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**Attorney for Plaintiff,
Global Barriers Coatings, Inc.**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GLOBAL BARRIERS COATINGS,
INC., a Nevada Corporation

Plaintiff,

v.

RON ROSEGARD, an individual, and
BIOGARD, INC., a California
Corporation.

Defendants.

Case No.: 2:13CV5596 CAS AJWx

Action Filed: May 13, 2013

COMPLAINT
(1) Patent Infringement
(2) Breach of Contract
(3) Unfair Competition

COMPLAINT FOR PATENT INFRINGEMENT

**COMES NOW, Plaintiff GLOBAL BARRIER COATINGS, INC. ("GBC")
who complains and alleges as follows:**

GENERAL ALLEGATIONS

1. Plaintiff Global Barrier Coatings ("GBC") is a Nevada corporation
authorized to conduct business in California. GBC manufactures proprietary,

1 environmentally friendly release agents and spray systems for the mining, asphalt,
2 and construction industries.

3 2. Plaintiff is informed and believes, and based thereon alleges, that
4 Defendant Ron Rosegard (“Rosegard”) is an individual residing in this State and
5 the County of Orange.

6 3. Plaintiff is informed and believes, and based thereon alleges that
7 Defendant Biogard, Inc. (“Biogard”) is a California Corporation, wholly owned by
8 Defendant Rosegard.

9 4. At all times mentioned herein, Defendant Rosegard used Biogard as a
10 mere shell, instrumentality and conduit from which he carried on his personal
11 business as if the corporation did not exist, to such an extent that any individuality
12 or separateness of Biogard never existed, and the activities of Biogard were carried
13 on without the required holding of directors’ or shareholders’ meetings, and no
14 records or minutes of any corporate proceedings were maintained. At times
15 relevant herein, Defendant Rosegard used the assets of Biogard for his own use.
16 Unless the acts of Biogard, including the obligations hereinafter alleged, are treated
17 as those of Defendant Rosegard, it would sanction a fraud and promote injustice.

18 **JURISDICTION AND VENUE**

19 5. This action arises under the United States Patent laws, 35 U.S.C. § 1,
20 *et seq.*, including §271. The Court has jurisdiction over this action pursuant to 28
21 U.S.C. §§1331 and 1338(a).

22 6. This Court has supplemental jurisdiction over pendent state law
23 claims pursuant to 28 U.S.C. §1367(a).

24 **GENERAL ALLEGATIONS**

25 7. GBC is the exclusive worldwide licensee of U.S. Patent No.
26 6,902,606 B1 and the improvement No. US8545611 B2 (hereafter referred to as
27 the “Patent”), pursuant to which license GBC is expressly granted all of the rights
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1 of the owner and assignor of the Patent, including but not limited to the right to
2 bring suit in its own name for past, present and future infringements. The Patent
3 is used in connection with the production of a high viscosity agent which inhibits
4 undesirable sticking of asphalt, concrete, and other materials. It has come to
5 GBC's attention that Ron Rosegard and Biogard, Inc. have been marketing and
6 selling a product identical to that protected by the Patent.

7 8. The Patent was issued and assigned to Reclamation Consulting and
8 Applications, Inc. Reclamation Consulting and Applications, Inc. changed its
9 name to Alderox, Inc. Reclamation and Alderox are hereafter referred to as
10 "Alderox." Pala Investment Holdings Limited acquired all right, title and interest
11 in and to the Patent by foreclosure on or about November 16, 2009, and confirmed
12 the acquisition of all rights, title and interest by virtue of and pursuant to the Asset
13 Purchase, Settlement and Release Agreement Effective April 18, 2012, pursuant to
14 which Pala acquired all aspects of ownership of the Patent.

15 9. On or about April 23, 2015, Plaintiff was granted a worldwide,
16 exclusive license in and to the Patent, specifically including all of the rights of the
17 assignee, including the right to bring suit in its own name for past, present and
18 future infringements.

19 10. Rosegard was employed by Alderox, where he was responsible for
20 building production facilities, specifically for manufacturing of the ASA-12
21 product and application equipment along with providing on-site demonstrations
22 within the mining and asphalt industries. Rosegard's work involved working with
23 Applied Industrial Technologies on the Arcelor Mittal Mont-Wright rail site
24 project in 2008. Through his employment with Alderox, Rosegard developed
25 contacts with Applied Industrial Technologies that he would not have otherwise
26 developed. Throughout his employment, Rosegard had access to all of Alderox's
27 intellectual property, confidential information and trade secrets.

