UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:24-CV-00465-FDW-DCK

ECO FIBER INC., **Plaintiff,** **v.** **DAVID KEVIN VANCE and YUKON PACKAGING, LLC,** **Defendants.**	**VERIFIED AMENDED COMPLAINT (Jury Trial Demanded)**

Plaintiff Eco Fiber Inc. ("EFI") hereby files its Amended Complaint as a matter of course pursuant to Rule 15(a) of the Federal Rules of Civil Procedure within twenty-one days after service of a motion under Rule 12(b) ("12(b) Motion"); and complaining of Defendants David Kevin Vance ("Vance") and Yukon Packaging, LLC ("Yukon"), EFI alleges and says as follows:

NATURE OF THE ACTION

This case involves Vance, a former EFI consultant who owns U.S. Patent 11,772,872 ("the '872 Patent"), making in bad faith objectively baseless assertions of infringement of the '872 Patent to EFI's largest customer after EFI ceased payments of a monthly patent royalty to Vance. EFI ceased such payments on the advice of counsel based on learning that Vance's patent does not and legally cannot cover any of EFI's insulated containers that it sells to customers ("EFI's Containers"). This is because Vance's patent covers a method of forming and loading an insulated container and does not cover an insulated container itself, which is what EFI makes and sells. Moreover, EFI does not perform a cutting step that is required in the claims of the '872 Patent.

Vance knows this, and his actions are unlawful under the North Carolina Abusive Patent Assertion Act ("APAA") (N.C.G.S. §§ 75-140, *et seq.*). EFI has also more recently learned that Vance also made in bad faith an objectively baseless assertion of patent infringement regarding U.S. Design Patent D964,172 S ("the '172 Design Patent"), which Vance also owns.

This case further involves false patent marking by Vance and his licensee Yukon in violation of 35 U.S.C. §292. Yukon is the main, direct competitor of EFI. The customer bases of the companies substantially overlap, and the largest customer by far for both companies is Veritiv Corporation ("Veritiv"). Yukon makes and sells insulated containers that are essentially the same as EFI's Containers ("Yukon's Containers"). Yukon marks its containers with "U.S. Patent No. 11,772,872" even though the '872 Patent does not and legally cannot cover its containers. EFI has suffered and continues to suffer competitive injury as a result of violations of §292 by Vance and Yukon.

A count for false advertising under the Lanham Act also is made against Yukon for publicly advertising, in connection with Yukon's Containers, "Natural Fiber Box Liners" with a description that "The patented three-piece technology allows for quicker pack times, insulates better, and provides easier inventory within your facility". Nothing about Yukon's Containers or the "natural fiber box liners" is patented. Furthermore, none of the claimed methods of the '872 Patent "allows for quicker pack times, insulates better, and provides easier inventory within your facility". EFI's Containers with three-piece pads that are identical to Yukon's Containers allow for the same pack times, insulate the same, and provide the same degree of ease of inventory in a facility.

This aforementioned unlawful false patent marking and false advertising constitute unfair competition in North Carolina, for which a count is also set forth.

Beginning in April 2024, Vance's unlawful conduct proximately caused EFI to lose approximately $832,000 in average monthly sale revenues to Veritiv, which equates to nearly $10 million annually. Through other unlawful conduct that is the subject of *Eco Fiber Inc. v. Yukon Packaging, LLC et al.*, 24CV020983-590 (N.C. Business Court), Yukon was unfairly positioned to step in and immediately take over those lost sales. The unlawful conduct subject to the counts for the false patent marking and false advertising in this action has harmed EFI and is hindering EFI in its recovery.

In the present case, EFI has already obtained a preliminary injunction against Vance enjoining Vance and others in concert or participation with Vance from making in bad faith objectively baseless assertions of infringement of the '872 Patent by EFI's Containers. Accordingly, EFI seeks a permanent injunction enjoining Vance from making in bad faith objectively baseless assertions of infringement by EFI's Containers of the '872 Patent or the '172 Design Patent to EFI's current and prospective customers; a permanent injunction enjoining Vance and any licensee of Vance from falsely marking insulated containers with a patent notice for the '872 Patent; and a permanent injunction enjoining Yukon from falsely advertising (i) that Yukon's Containers and "natural fiber box liners" are in any way patented, or (ii) that "[t]he patented three-piece technology allows for quicker pack times, insulates better, and provides easier inventory within your facility".

EFI further seeks exemplary damages under N.C.G.S. §75-145(b), which includes a multiple of EFI's actual damages, costs, and attorney fees; damages as provided under 35 U.S.C. §292(b) and attorney fees under 35 U.S.C. §285; damages, costs, and attorney fees as provided under 15 U.S.C. §1125 for violation of 15 U.S.C. §1125(a)(1)(B); treble damages and attorneys' fees under N.C.G.S. §75-16 and §75-16.1; and other relief deemed just and proper.

THE PARTIES

1. EFI is a North Carolina corporation with a registered address and principal place of business at 3520 Westinghouse Blvd Suite B, Charlotte, NC 28273.

2. Vance is an individual and resident of Cabarrus County, North Carolina, who has a primary residence at 255 Blackberry Trail, Concord, NC 28027.

3. Yukon is a North Carolina limited liability company with its principal office located in Mooresville, North Carolina. The address of its principal office is 122 Backstretch Ln., Mooresville, NC 28117.

JURISDICTION AND VENUE

4. Subject matter jurisdiction is:

   a. Original and exclusive under 28 U.S.C. §1338(a) with respect to COUNT ONE ("Declaratory Judgment of Noninfringement of the '872 Patent") against Vance with regard to the '872 Patent arising under 35 U.S.C. §271 and the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202.

   b. Original and exclusive under 28 U.S.C. §1338(a) with respect to COUNT TWO ("Declaratory Judgment of Noninfringement of the '172 Patent") against Vance with regard to the '172 Design Patent arising under 35 U.S.C. §271 and the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202.

   c. Original and exclusive under 28 U.S.C. §1338(a) with respect to COUNT THREE ("False Patent Marking") against Vance and Yukon arising under 35 U.S.C. §292(b).

   d. Original under 28 U.S.C. §1331 with respect to COUNT FOUR ("False Advertising") against Yukon arising under 15 U.S.C. §1125(a)(1)(B).

e. Original under 28 U.S.C. §1338(b) with respect to COUNT FIVE ("Unfair Competition") against Yukon arising under N.C.G.S. §§75.1-1, the claim of which is joined with the substantial and related claims for False Patent Marking of COUNT THREE and False Advertising of COUNT FOUR.

f. Supplemental under 28 U.S.C. §1367 with respect to COUNT SIX ("False Utility Patent Assertion") against Vance arising under N.C.G.S. §75-143(a) with regard to the '872 Patent.

g. Supplemental under 28 U.S.C. §1367 with respect to COUNT SEVEN ("False Design Patent Assertion") against Vance arising under N.C.G.S. §75-143(a) with regard to the '172 Design Patent.

