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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

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**Pure Maintenance Holdings, LLC,**  
a Utah limited liability company,

Plaintiff,

v.

**Jerel Clark,**  
an individual;  
**JD Clark Enterprises, Inc.,**  
a Utah corporation  
**Viper Restoration, Inc.,**  
a Wyoming Corporation;  
**Adrenalin Enterprises, Inc.,**  
a Utah corporation; and  
**Does 1–20,**

Defendants.

Civil No. 1:19-cv-00066-CW

**Complaint**

(Jury Demanded)

District Judge Clark Waddoups

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Plaintiff Pure Maintenance Holdings, LLC (“Pure Maintenance”) complains against Defendants Jerel Clark (“Clark”); JD Clark Enterprises, Inc. (“JD Clark”); Viper Restoration, Inc. (“Viper”); and Adrenalin Enterprises, Inc. (“Adrenalin”) (collectively, “Defendants”) for the causes of action alleged as follows:

### **THE PARTIES**

1. Pure Maintenance is a Utah limited liability company, with its principle place of business located at 1664 Woodland Park Drive, Layton, Utah 84041.
2. Clark is an individual and resident of the state of Utah.
3. Clark is employed by or conducts business in connection with Viper, Adrenalin, or other entities, whose identities are currently unknown to Pure Maintenance.
4. JD Clark is a Utah corporation, with its corporate office at 825 East 370 South, Orem, Utah 84097.
5. JD Clark does business as “1-800-Boardup SLC,” “Do It Yourself Flood,” “Floodbox of Utah,” “ARS,” “ARS Flood and Fire,” “Sterile Home Technologies,” “Expert Restoration,” “ARS Restoration, Inc.,” and “Rockwell Disaster Cleanup.”
6. JD Clark’s registered agent with the State of Utah is Defendant Jerel Clark, whose address is 825 E 370 S, Orem, Utah 84097.
7. Viper is a Wyoming corporation, with a registered address of 624 Salt Creek Hwy., Casper, Wyoming 82601.
8. Viper does business as “Sterile Home” and “Zero Mold.”
9. Pure Maintenance alleges on information and belief that Viper is the owner and operator of the website accessible at [www.zeromold.net](http://www.zeromold.net).

10. Viper has regular and established places of business in Utah including at least at 877 East 1200 S, Orem, Utah 84097 and 3039 North 2050 East, North Logan, Utah 84341.

11. Viper's registered agent with the State of Utah is the President of Viper, Dustin Clark, whose address is at 3039 North 2050 East, North Logan, Utah 84341.

12. Adrenalin is a Utah corporation, with its corporate office at 3120 North Main, North Logan, Utah 84341.

13. Adrenaline does business as "ARS Cleanup – Restore – Rebuild," "1-800-Boardup," "ARS Advanced Restoration Systems," "ARS Flood & Fire Cleanup," and "Advanced Restoration Systems."

14. Adrenalin's registered agent with the State of Utah is Trevin Workman at 632 North Main, Ste. 2C, Logan, Utah 84321.

15. Pure Maintenance alleges on information and belief, that the Defendants are associated with other entities, whose identities are currently unknown to Pure Maintenance, but which have taken part in the misconduct alleged herein.

### **JURISDICTION AND VENUE**

16. This is a civil action for patent infringement under the patent laws of the United States, including 35 U.S.C. § 1 *et seq.*

17. This is also a civil action for trademark infringement under Sections 32 and 43 of the Lanham Act, Title 15 U.S.C. §§ 1114(1) and 1125.

18. This is a civil action for unfair competition arising under Utah Code Ann. § 13-5a-101, *et seq.*

19. This is a civil action for deceptive trade practices arising under Utah Code Ann. § 13-11a-1, *et seq.*

20. This is a civil action for breach of contract, and related claims, pursuant to the laws of the State of Utah.

21. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121.

22. This Court has related claim jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

23. This Court's exercise of personal jurisdiction over Clark is consistent with the Constitutions of the United States and the State of Utah.

