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UNITED STATES DISTRICT COURT**CENTRAL DISTRICT OF CALIFORNIA**CLEARLY CLEAN PRODUCTS, LLC, and) Case No. 5:20-CV01054
CONVERTER MANUFACTURING, LLC,)

Plaintiffs,)

vs.)

NINGBO LINHUA PLASTIC CO., LTD.,)

Defendant.)

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

Plaintiffs CLEARLY CLEAN PRODUCTS, LLC (“CCP”) and CONVERTER MANUFACTURING, LLC (“CM”) (collectively, “Plaintiffs”) for their Complaint for Patent Infringement against NINGBO LINHUA PLASTIC CO., LTD. (“NLPC”) (“Defendant”), aver and allege as follows.

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 101, et seq., against Defendant, who, in violation of 35 U.S.C. § 271, has made, used, sold, offered for sale, and imported articles and practiced methods that infringe one or more claims of U.S. Patent Nos. 10,562,680 (the “‘680 Patent”), 9,908,281 (the “‘281 Patent”), 10,562,222 (the “‘222 Patent”), and 10,189,624 (“the ‘624 Patent”) (collectively, the “Asserted Patents”).

PARTIES

2. CM is a limited liability company organized under the laws of the Commonwealth of Pennsylvania and having its principal of business at 603 Industrial Drive, Orwigsburg PA 17961 USA. Since at least 2014, CM has designed, manufactured, and distributed high quality and novel food packaging products around the world, including within the United States, and in particular, rolled-edge rigid plastic food trays. As a result of its design and development efforts for these products, CM has developed substantial intellectual property, including, but not limited to, the ‘680 Patent, the ‘281 Patent, and the ‘222 Patent. A copy of the ‘680 Patent is attached hereto as **Exhibit A**. A copy of the ‘281 Patent is attached hereto as **Exhibit B**. A copy of the ‘222 Patent is attached hereto as **Exhibit C**. A copy of the ‘624 Patent is attached hereto as **Exhibit D**.

3. CCP is a limited liability company organized under the laws of the State of Connecticut and having its principal place of business at 225 Oakland Road, Suite 401, South Windsor CT 06074 USA. CCP is the exclusive licensee of the ‘680 and ‘281 Patents. CCP manufactures the brand-named rolled-edge rigid plastic food tray, the Roll Over-Wrap™, under at least the ‘680, ‘281, ‘222, and ‘624 Patents.

4. Eco Food Pak (USA), Inc. (“EFP”) is a company with a place of business in San Bernardino County, California, at 8719 Enterprise Way, Chino CA 91710. EFP is a company organized and existing under the laws of the State of California. EFP sells, offers for sale and imports competing rolled-edge rigid plastic food trays,

1 which it calls “turned edge trays,” that infringe one or more claims of the Asserted
2 Patents in California, including within this District. Additionally, EFP is and has been
3 performing business within the State of California by selling and distributing such
4 products within the State of California’s stream of commerce at all times relevant to
5 this proceeding.

6 5. On information and belief, NLPC is a Chinese company having a place
7 of business at No. 13, Dongfan Road, Xiwu, Fenghua, 315000, P.R. China. NLPC
8 sells, offers for sale, and imports into the United States competing rolled-edge rigid
9 plastic food trays, which it calls “turned edge trays,” that infringe one or more claims
10 of the Asserted Patents in California, including within this District. Additionally,
11 NLPC is and has been performing business within the State of California by selling
12 and distributing such products within the State of California’s stream of commerce at
13 all times relevant to this proceeding, including by shipping infringing product to EFP
14 through the ports of the State of California. One or both of EFP and NLPC is and has
15 been importing infringing “turned edge trays” into the United States, on information
16 and belief, through the port of Long Beach, California.

17 JURISDICTION AND VENUE

18 6. This action arises under the patent laws of the United States, Title 35 of
19 the United States Code.

20 7. This Court has subject matter jurisdiction over the claims in this
21 complaint pursuant to United States Code, Title 28, sections 1331 and 1338(a).

22 8. This Court has both general and specific jurisdiction over NLPC and EFP
23 because each of NLPC and EFP has committed acts within this District giving rise to
24 this action and has established minimum contacts with this forum such that the
25 exercise of jurisdiction over NLPC and EFP would not offend traditional notions of
26 fair play and substantial justice.

27 9. NLPC, directly and/or through subsidiaries, intermediaries (including
28 distributors, retailers, franchisees and others), has committed and continues to commit

1 acts of patent infringement in this District, by, among other things, using, offering for
2 sale, selling, and importing rolled-edge rigid plastic food trays, including the “turned
3 edge trays,” to EFP and which infringe CM’s and CCP’s intellectual property rights,
4 including the Asserted Patents. NLPC makes rolled-edge rigid plastic food trays
5 available for sale to consumers through an established distribution chain, through
6 EFP, and through third-party retailers such as Alibaba.com, as part of an e-commerce
7 business that extends its reach to consumers in this District. As a result, this Court has
8 personal jurisdiction over NLPC as they transact business in the State of California
9 and in this Judicial District, as well as throughout the United States by (i) conducting
10 at least a portion of the infringement alleged in California, or (ii) regularly doing or
11 soliciting business in California, maintaining continuous and systematic contacts in
12 California, purposefully availing themselves of the privileges of doing business in
13 California, and/or deriving substantial revenue from goods or services provided to
14 individuals in California, or a combination of the foregoing.

15 10. EFP had committed acts of patent infringement in this District, by,
16 among other things, using, offering for sale, selling, and importing rolled-edge rigid
17 plastic food trays, including “turned edge trays,” which infringed CM’s and CCP’s
18 intellectual property rights, including the Asserted Patents.

19 11. Venue is proper as to NLPC under 28 U.S.C. § 1391(c)(3) in that it is not
20 a resident of the United States and may, therefore, be sued in any judicial district.
21 *Brunette Mach. Works, Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706, 714 (1972).

22 12. Pursuant to ECF Dkt. No. 32, this Court has authorized service of process
23 on NLPC via alternative means under Fed. R. Civ. P. 4(f).

24 FIRST CAUSE OF ACTION:

25 INFRINGEMENT OF THE ‘680 PATENT

26 13. Plaintiffs hereby incorporate by reference Paragraphs 1 through 12,
27 above, as if fully set forth herein.