1 11. On or about August 6, 2008, Defendant Rosegard executed an
2 employment agreement with Alderox, Inc. Alderox, Inc. was a Colorado
3 Corporation with its principal place of business in California. The Employment
4 Agreement included the following provisions:

5 “2.6 Non-Disclosure of Confidential Information. It is understood that
6 Employee will acquire and be informed of confidential technical and/or
7 business information used by and belonging to the Company (“Confidential
8 Information”), including Confidential Information as defined in the
9 Company’s EMPLOYEE NON-DISCLOSURE AGREEMENT. Employee
10 agrees that some or all of such Confidential Information is in the nature of
11 trade secrets and is the sole property of the Company. Employee will keep
12 confidential, and will not disclose to any third person or entity, any
13 Confidential Information without Employer’s consent and pursuant to the
14 proceedings further defined in the Company’s EMPLOYEE NON-
15 DISCLOSURE AGREEMENT.”

16 “3.1 Confidentiality after Termination of Employment. Employee agrees
17 that upon termination of employment, he or she shall promptly surrender to
18 the Company any and all documents and property of the Company,
19 including but not limited to: reports, drawings, manuals, correspondence,
20 customer lists and other Confidential Information which he or she may
21 possess, and all other materials and copies thereof relating in any way to the
22 Company’s business, or in any way obtained by the Employee during the
23 course of his employment, and that he shall not retain any copies, notes or
24 abstracts of the foregoing. Employee further agrees that such documents,
25 lists and information shall be and remain the sole property of the Company.
26 All of the terms of paragraph 2.8 (sic) shall remain in full force and effect
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1 both during the continuation of employment of Employee by the Company
2 and after the termination of employment for any reason.

3 3.2 Confidentiality. Employee agrees to execute standard Company
4 documents establishing the Employee's duties of confidentiality and the
5 rights of the Company to all inventions, trade secrets, etc., developed by the
6 Employee in the course of his employment, namely the EMPLOYEE NON-
7 DISCLOSURE AGREEMENT.”

8 12. On or about November 30, 2009, Canvasback Company Limited
9 acquired certain physical and intangible assets of Alderox, Inc., including but not
10 limited to:

11 “All Alderox, Inc., employee & confidentiality agreements
12 All Alderox, Inc., reports, studies, trial information, data, etc.
13 generated by the trials of the Alderox, Inc., release agent products and
14 equipment.”

15 13. On or about February 9, 2012, Canvasback Company Ltd. assigned
16 all of its rights in and to the assets of Alderox, Inc., to Alderox Canada, Inc.,
17 together with other consideration, in return for shares in the corporation. Alderox
18 Canada, Inc. changed its name to Global Barrier Coatings, Inc.

19 14. In or about August of 2013, GBC learned that Defendants had
20 supplied to Applied Industrial, a former distributor of Alderox, a product and
21 method of application identical to that previously provided to Applied Industrial in
22 connection with efforts to secure contracts with certain mining companies located
23 in Canada. According to the Distributor, Defendant Rosegard represented that his
24 “mining release agent” was “identical” to that manufactured and supplied by
25 Alderox under the Patent.

26 15. Plaintiff is informed and believes, and on that basis allege that
27 beginning at the latest in October and November of 2010, Mr. Rosegard and
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1 Biogard made, used and sold within the United States a “mining release agent”
2 comprised of unfiltered soy bean oil, yellow grease #2 and/or water with a specific
3 gravity of between .90 and .95, infringing each and every claim of the Patent.
4 Plaintiff is further informed and believes and thereon alleges that Defendants
5 represented their mining release agent to be identical to that disclosed by the
6 Patent.

7 16. Plaintiff is informed and believes, and based thereon alleges that
8 beginning at the latest in October and November of 2010, Defendants used and
9 employed the confidential information as described in Paragraph 10, above, to
10 market and sell the Biogard mining release agent through Applied Industrial to
11 Arcelor Mittal in Canada. Specifically, Plaintiff is informed and believes, and
12 based thereon alleges that Rosegard used confidential information, including
13 confidential test results to tailor his presentation to Arcelor Mittal in such a way as
14 to duplicate the product benefits with respect to “carry back” in ore cars.

15 17. Absent the confidential and proprietary information obtained by
16 Rosegard while working for Alderox, Defendants could not have addressed or
17 responded to a request by Arcelor Mittal for a system as had previously been
18 demonstrated by Alderox.

19 18. Plaintiff is further informed and believes, and on that basis alleges,
20 that Defendants have solicited Iron Ore Canada, again through Applied Industrial,
21 based upon test and trial results obtained during demonstrations in which Rosegard
22 participated while employed by Alderox.

23 19. Plaintiff brought suit against defendants Biogard and Rosegard in the
24 Superior Court of the State of California for the County of Orange on November
25 12, 2014, before acquiring the Patent. The lawsuit bears case No. 30-2013-
26 00689334 and is pending.

1 20. Plaintiff has demanded that Defendants cease and desist making,
2 using and selling infringing products. Defendants claim that their product is non-
3 infringing

4 21. Damages for infringement of the Patent are inextricably intertwined
5 with damages from breach of contract and unfair competition.

