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8 dba WATERWAY PLASTICS

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 B & S PLASTICS, INC. DBA
WATERWAY PLASTICS,

13 Plaintiff,

14 vs.
15

16 CUSTOM MOLDED PRODUCTS,
17 LLC, and DOES 1-9, INCLUSIVE,

18 Defendants.
19

) Case No. 2:19-cv-10092

) **COMPLAINT FOR PATENT
INFRINGEMENT**

) **[DEMAND FOR JURY TRIAL]**

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COMPLAINT FOR PATENT INFRINGEMENT

For its complaint, Plaintiff B & S Plastics, Inc. dba Waterway Plastics alleges as follows:

PARTIES

1. Plaintiff B & S Plastics, Inc. dba Waterway Plastics (“Plaintiff” or “Waterway”) is a company organized under the laws of the State of California, with its principal place of business at 2200 East Sturgis Rd., Oxnard, California 93030.

2. Defendant Custom Molded Products, LLC (“CMP”) is corporation organized under the laws of the State of Delaware with a place of business at 36 Herring Road, Newnan, Georgia 30265, and with a distribution facility located in this judicial district at 5100 Western Way, Perris, California 92571.

3. The true names and capacities, whether individual, corporate, or otherwise of Defendants Does 1-9 inclusive, are unknown to Plaintiff, who therefore sues them by such fictitious names. Plaintiff will seek leave to amend this complaint to allege their true names and capacities when they have been ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged. At all times herein mentioned, Defendants Does 1-9 inclusive were the agents, servants, employees or attorneys of their co-defendants, and in doing the things hereinafter alleged were acting within the course and scope of their authority as those agents, servants, employees or attorneys, and with the permission and consent of their co-defendants.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1338(a) as it arises under Acts of Congress related to patents.

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1 on August 13, 2019, was filed on October 15, 2018, and is a continuation of the
2 ‘523 Patent, which issued on December 4, 2018, and was filed on March 23, 2015.
3 The ‘523 Patent claims priority to U.S. Provisional Application No. 61/969,740,
4 filed March 24, 2014.

5 10. The patents-in-suit describe a spa fixture lighting system assembly,
6 which includes a grommet configured to extend through a spa shell wall, and a spa
7 fixture for seating within the grommet with a friction fit, wherein the grommet is
8 configured to transmit light.

9 11. Waterway provided written notice to Defendant of the existence of the
10 ‘523 Patent on or about December 4, 2018. Attached hereto as **Exhibit 4** is a true
11 and correct copy of the letter sent to CMP on December 4, 2018.

12 12. On September 11, 2019, Waterway provided written notice to
13 Defendant of the existence of the ‘707 Patent. Attached hereto as **Exhibit 5** is a
14 true and correct copy of the letter sent to CMP on September 11, 2019.

15 13. On information and belief, CMP makes, uses, imports, offers to sell,
16 and/or sells the SQR LED Lighting Grommet that infringes at least one claim of the
17 ‘523 Patent and at least one claim of the ‘707 Patent.

18 14. By way of example only, and without waiving any right to assert
19 infringement of any other claim of the ‘523 Patent either directly or indirectly,
20 claim 5 reads: “A spa fixture lighting system assembly, comprising: a spa shell
21 wall having a water side and a back side; a light transmissive grommet extending
22 through the spa shell wall from the water side to the back side, the light
23 transmissive grommet having a plurality of ports extending into an exterior side of
24 the light transmissive grommet; a plurality of lights extending into the respective
25 plurality of ports; and a spa fixture extending through the spa shell wall and seated
26 in the light transmissive grommet with a friction fit.”