24. Pure Maintenance alleges on information and belief that JD Clark has sold or contracted for the sale of infringing goods and services within the State of Utah or induced others to sell or contract for the sale of infringing goods within the State of Utah. These actions by JD Clark have resulted in injury to Pure Maintenance and relate to, and in part give rise to, the claims asserted herein by Pure Maintenance.

25. JD Clark has purposefully availed itself of the privilege of conducting business within this judicial district; has established sufficient minimum contacts with this judicial district such that it should reasonably and fairly anticipate being haled into court in this judicial district; has purposefully directed activities at residents of this State and judicial district; and has committed acts of patent infringement in this State and judicial district.

26. This Court's exercise of personal jurisdiction over Viper is consistent with the Constitutions of the United States and the State of Utah.

27. Pure Maintenance alleges on information and belief that Viper has sold or contracted for the sale of infringing goods and services within the State of Utah or induced others to sell or contract for the sale of infringing goods within the State of Utah. These actions by Viper have resulted in injury to Pure Maintenance and relate to, and in part give rise to, the claims asserted herein by Pure Maintenance.

28. Viper has purposefully availed itself of the privilege of conducting business within this judicial district; has established sufficient minimum contacts with this judicial district such that it should reasonably and fairly anticipate being haled into court in this judicial district; has purposefully directed activities at residents of this State and judicial district; and has committed acts of patent infringement in this State and judicial district.

29. This Court's exercise of personal jurisdiction over Viper is consistent with the Constitutions of the United States and the State of Utah.

30. Pure Maintenance alleges on information and belief that Adrenalin has sold or contracted for the sale of infringing goods and services within the State of Utah or induced others to sell or contract for the sale of infringing goods within the State of Utah. These actions by Adrenalin have resulted in injury to Pure Maintenance and relate to, and in part give rise to, the claims asserted herein by Pure Maintenance.

31. Adrenalin has purposefully availed itself of the privilege of conducting business within this judicial district; has established sufficient minimum contacts with this judicial district such that it should reasonably and fairly anticipate being haled into court in this judicial district; has purposefully directed activities at residents of this State and judicial district; and has committed acts of patent infringement in this State and judicial district.

32. This Court's exercise of personal jurisdiction over Adrenalin is consistent with the Constitutions of the United States and the State of Utah.

33. Venue for Pure Maintenance's patent claims is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) at least because Defendants have committed acts of infringement in this State and in this judicial district, have a regular and established place of business in this judicial district, and are subject to personal jurisdiction in this judicial district.

34. Venue for Pure Maintenance's non-patent claims is proper in this judicial district pursuant to 28 U.S.C. § 1391(b).

## **BACKGROUND**

### **1. Pure Maintenance's Patents and Trademark for Its Products and Services**

35. Pure Maintenance is the sole owner of U.S. Patent No. 9,238,239 ("239 Patent"), issued on January 19, 2016, titled "Atomizing Sterilization of a Plurality of Cleaning Agents." A true and correct copy of the '239 Patent is attached to this Complaint as Exhibit 1.

36. Pure Maintenance is the sole owner of U.S. Patent No. 9,517,283 ("283 Patent"), issued on December 13, 2016, titled "Atomizing Sterilization of a Plurality of Cleaning Agents." A true and correct copy of the '283 Patent is attached to this Complaint as Exhibit 2.

37. The '239 Patent and '283 Patent are referred to collectively herein as the "Asserted Patents."

38. Pure Maintenance's products and services are covered by the claims of the Asserted Patents.

39. In particular the Pure Maintenance Fogger Unit is covered by system claims of the Asserted Patents.

40. Use of the Pure Maintenance Fogger Unit for application of multiple agents in fog treatment are covered by method claims of the Asserted Patents.

41. Pure Maintenance is the owner of trademark rights in the mark “INSTAPURE,” including rights under U.S. Trademark Registration No. 5,615,437 (“’437 Registration”), in connection with chemical preparations for industrial and commercial cleaning purposes in mold and remediation (“INSTAPURE Trademark”). A true and correct copy of the ’437 Registration is attached to this Complaint as Exhibit 3.

