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23 THE BETTER MEAT CO.
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THE BETTER MEAT CO.,

Plaintiff,

v.

EMERGY, Inc. d/b/a MEATI FOODS, PAUL
VRONSKY, and BOND CAPITAL
MANAGEMENT LP.

Defendants.

Case No.: 21-1203

COMPLAINT FOR:

- (1) Tortious Interference
- (2) Unfair Competition - Cal. Bus. & Prof. Code § 17200
- (3) Declaratory Judgment of Inventorship

JURY TRIAL DEMANDED

1 Plaintiff The Better Meat Co. (“BMC” or “Plaintiff”) brings this Complaint against
2 Defendants Emergy, Inc. d/b/a Meati Foods (“Emergy”), Bond Capital Management LP (“Bond
3 Capital”), and Paul Vronsky (“Vronsky”) and alleges as follows:

4 **INTRODUCTION**

5 1. The Better Meat Co. is a West Sacramento-based company that has developed
6 breakthrough technology to produce next-generation animal-free proteins. BMC’s products can be
7 used as alternative meats or as meat enhancers, improving health, animal welfare, and
8 environmental sustainability. BMC is in the process of raising Series A funding from investors
9 attracted by its innovative technology to build a facility to harness the power of fermentation to
10 produce its ingredients at a commercial scale.

11 2. BMC brings this action to put a stop to and redress efforts by Defendant Emergy to
12 interfere with its Series A fundraising round and drive it out of the marketplace. Emergy is a
13 heavily financed fungal products start-up company that has lurched from using carbonized fungus
14 for battery storage, to toothpaste, and eventually to meat replacements – all without obtaining a
15 single patent to its name. With money in search of a project and a significant advantage in
16 resources, Emergy has now targeted BMC’s innovations, patents, and business and attempted to
17 suppress its ability to raise capital from California investors.

18 3. Upon learning of BMC’s fundraising efforts, Defendant Emergy coordinated the
19 sending of false allegations and demands to BMC and the presumptive lead investor in its Series A
20 round with the intent of deterring any investment. Emergy falsely claimed to own and to have
21 invented BMC’s core technologies, specifically the novel combination of particle-size and water
22 weight limitations that are at the heart of BMC’s recently issued patent and that allow BMC’s
23 products to remain shelf stable and have their pleasing and meat-like texture. Bizarrely, Emergy
24 has asserted that its founders should be named as inventors of BMC’s patents and demanded that
25 BMC sign over its rights.

26 4. There is absolutely no truth to those claims, and Emergy knows that there is no truth
27 to them. Its sole intent is to force BMC to disclose Emergy’s baseless allegations to potential
28 investors as a means of suppressing BMC’s fundraising. Emergy has been unable to identify any

1 evidence that it had identified BMC's particle sizes and water weights at any time, much less back
2 in 2018 when it falsely alleges that they were stolen by a former employee of BMC. Had Emergy
3 developed those ideas, it would have included them in its own patent applications. But those
4 applications simply retread the extensive prior art on fungal fermentation and have been rejected by
5 the Patent and Trademark Office over and over for that reason.

6 5. Accordingly, BMC brings this action to recover for the damage done to its business
7 and to obtain declaratory relief establishing that it is the owner of its patents.

8 **PARTIES**

9 6. Plaintiff The Better Meat Co. is a general corporation organized under the laws of
10 Delaware with its headquarters and principal place of business in West Sacramento, California.

11 7. Defendant Emergy, Inc. d/b/a Meati Foods is a benefit corporation organized under
12 the laws of Delaware with its headquarters and principal place of business in Boulder, Colorado.

13 8. Defendant Bond Capital Management LP is an investment firm with its headquarters
14 and principal place of business in San Francisco, California, and is a substantial investor in
15 Emergy.

16 9. Defendant Paul Vronsky is an Operating Partner, General Partner, and General
17 Counsel of Bond Capital, located in San Francisco, California. Vronsky, when sending the email at
18 issue in this suit, did so in his capacity as a partner in Bond Capital and on behalf of Bond Capital
19 and Emergy. His conduct is attributable to both under principles of respondeat superior.

