Modular Thermal imports, makes, uses, sells, and/or offers for sale within the United States and within the State of Florida, either directly or through established distribution channels, a device for heating or cooling a surface with a first and second volume filled with high thermal capacity material, including a device designated as “Cryo-Max.” True and correct copies of webpages from Modular Thermal’s Website describing the device are attached hereto as **Exhibit “S.”**

77. Modular Thermal imports, makes, uses, sells, and/or offers for sale within the United States and within the State of Florida, either directly or through established distribution channels, a device for a heating or cooling pad with an envelope containing a high thermal capacity first material and at least one inner pouch that includes a high thermal capacity second



material wherein the first and second materials cannot mix, including a device designated as Cryo-Max. True and correct copies of webpages from Modular Thermal's Website listing distributors are attached hereto as **Exhibit "T."**

78. Modular Thermal's Cryo-Max products are covered by one or more claims of the '415 patent and Modular Thermal's importation, manufacture, use, sale, and/or offer for sale infringes one or more claims of the '415 patent. More specifically, Modular Thermal's Cryo-Max products are covered by and infringe upon at least Claims 1-8, 13-15 and 17-18 of the '415 patent.

79. Modular Thermal's Cryo-Max products are covered by one or more claims of the '256 patent and Modular Thermal's importation, manufacture, use, sale, and/or offer for sale infringes one or more claims of the '256 patent. More specifically, Modular Thermal's Cryo-Max products are covered by and infringe upon at least Claims 1-5 and 9-11 of the '256 patent.

80. Upon information and belief, Modular Thermal has sold products that are covered by one or more claims of the '415 patent to CVS, Rite Aid, Rite Aid of FL, Walgreens, Amazon, Drugstore, Fruth, Giant Eagle, Harris Teeter, Hartig Drug, Kerr Drug, Kinney Drugs, Lewis Drugs, Meijer, Navarro, Raley's, Save Mart, Target, Target.com, Supervalu, White Drug, Stephen LaFrance and Associated Wholesale (hereinafter collectively referred to as the "Distributor Defendants").

81. Upon information and belief, Modular Thermal has sold products that are covered by one or more claims of the '256 patent to the Distributor Defendants.

82. The Distributor Defendants have in turn sold infringing products to the consuming public.

83. Modular Thermal has represented that the Distributor Defendants were each a

distributor of the Modular Thermal products accused of infringement herein.

84. Upon information and belief, Modular Thermal had knowledge of the '415 patent and the '256 patent but sold the infringing products despite such knowledge.

**FIRST CAUSE OF ACTION**  
**(Patent Infringement of the '415 Patent against Modular Thermal)**

85. Der Ovanesian hereby realleges and incorporates the allegations contained in paragraphs 1 through 84 above as if fully set forth herein.

86. Modular Thermal has infringed and continues to infringe, directly and indirectly through contributory and/or induced infringement, one or more claims of the '415 patent by making, using, selling, offering for sale within the United States, or importing into the United States systems and products that embody one or more of the claims of the '415 patent, or by contributing to infringement, inducing others to infringe the '415 patent, or carrying out acts constituting infringement under 35 U.S.C. § 271.

87. The conduct of Modular Thermal as set forth hereinabove, including, for example, Modular Thermal's making, using and/or selling a device for heating or cooling a surface with a first and second volume filled with high thermal capacity material identified as Cryo-Max, gives rise to a cause of action for infringement of the '415 patent, pursuant to at least 35 U.S.C. §§ 271 and 281.

88. Modular Thermal has manufactured, offered for sale, and sold infringing products, including, for example, a device for heating or cooling a surface with a first volume containing a first high thermal capacity material and second volume containing a high thermal capacity material identified as Cryo-Max, despite an objectively high likelihood that its actions constitute infringement.

89. Der Ovanesian alleges on information and belief that Modular Thermal's

infringement of the '415 patent has been and continues to be willful, deliberate and intentional.

90. Der Ovanesian alleges on information and belief that Modular Thermal has gained profits by virtue of its infringement of the '415 patent.

91. By reason of the foregoing, Der Ovanesian has suffered and will continue to suffer damages and irreparable harm and is therefore entitled to monetary and/or injunctive relief against Modular Thermal, pursuant to 35 U.S.C. §§ 283–85, as more fully set forth herein. Unless enjoined, Modular Thermal will continue its infringing conduct.

**SECOND CAUSE OF ACTION**  
**(Patent Infringement of the '256 Patent against Modular Thermal)**

92. Der Ovanesian hereby realleges and incorporates the allegations contained in paragraphs 1 through 84 above as if fully set forth herein.

93. Modular Thermal has infringed and continues to infringe, directly and indirectly through contributory and/or induced infringement, one or more claims of the '256 patent by making, using, selling, offering for sale within the United States, or importing into the United States systems and products that embody one or more of the claims of the '256 patent, or by contributing to infringement, inducing others to infringe the '256 patent, or carrying out acts constituting infringement under 35 U.S.C. § 271.