28 14. The ‘680 Patent, which is titled “Formed Thermoplastic Article Having

Smooth Edges,” was duly and legally issued by the United States Patent and Trademark Office on February 18, 2020.

15. CM is the lawful owner of all right, title, and interest in and to the ‘680 Patent.

16. CCP is a business partner of CM and has an implied exclusive right and license under the ‘680 Patent to use, offer for sale, and sell rolled-edge rigid plastic food trays in the United States.

17. The following exemplary products imported, made, used, sold, and/or offered for sale by NLPC and EFP infringe at least one or more claims of the ‘680 Patent:

- Rolled-edge rigid plastic food trays that are titled “turned edge trays” by NLPC and EFP;
- Rolled-edge rigid plastic food trays sold under the “Master Cut” brand and distributed by Randall Foods, Inc. of Huntington Park, California;
- Rolled-edge rigid plastic food trays used for foods sold in Save Mart Supermarket, 1143 Country Club Drive, Madera, California 93638; and
- Rolled-edge rigid plastic food trays containing the model number E090733TE, where the “TE” is believed to be an abbreviation to designate a “turned edge” thermoplastic food tray.
- Products offered by NLPC via their website (<https://www.nblinhua.com/product/turned-edge-trays/>), such as, LP080535TE, LP080550TE, LP080630TE, LP080640TE, LP080735TE, LP080645TE, LP080750TE, LP110535TE, LP110640TE, LP110755TE, LP110935TE, LP120850TE, LP130640TE, LP9730TE, LP080535TE, LP9930TE, 3P, 4D, 8P, and 25P trays (hereinafter, the “Accused Products”).

18. For example, Claim 1 of the ‘680 Patent recites:

An article having a smooth, non-circular periphery, the article comprising

1 a shaped thermoplastic substrate sheet, the shape of the substrate sheet
2 including

3 a body including a bottom surrounded by sidewalls and a deflectable
4 flange joined at a junction to the sidewalls at at least a portion of the periphery,
5 the deflectable flange including

6 a peripheral edge of the substrate sheet at a position distal from the
7 junction;

8 a smoothly-curved bend region interposed between the junction and the
9 peripheral edge wherein a proximal portion of the bend region is offset from a
10 distal portion thereof by an angle A of from 85 to 135 degrees;

11 a substantially planar extension interposed between the junction and the
12 proximal portion of the bend region, the plane of the extension being
13 substantially parallel to the bottom, and the distal portion of the bend region and
14 the body extending away from the same face of the extension;

15 a peripheral flange bearing the peripheral edge and being connected to
16 the rest of the deflectable flange by way of an elbow; and

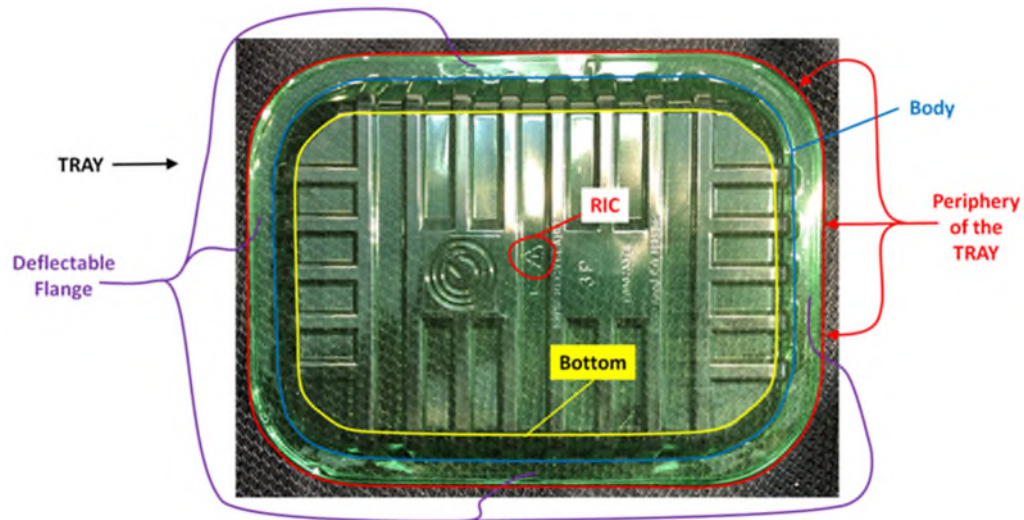
17 a curved bent portion interposed between the elbow and the bend region,
18 wherein the curvatures of the bend region and the bent portion position the
19 peripheral edge away from the periphery.

20 19. At least one of the Accused Products, identified as product Model
21 Number E090733TE (the “Model E090733TE Accused Product”), is “[a]n article
22 having a smooth, non-circular periphery, the article comprising a shaped thermoplastic
23 substrate sheet, the shape of the substrate sheet including a body including a bottom
24 surrounded by sidewalls and a deflectable flange joined at a junction to the sidewalls
25 at at least a portion of the periphery... .”