5. This Court has personal jurisdiction over Vance because Vance is a citizen and resident of North Carolina.

6. This Court has personal jurisdiction over Yukon because Yukon is organized in the State of North Carolina and has its principal place of business in North Carolina.

7. Venue is proper in the Western District of North Carolina pursuant to 28 U.S.C. §§1391(b), 1391(c), 1391(d), and 1400(b), because EFI has its principal place of business within this District, Yukon has its principal place of business within this District, and a substantial part of the events giving rise to the claims occurred and are occurring within this District.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

8. EFI manufactures and sells insulated containers. Such insulated containers are used primarily for cold-chain packaging but can also be used in other contexts.

9. "Cold-chain" packaging is an industry term that generally refers to insulated shipping boxes or containers designed to maintain consistent temperatures during shipping that are used to ship thermally sensitive objects.

10. EFI's Containers are not "cold-chain" products.

11. A "cold-chain" product is a product that is a thermally sensitive object, and such objects may include certain medical products and foods. An example of the use of such term believed to be representative of how this term is used in the industry is provided by way of a printout of a webpage having a blog titled "What are cold chain products?" in **Exhibit J**, which is submitted herewith and incorporated herein by reference; the URL for this webpage is https://www.coldchaintech.com/blog/knowledge/what-are-cold-chain-products.

12. Upon information and belief, EFI's Containers are sold and used by third parties for use in shipping "cold-chain" products.

13. EFI does not advertise, market, manufacture, use, sell, or offer for sale any three-piece "cold-chain" product.

14. EFI was incorporated on December 20, 2020.

15. In 2021, EFI engaged Vance as a consultant in order to add to EFI's expertise and experience in the manufacture and delivery of cold-chain packaging.

16. Vance has been involved in making containers for use in cold-chain packaging for nearly 17 years.

17. EFI believed that Vance would be an excellent addition to the EFI team because of Vance's experience.

18. Upon information and belief, Vance does not personally provide any goods or commercial services and does not personally engage in any manufacturing activities.

19. Upon information and belief, Vance does not personally engage in any research and technical or experimental work to create, test, qualify, modify, or validate technologies or processes for commercialization of goods or services.

20. On or about August 1, 2021, Vance entered into a consulting agreement with EFI through Zone 1 Consulting, LLC ("Zone 1"), a company that Vance organized with Christopher Poore ("Poore"), who also had significant experience in the cold-chain packaging industry and had agreed to provide consulting services to EFI. Vance and Poore had worked together at a previous company in the cold-chain packaging industry and knew each other.

21. In accordance with the consulting agreement, Vance received commissions on sales of EFI's products.

22. Toward the end of 2021 and into 2022, Vance assisted EFI in creating significant demand for EFI for a new design for an insulated container having three insulating pads.

23. The term of the consulting agreement between Zone 1 and EFI ended in 2022, and an amended consulting agreement was negotiated and entered into beginning in 2023.

24. In negotiating the amended consulting agreement, Zone 1 represented that Vance had a patent on the insulated container having three insulating pads and that, as part of the amended consulting agreement, a patent royalty of 5% for use of Vance's patent would be owed by EFI for all sales of the insulated container having three insulating pads ("Patent Royalty"). See **Exhibit A** submitted herewith and incorporated herein by reference.

25. Vance submitted a statutory declaration to this Court in which he declares that payment was expected to be "a 5% royalty on all products that were covered by my patent portfolio". ("Royalty Expectation"). (See ECF 19, ¶ 30).

26. At the time of the Royalty Expectation, Vance had the '408 Application (defined below) and the '172 Design Patent.

27. The '172 Design Patent does not and legally cannot cover EFI's Containers.

28. Upon information and belief, the '172 Design Patent does not and legally cannot cover any products that EFI has sold or is selling.

29. Based on the representation by Zone 1, EFI agreed to pay and did begin paying the Patent Royalty in January 2023 under the amended consulting agreement. In total, EFI has paid Zone 1 at least $240,776.05 as the Patent Royalty under the amended consulting agreement.

30. In November of 2023, EFI consulted patent counsel for the purposes of preparation and filing of new original patent applications for EFI. In the course of discussions, EFI informed patent counsel of the Patent Royalty being paid to Zone 1. Upon investigation by patent counsel, it was discovered that Vance did in fact have a utility patent (the '872 Patent), but that the patent had not been granted until October 3, 2023, well after payment of the Patent Royalty had begun.

The '872 Patent and the Currently Pending Patent Applications

31. Vance is the owner of the '872 Patent.

32. Based on the records of the U.S. Patent & Trademark Office, Vance is the owner of all rights, title and interests in and to the '872 Patent.

33. The ‘872 Patent is titled “Insulated Container and Method of Forming and Loading an Insulated Container” and was granted on October 3, 2023. A true and accurate copy of the ‘872 Patent is submitted herewith as **Exhibit B** and incorporated herein by reference.

34. According to the records of the U.S. Patent & Trademark Office, Vance does not own any rights, title, or interest in any other U.S. utility patent; the only U.S. utility patent for which Vance is the owner is the ‘872 Patent.

35. The ‘872 Patent issued from U.S. patent application 17/552,408 (“the ‘408 Application”).

36. The ‘872 Patent includes 12 claims, of which only claim 1 is independent. The remaining 11 claims depend directly or indirectly from claim 1.

37. Claim 1 and all dependent claims of the ‘872 Patent are for “[a] method of forming and loading an insulated container” that comprises at least twelve specifically recited steps.

38. The sixth step of claim 1 of the ‘872 Patent recites a step of cutting a continuous sheet as the continuous sheet exits a processing machine with a knife device to form three insulated pads (“Cutting Step”).

39. The knife device recited in the Cutting Step is “configured to crosscut the continuous sheet at predetermined intervals thereby forming insulated pads each time the knife crosscuts the continuous sheet”.

40. The ninth step of claim 1 of the ‘872 Patent recites a step of loading a thermally sensitive object into the container (“Object Loading Step”).

41. The tenth step of claim 1 of the ‘872 Patent recites a step of loading a cold pack into the container (“Cold Pack Loading Step”).

42. U.S. patent application 18/455,195 is a divisional patent application of the ‘408 Application (“the ‘195 Application”) and was filed on August 24, 2023.

43. The ‘195 Application as filed includes at least one claim that is identical in recited subject matter to the subject matter recited in a claim of the ‘872 Patent.

