

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

PLASTIPAK PACKAGING, INC.,

Plaintiff,

v.

NESTLÉ WATERS NORTH  
AMERICA, INC.,

Defendant.

Civ. Act. No. 1:20cv1288 (RDA/IDD)

**JURY TRIAL DEMANDED**

**AMENDED COMPLAINT FOR WILLFUL PATENT INFRINGEMENT**

Plastipak Packaging, Inc. brings this action for willful patent infringement against Nestlé Waters North America, Inc. (“Nestlé”). On July 29, 2020, Plastipak wrote to Nestlé, explaining how its products infringe Plastipak’s patents. (Attached as **Exhibit 13**.) Plastipak asked Nestlé to meet so that the parties could discuss Plastipak’s assessment, address any questions Nestlé might have, and evaluate whether any mutually agreeable business arrangement might resolve this matter. Counsel for Plastipak and Nestlé met on August 31, September 17, and October 27, 2020. The parties were unable to reach an agreement, and Nestlé continues to make and sell its infringing products. To date, Nestlé has provided no substantive, written response to Plastipak’s detailed letter describing Nestlé’s infringement.

Accordingly, Plastipak brings this action for willful patent infringement seeking to stop Nestlé's unlawful manufacture and sale of infringing products and to recover its damages. Plastipak alleges as follows:

### **SUMMARY OF DISPUTE**

1. Through its manufacture, use, and sale of plastic water bottles and preforms, Nestlé continues to infringe twelve Plastipak patents: U.S. Patent Nos. 8,857,637; 9,033,168; 9,139,326; 9,403,310; 9,522,759; 9,738,409; 9,850,019; 10,023,345; 10,214,311; 10,214,312; 10,266,299; and 10,457,437. These patents are directed to light-weighting, a practice that reduces the amount of plastic used in plastic bottles.

2. On information and belief, Nestlé operates 30 factories, 65 home and office delivery branches, and four offices throughout the United States and Canada. Nestlé domestically produces infringing water bottles under the Nestlé Pure Life, Arrowhead, Ozarka, Ice Mountain, Poland Spring, Deer Park, and Zephyrhills brand names, and it distributes those products via distribution centers located throughout the United States, including in this District.

3. On information and belief, the images below show infringing water bottles being distributed from a Nestlé ReadyRefresh distribution center located in this District.



4. On information and belief, the manufacturing methods used at Nestlé's facilities infringe the asserted method claims of the asserted patents, and the millions of plastic bottles produced each day at these facilities infringe the asserted apparatus claims of the asserted patents.

5. Plastipak brings this action to stop Nestlé's willful infringement of Plastipak's intellectual property rights, and to recover its damages.

### **THE PARTIES**

6. Plaintiff Plastipak Packaging, Inc. is a Delaware corporation having a principal place of business at 41605 Ann Arbor Road, Plymouth, Michigan 48170.

7. Plastipak is one of the world's leading companies in the business of inventing, developing, manufacturing, and selling containers and packaging for consumer products, including bottled water and other beverages.

8. Since the company was founded in 1967, Plastipak has grown by continuously inventing innovative plastic containers for consumer products. Plastipak is a leading innovator in the industry, surpassing 500 U.S. patents awarded for its technological advances.

9. Today, Plastipak produces over 40 billion plastic preforms and containers annually.

10. Nestlé Waters North America operates its ReadyRefresh by Nestlé delivery service in Virginia. Specifically, ReadyRefresh operates at least two physical locations in the District, including one in Lorton, Virginia and one in Chesapeake, Virginia. Nestlé Waters North America leverages its ReadyRefresh distribution facilities to disseminate Nestlé infringing water products throughout the

District. More generally, the Nestlé brand has been in Virginia since Nestlé opened a factory in Danville in 1988; and the Nestlé group currently operates throughout the District including in Alexandria, Rosslyn, Tysons Corner, Lorton, King William, and Chesapeake. In 2017, Nestlé USA announced a headquarters move to 1812 North Moore Street in Rosslyn, the tallest building in the metropolitan D.C. area.

11. Defendant Nestlé Waters North America, Inc. is a Delaware corporation having a principal place of business at 900 Long Ridge Rd., Building 2, Stamford, CT 06902.

12. On information and belief, Nestlé has committed direct and indirect acts of infringement of the asserted patents. According to corporate parent Nestlé S.A., the Nestlé Waters business in North America, excluding international brands, had sales of around CHF 3.4 billion (\$3.74 billion USD) in 2019.

13. Nestlé supplies bottled water to general retailers, grocery store chains, convenience store chains, direct delivery, online sales entities, and wholesale customers in this District and throughout the United States. By way of example, Nestlé operates a direct-to-consumer and office beverage delivery service called ReadyRefresh by Nestlé that operates throughout this District.





14. Nestlé also manufactures the plastic containers used for its bottled water, including the plastic preforms used to produce the containers.

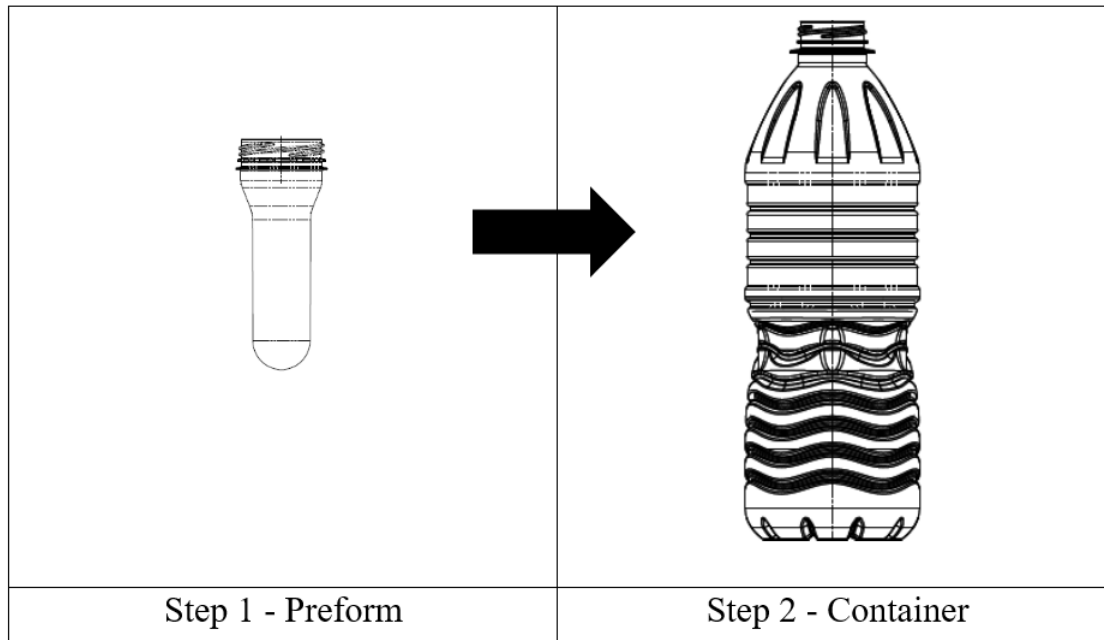
### **BACKGROUND**

#### **Producing Plastic Bottles**

15. Containers for bottled water are typically made from PET (polyethylene terephthalate), a thermoplastic material, but may also be made from other polymers, including without limitation polyethylene and polypropylene. The first step in manufacturing a PET bottle typically involves converting PET resin into a preform, a work-in-process product for the final plastic container. A preform may be produced through injection molding, compression molding, or other known methods.

16. Plastipak is a leading manufacturer of preforms with a wide range of innovative preform designs for plastic containers.

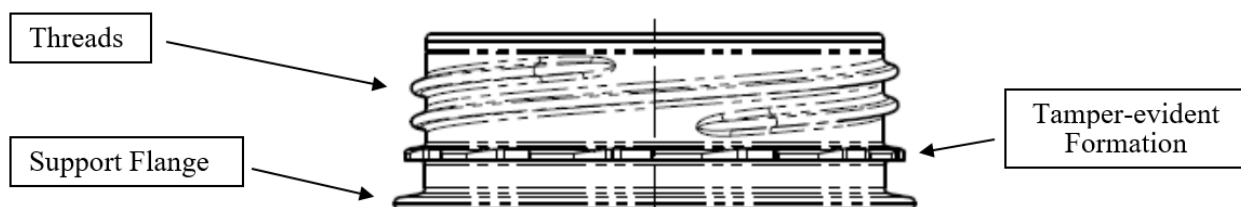
17. The images below show an example of a preform manufactured by Plastipak and a final 500-ml water bottle manufactured using the preform:



18. In the injection molding process, the neck of a preform is molded into the desired shape of the opening for the final container.

19. The structural features of the neck are referred to as the neck finish, which can include threads to retain a cap, a tamper-evident formation, and a support flange.

20. An example neck finish (also called a neck portion) is shown below:



21. The body of a preform is molded as a preliminary product. The preform is then stretched and blow molded at high temperature into the desired shape of the final container.

22. These manufacturing operations are typically performed using high-speed automated machinery that converts the PET resin into preforms and forms the final bottles, fills the bottles with the desired beverage, and seals the bottles with a closure. These operations may be done in multiple steps and/or at different locations.