26 ///

27 ///

28 ///



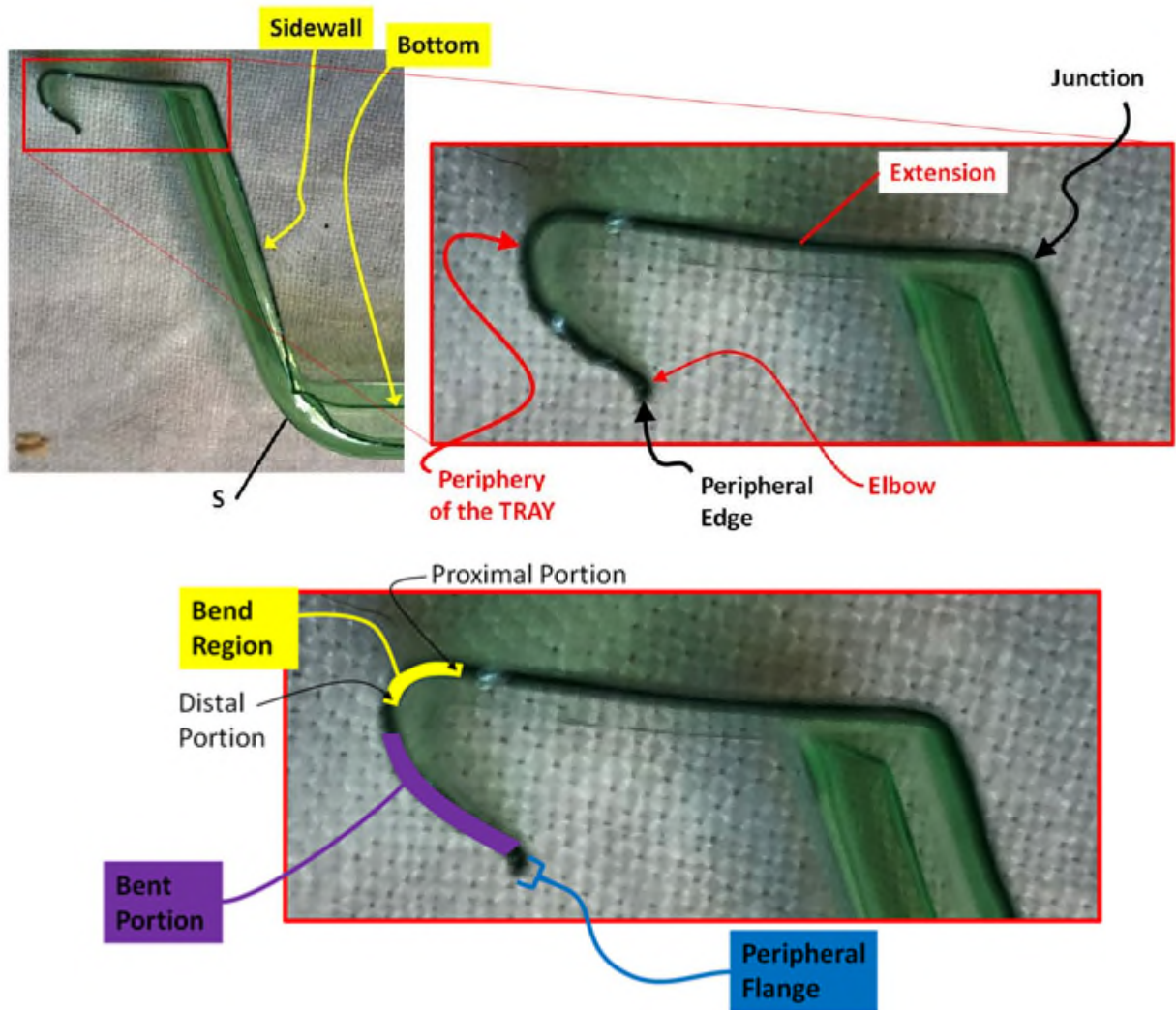
The annotation “RIC” points to markings on the Accused Products that show that they are made from polyethylene terephthalate, a thermoplastic.



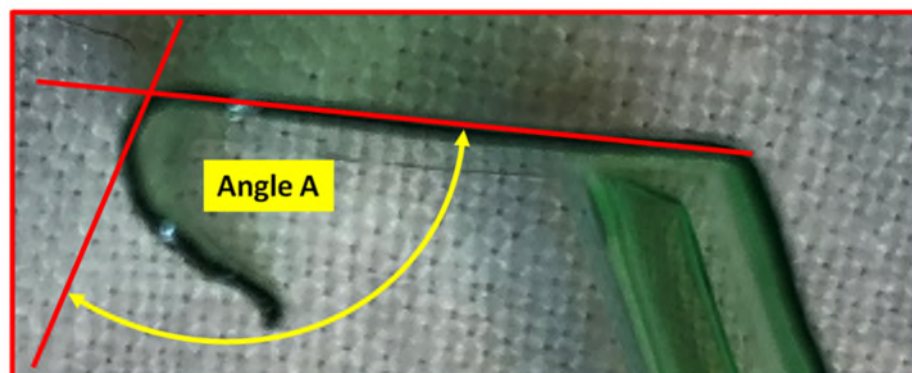
See American Chemistry Council, Plastic Packaging Resins, Resin Code (<https://plastics.americanchemistry.com/Plastic-Resin-Codes-PDF/>, last visited May 11, 2020).

20. A side view of a section of the Model E090733TE Accused Product shows, “the deflectable flange including a peripheral edge of the substrate sheet at a position distal from the junction,” “a smoothly-curved bend region interposed between the junction and the peripheral edge,” and “a substantially planar extension interposed between the junction and the proximal portion of the bend region, the plane of the extension being substantially parallel to the bottom, and the distal portion of the bend region and the body extending away from the same face of the extension; a peripheral flange bearing the peripheral edge and being connected to the rest of the deflectable flange by way of an elbow; and a curved bent portion interposed between the elbow and the bend region, wherein the curvatures of the bend region and the bent portion

position the peripheral edge away from the periphery.”



21. The side view of the section of the Model E090733TE Accused Product also shows “a proximal portion of the bend region is offset from a distal portion thereof by an angle A of from 85 to 135 degrees....”



1 As illustrated in the annotated image above, Angle A is about 105 degrees.

2 22. Additionally, substantially every part of each of the Accused Products is
3 optically clear, has the shape of a rectangular tray having rounded corners and edges,
4 and possess a deflectable flange that extends completely around the body at the
5 periphery.

6 23. NLPC and EFP have carried out the aforesaid acts with actual and
7 constructive knowledge of the existence of the ‘680 Patent and that their rolled-edge
8 rigid plastic food trays infringe the ‘680 Patent at least as of the filing date of this
9 Complaint or through manufacture, use, sale, offer to sell, and import of infringing
10 trays at least since the filing of this Complaint have acted with willful blindness of the
11 same.

12 24. NLPC and EFP have individually and collectively actively induced
13 infringement of the ‘680 Patent in this judicial district and elsewhere in the United
14 States by manufacturing, marketing, offering for sale, and selling rolled-edge rigid
15 plastic food trays to distributors for resale to the public knowing that the distributors
16 offer for sale and sale of the rolled-edge rigid plastic food trays to the public, and the
17 public’s use of the rolled-edge rigid plastic food trays, constitute patent infringement,
18 or have acted with willful blindness to such infringement of the ‘680 Patent despite
19 knowledge of the same.