44. Vance legally can seek issuance of a patent from the ‘195 Application that contains a claim that is an obvious variant of a claim of the ‘872 Patent.

45. U.S. patent application 18/754,672 is a continuation patent application of the ‘195 Application (“the ‘672 Application”) and was filed on June 26, 2024.

46. The ‘672 Application was filed in view of the current litigation.

47. Vance legally can seek issuance of a patent from the ‘672 Application that contains a claim that is an obvious variant of a claim of the ‘872 Patent.

48. Upon information and belief, the Object Loading Step and the Cold Pack Loading Step in the method recited by claim 1 of the ‘872 Patent may not be necessary for purposes of patentability.

49. Upon information and belief, Vance will seek issuance of a patent from the ‘672 Application that contains a claim that recites the same claim language as claim 1 of the ‘872 Patent but that omits either the Object Loading Step or Cold Pack Loading Step, or that omits both the Object Loading Step and Cold Pack Loading Step, and Vance will then assert infringement of such claim against EFI. A declaratory judgment that EFI’s Containers do not infringe the ‘872 Patent because EFI does not perform the Cutting Step would preclude such a subsequent assertion.

50. Vance has specific knowledge that the ‘872 Patent does not cover an insulated container.

51. Vance was intimately involved in the prosecution of the ‘408 Application, which issued as the ‘872 Patent.

52. The ‘408 Application originally presented claims for both the forming and loading method and the insulated container itself. In an Office Action dated April 12, 2023, the U.S. Patent & Trademark Office required Vance to elect for examination either the forming and loading method claims or the insulated container claims. **Exhibit B**, p. 46. In response, Vance elected for examination the method claims to the exclusion of the insulated container claims, and the insulated container claims were withdrawn. **Exhibit B**, p. 43. Vance later filed the ‘195 Application, for purposes of pursuing patent protection on the insulated container, which ’195 Application is pending and awaits initial substantive examination.

EFI Ceases Payment of Patent Royalties to Vance

53. EFI learned during discussions with its patent counsel that the ‘872 Patent did not cover and legally cannot cover an insulated container formed by EFI at its manufacturing facility in Charlotte, NC.

54. Based on what EFI learned, in December 2023 EFI ceased payment of the Patent Royalty to Vance and EFI ceased paying Vance as a consultant.

55. Following cessation of the payment of the Patent Royalty, Vance never inquired with EFI why the payments had stopped, and Vance never asserted to EFI either that the insulated containers having three pads infringed the ‘872 Patent or that any customer of EFI was infringing the ‘872 Patent by purchasing those containers from EFI.

Vance Makes in Bad Faith
Objectively Baseless Patent Assertions to Veritiv

56. Rather than contacting EFI regarding any asserted infringement of the ‘872 Patent following cessation of payment of the Patent Royalty, sometime in the latter half of March 2024 Vance contacted Veritiv and asserted to Veritiv that Vance owned the ‘872 Patent,

and that the ‘872 Patent covered the insulated containers having three insulating pads that EFI was selling to Veritiv.

57. Based on the assertions made by Vance, Veritiv was concerned that it had legal risk for infringement of the ‘872 Patent based on Veritiv purchasing the insulated containers from EFI. See **Exhibit C** submitted herewith and incorporated herein by reference (confidential information redacted).

58. Vance has worked with Amy Bruner (“Bruner”), a sales representative at Veritiv, since 2017.

59. There have been many times when Vance and Bruner spoke on a daily basis, sometimes several times per day, including when managing a new project, developing a solution for an existing customer, or doing a series of testing to prove a concept.

60. Bruner has been made aware by Vance that he has filed several patent applications relating to cold-chain packaging and to a three-pad insulated container.

61. During at least one phone call conversation in March 2024 between Vance and Bruner the ‘872 Patent was discussed.

62. At some time after April 12, 2024, and before June 7, 2024, Vance had a phone call with Bruner and Aidan Crean (“Crean”), a product specialist at Veritiv, during which call Vance informed Bruner and Crean that he had a design patent and a pending divisional patent application each covering his “3-piece design”. (See ECF 19, ¶ 75).

63. Upon information and belief, Vance conveyed to Bruner and Crean during said call that a license was required under Vance’s design patent for EFI’s Containers.

64. Upon information and belief, Vance did not consult with legal counsel at or about that time regarding any infringement of the ‘872 Patent by any insulated containers sold by EFI.

65. Upon information and belief, Vance did not consult with legal counsel at or about that time regarding any infringement of the '172 Design Patent by any insulated containers sold by EFI. **Exhibit K** submitted herewith and incorporated herein by reference is a true and correct copy of the '172 Design Patent.

66. Upon information and belief, Vance did not provide to Veritiv any details or specificity regarding how any claim of the '872 Patent maps to any insulated container sold by EFI.

67. Upon information and belief, Vance made a naked assertion to Veritiv of patent infringement by EFI, and of patent infringement by Veritiv based on purchasing from EFI, regarding EFI's insulated containers having three insulating pads.

68. Vance provided a copy of the '872 Patent to a sales representative and a product category manager at Veritiv who were responsible for purchasing from EFI the insulated containers having three insulating pads.

69. Upon information and belief, Vance did not contact anyone within the legal department of Veritiv regarding the '872 Patent, nor did Vance contact or provide notice to the registered agent for Veritiv or to any corporate officer of Veritiv.

70. Upon information and belief, Vance did not contact anyone within the legal department of Veritiv regarding the '172 Design Patent, nor did Vance contact or provide notice to the registered agent for Veritiv or to any corporate officer of Veritiv.

71. Any assertion that a customer such as Veritiv has legal risk for patent infringement of the '872 Patent based on purchasing insulated containers from EFI is objectively baseless as a matter of law.

72. Any assertion that a customer such as Veritiv has legal risk for patent infringement of the '172 Design Patent based on purchasing insulated containers from EFI is objectively baseless as a matter of law.

73. When making the assertion of patent infringement of the '872 Patent to Veritiv, Vance knew or should have known that such an assertion of patent infringement was objectively baseless.

74. When making the assertion of patent infringement of the '172 Design Patent to Veritiv, Vance knew or should have known that such an assertion of patent infringement was objectively baseless.

75. Veritiv knows that EFI's Containers are unlicensed insofar as EFI is not a licensee of Vance under the '872 Patent or the '172 Design Patent.

76. Vance is aware that Veritiv knows EFI's Containers are unlicensed.

77. Vance has actual knowledge that Veritiv knows that EFI's Containers are not licensed by Vance under the '872 Patent or the '172 Design Patent.