42. Pure Maintenance’s products and fog application method is generally described in Pure Maintenance’s marketing material, including a informational video available at <https://www.youtube.com/watch?v=Y8857IKRtd8> (“Pure Maintenance Marketing Video”).

43. As described in the Pure Maintenance Marketing Video, Pure Maintenance’s fog application method involves pressurizing a gas and a first agent, which is a sterilant marketed by Pure Maintenance under the INSTAPURE Trademark, and atomizing the first agent.



44. After atomizing the first agent, Pure Maintenance’s fog application method involves rinsing the first agent from the applicator and switching the applicator in order to atomize a second agent under pressure with a gas, which is a long-term cleaning agent for

protection against microorganism growth.



## 2. Clark and JD Clark enter into a License Agreement with Pure Maintenance

45. On or about August 1, 2017, Pure Maintenance, Clark, and JD Clark entered into a Residential and Small Business Licensing Agreement ("License Agreement"), a true and correct copy of which is attached as Exhibit 4.

46. Under the License Agreement, Clark and JD Clark agreed to make payments to Pure Maintenance for royalty fees, start-up fees, and other costs and fees.

47. Under the License Agreement, Pure Maintenance granted Clark and JD Clark a license to promote, sell, and deliver certain Pure Maintenance products and services within the territory of Multnomah, Oregon.

48. Under the License Agreement, Pure Maintenance leased to Clark and JD Clark a Pure Maintenance Fogger Unit.

49. Under the License Agreement, Clark and JD Clark were prohibited from modifying the Pure Maintenance Fogger Unit.

50. Under the License Agreement, Clark and JD Clark were obligated to return to Pure Maintenance, at Clark and JD Clark's expense, in good condition all Pure Maintenance



equipment, materials, literature, price lists, customer lists, and any other documents, and materials as well as the leased Pure Maintenance Fogger Unit.

51. Under the License Agreement, Clark and JD Clark were obligated to order all replacement parts for the leased Pure Maintenance Fogger Unit from Pure Maintenance at Clark and JD Clark's expense.

52. Under the License Agreement, Pure Maintenance disclosed confidential financial, sales, and marketing information, including information about Pure Maintenance's vendors, and Clark and JD Clark were, and still are, obligated to treat such information and confidential and trade secret and were, and still are, prohibited from disclosing to others or commercially exploiting such information.

53. Clark and JD Clark's obligations to protect Pure Maintenance's confidential, trade-secret information are continuing and survive the expiration or termination of the License Agreement.

54. Clark and JD Clark failed to make all required payments under the License Agreement.

55. On July 18, 2018, Pure Maintenance and Clark agreed to a Debt Settlement agreement ("Debt Settlement Agreement"), a true and correct copy of which is attached as Exhibit 5.

56. Under the Debt Settlement Agreement, Clark and JD Clark returned equipment leased from Pure Maintenance, and Pure Maintenance terminated Clark and JD Clark's license to promote, sell, and deliver certain Pure Maintenance products and services within the territory of Multnomah, Oregon.

57. None of the Defendants are licensed to practice the Asserted Patents, and none of the Defendants have any right or authority to license others to practice the Asserted Patents.

58. Clark and JD Clark returned equipment leased from Pure Maintenance, including the Pure Maintenance Fogger Unit, with unauthorized modifications and parts that were not ordered from Pure Maintenance.

59. Pure Maintenance, therefore, alleges on information and belief that Clark and JD Clark deconstructed, reconstructed, and modified Pure Maintenance's equipment, including the Pure Maintenance Fogger Unit, and returned it to Pure Maintenance in other than good condition.

60. Clark and JD Clark breached the License Agreement by modifying Pure Maintenance's equipment, including the Pure Maintenance Fogger Unit, without authorization to do so.

61. Clark and JD Clark breached the License Agreement by not ordering replacement parts for the leased Pure Maintenance Fogger Unit from Pure Maintenance.

62. Clark and JD Clark breached the License Agreement by returning Pure Maintenance's equipment, including the Pure Maintenance Fogger Unit, in other than good condition.