20 25. Upon information and belief, each of NLPC and EFP has actively
21 engaged in at least the following additional acts in this judicial district and elsewhere
22 in the United States to induce infringement of the ‘680 Patent:

- 23 a. Actively promoting and advertising the infringing rolled-edge rigid
24 plastic food trays through interactive websites, such as
25 <https://ecofoodpak.com/>, and “[https://ecofoodpak.com/products/
26 #1517084376474-6259755e-838e](https://ecofoodpak.com/products/#1517084376474-6259755e-838e)” which EFP maintains in this
27 judicial district;
28 b. Actively promoting and advertising the infringing rolled-edge rigid

1 plastic food trays through interactive websites, such as
2 <https://www.nblinhua.com/product/turned-edge-trays/> which
3 NLPC targets into this judicial district; and

4 c. Actively providing product literature, including instructions for use
5 and technical support relating to the infringing rolled-edge rigid
6 plastic food trays.

7 26. Each of NLPC and EFP has had actual knowledge of the ‘680 Patent
8 through the filing of the current lawsuit but continues the infringing activities despite
9 such knowledge.

10 27. Upon information and belief, NLPC’s infringements of the ‘680 Patent
11 have been in willful disregard of CM’s and CC’s patent rights, making this an
12 exceptional case, and entitling CM and CCP to enhanced damages pursuant to 35
13 U.S.C. § 284, and to recovery of their attorney fees and costs incurred in prosecuting
14 this action pursuant to 35 U.S.C. § 285.

15 28. The aforesaid infringing activity has caused damage to CM and CCP,
16 including loss of profits from sales they would have made but for Defendants’
17 infringements. Unless enjoined, the aforesaid infringing activity will continue, causing
18 irreparable injury to CM and CCP for which there is no adequate remedy at law.

19 **SECOND CAUSE OF ACTION:**

20 **INFRINGEMENT OF THE ‘281 PATENT**

21 29. Plaintiffs hereby incorporate by reference Paragraphs 1 through 12, as if
22 fully set forth herein.

23 30. The ‘281 Patent, which is titled “Formed Thermoplastic Article Having
24 Smooth Edges,” was duly and legally issued by the United States Patent and
25 Trademark Office on March 6, 2018.

26 31. CM is the lawful owner of all right, title, and interest in and to the ‘281
27 Patent.

28 32. CCP is a business partner of CM and has an implied exclusive right and

license under the ‘281 Patent to use, offer for sale and sell rolled-edge rigid plastic food trays in the United States.

33. The following exemplary products imported, made, used, sold, and/or offered for sale by NLPC and EFP infringe at least one or more claims of the ‘281 Patent:

- Rolled-edge rigid plastic food trays that are titled “turned edge trays” by NLPC and EFP;
- Rolled-edge rigid plastic food trays sold under the “Master Cut” brand and distributed by Randall Foods, Inc. of Huntington Park, California;
- Rolled-edge rigid plastic food trays used for foods sold in Save Mart Supermarket, 1143 Country Club Drive, Madera, California 93638; and
- Rolled-edge rigid plastic food trays containing the model number E090733TE, where the “TE” is believed to be an abbreviation to designate a “turned edge” thermoplastic food tray.

34. For example, Claim 9 of the ‘281 Patent recites:

The article of claim 1, wherein the extension includes a bend region interposed between the peripheral edge and the junction between the body and the extension and a peripheral flange interposed between the peripheral edge and the bend region, the bend region including a curved portion and the peripheral flange being connected to the bend region by an elbow.

35. Claim 1 of the ‘281 Patent, from which Claim 9 depends and incorporates by reference, recites:

An article formed from a thermoformable sheet having a peripheral edge and having sufficient rigidity to define the conformation of the article, the article comprising a body having the shape of a rounded rectangular tray with a concave compartment formed therein and having an extension extending peripherally away from the body, the extension including the peripheral edge of the thermoformable sheet and a bent portion interposed between the peripheral

edge and the junction between the body and the extension, the bent portion having a smooth periphery and being sufficiently bent that the peripheral edge of the thermoformable sheet is displaced from the periphery of the article, whereby the article has a smooth periphery.

36. As can be seen in the image within Paragraph 19 of this Complaint, the Model E090733TE Accused Product is “[a]n article formed from a thermoformable sheet having a peripheral edge and having sufficient rigidity to define the conformation of the article, the article comprising a body having the shape of a rounded rectangular tray with a concave compartment formed therein...” The annotation “RIC” in the image within Paragraph 19 of this Complaint points to markings on the Accused Products that show that they are made from a sheet of polyethylene terephthalate, a thermoformable material. See American Chemistry Council, Plastic Packaging Resins, Resin Code (<https://plastics.americanchemistry.com/Plastic-Resin-Codes-PDF/>, last visited May 11, 2020).

37. As can be seen in the image within Paragraph 20 of this Complaint, the side view of a section of the Model E090733TE Accused Product shows the “article” also “having an extension extending peripherally away from the body, the extension including the peripheral edge of the thermoformable sheet and a bent portion interposed between the peripheral edge and the junction between the body and the extension, the bent portion having a smooth periphery and being sufficiently bent that the peripheral edge of the thermoformable sheet is displaced from the periphery of the article, whereby the article has a smooth periphery.”

38. The side view of the image of the Model E090733TE Accused Product accompanying Paragraph 20 of this Complaint further shows that “the extension includes a bend region interposed between the peripheral edge and the junction between the body and the extension and a peripheral flange interposed between the peripheral edge and the bend region, the bend region including a curved portion and the peripheral flange being connected to the bend region by an elbow.”

1 39. NLPC and EFP have carried out the aforesaid acts with actual and
2 constructive knowledge of the existence of the ‘281 Patent and that their rolled-edge
3 rigid plastic food trays infringe the patent at least as of the filing date of this
4 Complaint or through manufacture, use, sale, offer to sell, and import of infringing
5 trays at least since the filing of this Complaint have acted with willful blindness of the
6 same.

7 40. NLPC and EFP have individually and collectively actively induced
8 infringement of the ‘281 Patent in this judicial district and elsewhere in the United
9 States by designing, manufacture, marketing, offering for sale, and selling rolled-edge
10 rigid plastic food trays to distributors for resale to the public knowing that the
11 distributors offer for sale and sale of the rolled-edge rigid plastic food trays to the
12 public, and the public’s use of the rolled-edge rigid plastic food trays, constitute patent
13 infringement, or have acted with willful blindness to such infringement of the ‘281
14 Patent despite knowledge of the same.