**Plastipak's Novel Approach to Lightweight Plastic Bottles**

23. In the course of its research and development, Plastipak discovered that plastic bottles could be produced with a lighter neck finish that still retained functional threads, a tamper-evident formation, and a support flange.

24. On March 6, 2006, Plastipak filed its first patent application with the United States Patent & Trademark Office (PTO) for inventions related to its lightweight neck finish technology.

25. On September 13, 2007, the PTO published Plastipak's application for its innovative lightweight neck finish as U.S. Publication No. 2007/0210026. The publication disclosed, *inter alia*, a plastic container with a "support flange with an upper and lower surface, a tamper-evident formation, and a dispensing opening at the top of the neck portion," wherein "the vertical distance from the top of the



dispensing opening to the lower surface of the support flange is 0.580 inches or less.”

The publication also disclosed that “for a 500 ml version of a container made in accordance with an embodiment of the invention, the total weight of the preform and unfilled weight of a container produced from such a preform may be 11 grams or less, and for some embodiments may be 10 grams or less.”

26. Plastipak’s innovations in lightweight bottles significantly reduce raw material consumption.

27. Plastipak’s lightweighting invention results in significant raw material cost savings.

28. Plastipak’s lightweighting invention also allows for a reduced cap size to fit the reduced weight bottle necks.

29. Plastipak’s innovations also provide savings in energy and other utilities necessary to manufacture and convey its products.

30. Plastipak’s innovations also provide processing efficiencies that provide savings throughout the manufacturing process.

31. Plastipak’s innovations allow for a reduced carbon footprint, conservation of resources, and competitive advantage.

### **THE ASSERTED PLASTIPAK PATENTS**

32. The PTO has awarded Plastipak multiple patents for its lightweight neck finish technology, including U.S. Patent Nos. 8,857,637 (“the ’637 patent”), 9,033,168 (“the ’168 patent”), 9,139,326 (“the ’326 patent”), 9,403,310 (“the ’310 patent”), 9,522,759 (“the ’759 patent”), 9,738,409 (“the ’409 patent”), 9,850,019 (“the ’019 patent”), 10,023,345 (“the ’345 patent”), 10,214,311 (“the ’311 patent”), 10,214,312 (“the ’312 patent”), 10,266,299 (“the ’299 patent”), and 10,457,437 (“the ’437 patent”) (collectively, “the Asserted Patents”).

33. Plastipak is the assignee of the ’637 patent and is the owner of all right, title, and interest in the ’637 patent, entitled “Lightweight Plastic Container and Preform,” which was duly and properly issued by the U.S. Patent and Trademark Office on October 14, 2014. A true and correct copy of the ’637 patent is attached hereto as **Exhibit 1**.

34. Plastipak is the assignee of the ’168 patent and is the owner of all right, title, and interest in the ’168 patent, entitled “Lightweight Plastic Container and Preform,” which was duly and properly issued by the U.S. Patent and Trademark Office on May 19, 2015. A true and correct copy of the ’168 patent is attached hereto as **Exhibit 2**.

35. Plastipak is the assignee of the '326 patent and is the owner of all right, title, and interest in the '326 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark Office on September 22, 2015. A true and correct copy of the '326 patent is attached hereto as **Exhibit 3**.

36. Plastipak is the assignee of the '310 patent and is the owner of all right, title, and interest in the '310 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark Office on August 2, 2016. A true and correct copy of the '310 patent is attached hereto as **Exhibit 4**.

37. Plastipak is the assignee of the '759 patent and is the owner of all right, title, and interest in the '759 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark Office on December 20, 2016. A true and correct copy of the '759 patent is attached hereto as **Exhibit 5**.

38. Plastipak is the assignee of the '409 patent and is the owner of all right, title, and interest in the '409 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark

Office on August 22, 2017. A true and correct copy of the '409 patent is attached hereto as **Exhibit 6**.

39. Plastipak is the assignee of the '019 patent and is the owner of all right, title, and interest in the '019 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark Office on December 26, 2017. A true and correct copy of the '019 patent is attached hereto as **Exhibit 7**.

40. Plastipak is the assignee of the '345 patent and is the owner of all right, title, and interest in the '345 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark Office on July 17, 2018. A true and correct copy of the '345 patent is attached hereto as **Exhibit 8**.

41. Plastipak is the assignee of the '311 patent and is the owner of all right, title, and interest in the '311 patent, entitled "Lightweight Plastic Container and Preform," which was duly and properly issued by the U.S. Patent and Trademark Office on February 26, 2019. A true and correct copy of the '311 patent is attached hereto as **Exhibit 9**.

42. Plastipak is the assignee of the '312 patent and is the owner of all right, title, and interest in the '312 patent, entitled "Lightweight Plastic Container and

Preform,” which was duly and properly issued by the U.S. Patent and Trademark Office on February 26, 2019. A true and correct copy of the ’312 patent is attached hereto as **Exhibit 10**.

43. Plastipak is the assignee of the ’299 patent and is the owner of all right, title, and interest in the ’299 patent, entitled “Lightweight Plastic Container and Preform,” which was duly and properly issued by the U.S. Patent and Trademark Office on April 23, 2019. A true and correct copy of the ’299 patent is attached hereto as **Exhibit 11**.






44. Plastipak is the assignee of the ’437 patent and is the owner of all right, title, and interest in the ’437 patent, entitled “Lightweight Plastic Container and Preform,” which was duly and properly issued by the U.S. Patent and Trademark Office on October 29, 2019. A true and correct copy of the ’437 patent is attached hereto as **Exhibit 12**.

### **NESTLÉ AND THE ACCUSED PRODUCTS**

45. Nestlé manufactures plastic preforms and plastic blow molded containers for its Pure Life, Arrowhead, Ozarka, Ice Mountain, Poland Spring, Deer Park, and Zephyrhills brand bottled water (“the Accused Products”) that infringe one or more claims of the ’637 patent, the ’168 patent, the ’326 patent, the ’310 patent, the ’759 patent, the ’409 patent, the ’019 patent, the ’345 patent, the ’311 patent, the

'312 patent, the '299 patent, and the '437 patent. For example, Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, and the preforms used to manufacture these products, all use Plastipak's patented lightweight neck finish technology.








46. Examples of Nestlé's infringing 8 oz, 16.9 oz, 20 oz, 23.7 oz, and 1 liter bottled water products sold under the Pure Life brand are shown below:

				
8 oz	16.9 oz	20 oz	23.7 oz	1 liter



















47. Examples of Nestlé’s infringing 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products sold under the Arrowhead brand are shown below:

						
8 oz	12 oz	16.9 oz	20 oz	23.7 oz	1 liter	1.5 liter








48. Examples of Nestlé’s infringing 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products sold under the Ozarka brand are shown below:

						
<b>8 oz</b>	<b>12 oz</b>	<b>16.9 oz</b>	<b>20 oz</b>	<b>23.7 oz</b>	<b>1 liter</b>	<b>1.5 liter</b>

49. Examples of Nestlé’s infringing 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products sold under the Ice Mountain brand are shown below:

						
<b>8 oz</b>	<b>12 oz</b>	<b>16.9 oz</b>	<b>20 oz</b>	<b>23.7 oz</b>	<b>1 liter</b>	<b>1.5 liter</b>

50. Examples of Nestlé’s infringing 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products sold under the Poland Spring brand are shown below:

						
<b>8 oz</b>	<b>12 oz</b>	<b>16.9 oz</b>	<b>20 oz</b>	<b>23.7 oz</b>	<b>1 liter</b>	<b>1.5 liter</b>

51. Examples of Nestlé’s infringing 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products sold under the Deer Park brand are shown below:

						
<b>8 oz</b>	<b>12 oz</b>	<b>16.9 oz</b>	<b>20 oz</b>	<b>23.7 oz</b>	<b>1 liter</b>	<b>1.5 liter</b>

52. Examples of Nestlé’s infringing 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products sold under the Zephyrhills brand are shown below:

						
<b>8 oz</b>	<b>12 oz</b>	<b>16.9 oz</b>	<b>20 oz</b>	<b>23.7 oz</b>	<b>1 liter</b>	<b>1.5 liter</b>



53. Each of Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products is a container assembly comprising a plastic blow molded container and a closure configured to receive threads.

