

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

BUZZBALLZ, LLC,

Plaintiff,

v.

THE BEVERAGE RANCH, LLC,

Defendant.

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CIVIL ACTION NO. 5:24-cv-00692

**FIRST AMENDED COMPLAINT**

Plaintiff BuzzBallz, LLC files this First Amended Complaint against Defendant The Beverage Ranch, LLC, for infringement of U.S. Patent No. 11,338,955 (the “955 Patent”) and U.S. Patent No. 12,037,162 (the “162 Patent”), and in support thereof states as follows:

**I. PARTIES**

1. Plaintiff BuzzBallz, LLC (“BuzzBallz”) is a limited liability company duly organized under the laws of the State of Delaware with its principal place of business in Dallas County, Texas.

2. Defendant The Beverage Ranch, LLC (“Defendant”) is a limited liability company organized under the laws of the State of Texas with its principal place of business at 106 E 6th Street, Suite 900-182, Austin, Texas 78701.

3. Defendant accepted service of process on June 26, 2024 and filed an Original Answer on July 30, 2024.

**II. JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271.

5. This Court has personal jurisdiction over Defendant because Defendant is organized under the laws of the State of Texas, maintains a headquarters in the State of Texas, maintains a registered agent in the State of Texas, and has committed acts of infringement in the State of Texas.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because the Defendant resides in this District. Defendant has further sold infringing products in this District and maintains a regular and established place of business in this District.

### **III. FACTUAL ALLEGATIONS**

#### **A. BuzzBallz and Its Patented Containers**

7. BuzzBallz is a woman-owned business that sells a variety of ready-to-drink alcoholic beverages in unique containers.

8. The concept for BuzzBallz was conceived in the mid-2000s by its founder, Merrilee Kick—at the time, a high school teacher—who was looking for a convenient way to sip a cocktail on a hot summer day. After years of industry research and a substantial financial investment, BuzzBallz was founded in July 2009.

9. Although BuzzBallz was founded in and is based in Texas, BuzzBallz has grown substantially since its founding, now selling products in all 50 U.S. states and internationally. BuzzBallz-branded alcoholic beverages have become the number one ready-to-drink, single-serve cocktails in the United States. BuzzBallz sells millions of cases annually, generating tens of millions of dollars in annual sales.

10. BuzzBallz's products, which are sold in retail stores and promoted online, including at [www.buzzballz.com](http://www.buzzballz.com), consist of high-quality, pre-mixed alcoholic beverages made from natural juices and premium ingredients.

11. BuzzBallz alcoholic beverages are packaged in unique, truncated, round, transparent, colorful, plastic resin containers. BuzzBallz has obtained multiple patents relating to its innovative container designs.

#### **B. The '955 Patent**

12. On May 24, 2022, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 11,338,955, entitled "Container" to inventor Merrilee Kick. A true and correct copy of the '955 Patent is attached hereto as **Exhibit A** and is incorporated herein by reference in its entirety.

13. Effective September 13, 2023, Merrilee Kick assigned all right, title, and interest in the '955 Patent to BuzzBallz, including, without limitation, the right to sue for, recover damages and relief for, settle, or release any past, present, or future infringement or misappropriation of the '955 Patent.

14. The '955 Patent generally relates to containers. For example, Figure 1 of the '955 Patent, reproduced below, illustrates one embodiment of a container disclosed by the '955 Patent:

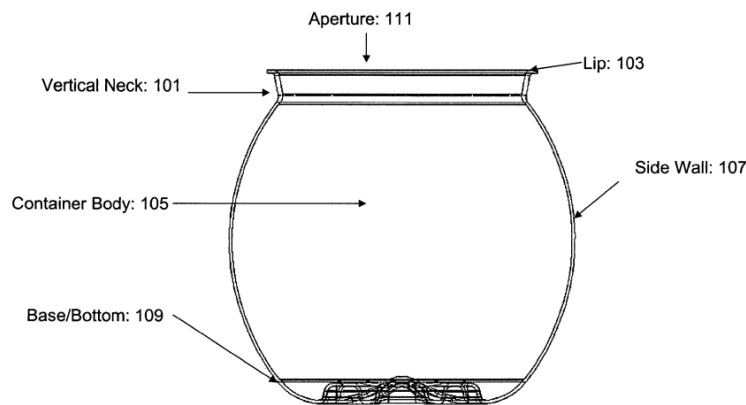


Figure 1

15. The '955 Patent contains twenty-one claims directed towards containers and more particularly to containers wherein the container body has a truncated spherical shape.