15 41. Upon information and belief, each of NLPC and EFP has actively
16 engaged in at least the following additional acts in this judicial district and elsewhere
17 in the United States to induce infringement of the ‘281 Patent:

- 18 a. Actively promoting and advertising the infringing rolled-edge rigid
19 plastic food trays through interactive websites, such as
20 <https://ecofoodpak.com/>, and “[#1517084376474-6259755e-838e](https://ecofoodpak.com/products/#1517084376474-6259755e-838e)” which EFP maintains in this
21 judicial district;
22
- 23 b. Actively promoting and advertising the infringing rolled-edge rigid
24 plastic food trays through interactive websites, such as
25 <https://www.nblinhua.com/product/turned-edge-trays/> which
26 NLPC targets into this judicial district; and
- 27 c. Actively providing product literature, including instructions for use
28 and technical support relating to the infringing rolled-edge rigid

1 plastic food trays.

2 42. Each of NLPC and EFP has had actual knowledge of the ‘281 Patent
3 through the filing of the current lawsuit but continues the infringing activities despite
4 such knowledge.

5 43. Upon information and belief, NLPC’s infringements of the ‘281 patent
6 have been in willful disregard of CM’s and CC’s patent rights, making this an
7 exceptional case, and entitling CM and CCP to enhanced damages pursuant to 35
8 U.S.C. § 284, and to recovery of their attorney fees and costs incurred in prosecuting
9 this action pursuant to 35 U.S.C. § 285.

10 44. The aforesaid infringing activity has caused damage to CM and CCP,
11 including loss of profits from sales they would have made but for Defendants’
12 infringements. Unless enjoined, the aforesaid infringing activity will continue, causing
13 irreparable injury to CM and CCP for which there is no adequate remedy at law.

14 **THIRD CAUSE OF ACTION:**

15 **INFRINGEMENT OF THE ‘222 PATENT**

16 45. Plaintiffs hereby incorporate by reference Paragraphs 1 through 12, as if
17 fully set forth herein.

18 46. The ‘222 Patent, which is titled “Formed Thermoplastic Article Having
19 Smooth Edges,” was duly and legally issued by the United States Patent and
20 Trademark Office on February 18, 2020.

21 47. CM is the lawful owner of all right, title, and interest in and to the ‘222
22 Patent.

23 48. CCP is a business partner of CM and has an implied exclusive right and
24 license under the ‘222 Patent to make, use, offer for sale and sell rolled-edge rigid
25 plastic food trays in the United States.

26 49. NLPC has made, used, sold, imported, and/or offered for sale the
27 Accused Products in the United States, including the following exemplary products,
28 that were produced by NLPC using one or more methods or equivalents thereof that

1 infringe at least one or more claims of the ‘222 Patent:

- 2 • Rolled-edge rigid plastic food trays that are titled “turned edge trays” by
- 3 NLPC and EFP;
- 4 • Rolled-edge rigid plastic food trays sold under the “Master Cut” brand and
- 5 distributed by Randall Foods, Inc. of Huntington Park, California;
- 6 • Rolled-edge rigid plastic food trays used for foods sold in Save Mart
- 7 Supermarket, 1143 Country Club Drive, Madera, California 93638; and
- 8 • Rolled-edge rigid plastic food trays containing the model number
- 9 E090733TE, where the “TE” is believed to be an abbreviation to designate a
- 10 “turned edge” thermoplastic food tray.

11 50. NLPC states in its website, [https://www.nblinhua.com/product/turned-](https://www.nblinhua.com/product/turned-edge-trays/)

12 [edge-trays/](https://www.nblinhua.com/product/turned-edge-trays/), the following:

13 **Wholesale Turned Rolled Edge PET Plastic Food Tray**

14 Our Turned Edge trays are made from material PET. The strength of this

15 tray is that there's the additional manufacturing process of Turning or Rolling

16 the edge of the flange with the purpose of making the flange tear resistant to the

17 over-wrap/stretch wrapping film.

18 A turned rolled edge tray is a type of tray that is designed for packaging

19 food products. *The tray is made from a single piece of material, typically*

20 *plastic or paperboard, that is shaped into a rectangular or square shape with*

21 *a turned rolled edge. The turned rolled edge is a raised lip that is created by*

22 *folding the edges of the tray over and rolling them under to create a smooth,*

23 *seamless finish.* This edge helps to reinforce the tray and provide additional

24 strength and stability, which makes it suitable for packaging heavier products

25 such as meat or produce. Turned rolled edge trays are commonly used in the

26 food industry for packaging a wide variety of products, including fresh and

27 processed meats, bakery goods, and fruits and vegetables. They are also used in

28 other industries for packaging non-food products such as cosmetics, household

items, and medical supplies. Turned rolled edge trays are often made from plastic materials such as polypropylene or PET (polyethylene terephthalate), which are strong, durable, and resistant to moisture and bacteria. They may also be made from paperboard materials that are coated with a plastic or wax layer for added strength and moisture resistance. Overall, *turned rolled edge trays are a popular and versatile packaging option due to their strength, stability, and ability to protect and showcase products.*

Emphasis added. Indeed, NLPC’s own website admits the very benefits discussed in each of the Asserted Patents. *See* ‘222 Patent, Col. 22, lines 36-38 (noting mechanical strength added by rolled peripheral edge); Col. 37, line 33 – Col. 38, line 15 (demonstrating stability of using thermoplastic container made by patented method to hold food product, withstand gas or sealing processes, and/or transit to food processors).

51. In a May 17, 2023 Industry Newsletter by NLPC entitled, “What are the advantages of using turned edge trays over other packaging options?” NLPC writes the following:

- Turned edge trays are known for their visually appealing and professional appearance. They are constructed using high-quality materials, often with printed or laminated finishes, offering a premium look and feel. The precise folding and wrapping techniques used in their manufacturing result in clean edges and seamless corners, creating a visually striking packaging solution.
- The turned edge construction technique ensures that the trays maintain their shape and strength, even when subjected to handling and transportation.

<https://www.nblinhua.com/news/industry-news/what-are-the-advantages-of-using-turned-edge-trays-over-other-packaging-options.html>.

52. NLPC also produced a YouTube video

(<https://www.youtube.com/watch?app=desktop&v=3Gr4S4-Bgdc>) showcasing the benefits of their infringing Turned Edge trays.

53. For each of its advertised LP080535TE, LP080550TE, LP080630TE, LP080640TE, LP080735TE, LP080645TE, LP080750TE, LP110535TE, LP110640TE, LP110755TE, LP110935TE, LP120850TE, LP130640TE, LP9730TE, LP080535TE, LP9930TE, 3P, 4D, 8P, and 25P trays (“other Accused Products”), NPLC states, “Our Turned Edge trays are made from material PET. *The strength of this tray is that there’s the additional manufacturing process of Turning or Rolling the edge of the flange with the purpose of making the flange tear resistant to the over-wrap/stretch wrapping film.*” See, e.g., <https://www.nblinhua.com/product/turned-edge-trays/lp080640te.html>. Again, this is the exact benefit noted in the disclosures of the Asserted Patents.

