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8 *Attorney for Plaintiff*

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12
13 SPLASH MEDICAL DEVICES, L.L.C.

14 Plaintiff,

15 vs.

16 ZEROWET, INC.,

17 Defendant.
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Case No.

COMPLAINT

Complaint Filed: November 5,
2021

Trial Date: None Set

1 Plaintiff Splash Medical Devices, LLC (“Splash”), through its undersigned
2 attorneys, for its Complaint against Defendant ZeroWet, Inc. (“ZeroWet”), alleges as
3 follows:

4 **THE PARTIES**

5 1. Plaintiff Splash is a Georgia corporation with its principal place of
6 business at 230 Sheridan Point Lane, Atlanta, GA 30342.

7 2. Defendant Zerowet is a California corporation with its principal place of
8 business at 26811 Westvale Road, Palos Verdes Peninsula, CA 90274.

9 **JURISDICTION**

10 3. This is an action for patent infringement arising under the Acts of
11 Congress relating to patents, 35 U.S.C. §§ 271, *et seq.*

12 4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and
13 1338(a).

14 5. This Court has personal jurisdiction over Defendant under the
15 Constitution of the United States at least because Defendant resides in this judicial
16 district.

17 6. Venue is proper in this District under 28 U.S.C. §1391.

18 **BACKGROUND**

19 **A. The Inventions Claimed In The Patent In Suit**

20 7. For decades Dr. Joseph P. Schultz, owner and principal of Splash, has
21 been developing medical devices that improve upon the function of existing
22 technologies. Dr. Schultz’s contributions to improved medical devices have, in turn,
23 led to improved patient outcomes. Medical device development is a natural
24 complement to Dr. Schultz’s work in pediatric emergency medicine, and he is keenly
25 aware of devices and related procedures that may be improved. Dr. Schultz’s
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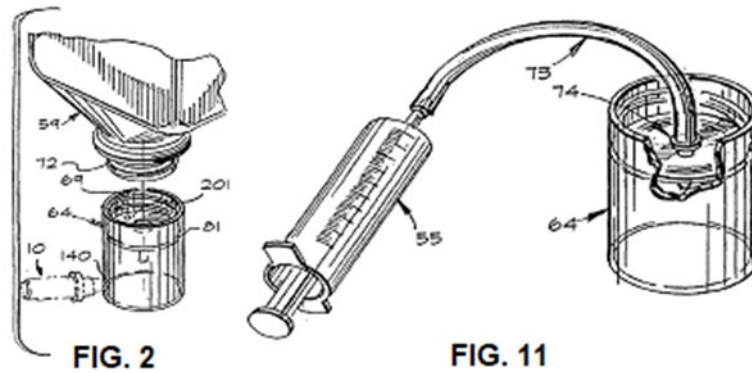
1 experience in devices manufacturing also provides him with the ability to identify
2 novel approaches to the improvement of existing procedures and equipment. His
3 insights allow him to bring those improved solutions into practice. In particular, Dr.
4 Schultz has focused on the demands, needs, and shortcomings of wound irrigation.
5 He established Splash for that purpose in 2005.

6
7 8. Splash has developed several improvements to existing wound and
8 abscess irrigation systems in order to satisfy the demands, needs, and shortcomings of
9 the market. For instance, Dr. Schultz invented the SplashCap[®] as an improved wound
10 irrigation device over twenty years ago (well prior to the introduction of ZeroWet's
11 infringing product, as discussed below). Dr. Schultz patented improvements to wound
12 irrigation devices in U.S. Patent No. 7,802,574 ("the '574 Patent"), which discloses a
13 product comprising an irrigation source, a cup-shaped shield to prevent splashing
14 during the irrigation, a conduit extending from the connection into the cup-shaped
15 shield, and, significantly, an optional aperture extending between the connection end
16 and the shield end separate from the irrigation conduit.

17 9. Dr. Schultz also obtained several additional patents directed to
18 innovations regarding wound and abscess irrigation systems that were part of the
19 disclosure of the '574 Patent. For example, the United States Patent and Trademark
20 Office ("PTO") duly and legally issued U.S. Patent No. 8,747,372 ("the '372 Patent")
21 on June 24, 2017. The '372 Patent, which is titled "Abscess Irrigation Systems," is
22 the "Patent in Suit." A true and correct copy of the Patent in Suit is attached hereto as
23 Exhibit A.

24 10. The embodiment shown below by Figures 2 and 11 of Patent in Suit is
25 encompassed by Claim 44 of that patent. The below figures disclose an example of an
26 innovative abscess irrigation system coupled to a wash bottle (*see* Figure 2) and,
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1 alternatively, to a syringe (*see* Figure 11), each optionally containing an aperture 201
2 separate from the irrigation nozzle and passageway.



Figures 2 and 11 of the Patent in Suit

11 11. The inventions claimed in the Patent in Suit are the result of the Dr.
12 Schultz's many years of experience in emergency pediatric medicine and address
13 needs that arose from his work in that position, particularly in the care and treatment
14 of wounds. The claimed inventions represent a leap forward in wound and abscess
15 irrigation technology.

