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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 KILO ELIQUID INC, a California
corporation

11 Plaintiff,

12 v.

13 TRAVIS J. PASTORE, an individual;
14 TRAVIS J. PASTORE D.B.A. KILO
EXTRACTS; TRAVIS J. PASTORE
15 D.B.A. KILOLABS; TRAVIS J. PASTORE
D.B.A. KILO LABORATORIES; KILO
16 EXTRACTS, an unknown entity,

17 Defendants.

Case No.: 5:19-cv-01927

COMPLAINT FOR:

1. REGISTERED TRADEMARK INFRINGEMENT AND COUNTERFEITING (15 U.S.C. §§1114, 1117)
2. FEDERAL TRADEMARK DILUTION (15 U.S.C. §1125(c))
3. FALSE ADVERTISING AND UNFAIR COMPETITION (15 U.S.C. §1125(a))
4. UNFAIR COMPETITION (CAL. BUS.& PROF. CODE §17200 AND COMMON LAW)
5. INJURY TO BUSINESS REPUTATION AND DILUTION (CAL. BUS. & PROF. CODE §14330)
6. CANCELATION OF CALIFORNIA TRADEMARK REGISTRATION NO. 306932 (CAL. BUS.& PROF. CODE §14230)
7. INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL



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25 Plaintiff KILO ELIQUID INC, a California corporation (“Plaintiff”), for its Complaint
26 against TRAVIS J. PASTORE, an individual; TRAVIS J. PASTORE D.B.A. KILO
27 EXTRACTS; TRAVIS J. PASTORE D.B.A. KILOLABS; TRAVIS J. PASTORE D.B.A.
28 KILO LABORATORIES; KILO EXTRACTS, an unknown entity, (collectively, “Defendants”)

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1 allege as follows:

2 **I. INTRODUCTION**

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 4 1. Plaintiff is the registered owner of 29 trademarks around the world for the word
 5 “KILO” and designs incorporating the word “KILO.” Among the trademark registrations
 6 owned by Plaintiff are the following four United States registrations for standard character
 7 marks and logo marks(collectively, “Plaintiff’s Marks”):

8 Mark	Registration No.	Registration Date	Goods Identified	Date of First Use
9 	5463661	5/8/2018	Cartomizers, namely, combination electronic cigarette refill cartridges sold empty and atomizers, sold as a component of electronic	8/1/2014
11 	5463662	5/8/2018	cigarettes; Cartridges sold filled with chemical flavorings in liquid form for electronic cigarettes; Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid) comprised of	8/1/2014
13 KILO	4993341	7/5/2016	flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette refill cartridges sold empty; Electronic cigarettes; Flavorings, other than essential oils, for use in electronic cigarettes; Liquid nicotine solutions for use in electronic cigarettes.	8/31/2014
15 KILO	4486397	2/18/2014	Cigars.	9/20/2013

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 17 2. Despite Plaintiff’s above cited federal trademark registrations, Defendant Travis
 18 J. Pastore filed a California Secretary of State trademark application to register his “KILO
 19 Extracts” mark (“California Registered Infringing Mark”) under Class 34 for “vaporizer pens,
 20 essential oils and extracts” on or about May 31, 2019, wherein they claimed a first use date of
 21 March 8, 2017. Defendants have been using the “Kilo Extracts” mark for their products related
 22 to marijuana extracts, including but not limited to products in wax and paste form. Further,
 23 Defendants have been marketing their marijuana extracts products and related service under an
 24 Instagram Account of “kilolabs” and a Facebook Account of “KILO Laboratories.”
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1 3. The California Registered Infringing Mark and social media account names of
2 “kilolabs” and “KILO Laboratories” and other marks used by Defendants containing the word
3 “Kilo” (collectively, “Infringing Marks”) are identical or confusing similar to Plaintiff’s Marks
4 in that they are the combination of the word KILO and a generic/descriptive term. The goods
5 identified are identical or overlap and are related. Defendants’ California trademark registration
6 identified “vaporizer pens,” which is the same product as electronic cigarettes registered with
7 Plaintiff’s Marks. Further, marijuana extracts produced by Defendants could be consumed with
8 the use of vaporizer pens/e-cigarette devices. As such, Defendants are using marks that are
9 confusing similar to Plaintiff’s marks for identical or related goods.

