

Civil Action No. \_\_\_\_\_

## COMPLAINT

**(JURY TRIAL DEMANDED)**

### Nature of the Action

3. Through its unauthorized actions, FiberSource has also breached a nonexclusive limited license agreement pursuant to which COC granted FiberSource limited rights to the claims of certain specified patents and other intellectual property for the sole purpose of making, using, offering to sell, selling, and otherwise disposing of a fiber optic adapter and plug assembly shown in drawings and specified in interface

specifications provided to FiberSource. FiberSource has breached the license agreement insofar as it has utilized not only the licensed claims of certain patents and other intellectual property to make, use, offer to sell, or otherwise dispose of preconnectorized fiber optic plug assemblies, but also the non-licensed claims of multiple COC patents not required or necessary for the manufacture, use, or sale of the fiber optic connector covered by the agreement.

4. FiberSource's actions not only breach the parties' license agreement and infringe multiple non-licensed COC patent claims, but also have resulted in automatic termination of the parties' license agreement. FiberSource accordingly no longer has any rights to practice the patent claims covered by the parties' license agreement or to use the other COC intellectual property provided pursuant thereto. COC thus also seeks an injunction prohibiting FiberSource from continuing to use this COC intellectual property, as well as a judgment that FiberSource has infringed and continues to infringe at least one of the previously-licensed patents.

### **The Parties**

5. COC is a North Carolina limited liability company with its principal place of business at 800 17th Street NW, Hickory, North Carolina.

6. On information and belief, Defendant FiberSource is a South Carolina corporation with its principal place of business at 7034 Augusta Road, Greenville, South Carolina.

### **Jurisdiction and Venue**

7. COC's claims for patent infringement against FiberSource arise under the patent laws of the United States, including 35 U.S.C. §§ 271, *et seq.* Consequently, this

Court has original and exclusive subject matter jurisdiction over COC's patent infringement claims pursuant to 28 U.S.C. §§ 1331 and 1338, and supplemental jurisdiction over all related claims herein under 28 U.S.C. § 1367. This Court also has subject matter jurisdiction on diversity grounds, pursuant to 28 U.S.C. § 1332, because there is complete diversity between the parties and the amount-in-controversy exceeds \$75,000.

8. This Court has personal jurisdiction over FiberSource because it is a resident of the district, it has sufficient minimum contacts with the forum as a result of business conducted within the State of South Carolina and this district, and/or it has regularly and systematically transacted business in this district directly or through intermediaries.

9. Venue is appropriate in this district under 28 U.S.C. § 1391(b) and (c) and 1400(b).

### **The License Agreement**

10. COC is a leading manufacturer of fiber optic communications system solutions for voice, data, and video network applications worldwide. Among other things, COC develops and manufactures fiber optic cables, fiber optic and copper cable hardware, and equipment including cable assemblies and fiber optic and copper connectors.

11. COC has designed and developed an OptiTap® connector product line and associated products, which include connectors that make installations of fiber optics faster, easier, and less costly, and are often used in deploying fiber optics to the home. Through significant research and development efforts and expense, COC has

developed valuable technology relating to such fiber optic equipment, including both patents and other intellectual property.

12. According to its website, FiberSource was founded in February of 1996 as a manufacturer of fiber optic connectivity solutions, and today manufactures a comprehensive selection of fiber optic products and connectivity solutions.

13. In 2004, CCS Technology, Inc. (CCS) (since merged with COC) and FiberSource entered into a Non-Exclusive License Agreement (the License Agreement), pursuant to which CCS granted FiberSource non-exclusive, limited rights to certain valuable intellectual property, including claims of specified patents and confidential materials (defined therein as the OptiTap Materials), for the limited purpose of making, using, offering to sell, selling, or otherwise disposing of a specific fiber optic adapter and plug assembly shown in drawings and specified in interface specifications provided to FiberSource (defined therein as the OptiTap Connector).

14. Optical fibers are used in a variety of applications, including in telecommunications. The OptiTap Connector allows for the interconnection of two optical fiber cables so that telecommunication signals may pass between them. Through License Agreement, COC granted to FiberSource a limited license permitting FiberSource to use COC's patented OptiTap Connector technology to manufacture and sell products capable of this desired interconnection.