78. Upon information and belief, Vance informed Veritiv that EFI's Containers are unlicensed.

79. Upon information and belief, Vance informed Veritiv that EFI is not a licensee of Vance under the '872 Patent.

80. Upon information and belief, Vance informed Veritiv that EFI is not a licensee of Vance under the '172 Design Patent.

81. When Veritiv ceased buying EFI's Containers in April 2024, Veritiv knew EFI's Containers were unlicensed.

Loss of Veritiv Business

82. As a direct and proximate result of Vance's assertion of patent infringement, Veritiv ceased all purchases from EFI of insulated containers having three insulating pads.

83. As a direct and proximate result of Vance's assertion of patent infringement, and upon information and belief, Veritiv closed EFI's vendor account whereby no further purchase orders could be issued for insulated containers having three insulating pads.

84. When purchase orders were not received from Veritiv in the beginning of April for delivery in May, EFI contacted Veritiv to inquire about the absence of purchase orders for insulated containers having three insulating pads.

85. Upon making inquiry, Veritiv informed EFI that no further business would be done with EFI due to Veritiv's concern over legal risk presented by the insulated containers having three insulating pads in view of the '872 Patent.

86. Veritiv's decision to cease further purchase of insulated containers having three insulating pads from EFI was not a consequence of the business relationship between Veritiv and EFI.

87. In January 2024, Veritiv conducted a business review of its vendor relationship with EFI, finding that: "Overall, Eco Fiber has had a phenomenal performance operationally. Our standard target for LTOC metric is 85%, and Eco Fiber maintained a +95% metric all year with steady lead times." See **Exhibit D** submitted herewith and incorporated herein by reference. (A personal telephone number was redacted from Exhibit D).

88. On April 11, 2024, EFI attempted to regain the lost sales of insulated containers having three insulating pads by engaging its patent counsel to provide a formal written opinion of noninfringement to Veritiv, which was done on April 12, 2024.

89. EFI received no purchase orders from Veritiv in April for insulated containers having three insulating pads. In May and June, EFI received some purchase orders; however, they are for only a fraction of the business EFI was receiving before Vance's false representations. There has been some discussion with Veritiv about EFI receiving some additional business back, though that has not yet occurred; and even if all orders under discussion are received, EFI will still only have recovered roughly half of the Veritiv business that was abruptly pulled in April. Upon information and belief, all or a substantial portion of the purchase orders that EFI would have received in April, May, and thereafter were redirected to Yukon.

90. Upon information and belief, sales of insulated containers having three insulating pads by EFI to Veritiv were expected to continue in the normal course for April and thereafter prior to the patent assertion and the resulting loss of business. If that business is not recovered by EFI, the resulting lost gross profit is estimated to exceed $200,000.00 per month.

91. EFI cannot afford to lose any further sales as a result of objectively baseless patent assertions made in bad faith by Vance.

92. Because EFI is now on the brink of going out of business, any further loss of sales will only hasten EFI's demise.

93. EFI has demanded that Vance cease and desist from further asserting that the insulated containers having three insulating pads sold by EFI infringe the '872 Patent and that customers buying these insulated containers from EFI will have legal risk. EFI further has demanded that Vance retract any such assertions that Vance has made to any actual or potential customer of EFI. See **Exhibit E** submitted herewith and incorporated herein by

reference. Upon information and belief, Vance has failed and refused to comply with these demands.

94. In response to EFI's demands to cease and desist, Vance did send an email to Veritiv clarifying that the specific act of Vance sending to Veritiv a copy of his patent was not a representation "that there was any infringement of my patent by Eco Fiber or any other entity." See **Exhibit F** submitted herewith and incorporated herein by reference. Vance's statement falls woefully short of saying that the insulated containers sold by EFI do not infringe the '872 Patent and that Veritiv does not have legal risk from buying the insulated containers from EFI.

95. Upon information and belief, Veritiv would not have ceased all business with EFI, citing as a reason "concern around the patent" and "legal risk," if Vance had not made assertions of patent infringement.

Vance's Covenant Made July 3rd, 2024

96. On July 3, 2024, counsel for Vance sent a letter to counsel for EFI, which letter is submitted herewith as **Exhibit G** and incorporated herein by reference.

97. Counsel for Vance did not provide any advance notice to counsel for EFI of the letter or its contents.

98. In the letter of Exhibit G, counsel for Vance represents that Vance, through the letter, makes a unilateral promise in the form of a covenant ("Covenant").

99. The letter states: "Nevertheless, after due consideration, Mr. Vance hereby makes an unconditional and irrevocable covenant not to sue EFI, its current or potential suppliers, or its current or potential customers or end-users, now or in the future, alone or in concert with others, for infringing any claim of the '872 Patent, relating to (1) any 3-piece cold-

chain product that EFI has advertised, marketed, manufactured, used, sold, or offered for sale at any time prior to the issuance of this letter, (2) any 3-piece cold-chain product that EFI is currently advertising, marketing, manufacturing, using, selling, or offering for sale, or (3) any 3-piece cold-chain product that EFI may advertise, market, manufacture, use, sell, or offer for sale in the future." (emphasis removed)

100. Counsel for Vance asserts in the letter that such Covenant "totally removes any current or future apprehension by EFI that it (or its suppliers, customers, or end-users) will face claims of infringement regarding the '872 Patent, and it completely eliminates any actual case or controversy in this case".

101. Counsel for Vance states in the letter their belief that "the foregoing convent [sic] not to sue divests the district court of subject matter jurisdiction over EFI's declaratory judgment claim of non-infringement".

102. Counsel for Vance requests in the letter "that EFI voluntarily dismiss its claim for declaratory judgment of non-infringement on or before Wednesday, July 10, 2024, so that Mr. Vance can avoid the expense of drafting and filing a motion to dismiss." (emphasis removed)

103. Counsel for Vance states in the letter that "I am available to discuss this issue at your convenience."

104. Prior to the stated deadline of Wednesday, July 10, 2024, counsel for Vance filed the 12(b) Motion on Tuesday, July 9, 2024.

105. Counsel for EFI had no input into the drafting of the Covenant by counsel for Vance.

106. Upon information and belief, the Covenant was inartfully drafted by counsel for Vance.

107. The Covenant is insufficient to divest the Court of subject matter jurisdiction over EFI's declaratory judgment claim of noninfringement. This is so for several reasons.

108. First, the Covenant is insufficient to divest the Court of subject matter jurisdiction over EFI's declaratory judgment claim of noninfringement because Vance has never admitted or otherwise explicitly confirmed that he is the current owner of the '872 Patent and has the authority and rights to make the Covenant.

