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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF UTAH**

**PETTER INVESTMENTS, INC. d/b/a  
RIVEER**, a Michigan corporation,

Plaintiff,

vs.

**HYDRO ENGINEERING, INC.**, a Utah  
corporation, and **CALIFORNIA  
CLEANING SYSTEMS**, a California  
company,

Defendants.

**SECOND AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT,  
FALSE ADVERTISING, INTENTIONAL  
INTERFERENCE WITH  
PROSPECTIVE ECONOMIC  
ADVANTAGE, UNFAIR  
COMPETITION, AND DECLARATORY  
JUDGMENT**

**JURY DEMANDED**

Civil Case No. 2:14-CV-00045

Judge Dee Benson

Following a transfer of venue under 28 U.S.C. § 1404(a), and pursuant to written consent under Fed. R. Civ. P. 15(a)(2),<sup>1</sup> for its Second Amended Complaint against Defendants Hydro Engineering, Inc. (“Hydro”) and California Cleaning Systems (“CCS”), Plaintiff Petter Investments, Inc. d/b/a RIVEER (“Riveer”) hereby alleges as follows.

### **JURISDICTION AND VENUE**

1. This is an action including for infringement under the patent laws of the United States, 35 U.S.C. § 101, *et. seq.* This Court has subject matter jurisdiction over the patent claims of this action under 28 U.S.C. §§ 1331 and 1338(a), over the declaratory judgment claim under 28 U.S.C. § 2201-2202 and 15 U.S.C. § 1121(a), and over the remaining claims under 28 U.S.C. § 1367(a).

2. This Court has personal jurisdiction over the Defendants because each regularly conducts business in Utah and has committed the infringing acts alleged herein in Utah.

3. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b)-(c) and 1400, and by virtue of the recent transfer of venue under 28 U.S.C. § 1404(a).

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<sup>1</sup> Defendants’ consent is not an acknowledgement that Plaintiff’s claims have any objective merit.

### **PARTIES**

4. Plaintiff Riveer is a Michigan corporation having its principal place of business at 233 Veterans Boulevard, South Haven, Michigan 49090, and having an Internet home page at <riveer.com>.

5. Upon information and belief, Defendant Hydro is a Utah corporation having its principal place of business at 865 West 2600 South, Salt Lake City, Utah 84119, and having an Internet home page at <hydroblaster.com>.

6. Upon information and belief, Defendant CCS is a California company having its principal place of business at 3666 San Gabriel River Parkway, Pico Rivera, California 90660.

7. Upon information and belief, CCS is a distributor and/or user of the accused infringing products. If and when other distributors or customers or users of the accused products are ascertained who also may be subject to the personal jurisdiction of this Court, Riveer may seek consent or leave to amend this Complaint.

### **GENERAL ALLEGATIONS**

8. For many years, Riveer and Hydro have competed in the market for “modular wash rack” systems used to enable washing vehicles and equipment in a manner that allows for water and debris to be collected and recycled and/or disposed of in an environmentally-friendly way. Although Riveer is a small company with only 35 employees, one of Riveer’s many strengths in the market is its focus on building custom

solutions meeting a customer's exact specifications for materials, design, and product capabilities.

9. Riveer is the owner by assignment of U.S. Patent No. 6,021,792 ("the '792 patent"), which is entitled "Modular Cleaning Facility," which duly and lawfully issued on February 8, 2000.

10. The claims of the '792 patent are directed to a "modular cleaning system" and recite elements including, *inter alia*, a "modular wash rack" including a "drainage fitting," a "coupling means," a "tube," and a "filtering system" comprising a "vacuum pump" and an associated "filter." The '792 patent covers Riveer's designs and protects Riveer's exclusive right to sell its wash rack designs without infringement by competitors such as Hydro, or its products.

11. On information and belief, Hydro has sold wash rack systems utilizing a vacuum pump.

12. Riveer is the owner by assignment of U.S. Patent No. 6,164,298 ("the '298 patent"), which is entitled "Modular Cleaning Facility," which duly and lawfully issued on December 26, 2000, and a copy of which is attached hereto as Exhibit A.

13. The claims of the '298 patent are directed to a "modular cleaning system" and recite elements including, *inter alia*, a "modular wash rack" including a "frame," a "basin," a "grate," a "drainage fitting" and "coupling means," as well as a "tube" and a "pump." The '298 patent covers designs including Riveer's original grate/basin modular

wash rack design, and the '298 patent protects Riveer's exclusive right to sell its wash rack designs without infringement by competitors such as Hydro, or its products.