15. Specifically, Section 1.2 of the License Agreement defines the licensed OptiTap Connector as "only the fiber optic adapter and plug assembly shown in the Drawings, and as specified in the interface Specifications" provided to FiberSource pursuant to the License Agreement. Drawings are defined as "Licensor's drawings of

the OptiTap Connector delivered by Licensor to Licensee pursuant to th[e] Agreement” and Specifications are defined as “the interface specifications for the OptiTap Connector delivered by Licensor to Licensee.”

16. Section 1.3 of the License Agreement defines the OptiTap Materials to which FiberSource received a limited right, and expressly limits the licensed materials to: (a) the claims of United States Patent No. 6,579,014 B2 (the '014 Patent or the Receptacle Patent); (b) the Drawings and Specifications; and (c) the claims of United States Patent No. 6,648,520 (the '520 Patent or the Plug Patent)) or other Licensor-owned United States patents which are required or necessary for the manufacture, use or sale of the licensed OptiTap Connector.

17. COC is the owner of all right, title, and interest in the Receptacle Patent, which was duly and lawfully granted on June 17, 2003 to Corning Cable Systems LLC, naming inventors Stuart R. Melton, Darrell R. Childers, and Hieu V. Tran, for an invention entitled “Fiber Optic Receptacle.” A true copy of the Receptacle Patent is attached as Exhibit A. Corning Cable Systems LLC changed its name to Corning Optical Communications LLC on or about January 14, 2014. A name change was recorded in the United States Patent and Trademark Office (USPTO) on September 23, 2016.

18. The Receptacle Patent describes and claims, among other things, a fiber optic receptacle that includes a receptacle housing and a floating adapter sleeve.

19. COC is the owner of all right, title, and interest in the Plug Patent, which was duly and lawfully granted on November 18, 2003 to Corning Cable Systems LLC, naming inventors A. John McDonald, Stuart R. Melton, Hieu V. Tran, James P. Luther,

and Darrell R. Childers, for an invention entitled “Fiber Optic Plug.” A true copy of the Plug Patent is attached as Exhibit B. A name change was recorded in the USPTO on September 23, 2016, following Corning Cable Systems LLC’s above-mentioned name change.

20. The Plug Patent describes and claims, among other things, a fiber optic plug having a plug body and a shroud.

21. Section 2 of the License Agreement expressly limits FiberSource’s license to the OptiTap Materials to use of those materials to make, use, offer to sell, sell, and otherwise dispose of the OptiTap Connector as defined by the License Agreement and sets forth restrictions on use.

22. Specifically, pursuant to Section 2.1 of the License Agreement, CCS granted FiberSource “a personal, nonexclusive, nontransferable, non-sublicensable, royalty free license, with no right to have made or import (except as specifically set forth in this Section 2.1), to use the OptiTap Materials to make, use, offer to sell, sell, and otherwise dispose of OptiTap Connectors solely in the Licensed Field [defined as the United States] and in the Licensed Field [defined as the telecommunications industry].”

23. In relevant part, Section 2.4 of the License Agreement makes clear that, “[e]xcept as explicitly stated in this Agreement, Licensor does not grant any other licenses, express or implied, to any other intellectual property whatsoever, including any rights under any business method, or trade, service, or other marks of Licensor or its affiliates, including Corning Incorporated.”

24. Pursuant to Section 2.3 of the License Agreement, FiberSource also expressly agreed to “maintain the OptiTap Materials in confidence and treat them in the same manner as it treats and protects its own intellectual property.”

25. The License Agreement makes clear that any breaches of Section 2 are considered material, and expressly provides for automatic termination of the License Agreement under such circumstances. Specifically, Section 5.1 provides that, among other things, the License Agreement automatically terminates if and when FiberSource “(a) breaches this Agreement and fails to cure such breach within ten (10) days after written notice” or when FiberSource “(f) uses the OptiTap Materials for any purpose not expressly permitted in this Agreement.”