**3. Clark's and the Defendants Misuse of Pure Maintenance's Proprietary Technology, Trademark, Confidential Information and Trade Secrets.**

63. Pure Maintenance alleges on information and belief that Clark and JD Clark used their knowledge of Pure Maintenance's products and services, as well as the construction of the Pure Maintenance Fogger Unit, to manufacture or have manufactured fogger units that copies of the Pure Maintenance Fogger Unit.

64. After entering into the Debt Settlement Agreement, JD Clark transferred the business name “Zero Mold” to Viper.

65. Clark is a Manager for Viper in its Orem, Utah location.

66. Clark is also an owner of ARS Restoration, Inc., which is a business name of JD Clark.

67. Pure Maintenance alleges on information and belief that Clark is also involved in the management of ARS Flood & Fire Clean Up, which is a business name of Adrenalin Enterprises, Inc.

68. Clark and JD Clark were provided with Pure Maintenance marketing videos, including the Pure Maintenance Marketing Video, under the License Agreement.

69. Viper posted a copy of the Pure Maintenance Marketing Video to describe Viper’s products and services. Viper replaced Pure Maintenance’s branding with Viper’s “Zero Mold” branding at the beginning and ending of the copied Pure Maintenance Marketing Video.

70. Defendants have, therefore represented that their products and services are identical to Pure Maintenance’s products and services in all material respects through the improper copying and misuse of the Pure Maintenance Marketing Video.

71. Pure Maintenance’s marketing video uses the INSTAPURE Trademark in connection with the marketing video’s description of the products and services described therein.

72. Viper’s unauthorized copying and use of Pure Maintenance’s marketing video with the INSTAPURE Trademark improperly associates Viper with Pure Maintenance in the minds of consumers and is likely to cause confusion as to the true source of the described products and services.

73. Pure Maintenance alleges on information and belief that Clark and JD Clark failed to return all Pure Maintenance equipment, materials, literature, price lists, customer lists, other documents, and materials to Pure Maintenance.

74. Pure Maintenance alleges on information and belief that Clark and JD Clark disclosed Pure Maintenance's information to and are acting in concert with Viper and Adrenalin to copy and use Pure Maintenance's marketing material and INSTAPURE Trademark and to copy and use Pure Maintenance's Fogger Units and application methods, which are covered by the Asserted Patents.

75. Pure Maintenance alleges on information and belief that Clark and JD Clark breached the License Agreement by failing to return all Pure Maintenance equipment, materials, literature, price lists, customer lists, other documents, and materials to Pure Maintenance.

76. Pure Maintenance alleges on information and belief that Viper is using Pure Maintenance's vendor information and confidential and proprietary materials to compete with Pure Maintenance and its licensees.

77. Pure Maintenance, therefore, alleges on information and belief that Clark and JD Clark breached the License Agreement by disclosing confidential financial, sales, and marketing information, including information about Pure Maintenance's vendors to Viper and/or Adrenaline.

78. By at least a letter addressed to Clark, dated March 4, 2019, Pure Maintenance gave notice to Defendants of the Asserted Patents and the acts of alleged misconduct herein.

79. Counsel for at least Clark and ARS Flood & Fire Clean Up sent a response to Pure Maintenance's March 4, 2019 letter, which promised a substantive response to the alleged misconduct "shortly."

80. None of the Defendants have substantively responded to Pure Maintenance's allegations of misconduct.

81. In a letter dated June 12, 2019, Pure Maintenance also informed counsel for at least Clark and ARS Flood & Fire Clean Up of the infringement of the INSTAPURE Trademark and failure to substantively respond to the March 4, 2019 letter.

82. Defendants have been on notice of the Asserted Patents since at least March 4, 2019.

83. Defendants have been on notice of Defendants' infringement of Pure Maintenance's trademark rights in the INSTAPURE trademark since at least June 12, 2019.

**FIRST CAUSE OF ACTION**  
**Breach of Contract**  
**(Against Clark and JD Clark)**

84. Pure Maintenance re-alleges and incorporates the foregoing paragraphs as though fully set forth hereat.

85. The License Agreement and Debt Release Agreement are valid and binding contracts.

86. Pure Maintenance has performed, and continues to perform, all of its obligations under the License Agreement and Debt Release Agreement or has been excused from performing its obligations under the License Agreement and Debt Release Agreement.