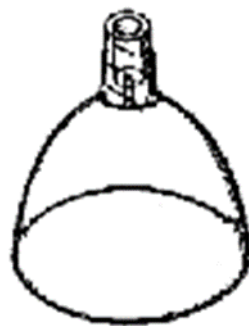
17 **B. Defendant's Infringing SuperShield® Product**

18 12. In September 2005, Dr. Schultz attended a tradeshow in Nashville, TN
19 of the Emergency Nurses Association (ENA) as representative of Splash to attempt to
20 sell a new wound irrigation shield with the trade name SplashCap®. SplashCap®
21 reduces the time required for staff in a busy emergency room to treat wounds by
22 reducing the amount of time required to irrigate a wound compared to the use of a
23 syringe with a syringe shield.

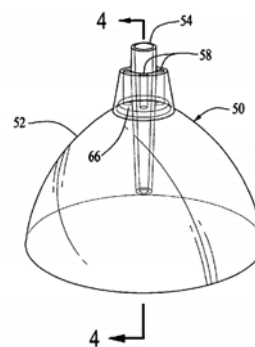
24 13. Dr. Stamler was also present as an exhibitor at the ENA meeting in
25 2005. He came by the Splash booth and saw the SplashCap® being shown. Dr.
26 Stamler examined the properties of the SplashCap® devices. Subsequently, Dr.
27 Stamler incorporated features disclosed within Dr. Schultz's published patent
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1 application into a new design for a wound irrigation shield (the SuperShield®). Dr.
2 Stamler has boasted that these new features (which are claimed in the Patent in Suit)
3 have led to the SuperShield® being successful over other competitors in the wound
4 irrigation market.

5 14. As a result of the success achieved by Splash's patented technology, and
6 the growing market created by Splash, Defendant sought to improve its position in
7 the market relative to Splash's patented wound irrigation devices. Rather than put in
8 the time and resources necessary to independently develop its own improved wound
9 irrigation system, Defendant merely incorporated the patented features of Dr.
10 Schultz's previously developed wound irrigation systems. Defendant had an original
11 wound irrigation product known as the Splashield®, which is shown below.
12 Defendant was not satisfied with the Splashield® product. Therefore, Defendant
13 modified the Splashield® product to include an aperture adjacent an extended
14 irrigation nozzle and conduit, and it subsequently rebranded the modified Splashield®
15 product as the SuperShield® product. These modifications were based on the features
16 claimed in Splash's Patent in Suit.



Splashield®

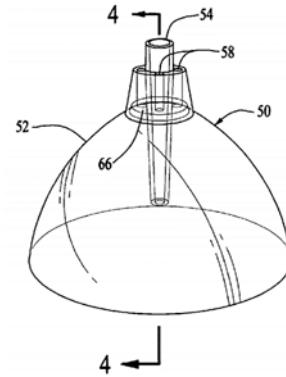


SuperShield®

1 15. To make matters worse, Defendant filed U.S. Patent Application No.
2 11/337,285 (“the ’285 Application”) on January 23, 2006, three months after seeing
3 the SplashCap® wound irrigation shield at the 2005 ENA meeting, with claims
4 encompassing the SuperShield® product shown above. Although the filing date of
5 Defendant’s ’285 Application was five years after the priority date for the Patent in
6 Suit, Defendant did not cite the Patent in Suit or any family member of the Patent in
7 Suit to the PTO during prosecution of the ’285 Application. In view of this dubious
8 omission, the ’285 Application issued as U.S. Patent No. 7,540,860 (“Defendant’s
9 ’860 Patent”).

10 15. Upon information and belief, Defendant has manufactured, used, offered
11 for sale, and sold the SuperShield® product continually for at least the last six years.
12 The SuperShield® is a wound irrigation system intended to be and is a direct
13 competitor Splash’s patented Product. Further, Defendant’s SuperShield® product,
14 when made, used, sold, or offered for sale in the United States, or imported into the
15 United States, directly meets the limitations of the claims of the Patent in Suit.
16 Particularly, the SuperShield® product infringes at least independent Claim 44 of the
17 Patent in Suit.