26. Pursuant to Section 5.4, FiberSource also “agree[d] that money damages would not be a sufficient remedy for a breach of Section 2 and that Licensor shall be entitled to equitable relief, including injunctive relief and specific performance, as a remedy for any such breaches by Licensee.” This section further reiterates that “[e]xcept for the rights specifically granted herein in the Licensed Field, no rights are granted under the OptiTap Materials.”

27. CCS and FiberSource also agreed pursuant to Section 7.3 that they would not be “bound by any definition, condition, warranty, right, duty or covenant other than as expressly stated herein,” and “expressly waive[d] any implied right or obligation regarding the subject matter hereof.”

28. In 2017, CCS was merged into COC, and COC is therefore now a party to the License Agreement.

### **Non-Licensed Patents**

29. In addition to the Receptacle and Plug Patents to which FiberSource was granted a limited right under the License Agreement, COC owns numerous other patents and pending patent applications relating to its innovative fiber optic connectivity technology. COC's patented technology includes but is not limited to U.S. Patent No. 7,090,406 B2 (the '406 Patent) and U.S. Patent No. 7,467,896 B2 (the '896 Patent) (collectively the Crimp Shell Assembly Patents).

30. COC is the owner of all right, title, and interest in the '406 Patent, which was duly and lawfully granted on August 15, 2006 to Corning Cable Systems LLC, naming inventors Stuart R. Melton, Hieu V. Tran, David A. Thompson, Richard S. Wagman, Michael J. Gimblet, and Xin Liu, for an invention entitled "Preconnectorized Fiber Optic Drop Cables and Assemblies." A true copy of the '406 Patent is attached as Exhibit C. A name change was recorded in the USPTO on September 23, 2016, following Corning Cable Systems LLC's above-mentioned name change.

31. The '406 Patent describes and claims, among other things, a preconnectorized fiber optic cable having a plug connector with a crimp assembly including a crimp band and a crimp housing having two half-shells.

32. COC is the owner of all right, title, and interest in the '896 Patent, which was duly and lawfully granted on December 23, 2008 to Corning Cable Systems LLC, naming inventors Stuart R. Melton, David A. Thompson, Michael J. Gimblet, Hieu V. Tran, Richard S. Wagman, and Xin Liu, for an invention entitled "Fiber Optic Drop Cables and Preconnectorized Assemblies." A true copy of the '896 Patent is attached



as Exhibit D. A name change was recorded in the USPTO on September 23, 2016, following Corning Cable Systems LLC's above-mentioned name change.

33. The '896 Patent describes and claims, among other things, a preconnectorized fiber optic cable having a plug connector with a shroud and a crimp assembly, wherein the crimp assembly includes a crimp housing having at least two shells.

34. Although the Crimp Shell Assembly Patents also concern COC's fiber optic connectivity technology, the claims of the Crimp Shell Assembly Patents are not required or necessary for the manufacture, use or sale of the OptiTap Connector shown in the Drawings and Specifications provided to FiberSource and covered by the License Agreement. Hence, FiberSource has no license to use the Crimp Shell Assembly Patents.

**FiberSource Infringes The Crimp Shell Assembly Patents  
And Breaches The License Agreement**

35. According to its website, FiberSource manufactures a comprehensive selection of fiber optic products and connectivity solutions, including preconnectorized fiber optic plug assemblies that FiberSource asserts are manufactured under license from COC.

36. As set forth above, pursuant to the License Agreement, FiberSource received detailed Drawings and Specifications illustrating and defining the interface specifications for the OptiTap Connector authorized under the License Agreement. No additional license to the OptiTap Materials was granted.

37. In violation of the License Agreement, FiberSource has utilized the licensed OptiTap Materials to make, use, offer to sell, sell, or otherwise dispose of certain

products also containing intellectual property of COC from the Crimp Shell Assembly Patents which are explicitly excluded from the License Agreement under Section 2.4. These FiberSource products include at least certain preconnectorized fiber optic plug assemblies that are or have been described as part of FiberSource's pre-terminated OSP drop cable product line which include features disclosed only in the Crimp Shell Assembly Patents.