87. Clark and JD Clark have breached the License Agreement and Debt Release Agreement, and continue to breach the Contract at least by modifying Pure Maintenance's equipment, including the Pure Maintenance Fogger Unit, without authorization to do so; by not ordering replacement parts for the leased Pure Maintenance Fogger Unit from Pure Maintenance; by returning Pure Maintenance's equipment, including the Pure Maintenance Fogger Unit, in other than good condition; by failing to return all Pure Maintenance equipment, materials, literature, price lists, customer lists, other documents, and materials to Pure Maintenance; and by disclosing confidential financial, sales, and marketing information, including information about Pure Maintenance's vendors to Viper and/or Adrenaline.

88. Clark and JD Clark's breach of the License Agreement and Debt Release Agreement is material and without justification.

89. As a direct and proximate result of Clark and JD Clark's breach, Pure Maintenance has suffered, and will continue to suffer general and special damages, including consequential damages, in an amount to be proven at trial.

90. Clark and JD Clark's conduct as set forth herein gives rise to a cause of action for breach of contract and related wrongs under the laws of the State of Utah.

91. By reason of the foregoing, Pure Maintenance is entitled to monetary and injunctive relief against Clark and JD Clark, as more fully set forth hereinbelow.

**SECOND CAUSE OF ACTION**  
**Breach of the Covenant of Good Faith and Fair Dealing**  
**(Against Clark and JD Clark)**

92. Pure Maintenance re-alleges and incorporates the foregoing paragraphs as though fully set forth hereat.

93. The License Agreement and Debt Release Agreement are valid and binding contracts.

94. Pure Maintenance performed and continues to perform its obligations under the License Agreement and Debt Release Agreement or has been excused from performing its obligations under the License Agreement and Debt Release Agreement.

95. Clark and JD Clark have breached the implied covenants of good faith and fair dealing of the License Agreement and Debt Release Agreement, and they continue to breach the implied covenant of good faith and fair dealing of the License Agreement and Debt Release Agreement at least by failing to deal with Pure Maintenance fairly and in good faith and by intentionally injuring Pure Maintenance's right to receive the benefits of the License Agreement and Debt Release Agreement.

96. Clark and JD Clark's breach of the implied covenants of good faith and fair dealing of the License Agreement and Debt Release Agreement is material and without justification.

97. As a direct and proximate result of Clark and JS Clark's breach of the implied covenant of good faith and fair dealing, Pure Maintenance has suffered, and will continue to suffer general and special damages, including consequential damages, in an amount to be proven at trial.

98. Clark and JD Clark's conduct as set forth herein gives rise to a cause of action for breach of the implied covenant of good faith and fair dealing, and related wrongs, under the laws of the State of Utah.

99. By reason of the foregoing, Pure Maintenance is entitled to monetary and injunctive relief against Clark and JD Clark, as more fully set forth hereinbelow.

**THIRD CAUSE OF ACTION  
Trademark Infringement, 15 U.S.C. § 1114  
(Against Clark and Viper)**

100. Pure Maintenance re-alleges and incorporates the foregoing paragraphs as though fully set forth hereat.

101. Pure Maintenance is the owner of the INSTAPURE Trademark, including the '437 Registration.

102. At least Clark and Viper used the INSTAPURE Trademark in connection with the advertising, marketing and sale of their products and services without Pure Maintenance's consent, and with knowledge of Pure Maintenance's rights in the INSTAPURE Trademark.

103. Clark and Viper's use of the INSTAPURE Trademark is identical to Pure Maintenance's use of its INSTAPURE Trademark, as found in the '437 Registration, in sound, appearance, and meaning.

104. Clark and Viper's used the INSTAPURE Trademark in connection with goods and services that compete with and are related to Pure Maintenance's goods and services sold under the INSTAPURE Trademark.