14. Hydro's wash racks exhibit the same grate/basin modular wash rack design covered by the claims of the '298 patent. Hydro simply collapsed its grate and basin together. As to Claim 1 of the '298 patent, for example, on information and belief Hydro's wash racks include the following design features satisfying the elements recited in Claim 1: (a) "frame," (b) "basin," (c) "grate," (d) "drainage fitting," (e) "coupling means," (f) "tube," and (g) "pump."

15. By making, using, selling, offering to sell and/or importing wash racks and components thereof that embody all of the features recited in the claims of the '298 patent, Defendants have infringed and still infringe the '298 patent.

16. In addition, upon information and belief, Defendants have caused, encouraged and aided others, including customers and distributors, to directly infringe the '298 patent having full knowledge of the '298 patent and the specific intent that its acts and the acts of its distributors and customers directly and/or indirectly infringe the '298 patent.

17. In addition, upon information and belief, Defendants have sold or offered to sell material components used by others, including its customers and distributors, to directly infringe the '298 patent, knowing those components to be especially made or

especially adapted for use in an infringing manner, and not a staple article or commodity of commerce suitable for substantial noninfringing use.

18. Riveer is the owner by assignment of U.S. Patent No. 8,499,774 (“the ‘774 patent”), which is entitled “Wash Pad With Evacuator,” which duly and lawfully issued on August 6, 2013, and a copy of which is attached hereto as Exhibit B.

19. The claims of the ‘774 patent are directed to a “wash pad” and recite elements including, *inter alia*, a “wash floor,” a “catch trough,” an “evacuator” including a “debris collector” and a “fluid mover,” an “elevator,” and a “conveyer.” The ‘774 patent protects Riveer’s exclusive right to sell its wash rack designs without infringement by competitors such as Hydro, or its products.

20. Certain of Hydro’s wash racks exhibit the same wash rack design covered by the claims of the ‘774 patent. As to Claim 1 of the ‘774 patent, for example, on information and belief, certain of Hydro’s wash rack systems include all of the design elements recited in Claim 1.

21. By making, using, selling, offering to sell and/or importing wash racks and components thereof that embody all of the features recited in the claims of the ‘774 patent, Defendants have infringed and still infringe the ‘774 patent.

22. In addition, upon information and belief, Defendants have caused, encouraged and aided others, including customers and distributors, to directly infringe the ‘774 patent having full knowledge of the ‘774 patent and the specific intent that its acts

and the acts of its distributors and customers directly and/or indirectly infringe the ‘774 patent.

23. In addition, upon information and belief, Defendants have sold or offered to sell material components used by others, including its customers and distributors, to directly infringe the ‘774 patent, knowing those components to be especially made or especially adapted for use in an infringing manner, and not a staple article or commodity of commerce suitable for substantial noninfringing use.

24. Riveer is the owner by assignment of U.S. Patent No. 8,506,720 (“the ‘720 patent”), which is entitled “Wash Rack System With Side Trough,” which duly and lawfully issued on August 13, 2013, and a copy of which is attached hereto as Exhibit C.

25. The claims of the ‘720 patent are directed to a “cleaning system” and recite elements including, *inter alia*, a “wash floor,” a “side trough sized to accommodate a skid-steer loader,” a “guide rail,” and a “filtering system.” The ‘720 patent protects Riveer’s exclusive right to sell its wash rack designs without infringement by competitors such as Hydro, or its products.

26. Certain of Hydro’s wash racks exhibit the same wash rack design covered by the claims of the ‘720 patent. As to Claim 1 of the ‘720 patent, for example, on information and belief, certain Hydro’s wash racks include all of the design elements recited in Claim 1.

27. By making, using, selling, offering to sell and/or importing wash racks and components thereof that embody all of the features recited in the claims of the ‘720 patent, Defendants have infringed and still infringe the ‘720 patent.

28. In addition, upon information and belief, Defendants have caused, encouraged and aided others, including customers and distributors, to directly infringe the ‘720 patent having full knowledge of the ‘720 patent and the specific intent that its acts and the acts of its distributors and customers directly and/or indirectly infringe the ‘720 patent.

29. In addition, upon information and belief, Defendants have sold or offered to sell material components used by others, including its customers and distributors, to directly infringe the ‘720 patent, knowing those components to be especially made or especially adapted for use in an infringing manner, and not a staple article or commodity of commerce suitable for substantial noninfringing use.