10 4. In short, Defendants are using their Infringing marks in a manner that is likely to
11 cause consumer confusion and deceive the public regarding the source, and/or affiliation of
12 their products with Plaintiff.

13 5. Additionally, Defendants marijuana extracts are considered schedule 1
14 controlled substances under the Federal Controlled Substance Act. As such, Defendants’ use
15 and continued use of the Infringing Marks are unlawful and is causing irreparable harm to
16 Plaintiff’s brand and goodwill by association.

17 6. Plaintiff brings this action in law and in equity for trademark infringement,
18 counterfeiting, dilution, false advertising, unfair competition, and unfair business practices
19 arising under the Trademark Act of 1946, 15 U.S.C. §§ 1051 et seq. (2009) (“Lanham Act”);
20 unfair competition and dilution under CAL. BUS.& PROF. CODE §17200 et seq. and the
21 common law. Among other relief, Plaintiff asks this Court to: (a) preliminarily enjoin
22 Defendants from distributing, marketing or selling e-cigarette related products, including vape
23 cartridge and wax products that may be consumed with vape pens or the like, bearing a
24 confusingly similar mark to Plaintiff’s Marks; (b) permanently enjoin Defendants from
25 distributing, marketing or selling e-cigarette related products, including vape cartridge and wax
26 products that may be consumed with vaporizer pens or the like, a confusingly similar mark to
27 Plaintiff’s Marks; (c) award Plaintiff monetary damages and to treble that award; (d) require
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1 Defendants to disgorge all profits from sales of the goods associated with the Infringing Marks;
2 and (e) award Plaintiff punitive damages, attorney fees, and costs as provided by law.

3 **II. PARTIES**

4 7. Plaintiff KILO ELIQUID INC is a corporation duly organized under the laws of
5 California, having a principle place of business at La Mirada, California.

6 8. Upon information and belief, Defendant TRAVIS J PASTORE, is an individual
7 residing in Riverside County, and is doing business as, or in participation with KILO Extracts,
8 KILO Laboratories, and kilolabs.

9 **III. JURISDICTION AND VENUE**

10 9. This Court has subject matter jurisdiction over Plaintiff’s claims under and
11 pursuant to 28 U.S. Code §§1331,1338 (a) and (b), 15 U.S.C. §1121, and 28 U.S.C. §1367 in
12 that this case arises under the Trademark Act of 1946, 15 U.S.C. §§1051 et seq. ("Lanham
13 Act"), and pursuant to principles of supplemental jurisdiction.

14 10. Venue is proper in the Central District of California under 28 U.S.C. §§ 1391
15 and 1400, inasmuch as, upon information and belief, Defendants resides in this judicial district,
16 a substantial part of the events giving rise to Plaintiff’s claims occurred in this judicial district,
17 and Defendant have committed acts of trademark infringement in this judicial district.

18 **IV. GENERAL ALLEGATION**

19 11. Plaintiff is the owner of all class 34 federal trademark registrations containing or
20 comprised of the word Kilo.

21 12. Since at least as early as 2014, Plaintiff commenced its advertisement and sale
22 of its goods in association with Plaintiff’s Marks.

23 13. Plaintiff is the owner of the federal trademark registration under Reg. No.
24 5463661, filed on September 18, 2017, and issued by the United States Patent and Trademark
25 Office (“PTO”) on May 8, 2018, for KILO logo in star design, as depicted below, in
26 international class 34 for “Cartomizers, namely, combination electronic cigarette refill
27 cartridges sold empty and atomizers, sold as a component of electronic cigarettes; Cartridges
28 sold filled with chemical flavorings in liquid form for electronic cigarettes; Chemical flavorings

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1 in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid)
2 comprised of flavorings in liquid form used to refill electronic cigarette cartridges; Electronic
3 cigarette refill cartridges sold empty; Electronic cigarettes; Flavorings, other than essential oils,
4 for use in electronic cigarettes; Liquid nicotine solutions for use in electronic cigarettes.” A
5 copy of the Certificate of Registration for this mark is attached as **Exhibit 1**.