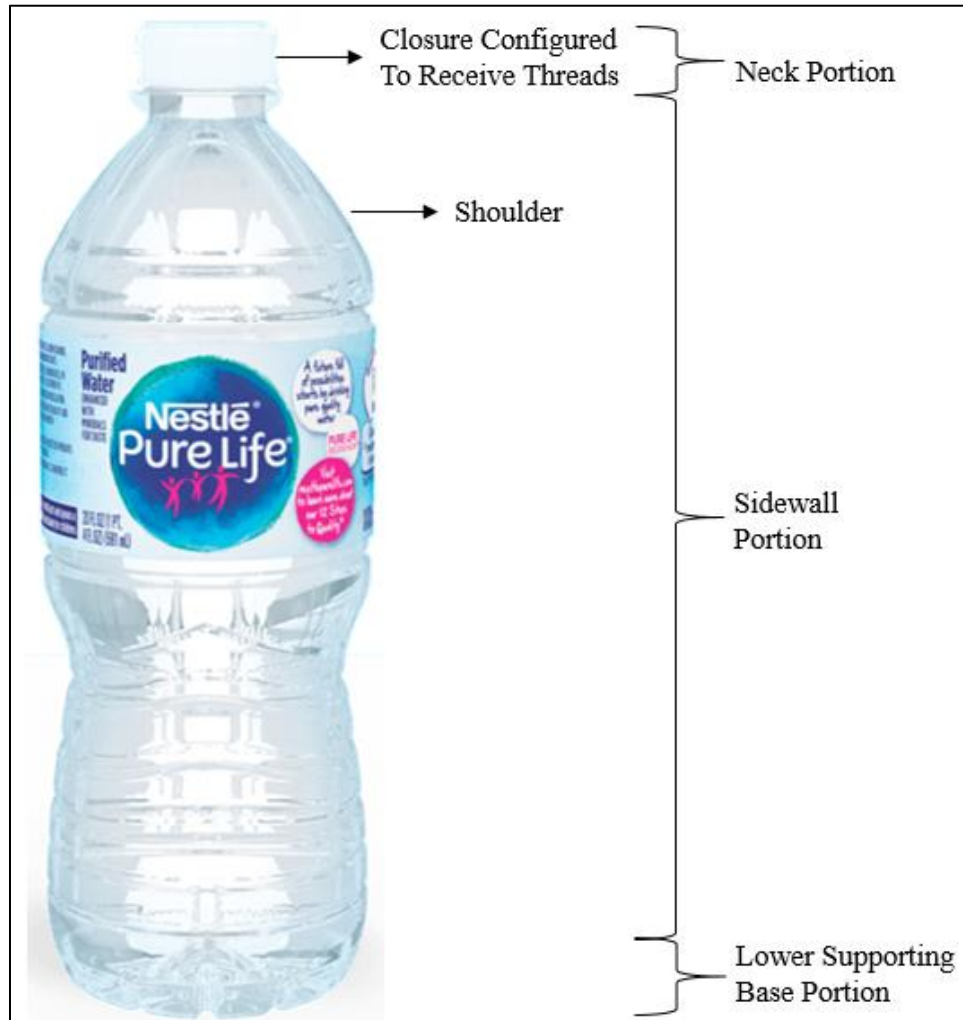
54. Each of Nestlé's 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products has a container volume that is at least 500 ml.

55. On information and belief, a plastic preform having a dispensing opening, a tamper-evident formation, a support flange with a lower surface, and a lower portion below the support flange, the lower portion having an initial axial length, is used to make each of Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products through a blow molding process.

56. Each of Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products comprises a hollow body portion because the body portion is hollow once blown.

57. Each of Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products includes a lower supporting base portion, a sidewall portion extending upwardly from the base portion, and a neck portion extending upwardly from the sidewall portion. As just one example, Nestlé's 16.9 oz Pure Life bottled water product (shown below) has a lower supporting base portion, a sidewall

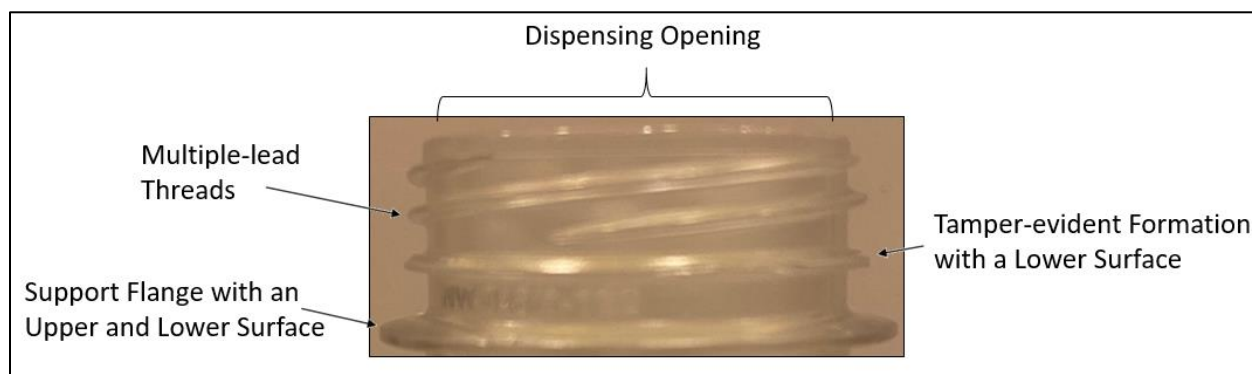
portion extending upwardly from the base portion, and a neck portion extending upwardly from the sidewall portion.



58. Each of Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water containers are sold with a closure, and the container assemblies are comprised of the container and the closure configured to receive threads (see above).



59. The neck portion of each of Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water containers and container assemblies includes a dispensing opening positioned at a top of the neck portion, multiple-lead threads positioned below the dispensing opening, a tamper-evident formation with a lower surface positioned below the threads, and a support flange with an upper and lower surface positioned below the tamper-evident formation. As just one example, the neck portion for Nestlé's 16.9 oz Pure Life bottled water product (shown below) has a dispensing opening with a top, multiple-lead threads, a tamper-evident formation with a lower surface, and a support flange with an upper and lower surface. As shown, the threads are multiple-lead threads (i.e., the neck finish has three threads). Additionally, the tamper-evident formation, which is the means for indicating tampering on the Nestlé bottled water products, comprises a bead.



60. Plastipak identifies the neck finish elements (above) and the dimensions (below) for an exemplary Nestlé 16.9 oz Pure Life bottled water product.

On information and belief, the elements and dimensions of a neck finish of a preform are typically preserved when the preform is blow molded into a container.

61. On information and belief, the Nestlé preform corresponding to the 16.9 oz Pure Life bottled water product has the same neck finish elements and dimensions as the 16.9 oz Pure Life bottled water container and container assembly.

62. In August 2020, Plastipak requested a third-party independent company called Inspec Inc. perform testing on samples of Nestlé's 16.9 oz (500 ml Pure Life) bottled water products. The results of that testing are contained in **Exhibit 14** and summarized below.

63. The height from the top of the opening to the bottom of the support flange for Nestlé's 16.9 oz Pure Life bottled water products (and the preforms for each product) is approximately 0.43 inches.

64. The height from the top of the opening to the top of the support flange for Nestlé's 16.9 oz Pure Life bottled water products (and the preforms for each product) is approximately 0.40 inches.

65. The height from the top of the opening to the bottom of the tamper-evident formation for Nestlé's 16.9 oz Pure Life bottled water products (and the preforms for each product) is approximately 0.28 inches.

66. The radially extending length of the support flange for Nestlé's 16.9 oz Pure Life bottled water products (and the preforms for each product) is approximately 0.14 inches.

67. The height from the furthest outwardly radially-extending portion of the lower surface of the tamper-evident formation to the upper surface of the support flange at the same outward radial distance for Nestlé's 16.9 oz Pure Life bottled water products (and the preforms for each product) is approximately 0.12 inches.

68. The inner diameter of the opening for Nestlé's 16.9 oz Pure Life bottled water products (and the preforms for each product) is approximately 22 mm.

69. The outside diameter of the support flange for Nestlé's 16.9 oz Pure Life bottled water products (and the preforms for each product) is approximately 29.3 mm.

70. The weight of the neck portion for Nestlé's 16.9 oz Pure Life bottled water products (and the preforms for each product) is approximately 1.7 grams.

71. The total weight of the container for Nestlé's 16.9 oz Pure Life bottled water products (and the preforms for each product) is approximately 8.5 grams.

72. On information and belief, and based on physical inspection, the neck finish for Nestlé's other Accused Products is the same or similar to the neck finish on Nestlé's 16.9 oz Pure Life bottled water products.

73. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product (and the preform used to make each product) is comprised of polyethylene terephthalate (PET), including, on information and belief, recycled polyethylene terephthalate (RPET). *See, e.g.*, Nestlé Waters North America Expands Use of 100% Recycled Plastic for Ozarka, Deer Park, and Zephyrhills (July 16, 2020)<sup>1</sup>; Nestlé Waters North America Will Achieve 25% Recycled Plastic by 2021 (Dec. 10, 2018)<sup>2</sup>.