38. For example, COC has recently become aware that FiberSource's product offerings include an OPSSCA-SCAPC 3M 3.0mm Singlemode Simplex product with a hardened plug connector terminated on one end, which infringes multiple claims of the Crimp Shell Assembly Patents. The hardened plug connector is marked with the patent numbers for the '014 Receptacle and the '520 Receptacle Patents, to which FiberSource was granted limited rights under the License Agreement. True copies of photographs of FiberSource's OPSSCA-SCAPC 3M 3.0mm Singlemode Simplex product with a hardened plug connector terminated on one end (with customer-identifying information redacted) are attached as Exhibit E.

39. On information and belief, FiberSource's product offerings also include additional OptiTap® compatible products with similar assemblies incorporating a crimp assembly having a crimp band and a housing wherein the housing includes two shells, which infringe multiple claims of the Crimp Shell Assembly Patents. True copies of examples of FiberSource's promotional materials for its pre-terminated OSP drop cable product line are attached as Exhibits F-I.

40. Notably, FiberSource touts its non-licensed products in advertising its pre-terminated OSP (outside plant) drop cables for Fiber to the Home (FTTH) and Fiber to

the location (FTTx), including the OPSSCA-SCAPC 3M 3.0mm Singlemode Simplex product with a hardened plug connector terminated on one end, making clear that such non-licensed FiberSource products bring significant value to the market and that FiberSource misappropriates that value. Among other things, FiberSource asserts the following:

FiberSource preinstalled connectors provide for quick subscriber connections. The drop cable assemblies are precision manufactured to rigorous quality standards, assuring reliable performance and compatibility. Tight tolerance controls result in reliable low-loss connections and reconnections over the long term.

The Ruggedized Connector, an outside plant hardened SC/APC, is compatible with industry standard OSP terminals.

FiberSource preinstalled standard connectors allow for easy and effective routing and termination in FTTx equipment - available in SC, LC, FC, & ST connectors with either APC (angled) or UPC (ultra) polish performance. Each pre-terminated cable is made to selected lengths with your choice of connectors and 2.0mm or 3.0mm furcated legs.

(See Exs. F & G.)

41. FiberSource also represents that these non-licensed products are OptiTap® compatible and manufactured under license from COC. (See Exs. F & H.)

**FiberSource's Knowledge Of The Crimp Shell Assembly Patents  
And Notice of Breach of the License Agreement**

42. FiberSource has had actual knowledge of the Crimp Shell Assembly Patents as well as of its infringing actions since at least July 26, 2018.

43. FiberSource has also had written notice of its breach of the License Agreement since at least July 26, 2018.

44. Specifically, on July 26, 2018, COC sent correspondence to FiberSource notifying it that at least its OPSSCA-SCAPC 3M 3.0mm Singlemode Simplex product with a hardened plug connector may infringe the '406 and '896 Crimp Shell Assembly

Patents, and referencing COC's own products, including COC's OptiTap® connector product line and associated products. Among other things, COC attached copies of the '406 and '896 Patents and included annotated images of FiberSource's OPSSCA-SCAPC 3M 3.0mm Singlemode Simplex product with a hardened plug connector.

45. In its July 26, 2018 correspondence, COC also attached a copy of the License Agreement and Drawings and Specifications for the licensed OptiTap Connector, and informed FiberSource that the Crimp Shell Assembly Patents contain claims not subject to the License Agreement. COC accordingly demanded that FiberSource immediately cease and desist from any further unauthorized making, using, selling, offering for sale, or importation of all products having the infringing terminated hardened plug connector.

46. On August 6, 2018, counsel for FiberSource responded to COC's July 26, 2018 correspondence, requesting a conference call to discuss the issue.