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8 14. Plaintiff is the owner of the federal trademark registration under Reg. No.
9 5463662, filed on September 18, 2017, and issued by the United States Patent and Trademark
10 Office (“PTO”) on May 8, 2018, for KILO logo in scale design, as depicted below, in
11 international class 34 for “Cartomizers, namely, combination electronic cigarette refill
12 cartridges sold empty and atomizers, sold as a component of electronic cigarettes; Cartridges
13 sold filled with chemical flavorings in liquid form for electronic cigarettes; Chemical flavorings
14 in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid)
15 comprised of flavorings in liquid form used to refill electronic cigarette cartridges; Electronic
16 cigarette refill cartridges sold empty; Electronic cigarettes; Flavorings, other than essential oils,
17 for use in electronic cigarettes; Liquid nicotine solutions for use in electronic cigarettes.” A
18 copy of the Certificate of Registration for this mark is attached as **Exhibit 2**.



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22 15. Plaintiff is the owner of the federal trademark registration under Reg. No.
23 4993341, filed on November 18, 2015, and issued by the United States Patent and Trademark
24 Office (“PTO”) on July 5, 2016, for KILO, a standard character mark, in international class 34
25 for “Cartomizers, namely, combination electronic cigarette refill cartridges sold empty and
26 atomizers, sold as a component of electronic cigarettes; Cartridges sold filled with chemical
27 flavorings in liquid form for electronic cigarettes; Chemical flavorings in liquid form used to
28 refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid) comprised of

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1 flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette refill
2 cartridges sold empty; Electronic cigarettes; Flavorings, other than essential oils, for use in
3 electronic cigarettes; Liquid nicotine solutions for use in electronic cigarettes.” A copy of the
4 Certificate of Registration for this mark is attached as **Exhibit 3**.

5 16. Plaintiff is the owner, as assigned, of the federal trademark registration under
6 Reg. No. 4486397, filed on April 15, 2013, and issued by the United States Patent and
7 Trademark Office (“PTO”) on February 18, 2014, for KILO, a standard character mark, in
8 international class 34 for “Cigars.” A copy of the Certificate of Registration for this mark is
9 attached as **Exhibit 4**.

10 17. Plaintiff markets and sells e-cigarette devices, also known as vaporizer pens,
11 and related products, including cartridges and refill liquids under its KILO brand name.

12 18. Plaintiff has expended large sums of money before the commencement of
13 defendant's activities alleged herein, to the present in developing, advertising and promoting its
14 products using Plaintiff’s Marks in the United States, including California, and elsewhere. As a
15 result of Plaintiff’s advertising and promotion of its products in association with Plaintiff’s
16 Marks, Plaintiff has developed, and has continued to develop a large and growing business in e-
17 cigarette and vaping community in the United States, including California and elsewhere. That
18 business is very valuable to Plaintiff.

19 19. Plaintiff’s goods are famous, distinctive, and well known throughout the United
20 States.

21 20. On or about May 31, 2019, Defendants filed a California Secretary of State
22 trademark registration for the “KILO Extracts” logo, as depicted below, under Registration No.
23 306932 in Class 34 for “vaporizer pens, essential oils and extracts”, wherein they claimed a
24 first use date of March 8, 2017. A copy of the Defendants’ Application for Registration of this
25 mark is attached as **Exhibit 5**.



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21. Defendants have and are currently engaged in the marketing and sale of related goods, including but not limited to, marijuana extracts, in association with images and designs which are unauthorized copies, and/or identical, or substantial similar imitations, see examples depicted below, (“Infringing Marks”) of Plaintiff’s Marks referenced above.



22. On information and belief, since long prior to their acts complained of herein, Defendants have been well aware of Plaintiff’s ownership of Plaintiff’s Marks, alleged herein, and of the goodwill represented and symbolized by each of said trademarks and that the trade recognizes and relies upon said trademarks as identifying plaintiff’s goods and distinguishing said goods from those of others.