18 16. For example, Defendant’s SuperShield® product embodies the elements
19 of Figure 3 of Defendant’s ’860 Patent, as shown below in a side-by-side comparison.
20 Defendant’s SuperShield® product is a wound irrigation system for introducing a
21 stream of water to a wound for the purposes of cleaning the wound. The SuperShield®
22 product comprises a transparent and rigid hollow cup-shaped shield (52), a conduit
23 (54) extending through the shield and into the cup-shaped shield, and an aperture (58)
24 substantially adjacent conduit 54, extending through the closed upper end of the
25 shield (52).
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8 **Side-by-Side Comparison of Defendant’s**
9 **SuperShield® Product to Figure 3 of Defendant’s ’860 Patent**

10 17. Further, Defendant has been aware of the Patent in Suit since at least as
11 early as October 2019, when Dr. Schultz spoke with Dr. Keith Stamler, a principal of
12 Defendant, at a trade show. Dr. Schultz explained to Dr. Stamler that Dr. Schultz
13 believed that the claims of the Patent in Suit cover the SuperShield® product. Dr.
14 Schultz later provided the Patent in Suit to Dr. Stamler by email November 2019.
15 That email particularly directed Dr. Stamler’s attention to Claim 44. Upon
16 information and belief, Defendant has had knowledge of the Patent in Suit and its
17 alleged infringement of the same through the discussion with Dr. Schultz at the trade
18 show in October 2019 and/or the email sent to Dr. Stamler in November 2019. In
19 addition, Defendant is on notice of the Patent in Suit through the filing of this
20 Complaint.

21 18. Despite being on notice of its infringement of the claims of the Patent in
22 Suit, Defendant continued to make, use, sell, offer for sale, or import its abscess
23 irrigation shields, marketed as the SuperShield product. Despite being an experienced
24 inventor who has been issued multiple patents, Defendant chose to continue his
25 ongoing infringement of the Patent in Suit, even after being confronted with
26 allegations of infringement by Dr. Schultz. Moreover, Defendant spoke to at least
27 one competitor of Splash regarding a sale of Zerowet, Inc., along with the rights to
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1 the infringing product, being put on notice of the infringement of the Patent in Suit.
2 Furthermore, Defendant did not initiate any follow up with Dr. Schultz on the
3 allegations of infringement despite a commitment by Defendant to do so. Such
4 actions were purposeful, and in deliberate disregard for Splash's patent rights. Thus,
5 Defendant's actions constitute willful infringement of the claims of the Patent in Suit.

6 19. Such willful infringement harmed Splash, which offers for sale and sells
7 a directly competing product. Defendant's infringement has resulted in injury through
8 at least lost sales to Splash.

9 **COUNT I – PATENT INFRINGEMENT OF THE '372 PATENT**

10 20. Splash incorporates Paragraphs 1-18 by reference as if set forth fully as
11 part of this count.

12 21. Defendant has infringed, literally and/or under the Doctrine of
13 Equivalents, the claims of the Patent in Suit, including at least independent Claim 44,
14 by making, using, selling, offering for sale, or importing its SuperShield products.
15 Upon information belief, Defendant's infringement includes direct infringement
16 under 35 U.S.C. § 271(a), inducement of infringement under 35 U.S.C. § 271(b), and
17 contributory infringement under 35 U.S.C. § 271(c).
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19 22. Splash has provided Defendant actual notice of the Patent in Suit and
20 Defendant's infringement thereof. Defendant therefore is, and has been, on notice of
21 Defendant's alleged infringement of the Patent in Suit at least since October 2019, the
22 date Dr. Schultz and Dr. Stamler had a conversation regarding the same at a trade
23 show. Alternatively, Defendant was on notice of its alleged infringement as early as
24 November 2019, when Dr. Stamler received an email from Dr. Schultz providing the
25 Patent in Suit and directing Dr. Stamler to Claim 44. Further, on information and
26 belief, Defendant had actual notice of the Patent in Suit even earlier than October
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1 2019, because those in the industry were aware that Dr. Schultz and Splash had
2 developed and patented its new technological feature.

3
4 23. Splash is therefore entitled to damages arising from Defendant's acts of
5 infringement occurring during the period beginning six years prior the filing of this
6 Complaint and ending coincident with the expiration of the Patent in Suit.

7 24. Splash has been damaged by Defendants' infringement of the Patent in
8 Suit at least by lost profits (and in no event less than a reasonable royalty) from
9 unrealized sales of Splash's SplashCap[®] due to Defendant's sales of the infringing
10 SuperShield product. Further, Splash is entitled to enhanced damages, up to a treble
11 amount, due to Defendant's willful infringement.

12 **REQUEST FOR RELIEF**

13 Splash requests the following relief:

- 14 a. A judgment that Defendant has infringed United States Patent No.
15 8,747,372;
- 16 b. A judgment that Defendant's infringement of United States Patent No.
17 8,747,372 has been willful;
- 18 b. A judgment and order requiring Defendant to pay all damages arising
19 out of Defendant's infringement of United States Patent No. 8,747,342, including
20 treble damages for willful infringement as provided by 35 U.S.C. § 284, with interest;
- 21 c. A determination that this is an exceptional case;
- 22 d. A judgment and order directing Defendant to pay the costs and expenses
23 of this action and attorneys' fees as provided by 35 U.S.C. § 285 and under other
24 applicable law, with interest; and
- 25 e. Such other and further relief as this Court may deem just and equitable.

26 **DEMAND FOR JURY TRIAL**

27 Splash hereby demands that all issues be determined by jury.

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Respectfully submitted,

Date: November 5, 2021

By: s/ Scott P. Shaw

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