### **Claims for Relief**

#### **Patent Infringement of the Crimp Shell Assembly Patents**

##### **Count I: Patent Infringement of U.S. Patent No. 7,090,406 B2**

47. COC repeats and realleges all previous allegations as if set forth in full herein.

48. FiberSource has directly infringed at least independent claims 1, 21, 40, and 58 and dependent claims 4, 6-18, 24, 26-37, 43, and 45-55 of the '406 Patent by making, using, offering to sell, selling, and/or importing, within this district or elsewhere in the United States, preconnectorized fiber optic plug assemblies having features specifically described and claimed in the '406 Patent, including but not limited to preconnectorized fiber optic plug assemblies that are or have been described as part of

FiberSource's pre-terminated OSP drop cable product line, including but not limited to the OPSSCA-SCAPC 3M 3.0mm Singlemode Simplex product with a hardened plug connector.

49. On information and belief, FiberSource has also directly infringed at least independent claims 1, 21, 40, and 58 and dependent claims 4, 6-18, 24, 26-37, 43, and 45-55 of the '406 Patent by making, using, offering to sell, selling, and/or importing, within this district or elsewhere in the United States, additional OptiTap® compatible products with similar assemblies incorporating a crimp assembly having a crimp band and a housing wherein the housing includes two shells, which have features specifically described and claimed in the '406 Patent.

50. FiberSource has made, used, imported, offered to sell, or sold and/or is making, using, importing, offering to sell, or selling products having features that are specifically described and claimed in the '406 Patent, including but not limited to preconnectorized fiber optic plug assemblies covered by the '406 Patent, including but not limited to preconnectorized fiber optic plug assemblies that are or have been described as part of FiberSource's pre-terminated OSP drop cable product line, including but not limited to the OPSSCA-SCAPC 3M 3.0mm Singlemode Simplex product with a hardened plug connector.

51. On information and belief, FiberSource has also made, used, imported, offered to sell, or sold and/or is making, using, importing, offering to sell, or selling additional OptiTap® compatible products with similar assemblies with similar assemblies incorporating a crimp assembly having a crimp band and a housing wherein

the housing includes two shells, having features that are specifically described and claimed in the '406 Patent.

52. The aforesaid acts by FiberSource are without right, license, or permission from COC.

53. On information and belief, FiberSource has willfully, deliberately, and intentionally infringed COC's '406 Patent.

54. FiberSource's willful, deliberate, and intentional infringement of the '406 Patent has caused COC irreparable harm and damages, including lost sales, lost profits, lost sales opportunities, and loss of good will, in an amount to be determined at trial.

55. FiberSource's willful, deliberate, and intentional infringement of the '406 Patent has also caused COC further irreparable harm and damages, and will entitle it to recover, among other things, treble damages, attorneys' fees, and costs.

56. On information and belief, FiberSource intends to continue the infringing activities described herein.

**Count II: Patent Infringement of U.S. Patent No. 7,467,896 B2**

57. COC repeats and realleges all previous allegations as if set forth in full herein.

58. FiberSource has directly infringed at least independent claim 28 and dependent claims 29-37 of the '896 Patent by making, using, offering to sell, selling, and/or importing, within this district or elsewhere in the United States, preconnectorized fiber optic plug assemblies having features specifically described and claimed in the '896 Patent, including but not limited to preconnectorized fiber optic plug assemblies that are or have been described as part of FiberSource's pre-terminated OSP drop

cable product line, including but not limited to the OPSSCA-SCAPC 3M 3.0mm Singlemode Simplex product with a hardened plug connector.

59. On information and belief, FiberSource has also directly infringed at least independent claim 28 and dependent claims 29-37 of the '896 Patent by making, using, offering to sell, selling, and/or importing, within this district or elsewhere in the United States, additional OptiTap® compatible products with similar assemblies incorporating a crimp assembly having a crimp band and a housing wherein the housing includes two shells, which have features specifically described and claimed in the '896 Patent.

60. FiberSource has made, used, imported, offered to sell, or sold and/or is making, using, importing, offering to sell, or selling products having features that are specifically described and claimed in the '896 Patent, including but not limited to preconnectorized fiber optic plug assemblies covered by the '896 Patent, including but not limited to preconnectorized fiber optic plug assemblies that are or have been described as part of FiberSource's pre-terminated OSP drop cable product line, including but not limited to the OPSSCA-SCAPC 3M 3.0mm Singlemode Simplex product with a hardened plug connector.