94. The conduct of Modular Thermal as set forth hereinabove, including, for example, Modular Thermal's making, using and/or selling a heating or cooling pad with an envelope containing a high thermal capacity first material and at least one inner pouch that includes a high thermal capacity second material wherein the first and second materials cannot mix identified as Cryo-Max, gives rise to a cause of action for infringement of the '256 patent, pursuant to at least 35 U.S.C. §§ 271 and 281.

95. Modular Thermal has manufactured, offered for sale, and sold infringing products,

including, for example, a heating or cooling pad with an envelope containing a high thermal capacity first material and at least one inner pouch that includes a high thermal capacity second material wherein the first and second materials cannot mix identified as Cryo-Max, despite an objectively high likelihood that its actions constitute infringement.

96. Der Ovanesian alleges on information and belief that Modular Thermal's infringement of the '256 Patent has been and continues to be willful, deliberate and intentional.

97. By reason of the foregoing, Der Ovanesian has suffered damages and irreparable harm and is therefore entitled to monetary and/or injunctive relief against Modular Thermal, pursuant to 35 U.S.C. §§ 283–85, as more fully set forth herein. Unless enjoined, Modular Thermal will continue its infringing conduct.

**THIRD CAUSE OF ACTION**  
**(Violation of FDUTPA against Modular Thermal)**

98. Der Ovanesian hereby realleges and incorporates the allegations contained in paragraphs 1 through 84, 87 through 91, and 94 through 98 above as if fully set forth herein.

99. Modular Thermal, by its actions set forth hereinabove, has engaged in intentional business acts or practices that are unlawful, unfair, and/or fraudulent and that have caused a material diminution in the value of the '415 patent and '256 patent, in violation of, *inter alia*, Fla. Stat. §§ 501.203 and 501.204.

100. Modular Thermal's conduct as set forth hereinabove gives rise to a cause of action for violation of FDUTPA and related wrongs under the statutory and common law of the State of Florida, including at least Fla. Stat. § 501.201, *et seq.*

101. By reason of the foregoing, Der Ovanesian has suffered damages and irreparable harm.

102. By reason of the foregoing, Der Ovanesian is entitled to actual and punitive

damages from Modular Thermal, along with her attorneys' fees and costs, pursuant to at least Fla. Stat. § 501.207, § 501.2075, § 501.2105 and § 501.211 as more fully set forth herein.

**FOURTH CAUSE OF ACTION**  
**(Patent Infringement of the '415 Patent against the Distributor Defendants)**

103. Der Ovanesian hereby realleges and incorporates the allegations contained in paragraphs 1 through 84 above as if fully set forth herein.

104. The Distributor Defendants have infringed one or more claims of the '415 patent by making, using, selling, offering for sale within the United States, or importing into the United States systems and products that embody one or more of the claims of the '415 patent, or by contributing to infringement, inducing others to infringe the '415 patent, or carrying out acts constituting infringement under 35 U.S.C. § 271.

105. The conduct of the Distributor Defendants as set forth hereinabove, including, for example, the Distributor Defendants' making, using and/or selling a device for heating or cooling a surface with a first volume containing a first high thermal capacity material and a second volume containing a second high thermal capacity material identified as Cryo-Max, gives rise to a cause of action for infringement of the '415 patent, pursuant to at least 35 U.S.C. §§ 271 and 281.

106. The Distributor Defendants have offered for sale and sold infringing products, including, for example, a device for heating or cooling a surface with a first volume containing a first high thermal capacity material and second volume containing a second high thermal capacity material identified as Cryo-Max, despite an objectively high likelihood that their actions constitute infringement.

107. Der Ovanesian alleges on information and belief that the Distributor Defendants' sales of infringing products have been both willful and deliberate.

108. Der Ovanesian alleges on information and belief that each of the Distributor

Defendants entered into a commercial relationship with Modular Thermal to make, use, and/or sell devices infringing the '415 patent.

109. By reason of the foregoing, Der Ovanesian has suffered damages and irreparable harm and is therefore entitled to monetary and/or injunctive relief against the Distributor Defendants, pursuant to 35 U.S.C. §§ 283–85, as more fully set forth herein. Unless enjoined, the Distributor Defendants will continue their infringing conduct.

**FIFTH CAUSE OF ACTION**  
**(Patent Infringement of the '256 Patent against the Distributor Defendants)**

110. Der Ovanesian hereby realleges and incorporates the allegations contained in paragraphs 1 through 84 above as if fully set forth herein.

111. The Distributor Defendants have infringed one or more claims of the '256 patent by making, using, selling, offering for sale within the United States, or importing into the United States systems and products that embody one or more of the claims of the '256 patent, or by contributing to infringement, inducing others to infringe the '256 patent, or carrying out acts constituting infringement under 35 U.S.C. § 271.