27 15. The SQRTM Topside Valve is a spa fixture lighting system assembly.
28 It is attached to a spa shell wall having a water side and a back side. The SQRTM

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1 LED Lighting Grommet is a light transmissive grommet extending through the spa
2 shell wall from the water side to the back side (see, Exhibit 4 at 30: “Translucent
3 SQR Grommet”; see also, Exhibit 1 at 3-4). The SQRTM LED Lighting Grommet
4 has a plurality of ports extending into an exterior side of the light transmissive
5 grommet (see, Exhibit 4 at 30: “Four LED Lighting Ports” ; see also, Exhibit 1 at
6 3-4). A plurality of lights extend into the respective plurality of ports (see, Exhibit
7 4 at 30; ; see also, Exhibit 1 at 3-4). A spa fixture extends through the spa shell wall
8 and is seated in the light transmissive grommet with a friction fit (see, Exhibit 4 at
9 30: “As part of the SQR system these valves are designed to reduce the overall
10 time spent on installation and greatly simplify the install process with fewer steps
11 and fewer tools required”; see also, Exhibit 1 at 3-4).

12 16. By way of example only, and without waiving any right to assert
13 infringement of any other claim of the ‘523 Patent either directly or indirectly,
14 claim 6 reads: “The system of claim 5, wherein each of the plurality of lights
15 extending into the respective plurality of ports is an LED port.” As discussed in
16 paragraph 15, the SQRTM Topside Valve contains all of the limitations of claim 5.
17 In addition, the ports in the SQRTM Topside Valve are LED ports (see, Exhibit 4 at
18 30: “Four LED Lighting Ports”; see also, Exhibit 1 at 3-4).

19 17. By way of example only, and without waiving any right to assert
20 infringement of any other claim of the ‘523 Patent either directly or indirectly,
21 claim 9 reads: “The system of claim 6, wherein each of the plurality of LED ports is
22 a grommet side wall vertical port.” As discussed in paragraph 16, the SQRTM
23 Topside Valve contains all of the limitations of claim 6. In addition, the LED ports
24 in the SQRTM Topside Valve are side wall vertical ports because, as shown in
25 Exhibit 4 at 30 (see also, Exhibit 1 at 3-4), the Four LED Lighting Ports are
26 oriented in a vertical manner relative to an axis defined by the grommet.

27 18. By way of example only, and without waiving any right to assert
28 infringement of any other claim of the ‘707 Patent either directly or indirectly,

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1 claim 15 reads: “A spa fixture lighting system, comprising: a grommet for
2 extending through a spa shell wall with a first friction fit; said grommet configured
3 to transmit light from a light source; and a spa fixture for extending through the spa
4 shell wall, the spa fixture configured for seating in the grommet with a second
5 friction fit.”

6 19. The SQR LED Lighting Grommet is a grommet for extending through
7 a spa shell wall with a first friction fit. The SQR LED Lighting Grommet is a
8 grommet configured to transmit light from a light source (see, Exhibit 4 at 30:
9 “Brand new translucent grommet with four integrated ports to fit all standard spa
10 LED light systems. The SQR grommet material creates soft, colorful light with no
11 hot spots for attractive and subtle lighting accent”; see also, Exhibit 1 at 3-4). The
12 Topside Control Valve is a spa fixture for extending through the spa shell wall, the
13 spa fixture configured for seating in the grommet with a second friction fit (see,
14 Exhibit 4 at 30; see also, Exhibit 1 at 3).

15 20. Waterway has not licensed or otherwise authorized CMP (or its
16 dealers, customers, affiliates, or the like) to deal in a product, or employ a system,
17 that is within the scope of one or more claims of the patents-in-suit, including the
18 SQR™ system. In other words, the making, using, importing, offering to sell,
19 and/or selling of the SQR™ system by CMP is unauthorized.

20 21. CMP’s infringement of the Patents-in-Suit is willful. CMP has known
21 about the ‘523 Patent since at least as early as December 4, 2018, and is not known
22 to have altered its infringing product/system or activities with respect its infringing
23 product/system since that time.

24 22. CMP has known about the ‘707 Patent since at least as early as
25 September 11, 2019, and is not known to have altered its infringing product/system
26 or activities with respect its infringing product/system since that time.