54. Claim 1 of the ‘222 Patent recites:

A method of making a shaped article having a body with a smooth periphery, the method comprising

forming a thermoplastic into a shape comprising the body and a deflectable flange at a peripheral portion of the body, the deflectable flange comprising

an extension that extends peripherally away from the body and connects thereto[,]

a bend region having a smooth contour and interconnecting the extension, at an approximately right angle, with a spacer that is connected with

a peripheral flange which bears a peripheral edge of the thermoplastic the spacer and peripheral flange being connected, at an angle other than 180 degrees, at an elbow;

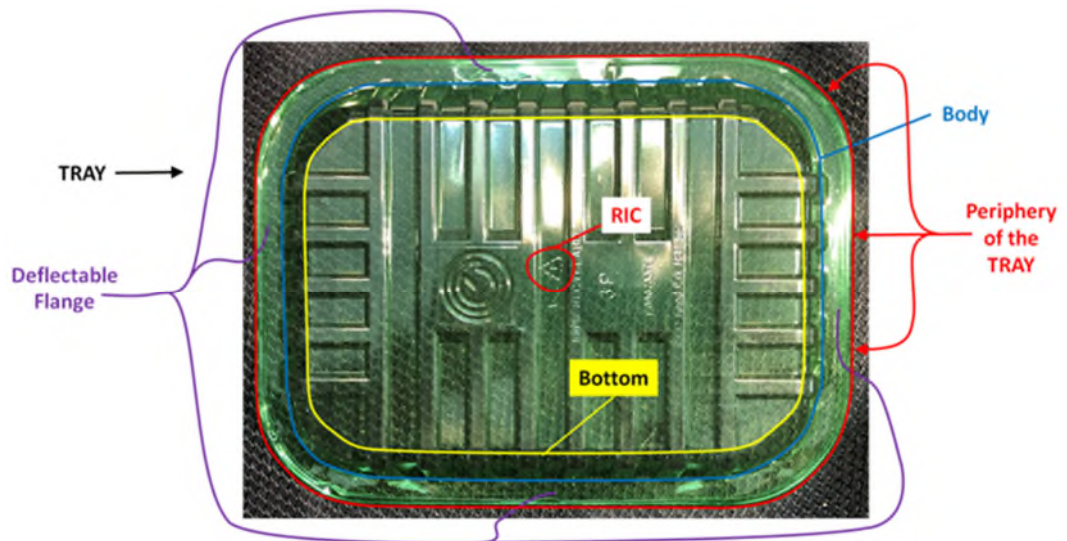
impinging a ram against the peripheral flange to deflect the spacer toward the extension, whereby the magnitude of the angle between the spacer and

the extension is decreased on account of at least one portion of the deflectable flange becoming bent, relative to its pre-impingement position, the bent portion being selected from the group consisting of the extension, the bend region, and the spacer;

heating the bent portion to at least the glass transition temperature of the thermoplastic; and

after impinging the ram against the peripheral flange and heating the bent portion to at least the glass transition temperature, further impinging the ram against the deflectable flange to further deflect the spacer toward the extension prior to disengaging the ram from the deflectable flange, whereby the bent portion remains deflected from its pre-impingement position even upon discontinuation of the impingement to yield the body with a smooth periphery.”

55. The Model E090733TE Accused Product is “a shaped article having a body with a smooth periphery ... and a deflectable flange comprising an extension that extends peripherally away from the body and connects thereto.”



The bend region and the peripheral flange (bearing the peripheral edge) are shown in the image within Paragraph 20 of this Complaint. The spacer is the portion of the Accused Products that is interposed between the bend region (annotated in

1 yellow in the image within Paragraph 20 of this Complaint) and the bent portion
2 (annotated in purple in the image within Paragraph 20 of this Complaint). The
3 peripheral edge and the elbow are also labeled in the image accompanying paragraph
4 20 of this Complaint.

5 56. As provided in NLPC's literature and its website, it uses an additional
6 manufacturing process to turn or roll the edge of the flange. That at least one portion
7 of the deflectable flange of the Accused Products has become bent on account of a
8 ram or known equivalents to the ram disclosed in the '222 Patent (not shown) being
9 impinged against the peripheral flange using heat is evidenced by the final position of
10 the peripheral edge beneath the extension and/or the lack of any indicators of crazing
11 or internal cracking in the plastic making up the Model E090733TE Accused Product.

12 57. Heating and impinging the plastic which makes up the Model
13 E090733TE Accused Product to its glass transition temperature using NLPC's
14 "additional manufacturing process of Turning or Rolling the edge of the flange,"
15 either literally practices the steps of Claim 1 or performs substantially the same step,
16 in a substantially the same way, to achieve substantially the same result(s) as disclosed
17 in the '222 Patent and claimed by Claim 1. *See* Ex. C, Col. 16, lines 3-25, 35-49; Col.
18 18, line 60 – Col. 19, line 12; Col. 31, lines 21-66; Col. 35, line 42 – Col. 36, line 8;
19 Figs. 1B-C, 8G.

20 58. Claim 11 of the '222 Patent recites:

21 ...the ram is impinged against the deflectable flange to deflect the
22 peripheral edge away from the periphery of the shaped article sufficiently
23 that a flexible film that tautly over-wraps the shaped article after cooling
24 the bent portion does not contact the peripheral edge.

25 59. The periphery of the Model E090733TE Accused Product is shown in the
26 image within paragraph 55 of this Complaint, and it can be seen from the image
27 within paragraph 20 of this Complaint that its peripheral edge has been "Turned or
28 Rolled" sufficiently so that a flexible film that tautly over-wraps the Accused Product

1 will not contact the peripheral edge.