16. For example, Claim 10 recites:

*A container, the container comprising a container body, the container body comprising a container side wall and a horizontally-extending base connected to the container side wall, wherein the container side wall and the horizontally-extending base are shaped so that an interior of said container body has a truncated spherical shape, wherein a cross-sectional diameter of a top portion of said container body is less than a cross-sectional diameter of a middle portion of said container body, wherein the horizontally-extending base defines a diameter that is less than the cross-sectional diameter of the middle portion of said container body, wherein the container body further comprises a circular neck extending vertically from the container side wall so that the container side wall extends between the circular neck and the horizontally-extending base, wherein an upper edge of said container side wall is adjacent to the circular neck of the container body, and wherein said container body defines an opening to the interior of said container body;*

*wherein the cross-sectional diameter of the top portion of said container body is defined by the circular neck;*

*wherein the cross-sectional diameter of the middle portion of said container body is defined by the container side wall; and*

*wherein the container side wall extends uninterruptedly between the circular neck and the horizontally-extending base.*

17. As a further example, Claim 21 recites:

*A container, the container comprising a container body, the container body comprising a container side wall and a horizontally-extending portion connected to the container side wall, wherein the container side wall and the horizontally-extending portion are shaped so that an interior of said container body has a truncated spherical shape, wherein a cross-sectional diameter of a top portion of said container body is less than a cross-sectional diameter of a middle portion of said container body, wherein the horizontally-extending portion defines a diameter that is less than the cross-sectional diameter of the middle portion of said container body, wherein the container body further comprises a circular neck extending vertically from the container side wall so that the container side wall extends between the circular neck and the horizontally-extending portion, wherein an upper edge of said container side wall is adjacent to the circular neck of the container body, and wherein said container body defines an opening to the interior of said container body;*

*wherein the cross-sectional diameter of the top portion of said container body is defined by the circular neck;*

*wherein the cross-sectional diameter of the middle portion of said container body is defined by the container side wall; and*

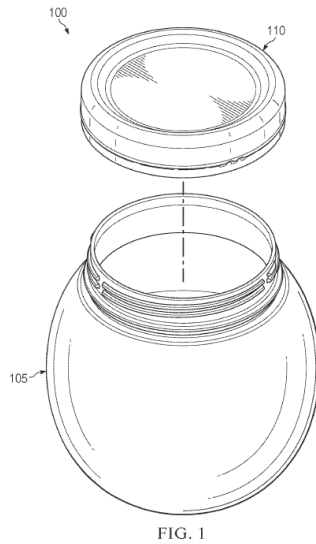
*wherein the container side wall extends uninterruptedly between the circular neck and the horizontally-extending portion.*

**C. The '162 Patent**

18. On July 16, 2024, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 12,037,162, entitled “Container Apparatus” to inventor Merrilee Kick. A true and correct copy of the '162 Patent is attached hereto as **Exhibit B** and is incorporated herein by reference in its entirety.

19. Effective April 30, 2024, Merrilee Kick assigned all right, title, and interest in the '162 Patent to BuzzBallz, including, without limitation, the right to sue for, recover damages and relief for, settle, or release any past, present, or future infringement or misappropriation of the '162 Patent.

20. The '162 Patent generally relates to containers, and more particularly to a “stackable container including a container body and a container lid, at least a portion of which container lid is detachable from, and re-attachable to, the container body.” ('162 Patent at 1:35-36.) For example, Figure 1 of the '162 Patent, reproduced below, illustrates one embodiment of a “container apparatus 100 [that] includes a container body 105 and a container lid 110” ('162 Patent at 3:31-32):



21. As the '162 Patent explains, “the container lid 110 is detachable from, and re-attachable to, the container body 105.” ('162 Patent at 8:62-64.) Further, “the container apparatus 100 is stackable with another container apparatus, which another container apparatus is substantially identical to the container apparatus 100.” ('162 Patent at 12:5-8.)