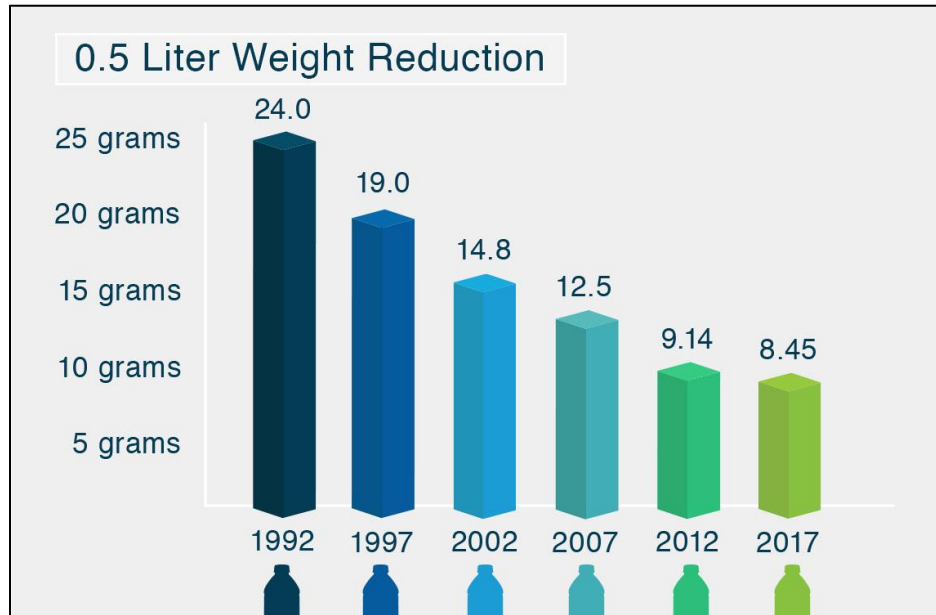
74. Nestlé advertises the benefits of using Plastipak’s lightweight finish innovation. According to its website, “Nestlé Waters North America has been working to reduce the amount of net-new plastic in the world by introducing lighter bottles into the market while increasing recycling efforts.” Packaging, Nestle-watersna.com (last accessed Dec. 4, 2020), *available at* <https://www.nestle-watersna.com/en/planet/packaging>. Nestlé’s website also claims, “[s]ince 1990, we have reduced the plastic content of our half-liter bottles by more than 60%. Light

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<sup>1</sup> Available at <https://www.nestle.com/media/news/nestle-waters-north-america-recycled-plastic-ozarka-deer-park-zephyrhills> (last accessed Dec. 4, 2020); <https://web.archive.org/web/20200924115714/https://www.nestle-watersna.com/en/nestle-water-news/pressreleases/nestle-waters-carbonlite-rpet-agreement>.

<sup>2</sup> Available at <https://www.nestle.com/media/news/nestle-waters-north-america-25-percent-recycled-plastic-by-2021> (last accessed Dec. 4, 2020).

weighting – reducing the amount of plastic resin – saves energy and reduces our carbon footprint.”<sup>3</sup>



*Id.*

### **JURISDICTION AND VENUE**

75. This action for patent infringement arises under the laws of the United States, Title 35 of the United States Code, 35 U.S.C. § 1 *et seq.*

76. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

77. This Court has at least specific personal jurisdiction over Nestlé pursuant to due process and the Virginia Long Arm Statute, due at least to its

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<sup>3</sup> Available at <https://web.archive.org/web/20201001193537/https://www.nestle-watersna.com/en/planet/packaging/innovations-in-packaging>.

continuous business contacts and infringing activities in the Commonwealth of Virginia and in this District.

78. Nestlé has transacted and continues to transact business within this District, including by advertising, offering for sale, and selling infringing products within this District and the Commonwealth.

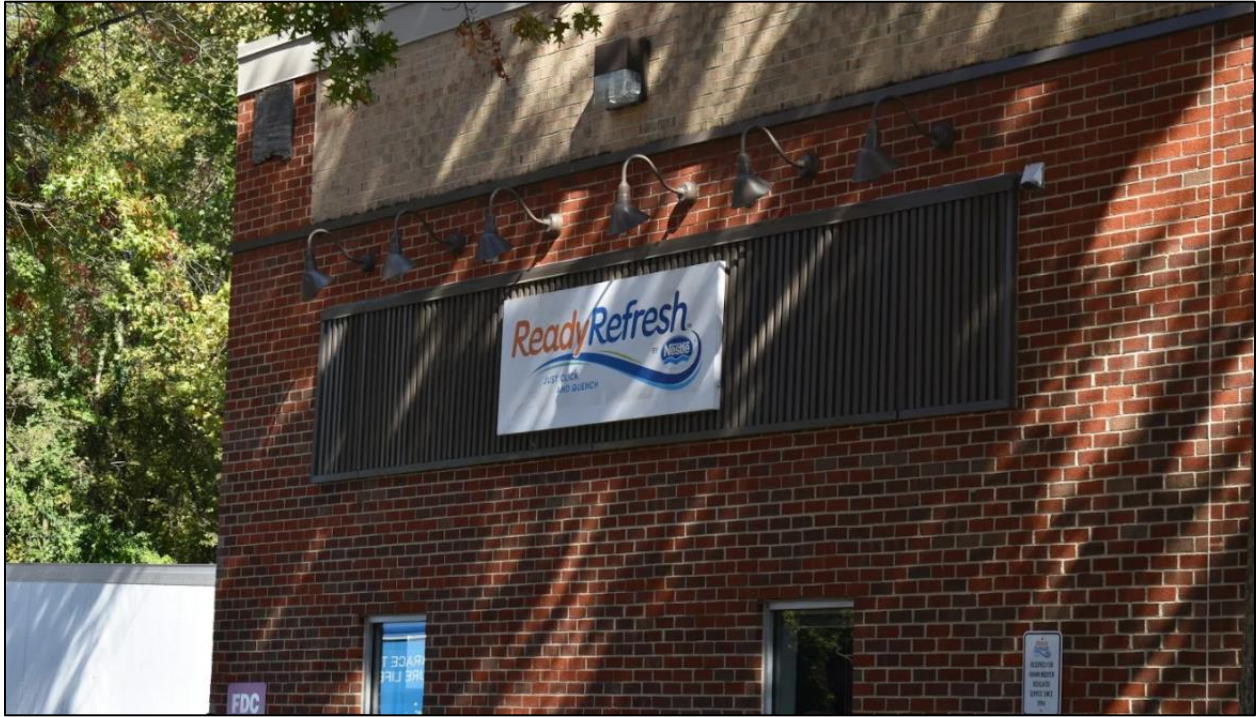
79. For example, Nestlé sells its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products to national chain retailers with stores in this District, which in turn sell the bottled water products to consumers in this District, as shown in the exemplary image below.



80. Nestlé has at least one regular and established place of business in this District. For example, Nestlé operates a distribution center at 7408 Lockport Place,



Lorton, VA 22079 through a subsidiary called ReadyRefresh by Nestlé. A picture of this facility is shown below.



81. Nestlé also operates a facility at 925 Cavalier Blvd, Chesapeake, VA 23323. A picture from this facility is shown below.



82. Nestlé's affiliate, Nestlé USA, Inc., also has a regular and established place of business in this District. Nestlé USA, Inc. recently relocated its U.S. headquarters to 1812 North Moore St., Arlington, VA 22209. Pictures of this building are shown below.



83. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

**NESTLÉ'S DIRECT AND INDIRECT INFRINGEMENT IS WILLFUL**

84. In December 2017, Plastipak filed a complaint alleging willful patent infringement by Niagara Bottling, LLC. On information and belief, Nestlé was aware of the Plastipak patents because of the industry awareness of the Niagara Case. On information and belief, at the time Nestlé learned of the Plastipak patents, it knew or should have known that its products infringed the Plastipak patents. Nestlé, however, took no steps to contact Plastipak or to change its products.

85. In May 2019, Plastipak filed a complaint alleging willful patent infringement by Ice River Springs Water Co. Inc. and Ice River Springs USA, Inc. On January 31, 2020, Plastipak filed a complaint alleging willful patent infringement by CG Roxane, LLC and a separate complaint alleging willful patent infringement by Premium Waters Inc. Nestlé was aware of the Plastipak patents because, on information and belief, it was aware of these other enforcement actions. On information and belief, at the time Nestlé learned of the Plastipak patents, it knew or should have known that its products infringed the Plastipak patents. On information and belief, Nestlé was in communication with the other alleged infringers, and Nestlé took no steps to avoid infringement or to contact Plastipak.



86. On July 29, 2020, Plastipak sent a letter to the Executive Vice President and General Counsel of Nestlé Waters North America, Inc. (**Exhibit 13**), notifying Nestlé that it is infringing Plastipak's patents. The letter requested that Nestlé and Plastipak meet so that Plastipak could explain its position, answer any questions Nestlé had, and see if there is a mutually agreeable business arrangement for resolving the matter.

87. Counsel for the parties met on August 31, September 17, and October 27, 2020 but were unable to reach an agreement.

88. Nestlé has not substantively responded to Plastipak's letter or otherwise explained why it does not infringe Plastipak's patents.

89. Nestlé continues to manufacture, use, offer to sell, and/or sell preforms, containers, and container assemblies that infringe Plastipak's patents.

90. On information and belief, through its manufacture, use, offer to sell, and/or sale in the United States of preforms, containers, and container assemblies, including at least its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products and associated preforms, Nestlé has literally and directly infringed the asserted claims of Plastipak's patents. Notably—on information, belief, and physical inspection—the neck finish for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products and associated preforms is the same

or similar, and thus Nestlé's products would infringe similarly all claim limitations relating to the neck portion of a preform, container, or container assembly.

91. On information and belief, to the extent Nestlé offers to sell or sells preforms, containers, and closures in the United States, through such acts Nestlé has also indirectly infringed the claims of Plastipak's patents under 35 U.S.C. §§ 271(b) and 271(c). Nestlé also sells container assemblies to retailers in the United States, and through those acts has also indirectly infringed the claims of Plastipak's patents under 35 U.S.C. § 271(b).

92. Nestlé had knowledge that its products infringed the Plastipak patents at least as early as July 2020, when Plastipak notified Nestlé of its infringement via letter—and on information and belief as early as 2018 (see paragraph 84). Each of Nestlé's preforms, containers, and closures is a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention. On information and belief, Nestlé knew its preforms, containers, and closures were especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use at least as early as Plastipak's notice letter.