2 60. To the extent that NLPC makes and has made the Accused Model
3 E090733TE and other Accused Products outside the United States, NLPC's making of
4 the Accused Model E090733TE and other Accused Products outside the United States
5 for importation, use, sale, and sales offers in the United States is, on information and
6 belief, the result of practicing each of the steps of at least Claims 1 and 11 of the '222
7 Patent or their equivalents. Furthermore, NLPC makes and has made the Accused
8 Model E090733TE and other Accused Products, whether within or without the United
9 States, with actual and constructive knowledge of the existence of the '222 Patent and
10 either (i) with knowledge that their methods of making rolled-edge rigid plastic food
11 trays and/or making such products and importing them into the United States infringe
12 the '222 Patent at least as of the filing date of this Complaint or through manufacture
13 and import of infringing trays at least since the filing of this Complaint or (ii) with
14 willful blindness of the same.

15 61. On information and belief, none of NLPC's Accused Products, including
16 the Accused Model E090733TE product has been materially changed after being
17 manufactured by the methods recited in one or both of Claims 1 and 11 of the '222
18 Patent, or equivalents thereof, and before being imported into the United States for
19 use, sale, and/or sales offers within the United States.

20 62. On information and belief, at least as of the filing date of this Complaint,
21 NLPC makes and has made the accused Model E090733TE and other Accused
22 Products and imported them into the United States either (i) with actual or
23 constructive knowledge of the existence of the '222 Patent and that NLPC's methods
24 of making the imported Accused Products are within the scope of at least Claims 1
25 and 11 of the '222 Patent or (ii) with willful blindness of the same.

26 63. NLPC and EFP have individually and collectively actively induced
27 infringement of the '222 Patent in this judicial district and elsewhere in the United
28 States by manufacture and importing rolled-edge rigid plastic food trays for offer and

1 sale to distributors for resale to the public knowing that such manufacture within the
2 United States would constitute patent infringement, or have acted with willful
3 blindness to such infringement of the ‘222 Patent despite knowledge of the same.

4 64. Upon information and belief, each of NLPC and EFP has actively
5 engaged in at least the following additional acts in this judicial district and elsewhere
6 in the United States to induce infringement of the ‘222 Patent:

7 a. Actively promoting and advertising rolled-edge rigid plastic food
8 trays made abroad by or for NLPC by infringing methods for
9 importation by NLPC and/or others into the United States
10 facilitated, for example, by interactive websites, such as
11 <https://ecofoodpak.com/>, and
12 “[https://ecofoodpak.com/products/#1517084376474-6259755e](https://ecofoodpak.com/products/#1517084376474-6259755e-838e)
13 [-838e](https://ecofoodpak.com/products/#1517084376474-6259755e-838e)” which EFP maintains in this judicial district;/
14

15 b. Actively promoting and advertising rolled-edge rigid plastic food
16 trays made abroad by or for NLPC by infringing methods for
17 importation by NLPC and/or others into the U.S. facilitated, for
18 example, by interactive websites, such as
19 <https://www.nblinhua.com/product/turned-edge-trays/> which
20 NLPC targets into this judicial district; and

21 c. Actively providing product literature, including instructions for use
22 and technical support relating to rolled-edge rigid plastic food trays
23 made abroad by or for NLPC by infringing methods for
24 importation into the United States by NLPC and/or others.

25 65. Each of NLPC and EFP has had actual knowledge of the ‘222 Patent
26 through the filing of the current lawsuit but continues the infringing activities despite
27 such knowledge.

28 66. Upon information and belief, NLPC’s infringements of the ‘222 Patent
have been in willful disregard of CM’s and CC’s patent rights, making this an

1 exceptional case, and entitling CM and CCP to enhanced damages pursuant to 35
2 U.S.C. § 284, and to recovery of their attorney fees and costs incurred in prosecuting
3 this action pursuant to 35 U.S.C. § 285.

4 67. The aforesaid infringing activity has caused damage to CM and CCP,
5 including loss of profits from sales they would have made but for Defendants'
6 infringements. Unless enjoined, the aforesaid infringing activity will continue, causing
7 irreparable injury to CM and CCP for which there is no adequate remedy at law.

8 **FOURTH CAUSE OF ACTION:**

9 **INFRINGEMENT OF THE '624 PATENT**

10 68. Plaintiffs hereby incorporate by reference Paragraphs 1 through 12, as if
11 fully set forth herein.

12 69. The '624 Patent, which is titled "Tray-Shaped Article Having Smooth
13 Edges and Amenable to Multiple Film Sealing Methods," was duly and legally issued
14 by the USPTO on January 29, 2019.

15 70. CM is the lawful owner of all right, title, and interest in and to the '624
16 Patent.

17 71. CCP is a business partner of CM and has an implied exclusive right and
18 license under the '624 Patent to use, offer for sale and sell rolled-edge rigid plastic
19 food trays in the United States.

20 72. The following exemplary products imported, made, used, sold, and/or
21 offered for sale by NLPC and EFP infringe at least one or more claims of the '624
22 Patent:

- 23 • Rolled-edge rigid plastic food trays that are titled "turned edge trays" by
24 NLPC and EFP;
- 25 • Rolled-edge rigid plastic food trays sold under the "Master Cut" brand and
26 distributed by Randall Foods, Inc. of Huntington Park, California;
- 27 • Rolled-edge rigid plastic food trays used for foods sold in Save Mart
28 Supermarket, 1143 Country Club Drive, Madera, California 93638; and

- Rolled-edge rigid plastic food trays containing the model number E090733TE, where the “TE” is believed to be an abbreviation to designate a “turned edge” thermoplastic food tray.

73. For example, Claim 1 of the ‘624 Patent recites:

A tray intended to be suitable for use in any or all of overwrap (OW), vacuum-sealed packaging (VSP), and modified atmosphere packaging (MAP) sealing technologies, the tray being;

an article formed from a thermoplastic sheet having a peripheral edge, the article comprising a tray-shaped body having a concave portion surrounded by an extension extending peripherally away from the concave portion;

the extension including the peripheral edge, a flat sealing surface surrounding the concave portion and being suitable for sealing a sealing film thereto using either of VSP and MAP sealing technologies, a bend region adjacent the sealing surface and interposed between the peripheral edge and the sealing surface, the bend region having the conformation of a smooth curve, and a bent portion interposed between the peripheral edge and a spacer separating the bent portion from the bend region; and

the article having a smooth periphery and having the overall shape of a rectangular tray with rounded corners, and the bent portion being bent sufficiently that the peripheral edge is turned at least approximately opposite the periphery.