20 **JURISDICTION AND VENUE**

21 10. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338,
22 1367, 2201, and 2202. Jurisdiction lies under the Declaratory Judgment Act because there is an
23 actual controversy between BMC and Emergy with respect to the inventorship and ownership of
24 U.S. Patent No. 11,058,137.

25 11. Defendants are subject to personal jurisdiction in California because, as detailed
26 further below, they directed tortious misstatements and threats into this State, both to BMC in
27 California, with the knowledge that those communications would need to be disclosed to investors
28 in California and to BMC's potential investors in California, all with the intention to disrupt

1 BMC's ability to raise investment capital from California investors and to take advantage of this
2 State's market for venture capital financing.

3 12. In addition, Defendant Vronsky, as General Partner at Defendant Bond Capital, and
4 on behalf of and at the direction of Defendant Emergy, sent at least one such message from within
5 California to an investor in California. As a result, Defendants have committed tortious acts in
6 California which are the gravamen of this action.

7 13. At the same time they have attempted to deprive BMC of the ability to raise capital
8 in this State, Defendants themselves continue to avail themselves of California's market for venture
9 capital financing, thereby attempting to obtain an unfair competitive advantage in terms of relative
10 access to this State's venture capital market.

11 14. Venue is proper in the Eastern District of California pursuant to 18 U.S.C. § 1291(b)
12 because a substantial part of the events or omissions giving rise to the claim occurred in this
13 judicial district.

14 **BACKGROUND**

15 **A. The Better Meat Co.**

16 15. The Better Meat Co. was founded in early 2018 by Joanna Bromley, Adam Yee, and
17 Paul Shapiro to create next-generation animal-free proteins that can be used as meat substitutes or
18 to enhance animal meat, improving health, animal welfare, and environmental sustainability at a
19 competitive cost. Many of these proteins are made using mycelium, which is the root-like structure
20 of fungi.

21 16. BMC's novel "Rhiza" mycoprotein product is a whole food, complete protein
22 ingredient that is versatile, allergen-free, neutral in taste, and naturally has the texture of animal
23 meat. It contains more protein than eggs, more iron than beef, more fiber than oats, and more
24 potassium than bananas. It is also shelf stable.

25 17. The Rhiza product and the underlying unique mycoprotein-based technology is the
26 result of extensive time, effort, and resources devoted by BMC to researching mycelium- and
27 mycoprotein-based foods.

1 18. In September 2019, BMC filed U.S. Patent Application Nos. 16/578,099 (“the ’099
2 Application”) and 16/586,150 (“the ’150 Application”). BMC’s U.S. Provisional Patent
3 Application No. 67/733,925 (“the ’925 Provisional”), filed September 20, 2018, supplies priority
4 for both applications.

5 19. On July 13, 2021, the ’099 Application issued as U.S. Patent No. 11,058,137 (“the
6 ’137 Patent”). The ’137 Patent covers a novel shelf-stable protein that comprises a cultural fungal
7 biomass with a certain particle size and amount of water by weight.

8 **B. Defendant Emergy**

9 20. Defendant Emergy was founded in 2015 by Justin Whiteley and Tyler Huggins as
10 an alternative energy startup, seeking to carbonize mycelium for use in batteries.

11 21. That year, Emergy was accepted into the Chain Reaction Innovations (CRI) program
12 at Argonne National Laboratory to perform research regarding carbonization of mycelium for use
13 in batteries. However, Emergy does not appear to have made any advances in that area.

14 22. Since then, Emergy has used its significant venture capital backing to cycle through
15 various guises and focuses, at no point obtaining any patents or launching a successful business
16 model.

17 23. In 2019, after exploring a variety of other business models from energy to toothpaste
18 to snacking chips, Emergy changed its business and research focus to animal-free meat and began
19 doing business as “Meati.” Meati opened its headquarters in June 2019.

