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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

11 **The AnTerra Group, Inc.**, a California
12 corporation, and **Anthony Terranova**,
an individual,

13 Plaintiff,

14 v.

15 **KiVAR Chemical Technologies**, a
16 California entity, and **Richard Varley**,
an individual,

17 Defendants.
18

Case No. SACV 13-734 JVS (ANx)

**AMENDED COMPLAINT FOR
PATENT INFRINGEMENT,
TRADE SECRET
MISAPPROPRIATION,
CONVERSION, INTERFERENCE
WITH PROSPECTIVE BUSNISS
ADVANTAGE, BREACH OF
EMPLOYEE'S FIDUCIARY DUTY
OF LOYALTY, UNFAIR
COMPETITION, AND INVASION
OF PRIVACY**

19
20 **AND RELATED COUNTERCLAIMS**

DEMAND FOR JURY TRIAL

21
22 Pursuant to written consent under Fed. R. Civ. P. 15(a)(2), for its Amended
23 Complaint, Plaintiff The AnTerra Group, Inc. ("AnTerra") alleges as follows:

24 **JURISDICTION AND VENUE**

25 1. This is an action including for infringement under the patent laws of the
26 United States, 35 U.S.C. § 101, *et. seq.* This Court has subject matter jurisdiction
27
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1 over the patent claims of this action under 28 U.S.C. §§ 1331 and 1338(a), and over
2 the remaining claims under 28 U.S.C. § 1367(a).

3 2. This Court has personal jurisdiction over the Defendants because each
4 regularly conducts business in California and has committed the infringing and other
5 tortious acts alleged herein in California.

6 3. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b)-(c)
7 and 1400.

8 **PARTIES**

9 4. Plaintiff AnTerra is a California corporation having its principal place
10 of business in Laguna Hills, California.

11 5. Upon information and belief, Defendant KiVAR Chemical
12 Technologies (“KiVAR”) is a California entity having a principal place of business
13 in Bakersfield, California and an Internet address at <kivarchem.com>.

14 6. Upon information and belief, Defendant Richard Varley (“Varley”) is
15 an individual residing in Bakersfield, California. Varley is believed to be doing
16 business as a sole proprietorship under the “KiVAR” trade name.

17 **GENERAL ALLEGATIONS**

18 7. For many years, AnTerra has been in the business of supplying
19 innovative, industry-leading products, services and solutions to customers in the
20 food processing, industrial and municipal markets, particularly concerning water
21 systems for washing and sanitization.

22 8. Through much time, expense, and inventive effort on the part of its
23 President Anthony Terranova, AnTerra has developed a proprietary carbon dioxide
24 gas dispersion system and method for use in washing and sanitizing post-harvest
25 organic fruits and vegetables, by which method the typically-chlorinated wash water
26 normally used may be “sparged” with carbon dioxide (CO₂), which replaces the
27 typical organic acids used (such as citric acid), in a manner that results in
28 maintaining a desired pH value of about 6.5 to 7 (“the AnTerra Technology”).

1 9. On April 16, 2013, U.S. Patent No. 8,420,143 (“the ‘143 patent”)
2 issued to AnTerra, confirming its exclusive rights to various claimed aspects of the
3 AnTerra Technology. A true and correct copy of the ‘143 patent is attached hereto
4 as Exhibit A.

5 10. Varley was AnTerra’s employee for about 8 years until July 2011.
6 During his entire period of employment, Varley was paid a salary by AnTerra which
7 was reported as W-2 income. Varley’s job responsibilities included being
8 technically knowledgeable concerning AnTerra’s products and services, and
9 interfacing with AnTerra’s customers, much of the time on-site at the customers’
10 facilities. AnTerra also provided Varley with all of the equipment and materials
11 necessary to carry out his job responsibilities, including an e-mail account
12 “@anterragroupinc.com.” Though Varley was a capable technician, he does not
13 have any formal technical education resulting in a Bachelors degree.

14 11. In July 2011, Varley chose to leave AnTerra’s employ and start his own
15 business in direct competition with AnTerra. At the time Varley left AnTerra,
16 Varley took with him not only certain items of AnTerra’s physical property,
17 including but not limited to a desktop computer system, but Varley also took with
18 him certain items of AnTerra’s confidential, proprietary business information,
19 including but not limited to customer lists and other customer information, e-mail
20 files including privileged communications between AnTerra and its legal counsel,
21 and proprietary technical information concerning the AnTerra Technology. Certain
22 of the foregoing AnTerra proprietary business information constitutes AnTerra’s
23 trade secret information. Defendants continue to utilize improperly the foregoing
24 physical and intellectual property of AnTerra.