30. In addition to patent infringement, Hydro also has engaged in false advertising, has intentionally interfered repeatedly with Riveer’s prospective business advantage, and has competed unfairly with Riveer, by making misrepresentations and false statements to potential purchasers of Riveer’s wash rack systems, including the U.S. government. Hydro’s conduct in this regard has caused Riveer to lose business and profits, and has otherwise damaged Riveer unfairly and illegally.

31. A first example is Hydro's bid on a recent VCI Marine Corps project. On information and belief, Hydro misrepresented that its proposed products met the required specification of stainless steel equipment, when in fact Hydro was not able to provide, and did not provide, stainless steel equipment. This misrepresentation, along with others, allowed Hydro to quote a bid price below that of Riveer, and win the bid, only because stainless steel equipment is much more expensive than the mild steel material that Hydro used in completing the project.

32. A second example is Hydro's actions surrounding a recent solicitation by the U.S. Army at Barstow, California. In 2011, the Army purchased a Riveer custom wash rack system including many unique features, such as automatic mud conveyers, a stainless steel recycling system, a solar generating system, and a diesel generator. Because the Army was very satisfied with Riveer's system, the Army communicated to Riveer an interest in purchasing 34 additional units, and solicited bids for an initial 4 units. The bid specifications required equipment at least as capable as the Riveer system already in use, including two troughs, an automatic mud conveyer, a vacuum filter, a stainless steel tank, and an ozone injection system.

33. Hydro submitted a bid knowing that it did not meet the specifications, but nonetheless Hydro won the initial bid with a price well below Riveer's bid price, which was higher because of the additional costs required to be able to meet the bid specifications. The Army, however, granted a protest by Riveer dated October 9, 2012

stating that it “should have been awarded the contract contemplated by the Solicitation, [but instead] the Army improperly evaluated Hydro’s proposal and/or relaxed material Solicitation requirements in Hydro’s favor.” Further, a counter-protest by Hydro was rejected, and Riveer’s distributor was awarded its attorney fees incurred because of the necessity of the protest action.

34. Although the Army project is now being re-bid, in the mean time, Hydro’s interfering actions have caused Riveer to lose profits at least because of the delay and the costs involved in the re-bid process.

### **FIRST CLAIM FOR RELIEF**

#### **(Infringement of U.S. Patent No. 6,164,298)**

35. Riveer incorporates by this reference all of the allegations stated in the above paragraphs.

36. By the acts of making, using, offering to sell, selling and/or importing the Hydro wash racks, the Defendants and each of them has directly infringed the ‘298 patent under 35 U.S.C. § 271(a).

37. By the acts of actively inducing others to infringe the ‘298 patent, the Defendants and each of them has infringed the ‘298 patent under 35 U.S.C. § 271(b). On information and belief, each Defendant, having knowledge of the ‘298 patent, specifically intended for its customers to infringe the ‘298 patent by using and/or re-selling the accused infringing Hydro wash racks.

38. By the acts of selling or offering to sell material components used by others, including its customers and distributors, to directly infringe the '298 patent, knowing those components to be especially made or especially adapted for use in an infringing manner, and not a staple article or commodity of commerce suitable for substantial noninfringing use, the Defendants and each of them has infringed the '298 patent under 35 U.S.C. § 271(c).

39. Each Defendant's acts of infringement asserted herein have been and continue to be deliberate and willful since they first learned about the '298 patent.

40. The Defendants have derived and received gains, profits and advantages from the aforesaid acts of infringement, and Riveer has lost profits and has otherwise been damaged and is entitled to monetary relief in an amount to be determined at trial.

41. The Defendants' infringement of the '298 patent has caused and continues to cause irreparable harm to Riveer, for which there is no adequate remedy at law, and the infringement will continue unless and until it is enjoined by this Court.

### **SECOND CLAIM FOR RELIEF**

#### **(Infringement of U.S. Patent No. 8,499,774)**

42. Riveer incorporates by this reference all of the allegations stated in the above paragraphs.

43. By the acts of making, using, offering to sell, selling and/or importing the Hydro wash racks utilizing the claimed “evacuator/elevator/conveyor” design, Hydro has directly infringed the ‘774 patent under 35 U.S.C. § 271(a).

44. By the acts of actively inducing others to infringe the ‘774 patent, Hydro has infringed the ‘774 patent under 35 U.S.C. § 271(b). On information and belief, having knowledge of the ‘774 patent, Hydro has specifically intended for its customers to infringe the ‘774 patent by using and/or re-selling the accused infringing Hydro wash racks.

45. By the acts of selling or offering to sell material components used by others, including its customers and distributors, to directly infringe the ‘774 patent, knowing those components to be especially made or especially adapted for use in an infringing manner, and not a staple article or commodity of commerce suitable for substantial noninfringing use, Hydro has infringed the ‘774 patent under 35 U.S.C. § 271(c).

