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Attorney for: Concrete Washout Systems, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

CONCRETE WASHOUT SYSTEMS,)
INC., a California corporation,)

Plaintiff,)

-- vs. --)

CONCRETE WASHOUT OF ARIZONA,)
LLC., DAN PARESSINI, KENNETH)
LOPER, ROBERT NELSON, STEVE)
WADKINS, IVAN ARAGUNDI, JR., and)
Does 1 -100,)

Defendants.)

Case No.:

**COMPLAINT FOR DAMAGES
FOR BREACH OF CONTRACT
AND PATENT INFRINGEMENT;
PRELIMINARY AND
PERMANENT INJUNCTIONS**

Concrete Washout Systems, Inc. (“Concrete Washout”), plaintiff in the above-captioned matter, and for its Complaint against defendants CONCRETE WASHOUT OF ARIZONA, LLC, DAN PARESSINI, KENNETH LOPER, ROBERT NELSON, STEVE WADKINS, IVAN ARAGUNDI, JR., and Does 1 -100, herein alleges as follows:

NATURE AND BASIS OF ACTION

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2 1. This is a civil action in which Concrete Washout asserts against defendants
3 CONCRETE WASHOUT OF ARIZONA, LLC, DAN PARESSINI, KENNETH LOPER,
4 ROBERT NELSON, STEVE WADKINS, IVAN ARAGUNDI, JR, claims for damages
5 for breach of contract, for breach of a written guaranty, and for patent infringement,
6 injunctive relief, and recovery of its costs and attorneys' fees.
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8
9 **PARTIES**

10 2. Concrete Washout is a corporation incorporated under the laws of the State
11 of California and maintains its principal place of business in Sacramento, Sacramento
12 County, California.
13

14 3. Upon information and belief, defendant CONCRETE WASHOUT OF
15 ARIZONA, LLC, is a limited liability company established under the laws of the state of
16 Arizona, and maintains its principal place of business in Phoenix, Arizona.
17

18 4. Upon information and belief, defendants DAN PARESSINI, KENNETH
19 LOPER, ROBERT NELSON, STEVE WADKINS, IVAN ARAGUNDI, JR., are
20 individuals who reside in the State of Arizona.
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22
23 **JURISDICTION AND VENUE**

24 5. This Court has jurisdiction over the subject matter of this action under
25 28 U.S.C. §§ 1331, 1332, and 1338, and 35 U.S.C. § 281. The Court has supplemental
26 jurisdiction over the state and common law claims pursuant to 28 U.S.C. § 1367.
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1 9. Violations of EPA and state regulations can result in penalties from \$10,000
2 per day to as high as \$27,500 per day, as well as \$10 per gallon of discharge into the
3 waterways.

4 10. In response to the long-felt need for a solution to concrete waste water
5 disposal, Concrete Washout's founder and CEO, Mark Jenkins ("Jenkins"), pioneered the
6 field of concrete washout boxes. Jenkins developed a concrete washout container for
7 receiving hardening concrete from a concrete truck or other concrete equipment for
8 subsequent disposal in a substantially hardened condition. The container is designed for
9 portability, having an open top, a bottom, two sides, and two ends with a watertight door
10 at one end. The container is lined on its inner wall surfaces with a release material to
11 inhibit adhesion of the concrete washout material and further is designed with an internal
12 taper to facilitate the removal of the hardened concrete washout. The container includes
13 one or more skids to aid in guiding the portable container during loading and unloading
14 from a separate transport vehicle.

15 11. In 2003, Jenkins formed Concrete Washout to market and license the
16 concrete washout system he had designed. Concrete Washout's systems quickly became a
17 commercial success and its solution to the environmental threat that plagued the
18 construction industry continues to be recognized and awarded accolades by industry and
19 government associations, including the World of Concrete 2005 Most Innovative Product
20 Award, the National Ready-Mixed Concrete Association 2004 Environmental Innovation
21 Award, and the Sacramento Business Environmental Resource Center 2004 Pollution
22 Prevention Award, among others.

U.S. Patent No. 7,118,633

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2 12. On October 10, 2006, the United States Patent and Trademark Office duly
3 and lawfully issued United States Patent No. 7,118,633 (“the ‘633 Patent”), entitled
4 “Concrete Washout Container and Method for Controlling Concrete Washout” to inventor
5 Mark Jenkins. A true and correct copy of the ‘633 Patent is attached hereto as Exhibit B.
6

7 13. The ‘633 Patent is currently in full force and effect.

8 14. All right, title, and interest in and to the ‘633 Patent have been assigned to
9 Concrete Washout, which is the sole owner of the ‘633 Patent.
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11 15. The ‘633 Patent contains nine claims generally directed to a method for
12 controlling concrete washout and related washout containers.