25 12. Through their improper use of AnTerra’s physical and intellectual
26 property, Defendants have interfered with AnTerra’s existing and prospective
27 customer relationships for the AnTerra Technology, including diverting business
28 from AnTerra’s customers including Boskovich Farms of Oxnard, California;

1 Misionero Vegetables of Gonzales, California; True Leaf Farms of San Juan
2 Bautista, California; and/or Gills Onions of Oxnard, California. In so doing,
3 Defendants have used and sold the AnTerra Technology and AnTerra's trade
4 secrets, converted AnTerra's physical property, competed unfairly with AnTerra,
5 and infringed the '143 patent, all without license or permission from AnTerra.

6 13. Prior to his departure from the employ of AnTerra, Varley also diverted
7 a business opportunity with Firestone Walker Brewery, for which AnTerra had
8 submitted a bid for a "reverse osmosis" system. In breach of his fiduciary duty of
9 loyalty to his employer AnTerra, Varley told AnTerra that Firestone had chosen
10 another bid for the project, when in fact Varley had re-directed the project to himself
11 (with a commission of at least \$6,000.00) and a new affiliate company that Varley
12 subsequently joined after he left AnTerra.

13 14. Varley also intentionally recorded a confidential conversation with
14 Anthony Terranova via an electronic recording device, without informing Mr.
15 Terranova that the conversation was being recorded, and without obtaining Mr.
16 Terranova's consent.

17 **FIRST CLAIM FOR RELIEF**

18 **(Infringement of U.S. Patent No. 8,420,143)**

19 15. AnTerra incorporates by this reference all of the allegations stated in
20 the above paragraphs.

21 16. By the acts of making, using, offering to sell, selling and/or importing
22 the AnTerra Technology, Defendants have directly infringed the '143 patent under
23 35 U.S.C. § 271(a).

24 17. By the acts of actively inducing others to infringe the '143 patent,
25 Defendants have infringed the '143 patent under 35 U.S.C. § 271(b). By the acts of
26 providing components used in practicing the inventions claimed in the '143 patent,
27 Defendants have infringed the '143 patent under 35 U.S.C. § 271(c).

28

1 18. At least since 2010, Defendants have known about AnTerra's
2 application for the '143 patent, and Defendants' acts of infringement asserted herein
3 have been and continue to be deliberate and willful.

4 19. Defendants have derived and received gains, profits and advantages
5 from the aforesaid acts of infringement, and AnTerra has lost profits and has
6 otherwise been damaged and is entitled to monetary relief in an amount to be
7 determined at trial.

8 20. Defendants' infringement of the '143 patent has caused and continues
9 to cause irreparable harm to AnTerra, for which there is no adequate remedy at law,
10 and the infringement will continue unless and until it is enjoined by this Court.

11 **SECOND CLAIM FOR RELIEF**

12 **(Trade Secret Misappropriation—Cal. Civ. Code § 3426 *et seq.*)**

13 21. AnTerra incorporates by this reference all of the allegations stated in
14 the above paragraphs.

15 22. By virtue of Varley's many years as an employee, AnTerra shared with
16 Varley confidential, proprietary business information constituting valuable trade
17 secrets, including customer lists and other customer information, e-mail files
18 including privileged communications between AnTerra and its legal counsel, and
19 proprietary technical information concerning the AnTerra Technology. AnTerra
20 shared its trade secret information with Varley under circumstances giving rise to a
21 duty to maintain their secrecy and limit their use.

22 23. AnTerra has undertaken efforts that are reasonable under the
23 circumstances to maintain secrecy and preserve the confidentiality of its trade secret
24 information, including (a) insisting on measures to ensure only restricted access to
25 trade secret information, (b) physical and electronic security measures, and (c) oral
26 and written confidentiality agreements, including particularly with employees.

27 24. AnTerra's trade secret information derives independent economic value
28 from not being generally known to, and not being reasonably ascertainable through

1 proper means by, customers, competitors and potential competitors, the public or
2 other persons who could obtain economic value from its disclosure or use.

3 25. Without the express or implied consent of AnTerra, Defendants have
4 used, disclosed and/or otherwise misappropriated AnTerra's trade secret information
5 despite having a duty to maintain secrecy and limit use and disclosure.

6 26. As a result of the actions of Defendants in misappropriating AnTerra's
7 trade secrets, AnTerra has suffered damages in an amount to be determined at trial.
8 Defendants' misappropriation also has resulted in and continues to result in the
9 unjust enrichment of Defendants, including but not limited to the tremendous cost
10 savings to Defendants in starting their business in direct competition with AnTerra.

11 27. Defendants committed their acts of misappropriation willfully and
12 maliciously to injure AnTerra's business and improve their own, thereby entitling
13 AnTerra to an award of exemplary damages and attorney fees.

14 28. AnTerra also has suffered and continues to suffer irreparable injury,
15 including the potential evisceration of AnTerra's trade secrets at issue because of
16 Defendants' unauthorized and potentially non-confidential use, disclosure and/or
17 publication of AnTerra's trade secrets. Such irreparable injury cannot be remedied
18 adequately unless Defendants are enjoined immediately from further use, disclosure
19 and/or other misappropriation of AnTerra's trade secrets.