61. On information and belief, FiberSource has also made, used, imported, offered to sell, or sold and/or is making, using, importing, offering to sell, or selling additional OptiTap® compatible products with similar assemblies incorporating a crimp assembly having a crimp band and a housing wherein the housing includes two shells, having features that are specifically described and claimed in the '896 Patent.

62. The aforesaid acts by FiberSource are without right, license, or permission from COC.

63. On information and belief, FiberSource has willfully, deliberately, and intentionally infringed COC's '896 Patent.

64. FiberSource's willful, deliberate, and intentional infringement of the '896 Patent has caused COC irreparable harm and damages, including lost sales, lost profits, lost sales opportunities, and loss of good will, in an amount to be determined at trial.

65. FiberSource's willful, deliberate, and intentional infringement of the '896 Patent has also caused COC further irreparable harm and damages, and will entitle it to recover, among other things, treble damages, attorneys' fees, and costs.

66. On information and belief, FiberSource intends to continue the infringing activities described herein.

### **Breach of the License Agreement**

#### **Count III: Breach of Contract**

67. COC repeats and realleges all previous allegations as if set forth in full herein.

68. As stated above, in 2004, CCS and FiberSource entered into the License Agreement, pursuant to which FiberSource was granted non-exclusive, limited rights to only the OptiTap Materials, for the limited purpose of making, using, offering to sell, selling, or otherwise disposing of the OptiTap Connector specified in Drawings and Specifications provided to FiberSource under the limited License Agreement.

69. As contemplated in the License Agreement, FiberSource was provided with detailed Drawings and Specifications specifically illustrating and defining the interface specifications for the OptiTap Connector authorized under the License Agreement.



70. In 2017, CCS was merged into COC, and COC is therefore now a party to the License Agreement.

71. The License Agreement constitutes a valid and binding written contract, made for valid consideration and governed by New York law pursuant to Section 7.4 thereof.

72. COC has performed or tendered performance of all of its material obligations under the License Agreement.

73. In violation of the License Agreement, FiberSource has utilized the licensed OptiTap Materials to make, use, offer to sell, sell, or otherwise dispose of products containing intellectual property of the Licensor explicitly excluded from the License Agreement under Section 2.4. FiberSource has therefore used the OptiTap Materials for purposes not specifically permitted under the License Agreement in violation of Section 5.1(f), resulting in automatic termination of the License Agreement. These FiberSource products include at least certain preconnectorized fiber optic plug assemblies that are or have been described as part of FiberSource's pre-terminated OSP drop cable product line which incorporate features disclosed only in the unlicensed Crimp Shell Assembly Patents.

74. For example, FiberSource has made, used, offered to sell, sold, or otherwise disposed of the OPSSCA-SCAPC 3M 3.0mm Singlemode Simplex product with a hardened plug connector, which as described herein infringes multiple claims of the Crimp Shell Assembly Patents.

75. On information and belief, FiberSource's product offerings also include additional OptiTap® compatible products with similar assemblies incorporating a crimp

assembly having a crimp band and a housing wherein the housing includes two shells, which infringe multiple claims of the Crimp Shell Assembly Patents.

76. FiberSource has therefore materially breached the License Agreement, including at least Section 2, which specifically defines the “Grant of License; Restrictions on Use.”

77. For example, FiberSource has exceeded the scope of the license explicitly set forth in Section 2.1 (incorporating the relevant definitions from Section 1), and has expressly breached Section 2.4, which makes clear that, “[e]xcept as explicitly stated in this Agreement, Licensor does not grant any other licenses, express or implied, to any other intellectual property whatsoever, including any rights under any business method, or trade, service, or other marks of Licensor or its affiliates, including Corning Incorporated.”

78. On information and belief, FiberSource has also breached Section 2.3, which requires that FiberSource “maintain the OptiTap Materials in confidence and treat them in the same manner as it treats and protects its own intellectual property.”

79. As a result of FiberSource’s breaches, the License Agreement has automatically terminated pursuant to Section 5.1(f), which reiterates that it is a material breach if and when FiberSource “uses the OptiTap Materials for any purpose not expressly permitted in this Agreement.”