27 23. CMP is therefore liable to Waterway for money damages pursuant to
28 35 U.S.C. § 284 from at least as early as December 4, 2018, if not the issue date of

1 the '523 Patent. In addition, CMP must be deterred from any further violations of
2 Waterway's rights in the patents-in-suit through a permanent injunction. CMP
3 should also be required to pay Waterway's attorneys' fees, expenses, and costs for
4 its willful and blatant disregard of Waterway's patent rights.

5
6 **COUNT I – PATENT INFRINGEMENT – U.S. PATENT 10,145,523**
7 **(35 U.S.C. §§ 101 et seq.)**

8 24. Waterway hereby repeats and incorporates herein the allegations set
9 forth in paragraphs 1 through 23 above.

10 25. Waterway's '523 Patent (see, **Exhibit 2** attached hereto) has at all
11 relevant times subsequent to its issue date been fully enforceable and is now fully
12 enforceable.

13 26. Subsequent to the issuance of the '523 Patent, CMP has infringed the
14 '523 Patent by making, using, importing, offering to sell, and/or selling, and
15 continuing to make, use, import, offer to sell and/or sell the SQR™ system that
16 utilize the SQR LED Lighting Grommets, which come within the scope of at least
17 one claim of the '523 Patent, and/or that come within a range of equivalents of at
18 least one claim of the '523 Patent, and/or contributing to the infringing activities of
19 others in the form of their use of the SQR™ system.

20 27. The making, using, importing, offering to sell, and/or selling of the
21 accused product(s) by CMP, including in, from, and/or through its distribution
22 facility in Perris, California, and/or contributing to and/or inducing the infringing
23 activities of others (including through at least instructions and information provided
24 to end users and/or installers in CMP product literature, technical guides, manuals,
25 online videos), has been without authority or license from Waterway and is in
26 violation of Waterway's rights under the '523 Patent, thereby infringing the '523
27 Patent.

28 28. For the reasons stated elsewhere herein, CMP's infringement of

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1 Waterway’s ‘523 Patent has been, and is, willful, with knowledge of, and in
2 disregard for the exclusive rights of Waterway set forth in its ‘523 Patent.

3 29. The amount of money damages due Waterway as a result of CMP’s
4 infringing acts will be determined according to proof at trial, with Waterway being
5 entitled to damages adequate to compensate it for the infringements, but in no event
6 less than a reasonable royalty.

7 30. The harm to Waterway arising from CMP’s acts of infringement of
8 Waterway’s ‘523 Patent is not fully compensable by money damages. Rather,
9 Waterway has suffered and continues to suffer irreparable harm which has no
10 adequate remedy at law and which will continue unless CMP’s conduct is enjoined.
11 Waterway is therefore also entitled to a preliminary injunction, to be made
12 permanent on entry of the judgment, preventing CMP from further acts of
13 infringement.

14
15 **COUNT II – PATENT INFRINGEMENT – U.S. PATENT 10,378,707**

16 **(35 U.S.C. §§ 101 et seq.)**

17 31. Waterway hereby repeats and incorporates herein the allegations set
18 forth in paragraphs 1 through 30 above.

19 32. Waterway’s ‘707 Patent (see, **Exhibit 3** attached hereto) has at all
20 relevant times subsequent to its issue date been fully enforceable and is now fully
21 enforceable.

22 33. Subsequent to the issuance of the ‘707 Patent, CMP has infringed the
23 ‘707 Patent by making, using, importing, offering to sell, and/or selling, and
24 continuing to make, use, import, offer to sell and/or sell the SQRTM system that
25 utilize the SQR LED Lighting Grommets, which come within the scope of at least
26 one claim of the ‘707 Patent, and/or that come within a range of equivalents of at
27 least one claim of the ‘707 Patent, and/or contributing to the infringing activities of
28 others in the form of their use of the SQRTM system.