13 16. In accordance with 35 U.S.C. § 282, the ‘633 Patent, and each and every
14 claim thereof, is presumed to be valid.
15

U.S. Patent No. 7,121,288

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17 17. On October 17, 2006, the United States Patent and Trademark Office duly
18 and lawfully issued United States Patent No. 7,121,288 (“the ‘288 Patent”), entitled
19 “Concrete Washout Container” to inventor Mark Jenkins. A true and correct copy of the
20 ‘288 Patent is attached hereto as Exhibit C.
21

22 18. The ‘288 Patent is currently in full force and effect.

23 19. All right, title, and interest in and to the ‘288 Patent have been assigned to
24 Concrete Washout, which is the sole owner of the ‘288 Patent.
25

26 20. The ‘288 Patent contains 36 claims generally directed to a washout container.
27
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1 21. In accordance with 35 U.S.C. § 282, the '288 Patent, and each and every
2 claim thereof, is presumed to be valid.

3
4 **U.S. Patent No. 7,124,767**

5 22. On October 24, 2006, the United States Patent and Trademark Office duly
6 and lawfully issued United States Patent No. 7,124,767 ("the '767 Patent"), entitled
7 "Concrete Washout Container" to inventor Mark Jenkins. A true and correct copy of the
8 '766 Patent is attached hereto as Exhibit D.

9
10 23. The '767 Patent is currently in full force and effect.

11
12 24. All right, title, and interest in and to the '767 Patent have been assigned to
13 Concrete Washout, which is the sole owner of the '767 Patent.

14 25. The '767 Patent contains 14 claims generally directed to a washout container.

15
16 26. In accordance with 35 U.S.C. § 282, the '767 Patent, and each and every
17 claim thereof, is presumed to be valid.

18
19 **U.S. Patent No. 7,364,627**

20 27. On April 29, 2008, the United States Patent and Trademark Office duly and
21 lawfully issued United States Patent No. 7,364,627 ("the '627 Patent"), entitled "Method
22 for Controlling Concrete Washout" to inventor Mark Jenkins. A true and correct copy of
23 the '627 Patent is attached hereto as Exhibit E.

24
25 28. The '627 Patent is currently in full force and effect.

26
27 29. All right, title, and interest in and to the '627 Patent have been assigned to
28 Concrete Washout, which is the sole owner of the '627 Patent.

1 30. The '627 Patent contains 13 claims generally directed to a washout container.

2 31. In accordance with 35 U.S.C. § 282, the '627 Patent, and each and every
3 claim thereof, is presumed to be valid.

4 32. Concrete Washout is the exclusive owner of the '633 Patent, the '288 Patent,
5 the '767 Patent and the '627 Patent.

6
7 33. Concrete Washout has expended enormous amounts of resources and has
8 established itself as an industry leader and pioneer with regard to the safe, responsible, and
9 environmentally friendly alternative to the old worksite concrete washouts. Concrete
10 Washout has advertised and promoted its name and its patented concrete washout systems
11 which control, capture, and contain all concrete washout waste water and material.

12
13 34. Concrete Washout is an industry leader as a result of its enormous investment
14 in its name, reputation, and in advertising and promoting its concrete washout systems,
15 including the systems described in the claims of the four patents identified above. As a
16 result of the efforts of Concrete Washout and the tremendous success of its business
17 operations and assets including, but not limited to, the patented assets described above,
18 Concrete Washout has earned an exceptional reputation for delivering quality concrete
19 washout systems.
20

21
22 35. Concrete Washout has invested heavily in research and development of its
23 concrete washout systems, as well as in manufacturing, marketing and promoting its
24 product.

25
26 36. Concrete Washout has expanded the nationwide and international use of its
27 concrete washout systems by licensing independent companies to purchase its concrete
28

1 washout system containers and to use those concrete washout containers in a rental
2 business conducted by that independent company.

3 37. Concrete Washout exercises strict control over the purchase, use, and transfer
4 of its concrete washout system containers by requiring every purchaser of the concrete
5 washout system container to execute a written license [“Licensing Agreement”] that
6 restricts the licensee’s use and transfer of the concrete washout system containers.
7

8 38. Every purchase of Concrete Washout’s concrete washout system is
9 conditioned upon obtaining a license from the patent holder.
10

11 39. Concrete Washout does not sell its concrete washout system to any person or
12 entity unless they first execute a Licensing Agreement with Concrete Washout.