23. On information and belief, notwithstanding said knowledge of Plaintiff’s Marks, and indeed by reason of such knowledge, Defendants set up a scheme, and course of conduct to infringe upon plaintiff’s rights in and to Plaintiff’s Marks and to use such infringing marks to mislead and deceive the public into believing that Defendants’ goods are plaintiff’s goods.

24. Plaintiff is further informed and believes, and thereon alleges that, in connection with Defendants’ wrongful acts alleged herein, Defendants have made unauthorized use of the Plaintiff’s Marks, or confusingly similar imitations thereof in such fashion as to intentionally create a false impression among the consuming public that Defendants’ products originate from plaintiff, or are licensed, sponsored, approved, affiliated with, managed and/or operated by plaintiff.

25. None of Plaintiff’s Marks has ever been assigned or licensed to Defendants. Plaintiff has never consented to Defendants’ use of Plaintiff’s Marks and object to said infringement. This complaint demands that Defendants, and each of them, cease and desist further manufacture, importation, sale, and distribution of any items incorporating the KILO

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1 mark or word, image or design that is confusingly similar to Plaintiff’s Marks in the United
2 States or elsewhere.

3 26. Such copying and use of Plaintiff’s Marks have been, and continue to be,
4 unauthorized and to the detriment of Plaintiff and to the commercial advantage of Defendants,
5 and each of them.

6 27. Such unauthorized copying and use of Plaintiff’s Marks will cause substantial
7 injury to plaintiffs' reputation and business and, upon information and belief, already had
8 caused such injury.

9 28. Defendants use and threatened continued use of counterfeit copies of Plaintiff’s
10 famous federally registered trademarks are likely to cause confusion, to cause mistake and to
11 deceive as to the source, origin, or sponsorship of Defendants' products, and are likely to cause
12 consumers to think that Defendants' products are manufactured, distributed, sponsored,
13 licensed, or approved by plaintiffs.

14 29. Plaintiff has demanded that Defendants cease and desist any and all usage of the
15 Infringing Marks. Defendants have refused and without consent, permission, and authority
16 continue to use the Infringing Marks in association with the advertisement and sale of goods
17 and services.

18 **FIRST CLAIM FOR RELIEF**

19 **(Trademark Infringement and Counterfeiting in Violation of 15 U.S.C. §1114)**

20 **(Against All Defendants)**

21 30. Plaintiffs realleges and incorporates by reference paragraphs 1 through 29 as
22 though fully set forth herein.

23 31. Defendants has made usage of Infringing Marks which are identical with, or
24 confusingly similar to Plaintiff’s Marks in connection with the sale, offering for sale,
25 distribution, and advertising of its goods.

26 32. Defendants' usage of Infringing Marks which are identical with, or confusingly
27 similar to Plaintiff’s Marks constitutes trademark infringement and counterfeiting in violation
28 of the Lanham Act, 15 U.S.C. § 1114(1).

1 33. Defendants' usage of the Infringing Marks is likely to confuse the public and
2 mislead the public to believe that Defendants' goods are associated with Plaintiff or that
3 Plaintiff has licensed, authorized, consented, or sponsored Defendants' usage of the Infringing
4 Marks.

5 34. Defendants' willful usage of the Infringing Marks has irreparably damaged
6 Plaintiff and will continue to do so unless enjoined by this Court.

7 35. Plaintiff has no adequate remedy at law.

8 **SECOND CLAIM FOR RELIEF**

9 **(Dilution in Violation of 15 U.S.C. §1125(c))**

10 **(Against All Defendants)**

11 36. Plaintiff realleges and incorporates by reference paragraphs 1 through 35 as
12 though fully set forth herein.

13 37. Plaintiff is the owner of Plaintiff's Marks, which are famous and distinctive.

14 38. Defendant's Infringing Marks are confusing similar to Plaintiff's Marks.

15 39. Defendants' usage of their Infringing Marks began after Plaintiff's Marks
16 became famous and distinctive.