20 24. Emergy has been highly successful at obtaining investment financing and has raised
21 substantial venture capital from California investors, including Acre Venture Partners (based in
22 Santa Monica), BOND Capital (based in San Francisco), Congruent Ventures (based in Oakland),
23 Prelude Ventures (based in San Francisco), Tao Capital (based in San Francisco), Fifty Years
24 (based in San Francisco), and Rose Marcario (based in Los Angeles).

25 25. However, Emergy has been unsuccessful at developing patentable technology,
26 methods, or products that go beyond what has long been known about the cultivation of mycelium.

27 26. Emergy’s patent applications do no more than recite material that appears
28 extensively in the prior art and have been rejected by the United States Patent and Trademark

1 Office on that basis. For example, Emergy’s U.S. Patent Application No. 16/435,261 was filed on
2 June 14, 2019 and purports to claim a “method of growing fungal mycelium and forming edible
3 food products includes growing fungal cells in a growth media such that the fungal cells produce
4 mycelium.” The examiner issued a final rejection on November 24, 2021. Emergy has not obtained
5 a single patent from the PTO.

6 27. Notably, none of Emergy’s patent applications disclose or claim any of the novel
7 aspects of BMC’s Rhiza product and ’137 Patent, including the particle size and water weight
8 claim limitations.

9 28. Nonetheless, using its significant capital and financial backing, Emergy has begun
10 to offer for sale a mycelium meat replacement product.

11 **C. Emergy Makes Baseless Claims of Trade Secret Misappropriation and**
12 **Demands that the Better Meat Co. Turn Over Its Patents**

13 29. The issuance of BMC’s patent appears to have been a surprise to Emergy and its
14 investors and could not have been welcome given Emergy’s own inability to develop any novel
15 technology that could obtain approval from the PTO.

16 30. On July 16, 2021, three days after BMC was granted the ’137 Patent, Emergy sent
17 twin letters to BMC and a former BMC employee named as the inventor on the ’150 Application
18 and ’137 Patent. In those letters, Emergy falsely alleged that the former BMC employee had stolen
19 the inventions disclosed in the ’150 Application and ’137 Patent from Emergy while he was on an
20 educational fellowship at Argonne National Laboratory between December 2017 and May 2018 –
21 prior to his time at BMC and to Emergy’s reorganization as “Meati.”

22 31. Emergy falsely accused BMC and BMC’s former employee of trade secret
23 misappropriation and unfair competition and demanded that BMC withdraw its Rhiza product from
24 the market, “correct” the inventorship of the ’150 Application and ’137 Patent to name Emergy’s
25 founders as inventors, and assign it ownership of the ’150 Application and ’137 Patent.

26 32. Emergy’s claims were false, and Emergy knows that they were false. Emergy’s sole
27 purpose was to force BMC to make investor disclosures that would slow down its fundraising
28 efforts. Emergy’s letter did not contain any evidence that Emergy had *ever* identified any of the

1 novel aspects of the '150 Application and '137 Patent, particularly the particle size and water-
2 weight claim limitations, much less done so during the early 2018 time period during which the
3 former BMC employee was on an educational fellowship at Argonne National Laboratory. At that
4 time, Emergy was focused on carbonization of mycelium for use in batteries.

5 33. While Emergy may have needed to put a brave face on its lack of a patent and cover
6 up for inaccurate representations it may have made to its own investors about the scope of its
7 intellectual property, that does not justify the misstatements about BMC in Emergy's letter.

8 34. BMC responded on August 5, 2021 by explaining how and when BMC and its
9 employees independently developed their intellectual property and Rhiza product. BMC observed
10 that Emergy's July 16 letter did not actually identify any trade secrets or contributions from
11 Messrs. Whiteley and Huggins to the '150 Application and '137 Patent. However, BMC offered to
12 consider any evidence that Emergy had developed the inventions disclosed in the '150 Application
13 and '137 Patent and shared them with BMC's former employee during his time at Argonne.