46. Hydro’s acts of infringement asserted herein have been and continue to be deliberate and willful since they first learned about the ‘774 patent.

47. Hydro has derived and received gains, profits and advantages from the aforesaid acts of infringement, and Riveer has lost profits and has otherwise been damaged and is entitled to monetary relief in an amount to be determined at trial.

48. Hydro's infringement of the '774 patent has caused and continues to cause irreparable harm to Riveer, for which there is no adequate remedy at law, and the infringement will continue unless and until it is enjoined by this Court.

**THIRD CLAIM FOR RELIEF**

**(Infringement of U.S. Patent No. 8,506,720)**

49. Riveer incorporates by this reference all of the allegations stated in the above paragraphs.

50. By the acts of making, using, offering to sell, selling and/or importing the Hydro wash racks utilizing the "skid-steer side trough" design, Hydro has directly infringed the '720 patent under 35 U.S.C. § 271(a).

51. By the acts of actively inducing others to infringe the '720 patent, Hydro has infringed the '720 patent under 35 U.S.C. § 271(b). On information and belief, having knowledge of the '720 patent, Hydro has specifically intended for its customers to infringe the '720 patent by using and/or re-selling the accused infringing Hydro wash racks.

52. By the acts of selling or offering to sell material components used by others, including its customers and distributors, to directly infringe the '720 patent, knowing those components to be especially made or especially adapted for use in an infringing manner, and not a staple article or commodity of commerce suitable for

substantial noninfringing use, Hydro has infringed the '298 patent under 35 U.S.C. § 271(c).

53. Hydro's acts of infringement asserted herein have been and continue to be deliberate and willful since they first learned about the '720 patent.

54. Hydro has derived and received gains, profits and advantages from the aforesaid acts of infringement, and Riveer has lost profits and has otherwise been damaged and is entitled to monetary relief in an amount to be determined at trial.

55. Hydro's infringement of the '720 patent has caused and continues to cause irreparable harm to Riveer, for which there is no adequate remedy at law, and the infringement will continue unless and until it is enjoined by this Court.

#### **FOURTH CLAIM FOR RELIEF**

##### **(False Advertising)**

56. Riveer incorporates by this reference all of the allegations stated in the above paragraphs.

57. Through Hydro's misrepresentations concerning bid specifications and the capabilities concerning Hydro's products, Hydro has made material, deceptive, false or misleading representations of fact in interstate commerce constituting false advertising and has thereby caused injury to Riveer including loss of goodwill and diversion of sales that likely would have been acquired by Riveer, in violation of § 43(a) of the Lanham Act

and the laws of California and Utah including Cal. Bus. & Prof. Code § 17500 *et seq.* and the Utah Truth in Advertising Act.

58. Hydro's false advertising has caused Riveer to suffer actual damages including lost profits, in an amount to be determined at trial, plus consequential damages. Hydro's false advertising also has resulted and continues to result in the unjust enrichment via profits to Hydro.

59. Hydro has committed its acts of false advertising willfully and maliciously to injure Riveer's business and improve its own, thereby entitling Riveer to an award of increased damages, exemplary damages and attorney fees.

60. Riveer also has suffered and continues to suffer irreparable injury, including damage to its customer relationships because of the false advertising. Such irreparable injury cannot be remedied adequately unless Hydro is enjoined immediately from further false advertising.

61. Riveer has no adequate remedy at law for the injuries it has suffered and continues to suffer, as it will be impossible for Riveer to determine the precise amount of damage it will suffer if Hydro's conduct is not restrained.

#### **FIFTH CLAIM FOR RELIEF**

##### **(Intentional Interference With Prospective Economic Advantage)**

62. Riveer incorporates by this reference all of the allegations stated in the above paragraphs.

63. By virtue of its regular competition with Riveer, including bidding on many of the same projects for potential customers, Hydro has been and is well aware Riveer's many existing and prospective customer relationships, including with the U.S. government including the GSA, the Marine Corps, and the Army.

64. Through Hydro's misrepresentations concerning bid specifications and the capabilities concerning Hydro's products, Hydro has intentionally interfered with Riveer's existing and prospective business with these customers, and potentially others, by diverting business to Hydro that likely would have been acquired by Riveer, in violation of the laws of California and Utah.

65. Hydro intended to interfere with Riveer's prospective economic advantage, and Hydro's intentional interference has caused Riveer to suffer actual damages including lost profits, in an amount to be determined at trial, plus consequential damages. Hydro's intentional interference with prospective economic advantage also has resulted and continues to result in the unjust enrichment of Hydro.