13 40. Concrete Washout does not permit any of its authorized manufacturers to sell
14 its concrete washout system to any person or entity unless they first execute a Licensing
15 Agreement with Concrete Washout.
16

17 41. Furthermore, Concrete Washout does not permit the purchaser to transfer the
18 concrete washout container to any other person or entity except in compliance with the
19 terms of the written Licensing Agreement.
20

21 42. Concrete Washout does not allow unlicensed persons or entities to use
22 Concrete Washout’s concrete washout system containers.

23 43. Concrete Washout’s income is derived from licensing out the concrete
24 washout system containers.
25

26 44. If unauthorized persons or entities use Concrete Washout’s proprietary
27 containers, that use diminishes the value of Concrete Washout’s proprietary rights.
28

DEFENDANTS’ CONDUCT

1
2 45. On March 1, 2005, plaintiff and defendant CONCRETE WASHOUT OF
3 ARIZONA, LLC [“CW ARIZONA”], entered into a written Licensing Agreement for the
4 Concrete Washout Systems containers. A true and correct copy of the Licensing
5 Agreement is attached hereto as Exhibit A.
6

7 46. Also on March 1, 2005, defendants DAN PARESSINI, KENNETH LOPER,
8 ROBERT NELSON, and STEVE WADKINS executed a written Guaranty guarantying
9 CW ARIZONA’s full compliance with the terms of the License Agreement. That written
10 Guaranty is page 11 of the Licensing Agreement, Exhibit A.
11

12 47. Pursuant to that Licensing Agreement, defendant CW ARIZONA purchased
13 sixty-nine (69) concrete washout system containers from plaintiff and its authorized
14 manufacturers and proceeded to use those containers to conduct a concrete washout
15 business.
16

17 48. Also pursuant to that Licensing Agreement, CW ARIZONA agreed to pay
18 the sum of \$55.00 per month for each concrete washout system box purchased or leased
19 by CW ARIZONA.
20

21 49. On July 25, 2009, Concrete Washout gave written notice to CW ARIZONA
22 that Concrete Washout was terminating the Licensing Agreement, Exhibit A, due to CW
23 ARIZONA’S failure to pay its licensing fees and its failure to purchase or lease the
24 required number of concrete washout system boxes.
25

26 50. Pursuant to the Licensing Agreement, upon termination by Licensor, CW
27 ARIZONA was obligated to continue paying the monthly license fees until either
28 Concrete Washout purchases the concrete washout systems boxes, or a third party buyer

1 approved by Concrete Washout assumes CW ARIZONA's obligations under the
2 Licensing Agreement. Concrete Washout did not purchase the concrete washout systems
3 boxes from defendant CW ARIZONA, there has been no assumption of CW ARIZONA's
4 obligations under the Licensing Agreement, and Concrete Washout has not approved a
5 third party buyer.
6

7 51. There is now owing and unpaid to Concrete Washout from defendant CW
8 ARIZONA, license fees in the total amount of \$268,671.54 as of April 10, 2013, and that
9 amount increases by the sum of \$3,795 per month, thereafter, plus interest.
10

11 52. There is now owing and unpaid to Concrete Washout from defendant
12 Guarantors DAN PARESSINI, KENNETH LOPER, ROBERT NELSON, STEVE
13 WADKINS, the license fees in the total amount of \$268,671.54 as of April 10, 2013, and
14 that amount increases by the sum of \$3,795 per month, thereafter, plus interest.
15

16 53. The Licensing Agreement provides in its relevant portions, as follows.

17 **14. LICENSEE's license to use the concrete washout systems boxes**
18 **shall cease upon termination of this Agreement, and upon**
19 **termination, Licensee shall not use, transfer or give away the concrete**
20 **washout systems boxes except with the prior written permission of**
21 **Licensor.**

22 54. Despite Concrete Washout giving notice to CW ARIZONA that Concrete
23 Washout terminated the Licensing Agreement, upon information and belief CW
24 ARIZONA transferred some of its concrete washout system boxes to defendant IVAN
25 ARAGUNDI, JR., and both CW ARIZONA and IVAN ARAGUNDI, JR., are now
26 conducting a concrete washout business without license or other consent of Concrete
27 Washout.
28

1 55. Plaintiff is informed and believes that and thereon alleges that defendants
2 CW ARIZONA and IVAN ARAGUNDI, JR., continue to operate the concrete washout
3 business using the containers obtained from defendant CW ARIZONA, and will continue
4 to do so unless restrained by an order from this Court.

5 56. The Licensing Agreement provides in its relevant portions, as follows.

6
7 **17. a. If any party to this Agreement brings legal action to enforce the**
8 **provisions of this Agreement, the prevailing party in any such litigation**
9 **shall be entitled to recover costs including reasonable attorney's fees.**

10
11 **FIRST CAUSE OF ACTION**
12 **(Breach of Contract)**

13 57. This cause of action includes paragraphs 1 through 56, as set forth above.