93. On information and belief, Nestlé's infringing preforms, containers, and closures have no use but to be blown into infringing containers, and/or assembled into infringing container assemblies. On information and belief, when Nestlé offered to sell or sold such preforms, containers, and closures with knowledge that these components infringe Plastipak's patent claims or are a material part of the invention, Nestlé knew it was inducing or contributing to further infringement of Plastipak's patents when those preforms, containers, and closures were used to manufacture infringing container assemblies for sale to customers.

94. In addition, on information and belief, Nestlé knowingly induced infringement of Plastipak's patents, including because its sales of container assemblies to retailers, and communications relating thereto, knowingly encouraged its customers to use the container assemblies to commit acts of direct infringement. Thus, Nestlé intentionally encouraged its customers to commit acts of direct infringement, including selling, offering for sale, and using Nestlé's container assemblies.

#### **COUNT I – INFRINGEMENT OF THE '637 PATENT**

95. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 94 of this complaint as though fully set forth herein.



96. Nestlé has directly infringed and continues to directly infringe various method claims of the '637 patent, including at least claims 29-30 and 32-34, under 35 U.S.C. § 271(a) by making the Accused Products in the United States using each step of the claimed methods.

97. Nestlé has made and continues to make each of its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products by forming a container using a preform having a dispensing opening, a tamper-evident formation, a support flange with a lower surface, and a lower portion below the support flange, where the vertical distance from the dispensing opening to the lower surface of the support flange, including threads and the tamper-evident formation, is 0.580 inches or less, and the lower portion has an initial axial length, which on information and belief is stretched three times during blow molding.

98. Nestlé has made and continues to make each of its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products by blow-molding a preform.

99. Nestlé has made and continues to make each of its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products using a preform with a dispensing opening that is at least 22 mm.

100. Nestlé has made and continues to make each of its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products by filling the container with a beverage (i.e., water) at a location substantially adjacent to where the container for that product is formed.

101. To the extent Nestlé has induced others to manufacture the Accused Products after it learned of the '637 patent, Nestlé has induced infringement of various method claims of the '637 patent, including at least claims 29-34, under 35 U.S.C. § 271(b). Likewise, to the extent Nestlé has offered to sell or sold to others infringing preforms, containers, or closures for making infringing container assemblies, Nestlé has contributed to infringement of various method claims of the '637 patent, including at least claims 29-34, under 35 U.S.C. § 271(c).

102. Nestlé does not have a license or permission to use the '637 patent.

103. Nestlé has been willfully infringing the '637 patent since at least the time it received Plastipak's July 29, 2020, letter, which identifies the '637 patent and its applicability to the Accused Products. On information and belief, at the time Nestlé learned of the '637 patent, it knew or should have known that its Accused Products infringed the asserted claims of that patent.

104. Nestlé's behavior is an egregious case of willful misconduct. Nestlé has known of the '637 patent and Plastipak's allegation that Nestlé infringed the

patent since at least its receipt of Plastipak's July 29, 2020, letter. On information and belief, Nestlé has no good faith defense to Plastipak's infringement allegations yet has deliberately and wantonly continued its infringement. As a result of Nestlé's willful infringement of the '637 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

### **COUNT II – INFRINGEMENT OF THE '168 PATENT**

105. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 104 of this complaint as though fully set forth herein.

106. Nestlé has directly infringed and continues to directly infringe at least claims 1-5, 7-18, 20-23, and 26-30 of the '168 patent under 35 U.S.C. § 271(a) by making, using, offering to sell and/or selling the Accused Products in the United States.

107. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a plastic blow molded container with a hollow body portion including a lower supporting base portion; a sidewall portion extending upwardly from the base portion; and a neck portion extending upwardly from the sidewall portion, wherein the neck portion has a support flange with an upper and lower surface, threads, a tamper-evident formation having a lower surface, and a dispensing opening having a top.

108. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the dispensing opening has an inner diameter that is at least 22 mm and less than 29 mm.

109. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including threads and the tamper-evident formation, is less than 0.450 inches.

110. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a tamper-evident formation comprising a bead.

111. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from a furthest outwardly radially-extending portion of the lower surface of the tamper-evident formation to the upper surface of the support flange at the same outward radial distance is 0.08 inches or less.

112. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from a furthest outwardly radially-extending portion of the lower surface of the tamper-evident formation to the upper surface of the support flange at the same outward radial distance is 0.15 inches or less.

113. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from a furthest outwardly radially-extending portion of the lower surface of the tamper-evident formation to the lower surface of the support flange at the same outward radial distance is 0.15 inches or less.

114. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from a furthest outwardly radially-extending portion of the lower surface of the tamper-evident formation to the lower surface of the support flange at the same outward radial distance is 0.20 inches or less.

115. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from the top of the dispensing opening to the upper surface of the support flange is 0.40 inches or less.

116. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from the top of the dispensing opening to the upper surface of the support flange is 0.50 inches or less.

117. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from the lower surface of the tamper-evident formation to the top of the dispensing opening is 0.30 inches or less.

118. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the radially extending length of the support flange is 0.17 inches or less.

119. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the least distance from a furthest radially-extending portion of the support flange to the furthest radially extending portion of the upper surface of the dispensing opening is 0.50 inches or less.

120. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the weight of the neck portion is 2.3 grams or less.

121. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a shoulder portion extending upwardly and inwardly from the sidewall portion to the neck portion.

122. On information and belief, the ratio of the height of the center of gravity to the container height for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is less than 0.53. For example, by providing a neck portion for its containers that incorporates the claimed invention, the center of gravity for the container is lowered as a percentage of height from bottom.



123. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the container is comprised of polyethylene terephthalate (PET).

124. To the extent Nestlé has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '168 patent, Nestlé has induced infringement of the '168 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United States for subsequent use or re-sale by Nestlé's customers, and by providing those customers with marketing material and/or product packaging intended to promote subsequent use and re-sale. Likewise, to the extent Nestlé has offered to sell or sold to others infringing preforms, containers, or closures for making infringing container assemblies, Nestlé has contributed to infringement of the '168 patent under 35 U.S.C. § 271(c).

125. Nestlé does not have a license or permission to use the '168 patent.

126. Nestlé has been willfully infringing the '168 patent since at least the time it received Plastipak's July 29, 2020, letter, which identifies the '168 patent and its applicability to the Accused Products. On information and belief, at the time Nestlé learned of the '168 patent, it knew or should have known that its Accused Products infringed the asserted claims of that patent.

127. Nestlé's behavior is an egregious case of willful misconduct. Nestlé has known of the '168 patent and Plastipak's allegation that Nestlé infringed the patent since at least its receipt of Plastipak's July 29, 2020, letter. On information and belief, Nestlé has no good faith defense to Plastipak's infringement allegations yet deliberately and wantonly continued its infringement. As a result of Nestlé's willful infringement of the '168 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

### **COUNT III – INFRINGEMENT OF THE '326 PATENT**

128. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 127 of this complaint as though fully set forth herein.

129. Nestlé has directly infringed and continues to directly infringe various method claims of the '326 patent, including at least claims 24-28, under 35 U.S.C. § 271(a) by making the Accused Products in the United States using each step of the claimed methods.

130. Nestlé has made and continues to make each of its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products by forming a container using a preform having a hollow body portion and a neck portion, the neck portion including: a dispensing opening positioned at the top of the neck portion; threads positioned below the dispensing opening; a tamper-evident formation positioned

below the threads; and a support flange positioned below the tamper-evident formation, the support flange having an upper and a lower surface; and the preform is formed of a material comprising polyethylene terephthalate (PET); the weight of the neck portion from the lower surface of the support flange to a top of the dispensing opening is 3.0 grams or less; the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm; the radially extending length of the support flange is 0.20 inches or less; and the vertical distance from a lower surface of the tamper-evident formation to the top of the dispensing opening is 0.30 inches or less; and stretch blow molding the preform to form a container.

131. Nestlé has made and continues to make each of its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products by filling the container with water just after formation and in close proximity to where the container for that product is formed.

132. Nestlé has made and continues to make each of its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products using a preform with a weight of the neck portion from the lower surface of the support flange to the top of the dispensing opening that is 2.3 grams or less.

133. On information and belief, Nestlé has made and continues to make each of its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products

using a preform that is stretched more than three times its initial length in the axial direction to form the container when it is blow molded.

134. To the extent Nestlé has induced others to manufacture the Accused Products after it learned of the '326 patent, Nestlé has induced infringement of various method claims of the '326 patent, including at least claims 24-28, under 35 U.S.C. § 271(b). Likewise, to the extent Nestlé has offered to sell or sold to others infringing preforms, containers, or closures for making infringing container assemblies, Nestlé has contributed to infringement of various method claims of the '326 patent, including at least claims 24-28, under 35 U.S.C. § 271(c).

135. Nestlé does not have a license or permission to use the '326 patent.

136. Nestlé has been willfully infringing the '326 patent since at least the time it received Plastipak's July 29, 2020, letter, which identifies the '326 patent and its applicability to the Accused Products. On information and belief, at the time Nestlé learned of the '326 patent, it knew or should have known that its Accused Products infringed the asserted claims of that patent.