17 40. On information and belief, Defendants market and produce marijuana related
18 products including CBD and THC extracts, which are categorized as controlled substances
19 prohibited by the Federal Controlled Substance Act.

20 41. Defendants' usage of the Infringing Marks causes injury to Plaintiff's business
21 reputation and is in violation of California Business and Professions Code §14330.

22 42. Defendants' usage of their Infringing Marks has and will continue to impair the
23 famous and distinctive quality of Plaintiff's Marks, causing dilution of Plaintiff's Marks in
24 violation of the Lanham Act, 15 U.S.C. § 1125(c).

25 43. Defendants' usage of their Infringing Marks has and will continue to harm the
26 reputation of Plaintiff's Marks, causing dilution of Plaintiff's Marks in violation of the Lanham
27 Act, 15 U.S.C. § 1125(c).

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1 44. Defendants' willful usage of the Infringing Marks has irreparably damaged
2 Plaintiff and will continue to do so unless enjoined by this Court.

3 45. Plaintiff has no adequate remedy at law.

4 **THIRD CLAIM FOR RELIEF**

5 **(False Advertising and Unfair Competition in violation of 15 U.S.C. §1125(a))**

6 **(Against All Defendants)**

7 46. Plaintiff realleges and incorporates by reference paragraphs 1 through 45 as
8 though fully set forth herein.

9 47. Defendants' actions in marketing their goods in commerce in association with
10 the Infringing Marks which are false representations and false designations which are likely to
11 confuse the public and to lead the public to believe erroneously that Defendants and their goods
12 and services are affiliated, licensed, connected, sponsored, approved, endorsed, or associated
13 with Plaintiff.

14 48. Defendants' usage of the Infringing Marks falsely designates the origin of
15 Defendants' goods and services and falsely represents those goods and services in violation of
16 Plaintiff's rights under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

17 49. Defendants know and intend that their usage of the Infringing Marks constitutes
18 a false designation of origin of Defendants' goods and false representations about those goods
19 and services, and that such usage of the Infringing Marks is likely to confuse the public and
20 lead the public to believe that Defendants or their goods and services are affiliated, connected,
21 sponsored, approved, endorsed, or associated with Plaintiff.

22 **FOURTH CLAIM FOR RELIEF**

23 **(Unfair Competition in violation of CAL. BUS.& PROF. CODE §17200, et seq.**

24 **and California Common Law)**

25 **(Against All Defendants)**

26 50. Plaintiff realleges and incorporates by reference paragraphs 1 through 49 as
27 though fully set forth herein.

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1 51. The acts of Defendants alleged above constitute unfair competition in that they
2 are unlawful, unfair, or fraudulent business practices and are unfair, deceptive, untrue, or
3 misleading advertising that is prohibited by §17200, et seq., including §17500 of the California
4 Business and Professions Code.

5 52. Plaintiff has no adequate remedy at law and is presently suffering irreparable
6 injury by and through Defendants’ actions.

7 53. Defendants’ acts of unfair competition will be ongoing unless enjoined by this
8 Court, and unless the Court makes such orders as necessary to prevent the use or employment
9 by Defendants of any practice which constitutes unfair competition or as may be necessary to
10 restore to Plaintiff any money which may have been acquired by Defendants by means of such
11 unfair competition.

FIFTH CLAIM FOR RELIEF

(Injury to Business Reputation and Dilution in violation of CAL. BUS.& PROF. CODE

§14330 et seq.)

(Against All Defendants)

16 54. Plaintiff realleges and incorporates by reference paragraphs 1 through 53 as
17 though fully set forth herein.

18 55. On information and belief, Defendants market and produce marijuana related
19 products including CBD and THC extracts, which are categorized as a controlled substance and
20 prohibited by the Federal Controlled Substance Act.

21 56. Defendants' usage of the Infringing Marks causes injury to Plaintiff’s business
22 reputation and is in violation of California Business and Professions Code §14330.

23 57. Defendants' usage of the Infringing Marks creates a dilution of the distinctive
24 quality of Plaintiff’s Marks and is in violation of California Business and Professions Code
25 §14330.