66. Hydro has committed its acts of intentional interference with prospective economic advantage willfully and maliciously to injure Riveer's business and improve its own, thereby entitling Riveer to an award of exemplary damages and attorney fees.

**SIXTH CLAIM FOR RELIEF**

**(Unfair Competition)**

67. Riveer incorporates by this reference all of the allegations stated in the above paragraphs.

68. By its acts above constituting false advertising and intentional interference with prospective economic advantage, Hydro has employed unlawful and unfair business acts or practices, in violation of the laws of California and Utah, including Cal. Bus. & Prof. Code §§ 17200 *et seq.* and the Utah Unfair Practices Act.

69. Hydro's unfair competition has resulted in and continues to result in unjust enrichment, and Hydro has committed its acts of unfair competition willfully and maliciously to injure Riveer's business and improve its own, thereby entitling Riveer to an award of exemplary damages and attorney fees.

70. Riveer also has suffered and continues to suffer irreparable injury, including damage to its customer relationships because of the intentional interference and unfair competition. Such irreparable injury cannot be remedied adequately unless Hydro is enjoined immediately from further interference and unfair competition.

71. Riveer has no adequate remedy at law for the injuries it has suffered and continues to suffer, as it will be impossible for Riveer to determine the precise amount of damage it will suffer if Hydro's conduct is not restrained.

**SEVENTH CLAIM FOR RELIEF**

**(Declaratory Judgment Of No Trademark Infringement)**

72. Riveer incorporates by this reference all of the allegations stated in the above paragraphs.

73. Hydro has alleged that Riveer's use of its "TAWS" trademark for a "total aircraft wash system" infringes rights that Hydro asserts in and to the mark "TEWS," as an acronym for a "turbine engine wash system," and that Riveer's "use of the TEWS [sic] mark in commerce is likely to cause confusion or cause or mistake or to deceive as to whether [it] is affiliated, connected, or associated with Hydro or as to whether Hydro originated, sponsored or approved of Hydro's [sic] TAWS product and related activities."

74. In order to resolve the actual controversy between Riveer and Hydro concerning their respective rights and duties concerning Hydro's trademark infringement allegations, including whether Hydro's asserted trademark right in and to the acronym "TEWS" is invalid, this Court should declare the rights of Riveer in this controversy, including declaring Hydro's asserted trademark rights to be invalid and not infringed by Riveer, including under 15 U.S.C. § 1114.

**PRAYER FOR RELIEF**

Therefore, Plaintiff Riveer prays for the following relief:

A. A determination that each Defendant has infringed the '298 patent under 35 U.S.C. § 271;

B. A determination that Hydro has infringed the ‘774 patent under 35 U.S.C. § 271;

C. A determination that Hydro has infringed the ‘720 patent under 35 U.S.C. § 271;

D. A determination that Hydro has falsely advertised its products in violation of § 43(a) of the Lanham Act, Cal. Bus. & Prof. Code § 17500 *et seq.* and the Utah Truth in Advertising Act;

E. A determination that Hydro has intentionally interfered with Riveer’s prospective economic advantage;

F. A determination that Hydro has competed unfairly with Riveer in violation of Cal. Bus. & Prof. Code § 17200 *et seq.* and the Utah Unfair Practices Act.

G. A declaration that Riveer has not infringed any valid trademark rights of Hydro in or to the mark “TEWS” for Hydro’s “turbine engine wash system;”

H. A preliminary and permanent injunction against the continuing patent infringement, false advertising, intentional interference with prospective economic advantage, and/or unfair competition;

I. An accounting for damages adequate to compensate for the patent infringement under 35 U.S.C. § 284, including Plaintiff’s lost profits, treble damages, pre-judgment and post-judgment interest, and costs;

J. A determination of willful patent infringement, and that this is an exceptional case, and an award of attorney fees and expenses to Plaintiff under 35 U.S.C. § 285;

K. An accounting for damages adequate to compensate for the false advertising and intentional interference with prospective economic advantage, including Riveer's lost profits and amounts attributable to Hydro's unjust enrichment, consequential damages, treble damages, exemplary damages, attorney fees, pre-judgment and post-judgment interest, and costs; and

L. Such other and further relief as this Court deems just and proper.

Dated: February 13, 2014

Respectfully submitted,

**The Eclipse Group LLP**

/s/ Stephen M. Lobbin

Stephen M. Lobbin (admitted *pro hac vice*)

*Attorneys for Plaintiff*