137. Nestlé's behavior is an egregious case of willful misconduct. Nestlé has known of the '326 patent and Plastipak's allegation that Nestlé infringed the patent since at least its receipt of Plastipak's July 29, 2020, letter. On information and belief, Nestlé has no good faith defense to Plastipak's infringement allegations

yet deliberately and wantonly continued its infringement. As a result of Nestlé's infringement of the '326 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

#### **COUNT IV – INFRINGEMENT OF THE '310 PATENT**

138. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 137 of this complaint as though fully set forth herein.

139. Nestlé has directly infringed and continues to directly infringe at least claims 1-5, 7-9, and 11-21 of the '310 patent under 35 U.S.C. § 271(a) by making, using, offering to sell, and/or selling the Accused Products in the United States.

140. Each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products has a hollow body portion, including a closed bottom portion and a lower portion extending upwardly from the bottom portion; a neck portion extending upwardly from the lower portion, the neck portion including a dispensing opening positioned at the top of the neck portion, multiple-lead threads positioned below the dispensing opening, a tamper-evident formation positioned below the threads, and a support flange positioned below the tamper-evident formation, the support flange having an upper surface and a lower surface.

141. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the weight of the neck portion from the

lower surface of the support flange to a top of the dispensing opening is 2.3 grams or less.

142. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including the threads and the tamper-evident formation, is 0.450 inches or less.

143. Each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products is comprised of polyethylene terephthalate (PET).

144. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the container is formed of a material comprising recycled material.

145. Each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products has a dispensing opening with an inner diameter between 22 mm and 29 mm.

146. Each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products has a tamper-evident formation comprising a bead.



147. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the vertical distance from a furthest outwardly radially-extending portion of a lower surface of the tamper-evident formation to the upper surface of the support flange at the same outward radial distance is 0.10 inches or less.

148. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the vertical distance from a furthest outwardly radially-extending portion of a lower surface of the tamper-evident formation to the lower surface of the support flange at the same outward radial distance is 0.20 inches or less.

149. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz liter bottled water products, the combined weight of the neck portion, the closed bottom portion and the lower portion is 10 grams or less.

150. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the vertical distance from the top of the dispensing opening to the upper surface of the support flange is 0.40 inches or less.

151. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the vertical distance from a lower surface

of the tamper-evident formation to the top of the dispensing opening is 0.30 inches or less.

152. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, an outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

153. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the radially extending length of the support flange is 0.17 inches or less.

154. Each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products has a transparent body portion.

155. Each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products has a tamper-evident formation that is vertically spaced from the threads.

156. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the vertical distance from a furthest outwardly radially-extending portion of the lower surface of the tamper-evident formation to the lower surface of the support flange at the same outward radial distance is 0.15 inches or less.

157. To the extent Nestlé has induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '310 patent, Nestlé has induced infringement of the '310 patent under 35 U.S.C. § 271(b). Likewise, to the extent Nestlé has offered to sell or sold to others infringing preforms, containers, or closures for making infringing container assemblies, Nestlé has contributed to infringement of the '310 patent under 35 U.S.C. § 271(c).

158. Nestlé does not have a license or permission to use the '310 patent.

159. Nestlé has been willfully infringing the '310 patent since at least the time it received Plastipak's July 29, 2020, letter, which identifies the '310 patent and its applicability to the Accused Products. On information and belief, at the time Nestlé learned of the '310 patent, it knew or should have known that its Accused Products infringed the asserted claims of that patent.

160. Nestlé's behavior is an egregious case of willful misconduct. Nestlé has known of the '310 patent and Plastipak's allegation that Nestlé infringed the patent since at least its receipt of Plastipak's July 29, 2020, letter. On information and belief, Nestlé has no good faith defense to Plastipak's infringement allegations yet has deliberately and wantonly continued its infringement. As a result of Nestlé's infringement of the '310 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

161. As a result of Nestlé's willful infringement of the '310 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

**COUNT V – INFRINGEMENT OF THE '759 PATENT**

162. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 161 of this complaint as though fully set forth herein.

163. Nestlé has directly infringed and continues to directly infringe at least claims 1-5, 7-18, and 20-30 of the '759 patent under 35 U.S.C. § 271(a) by making, using, offering to sell and/or selling the Accused Products in the United States.

164. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a plastic blow molded container with a lower supporting base portion; a sidewall portion extending upwardly from the base portion; a neck portion extending upwardly from the sidewall portion, the neck portion including a support flange having an upper and lower surface; multiple-lead threads; a tamper-evident formation; and a dispensing opening at the top of the neck portion, the dispensing opening having a top.

165. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the weight of the neck portion is 2.3 grams or less.

166. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, is 0.450 inches or less.

167. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

168. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a tamper-evident formation comprising a bead.

169. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a radially extending length of the support flange that is 0.20 inches or less.

170. On information and belief, the ratio of the height of the center of gravity to the container height for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is less than 0.57. For example, by providing a neck portion for its containers that incorporates the claimed invention, the center of gravity for the container is lowered as a percentage of height from bottom.

171. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is comprised of polyethylene terephthalate (PET).

172. For each Nestlé 8 oz, 12 oz, 16.9 oz bottled water product, the combined weight of the neck portion, the sidewall portion, and the base portion is 11 grams or less.

173. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the inner diameter of the dispensing opening is at least 22 mm.

174. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a tamper-evident formation that is vertically spaced from the threads.

175. To the extent Nestlé has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '759 patent, Nestlé has induced infringement of the '759 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United States for subsequent use or re-sale by Nestlé's customers and by providing those customers with marketing material and/or product packaging intended to promote subsequent use and re-sale. Likewise, to the extent Nestlé has offered to sell or sold to others infringing preforms, containers, or closures for making infringing container assemblies, Nestlé has contributed to infringement of the '759 patent under 35 U.S.C. § 271(c).



176. Nestlé does not have a license or permission to use the '759 patent.

177. Nestlé has been willfully infringing the '759 patent since at least the time it received Plastipak's July 29, 2020, letter, which identifies the '759 patent and its applicability to the Accused Products. On information and belief, at the time Nestlé learned of the '759 patent, it knew or should have known that its Accused Products infringed the asserted claims of that patent.

178. Nestlé's behavior is an egregious case of willful misconduct. Nestlé has known of the '759 patent and Plastipak's allegation that Nestlé infringed the patent since at least its receipt of Plastipak's July 29, 2020, letter. On information and belief, Nestlé has no good faith defense to Plastipak's infringement allegations yet has deliberately and wantonly continued its infringement. As a result of Nestlé's willful infringement of the '759 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

#### **COUNT VI – INFRINGEMENT OF THE '409 PATENT**

179. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 178 of this complaint as though fully set forth herein.

180. Nestlé has directly infringed and continues to directly infringe claims 1-5, 7-19, and 21-30 of the '409 patent under 35 U.S.C. § 271(a) by making, using, offering to sell and/or selling the Accused Products in the United States.

181. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is a container assembly comprising a plastic blow molded container with a lower supporting base portion; a sidewall portion extending upwardly from the base portion; a neck portion extending upwardly from the sidewall portion, the neck portion including a dispensing opening positioned at a top of the neck portion, the dispensing opening having a top; multiple-lead threads positioned below the dispensing opening; a tamper-evident formation, having a lower surface, that is positioned below the threads; and a support flange, having an upper and lower surface, that is positioned below the tamper-evident formation.

182. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a closure configured to receive the threads.

183. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the weight of the neck portion is 2.3 grams or less.

184. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including the threads and tamper-evident formation, is 0.450 inches or less.

185. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

186. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a tamper-evident formation comprising a bead.

187. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a radially extending length of the support flange that is 0.20 inches or less.

188. On information and belief, the ratio of a height of the center of gravity of the container to the container height for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is less than 0.57. For example, by providing a neck portion for its containers that incorporates the claimed invention, the center of gravity for the container is lowered as a percentage of height from bottom.

189. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is comprised of polyethylene terephthalate (PET).

190. For each Nestlé 8 oz, 12 oz, 16.9 oz bottled water product, the combined weight of the neck portion, the sidewall portion, and the base portion is 11 grams or less.

191. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the inner diameter of the dispensing opening is at least 22 mm.

192. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a tamper-evident formation that is vertically spaced from the threads.

193. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from the top of the dispensing opening to the upper surface of the support flange is 0.40 inches or less.

194. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from a furthest radially-extending portion of a lower surface of the tamper-evident formation to the upper surface of the support flange is 0.10 inches or less.

195. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance between a furthest outwardly radially-extending portion of the lower surface of the tamper-evident formation and the lower

surface of the support flange at the same outward radial distance is 0.15 inches or less.

196. To the extent Nestlé has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '409 patent, Nestlé has induced infringement of the '409 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United States for subsequent use or re-sale by Nestlé's customers and by providing those customers with marketing material and/or product packaging intended to promote subsequent use and re-sale. Likewise, to the extent Nestlé has offered to sell or sold to others infringing preforms, containers, or closures for making infringing container assemblies, Nestlé has contributed to infringement of the '409 patent under 35 U.S.C. § 271(c).

197. Nestlé does not have a license or permission to use the '409 patent.

198. Nestlé has been willfully infringing the '409 patent since at least the time it received Plastipak's July 29, 2020, letter, which identifies the '409 patent and its applicability to the Accused Products. On information and belief, at the time Nestlé learned of the '409 patent, it knew or should have known that its Accused Products infringed the asserted claims of that patent.