14 35. On August 25, 2021, perhaps having misled its own investors about the extent of its
15 own innovations, Emergy responded by purporting to provide such evidence. However, Emergy's
16 "evidence" consisted largely of unidentified, undated pictures of mycelial discs and chunks, all of
17 the sort that could, are, and have been grown by any number of investigators, laboratories, and
18 fungal biomass producers for decades. Emergy provided no evidence that it had identified the
19 novel claim terms of the '150 Application and '137 Patent. The letter contained no evidence that
20 Emergy shared any of the concepts at issue with BMC's former employee. Nor did the letter even
21 provide evidence that Emergy was actively researching meat replacement uses of mycelium prior to
22 2019.

23 36. On September 8, 2021, BMC responded with an explanation of these deficiencies in
24 Emergy's "evidence." BMC offered to discuss the matter but reaffirmed its willingness to defend
25 its intellectual property. *See Exhibit A.*

26 37. Emergy made no response to BMC's letter for more than three months.
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28

D. The Better Meat Co. Seeks Series A Financing

38. Beginning in late November 2021, BMC began to engage formally with potential investors in a Series A financing round. While BMC has breakthrough technology, commercial-scale production requires substantial investment in facilities, equipment, and personnel.

39. BMC signed a term sheet with a lead investor for the Series A investment round, a prominent and well-regarded California private equity investor with many years in the industry and extensive contacts and name recognition (the “Lead Investor”). BMC used that investor’s name while soliciting further investors to fill out the round, including other investors in California.

40. BMC’s breakthrough patents and technology are highly material to its attractiveness as a target for investment.

E. Meati Seeks to Stop The Better Meat Co.’s Fundraising By Threatening Meritless Litigation

41. Defendants – Emergy and its investors – became aware of BMC’s fundraising efforts and the identity of the Lead Investor. Concerned with its potential as a competitor, Defendants acted to undermine BMC’s ability to raise the capital that would allow it to build a commercial production facility.

42. At 1:51 p.m., on December 15, 2021, Emergy sent BMC a short letter directed to it in California accusing BMC of “misappropriation of Meati’s trade secrets and unfair competition” and expressing Emergy’s intention to “move forward with legal action” and “fil[e] a complaint . . . in the immediate future.” Emergy stated that it would seek an order “directing the Director of the United States Patent and Trademark Office to correct the inventorship of the patent claims that BMC currently has by naming Tyler Huggins and Justin Whiteley as the rightful inventors”

43. Emergy did not respond to any of the points in BMC’s September 8 letter and did not provide any further evidence to support its claims. Emergy attached its own prior letters but not BMC’s September 8 letter.

44. When Emergy sent the December 15 letter and attachments, it knew that the claims in those letters were false and that Emergy had not in fact invented the novel subject matter of BMC’s ’150 Application and ’137 Patent, much less shared them with BMC’s former employee. Had Emergy invented that material, it would have incorporated it into the claims of its own patent

1 application, which has been rejected by the PTO because it does not recite anything beyond the
2 prior art.

3 45. When Emergy sent the December 15 letter and attachments, it also knew that BMC
4 would be required to disclose the letter and attachments to potential investors in California,
5 including the Lead Investor, and that doing so would impair BMC's ability to raise money.

6 46. At 2:04 p.m. on December 15, 2021, thirteen minutes after counsel for Emergy had
7 sent its threat of litigation to BMC, Paul Vronsky, a California-based "Operating Partner" of
8 California-based Emergy investor Defend Bond Capital sent the Lead Investor, located in
9 California, an email. Vronsky identified himself as "General Partner and GC" of Bond Capital,
10 made clear that he was sending his email in that capacity, and stated that he was interested in this
11 matter because Bond Capital is an investor in Emergy.

12 47. The email stated in pertinent part:

13 I wanted to give you a heads up that one of our portfolio companies,
14 Meati, is in a pretty significant trade secret and patent dispute with a
15 company you might be evaluating, The Better Meat Co. I don't know
16 really more than that but as a matter of friendship and courtesy, I thought I
would reach out and let you know. I'm happy to connect with your
counsel if that is helpful.