26 58. Defendants' usage of the Infringing Marks creates a dilution of the distinctive
27 quality of Plaintiff’s Marks and is in violation of California Business and Professions Code
28 §14330.

1 59. Plaintiff has no adequate remedy at law and Plaintiff is suffering irreparable
2 injury.

3 60. Plaintiff is entitled to injunctive relief under California Business and Professions
4 Code §14330, et seq.

5 **SIXTH CLAIM FOR RELIEF**

6 (CANCELTION OF CALIFORNIA TRADEMARK REGISTRATION NO. 306932

7 PURSUANT TO CAL. BUS.& PROF. CODE §14230)

8 **(Against All Defendants)**

9 61. Plaintiff realleges and incorporates by reference paragraphs 1 through 60 as
10 though fully set forth herein.

11 62. Defendants claim ownership of California Trademark Registration No. 306932
12 (the “’932 Registration”) for the “KILO Extracts” logo.

13 63. Plaintiff’s Marks are live and were filed for Plaintiff in the United States Patent
14 and Trademark Office prior to the date of the filing of the application for registration of the
15 ‘932 Registration by Defendants.

16 64. The “KILO Extracts” logo is likely to cause confusion or mistake, or to deceive.

17 65. The ‘932 Registration should be cancelled pursuant to Cal. Bus.& Prof. Code
18 §14230(c)(6).

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff, KILO ELIQUID INC, prays that this Court enter judgment
21 in its favor on each and every claim for relief set forth above and award it relief including, but
22 not limited to, the following:

23 1. That the Defendants and their agents, officers, employees, representatives,
24 successors, assigns, attorneys, and all other persons acting in concert or privity with
25 Defendants, be preliminarily and permanently enjoined from:

- 26 (1) using the Infringing Marks,
- 27 (2) using any trademark that imitates or is confusingly similar to Plaintiff’s
- 28 Marks, or is likely to cause confusion, mistake, deception, or public

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1 misunderstanding as to the origins of Defendants’ goods or their relation
2 to Plaintiff; and

3 (3) engaging in trademark infringement, unfair competition, false
4 designation of origin, or other activities that misappropriate Plaintiff’s
5 trademark rights;

6 2. Order Defendants to file with this Court and serve upon Plaintiff within 30 days of
7 being served with this Court’s injunction issued in this action, a written report signed by
8 Defendants under oath, setting forth in detail the manner in which Defendants complied with
9 the injunction;

10 3. Provide Plaintiff with expedited discovery;

11 4. Plaintiff be awarded compensatory and statutory damages as provided by law,
12 including but not limited to, goodwill and profits lost as a result of any sales made by
13 Defendant;

14 5. That Defendants be compelled to account to Plaintiff for any and all profits
15 derived from their illegal acts complained of herein under 15 U.S.C. § 1117;

16 6. Disgorge Defendants of any and all profits derived from their illegal acts
17 complained of herein under 15 U.S.C. § 1117;

18 7. Based on Defendants’ knowing and intentional use of a confusingly similar
19 Infringing Marks, the damages awarded be trebled and the award of Defendants’ profits be
20 enhanced as provided for by 15 U.S.C. § 1117(a);

21 8. Defendants be required to pay to Plaintiff the costs and reasonable attorneys’ fees
22 incurred by Plaintiff in this action pursuant to 15 U.S.C. § 1117(a) and any applicable state
23 statutes cited in this Complaint;

24 9. Based on Defendant’s willful and deliberate infringement and/or dilution of
25 Plaintiff’s Marks, and to deter such conduct in the future, Plaintiff be awarded punitive
26 damages;

27 10. Plaintiff be awarded prejudgment and post-judgment interest on all monetary
28 awards;

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DEMAND FOR JURY TRIAL

Plaintiff KILO ELIQUID INC hereby demands a trial by jury on all issues so triable in this action.

Dated: October 8, 2019

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By: _____/s/Josephine W. Wu

David N. Makous, Esq.
Josephine W. Wu, Esq.
Attorneys for Plaintiff KILO ELIQUID INC

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