199. Nestlé's behavior is an egregious case of willful misconduct. Nestlé has known of the '409 patent and Plastipak's allegation that Nestlé infringed the patent since at least its receipt of Plastipak's July 29, 2020, letter. On information and belief, Nestlé has no good faith defense to Plastipak's infringement allegations yet has deliberately and wantonly continued its infringement. As a result of Nestlé's willful infringement of the '409 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

#### **COUNT VII – INFRINGEMENT OF THE '019 PATENT**

200. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 199 of this complaint as though fully set forth herein.

201. Nestlé has directly infringed and continues to directly infringe at least claims 1-5, 7-18, and 20-30 of the '019 patent under 35 U.S.C. § 271(a) by making, using, offering to sell and/or selling the Accused Products in the United States.

202. Each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products has a closed bottom portion and a lower portion extending upwardly from the bottom portion; a neck portion extending upwardly from the lower portion, the neck portion including a support flange having an upper surface and a lower surface, multiple-lead threads, a tamper-evident formation, and a dispensing opening having a top at an upper end of the neck portion.



203. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the weight of the neck portion is 2.3 grams or less.

204. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including the threads and tamper-evident formation, is 0.45 inches or less.

205. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

206. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the tamper-evident formation comprises a bead.

207. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the radially extending length of the support flange is 0.20 inches or less.

208. On information and belief, the ratio of the height of the center of gravity to the container height for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is less than 0.57. For example, by providing a

neck portion for its containers that incorporates the claimed invention, the center of gravity for the container is lowered as a percentage of height from bottom.

209. The preform for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is comprised of polyethylene terephthalate (PET).

210. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz bottled water products, the combined weight of the neck portion, the lower portion, and the bottom portion is 11 grams or less.

211. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the inner diameter of the dispensing opening is at least 22 mm.

212. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the tamper-evident formation is vertically spaced from the threads.

213. For each preform for Nestlé's 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products, the vertical distance from the top of the dispensing opening to the upper surface of the support flange is 0.40 inches or less.

214. To the extent Nestlé has induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '019 patent, Nestlé has induced infringement of the '019 patent under 35 U.S.C. § 271(b).

Likewise, to the extent Nestlé has offered to sell or sold to others infringing preforms, containers, or closures for making infringing container assemblies, Nestlé has contributed to infringement of the '019 patent under 35 U.S.C. § 271(c).

215. Nestlé does not have a license or permission to use the '019 patent.

216. Nestlé has been willfully infringing the '019 patent since at least the time it received Plastipak's July 29, 2020, letter, which identifies the '019 patent and its applicability to the Accused Products. On information and belief, at the time Nestlé learned of the '019 patent, it knew or should have known that its Accused Products infringed the asserted claims of that patent.

217. Nestlé's behavior is an egregious case of willful misconduct. On information and belief, Nestlé has no good faith defense to Plastipak's infringement allegations yet has deliberately and wantonly continued its infringement. As a result of Nestlé's willful infringement of the '019 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

#### **COUNT VIII – INFRINGEMENT OF THE '345 PATENT**

218. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 217 of this complaint as though fully set forth herein.

219. Nestlé has directly infringed and continues to directly infringe at least claims 17-19, and 21-28 of the '345 patent under 35 U.S.C. § 271(a) by making, using, offering to sell and/or selling the Accused Products in the United States.

220. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a container assembly comprising a plastic blow molded container with a base portion; a sidewall portion; and a neck portion, the neck portion including multiple-lead threads, a tamper-evident formation, and a support flange.

221. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, a closure is configured to receive the threads.

222. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is comprised of polyethylene terephthalate (PET).

223. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from the top of the dispensing opening to the lower surface of the support flange, including the threads and tamper-evident formation, is 0.450 inches or less.

224. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

225. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the weight of the neck portion is 2.3 grams or less.

226. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the tamper-evident formation comprises a bead.

227. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the radially extending length of the support flange is 0.20 inches or less

228. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is filled with water.

229. For each Nestlé 8 oz, 12 oz, 16.9 oz bottled water product, the combined weight of the neck portion, the sidewall portion, and the base portion is 11 grams or less.

230. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the inner diameter of the neck portion is at least 22 mm.

231. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is transparent.

232. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is formed of a material comprising recycled material.

233. To the extent Nestlé has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '345 patent, Nestlé has induced infringement of the '345 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United States for subsequent use or re-sale by Nestlé's customers and by providing those customers with marketing material and/or product packaging intended to promote subsequent use and re-sale. Likewise, to the extent Nestlé has offered to sell or sold to others infringing preforms, containers, or closures for making infringing container assemblies, Nestlé has contributed to infringement of the '345 patent under 35 U.S.C. § 271(c).

234. Nestlé does not have a license or permission to use the '345 patent.

235. Nestlé has been willfully infringing the '345 patent since at least the time it received Plastipak's July 29, 2020, letter, which identifies the '345 patent and its applicability to the Accused Products. On information and belief, at the time Nestlé learned of the '345 patent, it knew or should have known that its Accused Products infringed the asserted claims of that patent.

236. Nestlé's behavior is an egregious case of willful misconduct. Nestlé has known of the '345 patent and Plastipak's allegation that Nestlé infringed the patent since at least its receipt of Plastipak's July 29, 2020, letter. On information

and belief, Nestlé has no good faith defense to Plastipak's infringement allegations yet has deliberately and wantonly continued its infringement.

237. As a result of Nestlé's infringement of the '345 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

### **COUNT IX – INFRINGEMENT OF THE '311 PATENT**

238. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 237 of this complaint as though fully set forth herein.

239. Nestlé has directly infringed and continues to directly infringe at least claims 2 and 14 of the '311 patent under 35 U.S.C. § 271(a) by making, using, offering to sell and/or selling the Accused Products in the United States.

240. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a container assembly comprising a plastic blow molded container with a lower supporting base portion; a sidewall portion extending upwardly from the base portion; a neck portion extending upwardly from the sidewall portion, the neck portion including a dispensing opening positioned at a top of the neck portion, multiple-lead threads positioned below the dispensing opening; a radially extending tamper-evident formation, having a lower surface, that is positioned below the threads; and a support flange.



241. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, a closure is configured to receive the threads.

242. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is comprised of polyethylene terephthalate (PET).

243. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the weight of the neck portion is 2.3 grams or less.

244. For each Nestlé 8 oz, 12 oz, 16.9 oz bottled water product, the combined weight of the lower supporting base portion, the sidewall portion and the neck portion is 10 grams or less.

245. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from the lower surface of the tamper evident formation to a top of the dispensing opening is 0.30 inches or less.

246. On information and belief, the ratio of the height of the center of gravity of the container to container height for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is less than 0.57. For example, by providing a neck portion for its containers that incorporates the claimed invention, the center of gravity for the container is lowered as a percentage of height from bottom.

247. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the dispensing opening has an inner diameter that is at least 22 mm.

248. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is filled with water.

249. To the extent Nestlé has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '311 patent, Nestlé has induced infringement of the '311 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United States for subsequent use or re-sale by Nestlé's customers and by providing those customers with marketing material and/or product packaging intended to promote subsequent use and re-sale. Likewise, to the extent Nestlé has offered to sell or sold to others infringing preforms, containers, or closures for making infringing container assemblies, Nestlé has contributed to infringement of the '311 patent under 35 U.S.C. § 271(c).

250. Nestlé does not have a license or permission to use the '311 patent.

251. Nestlé has been willfully infringing the '311 patent since at least the time it received Plastipak's July 29, 2020, letter, which identifies the '311 patent and its applicability to the Accused Products. On information and belief, at the time

Nestlé learned of the '311 patent, it knew or should have known that its Accused Products infringed the asserted claims of that patent.

252. Nestlé's behavior is an egregious case of willful misconduct. Nestlé has known of the '311 patent and Plastipak's allegation that Nestlé infringed the patent since at least its receipt of Plastipak's July 29, 2020, letter. On information and belief, Nestlé has no good faith defense to Plastipak's infringement allegations yet has deliberately and wantonly continued its infringement.

253. As a result of Nestlé's infringement of the '311 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

#### **COUNT X – INFRINGEMENT OF THE '312 PATENT**

254. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 253 of this complaint as though fully set forth herein.

255. Nestlé has directly infringed and continues to directly infringe at least claims 1-7, 9-14, 16-23, 25-27, and 29-30 of the '312 patent under 35 U.S.C. § 271(a) by making, using, offering to sell and/or selling the Accused Products in the United States.

256. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a container assembly comprising a plastic blow molded

container with a lower supporting base portion; a sidewall portion extending upwardly from the base portion; a neck portion extending upwardly from the sidewall portion, the neck portion including a dispensing opening positioned at a top of the neck portion, the dispensing opening having a top; multiple-lead threads positioned below the dispensing opening; a tamper-evident formation, having a lower surface, that is positioned below the threads; and a support flange, having an upper and lower surface, that is positioned below the tamper-evident formation.

257. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, a closure is configured to receive the threads.

258. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is comprised of polyethylene terephthalate (PET).

259. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the weight of the neck portion is 2.3 grams or less.

260. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

261. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from the top of the dispensing opening

to the lower surface of the support flange, including the threads and tamper-evident formation, is 0.450 inches or less.

262. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from a lower surface of the tamper-evident formation to the top of the dispensing opening is .30 inches or less.

263. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from the top of the dispensing opening to the upper surface of the support flange is 0.40 inches or less.

264. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from a furthest outwardly radially-extending portion of a lower surface of the tamper-evident formation to the lower surface of the support flange at the same outward radial distance is 0.20 inches or less.

265. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the dispensing opening has an inner diameter that is at least 22 mm and less than 29 mm.

266. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the tamper-evident formation comprises a bead.

267. For each Nestlé 8 oz, 12 oz, 16.9 oz bottled water product, the combined weight of the neck portion, the sidewall portion, and the base portion is 10 grams or less.

268. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the radially extending length of the support flange is 0.17 inches or less.

269. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is filled with water.

270. To the extent Nestlé has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '312 patent, Nestlé has induced infringement of the '312 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United States for subsequent use or re-sale by Nestlé's customers and by providing those customers with marketing material and/or product packaging intended to promote subsequent use and re-sale. Likewise, to the extent Nestlé has offered to sell or sold to others infringing preforms, containers, or closures for making infringing container assemblies, Nestlé has contributed to infringement of the '312 patent under 35 U.S.C. § 271(c).

271. Nestlé does not have a license or permission to use the '312 patent.

272. Nestlé has been willfully infringing the '312 patent since at least the time it received Plastipak's July 29, 2020, letter, which identifies the '312 patent and its applicability to the Accused Products. On information and belief, at the time Nestlé learned of the '312 patent, it knew or should have known that its Accused Products infringed the asserted claims of that patent.

273. Nestlé's behavior is an egregious case of willful misconduct. Nestlé has known of the '312 patent and Plastipak's allegation that Nestlé infringed the patent since at least its receipt of Plastipak's July 29, 2020, letter. On information and belief, Nestlé has no good faith defense to Plastipak's infringement allegations yet has deliberately and wantonly continued its infringement.

274. As a result of Nestlé's infringement of the '312 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

#### **COUNT XI – INFRINGEMENT OF THE '299 PATENT**

275. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 274 of this complaint as though fully set forth herein.

276. Nestlé has directly infringed and continues to directly infringe various method claims of the '299 patent, including at least claims 19-27, under 35 U.S.C.



§ 271(a) by making the Accused Products in the United States using each step of the claimed methods.

277. Nestlé has made and continues to make preforms for its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products by injection molding a plastic preform having a hollow body portion and a neck portion, the neck portion including: a dispensing opening positioned at the top of the neck portion; threads positioned below the dispensing opening; a tamper-evident formation positioned below the threads; and a support flange positioned below the tamper-evident formation, the support flange having an upper and a lower surface; and the preform is formed of a material comprising polyethylene terephthalate (PET); the weight of the neck portion from the lower surface of the support flange to a top of the dispensing opening is 2.0 grams or less; and the vertical distance from the top of the dispensing opening to the lower surface of the support flange is 0.450 inches or less.

278. Nestlé has made and continues to make preforms for its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products with an outside diameter of the support flange that is greater than 22 mm and less than or equal to 39.2 mm.

279. Nestlé has made and continues to make preforms for its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products with a radially extending length of the support flange that is 0.20 inches or less.

280. Nestlé has made and continues to make containers for its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products where the preform is further stretch blow molded to form a container.

281. Nestlé has made and continues to make each of its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products by filling the container with water just after formation and in close proximity to where the container was formed.

282. On information and belief, the ratio of a vertical height of the center of gravity of the container to the vertical height of the container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is less than 0.57. For example, by providing a neck portion for its containers that incorporates the claimed invention, the center of gravity for the container is lowered as a percentage of height from bottom.

283. On information and belief, Nestlé has made and continues to make its 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water products where

blow molding the preform causes it to be stretched more than three times the initial length of the preform in the axial direction to form the container.

284. To the extent Nestlé has induced others to manufacture the Accused Products after it learned of the '299 patent, Nestlé has induced infringement of various method claims of the '299 patent, including at least claims 19-27, under 35 U.S.C. § 271(b). Likewise, to the extent Nestlé has offered to sell or sold to others infringing preforms, containers, or closures for making infringing container assemblies, Nestlé has contributed to infringement of the '299 patent under 35 U.S.C. § 271(c).

285. Nestlé does not have a license or permission to use the '299 patent.

286. Nestlé has been willfully infringing the '299 patent since at least the time it received Plastipak's July 29, 2020, letter, which identifies the '299 patent and its applicability to the Accused Products. On information and belief, at the time Nestlé learned of the '299 patent, it knew or should have known that its Accused Products infringed the asserted claims of that patent.

287. Nestlé's behavior is an egregious case of willful misconduct. Nestlé has known of the '299 patent and Plastipak's allegation that Nestlé infringed the patent since at least its receipt of Plastipak's July 29, 2020, letter. On information

and belief, Nestlé has no good faith defense to Plastipak's infringement allegations yet has deliberately and wantonly continued its infringement.

288. As a result of Nestlé's infringement of the '299 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

### **COUNT XII – INFRINGEMENT OF THE '437 PATENT**

289. Plastipak hereby incorporates by reference its allegations contained in paragraphs 1 through 288 of this complaint as though fully set forth herein.

290. Nestlé has directly infringed and continues to directly infringe at least claims 4, 20, and 30 of the '437 patent under 35 U.S.C. § 271(a) by making, using, offering to sell and/or selling the Accused Products in the United States.

291. Each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product has a container assembly comprising a plastic blow molded container comprising: a lower supporting base portion; a sidewall portion extending upwardly from the base portion; a neck portion extending upwardly from the sidewall portion, the neck portion including a dispensing opening positioned at a top of the neck portion; multiple-lead threads positioned below the dispensing opening, and a support flange positioned below the threads, having an upper surface and a lower surface; and a means for indicating tampering, i.e. a tamper evident formation.

292. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, a closure is configured to receive the threads.

293. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is comprised of polyethylene terephthalate (PET).

294. The container for each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product is filled with water.

295. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the weight of the neck portion from the lower surface of the support flange to a top of the dispensing opening is 2.3 grams or less.

296. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the vertical distance from the lower surface of the support flange to the top of the dispensing opening, including the threads, is 0.450 inches or less.

297. For each Nestlé 8 oz, 12 oz, 16.9 oz, 20 oz, 23.7 oz, 1 liter, and 1.5 liter bottled water product, the outside diameter of the support flange is greater than 22 mm and less than or equal to 39.2 mm.

298. For each Nestlé 8 oz, 12 oz, 16.9 oz bottled water product, the combined weight of the neck portion, the sidewall portion, and the base portion is 11 grams or less.

299. To the extent Nestlé has continued to sell or induced others to manufacture, use, import, offer to sell and/or sell the Accused Products after it learned of the '437 patent, Nestlé has induced infringement of the '437 patent under 35 U.S.C. § 271(b), including by selling the Accused Products in the United States for subsequent use or re-sale by Nestlé's customers and by providing those customers with marketing material and/or product packaging intended to promote subsequent use and re-sale. Likewise, to the extent Nestlé has offered to sell or sold to others infringing preforms, containers, or closures for making infringing container assemblies, Nestlé has contributed to infringement of the '437 patent under 35 U.S.C. § 271(c).

300. Nestlé does not have a license or permission to use the '437 patent.

301. Nestlé has been willfully infringing the '437 patent since at least the time it received Plastipak's July 29, 2020, letter, which identifies the '437 patent and its applicability to the Accused Products. On information and belief, at the time Nestlé learned of the '437 patent, it knew or should have known that its Accused Products infringed the asserted claims of that patent.

302. Nestlé's behavior is an egregious case of willful misconduct. On information and belief, Nestlé has no good faith defense to Plastipak's infringement allegations yet has deliberately and wantonly continued its infringement.

303. As a result of Nestlé's infringement of the '437 patent, Plastipak has suffered and will continue to suffer damages, in an amount not yet determined, of at least a reasonable royalty.

### **PRAYER FOR RELIEF**

WHEREFORE, Plastipak prays for relief as follows:

- A. For a judgment declaring that Nestlé has infringed the Asserted Patents;
- B. For a judgment declaring that Nestlé's infringement of the Asserted Patents has been willful;
- C. For a judgment awarding Plastipak compensatory damages as a result of Nestlé's infringement of the Asserted Patents, together with interest, including post-judgment interest, and costs, and in no event less than a reasonable royalty, and an accounting;
- D. For a judgment declaring that this case is exceptional and awarding Plastipak its expenses, costs, and attorneys' fees in accordance with 35 U.S.C. § 285 and Rule 54(d) of the Federal Rules of Civil Procedure;



- E. For a judgment awarding Plastipak enhanced damages under 35 U.S.C. § 284; and
- F. For such other and further relief as the Court deems just and proper.

**DEMAND FOR A JURY TRIAL**

Plastipak hereby demands a trial by jury in this action.

Respectfully submitted,

By: /s/ Ahmed J. Davis  
Ahmed J. Davis (Va. Bar No. 43982)  
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Dated: December 7, 2020

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing PLASTIPAK PACKAGING, INC.'S AMENDED COMPLAINT FOR WILLFUL PATENT INFRINGEMENT has been filed with the Court's ECF system, and thereby served all parties and counsel designated to receive such notices, on December 7, 2020.

*/s/ Ahmed J. Davis*

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