22. The '162 Patent contains twenty-two claims directed towards containers. For example, Claim 10 recites:

*An apparatus, comprising:*

*a container body defining an internal cavity, a first outer diameter, and a second outer diameter, the container body comprising:*

*a first side wall surrounding the internal cavity, the first side wall defining the first outer diameter of the container body, which first outer diameter is a maximum outer diameter of the first side wall;*

*a neck connected to the first side wall and axially above the first side wall, at least a portion of the neck defining a mouth via which the internal cavity of the container body is accessible, the at least a portion of the neck defining the mouth further defining the second outer diameter of the container body;*

*external threads extending around the at least a portion of the neck defining the mouth and further defining the second outer diameter of the container body; and*

*a bottom portion connected to the first side wall;*

*wherein the bottom portion of the container body defines a base extending within a plane, the base defining an outline extending circumferentially within the plane in which the base of the bottom portion extends;*

*wherein the base defines an outer diameter that is less than the first outer diameter of the container body and thus is less than the maximum outer diameter of the first side wall; and*

*and*

*a container lid attached to the neck of the container body, the container lid comprising:*

*a second side wall;*

*a top wall connected to the second side wall;*

*wherein the second side wall at least partially defines an internal region of the container lid;*

*wherein the container lid further comprises internal threads;*

*wherein the internal threads of the container lid are engaged with the external threads of the container body so that the container lid is threaded onto the neck of the container body and thus the container lid is attached to the container body by the threaded engagement between the internal threads of the container lid and the external threads of the container body;*

*wherein the top wall comprises a central portion and an outer edge portion;*

*wherein the outer edge portion comprises a radially-inwardly-facing external surface circumferentially extending around the central portion;*

*wherein at least the radially-inwardly-facing external surface and the central portion, in combination, define an external region of the container lid, the external region being axially opposite the internal region;*

*wherein the container lid is detachable from the neck of the container body by threading off the internal threads of the container lid from the external threads of the container body via rotation of the container lid, in a first circumferential direction and relative to the container body;*

*wherein the container lid is re-attachable to the neck of the container body by re-engaging the internal threads of the container lid with the external*

*threads of the container body via rotation of the container lid, in a second circumferential direction and relative to the container body;*

*wherein the second circumferential direction, in which the container lid is rotated relative to the container body to re-attach the container lid to the neck of the container body, is opposite the first circumferential direction, in which the container lid is rotated relative to the container body to detach the container lid from the neck of the container body;*

*wherein, when the container lid is detached from the neck of the container body, the bottom portion of the container body is adapted to be received by the external region of the container lid, which external region is defined by at least the combination of the radially-inwardly-facing external surface and the central portion of the container lid, so that:*

*the radially-inwardly-facing external surface of the container lid extends circumferentially around at least a portion of the container body; and*

*the container body is adjacent or proximate the radially-inwardly-facing external surface of the container lid;*

*wherein at least a portion of the first side wall of the container body is curved, the curved portion of the first side wall defining a radius of curvature in a plane that is perpendicular to the plane in which the base of the bottom portion extends;*

*wherein the curved portion defines the first outer diameter of the container body and thus the maximum diameter of the first side wall of the container body;*

*wherein the second outer diameter defined by the at least a portion of the neck of the container body is less than the first outer diameter defined by the curved portion of the container body;*

*wherein at least another portion of the first side wall defines another outer diameter that is less than the first outer diameter of the container body and thus is less than the maximum outer diameter of the first side wall of the container body;*

*wherein the another outer diameter defined by the at least another portion of the first side wall is greater than the second outer diameter defined by the at least a portion of the neck of the container body;*

*wherein the second outer diameter defined by the at least a portion of the neck of the container body is less than each of a plurality of outer diameters defined by the first side wall of the container body;*



*wherein each of the outer diameters in the plurality of outer diameters is defined in a respective plane that is spaced in a parallel relation from the plane in which the base of the bottom portion of the container body extends, the plurality of outer diameters including each of:*

*the first outer diameter defined by the curved portion of the first side wall of the container body and thus the maximum diameter of the first side wall of the container body;*