105. Clark and Viper's unauthorized use of Pure Maintenance's INSTAPURE Trademark has caused, or is likely to cause confusion, mistake, and deception in violation of the Lanham Act 15 U.S.C. §1114.



106. The actions of the Clark and Viper described herein constitute infringement of Pure Maintenance's registered INSTAPURE Trademark in violation of the Lanham Act, 15 U.S.C. §1114.

107. Clark and Viper's unauthorized use of the INSTAPURE Trademark in connection with the sale and advertising of goods and services deprives Pure Maintenance of the ability to control the goodwill and reputation that Pure Maintenance has built in the INSTAPURE Trademark.

108. Unless permanently restrained, Clark and Viper's use of the INSTAPURE Trademark will injure Pure Maintenance, causing damage to Pure Maintenance in an amount to be determined at trial.

109. Clark and Viper's actions caused and will cause irreparable injury to Pure Maintenance's good will and reputation associated with the value of the INSTAPURE Trademark.

110. As a direct and proximate result of Clark and Viper's trademark infringement, Pure Maintenance has been damaged within the meaning of 15 U.S.C. §1114.

111. Clark and Viper's use of the INSTAPURE Trademark was done willfully, and with knowledge that such use would or was likely to cause confusion, mistake or deceive others in blatant disregard for Pure Maintenance's rights.

**FOURTH CAUSE OF ACTION  
Trademark Infringement, False Designation, Unfair Competition, 15 U.S.C. § 1125  
(Against Clark and Viper)**

112. Pure Maintenance re-alleges and incorporates the foregoing paragraphs as though fully set forth hereat.

113. Pure Maintenance is the owner of common law rights in the INSTAPURE Trademark.

114. Clark and Viper are using the INSTAPURE Trademark in connection with the advertising, marketing and sale of their products and services without Pure Maintenance's consent, and with knowledge of Pure Maintenance's rights in the INSTAPURE Trademark.

115. Clark and Viper's use of the INSTAPURE Trademark is identical to Pure Maintenance's INSTAPURE Trademark, in sound, appearance, and meaning.

116. Clark and Viper use the INSTAPURE Trademark in connection with goods and or services that are competitive and related to Pure Maintenance's goods and or services sold under the INSTAPURE Trademark.

117. Clark and Viper's unauthorized use of Pure Maintenance's INSTAPURE Trademark and Clark and Viper's false designations of origin have caused, or are likely to cause confusion, mistake, or to deceive as to the affiliation, connection, or association of Clark or Viper with the Pure Maintenance and as to the origin, sponsorship, or approval of Clark and Viper's goods or services, or commercial activities.

118. Clark and Viper have unfairly competed with and injured Pure Maintenance, and unless permanently restrained, will continue to injure Pure Maintenance, causing damage to Pure Maintenance in an amount to be determined at trial.

119. Clark and Viper's actions have causing and will cause irreparable injury to Pure Maintenance's good will and reputation associated with the value of the Pure Maintenance's INSTAPURE Trademark.

120. Clark and Viper's unauthorized use of the INSTAPURE Trademark in connection with the sale and advertising of goods and services deprives Pure Maintenance the ability to control the goodwill and reputation that Pure Maintenance has built in the INSTAPURE Trademark.

121. The actions of Clark and Viper described herein constitute infringement of the Lanham Act, 15 U.S.C. §1125, and based thereon, Pure Maintenance is entitled to injunctive relief, including but not limited to preliminary relief, as well as monetary damages and other remedies including Clark and Viper's profits, treble damages, reasonable attorney's fees, costs and prejudgment interest.

**FIFTH CAUSE OF ACTION**  
**Unfair Competition**  
**(Against Clark and Viper)**

122. Pure Maintenance re-alleges and incorporates the foregoing paragraphs as though fully set forth hereat.

123. Clark and Viper's conduct as alleged herein is in violation of Utah Code Ann. § 13-5a-101 *et seq.*

124. Pure Maintenance alleges on information and belief that Clark and Viper's acts have been willful and with knowledge that Clark and Viper would be unlawfully and unfairly profiting from the goodwill associated with Pure Maintenance and its rights in the INSTAPURE Trademark.