112. The conduct of the Distributor Defendants as set forth hereinabove, including, for example, the Distributor Defendants' making, using and/or selling a device for a heating or cooling pad with an envelope containing a high thermal capacity first material and at least one inner pouch that includes a high thermal capacity second material wherein the first and second materials cannot mix identified as Cryo-Max, gives rise to a cause of action for infringement of the '256 patent, pursuant to at least 35 U.S.C. §§ 271 and 281.

113. The Distributor Defendants have offered for sale and sold infringing products, including, for example, a device for a heating or cooling pad with an envelope containing a high thermal capacity first material and at least one inner pouch that includes a high thermal capacity

second material wherein the first and second materials cannot mix identified as Cryo-Max, despite an objectively high likelihood that their actions constitute infringement.

114. Der Ovanesian alleges on information and belief that the Distributor Defendants' sales of infringing products have been both willful and deliberate.

115. Der Ovanesian alleges on information and belief that each of the Distributor Defendants entered into a commercial relationship with Modular Thermal to make, use, and/or sell devices infringing the '256 patent.

116. By reason of the foregoing, Der Ovanesian has suffered damages and irreparable harm and is therefore entitled to monetary and/or injunctive relief against the Distributor Defendants, pursuant to 35 U.S.C. §§ 283–85, as more fully set forth herein. Unless enjoined, the Distributor Defendants will continue their infringing conduct.

**SIXTH CAUSE OF ACTION**  
**(Violation of FDUTPA against the Distributor Defendants)**

117. Der Ovanesian hereby realleges and incorporates the allegations contained in paragraphs 1 through 84, 105 through 110, and 112 through 117 above as if fully set forth herein.

118. The Distributor Defendants, by their actions set forth hereinabove, have engaged in intentional business acts or practices that are unlawful, unfair, and/or fraudulent and that have caused a material diminution in the value of the '415 patent and the '256 patent, in violation of, *inter alia*, Fla. Stat. §§ 501.203 and 501.204.

119. The Distributor Defendants' conduct, as set forth hereinabove, gives rise to a cause of action for violation of FDUTPA and related wrongs under the statutory and common law of the State of Florida and other states, including at least Fla. Stat. § 501.201, *et seq.*

120. By reason of the foregoing, Der Ovanesian has suffered damages and irreparable harm.

121. By reason of the foregoing, Der Ovanesian is entitled to monetary damages from the Distributor Defendants, along with her attorneys' fees and costs, pursuant to at least Fla. Stat. § 501.207, § 501.2075, § 501.2105 and § 501.211 as more fully set forth herein.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, MARY DER OVANESIAN, prays for judgment as follows:

- A. A judgment finding Defendants jointly and severally liable for infringement of the '415 patent;
- B. A judgment finding Defendants jointly and severally liable for infringement of the '256 patent;
- C. For injunctive relief enjoining Defendants, and their respective officers, directors, agents, employees, representatives and all persons operating in concert with Defendants, as follows:
  - a. from manufacturing any products falling within the scope of the claims of the '415 patent or the '256 patent;
  - b. from using any product or method falling within the scope of any of the claims of the '415 patent or the '256 patent;
  - c. from selling, offering to sell, licensing or purporting to license any product or method falling within the scope of any of the claims of the '415 patent or the '256 patent;
  - d. from importing any product into the United States which falls within the scope of any of the claims of the '415 patent or the '256 patent;
  - e. from actively inducing others to infringe any of the claims of the '415 patent or '256 patent;
  - f. from engaging in acts constituting contributory infringement of any of the claims



of the '415 patent or the '256 patent; and

g. from all other acts of infringement of the '415 patent and the '256 patent;

D. For judgment finding the infringement of the Defendants to be willful, and for an award of enhanced damages in connection with such finding;

E. For judgment finding this to be an exceptional case and awarding Plaintiff her costs and attorneys' fees incurred herein;

F. For judgment finding Defendants liable for unfair trade practices under the Florida Deceptive and Unfair Trade Practices Act.

G. An award of damages adequate to compensate Plaintiff for infringement of the '415 patent and the '256 patent, in an amount to be proven at trial, including treble damages, lost profits damages, reasonable royalty damages, and other damages allowed by 35 U.S.C. §284;

H. An award of actual and punitive damages pursuant to Fla. Stat. § 501.2075 and § 501.211;

I. An award of Plaintiff's costs in bringing this action, pursuant to at least 28 U.S.C. § 1920, 35 U.S.C. § 284, and applicable state statutory and common law, including at least Fla. Stat. § 501.2105;

J. An award of Plaintiff's attorneys' fees, pursuant to applicable state statutory and common law, including at least Fla. Stat. §501.2105;

K. An order that Plaintiff be granted pre-judgment and post-judgment interest; and

L. For such other and further relief this Court deems just and proper.

### **DEMAND FOR JURY TRIAL**

Der Ovanesian demands a trial by jury on all claims and issues so triable.

DATED: February 22, 2013.

Respectfully Submitted,

By: /s/ Joshua D. Martin

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Florida Bar No.: 028100

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