*the another outer diameter defined by the at least another portion of the first side wall of the container body; and*

*yet another outer diameter defined by at least yet another portion of the first side wall of the container body;*

*wherein the first outer diameter defined by the curved portion of the first side wall of the container body, and thus the maximum outer diameter of the first side wall of the container body, extends in a plane axially above the plane in which the base of the bottom portion of the container body extends;*

*wherein the another outer diameter, which is defined by the at least another portion of the first side wall of the container body, extends in another plane axially above the plane in which the base of the bottom portion of the container body extends;*

*wherein the another plane, in which the another outer diameter defined by the at least another portion of the first side wall of the container body extends, is axially above the plane in which the first outer diameter defined by the curved portion of the first side wall of the container body, and thus the maximum diameter of the first side wall of the container body, extends;*

*wherein the yet another outer diameter, which is defined by the at least yet another portion of the first side wall of the container body, extends in yet another plane axially above the plane in which the base of the bottom portion of the container body extends;*

*wherein the yet another plane, in which the yet another outer diameter defined by the at least yet another portion of the first side wall of the container body extends, is either:*

*(i) axially below the plane in which the first outer diameter defined by the curved portion of the first side wall of the container body, and thus the maximum diameter of the first side wall of the container body, extends, and thus also axially below the another plane in*

*which the another outer diameter, which is defined by the at least another portion of the first side wall of the container body, extends;*

*or*

*(ii) axially above the another plane in which the another outer diameter, which is defined by the at least another portion of the first side wall of the container body, extends, and thus also axially above the plane in which the first outer diameter defined by the curved portion of the first side wall of the container body, and thus the maximum diameter of the first side wall of the container body, extends;*

*wherein the bottom portion of the container body, including the base, at least partially defines a first three-dimensional profile;*

*wherein the radially-inwardly-facing external surface and the central portion of the container lid at least partially define a second three-dimensional profile;*

*and*

*wherein, when the container lid is detached from the neck of the container body, the bottom portion of the container body is adapted to be received by the external region of the container lid so that also:*

*the second three-dimensional profile of the container lid matingly receives the first three-dimensional profile of the container body.*

**D. Defendant's SlamZees Product Infringes the '955 Patent and the '162 Patent**

23. Like BuzzBallz, Defendant produces ready-to-drink alcoholic beverages packaged in truncated, round, plastic containers. Defendant markets these beverages under the name "SlamZees." One example of a SlamZees product with a truncated, round, plastic container is shown below:



24. BuzzBallz first discovered Defendant's SlamZees products through promotional posts on Instagram made by one of Defendant's personnel. For example, below is a true and accurate screenshot of a post from Allison Hartmann, Defendant's National Accounts Manager, promoting a SlamZees product:



<https://www.instagram.com/p/CzMG87SL5EF/> (Nov. 3, 2023).

25. On January 29, 2024, BuzzBallz contacted Defendant via letter informing it of the '955 Patent and providing notice that the SlamZees products depicted above, more specifically the container for the SlamZees products, infringes at least Claims 10 and 21 of the '955 Patent. BuzzBallz requested that Defendant cease manufacturing, marketing, or selling the infringing SlamZees products.

26. Upon information and belief, Defendant had not launched the SlamZees products when BuzzBallz first contacted Defendant.

27. Upon information and belief, Defendant had not made significant sales of SlamZees products when BuzzBallz first contacted Defendant.

28. Defendant failed to immediately comply with BuzzBallz's request, however, and on March 8, 2024, BuzzBallz reiterated that the SlamZees products infringe the '955 Patent and insisted Defendant cease its infringing activities.

29. Despite receiving actual notice on two occasions that the SlamZees products infringe claims of the '955 Patent, Defendant ignored BuzzBallz's patent rights and began making widespread sales of infringing SlamZees products.

30. Defendant's SlamZees products infringe at least Claims 10 and 21 of the '955 Patent, as illustrated in the exemplary chart attached hereto as **Exhibit C**.

31. The SlamZees products infringe at least Claims 10 and 21 of the '955 Patent because they include all of the recited elements in Claims 10 and 21. For example, the SlamZees products include a container with a container body and lid having the features, structural elements, and materials as recited in Claims 10 and 21.