109. Second, the Covenant is insufficient to divest the Court of subject matter jurisdiction over EFI's declaratory judgment claim of noninfringement because the covenant is qualified by and limited to "any 3-piece cold-chain product" that EFI has advertised, marketed, manufactured, used, sold, or offered for sale or advertises, markets, uses, sells, or offers for sale now or in the future; but EFI has not and does not advertise, market, manufacture, use, sell or offer for sale any "3-piece cold-chain product".

110. Third, the Covenant is insufficient to divest the Court of subject matter jurisdiction over EFI's declaratory judgment claim of noninfringement because the Covenant does not apply to claims that are obvious variants of the claims of the '872 Patent that may issue from the '195 Application or '672 Application.

111. Vance has already represented to the Court that Veritiv likely was hesitant to purchase EFI's Containers in April 2024 because of the '195 Application and the claims that may grant in a patent issuing from the '195 Application.

112. Fourth, the Covenant is insufficient to divest the Court of subject matter jurisdiction over EFI's declaratory judgment claim of noninfringement because the Covenant does not stop or otherwise keep Vance from suing EFI, EFI's customers, EFI's suppliers, and end-users

of EFI's Containers for infringement of an obvious variant of a claim of the '872 Patent that issues in a patent from Vance's currently pending patent applications.

113. As a result of the foregoing, EFI retains a concrete interest in obtaining a declaratory judgment of noninfringement of the '872 patent such that the declaratory judgment claim is not mooted by the Covenant.

114. EFI represents that EFI will voluntarily dismiss the claim for declaratory judgment of noninfringement of the '872 Patent (COUNT ONE) upon receipt of a covenant by Vance stating: "*I, David Kevin Vance, hereby represent and warrant to Eco Fiber Inc. that I am the owner of U.S. Patent No. 11,772,872, and by these presents I unconditionally and irrevocably covenant to Eco Fiber Inc. not to sue Eco Fiber Inc., its current or potential suppliers, or its current or potential customers or end-users, now or in the future, for infringing any claim of U.S. Patent No. 11,772,872 or reexamination or reissue thereof, or obvious variant of any such claim, whether acting alone or in concert with others.*"

COUNT ONE
Declaratory Judgment of Noninfringement of the '872 Patent
(35 U.S.C. §271, and 28 U.S.C. §§ 2201 and 2202)
[Vance]

115. The foregoing paragraphs are hereby repeated and incorporated herein by reference as if fully set forth herein.

116. This is a claim for declaratory judgment of noninfringement of the '872 Patent.

117. EFI's Containers are primarily sold for use in cold chain packaging but can be used in other shipping contexts.

118. EFI's Containers do not infringe and have not infringed, directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, any claim of the '872 Patent.

119. EFI's Containers do not infringe the '872 Patent under 35 U.S.C. 271(a) because the '872 Patent includes only method claims.

120. EFI's Containers do not infringe the '872 Patent under 35 U.S.C. 271(g) because EFI does not perform, whether literally or under the doctrine of equivalents, and whether individually or in concert or as part of a common enterprise with a third party, the Cutting Step required by each claim of the '872 Patent.

121. EFI's Containers do not infringe the '872 Patent under 35 U.S.C. 271(g) because EFI does not perform, whether literally or under the doctrine of equivalents, and whether individually or in concert or as part of a common enterprise with a third party, the Object Loading Step required by each claim of the '872 Patent.

122. EFI's Containers do not infringe the '872 Patent under 35 U.S.C. 271(g) because EFI does not perform, whether literally or under the doctrine of equivalents, and whether individually or in concert or as part of a common enterprise with a third party, the Cold Pack Loading Step required by each claim of the '872 Patent.

123. EFI's Containers do not infringe the '872 Patent under 35 U.S.C. 271(g) because EFI Containers are not imported into the United States; the '872 Patent only covers methods and legally cannot cover a product that is made by EFI at its manufacturing facility in Charlotte, NC.

124. An actual and justiciable controversy exists between EFI and Vance concerning the scope of the '872 Patent and the rights and legal relations of EFI and Vance with respect thereto that may be resolved by a judicial declaration determining the same.

125. While Vance purports to disavow any allegation of infringement by EFI, as recently as June 24, 2024, Vance served EFI with its initial infringement contentions pursuant to order

by the Court (ECF No. 24) in which Vance notes that the Complaint has not been answered "so as to trigger the need for infringement contentions", but nevertheless asserted that "Vance would likely succeed on the merits if he did assert infringement" and that:

> To date, Plaintiff has not disputed that it practices each of the first eight claim steps of Claim 1 of the '872 Patent. Nor has Plaintiff disputed that Customer 1 (and other similarly situated entities that use Plaintiff's 3-piece cold-chain products [sic]) practice the remaining four claim steps. Accordingly, in a hypothetical infringement analysis, the cooperation between Plaintiff and Customer 1 (and/or similarly situated customers) in jointly practicing each and every one of the claim steps would constitute infringement under the test articulated in *Akamai Techs, Inc. v. Limelight Networks, Inc*., 797 F.3d 1020 (Fed. Cir. 2015) (en banc) and its progeny, including *Travel Sentry, Inc. v. Tropp*, No. 2021-1908 (Fed. Cir. Feb. 14, 2022).

A true and accurate copy of Vance's initial infringement contentions served on EFI is contained in **Exhibit H** which is submitted herewith and incorporated herein by reference.

126. In view of the foregoing, EFI is entitled to, and EFI seeks, a judicial declaration and order that EFI does not infringe any claim of the '872 Patent.

127. In view of the foregoing, EFI is entitled to, and EFI seeks, a judicial declaration and order that EFI's Containers do not infringe any claim of the '872 Patent.

128. A judicial declaration is necessary and appropriate so that EFI and its customers may ascertain their rights and obligations vis-a-vis the '872 Patent and any patent that may grant from a patent application that claims priority directly or indirectly to the '408 Application.

COUNT TWO
Declaratory Judgment of Noninfringement of the '172 Design Patent
(35 U.S.C. §271, and 28 U.S.C. §§ 2201 and 2202)
[Vance]

129. The foregoing paragraphs are hereby repeated and incorporated herein by reference as if fully set forth herein.

130. This is a claim for declaratory judgment of noninfringement of the ‘172 Design Patent.

131. EFI’s Containers do not infringe and have not infringed, directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, the claim of the ‘172 Design Patent.

132. EFI’s does not infringe the claim of the ‘172 Design Patent because the claim is for the ornamental design for insulation for packaging containers and EFI does not make, sell, or offer for sale an article of manufacture that is insulation.

133. EFI’s Containers do not infringe the claim of the ‘172 Design Patent because the insulation of EFI’s Containers comprises three pads that are assembled within the container and the three pads never appear in the form claimed in the ‘172 Design Patent; when assembled, the three pads of insulation of EFI’s Containers lack ornamentality.