80. In the alternative, the License Agreement has automatically terminated pursuant to Section 5.1(a), as COC has provided FiberSource with written notice of its breaches, which FiberSource has failed to cure within ten days.

81. As a direct result of FiberSource's breaches, COC has been irreparably harmed and has suffered damages in an amount to be determined at trial.

82. Accordingly, COC is entitled to judgment against FiberSource in an amount to be determined at trial, plus all interest and costs as allowed by law.

83. COC is also entitled to recover its reasonable in-house and all external attorney's fees, costs, and other expenses incurred as a result of FiberSource's breach of the License Agreement, pursuant to Section 7.10 thereof.

84. COC further requests a declaratory judgment that the Licensing Agreement has automatically terminated pursuant to Section 5.1, and a preliminary and permanent injunction restraining and enjoining FiberSource, its officers, agents, attorneys, employees, and those acting in privity or concert with them, from further utilizing the OptiTap Materials in any manner. FiberSource has acknowledged that COC is entitled to injunctive relief as a remedy for breaches of Section 2 of the License Agreement.

85. COC further requests an order directing FiberSource to immediately return any and all copies of the OptiTap Materials and any other materials provided to FiberSource pursuant to the License Agreement, as well as any and all documents, computer files, or other materials that directly or indirectly reveal any of COC's confidential or proprietary information. FiberSource is required to return such materials upon termination of the License Agreement pursuant to Section 5.2.

#### **Count IV: Patent Infringement of the Plug Patent**

86. COC repeats and realleges all previous allegations as if set forth in full herein.

87. As described herein, as a result of FiberSource's breaches of the License Agreement, the License Agreement has automatically terminated pursuant to Section 5.1 thereof. FiberSource has accordingly lost its rights to practice the claims of the patents covered by the License Agreement, including the Plug Patent.

88. Following the termination of the License Agreement, FiberSource has directly infringed at least independent claims 1, 7, and 17 and dependent claims 2, 5, 6, 8-9, and 13-14 of the Plug Patent by making, using, offering to sell, selling, and/or importing, within this district or elsewhere in the United States, preconnectorized fiber optic plug assemblies having features specifically described and claimed in the Plug Patent, including but not limited to preconnectorized fiber optic plug assemblies that are or have been described as part of FiberSource's pre-terminated OSP drop cable product line, including but not limited to the OPSSCA-SCAPC 3M 3.0mm Singlemode Simplex product with a hardened plug connector.

89. On information and belief, FiberSource has also directly infringed at least at least independent claims 1, 7, and 17 and dependent claims 2, 5, 6, 8-9, and 13-14 of the Plug Patent by making, using, offering to sell, selling, and/or importing, within this district or elsewhere in the United States, additional OptiTap® compatible products with similar assemblies incorporating a crimp assembly having a crimp band and a housing wherein the housing includes two shells, which also have features specifically described and claimed in the Plug Patent.

90. On information and belief, given that the License Agreement automatically terminated following FiberSource's breach, FiberSource has also directly infringed at least independent claims 1, 7, and 17 and dependent claims 2, 5, 6, 8-9, and 13-14 of

the Plug Patent by making, using, offering to sell, selling, and/or importing, within this district or elsewhere in the United States, additional OptiTap® compatible products having a fiber optic plug with a plug body and a shroud, which have features specifically described and claimed in the '520 Patent, including but not limited to any OptiTap Connector that would otherwise have been permitted under the License Agreement.

91. FiberSource has made, used, imported, offered to sell, or sold and/or is making, using, importing, offering to sell, or selling products having features that are specifically described and claimed in the Plug Patent, including but not limited to preconnectorized fiber optic plug assemblies covered by the Plug Patent, including but not limited to preconnectorized fiber optic plug assemblies that are or have been described as part of FiberSource's pre-terminated OSP drop cable product line, including but not limited to the OPSSCA-SCAPC 3M 3.0mm Singlemode Simplex product with a hardened plug connector.