32. Accordingly, Defendant's SlamZees products embody and practice all the elements of—and therefore infringe—at least two claims of the '955 Patent, Claims 10 and Claim 21, either

literally or under the doctrine of equivalents.

33. Defendant's SlamZees products also infringe at least Claim 10 of the '162 Patent, as illustrated in the exemplary chart attached hereto as **Exhibit D**.

34. The SlamZees products infringe at least Claim 10 of the '162 Patent because they include all of the recited elements in Claim 10. For example, the SlamZees products include an apparatus with a container body and container lid having the features, structural elements, and materials as recited in Claims 10.

35. Accordingly, Defendant's SlamZees products embody and practice all the elements of—and therefore infringe—at least two claims of the '162 Patent, Claims 10, either literally or under the doctrine of equivalents.

#### **IV. FIRST CLAIM FOR RELIEF**

##### **Defendant's Direct Infringement of the '955 Patent**

36. BuzzBallz reincorporates by reference the allegations in the foregoing paragraphs, inclusive, as if the same were set out here in full.

37. The '955 Patent is a valid, enforceable, and patent-eligible patent that was duly issued by the USPTO. *See* Exhibit A.

38. BuzzBallz is the assignee of the '955 Patent with full rights to pursue recovery of damages for infringement, including reasonably royalties and past and future damages.

39. Defendant is directly infringing the '955 Patent by making, using, offering to sell, selling, or importing into the United States products, including the SlamZees products, that practice one or more claims of the '955 Patent including, but not limited to, Claims 10 and 21.

40. Defendant has infringed and continues to infringe, either literally or under the doctrine of equivalents, at least Claims 10 and 21 of the '955 Patent under 35 U.S.C. § 271(a) by

making, using, offering to sell, selling, or importing into the United States Defendant's SlamZees products.

41. As a result of Defendant's unlawful infringement of the '955 Patent, BuzzBallz has suffered and will continue to suffer damages. BuzzBallz is entitled to recover from Defendant compensation and monetary relief to the fullest extent allowed by law, which has yet to be determined.

42. Defendant has possessed actual knowledge of the '955 Patent and infringement of at least Claims 10 and 21 by the SlamZees products at least since January 29, 2024 when BuzzBallz notified Defendant of its infringement, such that Defendant's continued infringement thereafter is willful. Any making, using, offering to sell, selling, or importing by Defendant of the SlamZees products subsequent to the date Defendant received BuzzBallz's initial letter detailing its infringement demonstrates a deliberate and conscious decision to infringe the '955 Patent or a reckless disregard of BuzzBallz's patent rights.

43. This case is an exceptional case under 35 U.S.C. § 285. BuzzBallz is entitled to treble damages and attorney's fees and costs incurred in this action, along with prejudgment interest under 35 U.S.C. §§ 284 and 285.

44. Defendant will continue to infringe the '955 Patent unless and until it is enjoined by this Court. Defendant's acts of infringement have caused and will continue to cause irreparable harm to BuzzBallz until enjoined by this Court.

## **V. SECOND CLAIM FOR RELIEF**

### **Defendant's Direct Infringement of the '162 Patent**

45. BuzzBallz reincorporates by reference the allegations in the foregoing paragraphs, inclusive, as if the same were set out here in full.

46. The '162 Patent is a valid, enforceable, and patent-eligible patent that was duly issued by the USPTO. *See* Exhibit B.

47. BuzzBallz is the assignee of the '162 Patent with full rights to pursue recovery of damages for infringement, including reasonably royalties and past and future damages.

48. Defendant is directly infringing the '162 Patent by making, using, offering to sell, selling, or importing into the United States products, including the SlamZees products, that practice one or more claims of the '162 Patent including, but not limited to, Claim 10.

49. Defendant has infringed and continues to infringe, either literally or under the doctrine of equivalents, at least Claim 10 of the '162 Patent under 35 U.S.C. § 271(a) by making, using, offering to sell, selling, or importing into the United States Defendant's SlamZees products.