134. An actual and justiciable controversy exists between EFI and Vance concerning the scope of the ‘172 Design Patent that may be resolved by a judicial declaration determining the same.

135. In view of the foregoing, EFI is entitled to, and EFI seeks, a judicial declaration and order that EFI does not infringe the ‘172 Design Patent.

136. In view of the foregoing, EFI is entitled to, and EFI seeks, a judicial declaration and order that EFI’s Containers do not infringe the ‘172 Design Patent.

137. A judicial declaration is necessary and appropriate so that EFI and its customers may ascertain their rights and obligations vis-a-vis the ‘172 Design.

COUNT THREE
False Patent Marking
(35 U.S.C. §292(b))
[All Defendants]

138. The foregoing paragraphs are hereby repeated and incorporated herein by reference as if fully set forth herein.

139. This is a claim for violation of 35 U.S.C. 292(b) for marking an unpatented article with intent to deceive the public.

140. Vance licenses Yukon under the '872 Patent.

141. Yukon is the only licensee of Vance under the '872 Patent.

142. As Vance's licensee, Yukon makes and sells Yukon's Containers to Veritiv that include the patent marking "US Patent No. 11,772,872 B2".

143. Veritiv accounts for approximately 95% of all of the business of Yukon.

144. Vance, and Yukon acting in concert and participation with Vance as a patent licensee, are affixing "U.S. Patent No. 11,722,872" to Yukon's Containers.

145. Yukon's Containers are sold to EFI's current and prospective customers.

146. Yukon's Containers are not covered by any claim of the '872 Patent.

147. Yukon's Containers are not covered by any claim of the '872 Patent under 35 U.S.C. 271(a) because the '872 Patent includes only method claims.

148. Yukon's Containers are not covered by any claim of the '872 Patent under 35 U.S.C. 271(g) because Yukon does not perform the Object Loading Step required by each claim of the '872 Patent.

149. Yukon's Containers are not covered by any claim of the '872 Patent under 35 U.S.C. 271(g) because Yukon does not perform the Cold Pack Loading Step required by each claim of the '872 Patent.

150. Yukon's Containers are not covered by any claim of the '872 Patent under 35 U.S.C. 271(g) because Yukon's Containers are not imported into the United States; the '872 Patent only covers methods and legally cannot cover a product that is made by Yukon at any of its manufacturing facilities in the United States.

151. Vance and Yukon know that the '872 Patent does not cover Yukon's Containers.

152. Vance and Yukon do not have a reasonable belief that the '872 Patent covers Yukon's Containers.

153. In addition to the principal customer of both Yukon and EFI being Veritiv, the companies advertise and compete for customers in the same space such that any customer won by Yukon by means of false statements is a loss of a prospective customer by EFI.

154. Overlapping customers and prospective customers of Yukon and EFI are being and will be deceived and misled by the false patent marking into thinking that the '872 Patent covers Yukon's Containers.

155. Overlapping customers and prospective customers of Yukon and EFI are being and will be deceived and misled by the false patent marking into thinking that EFI's Containers, which are the same product as Yukon's Containers, infringe the '872 Patent.

156. Overlapping customers and prospective customers of Yukon and EFI are being and will be deceived and misled by the false patent marking and influenced to purchase Yukon's Containers over EFI's Containers as a result of the false patent marking.

157. EFI has suffered, is suffering, and will suffer competitive injury as a result of the false patent marking.

158. Upon information and belief, EFI's goodwill has been and is being lessened because it appears to EFI's customers and prospective customers that EFI is copying patented articles and thereby disrespecting intellectual property rights.

159. EFI has suffered, is suffering, and will suffer damages as a result of the false patent marking in an amount to be proved at trial.

COUNT FOUR
False Advertising
(15 U.S.C. §1125(a)(1)(B))
[Yukon]

160. The foregoing paragraphs are hereby repeated and incorporated herein by reference as if fully set forth herein.

161. This is a claim for violation of 15 U.S.C. §1125(a)(1)(B) for falsehoods in commercial advertising that misrepresent the nature, characteristics, or qualities of Yukon's Containers.

162. Yukon knows that neither the '872 Patent nor the '172 Design Patent covers Yukon's Containers.

163. Yukon does not have a reasonable belief that either the '872 Patent or the '172 Design Patent covers Yukon's Containers.

164. Yukon's Containers are sold to EFI's current and prospective customers.

165. Yukon's Containers are not covered by any claim of the '872 Patent.

166. Yukon's Containers are not covered by the '172 Design Patent.

167. Yukon's Containers are not covered by any claim of the '872 Patent under 35 U.S.C. 271(a) because the '872 Patent includes only method claims.

168. Yukon's Containers are not covered by any claim of the '872 Patent under 35 U.S.C. 271(g) because Yukon does not perform the Object Loading Step required by each claim of the '872 Patent.

169. Yukon's Containers are not covered by any claim of the '872 Patent under 35 U.S.C. 271(g) because Yukon does not perform the Cold Pack Loading Step required by each claim of the '872 Patent.

170. Yukon's Containers are not covered by any claim of the '872 Patent under 35 U.S.C. 271(g) because Yukon's Containers are not imported into the United States; the '872 Patent only covers methods and legally cannot cover a product that is made by Yukon at one of its manufacturing facilities in the United States.

171. Vance and Yukon know that neither the '872 Patent nor the '172 Design Patent covers Yukon's Containers.

172. Vance and Yukon do not have a reasonable belief that either the '872 Patent or the '172 Design Patent covers Yukon's Containers.

173. In addition to the principal customer of both Yukon and EFI being Veritiv, the companies advertise and compete for customers in the same space such that any customer won by Yukon by means of false statements is a loss of a prospective customer by EFI.

174. Overlapping customers and prospective customers of Yukon and EFI are being and will be misled by the false advertising into thinking that Yukon's Containers are covered by a patent and thus are patented.

175. Overlapping customers and prospective customers of Yukon and EFI are being and will be deceived and misled by the false advertising and influenced to purchase Yukon's Containers over EFI's Containers as a result of the false advertising.

176. EFI has suffered, is suffering, and will suffer competitive injury as a result of the false advertising.

177. Upon information and belief, EFI's goodwill has been and is being lessened because it appears that EFI has improperly copied Yukon's Containers that are advertised as being patented.

178. Upon information and belief, the goodwill associated with EFI's Containers is being lessened because Yukon's Containers are falsely advertised as having characteristics or qualities arising from a patented aspect of Yukon's Containers which characteristics or qualities render Yukon's Containers superior to EFI's Containers.