20 29. AnTerra has no adequate remedy at law for the injuries it has suffered
21 and continues to suffer, as it will be impossible for AnTerra to determine the precise
22 amount of damage it will suffer if Defendants' conduct is not restrained.

23 **THIRD CLAIM FOR RELIEF**

24 **(Conversion)**

25 30. AnTerra incorporates by this reference all of the allegations stated in
26 the above paragraphs.

27 31. At the time Varley left AnTerra's employ, Varley intentionally
28 disposed of and/or retained possession of certain items of property in a manner

1 inconsistent with AnTerra's property rights, including a desktop computer system,
2 computer files and e-mails, and paper files all belonging to AnTerra.

3 32. As a result of these actions, AnTerra has suffered damages in an
4 amount to be determined at trial, including those allowable under Cal. Civ. Code §
5 3336. Defendants' conversion also has resulted in and continues to result in the
6 unjust enrichment of Defendants.

7 33. Defendants committed their acts of conversion willfully and
8 maliciously to injure AnTerra's business and improve their own, thereby entitling
9 AnTerra to an award of exemplary damages and attorney fees.

10 **FOURTH CLAIM FOR RELIEF**

11 **(Intentional Interference with Prospective Economic Advantage)**

12 34. AnTerra incorporates by this reference all of the allegations stated in
13 the above paragraphs.

14 35. Because of Varley's long employment at AnTerra, Defendants have
15 been aware of AnTerra's many existing and prospective customer relationships for
16 the AnTerra Technology, including with Boskovich Farms, Misionero Vegetables,
17 True Leaf Farms and Gills Onions. Through their improper use of AnTerra's
18 physical and intellectual property, Defendants have intentionally interfered with
19 AnTerra's existing and prospective business with these customers, and potentially
20 others, by diverting business to Defendants.

21 36. Defendants' intentional interference with prospective economic
22 advantage has caused AnTerra to suffer actual damages in an amount to be
23 determined at trial, plus consequential damages. Defendants' intentional
24 interference with prospective economic advantage also has resulted and continues to
25 result in the unjust enrichment of Defendants.

26 37. Defendants committed their acts of intentional interference with
27 prospective economic advantage willfully and maliciously to injure AnTerra's
28

1 business and improve their own, thereby entitling AnTerra to an award of exemplary
2 damages and attorney fees.

3 38. AnTerra has no adequate remedy at law for the injuries it has suffered
4 and continues to suffer, as it will be impossible for AnTerra to determine the precise
5 amount of damage it will suffer if Defendants' conduct is not restrained.

6 **FIFTH CLAIM FOR RELIEF**

7 **(Breach of Employee's Duty of Loyalty)**

8 39. AnTerra incorporates by this reference all of the allegations stated in
9 the above paragraphs.

10 40. By their above-described acts of diverting business opportunities and
11 intentional interference, Defendants breached a fiduciary duty of loyalty to AnTerra,
12 Varley's employer.

13 41. Defendants' breach has resulted in and continues to result in the unjust
14 enrichment of Defendants.

15 42. Defendants have committed their unjust acts willfully and maliciously
16 to injure AnTerra's business and improve their own, thereby entitling AnTerra to an
17 award of exemplary damages and attorney fees.

18 43. AnTerra also has suffered and continues to suffer irreparable injury,
19 including damage to its customer relationships. Such irreparable injury cannot be
20 remedied adequately unless Defendants are enjoined immediately. AnTerra has no
21 adequate remedy at law for the injuries it has suffered and continues to suffer.

22 **SIXTH CLAIM FOR RELIEF**

23 **(Unfair Competition—Cal. Bus. & Prof. Code § 17200 *et seq.*)**

24 44. AnTerra incorporates by this reference all of the allegations stated in
25 the above paragraphs.

26 45. By their acts above constituting the unauthorized disclosure and use of
27 the AnTerra Technology and AnTerra's trade secret information, the intentional
28 interference with prospective economic advantage, and the conversion of AnTerra's

1 physical property, Defendants have employed unlawful and unfair business acts or
2 practices, in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*

3 46. Defendants' unfair competition has resulted in and continues to result
4 in the unjust enrichment of Defendants, including but not limited to the tremendous
5 cost savings to Defendants in setting up a directly competitive business immediately
6 upon Varley leaving the employ of AnTerra.

7 47. Defendants have committed their acts of unfair competition willfully
8 and maliciously to injure AnTerra's business and improve their own, thereby
9 entitling AnTerra to an award of exemplary damages and attorney fees.