14 58. Plaintiff Concrete Washout has performed all of its obligations under the
15 Licensing Agreement.

16
17 59. Defendant CW ARIZONA breached the Licensing Agreement by failing to
18 pay its monthly license fees, failing to purchase or lease ninety-six (96) concrete washout
19 bins within one year, and by transferring its concrete washout bins to a third party without
20 the consent of plaintiff.

21
22 60. As a proximate result of CW ARIZONA's breach of the Licensing
23 Agreement, plaintiff has been damaged in the amount of \$268,671.54, and said amount is
24 increasing monthly by the sum of \$3,795 per month, plus interest.

25
26 **SECOND CAUSE OF ACTION**
27 **(Breach of Guaranty)**

28 61. This cause of action includes paragraphs 1 through 60, as set forth above.

1 62. Plaintiff Concrete Washout has performed all of its obligations under the
2 Licensing Agreement.

3 63. Defendant Guarantors DAN PARESSINI, KENNETH LOPER, ROBERT
4 NELSON, STEVE WADKINS, breached the written Guaranty by failing to pay CW
5 ARIZONA's monthly license fees, failing to purchase or lease ninety-six (96) concrete
6 washout bins within one year, and by transferring CW ARIZONA's concrete washout bins
7 to a third party without the consent of plaintiff.
8

9 64. As a proximate result of Defendant Guarantors DAN PARESSINI,
10 KENNETH LOPER, ROBERT NELSON, STEVE WADKINS's breach of the Guaranty
11 Agreement, plaintiff has been damaged in the amount of \$268,671.54, and said amount is
12 increasing monthly by the sum of \$3,795 per month, plus interest.
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14
15 **THIRD CAUSE OF ACTION**
16 **(Patent Infringement)**

17 65. This cause of action includes paragraphs 1 through 56, as set forth above.
18

19 66. Plaintiff has not given consent nor granted a new license to CW ARIZONA
20 or IVAN ARAGUNDI, JR., to use plaintiff's patented concrete washout systems
21 containers.
22

23 67. Defendants CW ARIZONA's and IVAN ARAGUNDI, JR.'s use of
24 plaintiff's patented concrete washout systems containers without consent or a valid license
25 from plaintiff infringes plaintiff's patent rights.

26 68. As a proximate result of CW ARIZONA's and IVAN ARAGUNDI, JR.'s
27 infringement of plaintiff's patents, plaintiff has been damaged in the amount of not less
28 than \$268,671.54, and in an amount according to proof.

1 69. Defendants' infringement is willful and deliberate and plaintiff is thereby
2 entitled to treble damages.

3
4 **FOURTH CAUSE OF ACTION**
5 **(Injunctive Relief)**

6 70. This cause of action includes paragraphs 1 through 69, as set forth above.

7 71. Unless restrained by this court, defendants CW ARIZONA and IVAN
8 ARAGUNDI, JR. will continue to use the concrete washout systems containers.

9 72. Concrete Washout seeks injunctive relief to prevent defendants CW
10 ARIZONA's and IVAN ARAGUNDI, JR.'s infringement of plaintiff's patent rights,
11 because pecuniary compensation would not afford adequate relief, it would be extremely
12 difficult to ascertain the amount of compensation which would afford adequate relief, and
13 the restraint is necessary to present a multiplicity of judicial proceedings.
14

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17 **REQUEST FOR JUDGMENT**

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19 WHEREFORE, plaintiff Concrete Washout Systems, Inc., prays for judgment
20 against as follows:

21 First Cause of Action against defendant Concrete Washout of Arizona, LLC:

- 22 1. For damages for breach of contract in the sum of \$268,671.54, and said
23 amount to be increased monthly by the sum of \$3,795 per month, plus
24 interest.
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Second Cause of Action against defendants DAN PARESSINI, KENNETH LOPER, ROBERT NELSON, STEVE WADKINS:

2. For damages for breach of the guaranty agreement in the sum of \$268,671.54, and said amount to be increased monthly by the sum of \$3,795 per month, plus interest.

Third Cause of Action against defendants CONCRETE WASHOUT OF ARIZONA LLC, and IVAN ARAGUNDI, JR:

3. For damages for patent infringement, and
4. That such amount be tripled.

Fourth Cause of Action against defendants CONCRETE WASHOUT OF ARIZONA LLC, and IVAN ARAGUNDI, JR:

5. For a temporary and permanent injunction prohibiting defendants from using the patented concrete washout systems containers to collect concrete washout.

For all causes of actions against all defendants:

6. That plaintiff be awarded its costs, expenses and attorney fees incurred herein; and,
7. For such other and further relief as the Court deems just and proper.