74. As can be seen in the image within Paragraph 19 of this Complaint, the Model E090733TE Accused Product is “an article formed from a thermoplastic sheet having a peripheral edge, the article comprising a tray-shaped body having a concave portion surrounded by an extension extending peripherally away from the concave portion...” and “having the overall shape of a rectangular tray with rounded corners...” As can be further seen in the image within Paragraph 19 of this Complaint, the annotation “RIC” points to markings on the Accused Products that show that they are

1 made from a sheet of polyethylene terephthalate, a thermoformable material. *See*
2 American Chemistry Council, Plastic Packaging Resins, Resin Code
3 (<https://plastics.americanchemistry.com/Plastic-Resin-Codes-PDF/>, last visited May
4 11, 2020). As can be further seen from the image within Paragraph 20 of this
5 Complaint, a side view of a section of the Model E090733TE Accused Product shows
6 the “article” also has “the extension including the peripheral edge... .”

7 75. The side view of the Model E090733TE Accused Product in the image
8 within Paragraph 20 of this Complaint further shows that the “extension” is also “a
9 flat sealing surface surrounding the concave portion and being suitable for sealing a
10 sealing film thereto using either of VSP and MAP sealing technologies... .” That side
11 view also shows “a bend region adjacent the sealing surface and interposed between
12 the peripheral edge and the sealing surface, the bend region having the conformation
13 of a smooth curve... .” That side view in the image within Paragraph 20 also shows
14 that the Accused Product possesses “a bent portion interposed between the peripheral
15 edge and a spacer separating the bent portion [annotated in purple in the image within
16 Paragraph 20 of this Complaint] from the bend region [annotated in yellow in the
17 image within Paragraph 20 of this Complaint].”

18 76. Additionally, a gap exists between the bent portion and the concave
19 portion of the body that occurs about the entire periphery of the Accused Products,
20 substantially every part of each of the Accused Products is visually clear, the Accused
21 Products are each suitable for use in a tray-sealing apparatus in a MAP-sealing
22 process, and the Accused Products have an edge strength sufficient to resist the
23 tendency of overwrapped sealing film to cause the concave portion to close upon
24 itself.

25 77. NLPC and EFP have carried out the aforesaid acts with actual and
26 constructive knowledge of the existence of the ‘624 Patent and that their rolled-edge
27 rigid plastic food trays infringe the patent at least as of the filing date of this
28 Complaint or through manufacture, use, sale, offer to sell, and import of infringing

1 trays at least since the filing of this Complaint have acted with willful blindness of the
2 same.

3 78. NLPC and EFP have individually and collectively actively induced
4 infringement of the ‘624 Patent in this judicial district and elsewhere in the United
5 States by designing, manufacture, marketing, offering for sale, and selling rolled-edge
6 rigid plastic food trays to distributors for resale to the public knowing that the
7 distributors offer for sale and sale of the rolled-edge rigid plastic food trays to the
8 public, and the public’s use of the rolled-edge rigid plastic food trays, constitute patent
9 infringement, or have acted with willful blindness to such infringement of the ‘281
10 Patent despite knowledge of the same.

11 79. Upon information and belief, each of NLPC and EFP has actively
12 engaged in at least the following additional acts in this judicial district and elsewhere
13 in the United States to induce infringement of the ‘624 Patent:

- 14 a. Actively promoting and advertising the infringing rolled-edge rigid
15 plastic food trays through interactive websites, such as
16 <https://ecofoodpak.com/>, and “[https://ecofoodpak.com/products/
17 #1517084376474-6259755e-838e](https://ecofoodpak.com/products/#1517084376474-6259755e-838e)” which EFP maintains in this
18 judicial district;
- 19 b. Actively promoting and advertising the infringing rolled-edge rigid
20 plastic food trays through interactive websites, such as
21 <https://www.nblinhua.com/product/turned-edge-trays/> which
22 NLPC targets into this judicial district; and
- 23 c. Actively providing product literature, including instructions for use
24 and technical support relating to the infringing rolled-edge rigid
25 plastic food trays.

26 80. Each of NLPC and EFP has had actual knowledge of the ‘624 Patent
27 through the filing of the current lawsuit but continues the infringing activities despite
28 such knowledge.

1 81. Upon information and belief, NLPC's infringements of the '624 patent
2 have been in willful disregard of CM's and CC's patent rights, making this an
3 exceptional case, and entitling CM and CCP to enhanced damages pursuant to 35
4 U.S.C. § 284, and to recovery of their attorney fees and costs incurred in prosecuting
5 this action pursuant to 35 U.S.C. § 285.

6 82. The aforesaid infringing activity has caused damage to CM and CCP,
7 including loss of profits from sales they would have made but for Defendants'
8 infringements. Unless enjoined, the aforesaid infringing activity will continue, causing
9 irreparable injury to CM and CCP for which there is no adequate remedy at law.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, CM and CCP each prays for judgment as follows:

- 12 A. A judgment that NLPC has infringed one or more claims of each of the
13 '281, '680, '222, and '624 patents in violation of 35 U.S.C. § 271(a);
- 14 B. A judgment that NLPC has infringed one or more claims of each of the
15 '281, '680, '222, and '624 patents in violation of 35 U.S.C. § 271(b);
- 16 C. A judgment that NLPC has infringed one or more claims of the '222
17 patent in violation of 35 U.S.C. § 271(g);
- 18 D. A judgment permanently enjoining NLPC, its respective officers,
19 directors, employees, attorneys, agents, representatives, parents,
20 subsidiaries, affiliates and all other persons acting in concert,
21 participation or privity with them, and their successors and assigns, from
22 infringing the '281, '680, '222, and '624 patents;
- 23 E. A judgment awarding CM and CCP all damages adequate to compensate
24 for NLPC's infringements, and in no event less than a reasonable royalty,
25 including pre-judgment interest and post-judgment interest at the
26 maximum rates allowed by law;
- 27 F. A judgment that NLPC's acts of infringement have been willful and
28 deliberate, and therefore, that CM and CCP is entitled to treble damages

as provided by 35 U.S.C. § 284;

G. A judgment that NLPC's willful infringements render this an exceptional case entitling CM and CCP to an award of reasonable attorney fees and the costs incurred in prosecuting this action, together with interest, pursuant to 35 U.S.C. § 285; and

H. A judgment awarding CM and CCP such other and further relief as the Court may deem just and proper.

Dated: September 13, 2023

Respectfully submitted,

By: /s/ Randall A. Miller
Randall A. Miller, Esq.
Joseph Farco, Esq.
Attorneys for Plaintiffs