10 48. AnTerra also has suffered and continues to suffer irreparable injury,
11 including damage to its customer relationships because of the intentional
12 interference and the potential evisceration of AnTerra's trade secret information at
13 issue because of Defendants' unfair competition and unauthorized and potentially
14 non-confidential use, disclosure and/or publication of AnTerra's trade secret
15 information. Such irreparable injury cannot be remedied adequately unless
16 Defendants are enjoined immediately from further interference and further use,
17 disclosure and/or other misappropriation of AnTerra's trade secret information.

18 49. AnTerra has no adequate remedy at law for the injuries it has suffered
19 and continues to suffer, as it will be impossible for AnTerra to determine the precise
20 amount of damage it will suffer if Defendants' conduct is not restrained.

21 **SEVENTH CLAIM FOR RELIEF**

22 **(Invasion of Privacy—Cal. Penal Code § 637.2)**

23 50. Terranova incorporates by this reference all of the allegations stated in
24 the above paragraphs.

25 51. By intentionally recording a confidential conversation with Terranova
26 via an electronic recording device, without informing Terranova that the
27 conversation was being recorded, and without obtaining Terranova's consent,
28

1 Varley committed an invasion of privacy in violation of California's Invasion of
2 Privacy Act.

3 52. Terranova has been injured by and has sustained actual damages caused
4 by Varley's invasion of privacy.

5 53. Varley committed his act of invasion of privacy willfully and
6 maliciously to injure Terranova, thereby entitling Terranova to an award of
7 exemplary damages and attorney fees.

8 54. Terranova also has suffered and continues to suffer irreparable injury,
9 which cannot be remedied adequately unless Varley is enjoined.

10 55. Terranova has no adequate remedy at law for the injuries he has
11 suffered and continues to suffer, as it will be impossible for Terranova to determine
12 the precise amount of damage he will suffer if Varley's conduct is not restrained.

13 **PRAYER FOR RELIEF**

14 Therefore, Plaintiff AnTerra prays for the following relief:

15 A. A determination that each Defendant has infringed the '143 patent
16 under 35 U.S.C. § 271;

17 B. A determination that each Defendant has misappropriated AnTerra's
18 confidential, trade secret information;

19 C. A determination that each Defendant is liable for conversion of
20 AnTerra's property;

21 D. A determination that each Defendant has intentional interfered with
22 AnTerra's prospective economic advantage;

23 E. A determination that each Defendant has breached a fiduciary duty of
24 loyalty owed to AnTerra;

25 F. A determination that each Defendant has competed unfairly with
26 AnTerra;

27 G. A determination that Varley has violated the California Invasion of
28 Privacy Act;

1 H. A preliminary and permanent injunction against the continuing patent
2 infringement, trade secret misappropriation, conversion, intentional interference
3 with prospective economic advantage, breach of fiduciary duty of loyalty, unfair
4 competition, and invasion of privacy;

5 I. An accounting for damages adequate to compensate for the patent
6 infringement, trade secret misappropriation, conversion, intentional interference
7 with prospective economic advantage, breach of fiduciary duty of loyalty, and
8 invasion of privacy, including AnTerra's lost profits and amounts attributable to
9 Defendants' unjust enrichment, consequential damages, treble damages, exemplary
10 damages, statutory damages, pre-judgment and post-judgment interest, and costs;

11 J. An award of reasonable attorney fees and expenses to AnTerra;

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

13 Respectfully submitted,

14 Dated: February 21, 2014

THE ECLIPSE GROUP LLP

15 _____
16 /s/ Stephen M. Lobbin
Stephen M. Lobbin

17 Attorneys for Plaintiff
18 **The AnTerra Group, Inc.**

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PROOF OF SERVICE

I, the undersigned, declare and certify as follows:

I am over the age of eighteen (18) years and employed in the County of Orange, State of California. I am employed in the office of THE ECLIPSE GROUP LLP, members of the Bar of the above entitled Court, and I made the service referred to below at their direction. My business address is 20 Main Street, Suite 150, Irvine, California 92614.

On February 21, 2014, I served the foregoing document:

AMENDED COMPLAINT FOR PATENT INFRINGEMENT, TRADE SECRET MISAPPROPRIATION, CONVERSION, INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE, BREACH OF EMPLOYEE'S FIDUCIARY DUTY OF LOYALTY, UNFAIR COMPETITION, AND INVASION OF PRIVACY

VIA CM/ECF FILING SYSTEM. The undersigned hereby certifies that she caused a copy of the foregoing document(s) to be filed with the clerk of the U.S. District Court, Central District of California, using the CM/ECF filing system, which caused a copy to be electronically mailed to the following CM/ECF Participant(s) noted below:

Matthew C. McCartney Eastman & McCartney 401 West A Street Suite 1785 San Diego, CA 92101	
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I declare under penalty of perjury, under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on February 21, 2014, at Orange County, California.

/s/ Rebecca Meegan