50. As a result of Defendant's unlawful infringement of the '162 Patent, BuzzBallz has suffered and will continue to suffer damages. BuzzBallz is entitled to recover from Defendant compensation and monetary relief to the fullest extent allowed by law, which has yet to be determined.

51. Defendant has possessed actual knowledge of the '162 Patent and infringement of at least Claim 10 by the SlamZees products at least since the filing of this pleading, such that Defendant's continued infringement thereafter is willful. Any subsequent making, using, offering to sell, selling, or importing by Defendant of the SlamZees products demonstrates a deliberate and conscious decision to infringe the '162 Patent or a reckless disregard of BuzzBallz's patent rights.

52. This case is an exceptional case under 35 U.S.C. § 285. BuzzBallz is entitled to treble damages and attorney's fees and costs incurred in this action, along with prejudgment interest under 35 U.S.C. §§ 284 and 285.

53. Defendant will continue to infringe the '162 Patent unless and until it is enjoined by this Court. Defendant's acts of infringement have caused and will continue to cause irreparable harm to BuzzBallz until enjoined by this Court.

## **VI. REQUEST FOR INJUNCTIVE RELIEF**

54. BuzzBallz reincorporates by reference the allegations in the foregoing paragraphs, inclusive, as if the same were set out here in full.

55. Defendant has violated 35 U.S.C. § 271(a) and committed patent infringement under federal law, and BuzzBallz is therefore entitled to injunctive relief under 35 U.S.C. § 283.

56. BuzzBallz requests that the Court issue preliminary and permanent injunctive relief enjoining Defendant and its officers, directors, agents, employees, successors, assigns and attorneys, and all other persons and entities in active concert or participation with Defendant who receive notice of the injunction, from doing, aiding, causing or abetting Defendant's making, using, offering to sell, selling, or importing into the United States any product covered by the '955 Patent for the full term thereof.

57. BuzzBallz will suffer immediate and irreparable damage, injury, and harm for which there is no adequate remedy at law if Defendant is not immediately and permanently enjoined from the conduct listed above.

58. Public policy favors the protection of intellectual property rights and the prevention of unfair competition, and any injunctive relief granted herein will therefore be in accordance with public policy.

59. The potential damage to BuzzBallz if the injunctive relief requested herein is not granted far outweighs any harm that Defendant will suffer as a result of the injunctive relief requested. Immediate and permanent injunctive relief is therefore appropriate.



## **VII. JURY DEMAND**

60. BuzzBallz hereby demands a trial by jury of all claims so triable.

## **VIII. PRAYER FOR RELIEF**

WHEREFORE, BuzzBallz requests that the Court enter judgement in its favor and against Defendant as follows:

1. Granting the injunctive relief requested above;
2. Ordering Defendant to file with the Court and serve upon counsel for BuzzBallz within thirty (30) days after the entry of the injunction prayed for in this Complaint, a written report, sworn to under oath, setting forth in detail the manner and form in which Defendant has complied with the injunction;
3. Finding that Defendant has directly infringed the '955 Patent and the '162 Patent;
4. Awarding BuzzBallz all available damages under 35 U.S.C. § 284 for Defendant's past infringement, and any continuing or future infringement of the '955 Patent and the '162 Patent, up until the date judgement is entered, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 to adequately compensate BuzzBallz for Defendant's infringement;
5. Finding that Defendant's infringement of the '955 Patent and the '162 Patent has been willful and deliberate;
6. Awarding BuzzBallz treble damages and pre-judgement interest under 35 U.S.C. § 284 as a result of Defendant's willful and deliberate infringement of the '955 Patent and the '162 Patent;
7. Finding this case is exceptional within the meaning of 35 U.S.C. § 285;
8. Awarding BuzzBallz attorneys' fees, costs, and expenses incurred in prosecuting this action; and

9. Awarding BuzzBallz all such further relief at law or in equity to which it may be justly entitled.

Respectfully submitted,

HAYNES AND BOONE, L.L.P.

/s/ Jason P. Bloom

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**ATTORNEYS FOR PLAINTIFF  
BUZZBALLZ, LLC**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing and all exhibits thereto was filed using the CM/ECF system, which will send notification to all counsel of record.

/s/ Jason W. Whitney  
Jason W. Whitney