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1 34. The making, using, importing, offering to sell, and/or selling of the
2 accused product(s) by CMP, including in, from, and/or through its distribution
3 facility in Perris, California, and/or contributing to and/or inducing the infringing
4 activities of others (including through at least instructions and information provided
5 to end users and/or installers in CMP product literature, technical guides, manuals,
6 online videos), has been without authority or license from Waterway and is in
7 violation of Waterway’s rights under the ‘707 Patent, thereby infringing the ‘707
8 Patent.

9 35. For the reasons stated elsewhere herein, CMP’s infringement of
10 Waterway’s ‘707 Patent has been, and is, willful, with knowledge of, and in
11 disregard for the exclusive rights of Waterway set forth in its ‘707 Patent.

12 36. The amount of money damages due Waterway as a result of CMP’s
13 infringing acts will be determined according to proof at trial, with Waterway being
14 entitled to damages adequate to compensate it for the infringements, but in no event
15 less than a reasonable royalty.

16 37. The harm to Waterway arising from CMP’s acts of infringement of
17 Waterway’s ‘707 Patent is not fully compensable by money damages. Rather,
18 Waterway has suffered and continues to suffer irreparable harm which has no
19 adequate remedy at law and which will continue unless CMP’s conduct is enjoined.
20 Waterway is therefore also entitled to a preliminary injunction, to be made
21 permanent on entry of the judgment, preventing CMP from further acts of
22 infringement.

23
24 **PRAYER FOR RELIEF**

25 WHEREFORE, Waterway demands judgment against CMP, as follows:

26 A. A finding that CMP has directly and/or indirectly infringed the
27 Patents-in-Suit.

28 B. For an order preliminarily and permanently enjoining CMP, and its

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1 officers, directors, agents, servants, attorneys, affiliates, employees, and
2 contractors, and all other persons acting in concert with it from committing any
3 further acts of infringement, including but not limited to, manufacturing, using,
4 importing, offering to sell, and selling the SQRTM system with the SQR LED
5 Lighting Grommet (or products colorably similar thereto), contributing to,
6 inducing, or otherwise aiding, abetting, or assisting others in such infringing
7 activities;

8 C. For an order directing CMP to file with this Court and to serve on
9 Waterway within thirty (30) days after service on CMP of the injunction granted
10 herein, or such extended period as the Court may direct, a report in writing, under
11 oath, setting forth in detail the manner and form in which CMP has complied with
12 the injunction and order of the Court;

13 D. For a judgment to be entered for Waterway against CMP awarding
14 damages adequate to compensate Waterway for the infringement, but in no event
15 less than a reasonable royalty;

16 E. For a judgment awarding to Waterway prejudgment and postjudgment
17 interest until the award is fully paid;

18 F. For a judgment that CMP has willfully and deliberately infringed
19 Waterway's patent rights, such that it is determined that this is an exceptional case
20 entitling Waterway to enhanced damages under the Patent Laws of the United
21 States;

22 G. For an award to Waterway of costs, expenses, and attorneys' fees,
23 incurred in bringing this action under the Patent Laws of the United States; and,

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1 H. For such other and further relief as this Court may deem just and
2 equitable under the circumstances.

3
4 Respectfully submitted:
5 CISLO & THOMAS LLP

6 Dated: November 26, 2019

7 By: /s/Mark D. Nielsen
8 Daniel M. Cislo
9 Mark D. Nielsen
10 C. Wook Pak

11 Attorneys for Plaintiff,
12 B & S PLASTICS, INC. DBA
13 WATERWAY PLASTICS

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DEMAND FOR JURY TRIAL

Waterway hereby demands a trial by jury on all issues raised by the Complaint so triable.

Respectfully submitted:
CISLO & THOMAS LLP

Dated: November 26, 2019

By: /s/Mark D. Nielsen
Daniel M. Cislo
Mark D. Nielsen
C. Wook Pak

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