179. EFI's Containers and Yukon's Containers are the same product.

180. EFI's Containers are the same as Yukon's Containers in nature, qualities, and characteristics.

181. Upon information and belief, Yukon's Containers are not covered by a patent.

182. Yukon has made a false or misleading description of fact or representation of fact in a commercial advertisement about Yukon's Containers. Specifically, Yukon has publicly advertised, in connection with Yukon's Containers, "Natural Fiber Box Liners" with a description that "The patented three-piece technology allows for quicker pack times, insulates better, and provides easier inventory within your facility" (the "Misrepresentation").

183. The Misrepresentation is material, in that it is likely to influence purchasing decisions of overlapping customers and prospective customers of Yukon and EFI.

184. Upon information and belief, the Misrepresentation has influenced Veritiv's decision as to whether to continue to purchase EFI's Containers.

185. The Misrepresentation has deceived and has the tendency to deceive a substantial segment of EFI's customers.

186. Yukon placed the false or misleading statement in interstate commerce by publishing the Misrepresentation on Yukon's "Products" webpage of its website, a true and correct screenshot of which is submitted herewith as **Exhibit I** and incorporated herein by reference.

187. EFI has been injured and will continue to be injured as a result of the Misrepresentation, either by direct diversion of sales or by a lessening of goodwill associated with EFI's Containers, in an amount to be proved at trial.

COUNT FIVE
Unfair Competition
(N.C.G.S. § 75-1.1)
[Yukon]

188. The foregoing paragraphs are hereby repeated and incorporated herein by reference as if fully set forth herein.

189. Yukon is a direct competitor of EFI.

190. Yukon's conduct previously alleged herein is in and affecting commerce in North Carolina.

191. Yukon's conduct previously alleged herein constitutes unfair methods of competition in violation of N.C.G.S. § 75-1.1.

192. Yukon's conduct in violation of 35 U.S.C. §292 is a violation of N.C.G.S. § 75-1.1.

193. Yukon's conduct in violation of 15 U.S.C. §1125(a)(1)(B) is a violation of N.C.G.S. § 75-1.1.

194. As a direct and proximate result of the foregoing violations of N.C.G.S. § 75-1.1, EFI has been and is being harmed and is entitled to recover damages from the Defendants, jointly and severally, in an amount to be determined at trial; to have those damages trebled pursuant to N.C.G.S. § 75-16; and to have and recover its attorney fees pursuant to N.C.G.S. § 75-16.1.

COUNT SIX
False Utility Patent Assertion under the APAA
(N.C. Gen. Stat. §§ 75-140, *et seq.*)
[Vance]

195. The foregoing paragraphs are hereby repeated and incorporated herein by reference as if fully set forth herein.

196. This is a claim for violation of N.C.G.S. §75-143(a) for making, in bad faith, objectively baseless assertions of infringement of the '872 Patent.

197. Insulated containers sold by EFI do not infringe and have not infringed, directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, any claim of the '872 Patent.

198. EFI's Containers do not infringe the '872 Patent under 35 U.S.C. 271(a) because the '872 Patent includes only method claims.

199. EFI's Containers do not infringe the '872 Patent under 35 U.S.C. 271(g) because EFI does not perform, whether literally or under the doctrine of equivalents, and whether individually or in concert or as part of a common enterprise with a third party, the Cutting Step.

200. EFI's Containers when sold by EFI do not infringe the '872 Patent under 35 U.S.C. 271(g) because none of EFI Containers are loaded with a thermally sensitive object or with a cold pack.

201. EFI's Containers do not infringe the '872 Patent under 35 U.S.C. 271(g) because EFI Containers are not imported into the United States; the '872 Patent only covers methods and legally cannot cover a product that is made by EFI at its manufacturing facility in Charlotte, NC.

202. Vance has made and is making assertions that: EFI's customers and prospective customers infringe the '872 Patent by buying, using, offering for sale, or selling EFI's Containers; EFI's customers and prospective customers need a license under the '872 Patent for buying, using, offering for sale, or selling EFI's Containers; and/or EFI's customers and prospective customers have legal risk for infringement of the '872 Patent based on purchasing EFI's Containers (collectively "Assertions"), which Assertions are objectively baseless.

203. Yukon is acting in concert and/or participation with Vance in the making by Vance of objectively baseless Assertions of patent infringement to one or more of EFI's customers.

204. Vance knows or should know that the Assertions are objectively baseless.

205. Vance has made and is making the Assertions in bad faith.

206. Vance has made objectively baseless Assertions of patent infringement in bad faith with malice.

207. As a result of Vance's objectively baseless patent infringement Assertions made in bad faith, EFI has suffered and continues to suffer harm.

208. All of EFI's damages, costs, and attorney fees resulting from Vance's objectively baseless patent infringement assertions made in bad faith are recoverable under the APAA. *See* N.C.G.S. §§ 75-145(b)(1)-(3).

209. EFI is entitled to and seeks both equitable relief enjoining Vance from making objectively baseless assertions of infringement of the '872 Patent by EFI's Containers as well as recovery of its damages, costs, and fees, together with an award of exemplary damages in an amount of $50,000 or three (3) times the total of damages, costs, and fees, whichever is greater. *See id.* §§ 75-145(b)(1)-(4).

COUNT SEVEN
False Design Patent Assertion under the APAA
(N.C. Gen. Stat. §§ 75-140, *et seq.*)
[Vance]

210. The foregoing paragraphs are hereby repeated and incorporated herein by reference as if fully set forth herein.

211. This is a claim for violation of N.C.G.S. §75-143(a) for making, in bad faith, objectively baseless assertions of infringement of the '172 Design Patent.

212. Insulated containers sold by EFI do not infringe and have not infringed, directly or indirectly, literally or under the doctrine of equivalents, willfully or otherwise, the claim of the '172 Design Patent.

213. EFI's Containers do not infringe the '172 Design Patent under 35 U.S.C. 271(a) at least because EFI's Containers are not articles of insulation, and because there is no exterior ornamentality of the insulation that is contained within EFI's Containers; the exterior surfaces of five of the six outwardly facing sides of the insulation contained within EFI's Containers are hidden and not subject to view.

214. Vance has made and is making assertions that: EFI's customers and prospective customers infringe the '172 Design Patent by buying, using, offering for sale, or selling EFI's Containers; EFI's customers and prospective customers need a license under the '172 Design Patent for buying, using, offering for sale, or selling EFI's Containers; and/or EFI's customers and prospective customers have legal risk for infringement of the '172 Design Patent based on purchasing EFI's Containers (collectively "Design Patent Assertions"), all of which Design Patent Assertions are objectively baseless.

215. Upon information and belief, Vance has made and is making the objectively baseless Design Patent Assertions in bad faith.

216. Upon information and belief, as a result of Vance's the objectively baseless Design Patent Assertions made in bad faith, EFI has suffered and continues to suffer harm.