6 **FIRST CAUSE OF ACTION**

7 **(FOR PATENT INFRINGEMENT AGAINST ALL DEFENDANTS)**

8 As and for a First Cause of Action against Defendants, and each of them,
9 Plaintiff alleges as follows:

10 22. Plaintiff refers to, repeats and realleges all of the allegations set forth
11 in Paragraphs 1 through 22 of this Complaint, inclusive, and by this reference
12 incorporates same as though fully set forth herein, hereat, verbatim.

13 23. Defendants, and each of them, have and continue to infringe upon the
14 letters Patent and each of the claims therein by making, using and selling a high
15 viscosity agent which inhibits undesirable sticking of asphalt, concrete and other
16 materials that embody the patented invention, and the defendant will continue to
17 do so unless enjoined by this court.

18 24. Plaintiff is informed and believes, and on that basis alleges, that the
19 sales of infringing products total nearly \$1,000,000.00 in each year since 2011.

20 25. The Plaintiff has complied with the statutory requirement of giving
21 the defendant written notice of the infringement.

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1 SECOND CAUSE OF ACTION

2 (FOR BREACH OF CONTRACT AGAINST ALL DEFENDANTS)

3 As and for a Second Cause of Action against Defendants, and each of them,
4 Plaintiff alleges as follows:

5 26. Plaintiff refers to, repeats and re-alleges Paragraphs 1 through 21
6 hereof, and by this reference incorporates same as though fully set forth herein,
7 hereat, verbatim.

8 27. Rosegard unilaterally terminated his employment with Alderox
9 without notice. Plaintiff is informed and believes, and based thereon alleges, that,
10 on his departure from Alderox, Rosegard possessed and/or copied Alderox's
11 confidential and proprietary information, including but not limited to results of
12 trials conducted at Arcelor Mittal and Iron Ore Canada, as well as written and
13 unwritten confidential and proprietary information documenting the costs and
14 benefits of release agents in the mining industry, particularly in applications
15 involving extremely low temperatures. This information was developed by
16 Alderox and its owners and tremendous expense over a period of years.

17 28. The costs of developing the confidential and proprietary information
18 were such that Alderox financed its intellectual property through loans secured by
19 that confidential and proprietary information, including the loans from
20 Canvasback.

21 29. Defendants have breached the obligations of confidentiality as set
22 forth in Paragraph 10, above, by utilizing the confidential and proprietary
23 information to gain access to customers, understand and address customers'
24 requirements, understand and address the costs of manufacture and pricing, as
25 well as other technical know-how such as the types of spray nozzles, spray
26 pressure and other application of product data.

1 30. By virtue of defendants' breach of contract regarding the use and
2 disclosure of confidential information, Plaintiff has been damaged by its inability
3 to exploit its intellectual property, including securing contracts with distributors
4 and customers such as Arcelor Mittal.

5 31. Plaintiff is informed and believes, and on that basis alleges, that it has
6 been damaged in an amount in excess of \$1,000,000.00.

7 **THIRD CAUSE OF ACTION**

8 **(FOR UNFAIR COMPETITION AGAINST ALL DEFENDANTS)**

9 As and for a Third Cause of Action against Defendants, and each of them,
10 Plaintiff alleges as follows:

11 32. Plaintiff refers to, repeats and re-alleges Paragraphs 1 through 32
12 hereof, and by this reference incorporates same as though fully set forth herein,
13 hereat, verbatim.

14 33. Defendants engaged in unfair competition as defined in California
15 Business and Professions Code 17200.

16 34. Defendants' acts and practices of unfair competition include misuse of
17 confidential information he obtained through his employment at Alderox to
18 develop contacts that he otherwise would have never had. Defendants' acts also
19 include producing and selling a product identical to Alderox's product, ASA-12,
20 renamed as "BioGuard" but marketed as an identical product.

21 35. Plaintiff is entitled to recover civil penalties as a result of Defendants'
22 unfair competition. Pursuant to California Business and Profession Code 17200,
23 et seq., Defendants and their agents, representatives, employees and successor
24 should be permanently enjoined from committing any acts of unfair competition
25 including selling products tested and developed during employment with Alderox.
26 As a result of Defendants' acts, GBC is entitled to damages and attorneys' fees, in
27 an amount to be determined at trial.

PRAYER FOR RELIEF

Therefore, the Plaintiff demands:

- (a) A preliminary and final injunction against the continuing infringement;
- (b) an accounting for damages; and
- (c) interest and costs
- (d) attorneys' fees
- (e) that this court assume supplemental jurisdiction over and stay the claims based upon state law currently pending in the Superior Court.

DATE: *May 4, 2015*

COCHRAN, DAVIS & ASSOCIATES, P.C.

By: *Aya Deam*

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