92. On information and belief, FiberSource has also made, used, imported, offered to sell, or sold and/or is making, using, importing, offering to sell, or selling additional OptiTap® compatible products with similar assemblies incorporating a crimp assembly having a crimp band and a housing wherein the housing includes two shells, which also have features that are specifically described and claimed in the Plug Patent.

93. On information and belief, FiberSource has also made, used, imported, offered to sell, or sold and/or is making, using, importing, offering to sell, or selling additional OptiTap® compatible products having a fiber optic plug with a plug body and a shroud, which have features specifically described and claimed in the Plug Patent,

including but not limited to any OptiTap Connector that would otherwise have been permitted under the License Agreement.

94. The aforesaid acts by FiberSource are without right, license, or permission from COC.

95. On information and belief, FiberSource has willfully, deliberately, and intentionally infringed COC's Plug Patent.

96. FiberSource's willful, deliberate, and intentional infringement of the Plug Patent has caused COC irreparable harm and damages, including lost sales, lost profits, lost sales opportunities, and loss of good will, in an amount to be determined at trial.

97. FiberSource's willful, deliberate, and intentional infringement of the Plug Patent has also caused COC further irreparable harm and damages, and will entitle it to recover, among other things, treble damages, attorneys' fees, and costs.

98. On information and belief, FiberSource intends to continue the infringing activities described herein.

### **Prayer for Relief**

Wherefore, Plaintiff COC respectfully requests the following relief:

A. A judgment and decree that FiberSource has infringed the '406 and '896 Crimp Shell Assembly Patents;

B. A preliminary and permanent injunction restraining and enjoining FiberSource, its officers, agents, attorneys, employees, and those acting in privity or concert with them, from engaging in the commercial manufacture, use, offer to sell, or sale within the United States, or importation into the United States, of products claimed in either or both of the Crimp Shell Assembly Patents or components or materials

especially made or especially adapted for use in an infringement of either or both of the Crimp Shell Assembly Patents;

C. A judgment and decree that FiberSource has infringed the '520 Plug Patent;

D. A preliminary and permanent injunction restraining and enjoining FiberSource, its officers, agents, attorneys, employees, and those acting in privity or concert with them, from engaging in the commercial manufacture, use, offer to sell, or sale within the United States, or importation into the United States, of products claimed in the Plug Patent or components or materials especially made or especially adapted for use in an infringement of the Plug Patent;

E. An accounting of all damages to COC arising from FiberSource's infringement and willful infringement, and an award of such damages to COC with interest and costs;

F. An order requiring FiberSource to recall all of its infringing products currently in the marketplace;

G. A determination that FiberSource's infringement of the Crimp Shell Assembly Patents has been willful, and an award of treble damages pursuant to 35 U.S.C. § 284;

H. A determination that FiberSource's infringement of the Plug Patent has been willful, and an award of treble damages pursuant to 35 U.S.C. § 284;

I. A determination that, pursuant to 35 U.S.C. § 285, this is an exceptional case and an award of the costs and reasonable attorneys' fees incurred by COC in connection with this action;

J. A judgment and decree that FiberSource has breached the License Agreement and that the License Agreement has automatically terminated;

K. An award of damages in an amount to be determined at trial for FiberSource's breach of contract with interest and costs;

L. An award of COC's reasonable in-house and all external attorney's fees, costs, and other expenses incurred as a result of FiberSource's breach of the License Agreement, pursuant to Section 7.10 thereof;

M. A preliminary and permanent injunction restraining and enjoining FiberSource, its officers, agents, attorneys, employees, and those acting in privity or concert with them, from further use of any of the OptiTap Materials in any manner;

N. An Order directing FiberSource to immediately return any and all copies of the OptiTap Materials and any other materials provided to FiberSource pursuant to the License Agreement, as well as any and all documents, computer files, or other materials that directly or indirectly reveal any of COC's confidential or proprietary information; and

O. The award of any such other and further relief as the Court may deem just and proper.

#### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Corning requests a trial by jury in this matter.

*(signature page attached)*



Respectfully submitted,

s/Joel H. Smith

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May 6, 2019  
Columbia, South Carolina