17 48. The timing of the two December 15, 2021, communications demonstrates that Mr.
18 Vronsky sent his email on behalf of, in coordination with, and at the direction of Emergy and with
19 knowledge of Emergy's communications with BMC.

20 49. In fact, Mr. Vronsky is not a friend of the Lead Investor and has no relationship with
21 them. The only reason for Mr. Vronsky to reach out to the Lead Investor was to bring to the
22 attention of the Lead Investor in California the false statements in Emergy's letters that it and not
23 BMC had invented the novel contributions of the '150 Application and '137 Patent.

24 50. Emergy, Mr. Vronsky, and Bond Capital targeted BMC and its Lead Investor in
25 order to interfere with its fundraising and punish a competitive company in the meat replacement
26 space.

27 51. To date, Emergy has satisfied itself with sending meritless letters designed to
28 damage BMC's efforts to raise the investment capital necessary to build a competing production

1 facility. Despite its threats, Emergy has not brought any litigation to test its claims in a court of
2 law.

3 **FIRST CAUSE OF ACTION**

4 **Tortious Interference – Against All Defendants**

5 52. Plaintiff incorporates the foregoing paragraphs as is fully restated herein.

6 53. Plaintiff has and had an expectancy in continuing advantageous economic
7 relationships with current and prospective investors, and has negotiated and signed a valid term
8 sheet agreement with certain such investors. These relationships contained the probability of future
9 economic benefit in the form of investments and startup capital necessary to fund Plaintiff's
10 growing business.

11 54. As Plaintiff's competitor in the same market for the same investors, Defendants
12 were aware that Plaintiff has relationships, term sheets, and agreements with Plaintiff's investors
13 and prospective investors.

14 55. Defendants committed intentional acts designed to disrupt Plaintiff's relationships
15 and agreements with its investors and prospective investors. On December 15, 2021, Defendant
16 Emergy sent BMC a letter falsely claiming trade secret misappropriation and ownership of its
17 patents that was objectively and subjectively baseless and in bad faith knowing that BMC would be
18 required to disclose it to investors.

19 56. In coordination with Defendant Emergy, Defendant Vronsky sent an email to Lead
20 Investor apprising him of the invented "dispute." In that email, Defendant Vronsky identified
21 himself as "General Partner and GC" of Bond Capital, made clear that he was sending his email in
22 that capacity, and stated that he was interested in this matter because Bond Capital was an investor
23 in Emergy. In sending that email Defendant Vronsky acted as the agent and employee of Bond
24 Capital, which is liable for his conduct under principles of respondeat superior. Defendant
25 Vronsky also sent that email in coordination with, at the direction of, acting on behalf of, and as an
26 agent of Defendant Emergy.

1 57. In sending these emails, Defendants intended to discourage the Lead Investor from
2 continuing his business relationship with Plaintiff, and intentionally targeted Lead Investor in order
3 to disrupt the Series A financing process.

4 58. Defendants' conduct was wrongful and is proscribed by determinable legal
5 standards. Defendants intentionally and materially misrepresented the nature and significance of
6 the dispute between Plaintiff and Defendant Emery and Emery's imagined ownership of BMC's
7 technology. Defendants also engaged in unfair and anti-competitive conduct by attempting to drive
8 Plaintiff, Emery's potential competitor, out of the market, and prevent Plaintiff from raising
9 money from investors.

10 59. Defendants' wrongful acts were designed to disrupt the relationship and agreements
11 between Plaintiff and its investors, most prominently the Lead Investor.

12 60. Defendants' wrongful conduct actually disrupted Plaintiff's relationship with its
13 investors and made Plaintiff's performance of its agreements with its investors more difficult.

14 61. Defendants' wrongful conduct also caused Plaintiff to suffer economic harm. As a
15 direct and proximate result of Defendants' intentional interference, Plaintiff's current and
16 prospective investors learned of the false claims espoused by Defendants, which negatively
17 impacted Plaintiff's ability to obtain investments on favorable terms. Defendants' wrongful
18 conduct was a substantial factor in causing this harm.