125. Clark and Viper's actions have led to a material diminution in value of the INSTAPURE Trademark.

126. Pure Maintenance has been injured by Clark and Viper's infringement of the INSTAPURE Trademark.

127. Pursuant to Utah Code Ann. § 13-5a-103, Pure Maintenance is entitled to damages, costs, attorneys' fees, and punitive damages from Clark and Viper for their unfair competition.

**SIXTH CAUSE OF ACTION  
Deceptive Trade Practices  
(Against Clark and Viper)**

128. Pure Maintenance re-alleges and incorporates the foregoing paragraphs as though fully set forth hereat.

129. Clark and Viper, by their actions as alleged herein, have caused a likelihood of confusion or of misunderstanding as to the source of its products and services and has thereby engaged in a deceptive trade practice, pursuant to Utah Code Ann. § 13-11a-3(1)(b).

130. Clark and Viper's conduct as set forth hereinabove gives rise to a cause of action for deceptive trade practices and related wrongs under the statutory and common law of the State of Utah, including at least Utah Code Ann. § 13-11a-4(2)(a).

131. Clark and Viper have engaged in deceptive trade practices against Pure Maintenance in willful and deliberate disregard of Pure Maintenance's rights and those of the consuming public.

132. By reason of Clark and Viper's acts, Pure Maintenance has suffered damage and irreparable harm.

133. Accordingly, Pure Maintenance is entitled to injunctive and monetary relief against Clark and Viper, pursuant to at least Utah Code Ann. § 13-11a-4(2)(a) and (b).

**SEVENTH CAUSE OF ACTION**  
**Infringement of U.S. Patent No. 9,238,239**  
**(Against Defendants)**

134. Pure Maintenance re-alleges and incorporates the foregoing paragraphs as though fully set forth hereat.

135. Defendants have directly infringed and continue to directly infringe at least claim 1 of the '239 Patent by making, using, offering to sell, selling and/or importing in the United States, its fogger units and associated services without license or authority from Pure Maintenance to do so

136. Defendants have indirectly infringed and continue to indirectly infringe at least claim 1 of the '239 Patent by inducing others to use its fogger units and associated services, without license or authority from Pure Maintenance to do so, despite knowledge of the '239 Patent and that such use infringes one or more claims of the '239 Patent.

137. Pure Maintenance has sustained damages and will continue to sustain damages as a result of Defendants acts of infringement.

138. Pure Maintenance is entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount to be proven at trial.

139. Defendants' infringement of the '239 patent will continue to damage Pure Maintenance's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

140. Notwithstanding notice from Pure Maintenance, Defendants continue to make, use, sell, and offer for sale, infringing products and services.

141. Defendants' infringement of the '239 Patent has been willful and in deliberate disregard of Pure Maintenance's rights.

142. Pure Maintenance is entitled to injunctive and monetary relief against Defendants, pursuant to 35 U.S.C. §§ 283, 284, and 285, as more fully set forth herein.

**EIGHTH CAUSE OF ACTION  
Infringement of U.S. Patent No. 9,517,283  
(Against Defendants)**

143. Pure Maintenance re-alleges and incorporates the foregoing paragraphs as though fully set forth hereat.

144. Defendants have directly infringed and continues to directly infringe at least claim 1 of the '283 Patent by making, using, offering to sell, selling and/or importing in the United States, its fogger units and associated services without license or authority from Pure Maintenance to do so

145. Defendants have indirectly infringed and continue to indirectly infringe at least claim 1 of the '283 Patent by inducing others to use its fogger units and associated services, without license or authority from Pure Maintenance to do so, despite knowledge of the '283 Patent and that such use infringes one or more claims of the '283 Patent.

146. Pure Maintenance has sustained damages and will continue to sustain damages as a result of Defendants acts of infringement.

147. Pure Maintenance is entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount to be proven at trial.

148. Defendants' infringement of the '283 patent will continue to damage Pure Maintenance's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

149. Notwithstanding notice from Pure Maintenance, Defendants continue to make, use, sell, and offer for sale, infringing products and services.