217. All of EFI's damages, costs, and attorney fees resulting from Vance's objectively baseless Design Patent Assertions made in bad faith are recoverable under the APAA. *See* N.C.G.S. §§ 75-145(b)(1)-(3).

218. EFI is entitled to and seeks both equitable relief permanently enjoining Vance from making in bad faith objectively baseless assertions of infringement of the '172 Design Patent by EFI's Containers as well as recovery of its damages, costs, and fees, together with an award of exemplary damages in an amount of $50,000 or three (3) times the total of damages, costs, and fees, whichever is greater. *See id.* §§ 75-145(b)(1)-(4).

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. The Court declare that EFI's Containers have not infringed and do not infringe any claim of the '872 Patent, either literally or under the Doctrine of Equivalents.

B. The Court declare that EFI's Containers have not infringed and do not infringe the '172 Design Patent.

C. The Court preliminarily and permanently enjoin Vance and Yukon from violating 35 U.S.C. §292(b) by falsely marking Yukon's Containers with "U.S. Patent No. 11,722,872" or similar notice of the '872 Patent;

D. The Court preliminarily and permanently enjoin Yukon from violating 15 U.S.C. §1125(a)(1)(B) by falsely advertising (i) that Yukon's Containers and "natural fiber box

liners" are in any way patented, or (ii) that "[t]he patented three-piece technology allows for quicker pack times, insulates better, and provides easier inventory within your facility";

E. The Court preliminarily and permanently enjoin Vance and those acting in concert or participation with Vance from making in bad faith objectively baseless assertions of infringement of the '872 Patent by EFI's Containers to EFI's current and prospective customers;

F. The Court preliminarily and permanently enjoin Vance and those acting in concert or participation with Vance from making in bad faith objectively baseless assertions of infringement of the '172 Design Patent by EFI's Containers to EFI's current and prospective customers;

G. Judgment be entered against Vance finding his conduct to be in violation of the APAA and awarding to EFI all remedies contemplated by the APAA, including but not limited to all damages to be proved at trial, costs, expenses, and attorneys' fees incurred by EFI as a result of Vance's objectively baseless assertions of patent infringement made in bad faith of the '872 Patent;

H. The Court award as exemplary damages for Vance's violation of the APAA regarding the '872 Patent in an amount equal to three times the sum of EFI's damages to be proved at trial and costs and attorneys' fees, or $50,000, whichever is greater;

I. Judgment be entered against Vance finding his conduct to be in violation of the APAA and awarding to EFI all remedies contemplated by the APAA, including but not limited to all damages to be proved at trial, costs, expenses, and fees incurred by EFI as a result of Vance's objectively baseless assertions of patent infringement made in bad faith of the '172 Design Patent;

J. The Court award as exemplary damages, for Vance's violation of the APAA regarding the '172 Design Patent, an amount equal to three times the sum of EFI's damages to be proved at trial and costs and attorneys' fees, or $50,000, whichever is greater;

K. Judgment be entered against Vance and Yukon finding their conduct to be in violation of 35 U.S.C. §292(b) and awarding to EFI all remedies contemplated by §292(b) including damages to be proven at trial;

L. The Court find this case exceptional and award EFI its attorneys' fees under 35 U.S.C. §285;

M. Judgment be entered against Yukon finding its conduct to be in violation of 15 U.S.C. §1125(a)(1)(B) and awarding to EFI all remedies contemplated under 15 U.S.C. §1117 including Yukon's profits and a multiple of EFI's monetary damages in an amount to be proven at trial, plus EFI's costs and EFI's attorneys' fees;

N. Judgment be entered against Yukon finding its conduct to be in violation of N.C.G.S. § 75-1.1 and awarding EFI all remedies contemplated under N.C.G.S. § 75-16, including damages to be proved at trial, and the trebling of those damages pursuant to N.C.G.S. § 75-16;

O. EFI have and recover pre- and post-judgment interest on any judgment awarded hereunder as allowed by law;

P. This action be tried before a jury on all issues so triable; and

Q. The Court award such other and further relief, both at law and in equity, which the Court deems just and proper.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted this the 23rd day of July 2024.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:24-CV-00465-FDW-DCK

ECO FIBER INC.,

Plaintiff,

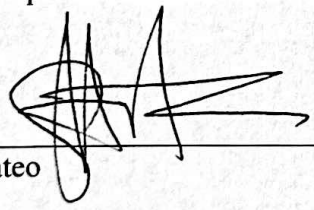
v.

DAVID KEVIN VANCE and YUKON PACKAGING, LLC,

Defendants.

VERIFICATION

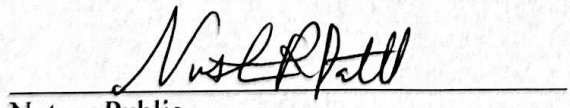
Being first duly sworn, I hereby depose and say that I am the CFO and COO of Eco Fiber Inc., the Plaintiff in the above-captioned action, and that I have read the foregoing VERIFIED AMENDED COMPLAINT and know the contents thereof to be true except for those matters alleged upon information and belief, and as to those I believe them to be true.



Art Mateo

Date: JULY 23, 2024

SWORN TO (or AFFIRMED) and subscribed before me this day by Art Mateo. 7/23/2024

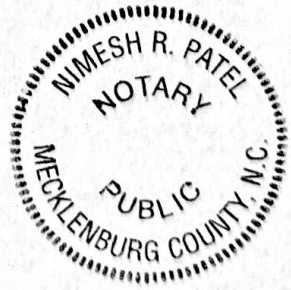


Notary Public

Nimesh R Patel

Name

My Commission Expires: Nov. 7, 2024



INDEX OF EXHIBITS TO THE COMPLAINT

EX. A: Email Exchange Between EFI and Zone 1 Regarding 5% Patent Royalty

EX. B: U.S. patent 11,772,872

EX. C: Email Exchange Between EFI and Veritiv Regarding Reason for Pulling Business

EX. D: Eco Fiber 2023 Business Review Email

EX. E: EFI Cease-and-Desist Demand Letter Sent to David Kevin Vance

EX. F: David Kevin Vance Email to Veritiv in Response to EFI's Cease-and-Desist Letter

EX. G: Letter from Vance's Counsel to EFI's Counsel Making a Covenant Not to Sue

EX. H: Vance's Notice of Infringement Contentions Served on EFI

EX. I: Screenshot of Yukon's Products Webpage

EX. J: Printout of a Blog Titled "What are Cold Chain Products?"

EX. K: U.S. Design Patent 964,172 S for "Insulation for Packaging Container"

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2024, the foregoing was electronically filed via the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Christopher P. Raab
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