19 62. Defendants' intentional commission of these wrongful acts, including their aiding
20 and abetting of these wrongful acts, was willful, malicious, oppressive, and in conscious disregard
21 of Plaintiff's rights. Plaintiff is therefore entitled to an award of punitive damages to punish
22 Defendants' wrongful conduct and deter future wrongful conduct.

23 **SECOND CAUSE OF ACTION**

24 **Unfair Competition - Cal. Bus. & Prof. Code § 17200 – Against All Defendants**

25 63. Plaintiff incorporates the foregoing paragraphs as is fully restated herein.

26 64. Defendants have engaged in unlawful, unfair, and fraudulent business practices as
27 defined by California Bus. & Prof. Code §§ 17200, et seq. by committing acts including tortious
28 interference, fraudulent misrepresentation, and unfair, anti-competitive conduct, and other illegal

1 acts and practices as alleged above, all in an effort to gain unfair competitive advantage over
2 Plaintiff.

3 65. Defendants' unfair business practices have unjustly minimized Plaintiff's
4 competitive advantage and have caused and are causing Plaintiff to suffer economic injuries.

5 66. As a result of such unfair competition, Plaintiff has also suffered irreparable injury
6 and, unless Defendants are enjoined from such unfair competition, will continue to suffer
7 irreparable injury, whereby Plaintiff has no adequate remedy at law. Defendants should be
8 enjoined from further unlawful, unfair, and deceptive business practices.

9 **THIRD CAUSE OF ACTION**

10 **Declaratory Judgment of Inventorship – Against Emergy**

11 67. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

12 68. BMC is the rightful and sole owner of all right, title, and interest in the '137 Patent.

13 69. The '137 Patent lists the true and correct inventor of its subject matter, Augustus H.
14 Pattillo.

15 70. Emergy founders Whiteley and Huggins are not entitled to be named as inventors on
16 the '137 Patent, and neither they nor Emergy have any rightful ownership in the '137 Patent,
17 because they did not develop, conceive, or invent any aspect of the inventions disclosed in the '137
18 Patent.

19 71. Emergy has disputed BMC's exclusive ownership right in the subject matter
20 disclosed and claimed ownership in the '137 Patent by falsely contending that the inventor named
21 on the '137 Patent is not the true and actual inventor of the subject matter claimed therein.

22 72. BMC's ability to exploit, use, and license to others its intellectual property rights,
23 including those rights pertaining to the subject matter disclosed and claimed in the '137 Patent,
24 depends on whether the inventors are properly identified. BMC desires to, and is prepared to,
25 immediately use its intellectual property rights, including those rights pertaining to the subject
26 matter disclosed and claimed in the '137 Patent, but Emergy's allegations of incorrect inventorship
27 have caused uncertainty over BMC's ability to do so.
28

73. Because there is an immediate, real, and substantial controversy between the parties regarding whether the true inventors are properly identified in the '137 Patent, BMC is entitled to a declaration that Whiteley and Huggins are not inventors of the '137 Patent and that it is the rightful and sole owner of all right, title, and interest in the '137 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff The Better Meat Co. prays that the Court order and/or issue the following relief:

- A. Damages in an amount to be determined at trial;
- B. Punitive and exemplary damages;
- C. Treble damages;
- D. Restitution;
- E. Preliminary and permanent injunctive relief;
- F. Declaratory judgment of inventorship and ownership;
- G. Attorney's fees and costs;
- H. Interest; and
- I. All such other and further relief as the Court may deem just, proper, and equitable.

Dated: December 17, 2021

Respectfully Submitted,

BRAUNHAGEY & BORDEN LLP

By: /s/ J. Noah Hagey
J. Noah Hagey

Attorneys for Plaintiff
THE BETTER MEAT CO.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff The Better Meat Co. hereby demands a jury trial of all claims and causes of action so triable before a jury in the above-titled action.

Dated: December 17, 2021

Respectfully Submitted,

BRAUNHAGEY & BORDEN LLP

By: /s/ J. Noah Hagey
J. Noah Hagey

Attorneys for Complainant
THE BETTER MEAT CO.