150. Defendants' infringement of the '283 Patent has been willful and in deliberate disregard of Pure Maintenance's rights.

151. Pure Maintenance is entitled to injunctive and monetary relief against Defendants, pursuant to 35 U.S.C. §§ 283, 284, and 285, as more fully set forth herein.

#### **PRAYER FOR RELIEF**

WHEREFORE, Pure Maintenance prays for entry of a final order and judgment against Defendants as follows:

- A. Judgment finding Defendants liable for infringement of the Asserted Patents;
- B. Judgment that Clark and Viper have infringed Pure Maintenance's rights in the INSTRAPURE Trademark;
- C. Judgment that Clark and Viper have committed acts of unfair competition;
- D. Judgment that Clark and Viper have engaged in deceptive trade practices;
- E. An order temporarily, preliminarily, and permanently enjoining Defendants, their agents and servants, and any and all parties acting in concert with any of them, from directly or indirectly infringing in any manner the Asserted Patents, whether by making, using, selling, offering to sell, or importing in the United States any products

or services falling within the scope of any claims of the Asserted Patents, pursuant to at least 35 U.S.C. § 283;

- F. An order temporarily, preliminarily, and permanently enjoining Clark and Viper, their agents and servants, and any and all parties acting in concert with any of them, from further acts of infringement of Pure Maintenance's rights in the INSTAPURE Trademark, pursuant to Section 34(a) of the Lanham Act, 15 U.S.C. § 1116(a), and Utah Code Ann. § 13-11a-4(2)(a);
- G. An order temporarily, preliminarily, and permanently enjoining Clark and Viper, their agents and servants, and any and all parties acting in concert with any of them, from engaging in deceptive trade practices, pursuant to at least Section 34(a) of the Lanham Act, 15 U.S.C. § 1116(a), and Utah Code Ann. § 13-11a-4(2)(a);
- H. An order of the Court ordering specific performance by Clark of his obligations under his contracts with Pure Maintenance;
- I. An order requiring Defendants to destroy their entire stock of infringing products within the United States, pursuant to at least 35 U.S.C. § 283 and 15 U.S.C. § 1118;
- J. An award of damages, in an amount to be proven at trial, and a determination that such damages be trebled in view of the willful infringement by Defendants, pursuant to at least 35 U.S.C. § 284 and 15 U.S.C. § 1117(b);
- K. An award of damages, costs, and Clark and Viper's profits under 15 U.S.C. § 1117 for Clark and Viper's infringement of the INSTAPURE Trademark;
- L. An award of damages, costs, attorneys' fees, and punitive damages for Clark and Viper's acts of unfair competition, pursuant to Utah Code Ann. § 13-5a-103;



- M. An award of damages and Clark and Viper's profits, pursuant to applicable state statutory and common law, including at least the greater of Pure Maintenance's actual damages and \$2,000, pursuant to Utah Code Ann. § 13-11a-4(2)(b);
- N. An award of damages against Clark and JD Clark for breach of contract, including general, special, and consequential damages, in an amount to be proved at trial, plus interest;
- O. An award of pre-judgment interest, pursuant to at least 35 U.S.C. § 284 and 15 U.S.C. § 1117(b);
- P. An award of costs in bringing this action, pursuant to at least 35 U.S.C. § 284;
- Q. A declaration that this is an exceptional case and an award of attorneys' fees and expenses, pursuant to at least 35 U.S.C. § 285 and 15 U.S.C. § 1117;
- R. An award of attorneys' fees under Utah Code Ann. § 13-11a-4(2)(c);
- S. An award of post-judgment interest, pursuant to at least 28 U.S.C. § 1961(a); and
- T. All other relief which this Court in its discretion deems just, proper, and equitable.

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

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Pure Maintenance demands trial by jury on all claims and issues so triable.

Dated: June 28, 2019.

Respectfully Submitted,

MASCHOFF BRENNAN

By: /s/ Kirk R. Harris

Kirk R. Harris

Jared J. Braithwaite

Alexis K. Juergens

Attorneys for Plaintiff

PURE MAINTENANCE HOLDINGS, LLC